 PELICAN INSURANCE RRG
Pelican's Liability Insurance for County Affiliated Nursing Homes
Member of the County Commissioners Association of Pennsylvania

CCAP

A PELICAN Sponsored Workshop

Risk Managers,
Workers Compensation and
Safety Committees
**THEIR ROLES IN SAVING
NURSING FACILITIES MONEY**

PACAH Conference
State College, PA
April 19, 2010

WE ALL UNDERSTAND....

- Counties are a political subdivision of the Commonwealth and as such are viewed by the State of Pennsylvania and their surrounding communities as a safety net for anyone requiring long-term care regardless of acuity, behavioral issues, or ability to pay.

With that, let's proceed!

What Is Risk Management?

- Is a decision making process designed to produce a more cost-effective risk management program by planning, organizing, leading and controlling the Nursing Home's assets to eliminate or minimize the adverse effects of losses.

Similarities and Differences of County versus Private Homes

- Similar with managing of risk in the private sector because of the following:
 - Public Scrutiny
 - Litigation – “deep pocket” theory
 - Unique number and types of services provided

Similarities and Differences of County versus Private Homes

- Differs from managing of risk in the private sector because of the following:
 - Essential Government Functions** – must be provided on an ongoing basis because they are essential in ensuring a reasonably safe society.

Similarities and Differences of County versus Private Homes

■ Differs from managing of risk in the private sector because of the following:

Scope of Exposures – expanding requirements related to provision of governmental services generates a greater potential and variety of loss exposures.

Similarities and Differences of County versus Private Homes

■ Differs from managing of risk in the private sector because of the following:

Special Legal Requirements – Counties are exempt from some laws but subject to other laws such as city charters, state constitutions, statutes which leads to limitation of choices.

Similarities and Differences of County versus Private Homes

■ Differs from managing of risk in the private sector because of the following:

Public Interest, Nonprofit Objectives – Counties strive to establish and meet specific objectives within tight budget constraints.

Similarities and Differences of County versus Private Homes

■ Differs from managing of risk in the private sector because of the following:

Power to Tax – Counties are able to generate revenue through taxation and other fees.

What's Special About Managing Risk at a Nursing Home?

■ Regulations and Standards

1. DOH
2. CMS
3. DPW
4. JACHO
5. Organizational policies & procedures
6. Standards of Care

Essential Functions of a Risk Manager within Nursing Homes

■ To prevent circumstances that could lead to accidents, injuries or other adverse events involving residents, employees, visitors, students and others.

■ To minimize the adverse effects of injuries or accident when they occur (frequency versus severity).

Essential Functions of a Risk Manager within Nursing Homes

- To protect the financial assets.
- Assist in establishing and sustaining a culture of safety – **TOP LEADERSHIP SUPPORT IS A MUST.**

Essential Functions of a Risk Manager within Nursing Homes

- Assist in the development of a comprehensive RM program.
- Must include all areas of a Nursing Facility's operations.
- Must look at all types of safety "issues".
- Ongoing promotion of safety culture.
- Must include all levels of employees when establishing RM program.

Essential Functions of a Risk Manager within Nursing Homes

- **Support** the mission and objectives of the facility, not be an **impediment!**



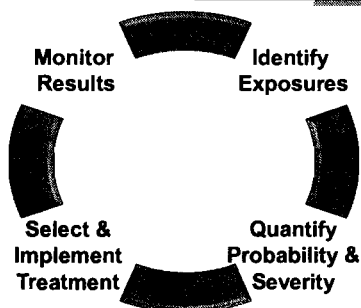
Objectives of Risk Managers

1. Reduce the frequency and severity of accidental losses.
2. Establish financial arrangements for anticipated losses.
3. Reduction of the total cost of risk (TCR) to an absolute minimum.
4. Risk avoidance – of potential high-risk, high-loss situations.
5. Avoid negative publicity.

Objectives: Risk Managers


- The need to conserve the nursing facility's assets, resources and revenues against the effects of accidental loss.
- Limit losses, provide catastrophic protection and reduce TCR.
- In simple terms, "find out what can go wrong, prevent if possible; but determine how to pay for it."

The Risk Management Process



Risk Management – Managerial Process

- Planning
- Organizing
- Leading
- Controlling
- Evaluating
- Assessing
- Correcting



The Risk Management Process Consists of the Following:

Identify and Analyze loss exposures – determine the kinds of losses the nursing home can suffer:

1. **Property:** building, tools, equipment, vehicles
2. **Net Income:** delayed work, higher cost of work

The Risk Management Process Consists of the Following:

Identify and Analyze loss exposures – determine the kinds of losses the nursing home can suffer:

3. **Liability:** potential for lawsuits and the need to defend
4. **People:** Residents, visitors, employees, service providers

Analyzing these exposures will allow for the implementation of loss prevention techniques!

**The Risk Management Process
Consists of the Following:**

Understanding on the potential causes of losses:

1. **Natural** – hurricane, flood, tornado, wind, snow
2. **Human** – thefts, workplace violence, vandalism
3. **Economic** – strikes, depression, tight budgets

**The Risk Management Process
Consists of the Following:**

- Identify Loss Exposures
- Examine feasibility of RM techniques
- Select best RM technique
- Implement chosen RM technique
- Monitor and improve the RM process

**The Risk Management Process
Consists of the Following:**

- Exposure Avoidance
- Loss Prevention
- Loss Reduction
- Segregation of Exposure
- Contractual Transfer of financial and legal burdens

Risk Management Techniques

- Forecasting and Predicting projected losses
- Financial – impact on Home's cash flow
- Humanitarian
- Understanding of Legal

Again, the monitoring of the above is critical!

Selection of Risk Management Technique

- The forecasting of losses is critical.
- The selection of the appropriate risk control and financing techniques including the cost of same.
- Must evaluate the County's/Facility's organizational cash flows when doing so.



The Risk Management Process Consists of the Following:

Monitoring and Improving the Risk Management Program

- Determine if changes need to be made.
- Are we achieving the desired results?
- If not, modify the risk management technique to meet desired result or for changing loss exposures.

**The Risk Management Process
Consists of the Following:**

***Monitoring and Improving the Risk
Management Program***

- Results oriented – measure amount of activity versus frequency/severity of losses compared to same.
- Compare actual results with standards.
- Correct/Improve substandard performance areas.

Potential Loss Exposures:

1. Resident care
2. Visitors
3. Employment Related
4. Financial
5. Changes in Legislative and Regulatory Requirements

Risk Management Deliverables:

1. Identify and analyze loss exposures.
2. Ability to measure the financial impact of potential losses i.e. loss frequency and loss severity.
3. Controlling of Risks

Risk Management Deliverables:

4. Claims Management
5. Establishment of Funds
Appropriations – finance small and predictable losses as well as catastrophic and unpredictable losses

Risk Management In a Nursing Facility Environment:

- Critical given limited revenue streams
- Critical given increased accountability
- Critical given increased demand for services

An effective risk management program is a tool that can be used to assist in meeting all of the above.

Risk Management In a Nursing Facility Environment:

- Requires Administrator support and leadership.
- Requires continual communication from top-down as well as lateral.
- Requires interaction with all levels of employees.
- Must include the evaluation of outcomes.
- Must continually improve.

Risk Management Financing Techniques

Again, need to forecast potential losses and budget for payment of same

How?

1. Review of loss frequency patterns.
2. Review of loss reporting patterns.
3. Review of loss severity patterns.
4. Review of loss trending factors.
5. Review of accident reports/loss runs.

Risk Management Financing Options

- Joining Public Entity Pools.
- Obtaining required insurance and/or bonds.
- Large Deductible/Self Insured Retention.

Risk Management Financing Options

- Pure Self Insurance + Excess/Umbrella coverage.
- Retaining "un-transferable" exposures i.e. the Facility must take responsibility not only for the actions of their employees, but other agents who are performing for the Facility.

Calculating a Facility's TCR

- Insurance and risk management costs make up a portion of the nursing facility's budget; however, an effective risk management program is "money in the bank".
- ROI – the savings compared to the investment allows for nursing facility's to utilize funds in other selected areas.

Calculating a Facility's TCR

- By knowing a nursing home's potential exposures and implementing appropriate risk management techniques, a full time Risk Manager can lower the TCR and save money!



SUMMARY

- Need to identify potential loss exposures.
- Need to eliminate or control potential loss exposures.
- Propose cost-effective risk financing techniques (risk retention versus risk transfer).
- Design insurance programs that eliminate overlaps as well as gaps in coverage.

QUESTIONS???

- We'll now turn our attention to a topic which brings much consternation and concerns to all Nursing Facilities.
- Our objective is to help everyone understand the financial implications of workplace injuries and illnesses and their impact on the provision of care to residents.

Workers Compensation – How to Control Costs While Meeting Resident’s Needs

- Why are WC benefits provided?
- Who is impacted?
- Financial Implications?
- Actual Cases as well as decisions rendered by workers’ compensation judges!
- Role of Safety Committee and its positive impact on overall costs

Workers’ Compensation Costs in Nursing Facilities

- *“Benefits for employees injured or contract a disease as a result of employment .”*
- Include payment of lost wage benefits, payment of medical benefits; finally death & disfigurement benefits.
- Protects employers from lawsuits.

**Workers' Compensation Costs
in Nursing Facilities**

\$845.00
per week, tax free!?!?

**Pennsylvania Laws Governing
Workers' Compensation**

- Pennsylvania Workers' Compensation Act
- Occupational Disease Act

**When is an Injury or Illness
Accepted?**

- Must be specific.
- Must occur in the course of employment.
- Could be the result of a repetitive activity or an aggravation of a pre-existing condition.
- Could be a re-occurrence of old injury.

Workers' Compensation Benefits

- Again, replaces lost wages – **2/3 salary**
- Max rate - 90% = **\$845.00**
- Full disability - **potential lifetime benefits**
- Partial disability - **up to 500 weeks**
- Payment of medical bills – **potentially for life of claim**
- Specific loss benefits
- Disfigurement and Death benefits

How to Insure for Workers' Compensation Coverage?

- Commercial Insurance – “traditional” coverage
- Self Insurance - facility pays “as you go.”
 - excess coverage above deductible
 - use of a Third Party Administrator (TPA)

Managing Workers' Compensation Through.....

- Physicals
- Fitness for duty exams.
- Analysis of jobs.
- Detailed, accurate job descriptions
- Policies, procedures, directives.
- Establishment of Return to work, light duty programs for injured workers.

Managing Workers' Compensation Through.....

- Investigation
- Follow-up
- Designated panel physician list
- Case management
- Studying of injury/illness trends
- Close working relationship with TPA

Actual Case Law: Judicial Results

- **Background:**
A "well nourished" Certified Nursing Assistant claims a low back injury while transferring a resident from toilet to wheelchair – felt "pop" in back.
- Date of Incident –
September 9th, 2006.

Actual Case Law: Judicial Results

- **Main issue** – Facility offered light duty to injured employee; however, prior to doing so, IW would have needed to re-train. Injured worker failed to return to work because of failure to re-certify "on-line" per DOH regulations.
- As a result, Facility petitioned WC Judge stating "IW did not re-certify per DOH regulations; therefore, WC benefits should be suspended."

Actual Case Law: Judicial Results

- Judge denied Facility's request to suspend benefits based on injured worker's failure to recertify
- Judge instructed Facility to continue paying benefits per the WC Act.
- Facility has attempted to settle; IW seeking \$60,000.00 + (2) years of medicals

Actual Case Law: Judicial Results

- Costs associated with defending this claim:
 - Weekly Compensation Rate = \$342.63
 - Medical Paid = \$21,945.43
 - Lost Wages Paid = \$61,916.66
 - Litigation Expenses = \$33,674.78
 - Totals = \$117,536.87
 - Outstanding Reserves = \$112,000.00

An Administrator's Viewpoint

Establishing a Risk Adverse Culture in a Healthcare Setting

Three Critical Considerations

- Assess the Environment
- What to do when an Event Occurs
- The ALL Important Accountability Factor

Assess the Risk in Your Environment

- What programs do we currently have that help us mitigate risk in our facility?
- Do our policies support a culture of risk management?

Assess the Risk in Your Environment

- Do we have system(s) in place that allow us to assess our risk exposure?
- How as a facility do we push the information that we have, or the thing that we have learned down to our staff.?

Incidents will Occur; What to do When it Does and After

- Do we have well defined protocols for notification and guidance when an incident occurs?
- Ask yourselves – Was this or should this have been a foreseeable incident?
- Was there a breakdown in systems or policies that may have led to this situation.

Incidents will Occur; What to do When it Does and After

- Was there a policy in place which should have prevented this occurrence?
- Does this policy need updated or changed as a result of this incident?
- Was human error directly or indirectly related to this incident?

Incidents will Occur; What to do When it Does and After

- Did this error reflect a violation of approved policy?
- Does the facility have resources in place to analyze either systemic or individual issues?
- Does the facility have resources in place to assist in addressing risk exposure as well as necessary correction(s)?

The Case for Doing “Case Studies”

- The goal of a case study is performance improvement
- This is an opportunity to use a multi-disciplinary approach to examine systems, policies, and performance
 - Team development
 - Teaches critical thinking
 - Establish educational approaches
 - Becomes self perpetuating by establishing a culture of performance improvement

The Accountability Factor

- The single most important factor affecting leadership today.
- The idea of accountability in healthcare leadership is vitally important in the well-being of our operations and certainly our care outcomes.

ADMINISTRATORS Are Responsible For?

- Quality care
- Safety
- Delivery of resources
- Efficient effective management
- Standards and regulations

QUESTIONS/COMMENTS?

**THANKS FOR YOUR
ATTENTION!**
