

Finding the “TEAM” in Litigation ManAgEMENT

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Ever since the early self insurance (SI) trusts and multi-parent captives of health care institutions and systems, the major goals were affordability and longevity in both hard and soft markets going forward. Initially, in the hard market of the mid 1970's rising premiums drove many of the larger and some smaller health care programs to include an element of self insurance in their liability insurance scheme.

Inherent in such programs was the need to manage litigation economically with accountability and foresight. Effectively resolving meritorious claims and defending non-meritorious claims triggered responsibility for the internal insurance manager and the plenary of vendors, attorneys and consultants that needed to be retained. The Insured, if their layer of self insurance controlled the defense costs in the primary, was required to weight the cost of developing a full internal staff

against the cost of outsourcing responsibility for program management to a Third Party Administrator (TPA), defense counsel, legal support firm, experts, actuaries and various consultants. The weight of knowledge and financial outlay, in addition to premium, made outsourcing the more economical option. The larger hospitals and systems were the first to develop internal litigation management programs.

Effective litigation management in the health care setting required the select skill sets of a number of experienced professionals not found within one organization. In primary SI programs, TPA services were often outsourced to receive and formally set up claims, (unasserted and asserted), in the appropriate policy period and apply best practices to the investigation, documentation and oversight to the litigation process.

Defense counsel performed the vital function of timely responding to legal papers, answering the allegations and protecting the interests of the Insureds to whom they owed the ultimate responsibility. They abided by mandated requirements and guidelines of law and added their expertise to the litigation process. They recommended and interviewed Insureds and expert witnesses, reporting to the TPA and Insured's internal manager and defended the claim through the

➤ Continued pg. 11



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trial and appeal process as needed.

Legal support firms managed the backroom and ancillary functions, oversaw document collection, court reporting and stenography, served subpoenas and assisted in trial preparation. All of these defense team members involved in the litigation process honed their skills with a greater personal involvement and responsibility since the early era of SI.

During the initial period of formation of an internal claims/litigation management program, or if the Team effort became too weighted towards one of the consultants, the economic benefits of outsourcing were diminished. The controls applied and balance achieved by the teamwork of internal management and the claims consultants contributed to more favorable economical results and the likelihood of greater longevity of the program. Over powering influence by a team member could sway the financial results either in claim resolution (liability costs), management of legal costs or premium funding to the point where funding was inadequate to support the SI portion.

By managing and balancing the superior skill sets of a team of experienced consultants, delegating responsibility, monitoring costs and weighting the opinions and knowledge of the Team as pertains to the individual claims and overall program, financial decisions affecting the program can run more effectively. Longevity, income on investment, a positive reputation and insurance protection are the beneficial results of an SI program of any type.

Requiring and accepting responsibility for the work product of each team member is critical. Interaction, support and direction as determined by the self insured and practiced by the consultants can lead to achieving more favorable results and longevity for the program and enhance the reputation of both the program and all the consultants. There is a place for the Team in Litigation Management.

ABOUT James M. Page

Mr. Page has been involved in the insurance industry for over 35 years, and has an extensive background working with all aspects of health care self insurance including administration, team leadership and claim analysis/resolution, auditing and consulting. He has led more than 550 professional liability claim audits, consulted for over 25 Captives and worked with more than 400 hospitals, carriers, hospital systems, excess reinsurers, RRG's and physician groups. In addition, Jim is highly recognized in the industry as an expert in third party self insurance claims administration. He has managed audit teams that have reviewed reserves, recommended claim strategies and conceived best practices for over 100,000 high exposure claims. Jim is a Senior Analyst at Alan Gray, Inc. and can be reached at 631.707.6279 or via email at jpage@alangray.com.

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