



~ Our Mission ~

"A professional organization dedicated to the ongoing education of the claims community. Providing an arena for member interaction and the sharing of resources."

Next Regular Meeting: September 20, 2019

Renaissance Hotel, Seattle

— See page 2 for details

September Presenter

David's primary duties for the Office of the Insurance Commissioner are to lead agency rulemaking efforts, prepare legislative analyses, work with stakeholders and formulate policy briefings.



David A. Forte
Property & Casualty
Policy Analyst,
Policy and
Legislative
Affairs Division,
Washington
State Office of
the Insurance
Commissioner

Prior to joining the OIC, David worked closely with insurance companies and their insureds for over 7 years adjusting large loss property claims in eight western US states. His success in adjusting claims was assisted by his 15 years of experience in the construction field and 10 years of litigation support, including as an expert witness in federal and state court on claims handling regulations.

David earned his undergraduate degree from Washington State University. David also has received his Chartered Property Casualty Underwriters (CPCU) and Associate in Claims (AIC) professional designations from the American Institute of Chartered Property Casualty Underwriters.

— Join us for our luncheon meeting at the Renaissance Hotel on September 20 for his presentation titled "You Need a License for that". Read Roger's Claims Conversation article for more info. ❖



Claims Conversation

with Roger Howson, Claims Dispute Resolution, PSAA Newsletter Editor & Education Chair, TCAA Past President

PSAA, like the United States Congress, is on hiatus this month, but the Claims Conversations never rest.

Sign up now for this year's inaugural 2019-2020 PSAA meeting on Friday, September 20th at the Seattle Renaissance Hotel (or is it the Renaissance Seattle Hotel, I can never remember which) at 515 Madison Street, Seattle, WA 98104. The venue is right in the heart of downtown Seattle on the corner of Sixth and Madison just southeast of the magnificent Seattle Public Library, so you can't miss it. In response to the recreational bitching about the hassles of getting in and out of Seattle, we offer the following concessions: (1) the hotel is right there at the Seneca Street exit off I-5, (2) PSAA provides free parking for adjusters, and discounted parking for our vendor partners, (3) the view from our 28th floor meeting room is spectacular, and (4) there's no limit on the number of homeless you can take home with you.

(Continued on page 3)

Reinventing the Seatbelt — Page 5

Northwest Faces Growing Wildfire Threat — Page 13

MSP Changes (Viewpoint) — Page 17

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PSAA Next Luncheon Mtg



Next Meeting: September 20, 2019

Time: 11:30am to 1:30pm

Location: Renaissance Seattle Hotel
515 Madison Street
Seattle, WA
206/583-0300 www.marriott.com/Seattle

Cost: Claims Personnel—Active Member Status
No charge for lunch or parking
Vendors & Non-Members
\$35 if paid in advance (\$50 @ door)
Parking \$12

Presentations: David A. Forte from the Office of WA State
Insurance Commissioner to talk about
proposed new laws regarding the licensing
of adjusters — “You Need a License for that”

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To RSVP or to stay in touch with PSAA use our social
media tools listed below!

www.pugetsoundadjusters.org/calendar
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Additional Meeting Information

Please keep in mind that we’d like to start and end promptly during our
monthly meetings. Here is the timeline for each meeting:

- 11:30 a.m. Registration
- 11:45 a.m. Buffet
- 12:00 p.m. Meeting Called to Order
- 1:30 p.m. End of Meeting

Please arrive on time and have your cash or check (payable to PSAA) ready,
or provide your online payment receipt. We appreciate your cooperation and
assistance.



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Claims Conversation... *(Continued from front page)*

Our guest speaker this month is David Forte from the Office of the Washington State Insurance Commissioner. David is an OIC unicorn by virtue of his claims experience. Traditionally, the Commissioner's office is staffed by veterans of insurance agencies, brokerages, underwriting, and healthcare. The claims process is an unexplored mystery to many of them, so the challenges of the claims profession is not high on their list of priorities. David Forte is the exception that proves the rule.

David Forte has been tasked by the Insurance Commissioner to explore tightening licensing requirements due to the number of unlicensed individuals "representing" policyholders and/or "analyzing and evaluating" claims on behalf of insurance companies. Washington state's definition of an adjuster includes anyone who investigates or reports on a claim... which covers just about EVERYONE. The OIC's opinion is that if it quacks like an adjuster, waddles like an adjuster, and/or flies like an adjuster... it damn well better be licensed as an adjuster. In other words, if you're touching an insurance claim, company, policyholder, or claimant you need to be licensed as an adjuster... or an attorney (more about that in a later PSAA Claims Conversation). David Forte's presentation addresses a licensing issue which affects every PSAA member, vendor partner, and associate, so sign up early to make sure that you're not locked out on this critical issue. Seating IS limited (not really, Lizzy will just move us to a larger room).

What's even more interesting about this month's speaker is not what he's going to SAY, but what he's going to ASK. The licensing of everyone and anyone engaged in the claims process may be an important issue, but the Office of the Insurance Commissioner has instructed David Forte to find out what the claims profession REALLY thinks, REALLY wants, and REALLY needs.

David is the proverbial canary in the coal mine... he's been sent out to see if this dog bites. So, when he asks what we think (or want or need), please remember to be nice, but be sure to be honest. We don't get very many opportunities to interact directly and candidly with the OIC, and it's extremely rare to talk to an insurance regulator who understands what we do, respects our profession, and actually speaks our language. (Our most recent OIC guest speaker from many years ago was a very low-level bureaucrat who was last minute replacement for a Deputy Commissioner, and this poor woman merely read a bunch of meaningless insurance statistics that she'd Googled minutes before leaving her office. She

talked fast and bolted the stage even faster, but no one noticed because every audience member was sound asleep.)

I guarantee that David Forte will be an important and impactful guest speaker, but there are three more excellent reasons why you want to attend the Friday, September 20th PSAA Meeting: (1) this is our opportunity to properly thank our outgoing 2018-2019 PSAA President, Jason Runyon, for his selfless service (and to see the return of his family that we've held hostage throughout his four year tenure on the PSAA Board), (2) meet the new Sheriff in town, 2019-2020 PSAA President Deanna Boras (and watch as we take her husband, Alex Boras, back into custody to ensure that she serves out her term as president), and (3) check out the PSAA "back to school" attendees to see who is still in business, switched employers, looking to make a move, and/or just to say hi to all of your friends and cohorts.

We look forward to seeing you there. ❖

— Meeting sponsored in part by:



Save these dates in 2019-20

Sept 20	PSAA Luncheon Meeting, Renaissance
Nov 1	PSAA Luncheon Meeting, Renaissance
Dec 6	PSAA Pajama Jam Holiday Party, Renaissance
Feb 21	PSAA Bowling @ Acme
Mar 20	PSAA Mini Symposium
May 15	PSAA Past Presidents & Vendor Appreciation Luncheon, Renaissance
June 19	PSAA Zombie Golf Tournament, Northshore
Note:	No meeting or event in the months of October, January, April



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Reinventing the Seatbelt for the Self-Driving Era

— By Anthony Cuthbertson
Reprinted from www.independent.co.uk

In 1959, Volvo gave away the most important invention in its history. The previous year, the company's CEO had lost a close relative in a car accident, so he hired Nils Bohlin to be the first chief safety engineer at the Swedish carmaker. Bohlin had spent his career developing ejector seats in fighter jets but was now tasked with reinventing the seatbelt.

Until then, seatbelts had been single-strap devices that often did more harm than good. Injuries and even deaths were caused by damage to internal organs in the event of a crash, while alternatives like the four-point safety belt used by pilots were impractical for everyday use. Bohlin's solution was a V-shaped, three-point belt that could be clicked into place within seconds of entering a vehicle.

It offered an "effective and physiologically favourable" way to protect drivers and passengers, according to the patent Bohlin filed 60 years ago, and was such a significant innovation that Volvo decided to make the design free to all vehicle manufacturers. It may have cost them millions of dollars in potential revenue but by the time of Bohlin's death in 2002, Volvo estimated his invention had saved more than a million lives.

The ubiquity of three-point seatbelts has helped Volvo become synonymous with safety – and with the advent of self-driving technology, the company is once again on a mission to reinvent safety.

Making algorithms responsible for transporting people from place to place is one of the biggest fears surrounding this new autonomous age, particularly when it comes to cars that completely lack steering wheels, brake pedals, or any other method for humans to take back control.



Volvo's concept for this type of future is the 360c, which completely removes traditional driving controls and imagines a space where passengers can

Nils Bohlin's invention is credited with saving more than a million lives (Volvo).

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work, relax and even sleep. The carmaker believes this type of vehicle could one day replace short-haul air travel, stating in promotional materials that an overnight "sleeper vehicle" could deliver passengers to morning meetings fully refreshed.

Inside, the 360c is like a business class cabin on a plane, complete with a fully reclinable seat that acts as a bed when it comes time to sleep. The problem is, three-point safety belts aren't practical when someone is lying down trying to get a good night's rest.

Commercial airlines typically use the same seat belts across every class of travel, as in the event of a serious crash, no amount of nylon strapping would save someone. (The primary function of the lap belts found on planes is to prevent passengers banging their heads on the ceiling during severe turbulence).

Volvo's solution is not a belt at all, but a blanket. It works through a subtle system of straps woven into the blanket that are "loosely attached" to the surrounding structure of the car, which cocoon the passenger without feeling restrictive. If there is a sudden impact, the safety blanket restrains the person from their legs to their upper body.

In charge of its development is Malin Ekholm, the latest successor to Nils Bohlin as Volvo's head of safety. "Every safety engineer would love to invent the next seatbelt but that is not the starting point," she tells The Independent.

"It's about how we make sure we keep you safe in a new environment. The safety blanket is a first step. It might not be the final answer but it is the beginning of a journey."

Ekholm notes that if all vehicles on the road were fully autonomous, then they would all be perfectly in sync with each other and there would be no chance of an accident. Tesla CEO Elon Musk, who has helped pioneer the development of fully autonomous driving systems, has described self-driving cars as the "natural extension of active safety" and claims the technology will soon be implemented across all major car manufacturers.

But even if self-driving cars were to one day completely replace human drivers, there will still be a prolonged transition period when robot drivers have to share the roads with their more fallible human counterparts. It means that seatbelts are not the only safety consideration.

One of the biggest challenges in this new era is finding a way for autonomous cars to communicate with human drivers without being able to rely on eye con-



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fact, hand signals and other common gestures. The most obvious way to do this is through colour and sound, though there are only a limited number of options left to work with.

There are only a few colours that can be clearly distinguished in bright sunlight. Red is already universally understood to mean slow down or stop, orange and yellow are used to convey caution or intention, while green is associated with being safe to proceed. Emergency vehicles have the monopoly on blue, meaning driverless cars can either attach themselves to magenta or turquoise.

Working with other automotive manufacturers, Volvo has decided to use turquoise as the colour used for autonomous vehicles to communicate, with Volvo's senior director of autonomous strategy Martin Kristensson describing it as a modern colour.

"The sounds and colours we're using are designed to be intuitive, though there will still need to be a period of learning for pedestrians," he says. "At the end of the day, there needs to be a standalone solution – a single language so that people only need to learn one. We need to start living with robots around us and how to communicate with them, otherwise it will be a big mess out there."

In an effort to push Volvo's safety credentials to the ultimate limit, CEO Hakan Samuelsson has laid out an ambitious goal called Vision 2020. "Our vision is that by 2020 no one should be killed or seriously injured in a new Volvo car," he says.

The company's commitment to develop self-driving cars will depend on the success of new communication methods and the reimagined safety belt.

"It's a super exciting time to be working on safety," Ekholm says, revealing that the safety blanket is already undergoing virtual testing through computer simulations.

It could prove to be even more life-saving than the three-point seatbelt, but the question will be whether Volvo decides to once again give away its next-generation invention. The patent is currently pending. ❖

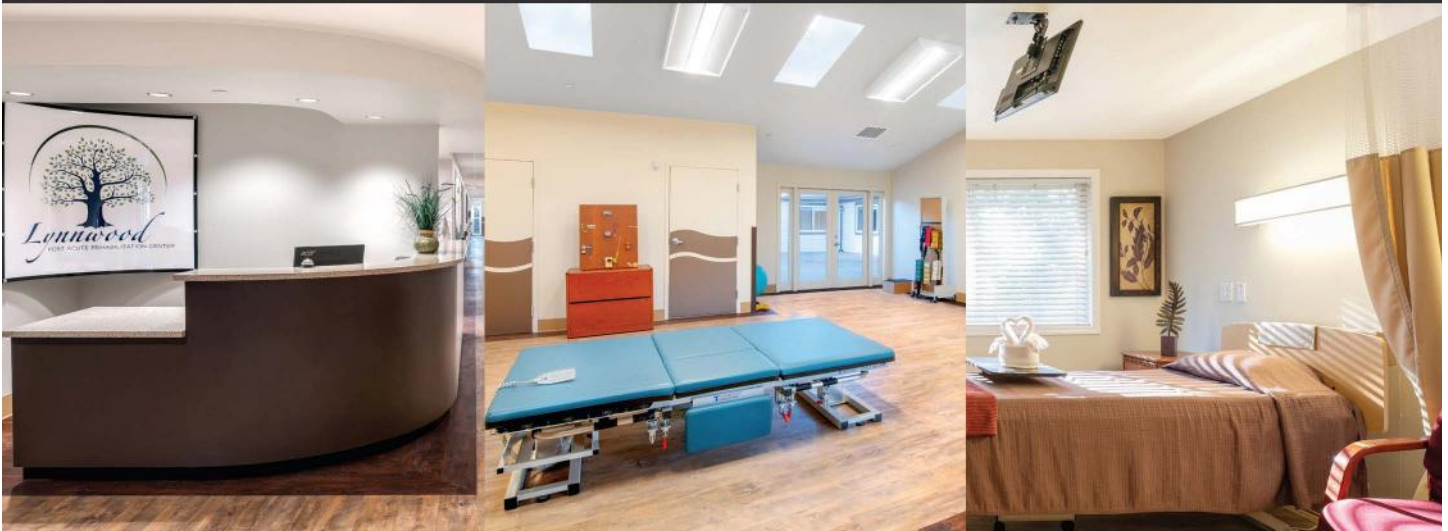


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NEWS from Around the Web

New Ransomware Targets U.S. and European Companies

Reprinted from www.ft.com (Financial Times)

Cyber insurance experts report that a new type of ransomware known as Sodinokibi is attacking companies throughout the U.S. and Europe and is leading to a large number of claims on cyber insurance policies. These experts say Sodinokibi attacks have exploded in recent months and that the associated demands for ransom are unusually high. Victims of ransomware are often asked to pay a ransom, usually in bitcoin, to regain access to files or systems disabled through a key that decrypts files after the ransom is paid. Insurance broker Gallagher reports that the average Sodinokibi ransom demand in May was \$150,000, compared with an average of less than \$50,000 for other types of ransomware. Sodinokibi often uses victims' systems or suppliers to attack small and medium-sized companies. ❖

Texas Father, Son Sentenced For Bilking Insurance Of Over \$27M In Scam

Reprinted from www.claimspages.com

A father and his son were sentenced on Wednesday to a combined 15 years in federal prison for submitting more than \$27 million in fraudulent hearing aid claims through their businesses in Bedford and Arlington.

Terry Lynn Anderson, 69, of Dallas, was sentenced to eight years in prison and ordered to pay \$13.7 million in restitution to Blue Cross and Blue Shield of Texas.

He also was ordered to forfeit his 300-acre ranch in Valley Mills, three vehicles and more than \$3.1 million seized from nine financial accounts.

His son, Rocky Freeland Anderson, 38, of Dallas, was sentenced to seven years in prison and ordered to pay more than \$8.4 million to the insurance company. ❖

Careening Dump Truck Leaves Trail Of Destruction In Pioneer Square, Seattle

Reprinted from www.claimspages.com

A dump truck left a trail of destruction and injuries

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as it careened down streets in Seattle's Pioneer Square on Monday morning, crashing into vehicles and people before plowing into a Subway restaurant at 40 mph.

Police and medics responded to the scene, along James Street between 1st Avenue and 3rd Avenue at around 9:50 a.m. after receiving reports of a dump truck hitting multiple vehicles and a pedestrian.

Police say five people were involved in the crash, some sustaining serious injuries. All were taken to Harborview Medical Center.

The dump truck also reportedly struck a white SUV, a work van and a black car as it hurtled down the hill.

The doors were ripped off the work van by the force of the impact. ❖

Most Traumatic Brain Injuries in U.S. Kids Linked to Consumer Products

By Linda Carroll

Reprinted from www.claimsjournal.com

The majority of the more than four million traumatic brain injuries in kids treated in U.S. emergency rooms involved consumer products, a new study suggests.

Brain injuries in younger children were tied to products such as beds and flooring, while injuries in older kids were tied to sports, such as football, basketball and bicycling, researchers reported in Brain Injury.

"A child's age is important when looking at the incidence and causes of these injuries," said the study's lead author, Bina Ali, a research scientist at the Pacific Institute for Research and Evaluation in Beltsville, Maryland. "In this study we found that home furnishings and fixtures, primarily beds, were highest among infants and children up to 4 years old. Among children aged 5 to 19 traumatic brain injuries from sports and recreation were highest. The findings indicate priority areas for traumatic brain injury prevention."

Using the National Electronic Injury Surveillance System—All Injury Program, the researchers identified 4,091,376 nonfatal pediatric TBIs seen in emergency rooms between 2010 and 2013. Stratified by age, there were 380,842 TBIs in infants under a year, 1,085,680 in children ages 1 to 4, 682,826 in kids ages 5 to 9, 834,565 in 10- to 14-year-olds, and 1,107,463 in those ages 15 to 19.

Most youngsters with TBIs (92%) were treated in the emergency room and then released.

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Overall, 28.8% of the TBIs were related to sports and recreation, 17.2% to home furnishings and 17.1% to home structures and construction materials. Toys were linked with 2.4% of brain injuries, while personal use items, home electronics and hobbies and other product groups accounted for another 6.6% of TBIs.

Most injuries in infants (71.3%) and children ages 1 to 4 (60.6%) were related to home furnishings and fixtures, home structures and construction materials.

To protect these younger kids Ali recommends "removing tripping hazards, such as area rugs, improving lighting, avoiding hard surface playgrounds, using home safety devices, such as stair gates and stairway handrails."

The biggest single source of TBIs in 10- to 19-year-olds was American football, followed by basketball.

There are a number of strategies to keep brains safe in sports-playing kids in these age groups, said Dr. Chris Giza, a professor of pediatrics and neurosurgery at the University of California, Los Angeles, and UCLA's Mattel Children's Hospital.

"Use protective devices," Giza said. "Make sure helmets fit properly and are actually worn. Head injuries prevented by helmets are often skull fractures and other severe injuries. Those are the ones with the more debilitating long-term consequences."

Giza also suggested that parents of kids playing organized sports get to know the coach and other staff. "You wouldn't sign your child up for piano lessons without vetting the teacher," he said. "Many parents don't know the coach or the athletic trainer or whether there is medical supervision."

"You also want to know whether the officials enforce the rules," Giza said. "Does the coach have any training in injury prevention? What is the mentality of the team? Is it win at all costs or is there an emphasis on having fun and making sure there is good sportsmanship?"

Overall, Giza was pleased to see some "hard numbers" on TBIs in kids, although he suspects the numbers would be even higher if the researchers had included doctors' visits.

Parents may be surprised to find that toys, playgrounds and monkey bars accounted for such a small percentage of injuries. But that may be because "kids don't have as much unstructured time these days," Giza said. "You rarely see kids playing in the park or climbing trees." ❖



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U.S. Northwest Faces Growing Wildfire Threat

By Tom James
 Reprinted from www.insurancejournal.com

Nestled in the foothills of Washington's Cascade Mountains, the bustling Seattle suburb of Issaquah seems an unlikely candidate for anxiety over wildfires.

The region, famous for its rainfall, has long escaped major burns even as global warming has driven an increase in the size and number of wildfires elsewhere in the American West.

But according to experts, previously too-wet-to-burn parts of the Pacific Northwest face an increasing risk of significant wildfires due to the same phenomenon: Climate change is bringing higher temperatures, lower humidity and longer stretches of drought.

And the region is uniquely exposed to the threat, with property owners who are often less prepared for fire than those in drier places and more homes tucked along forests than other western states. In Issaquah and towns like it across the region, that takes a shape familiar from recent destructive California wildfires: heavy vegetation that spills into backyards, often pressing against houses in neighborhoods with few escape routes.

"The only thing that's keeping it from going off like a nuclear bomb is the weather," said Chris Dicus, a California Polytechnic State University, San Luis Obispo professor and head of the Association for Fire Ecology, a national group that studies wildfire.

Hilary Franz, commissioner of public lands for Washington, recently noted that the state had a record 1,850 responses to wildfires on Department of Natural Resources lands last year and that over the last five years, wildfires have continued to hit the state hard.

With historically short summers, the densely forested coastal territory stretching from northwestern Oregon to British Columbia has long been cloaked in a protective veil of moisture, making even medium-sized fires relatively rare.

But global warming is changing the region's seasons. A national climate assessment prepared by 13 federal agencies and released in 2018 said the Pacific Northwest had warmed nearly 2 degrees Fahrenheit since 1900 and that trend would continue into the century, leading to warmer winters and less mountain snowpack.



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Experts say these long-term changes create a special risk in Pacific Northwest forests: Even a modest increase in contributing factors, like days without rain, could make them much more prone to burning.

"Those are the kinds of changes that amount to taking a forest and pushing it over the edge," said Michael Medler, a fire scientist and chair of Western Washington University's environmental studies department.

Exactly when any one part of the region will reach that point is hard to predict, and researchers stressed that unknowns exist in forests that have burned so infrequently in the past. But all pointed to changes already taking place.

For instance, the region's fire danger this year reached above-normal levels three months earlier than at any time in more than 10 years, driven partly by an abnormally dry winter.

And fire counts are up: As of late June, western Oregon forests had seen double the average number of fire starts from the previous decade – 48 compared with 20. Washington jumped even further, with 194 starts compared with an average of 74.

Even the region around Astoria, Oregon, which frequently gets 100-plus rainy days per year, has seen a dozen small fires in 2018 and 2019, according to data from Oregon's Forestry Department. That compares with an average of just two per year over the previous decade.

Last year, 40% of Washington's wildfires were on its wetter western side, which was "alarming and a first for us," Janet Pearce, a spokeswoman for that state's natural resources agency, said in an email.

The risk is amplified by development patterns throughout the Pacific Northwest.

A 2013 Headwaters Economics survey of development within 550 yards of forestlands found that just six counties along the western foothills of Washington's Cascade mountains host more homes in such zones than all of California.

Ray Rasker, who heads the nonprofit land management research group, cautioned the report was narrower than others – which count development up to 1.5 miles from any wildland – and other types of wild areas are more prone to burning than mature forests.

But while officials in California and other states have begun reforming forest-edge building and



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landscaping rules, such codes are rare in the Northwest, and virtually none apply to houses already built, said Tim Ingalsbee, who heads Firefighters United for Safety Ethics and Ecology, an Oregon-based nonprofit that works to update building codes.

"The western slopes of the Cascades and the Northwest are just woefully unprepared," Ingalsbee said.

Wildfires get harder to fight when they penetrate neighborhoods, which happened last year in Paradise, California, where dozens died and thousands of homes burned.

Like Paradise, Issaquah has neighborhoods surrounded by dense forests, some with only a single road, and strong seasonal winds.

California's fires were a wake-up call, said Rich Burke, deputy fire chief with the Eastside Fire Department, which oversees fire protection in and around Issaquah, population 39,000.

Wildfire-oriented setbacks and less-flammable materials still aren't written into building codes on the city's edges. But Burke said the department now hosts preparedness trainings and has four wildland fire engines.

Jason Ritchie, who owns a home just north of Issaquah, said a nearby 2015 fire drove home the risks.

"It grew so fast," Ritchie said, adding that he previously hadn't considered that his area has only two main routes out.

"Had the wind been blowing from the north to the south, it would have engulfed the neighborhood very, very quickly." ❖

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MSP Changes Include Penalties, Review Criteria, Double Damages: Viewpoint

By Shawn Deane
 Reprinted from www.claimsjournal.com

As we approach the halfway point of 2019, Medicare Secondary Payer (MSP) continues to be one of the most rapidly evolving areas of compliance in claims. On the horizon are possible significant changes relating to each compliance point: Section 111, Medicare Set-Asides (MSAs), and recovery. Insurance carriers, self-insureds, claims professionals, attorneys, and MSP practitioners will potentially be affected. To properly prepare for potential changes, industry stakeholders first must understand what those changes are and their possible impact.

Enforced penalties and expanded compliance may be on the horizon for Section 111.

Civil money penalties

The potential for a per-claim penalty of \$1,000 per day for Section 111 noncompliance has loomed over the industry since the 2007 passage of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act (Pub. L. No. 110-173 [2007] [codified in various sections of 42 U.S.C.]). Section 111 brought stringent reporting requirements on the part of insurance carriers and self-insureds—known as Responsible Reporting Entities (RREs)—to alert Medicare to the existence of responsibility under MSP.

The associated civil money penalty (CMP) for non-compliance is grounded in the MSP statute,[1] but currently, there's no regulatory mechanism indicating when it may be imposed. The SMART Act of 2012 [2] revised the statutory language to ensure the penalty was optional versus mandatory, and the SMART Act required the Centers for Medicare and Medicaid Services (CMS) to provide clarification about when penalties may be imposed.

In 2013, CMS initiated the rulemaking process by soliciting comments.[3] But the agency took no further action until fall 2018, when the Office of Management and Budget (OMB) issued a notice indicating that CMS is planning to release proposed rules for public comment about civil money penal-



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ties.[4] It’s expected that later in 2019 CMS will outline a proposed rule around the imposition of CMPs. RREs will need to be on alert for the release of a formal proposed rule in order to comment and advocate for reasonable, fair, and appropriate guidelines concerning Section 111 CMPs.

Medicare Parts C and D data

A major difficulty for primary payers is the identification of Medicare recipients who are enrolled in Medicare Part C (Medicare Advantage) and Medicare Part D (prescription drug) plans. The Section 111 query response provides general information only about traditional Medicare (Parts A and B) enrollment. The Provide Accurate Information Directly (PAID) Act (H.R. 1375), if passed, would require CMS to return Medicare Parts C and D information for the last three years before the applicable injury. RREs would most certainly require updates to the query response file to ingest and capture new data points. Should this legislation pass, it will be important for RREs and their technical teams to follow CMS’s guidance when the changes go into effect.

Medicare Set-Asides in 2019: The hunt for alternatives, off-label meds, and potential expansion

Submission alternatives

In the last few years, insurance carriers, self-insureds, TPAs, and vendors have been increasingly exploring alternatives to submitting MSAs to CMS for review when they otherwise meet submission thresholds. Costs have been reported as the primary driver behind this trend. Parties to a workers’ compensation settlement can typically contain costs and achieve compliance through the formalized voluntary Workers’ Compensation Medicare Set-Aside (WCMSA) submission process. Yet, there are circumstances when engaging in traditional submission that may result in unfairness, inequality, and speculative treatment proposed by CMS. At the individual claim level, CMS’s methodology may be unsound and unreasonable, resulting in a claim that cannot be settled. From a programmatic viewpoint, the risk tolerance of the parties may weigh against availing themselves of the process altogether.

In addition to forgoing submission, other features and elements are often used to guard against exposure and mitigate costs, including:

-)] professional administration
-)] insurance/indemnification provisions
-)] alternative allocation methodologies

So long as CMS continues to uphold inflexible and unreasonable requirements for future medical care,

it is assured that the appetite to explore alternative options to traditional MSA submission will likely increase.

Stricter WCMSA review criteria

The Workers' Compensation Review Contractor (WCRC) is requesting copies of treatment records for zero-dollar submissions. In the past, the WCRC rarely made this type of request. In some cases, these requests can be successfully protested, and there are recent examples of zero-dollar approvals following the submission of medical records. Claims payers should monitor whether the Centers for Medicare and Medicaid Services and the WCRC will continue to move toward a more stringent re-

view or formalize new policies around the zero-dollar proposal.

Since taking over the WCRC, Capitol Bridge, LLC, has consistently required Lyrica to be included in MSAs where it was historically excluded as an off-label medication. CMS formally announced a policy change requiring Lyrica in MSAs in the January 2019 release of the Workers' Compensation Medicare Set-Aside (WCMSA) Reference Guide, v2.9. The basis for inclusion, per the WCMSA Reference Guide, is that "[t]here are many off-label indications that are listed in recognized compendia and peer-reviewed sources; thus, they would be covered under the Part D Benefit, and should also be included in a WCMSA" (see section 9.4.6.2). Based on this rationale, submitters should keep a close eye on whether additional medications with off-label indications will be required in the future.

Liability Medicare Set-Asides

As long as the WCMSA program has existed, the industry has speculated and offered different opinions about the applicability of future medicals in the liability arena. Liability Medicare Set-Asides (LMSA) have been the perennial concern of the MSP industry. Regardless of where a practitioner lands on the issue, for years CMS has intimated that settling parties should take Medicare's interests into consideration in liability claims. In the latter part of 2018, the Office of Information and Regulatory Affairs (OIRA) released a notice indicating that CMS plans to issue proposed rules on options to address future medicals in relation to liability, workers' compensation, and no-fault claims.[5] This notice further indicated that a Notice of Proposed Rulemaking (NPRM) on this subject is targeted for release by September 2019.

While the released notice doesn't provide any specifics, the forthcoming proposed regulation is believed to be focused on LMSAs. The industry is closely watching to see if CMS will finally take steps to codify policy around future medicals in liability claims.

The state of recovery: Part C decisions, performer's continued challenges, and rising Treasury involvement.

Increase in Part C recovery and double damage rights

Judicial decisions in various jurisdictions have recognized Private Cause of Action (PCA) rights under the MSP, whereby a Part C/Medicare Advantage Plan entity can recover double damages to recoup conditional payments. These rights have in-



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creased the activity in Part C recovery against primary payers and have opened the door for litigants seeking to recover under the PCA. CMS provides the Non-Group Health Plan (NGHP) Section 111 data to Part C plans, although the details and scope of this process remain unclear. However, this data exchange—along with court decisions—has bolstered Part C recovery.

With proposed PAID Act legislation requiring CMS to return Part C enrollment data[6] to RREs in the query process, RREs would be permitted to investigate a potential Part C plan lien. The entities could then take proactive measures to ensure that the lien is

properly addressed and resolved. The industry is closely keeping an eye on movement in Part C recovery litigation and continued reforms that could level the playing field between primary payers and Part C plans.

Performant's performance

The Commercial Repayment Center (CRC) contractor change and the initiation of pre-settlement recovery against primary payers were two of the biggest changes to the MSP program since its start. The first entity to hold the post, CGI Federal, struggled with a new process and NGHP recovery concepts under the MSP. Within two years, in October 2017, CGI Federal was replaced by Performant Corp.

Performant inherited a significant backlog that it continues to work through. Improvements in turnaround times and general performance have been made; however, the CRC still needs to improve accuracy of charges, the dispute/appeal process, the MSP Recovery Portal (MSRP), obtaining refunds, integration with Section 111 data, incorrect referrals to the U.S. Treasury Department, and issue resolution, to name a few.

As the CRC continues to increase its recovery efforts, the latter half of 2019 will be a critical year for the contractor and an area for industry stakeholders to watch.

Treasury collections rise

Recovery sought of MSP debts to the U.S. Department of the Treasury increased in 2018.[7] Many of them originated as mistaken or premature referrals from the CRC. With an increase in referrals to Treasury, it appears that there was also an increase in referrals to the Treasury Offset Program (TOP). When a debt is referred to the TOP, federal funds owed to an entity or individual can be intercepted in consideration of the MSP debt. This particularly affects entities that are frequent recipients of federal grants as well as beneficiaries who rely on Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI), and other federal benefits. Recently, states also became more involved in offsets through the State Reciprocal Program (SRP), where they can intercept funds owed for federal debts and vice versa. [8]

Treasury collections, including the TOP, are effective means for CMS to recover delinquent MSP debts. However, it's critical that referral integrity exists and that appropriate information be available to primary payers. This would ensure that inappropriate collections can be contested and refunds

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obtained. CMS is mandated to refer delinquent MSP debts to Treasury, so this will be a developing issue in 2019 as recovery only increases.

Preparing for the changes ahead

With all the new requirements in the pipeline, it's important for insurers to remain vigilant by keeping informed about MSP trends and legislative developments. Carriers will also want to make sure they have the resources on hand to pivot their compliance efforts when necessary. By staying a step ahead of the potential changes, insurers can successfully achieve compliance and contain costs in the ever-changing MSP landscape. ❖

Footnotes:

- [1]42 USC 1395y
- [2]Strengthening Medicare and Repaying Taxpayers Act of 2012 (SMART Act): <https://www.congress.gov/bill/112th-congress/house-bill/1845>
- [3]<https://www.federalregister.gov/documents/2013/12/11/2013-29473/medicare-program-medicare-secondary-payer-and-certain-civil-money-penalties>
- [4]<https://www.reginfo.gov/public/do/eAgendaViewRule?publd=201810&RIN=0938-AT86>
- [5] Miscellaneous Medicare Secondary Payer Clarifications and Updates (CMS-6047-P) <https://www.reginfo.gov/public/do/eAgendaViewRule?publd=201810&RIN=0938-AT85>
- [6]Sec. 2(2)(II) "to the extent applicable, identify by plan name and address any Medicare Advantage plan under part C and any prescription drug plan under part D in which the claimant is enrolled or has been enrolled during such period."
- [7]See The Medicare Secondary Payer Commercial Repayment Center in Fiscal Year 2018 Report to Congress
- [8]<https://www.transparency.treasury.gov/dataset/treasury-offset-program/state-programs-participation>

~ Benefits of PSAA Membership ~

We can't say enough about the advantages of membership in the Puget Sound Adjusters Association. The benefits are numerous!
For example:

- **Newsletter** — Receive an electronic copy of the PSAA newsletter every month. Each issue includes educational articles and other information of interest to adjusters. It is also a resource guide to goods and services provided by our industry vendors — who also support our Association.
- **Luncheon Meetings** — Claims Personnel who have paid dues can attend monthly meetings and have lunch at no charge with free parking; hear local presenters on topics that are pertinent to today's adjuster — always educational and sometimes entertaining!
- **Spring Symposium & Vendor Fair** — This annual educational event held in the spring is also free to dues paying Claims Personnel. A full day of workshops on all the hot topics and an opportunity to meet with industry vendors face-to-face outside the office.
- **Bowling & Golf** — Not much educational about bowling or golf, but what adjuster today doesn't need a little relaxation and fun; also free to dues paying Claims Personnel.
- **Website** — Pay dues online with a credit card. Check the calendar so you know what's happening and when. Find contact information for our supporting Vendors, and all PSAA board and committee members. Find a new job from the employment listings or post a job opening.

• **And so much more....**

Membership in PSAA is open to all Claims Personnel, and should be a priority on your list of things to do!
Print the application from our website or see the following page and **JOIN or RENEW TODAY!** www.pugetsoundadjusters.org

