

**AUDIT REPORT –**  
**WORKERS’**  
**COMPENSATION**

*Final Report –  
June 6, 2018  
from the New  
Castle County  
Auditor’s  
Office*

June 6, 2018

## Audit Report – Workers’ Compensation Audit

To: Stephanie Tickle, Insurance and Loss Control Manager  
Vanessa Phillips, Chief Administrative Officer  
Brian Maxwell, Chief Financial Officer  
Deloris Hayes-Arrington, Chief Human Resources Officer

### **Audit Conclusions and Reportable Items**

Overall, we believe that adequate internal controls exist in all material respects over New Castle County’s administration of Workers’ Compensation claims, except for the areas indicated below. We’d like to note that these issues, for the most part, existed prior to the hiring of the current Insurance and Loss Control Manager and that the current Manager has, or is taking steps, to address the issues she has responsibility for.

**We have five Areas of Particular Concern which we believe warrant management’s immediate attention. These are:**

- **Ensure accurate re-pricing of medical invoices. Please note that this issue may have resulted in estimated overpayments up to approximately \$600,000 for Fiscal Years 2016 and 2017. See page 9.**
- **Ensure compliance with Workers’ Compensation Regulations concerning proper authorizations for Pharmaceuticals. See page 14.**
- **Evaluate treatment in County’s internal and external financial reports of LII (Leave for Injury or Illness) payments. See page 17.**
- **Continue to evaluate the cost versus benefit decision of obtaining excess Workers’ Compensation insurance. See page 20.**
- **Develop a Policies and Procedures Manual. See page 21.**

Other opportunities for improvement are included in the “Opportunities for Improvement” section of this report beginning on page 24. We also have a General Comment on page 7.

### **Overview – Workers’ Compensation**

Per the Delaware Department of Labor website, “Workers’ Compensation is a system, created by the Delaware Legislature, which provides benefits to workers who are injured at work or

acquire an occupational disease while working. The benefits include medical care, temporary disability payments, and compensation for a resulting permanent impairment. In the event of the death of an injured worker, benefits are payable to the family of the worker.” Specifically,

- Medical benefits: All necessary medical treatment and hospitalization services are provided by the employer or the employer’s insurance carrier. Delaware Code, Title 19, Chapter 23, Section 2322B establishes a health-care payment system for Workers’ Compensation claims. The health-care payment system includes payment rates, instructions, guidelines, and payment guides and policies regarding application of the payment system. The maximum allowable payment for health-care related payments for Workers’ Compensation claims is the lesser of the health-care provider’s actual charges or the fee set by the payment system.
- Temporary Total Disability benefits<sup>1</sup>: If an employee is unable to go back to work following an injury or illness, the employee receives  $66\frac{2}{3}$  percent of gross weekly wages received at the time of the injury, up to a maximum established annually by the Department of Labor. Please note that there is no cap on benefits.
- Temporary Partial benefits<sup>2</sup>: If an employee is able to return to work part-time or at a lower rate than his/her pre-injury wage (say, due to his/her inability to work overtime), the employee may be entitled to  $\frac{2}{3}$  of the difference between the pre-injury wage and his/her current wage. Please note that this award is capped at 300 weeks.
- Permanent Impairment benefits: If an employee suffers permanent injury or when the usefulness of a body part/organ or any physical function is permanently impaired, benefits are based on Delaware Code Title 19, Section 2326 (a)-(e) and (g)-(i).
- Disfigurement benefits: If an employee suffers any disfigurement (e.g. scarring) following an injury or illness, the employee may be paid disfigurement depending on the severity of the disfigurement [Section 2326(f)].
- Death benefits: When a work-related injury or illness results in the workers’ death, benefits are payable to the dependents of the worker as defined by law.

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<sup>1</sup> Note: Because of the LII provision in most union contracts for union employees and in the New Castle County Code Section 26.03.904 for non-union classified and unclassified service employees, this category is often handled differently by New Castle County. See LII comment on page 17.

<sup>2</sup> See Note 1.

New Castle County is 100% self-insured for its Workers' Compensation program and it processes all Workers' Compensation claims in-house. Workers' Compensation claims processing involves evaluating whether a claim is compensable, filing of First Report of Injury with the Department of Labor, reviewing and paying invoices related to the employee's treatment, monitoring and managing employee's work status, and reaching (if necessary) compensation settlements with the employee. Risk Management utilizes the MCO system to re-price invoices to the Delaware Fee Schedule.

**Table 1: Workers' Compensation claims opened, FY2013 – FY2017**

<b>FY of Injury</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>Number of claims</b>	243	224	185	187	170
<b>Open claims</b>	15	17	19	48	143
* As of 6/30/2017					

Table 1 gives the number of Workers' Compensation claims opened between FY2013 and FY2017, while Table 2 gives New Castle County's costs related to Workers' Compensation for the last five fiscal years.

**Table 2: Workers' Compensation Payments, FY2013 – FY2017**

<b>Workers' Compensation Payments made (\$)</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>Leave for Injury or Illness (LII) *</b>	645,458	651,679	788,879	967,374	801,808
<b>Temporary Partial Disability</b>	338,514	376,173	377,555	392,454	342,109
<b>Temporary Total Disability</b>	310,599	259,962	224,311	296,140	448,724
<b>Medical</b>	2,159,971	2,011,145	2,597,035	2,827,710	2,171,115
<b>Pharmaceuticals</b>	-	105,027	110,367	100,232	106,542
<b>Settlements</b>	824,942	452,708	534,609	878,320	1,199,530
<b>Expenses</b>	119,763	57,181	48,658	82,571	84,978
<b>Reimbursements</b>	11,142	10,881	10,822	10,849	12,185
<b>Total</b>	<b>4,410,390</b>	<b>3,924,756</b>	<b>4,692,236</b>	<b>5,555,649</b>	<b>5,166,990</b>
* LII payments are not made from Risk Management's Workers' Compensation budget; they come from the Departments' budgets.					

## Audit Objectives, Methodology, and Scope

This audit was a "performance audit" of New Castle County's Workers' Compensation program administered by the Risk Management Division of the Office of Human Resources.

Performance audits, as defined by Generally Accepted Governmental Auditing Standards, are audits that provide findings and conclusions based on an evaluation of sufficient, appropriate evidence against criteria. The overall performance audit objectives for this audit were:

- **Internal Control:** An assessment of the County's system of internal control over Workers' Compensation processing that is designed to provide reasonable assurance of achieving efficient and effective operations, reliable financial and performance reporting, and compliance with applicable laws and regulations.
- **Compliance:** An assessment of the County's compliance with criteria, related to Workers' Compensation processing, established by provisions of laws, formal policies and procedures, and other requirements.
- **Program effectiveness, economy, and efficiency:** An assessment of the extent to which the County is achieving its goals and objectives related to the Workers' Compensation processes.

Our performance audit, and its scope and methodology, encompassed the following:

1. Evaluating whether the County is taking steps to be adequately covered for Workers' Compensation claims in the event of a catastrophic incident(s).
2. Determining whether Policies and Procedures exist for the various aspects of Workers' Compensation claims processing.
3. Evaluating whether Workers' Compensation medical invoices are accurately re-priced per the Delaware Fee Schedule and the Delaware Workers' Compensation Regulations by re-pricing medical invoices independently (i.e., without using the MCO system).
4. Evaluating Risk Management's compliance with Workers' Compensation Regulations concerning authorization of Pharmaceuticals.
5. Evaluating the treatment of LII (Leave for Illness or Injury) payments in the County's financial reports. Also, evaluating whether departmental Medical Liaisons were aware of the LII approval process through meetings with the Medical Liaisons of four County departments (Public Safety, Special Services, Land Use and Office of Finance).
6. Evaluating the processing of claims by selecting a sample of 15 claims for:
  - a. Verifying whether the First Report of Injury (FROI) accurately reflected information from PeopleSoft and the Incident Report.
  - b. Verifying whether the MCO system accurately reflected the Date of Injury and Type of Injury information.
  - c. Verifying the computation of the average weekly wage (total wages paid to the employee during the 26 weeks immediately preceding the date of injury divided by 26) used in calculating compensation amounts.
  - d. Verifying whether employees received LII payments as per their hourly rate at the time of injury.

- e. Verifying that employees did not receive both LII and indemnity payments simultaneously for Workers' Compensation injuries while they were out of work.
  - f. Determining whether any settlement amounts paid agreed with the settlement agreements.
7. Analyzing whether there is opportunity to negotiate discounts with health care providers. Also, for existing agreements, determining whether the discounts were reflected in the amounts paid.
  8. Evaluating Risk Management's communications (through Safety Committee and Medical Liaison meetings) with the various departments to obtain feedback and provide guidance on Workers' Compensation claims.
  9. Evaluating Risk Management's internal reporting and analyses as well as reports provided to Executive Management and to County Council.
  10. Evaluating the transition from having a Third Party Administrator for processing of Workers' Compensation claims to processing claims in-house.
  11. Evaluating whether Risk Management ensures the quality of data in the MCO system by reconciling it with the data from the Tier system.
  12. Evaluating the process for deciding whether claims are compensable.
  13. Evaluating the quality and adequacy of data provided to the actuary.
  14. Verifying that contract service provider invoices reflect billing for the services actually rendered.

In general, our testing involves audit sampling. We evaluate the results of the tests and use professional judgment, based on the number of exceptions and/or the materiality of such exceptions, whether to include exceptions in the audit report. In some cases, we perform additional testing to help us obtain additional audit evidence in making such evaluation and determination.

If our audit work reveals an item which we believe is significant in the context of one or more audit objectives, we include this in an "Areas of Particular Concern" section of the audit report. An Area of Particular Concern is an item (such as a deficiency in internal control or noncompliance with a particular law) which we believe has or could have a significant adverse impact upon the County's ability to accomplish a major objective and, therefore, warrants management's immediate attention. All other reportable items are included in an "Opportunities for Improvement" section of the audit report.

Because the scope of an audit does not allow us to examine every single function and transaction performed by an area, an audit would not necessarily disclose all matters that might be reportable items.

## Generally Accepted Government Auditing Standards

Except as discussed in the following paragraph, we conducted our audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) promulgated by the United States General Accounting Office. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We have not met the requirement of Section 3.96 of GAGAS that requires an audit organization performing audits in accordance with GAGAS to have an external review every three years. In Fiscal Year 2019, we plan to have the Association of Local Government Auditors perform a peer review of the County Auditor's Office.

## Views of Responsible Officials

Management's responses are included after each of the report's recommendations.

## Appreciation of Cooperation

We sincerely appreciate the cooperation of the Insurance and Loss Control Manager and her staff in their willingness to work together with us in determining constructive improvements to the processing of Workers' Compensation claims.

Cc:

Matthew Meyer, County Executive  
Michael Hojnicky, Chief of Technology and Administrative Services  
Aundrea Almond, Chief of Staff  
Brian Boyle, Policy Director  
Jason Miller, Communications Director  
David Gregor, Executive Assistant IV  
Victoria Ford, Executive Assistant IV  
Karen Smalls, Executive Assistant IV  
Nellie Hill, Clerk of County Council  
New Castle County Council Members  
New Castle County Audit Committee Members

## General Comment

### **Risk Management Initiatives**

The Insurance and Loss Control Manager began working in Risk Management in early 2017. She is striving to make improvements in the Workers' Compensation area. During the audit, we found her to be very receptive to our thoughts and ideas and very interested/motivated to improve the internal controls over the processing of Workers' Compensation claims. We believe she is setting a strong "tone at the top" in her leadership of Risk Management.

Risk Management has taken the following initiatives to better manage the Workers' Compensation program through open communication, improving safety and keeping costs low:

- **Medical Liaison meetings:** As per Risk Management's FY 2018 Budget book, one of the missions of the Office of Risk Management is to clearly define the roles and responsibilities of New Castle County employees and management personnel for reporting occupational (Workers' Compensation) and non-occupational injuries/illnesses. Risk Management accomplishes this mission through periodically holding Medical Liaison meetings. The Insurance and Loss Control Manager meets with the medical liaisons (usually time keepers) from the different departments and discusses steps to be taken in different situations, such as the use of crutches/walkers by injured employees, reasonable use of ambulance and emergency room, injured employee's return to work, etc.
- **Safety Committee meetings:** In an attempt to prevent workplace injuries, Risk Management holds monthly Safety Committee meetings to identify safety issues throughout County Government. The Safety Committee consists of representatives from the County's different departments and employee collective bargaining organizations. The Safety Committee's objective is to preserve and improve the safety of the workplace for all County employees by being observant of the workplace and advising supervisors and Risk Management on safer practices. In the past, the Safety Committee has identified issues like proper lifting techniques, stand-alone employee safety, navigation holders in County issued vehicles, etc. Based on discussions in these meetings, Risk Management takes steps to mitigate the safety risks identified by the Safety Committee.
- **Emphasis on reducing time lost by injured employees:** Risk Management is striving to help injured employees return to work as soon as possible, often in modified duty roles that the injured employees are qualified to perform and that also meet the injured employees' work restrictions. The Insurance and Loss Control Manager informed us that



Risk Management asks the injured employee's department to provide information on any such modified duty positions available within the department or, if nothing is available in the employee's department, Human Resources tries to find other County positions that might meet the employee's qualifications and work restrictions. If Human Resources is unable to place an employee who has been out of work on an ongoing basis, or if the injured employee declines the modified duty offered, the employee may be separated from County employment. When that happens, the employee stops receiving "Leave for Injury or Illness" (LII) payments (full salary) and may be entitled to 66 2/3 percent of his/her salary up to the state maximum.

- Tracking of medical denials and utilization reviews: A new cost-savings initiative implemented by the Insurance and Loss Control Manager is the tracking of medical denials and utilization reviews. This is important as the County has only 15 days from denial of a medical invoice to file for a utilization review [Delaware Code Title 19, Chapter 23, Section 2322F (h)]. Utilization reviews are requested when the medical treatment is deemed beyond the physician's script or if treatment exceeds practice guidelines.

## Areas of Particular Concern

### #1. Ensure accurate re-pricing of medical invoices.

#### Background

The Delaware General Assembly authorized the establishment of a fee schedule framework to define the maximum allowable reimbursement (MAR) for hospitals, ambulatory surgery centers, and professional services. The fee schedules were required to produce a 33% reduction in medical costs by 2017. Per Delaware Code Title 19, Chapter 23, Section 2322B (5),

”Beginning on January 1, 2018, the payment system will be adjusted yearly based on percentage changes to the Consumer Price Index-Urban, U.S. City Average, All Items, as published by the United States Bureau of Labor Statistics. Notwithstanding the annual CPI-Urban increase permitted by this paragraph, no individual procedure in Delaware paid for through the workers’ compensation system (as identified by HCPCS level 1 or level 2 Code) shall be reimbursed at a rate greater than 200% of that reimbursed by the federal Medicare system, provided that radiology services may be reimbursed at up to 250% of the federal Medicare reimbursement and surgery services may be reimbursed at up to 300% of the federal Medicare reimbursement....”

Section 2322B (6) requires that

”Upon adoption of the health-care payment system, an employer and/or insurance carrier shall pay the lesser of the rate set forth by the payment system or the health-care provider’s actual charge....”

New Castle County is self-insured for Workers’ Compensation, and handles the re-pricing and payment of all Workers’ Compensation claims in-house. The Risk Management staff members are responsible for re-pricing medical invoices to the Delaware Fee Schedule. Risk Management utilized the MCO system for such process from 2014 through mid-2017. During the audit, as a result of issues identified by both the County Auditor’s Office and the Insurance & Loss Control Manager, Risk Management began to utilize both the State’s on-line database and the MCO system.

#### Testing

We initially selected a sample of claims with injury dates between FY 2013 and FY 2017 and began looking at all medical invoices for the particular claims. We reviewed all 61 invoices for the first claim and 45 invoices from the second claim. During our review, we realized there

were re-pricing issues and we kept Risk Management informed of our findings. The Insurance and Loss Control Manager agreed with the re-pricing issues we identified and then independently reviewed the first binder of medical invoices from FY 2017. She identified 96 invoices that she felt were not re-priced accurately and asked us to review a sample from these 96 invoices. We reviewed a sample of 15 of these invoices and re-priced them ourselves according to the 2016 Delaware Fee Schedule and Delaware Workers' Compensation Regulations.

Our review of the above medical invoices revealed the following re-pricing issues:

1. Hospital outpatient services are priced lower than hospital inpatient services, but the County paid the outpatient invoice as an inpatient service.
2. Anesthesia services were not repriced as per the Delaware Workers' Compensation Regulations (Section 4.20).
3. Durable medical equipment has not always been re-priced to the Delaware Fee Schedule; sometimes, the full billed amount was paid.
4. Delaware Administrative Code Title 19, 1341, Workers' Compensation Regulations, Section 4.21.1.11.2.2 states that  
"The maximum reimbursement allowance for the physician assistant or the registered nurse first assistant (RNFA) is twenty percent (20%) of the surgeon's fee for the procedure(s) performed."

Similarly, when an anesthesiologist provides direction to the CRNA providing the anesthesia service, the reimbursement must be split between the two of them at 50% (Section 4.20.4.2.4). These regulations have not always been followed while re-pricing such medical invoices.

5. At the time of our review (November - December, 2017), the Frequently Asked Questions area of the Health Care Payment System section of the Delaware Department of Labor's website stated the following for out-of-state treatment reimbursement:  
"The health care payment system shall include provisions for health care treatment and procedures performed outside of the State of Delaware ... In the event that a procedure, treatment or service is rendered outside of the State of Delaware by a health care provider, hospital or ambulatory surgery center, not licensed or permitted to render such procedure, treatment or service within the State of Delaware but licensed in another state, the amount of reimbursement shall be the lesser of:
  - The health care provider's usual and customary fee;
  - The maximum allowable fee pursuant to the Delaware workers' compensation health care payment system adopted pursuant to this section;

- The maximum allowable fee pursuant to any workers' compensation health care payment system in the state in which the services at issue were rendered; or
- If an employer or insurance carrier contracts with a provider for the purpose of providing services under this chapter, the rate negotiated to any such contract."

In our review, we came across an out-of-state invoice where "the maximum allowable fee pursuant to any workers' compensation health care payment in the state in which the services at issue were rendered" was the least of the four criteria set above, but this invoice was not re-priced and the full amount billed had been paid.

6. Per Delaware Administrative Code Title 19, Section 4.6.3, reimbursement to Ambulatory Surgery Centers (ASC) shall be made at the lesser of the maximum allowable or billed charges. Our review found that Ambulatory Surgery Centers were not always reimbursed per the 2016 Delaware Fee Schedule. The MCO system did not reflect the actual 2016 Delaware Fee Schedule amounts and, due to some misunderstanding/miscommunication in Risk Management, some medical invoices were manually re-priced to 64.02%, even when the Fee Schedule was populated with actual fee dollar amounts for the particular CPT (Current Procedural Terminology, copyright American Medical Association) codes. This led to erroneous re-priced amounts and payments.

Without a complete review of all the medical invoices related to Workers' Compensation claims paid over FY 2016 and FY 2017, it is not possible to know the exact amount overpaid by the County over that period due to the above discrepancies. However, based on our review of the sample of medical invoices in the first half of FY 2017, ours and the Insurance and Loss Control Manager's conservative estimate of the amount overpaid over FY 2016 and FY 2017 is approximately \$600,000. This rough estimate, if true, is not immaterial, and the Insurance and Loss Control Manager has started looking into how the County can legally "claw back" some of the overpayments.

## **Causes**

Risk Management uses the MCO system for re-pricing medical invoices. And, for the most part, these issues seem to have arisen from inaccurate re-pricing information in the MCO system. Per the MCO Advantage Ltd., Work Comp Services Agreement, "CUSTOMER will have access to the functionality of the MCO ADVANTAGE product including: ... automatic re-pricing of line items according to the state CPT fee schedule or provider panel fee; ..." The MCO system does not appear to have been updated with the Delaware CPT Fee Schedule for at least calendar year 2016. The MCO system also did not incorporate the Delaware Workers' Compensation regulations, which is why the anesthesia charges and surgery assistant charges are inaccurate.

Moreover, while re-pricing medical invoices, the MCO system currently does not include the discounts negotiated with providers. Risk Management staff manually re-prices the medical invoices to account for the provider discounts.

## **Recommendations**

We recommend that Risk Management:

- Ensure the vendor is updating the MCO system with the latest Delaware Fee Schedule and the Delaware Workers' Compensation Regulations.
- Review all medical invoices paid in fiscal years 2016 and 2017 (and further back if deemed necessary); if possible, collect the extra payments made to the providers as a result of incorrect re-pricing of invoices. The Insurance and Loss Control Manager informed us that the Chief Administrative Officer and she were planning to do this.
- To prevent inaccurate re-pricing in the future, periodically choose a sample of medical invoices for re-pricing independently of the MCO system.
- Consider providing claims adjustment training to one or two Risk Management staff members and perhaps pursue professional certification for such staff. Having a certified claims adjustor as a part of the Risk Management staff could help prevent such issues with medical invoice re-pricing.

## **Management's Response**

As detailed in the County Auditor's report, the County's Workers' Compensation Program is 100% self-insured. Furthermore, the program is fully managed in-house by the County's Office of Risk Management. One of the main tasks associated with the administration of a workers' compensation insurance program is the review, processing and payment of medical bills. As indicated in the County Auditor's report, the Office of Risk Management currently utilizes MCO for its medical repricing. In addition, MCO is the database wherein we maintain the payments related to the County's workers' compensation claims.

The rates paid on medicals associated with workers' compensation claims are determined by the Health Care Advisory Panel ("HCAP"), in accordance with 19 Del. C. Section 2322, and found within the Workers' Compensation Health Care Payment System for Delaware (the "Health Care Payment System"). The rates are commonly referred to as the "fee schedule rates". Each year, sometimes more frequently, the HCAP issues updated fee schedule rates. Therefore, the rates the County pays on medicals are primarily driven by the Health Care Payment System's fee schedule rates.

During the audit, we discovered that the MCO system had not been updated with the 2017 fee schedule rates. This was immediately brought to MCO's attention and their database was updated with the necessary fee schedule rates. In addition to the fee schedule rates, we also discovered errors with repricing related to numerous items which were not specifically coded in the Health Care Payment System, but for which were included in the HCAP's Health Care Practice Guidelines and/or the Workers' Compensation Act. The errors were related to hospital charges, surgicenter charges, anesthesia services and surgery charges including nurse practitioners. The issues were immediately brought to the vendor's attention and rectified. Moving forward, the Insurance and Loss Control Manager will monitor the Health Care Payment System's website for updates to the fee schedule rates and Health Care Practice Guidelines. Upon notification that the fee schedule rates and/or guidelines have been updated, the Insurance and Loss Control Manager will direct the responsible staff member to advise MCO as to the changes. That staff member will then request that MCO upload the updates. It will be that staff member's responsibility to ensure that MCO uploads the updates. The staff person will be able to confirm updates to the MCO system by comparing MCO's information to that found at the Health Care Payment System's website.

The County Auditor's report is correct in that the failure to maintain up-to-date repricing information resulted in overpayments on numerous medical invoices. The Office of Risk Management is currently undertaking the burdensome process of going through all the payments issued in 2016 and 2017 to determine which invoices were overpaid. We are currently in the stage of determining the rate of overpayment. We do not presently have an overpayment figure as we have not completed this stage. Once we have determined the rates of overpayment, demand letters will be sent to the medical providers demanding refunds of the overpayments.

In an effort to avoid issues in the future with repricing, the staff member responsible for repricing regularly and randomly selects invoices and reprices them both through the MCO system and the Health Care Payment System's online system to ensure accuracy. In addition, the Insurance and Loss Control Manager signs off on each invoice. In doing so, the Insurance and Loss Control Manager compares, at random, invoice figures as marked-up by the responsible staff member to that of the fee schedule rates, as maintained by the Health Care Payment System. This process has greatly reduced spending in relation to medicals, and it is believed that it has and will continue to reduce errors in repricing.

As for the County Auditor's recommendation that the County provide claims adjustment training to one or two of the Office of Risk Management staff members, that is definitely useful training for staff members handling general liability claims. However, employees handling workers' compensation claims are really better served by obtaining training in medical billing

and coding. However, medical billing and coding requires schooling before training can become an effective tool. Unfortunately, tuition reimbursement is not in the budget for the upcoming fiscal year. However, if tuition reimbursement is returned to the budget in the future, the Insurance and Loss Control Manager would certainly urge the staff member who handles the workers' compensation claims processing to consider said schooling.

The repricing problems were as a result of: (1) relying too heavily on a software vendor; and (2) failing to stay abreast of changes to the Health Care Payment System and the Workers' Compensation Act. Now that these pitfalls have been identified, the Office of Risk Management can learn from the mistakes of its past, and moving forward we know to educate our vendor and double-check our work. More importantly, we now know that staying abreast of the law is key to the success of a self-insured workers' compensation program.

## **#2. Ensure compliance with Workers' Compensation Regulations concerning authorization of Pharmaceuticals.**

### **Comment**

We selected 15 pharmacy invoices for testing – a combination of high-value invoices and non-preferred agent drug invoices for the time period 7/1/2016 to 8/31/2016. Our testing revealed:

- Delaware Administrative Code Title 19, 1341, Workers' Compensation Regulations, Section 4.13.8 provides:  
“When a brand name drug is prescribed to treat an injury for which a carrier or self-insured employer is liable, the pharmacist or medical provider dispensing the drug or medication shall substitute a preferred/generic drug pursuant to this Regulation as set forth above. A physician may prescribe and a pharmacist must dispense a non-preferred/brand name drug or medication only upon the physician's or other authorized individual's completion of the 'Justification For Use of Non-Preferred Medication' form, ... A provider may prescribe a medication from the Non-Preferred Agent list if the patient has trialed (*sic*) the use of two preferred agents and the trials have failed due to lack of efficacy or unacceptable side effects. Preferred agent trials should be documented in the medical record.”

Five of the pharmacy invoices in our sample were for medication from the Non-Preferred Agent list. We were told by Risk Management that the pharmacy dispensing the medication usually calls for approval before dispensing medication from the Non-Preferred Agent list

and we did find call logs recording requests from a pharmacy's payment processor for approval for "Gralise" in one instance. But we did not find any "Justification for Use of Non-Preferred Medication" forms for any of the invoices in the sample.

- Per Section 4.13.5 of the same Regulations,  
"As of the effective date of this Regulation, Oxycontin as well as oxycodone extended release; and Actiq, as well as transmucosal fentanyl, are not on the Preferred or Non-Preferred Medication List and may only be used with prior written approval of the employer or its insurance carrier. However, an employee on a stable dose of Oxycontin prior to the effective date of this Regulation may continue the use of this medication after the effective date of this Regulation."

In our sample, there were five pharmacy invoices for Oxycontin or fentanyl, three of which were for the same claim, and all the claims for these five invoices were for injuries before September 2013 (the effective date for Section 4.13.5). We did not find any written approvals from New Castle County for the use of these four medications in the claims files on Time Matters<sup>3</sup>, and were not able to determine whether the employees were on a stable dose of Oxycontin prior to September 2013. (Note: if the dose needs to change, it is no longer considered a "stable dose.") We believe that it is important for Risk Management to review and provide written approvals for these medications, especially in light of the current opioid epidemic.

- Delaware Administrative Code Title 19, 1341, Workers' Compensation Regulations, Section 4.13.1 gives the maximum reimbursement for prescription drugs or medicines under Workers' Compensation:  
"Prescribed drugs are capped at the lesser of the provider's usual charge; a negotiated contract amount; or the Average Wholesale Price (AWP) for the National Drug Code (NDC) for the prescription drug or medicine on the day it was dispensed minus a percentage reduction set by the Workers' Compensation Oversight Panel plus a dispensing fee set by the Workers' Compensation Oversight Panel for brand-name drugs or medicines and generic drugs or medicines...."

Here, "Average Wholesale Price", or "AWP", means the average wholesale price of a prescription drug as provided in the most current release of the Medi-Span Master Drug Database by Wolters Kluwar Health on the day a prescription drug is dispensed or other

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<sup>3</sup> A system used to store documents related to claims.



nationally recognized drug pricing index adopted by the Workers' Compensation Oversight Panel.

New Castle County has an agreement with a Pharmacy Service Provider on reimbursement rates. During this audit we tried to determine whether the County was receiving the rates agreed upon, and we found that the amount of discount received was not constant. We believe that Risk Management should seek clarification on how the reimbursement amounts in the invoices were calculated.

## **Recommendations**

We recommend that Risk Management:

- Ask for a "Justification for Use of Non-Preferred Medication" form every time a Workers' Compensation claimant is prescribed a Non-Preferred Medication for the first time.
- Either review and provide written approvals every time a Workers' Compensation claimant fills a prescription for Oxycontin, Oxycodone extended release, Actiq, or transmucosal fentanyl, or ensure that prior written approvals exist for these medications. (Note: Per Delaware Administrative Code Title 19, 1341, Workers' Compensation Regulations, Section 4.13.5, an employee on a stable dose of Oxycontin prior to September 2013 may continue the use of Oxycontin.)
- Monitor that the reimbursement amounts paid to the Pharmacy Service Provider are per New Castle County's agreement with the Provider.

## **Management's Response**

The County Auditor recommended as part of his review of the prescription management portion of the Workers' Compensation Program that the Office of Risk Management implement an SOP wherein we request a "Justification for Use" form for every non-preferred medication prescription. This is certainly an SOP that can be implemented and is proper given the language in the Health Care Practice Guidelines. The Office of Risk Management will begin this practice immediately for any newly prescribed non-preferred medication prescription.

Claimants typically have prescriptions filled prior to the Office of Risk Management having any knowledge of the prescription. Often the events which take place are as follows: the claimant is seen by their medical provider, their medical provider provides them with a prescription, the claimant goes to the pharmacy (typically the County's Pharmacy Service Provider) and has the prescription filled, and then days later our office receives, via first class mail, the invoice for the prescription which was dispensed days or weeks prior. As a result of this process, the County

Auditor's recommendation that the Office of Risk Management review and provide written approval for various opioids is not realistic, as we are not aware of the prescriptions until days to weeks after they've been filled. Now, admittedly, the County could make a request of their Pharmacy vendor that for any opioid prescription the vendor must obtain approval from the Office of Risk Management before dispensing. However, this process would result in delay to the claimants and additional tasks for the already very busy employees of the Office of Risk Management. The Insurance and Loss Control Manager recognizes that the opioid crisis is front stage at the moment on most agendas. However, in relation to the County's Workers' Compensation Program, there have been no identified issues; therefore, the Insurance and Loss Control Manager is of the opinion that this recommended process would only create more tasks for both the Office of Risk Management and the vendor and would result in no positive change to our Workers' Compensation Program. Moreover, the Insurance and Loss Control Manager feels that requiring a "Justification for Use" form for every non-preferred medication prescription, including Oxycontin, will be an effective internal control.

The Office of Risk Management will include in its forthcoming Request for Proposals for pharmaceutical services, a requirement that the successful vendor include applicable AWP pricing information with each invoice. This way, the vendor will bear the cost of the AWP subscription (through Wolters Kluwer Health) information and not the County.

**#3. Evaluate treatment in County's internal and external financial reports of LII (Leave for Injury or Illness) payments.**

**Comment**

At the beginning of the audit, the Insurance and Loss Control Manager informed us that, due to the language in the union contracts, employees who are temporarily injured on the job are eligible to receive full pay through regular payroll and not through the Workers' Compensation program.<sup>4</sup> For example, the language in the Local 1607 contract is as follows:

"A permanent or probationary employee who is temporarily disabled in the line of duty shall receive full pay for the period of his/her disability without charge against his/her vacation or sick leave, subject to the following conditions:

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<sup>4</sup> Note: County Code Section 26.03.904 contains this provision for non-union (both classified and unclassified) employees, but it only applies to the first three months of the employee's disability. The provision in the union contracts does not have the time threshold. (Note: The provision is in all union contracts except for the crossing guard's contract).

- i. Provided that the disability results from an injury or illness sustained directly in the performance of the employee's work, as provided in the State Worker's Compensation Act.
- ii. If incapacitated for his/her regular employment, the employee may be given other duties with County government for the period of recuperation. Unwillingness to accept such an assignment as directed by the General Manager or the Chief Human Resources Officer will make the employee ineligible for disability leave during the time involved ..."

Injured employees paid through this provision are paid through regular payroll with a code of LII ("Leave for Injury or Illness").<sup>5</sup> The Payroll section of the Office of Finance informed us that these payments are posted in the County's accounting records as "Salaries and Wages", not as "Workers' Compensation Indemnifications." Thus, for purposes of the County's internal and external reporting (including the County's financial statements), it appears that these payments are not properly classified as Workers' Compensation payments. (Note: On the financial statements, these would be classified as "Salaries and Wages", whereas items posted as Workers' Compensation costs are ultimately classified as "Fringe Benefits.")<sup>6</sup>

We have the following concerns:

- Users of the County's financial reports may get a distorted review of the actual Workers' Compensation costs to the County. We asked the Office of Finance for a report showing the LII payments for the past five fiscal years. The report showed that employees were paid \$3,855,198 in Workers' Compensation payments through LII over this period. In contrast, the total amount posted to "Workers' Compensation Indemnifications" (the account from which the employees would be paid if not through LII) for this same period was \$3,366,541.
- Since Risk Management reports to the County's actuary<sup>7</sup> each year only Workers' Compensation data from the MCO system (which does not reflect LII payments), we are concerned that the actuary is receiving incomplete data to report on the County's loss exposure. The actuary actually states in its report "Errors in the data could have a

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<sup>5</sup> Note: There are situations where a union employee is not paid through LII and is instead paid through Workers' Compensation. These include when a person is no longer employed but is still receiving Workers' Compensation indemnity payments and when an employee is on partial disability (TPD) and is back to work on light duty (the difference between his pay on light duty and his normal pay would be paid through Workers' Compensation).

<sup>6</sup> Note: Since anticipated LII payments for a fiscal year are not budgeted in Fringe Benefits, posting actual LII payments to Fringe Benefits would create an over budget situation in those financial reports showing actual versus budgeted amounts. Correspondingly, it would create an under budget situation in Salaries and Wages. Thus, management would need to budget projected LII payments in Fringe Benefits and reduce budgeted Salaries and Wages by this same amount.

<sup>7</sup> The County engages an actuary each year to perform an evaluation of the County's self-insured loss and allocated loss adjustment expense associated with Workers' Compensation claims, including a forecast of ultimate losses for the upcoming accident year.

significant impact upon our analysis. If NCC becomes aware of any problems with the data, we should be notified so that our report can be amended if necessary.” We don’t know if the Risk Management area has ever provided LII information to the actuary.

- We estimate that for Fiscal Years 2013 to 2017 the County paid approximately \$1.9 million more in Workers’ Compensation payments than it would have if not for the LII provision in the union contracts and in County Code. However, we recognize that this is a benefit negotiated with past Administrations.

In our meetings with Medical Liaisons from four departments, we were told that the current LII approvals process involves departments receiving LII approval emails for each employee from Risk Management. Risk Management sends these approvals every time they receive a physician’s work status report advising that an employee stay out of work.

To evaluate the LII approval process, we requested the Medical Liaisons from the four departments to forward the LII approvals they had received for a sample of employees. We received some approvals from three departments, and did not receive any approvals from one department. Given that the departments had difficulty locating the LII approvals, it seems that the departments do not have a policy of retaining LII approvals. Although the Insurance and Loss Control Manager showed us that a copy of LII approval emails is stored in the employee’s claim file on Time Matters in Risk Management, we believe that the Departments too should have a policy of retaining LII approvals for a period of time (not necessarily the individual employee approval emails, instead maybe the weekly LII employee lists approved by Risk Management). It would help create an audit trail and thus ensure that the Departments are following the LII approval policy set by Risk Management. In our audit review, we came across instances for a claim where LII payments were made but approvals could not be located on Time Matters.

### **Recommendations – Office of Finance, Risk Management and the County’s Departments**

We recommend that Office of Finance management evaluate whether the payments being posted to LII should instead be posted as Workers’ Compensation (or possibly the LII payments should be reclassified as Workers’ Compensation for purposes of internal and external financial reporting). Note: The County Auditor’s Office and the Office of Finance met with the County’s external audit firm on May 11, 2018 and posed this question. The external audit firm will get back to us as part of the financial statement audit for Fiscal Year 2018. Therefore, a response to this comment is not required from the Office of Finance.

We recommend that Risk Management discuss with the actuary whether LII payments should be included in the actuarial analysis of the County's liability from Workers' Compensation claims.

We will be issuing a memorandum recommending that the County's Departments institute a policy of retaining LII approvals received from Risk Management for a certain period of time. Also, the Departments should periodically generate a report on LII payments made, especially as such payments come out of their budgets. Such a report would give management a better understanding of lost time in their Departments.

### **Management's Response**

Although the Insurance and Loss Control Manager does not believe that LII payments should be included in the actuarial analysis of the County's liability from Workers' Compensation claims, the Insurance and Loss Control Manager will make such inquiry with the actuary when we begin the FY2018 process in a few short weeks from today.

There should be no need for the Departments to retain LII approvals. LII approvals are retained by the Office of Risk Management in our files.

#### **#4. Continue to evaluate the cost versus benefit decision of obtaining excess Workers' Compensation insurance.**

New Castle County is 100% self-insured for Workers' Compensation claims. This means that New Castle County assumes the financial risk for providing Workers' Compensation benefits to its employees. There are many advantages employers see in being self-insured, including (i) they've had good claims experience and feel the cost of purchasing insurance would be too high, (ii) they believe they can manage their claims better by being more involved in the loss prevention and claims processes, and (iii) they realize that by self-insuring, they pay costs as they are incurred, which normally results in lower costs over time and improved cash flow.

As evidenced by the City of Wilmington's fire incident of September 24, 2016<sup>8</sup>, catastrophic events can result in huge Workers' Compensation liabilities for an employer not carrying some sort of catastrophic loss coverage. New Castle County was covered by excess Workers' Compensation insurance until 3/10/2014, for a retention amount of \$1,000,000 per claim. (Note: an incident may result in multiple claims.) We do not know the specific reason why

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<sup>8</sup> <https://www.delawareonline.com/story/news/2017/01/13/city-loses-gamble-pay-9-million/96461996/>

management decided to discontinue it at that time. Currently, the County's Workers' Compensation program does not have excess insurance coverage.

Since New Castle County provides public safety, emergency and other high risk essential services to its residents, we believe that the County carries a high level of Workers' Compensation risk. Moreover, given some recent incidents in public safety in the State and with the County's reserves continuing to be drawn upon, we believe that the County might have difficulty in absorbing Workers' Compensation costs in case of adverse catastrophic events.

Last year, the Insurance and Loss Control Manager obtained quotes on excess insurance coverage for the County's Workers' Compensation program. She is currently working with the County's insurance broker to obtain more favorable quotes. As part of this effort, the Insurance and Loss Control Manager informed us that she is working on measures to make the County's program look more attractive to insurance companies, and thus to bring down excess insurance coverage premiums and retention levels.

### **Recommendation**

We recommend that Risk Management, together with the Executive Office, continue to evaluate the cost versus benefit decision of obtaining excess Workers' Compensation insurance.

### **Management's Response**

The Office of Risk Management has been working with the County's insurance broker, USI, in an effort to obtain costs associated with excess workers' compensation insurance. An analysis of the cost to benefit value will be conducted once the quotes are received.

### **#5. Develop a Policies and Procedures Manual.**

#### **Comment**

At the beginning of this audit, the Insurance and Loss Control Manager informed us that there were no formal written policies and procedures for the processing of Workers' Compensation claims. She is currently working on writing policies and procedures and she informed us that having written policies and procedures can help the County get competitive insurance rates from insurers.

“Internal Control – Integrated Framework”<sup>9</sup> defines internal control as “a process, effected by an entity’s board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance.” The Framework establishes five components of internal control, one of which is “Control Activities.”

Control Activities are “the actions established through policies and procedures that help ensure that management’s directives to mitigate risks to the achievement of objectives are carried out. Control activities are performed at all levels of the entity, at various stages within business processes, and over the technology environment. They may be preventive or detective in nature and may encompass a wide range of manual and automated activities such as authorizations and approvals, verifications, reconciliations, and business performance reviews ... “

Thus, it is very important for Risk Management to have written policies and procedures to document its Control Activities and, thus, to help mitigate risk. Written policies and procedures are also helpful to:

- Ensure employees fully understand their roles and responsibilities.
- Ensure consistency in the performance of management’s directives.
- Provide a roadmap to decision making.
- Serve as a training tool for new employees or to existing employees performing new job functions.

Concerning this audit, an example of where a formal policy and procedure may have been helpful would have been a requirement to routinely validate that the MCO system is re-pricing medical invoices in accordance with the current Delaware Fee Schedule. This would have ensured the implementation of management’s unwritten policy of re-pricing medical bills in accordance with the current Delaware Fee Schedule.

## **Recommendation**

We recommend that the Insurance and Loss Control Manager develop a Policies and Procedures Manual for all aspects of processing of Workers’ Compensation claims.

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<sup>9</sup> Written by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Please note that this framework is incorporated into “Standards for Internal Control in the Federal Government.” These Standards have been adopted by various state and local governments. The New Castle County Auditor’s Office supports the COSO report and the Standards.

## **Management's Response**

The Insurance and Loss Control Manager couldn't agree with the County Auditor on any recommendation more than the recommendation that the Office of Risk Management should develop a Policies and Procedures Manual. The Insurance and Loss Control Manager and office staff are in the process now of drafting SOPs and a Workers' Compensation Personnel Policy. The Insurance and Loss Control Manager looks forward to finalizing and publishing both within the next few months.



## Opportunities for Improvement

### **#6. Perform a periodic reconciliation of the Tier and MCO system amounts.**

#### **Comment**

Risk Management uses three systems for processing Workers' Compensation claims:

- i. Tier, the County's financial system, used for generating checks and storing summary information (mainly expense related) for the County's general ledger;
- ii. The MCO system, a Third Party system used for storing detailed claims information and re-pricing invoices related to claims; and,
- iii. Time Matters, a system used for storing documents related to claims.

Specifically, Tier stores information relating to financial transactions occurring on a claim, while the MCO system stores claim-related details including employee's department, date of injury, type of injury, medical payments, indemnity payments, settlement payments, check number, check date, procedure code, etc.

When an entity has a subsidiary system (in this case, the MCO System) to maintain the detailed records of the entity's financial transactions (in this case, the detailed information on individual claim payments), and a general ledger to reflect summary information for the entity's financial statements, it is typical to perform a reconciliation of the data between the two systems. If there are differences, then there would be reconciling items, which need to be analyzed and corrected, if necessary.

Risk Management informed us that a reconciliation between the MCO system amounts and the Tier system amounts has never been done. We believe it would be a prudent exercise for Risk Management to perform a periodic reconciliation of this data (at a minimum, doing so before the annual information is submitted to the actuary).

Based on the MCO system's Loss Run reports for the different fiscal years, we tried to reconcile the amounts paid per the MCO system to the amounts paid per the Tier system. The following table gives our results for the past 5 fiscal years:

**Table 3: MCO – Tier Reconciliation**

Unreconciled differences	Recon : MCO - TIER amounts				
	2013	2014**	2015	2016	2017
Indemnity payments	(123,973)	(1,155,686)	(169,648)	49,158	23,213
Medical payments	(146,967)	20,238	(128,067)	(94,439)	15,873
Other payments*	(18,847)				
<b>Total</b>	<b>(289,787)</b>	<b>(1,135,448)</b>	<b>(297,716)</b>	<b>(45,282)</b>	<b>39,086</b>
Note that payments on contracts (about \$30,000 for FY2017) are not captured in the MCO system					
*Since FY2014, expenses (e.g., court reporter fees) have been included with the indemnity and settlement payments in the Comp Paid field					
**For FY2014, the Loss Run report from the MCO system did not have any indemnity or settlement payments					

The County engages an actuarial firm to perform an annual evaluation of the County’s self-insured loss and allocated loss adjustment expense reserves for Workers’ Compensation. In its FY 2017 report, the County’s actuary states that “The accuracy and comprehensiveness of these data are the responsibility of the County” and errors in the data could have a material impact on the actuary’s analysis. The actuary also reviews the data provided for reasonableness and internal consistency.

The actuary’s methodology of loss data (from the MCO system) evaluation involves comparison of the previous fiscal year’s evaluation of data to the recent fiscal year’s evaluation at the claim level based on Claim Number. This methodology is different from using the Loss Run reports as we did (since Risk Management was able to provide us the data they provided the actuary for only FY 2017). But since the source for both data sets is the MCO system, we would expect similar results. On reviewing three actuary reports from FY 2015, FY 2016 and FY 2017, the actuary’s comparison of payments recorded in the MCO system and that in the County’s financial system revealed unreconciled differences of \$80,606 in FY 2015, \$(63,756) in FY 2016, and \$(67,000) in FY 2017. The actuary considered these unreconciled differences to be immaterial; however, the actuary’s unreconciled differences do not match ours. Without the data provided to the actuary for FY 2015 and FY 2016, we are not sure why our differences are not the same as the actuary’s; however, we noticed that for FY 2015, the actuary was provided financial data as of 5/31/2015 instead of 6/30/2015.

Risk Management informed us that differences between MCO and Tier occur due to two reasons: (1) payments on service contracts are not captured in MCO because the Workers’ Compensation medical charges are batch billed by the service contractor and not processed in MCO, and (2) fiscal year timing differences wherein “Invoices received in a new fiscal year for services rendered in the prior fiscal year may be charged against the prior year’s budget if there remain available funds.” The Insurance and Loss Control Manager informed us that, going forward, Risk Management will input contract figures to MCO to reduce the difference in the MCO and Tier amounts.

The FY 2017 actuary report notes that there was a difference in medical payments of \$281,000 due to payments in the 2<sup>nd</sup> half of June 2016 caused by a timing issue related to how NCC processes payments in the MCO system. We were unable to independently identify the \$281,000 in medical payments that caused this difference between the Tier and MCO systems. We are also concerned if this difference implies that there are implications on the FY 2016 actuary report.

## **Recommendations**

We recommend that Risk Management:

- Periodically reconcile the MCO system's Workers' Compensation claims data with the Workers' Compensation payment amounts in the County's financial system, Tier. This is an important internal control for ensuring accuracy and good data quality for actuarial purposes.
- If feasible, provide data to the actuary after July 31<sup>st</sup> of the fiscal year, so that all adjustments are reflected on the Tier and MCO systems, and differences due to timing issues are minimized.
- Discuss with the actuary whether the \$281,000 difference in medical payments between Tier and MCO had a material impact on the FY 2016 actuary report.
- Provide input to the Project Team on the "Financial System Replacement" project on the desire for an interface between MCO and the new financial system (to ensure that MCO and financial system amounts can be easily reconciled in the future).

## **Management's Response**

There were differences discovered by the County Auditor between MCO and Tier. The Office of Risk Management realized the discrepancies and has since begun to publish all charges in both systems.

The Office of Risk Management will discuss with the actuary and the Office of Finance as to how, if at all, we can provide the actuary with data after July 31<sup>st</sup> of the fiscal year, so that all adjustments are reflected.

The Insurance and Loss Control Manager will discuss with the actuary what, if any, impact the \$281,000 difference in medical payments between MCO and Tier had on the FY2016 actuary report.

The Department Finance Officer, Senior Office Assistant and the Insurance and Loss Control Manager met with Information System's Business Analyst leading the financial system

replacement project to discuss an interface between the new financial system and the Office of Risk Management's claims management software. We look forward to being part of the group which will create a new financial system which will reduce redundancy in our work.

**#7. Ensure complete and accurate data transfer while implementing new Claims Management System.**

**Comment**

Prior to 2013, the Risk Management area utilized a Third Party Administrator (TPA) to handle many of the tasks associated with the administration of Workers' Compensation claims. This vendor had its own system for claims processing. In 2013, the Risk Management area made the decision to terminate the TPA contract and to bring the function in-house. This necessitated the need to find a new system for processing claims. The system selected was the Claims Advantage (MCO) System from the vendor MCO Advantage.

At one of our initial meetings with the current Insurance and Loss Control Manager and her staff, we asked questions about the procurement of the Claims Advantage System and the conversion process from the prior system to the new. We learned that the prior Insurance and Loss Control Manager and an Executive Assistant employed by the prior Administration were apparently the primary individuals involved in the selection, conversion, and implementation of the system. Information Systems (IS) told us that IS was not involved. Thus, it appears that the selection of the vendor, as well as the conversion of the prior system to the new, did not follow typical protocols and did not adhere to best practices.<sup>10</sup> For example,

- It appears that no one prepared a Needs Assessment listing the business and technical requirements for the new system. Both Risk Management and Information Systems informed us that there was no such documentation left behind by the prior Insurance and Loss Control Manager or by the Executive Assistant.
- The employees involved in claims processing (who were in Risk Management at the time of vendor selection and are still in Risk Management) were not involved in the vendor selection process and were, therefore, not asked for their input on what they were looking for in the system.
- The data conversion process from the prior system to the new system was handled between the prior vendor and the new vendor with apparently little involvement from Risk Management and Information Systems. Risk Management has since discovered that not all

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<sup>10</sup> Please note that the annual fees paid to the system vendor are less than \$50,000 and, thus, the selection of the vendor did not have to follow Procurements' requirements for vendors providing professional services.

data was properly converted; thus, it appears that the controls over the conversion were not adequate and no one from the County ascertained that all data was properly converted. We also question whether the new system was run parallel to the old system (and properly tested) prior to “going live” with the new system.

- We’d like to make the following observation regarding the quality of data in MCO which seems to have been affected due to lack of policies and procedures on maintaining data integrity through the process of changing systems. There is an ‘Exp/Oth paid’ field in MCO with a total amount of \$2,580,385. This field seems to have not been populated since the system conversion from CorVel to MCO. Since FY 2014, apparently all expense payments (including employee reimbursement payments but excluding medical, pharmaceutical, indemnity and settlement payments) are now being grouped with indemnity and settlement payments. This break in how data is recorded in MCO can cumulatively become significant. Also, this may have a long term impact since actuaries consider data over a relatively long period of time. Moreover, during our audit testing we learned that expenses not related to settlements [e.g., Defense Medical Examination (DME) payments, court reporter fees, etc.] were not recorded in the MCO system prior to April 2015.

## **Recommendations**

Should Risk Management decide to convert to a new system (either on its own or by virtue of switching to a TPA), we recommend management:

- Prepare a formal Needs Assessment, including business and technical requirements for the new system.
- Involve Information Systems and the Risk Management staff in the process.
- Ensure all existing data is properly converted to the new system.
- Run the new system in parallel to the old system, prior to “going live”, to ensure the new system properly performs all required tasks (including fee calculations).

## **Management’s Response**

The Office of Risk Management is not presently considering changing its operating system; however, if we do decide to do such, we will certainly follow the County Auditor’s recommendations.

**#8. Develop/refine management reports to be provided to County Executive's Office, County Council, and others. Develop specific performance measures for gauging success of Workers' Compensation program.**

**Comment**

The Insurance and Loss Control Manager informed us that she is not required to submit any routine, standard management-level reports to Human Resources, the County Executive's Office, or to County Council. Also, the annual budget book for Risk Management's public budget hearing contains only generalized goals for the Workers' Compensation program. For example, a goal in the FY 2018 budget book is "To continue to manage all Workers Compensation claims in-house, including repricing to the Delaware fee schedule and processing payments for all Workers Compensation claims."

We believe Risk Management should provide periodic reporting to the Human Resources General Manager and the Executive Office, as well as County Council, on the performance of the County's Workers' Compensation program. Examples of performance measures that could be included, and measured on a year-to-year basis, on management reports include:

- The annual number of incidents for which a claim is opened.
- The annual number of claims involving employees who have filed claims before.
- The average amount (both indemnity and medical) paid on a claim.
- The average reserve for losses set up for claims.
- The number of claims closed each year.
- The average number of days a claim remains open.
- The average number of hours lost due to employees being out of work due to injuries.
- The average number of days it takes for an employee to return to work.
- The number of claims incurred on each day of the week (could indicate a pattern that a large percentage of claims occur on Mondays, for example).
- The top five types of injuries (so management can evaluate steps being taken to address the causes).
- The top 10 claims in dollar amounts paid.

Such data could not only be compared from year to year but could also be compared to other local governments' data. Such data could also be broken down by individual department.

We know that the Insurance and Loss Control Manager is already looking at some of this information herself; however, we believe Executive management should be receiving such

information to determine whether the County is achieving its objectives for its Workers' Compensation program.

It should be noted that the City of Wilmington, for example, has a Risk Management Committee established by Code. City Code requires the Insurance and Loss Control Manager to "prepare a quarterly report to the risk management committee of all claims settled during each quarter of every fiscal year" and an annual "report on the status of the risk management program." Also, the City of Wilmington in its annual operating budget presentation to City Council has numerous "critical indicators" (such as average dollar cost per claim and average number of working days lost) that it presents data on for a three-year period. Please note that we are not lobbying for the County to have a Risk Management Committee (since risk management issues can be handled in the County Council Finance Committee); instead, we are only trying to provide an example of a municipality that does periodic management reporting.

### **Recommendations**

We recommend that Risk Management:

- Discuss with the Director of Human Resources and the Chief Administrative Officer the information they need to evaluate the performance of the County's Workers' Compensation program.
- Design periodic (at least quarterly) reports to reflect this information in a clear format and provide such reports to Executive management on a routine basis.
- Report to County Council at least annually on the performance of the Workers' Compensation program.

### **Management's Response**

The Insurance and Loss Control Manager presently meets with the CAO on a weekly basis. This practice began when the CAO was the CHRO. The primary focus of most of these weekly meetings is the performance of the Workers' Compensation program. The Insurance and Loss Control Manager anticipates that due to the recent hire of the County's new CHRO, her meetings with the CAO will not be as often; therefore, she will inquire with the CAO as to what type of regular updates the Executive's Office would find appropriate and helpful for its continued review of the Workers' Compensation Program. As for regular meetings with the new CHRO, the Insurance and Loss Control Manager is hopeful that she will be granted the opportunity to have weekly meetings with her as she's done in the past with the now CAO.

The Office of Risk Management is open to providing the necessary reports to the Executive Office. The Insurance and Loss Control Manager will certainly inquire with the Executive Office as to their needs.

County Council recently requested a presentation on the County's Workers' Compensation Program. The Insurance and Loss Control Manager is eager to present to Council so as to have them better informed as to what our Workers' Compensation Program involves. She is very proud of the progress in the program, and, is hopeful that Council will be as well. As for yearly presentations to Council, she is completely open to that idea and certainly willing to conduct said presentation, if Council so desires.

### **#9. Evaluate security of employee health care data.**

#### **Comment**

Due to its very nature, claims processing gives Risk Management access to a lot of employee information, some of which is confidential and protected. During our audit, we repeatedly noticed that the staff in Risk Management took care to redact sensitive information from reports, shredded documents with sensitive information and directed the Medical Liaisons on the safe handling of employee information.

Although evaluating security over confidential employee health care data<sup>11</sup> was not a specific objective of this audit, we did notice that employee last names are used in the invoice descriptions on the County's financial system (Tier). Because of this, we attempted to ascertain from the Office of Finance whether anyone outside of Risk Management has the ability to view this information in Tier.

Finance informed us that, due to the variety of factors that can determine one's level of access, there is no simple way to isolate every user who would have access to Risk Management's financial information. (The only way to do it would be to manually look at each user's access.) It is not a simple matter of running a report of all users having access to Department 3 ("Administration", which is where Risk Management resides). For example, even if a user has

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<sup>11</sup> We have this concern because of the HIPAA (Health Insurance Portability and Accountability Act of 1996) Privacy Rule, which establishes national standards to protect individuals' medical records and other personal health information. The Rule requires appropriate safeguards to protect the privacy of personal health information, and sets limits and conditions on the uses and disclosures that may be made of such information without patient authorization. Please note that we do not know if this rule applies to Workers' Compensation indemnity payments. (Employees receiving indemnity payments are established as a vendor in Tier and, thus, their first and last names are in Tier.)



access to Department 3, there may be organization ranges (which relate directly to OCAs) specified in his/her access -- meaning Risk Management's organization may or may not be included in that range; thus, the user may or may not actually have access to view Risk Management's information. Also, if a user has access to a range of departments that includes Department 3, the user would not be identified on a report of all users having access to Department 3 (since Department 3 is part of a range and therefore not specifically mentioned).

We are not experts in data privacy rules, but this causes us concern because currently it's difficult to control those with access to Tier who can view data such as medical payments or indemnity payments made on a claim.

### **Recommendations**

The County has formed a Project Team to determine the requirements of a new financial system to replace Tier. The plan is to have a Request for Proposal completed by the Fall of 2018. The County Auditor's Office will share with the Project Team the concern about not being able to easily ascertain the system users who have access to Risk Management's data on Tier. We recommend that the Insurance and Loss Control Manager also express this concern to the Project Team when Risk Management is interviewed about Risk Management's system requirements.

In the interim, we recommend that Risk Management consider no longer using employee last names in the invoice descriptions on Tier. Perhaps the claim number (from the MCO System) could be utilized on Tier which would enable Risk Management to relate a particular payment on Tier back to the MCO System.

### **Management's Response**

Keeping claimants' information confidential is one of the biggest concerns the Office of Risk Management has when it comes to individuals outside of the Office of Risk Management having to assist with completing our tasks, e.g., Finance processing payments. To date, we have had no real issues with confidentiality, but any recommendation that can be made to avoid a breach of confidentiality, the Insurance and Loss Control Manager is certainly open to. As far as eliminating last names from Office of Finance submittals, the recommendation is well received. The Insurance and Loss Control Manager will work with the Department Finance Officer to see if this is feasible.

**#10. Consider pursuing cost arrangements with additional health care providers.**

**Comment**

The County has cost arrangements with only a few health care providers. Together, all the health care providers with a cost arrangement with the County accounted for only a little over 10% of the Medical and Pharmaceutical payments made in FY 2017. Since the injured employee can choose to be treated by any health care provider of his/her choice, the County pays more than a hundred health care providers in a fiscal year (for FY 2017, the County made payments to about 140 health care providers). Hence, entering into a cost arrangement with each health care provider may not be feasible.

Our analysis of the FY 2017 loss run data provided by Risk Management shows that the top 20 health care providers, by amount paid in FY 2017, accounted for almost 85% of all the Medical and Pharmaceutical payments and over 68% of the number of Medical and Pharmaceutical invoices. We estimate that the County could save close to \$67,000 annually by entering into 5% discount cost arrangements with the top 20 health care providers (by amount paid) not currently having a cost arrangement with the County.

**Recommendation**

We recommend that Risk Management consider pursuing cost arrangements with the top 20 health care providers (by amount paid).

**Management's Response**

The Office of Risk Management does intend on pursuing cost reduction contracts with some of the more frequently utilized medical providers, i.e. Delaware State Orthopedics, Dynamic Physical Therapy.

**#11. Calculate indemnity payments per the Delaware Code for employees on Temporary Partial Disability.**

**Comment**

According to Delaware Code Section 2325, the compensation to be paid during partial disability (when an employee works in a modified duty role) "shall be 66 2/3 percent of the difference

between the wages received by the injured employee before the injury and the earning power of the employee thereafter.” In our sample review, we found a couple of instances where the lost wage calculation did not match ours. In one case, to compute the lost wages, Risk Management multiplied the employee’s standard hours by the hourly rate rather than considering the employee’s actual post-injury earnings (which were higher).

For a third case, we found that the employee received temporary partial disability (TPD) wage loss compensation while completely out of work (partial disability wage loss compensation is only for when an employee is working on modified duty due to work restrictions). For this case, we also noted that the employee received “TPD – OT” pay, different from TPD pay. Risk Management informed us that, under the tenure of the prior Insurance and Loss Control Manager, there had been a policy whereby injured employees on modified duty could be included on the list of employees willing to work overtime hours. If such employees were called upon for overtime work and forewent the overtime work due to their work restrictions, they received reimbursement for overtime wages that they had to forego due to their work restrictions. The current Insurance and Loss Control Manager, in a formal memorandum dated February 2017, stopped this practice since these overtime payments were not required by the Delaware Code nor the County’s Personnel policy or collective bargaining agreements. Moreover, payment of overtime (not required by Delaware Code), would not prevent the employee from seeking other compensation set by the Delaware Code. Under the temporary overtime reimbursement policy, the County paid \$398 in FY 2014, \$27,634 in FY 2015, \$25,027 in FY 2016 and \$15,159 in FY 2017. Our testing showed that employees on modified duty who received overtime reimbursements did not receive other indemnity payments.

### **Recommendation**

Since the current Insurance and Loss Control Manager has put a stop to the practice of paying for unworked overtime hours, a response to this portion of our comment is not required. However, we do recommend that Risk Management formalize a policy for calculation of indemnity payments.

### **Management’s Response**

The SOPs will include procedures addressing the appropriate calculations to be used for each of the numerous types of indemnity payments.

**#12. Ensure only accidents not requiring medical attention are classified as “Incident Only.”**

**Comment**

Delaware Code Title 19, Chapter 23, Section 2313(a) requires that “Every employer to whom this chapter applies shall keep a record of all injuries, fatal or otherwise, received by employees in the course of their employment. Within 10 days after knowledge of the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing by the employer to the Department in duplicate on blanks to be procured from the Department for that purpose.” “Department” here refers to the Department of Labor.

Sometimes accidents in the workplace do not result in injuries immediately, e.g., exposure to harmful chemicals. But such incidents are reported to Risk Management to keep them informed in case later such incidents were to develop into something more serious. Since FY 2013, Risk Management has been recording such incidents as “Incident Only” claims. Incident Only claims do not get reported to the Department of Labor. Table 4 gives the number of Incident Only claims over the years and the amount paid by the County on such claims.

**Table 4 – Incident Only Claims**

<b>FY of Injury</b>	<b>Number of Claims</b>	<b>Compensation Paid</b>	<b>Medical Paid</b>	<b>Total Paid</b>
1994	1	-	158	158
1995 - 2013	-	-	-	-
2014	29	-	8,738	8,738
2015	63	-	21,021	21,021
2016	76	573	26,547	27,120
2017	51	-	19,482	19,482
<b>Grand Total</b>	<b>220</b>	<b>\$573</b>	<b>\$75,947</b>	<b>\$76,520</b>
* As of 6-30-2017				

Although the County has paid only \$76,500 on such claims, our concern is that when claims involve compensation or medical payments, they should probably be reported to the Department of Labor.

The Insurance and Loss Control Manager informed us that, going forward, only reports of incidents that do not involve any medical attention (including no visit to Omega) will be treated as “Incident Only” claims. The Insurance and Loss Control Manager believes that the Department of Labor notification requirement is not violated when incidents not requiring medical treatment are not reported -- because at that point the incident is not yet an injury.

## Recommendation

We recommend that Risk Management implement its new policy of only classifying incidents not requiring medical attention as Incident Only.

## Management's Response

The Office of Risk Management has implemented a policy wherein only events not requiring medical attention are deemed "Incident Only." A procedure will be included in the Office of Risk Management's SOPs formalizing the policy.

### **#13. Evaluate current job descriptions to determine if changes are needed to better reflect skill sets needed and actual job responsibilities.**

## Comment

Our review of Risk Management's current job descriptions revealed that four of the five descriptions are standard Countywide descriptions and are not particular to the Risk Management function. (The fifth description is the Insurance and Loss Control Manager which is specific to the function.) These descriptions are as follows:

- Confidential Assistant: There are two Risk Management employees in this position.
- Senior Office Assistant: There is one Risk Management employee in this position.
- Department Finance Officer: There is one Risk Management employee in this position.

The "Examples of Work", "Required Knowledge, Skills, and Abilities", and "Minimum Qualifications" sections of these descriptions are written in general terms so that they can be germane to positions in other departments. For example, for the Confidential Assistant:

- Examples of Work: "Works with management on issues and responds to telephone calls and email from a variety of individuals." "Researches issues and questions and prepares an appropriate response." "Performs support functions such as filing, answering telephones, managing mail and preparing a variety of letters, memoranda, reports, agreements, documents, publications and other such material." "Operates a personal computer and other related equipment in the course of the work."
- Required Knowledge, Skills, and Abilities: "Good knowledge of the operations, functions, and scope of authority of County government as related to the handling and disposition of complaints and requests for information." "Ability to identify problems, to troubleshoot

issues and to coordinate reliable and accurate information for the customers of the County.” “Ability to analyze complex data, draw valid conclusions, and to make reliable recommendations.”

- Minimum Qualifications: “At least five (5) years of experience in performing administrative and support work of a progressively responsible nature.”

The work of the Risk Management employees in these positions can be fit, in general terms, within the parameters of these duties; however, we believe it makes sense to write job descriptions particular to the area, particularly given the highly technical nature of the Workers’ Compensation business, the high level of importance/risk of this business to the County, and the fact that the County is self-insured and processes claims in-house (requiring much more technical expertise on the part of the staff). For instance, one of the positions is involved with repricing medical bills; however, there is nothing in the job description requiring the performance of insurance adjusting duties or the requirement to have insurance adjusting experience.

### **Recommendations**

We recommend that the Insurance and Loss Control Manager:

- Consider working with Human Resources to tailor the job descriptions to the technical requirements of the Workers’ Compensation business.
- Consider providing appropriate training in claims adjustment to Risk Management staff.

### **Management’s Response**

Tailoring job descriptions to the needs of the Office of Risk Management is certainly appropriate, and needed. The Insurance and Loss Control Manager has had discussions with Human Resources about this subject and will continue to do so.

### **#14. Improve documentation and filing practices.**

#### **Comment**

We noted three areas where we believe documentation and filing practices can be improved:

- At the start of this audit, we were informed that a review of the medical invoices would be challenging in terms of accessing the invoices. Medical invoices are filed in paper binders by year of payment rather than by claim number. In the binders, the medical invoices are filed

by the RV Numbers (numbers generated by Tier when a payment is processed), not check numbers; and the process for finding the RV Number of a medical invoice is a two-part process. To find the RV Number of the invoice paid, first one needs to look up the check number in MCO (called Payment Number on Tier), and then obtain the RV Number from Tier by looking up the Payment Number. The Insurance and Loss Control Manager informed us that she has initiated the practice of scanning medical invoices into the claimant's file on Time Matters. This should facilitate retrieval of all the information on a claim (for reviews) and when requested by the claimant's attorney.

- Risk Management is apparently not utilizing all the fields available in the MCO system for recording return to work details. For example, the data from the MCO system provided to us included fields for Loss Time Days and Modified Duty Days which were either 0 or blank. Recording Modified Duty Days would help Risk Management track the number of days an injured employee spends on Modified Duty, especially since the employer is not required to pay for lost wages for more than 300 weeks (Delaware Code Section 2325).
- There is also a need for better documentation and filing concerning the initial investigation performed to determine whether Workers' Compensation claims are compensable. Risk Management informed us that, where possible, videotapes are reviewed, witnesses are interviewed and social media posts are viewed. However, our review of our sample of claims did not yield any documentation of such investigations. The Insurance and Loss Control Manager informed us that she is now encouraging employees to save all notes/communications (including phone calls) concerning claims in the relevant claim files on Time Matters. This will ensure that all important information gets properly recorded.

## **Recommendations**

We recommend that Risk Management:

- Develop written policies and procedures for its filing and documentation practices, with the objective of documenting all required information in an easily retrievable form.
- Start recording information related to return to work on the MCO system to enable analysis of total lost time in a year and the duration a claimant stays on Modified Duty.
- Provide input to the Project Team responsible for determining the user requirements for the financial system (replacing Tier). Risk Management may have ideas for better cross-referencing of data between MCO and the financial system.

## **Management's Response**

The Office of Risk Management is in the process of drafting a written policy and procedure for its filing and documentation practices.

The Office of Risk Management does not presently track modified duty time. However, the Insurance and Loss Control Manager is in agreement with the County Auditor's recommendation that we should perform such task. The Insurance and Loss Control Manager will have her staff immediately begin tracking work statuses in TimeMatters so that the information is easily accessible.