

March 13, 2014



## PRESIDENT'S CORNER

**By Brandon Miller, President**

I am honored to have been selected by the Board of Directors as the new president of a great organization that plays a key role in the Minnesota workers' compensation arena by ensuring accurate and timely data collections and ratemaking for the industry.

It's been a long and interesting journey. Since I began in the Workers' Compensation arena back in 1988, I have received so much support, training, and mentoring from so many great people in this industry. The thing that has inspired me along the trail has been the ability to work with a wide range of people from all aspects of the industry. As you know from your own experience, the workers' compensation industry tends to feel a lot smaller than it may be because great people remain committed to the principles of the system, even as they change companies and roles.

In addition to leadership changes here, we have seen recent torch passing at the Minnesota Self-Insured Security Fund (SISF) as well as the Minnesota Workers' Compensation Reinsurers Association (WCRA).

As the industry continues to mature, we will be seeing a lot of turnover in the next 15 years. We said goodbye to Bruce Tollefson, Karen Ose and Glenn Colby who all retired recently. They provided great service to this organization and they will be missed. This provides a great opportunity for people to expand their contribution in different ways. At MWCIA, we have been lucky to hire two capable people.

**Deanne Reese** joins us as a Business Analyst in our IT group. Deanne comes to us from Optum (I used to work there at one point) and will be working with us to improve our technological solutions for our carrier and agent customers.

**Belinda Seitzer** comes from RAS and is

fitting right in on our Underwriting Team. She has some great experience in the industry. Many of you have probably worked with her at some point in the past.

### Legal Services Update

As I mentioned in the last newsletter, we are transitioning legal counsel as Tom Harms retires March 1, 2014. With the support and endorsement from our Board of Directors, we have selected Peter Thrane and his firm of Stinson Leonard Street as our corporate counsel moving forward. Peter is a well-qualified and well known entity in the Minnesota Workers' Compensation arena and we look forward to establishing a long lasting relationship with him and his team at Stinson.

### 2014 Initiatives: "ACCCT – The Future"

In our last newsletter, I promised to highlight one major initiative for each quarter in 2014.

ACCCT stands for the American Cooperative Council on Compensation Technology. Members include independent data rating and service organizations in California, New York, Michigan, Delaware, Pennsylvania, North Carolina, Massachusetts, Wisconsin, New Jersey, Minnesota and ISO.

Its purpose is to foster software development and technical cooperation on a project basis among its membership. The collaboration also allows the members to offer a unified reporting platform to our member insurers and reduce the need to maintain separate reporting interfaces. Any number of members may agree to a joint effort for a given project. ACCCT facilitates this cooperation by providing a venue and support for legal services, billing, and bookkeeping.

ACCCT has implemented and supported some great products over time including Compensation Data Exchange (CDX) supporting policy and USR reporting.

Our next challenge is to look into the future on a longer term horizon of 3-5 years and develop ideas and initiatives which will further increase usability and value to our member

companies. Rather than focusing on what is in place today and focusing on enhancements and fixes, ACCCT the Future is meant to think outside the box. Once ideas are generated, reviewed and supported by our members, we will prioritize, choose technology applications to support the ideas, plan a roadmap and provide resources necessary to develop these tools.

MWCIA's goal, along with those of our partnering organizations, is to leverage technology to create efficiencies and improved operations for our users and member companies, while meeting our responsibilities to assure timely and accurate data reporting to support the industry.

We anticipate having vetted recommendations ready for approval at the ACCCT board meeting in September, 2014.

### Save the Date

Our Annual luncheon date and time has been set. We will again be hosting a luncheon and presentation for invitees on Monday, April 21, 2014 at the U of M McNamara Alumni Center. This year we are excited to have Minnesota Department of Labor & Industry Commissioner Ken Peterson and Sharon Belton from the Workers' Compensation Research Institute in Cambridge, MA, to share findings from the Minnesota Worker Outcome Study. The study should be published in mid-April, so this will be a very timely and enlightening presentation. In addition, we will have a special greeting and short presentation from U of M President Eric Kaler discussing developments at the University of Minnesota.

### IN MEMORIAM Fran Kaitala

Fran Kaitala, formerly of SFM who served as a member of the MWCIA Board from 2002-2010, passed away on February 18<sup>th</sup>. I was lucky to have served on the Board with Fran for just over 5 years and she impressed me with her knowledge and dedication to the workers' compensation system. She will be sorely missed.

## **FROM THE IT CORNER**

### **Experience Mod History Completion**

On January 27, 2014, the MWCIA successfully rolled out the new and improved Experience Mod History product to the MWCIA website. This new product offers enhanced capabilities, easier access, and a new look. Changes include the integration of the Experience Mod History product with the MWCIA Web Membership system and enhanced search and download capabilities for both member carriers and registered agents.

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### **Web Membership System Updates**

The integration of Experience Mod History with Web Membership is just the latest in a series of exciting updates to the MWCIA Web Membership system, allowing MWCIA customers to easily establish and manage their own accounts and permissions for MWCIA web products.

With the addition of Experience Mod History, the MWCIA Web Membership system now includes the following products:

- Manage Policy system, which allows member carriers to search for, view, update, validate and submit their policy data.
- Manage USR, which gives carriers the ability to submit and manage Unit Statistical Report data online.
- ARROW, which allows carriers to perform queries against their own statistical plan data as well as comparative statewide data.
- Experience Mod History, providing enhanced experience modification search and download capabilities for both member carriers and registered agents.
- ACCEDE, which provides financial call access to member carriers, is also included but MWCIA manages the accounts on behalf of the carriers.

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### **Website Java Conversion to .Net Project Completion**

The final work for our two-year project to eliminate Java from the MWCIA website was rolled out January 25, 2014. The final applications converted included Ratemaking Report, Pure Premium Base Rates, and Experience Mod History.

You may have noticed an updated look and feel to your favorite MWCIA applications due to this two year effort. Elimination of Java will allow MWCIA to cease our dependence on technology which will no longer be as well-supported in the future, standardize our development and support environments, reduce training demands, and streamline maintenance.

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### **Website Browser Compatibility**

February, 2014, saw the update of our MWCIA website to .Net 4.0. This update of the website's core features makes the MWCIA website more compatible with browsers such as Internet Explorer 10, Safari, Chrome, and Firefox.

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## **FROM THE UNDERWRITING CORNER**

### **Circulars & Filings**

Since our last issue of MWCIA News, the following circulars have been filed and approved for use in MN:

#### **[Circular Letter 13-1643 Rollout for ARROW Enhancements](#)**

This circular announces upcoming enhancements for ARROW.

#### **[Circular Letter 13-1644 Assigned Risk Rates](#)**

This circular announces the Minnesota Assigned Risk Rates and Miscellaneous Values effective 4/1/2014.

#### **[Circular Letter No. 14-1645 Revisions to the MN Basic Manual- Employee Leasing Arrangements](#)**

This circular announces revisions to the Minnesota Basic Manual with regard to the treatment of executive officers and employee leasing arrangements.

#### **[Circular Letter No. 14-1646 Rollout Schedule for Changes to MWCIA Web Experience Mod History](#)**

This circular announces that Web Experience Mod History was rewritten.

#### **[Circular Letter No. 14-1647 Revised Minnesota Medical Data Call Reporting Manual](#)**

This circular announces revisions to the *Minnesota Medical Data Call Reporting Manual*.

#### **[Circular Letter No. 14-1648 2013 Test Audit Summary Report](#)**

This circular announces the 2013 results of

Minnesota's test audit program.

#### **[Circular Letter No. 14-1649 MWCARP – 4-1-2014 Assigned Risk Plan Rates and Revised Miscellaneous Values Pages](#)**

This circular announces a revision to the Minnesota Assigned Risk Rates and Miscellaneous Values to include a charge for Waiver of Subrogation.

#### **[Circular Letter No. 14-1650 MWCARP – 4-1-2014 Assigned Risk Plan Rates and Miscellaneous Values Pages – REVISED](#)**

This circular announces a revision to the Minnesota Assigned Risk Rates and Miscellaneous Values to include how the premium charge for a Waiver of Subrogation is calculated.

#### **[Circular Letter 14-1651 Policy Follow-Up notifications coming to Manage Policy](#)**

This circular announces an upcoming enhancement to the Manage Policy System to include policy follow-up notifications.

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### **Construction Contractor Registration Pilot Program Update**

by

*Charlie Durenberger*

*Director of Licensing and Enforcement  
Construction Codes and Licensing  
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In 2013, the Minnesota Legislature enacted the Construction Contractor Registration Pilot Program in response to concerns regarding the effectiveness of the Independent Contractor Exemption Certificate program. That program sought to address the problem of worker misclassification in the construction industry. This pilot program was the recommendation of a task force convened by the Minnesota Department of Labor and Industry (DLI) and requires all building construction and improvement contractors not already licensed by DLI to register with the Department by September 15, 2013. To date, over 12,000 contractors have registered. Under current law these registrations will expire on June 30, 2014.

In January, DLI issued a report to the Legislature recommending that the Construction Contractor Registration Program be made permanent, with some modifications. DLI is proposing that all current registrations be automatically extended to June 30, 2015. Contractors would then need to submit a renewal to DLI in 2015 in order to remain

registered for another two-year period. The 2014 Legislature will decide whether to extend the pilot program, modify it, or allow it to expire on July 1, 2014.

The DLI recommendation would also modify the presumption of an employer-employee relationship for unregistered contractors to that presumption rebuttable. Contractors who hire an unregistered subcontractor could still argue the subcontractor was not an employee as long as the contractor can demonstrate that the subcontractor meets the nine-factor employer-employee test, has an active business filed with the Minnesota Secretary of State, and invoices or contracts in the name of that business.

This change is in response to concerns raised by the industry that legitimate subcontractors were being deemed employees based solely upon the fact that the subcontractor had not registered with DLI. This issue was addressed by DLI, the Department of Commerce, and the Workers' Compensation Assigned Risk Plan in early 2013. The Plan determined that a subcontractor would not be deemed an employee of the contractor for workers' compensation insurance purposes based solely on the subcontractor's failure to register with DLI. The Plan also agreed that Minn. Stat. § 181.723, subd. 4 does allow for an owner of an LLC or corporation to be deemed an employee of another contractor if the owner fails to meet the nine-factor test for determining if the individual is an employee of the hiring contractor.

Since the pilot program began, DLI investigators working on misclassification cases have issued 108 enforcement orders and made 87 referrals to DEED and/or DOR (Department of Revenue). Most of these actions are directed at employers who were found to have misclassified employees as independent contractors. DOR audit managers have confirmed that DLI referrals are one of the best sources for identifying audit subjects that the agency receives. DOR's audits target employers who fail to withhold taxes for their employees, but they have also begun looking into income tax filing issues as well. In this regard DLI's worker misclassification enforcement efforts also assist DOR in identifying employers (and workers) who fail to file tax returns or misstate their income.

DLI believes a continuation of the Construction Contractor Registration Program will help level the playing field, ensure all employers and employees are treated equally,

and reduce the impact of worker misclassification.

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### Interchange of Labor

**MN STATUTE 79.211 Subd. 2. Division of payroll.** An insurer shall permit an employer to divide a payroll among the rating classifications most closely fitting the work actually performed by each employee in a four-hour block or more for purposes of premium calculation when the employer's records provide adequate support for a division.

### History & Background

The general rule, before the adoption of Minnesota statute 79.211, subd. 2, was that an employee was to be classified based upon the predominant nature of the work that employee performed. This rule made sense, particularly in the world of small to medium size businesses.

Work related classifications are a starting point for pricing workers' compensation insurance. The actual premium charged an insured considers, among other factors, the work done by its employees, reflected in these work classifications, base rates applied to those classifications, experience rating that provides credits for employers with a low injury rate as well as other credits and dividends the insurer may provide. Each of these elements has an impact on price.

When Minnesota moved from administered pricing to competitive rating, there was a debate about moving away from the existing method for classifying workers using the predominant nature of the work performed to an hourly method for dividing payroll.

After much study and debate the Legislature adopted the current division of payroll standard based on a four hour minimum essentially half a day's work. This was viewed as a reasonable compromise for two reasons. First, it was assumed this would give employers, particularly small businesses, an additional tool in negotiating with insurers. Essentially if an insurer was pricing a policy using the traditional method, the employer could ask the insurer to divide payroll between four hour blocks to see if that would favorably influence pricing. It was difficult to assess if this would have a meaningful impact upon actual pricing of

insurance in Minnesota, but it was viewed by the Legislature as a helpful tool.

The decision was made by the Legislature not to go to smaller time increments. This was also done for a practical reason and based upon input from many groups. Understand, when this statute was adopted, it was part of a larger law change designed to enhance competition among workers' compensation insurers. The Minnesota division of payroll statute is unique and it's applied mostly to smaller businesses. The downside of this unique method is that it creates a disincentive for insurers who do not use this method in other states to compete in offering insurance to these smaller businesses.

The concern was that if the law mandated the division of payroll into one, two or three hour segments, it would impose a level of complexity and administrative burden in underwriting small businesses that would actually drive insurers away from competing for these smaller businesses.

Division of payroll was an experiment in Minnesota. Its real impact on lowering premiums, if any, is more antidotal than demonstrable, since carriers predominately use other tools to compete for business and lower premium. What is known is that the more complexity that is added to the process of insuring a risk – complexity for the employer that has to measure every hour of every day for every employer and for the insurer who has to assess and audit that data – the more the cost of insuring the risk will rise. In the arena of smaller businesses, higher cost dampens rather than enhances competition.

### The Rule "Interchange of Labor"

Some employees may perform duties directly related to more than one properly assigned classification according to Rule 1-D-3, their payroll may be divided among the properly assigned classifications as follows:

Minnesota Statute 79.211, subd. 2 (1980), provides that the insurer shall permit an employer to divide his payroll among the rating classifications most closely fitting the work actually performed by each employee in a four-hour block or more for purposes of premium calculation when the employer's records provide adequate support for a division.

An insurer is not required to divide an employer's payroll unless the employer requests or demands that it do so and notifies the insurer of its election or desire to have its payroll divided.

The division of payroll permitted by Minnesota Statute 79.211 pertains both to the computation of an employer's premium and also to the proper statistical reporting of premiums and losses to the Minnesota Workers' Compensation Insurers Association, subject to the following provisions:

- The numeric classification code used to rate the risk must be valid in Minnesota — i.e. the classification code number reported must be included in the current **Minnesota Ratemaking Report**.
- The classification definition contained in the **Minnesota Basic Manual** for the classification code being reported must include, either generally or specifically, the definition used by the carrier to rate the risk under that classification code. **Note:** Estimated or percentage allocation of payroll is not permitted. If payroll records do not show the actual payroll applicable to each classification, the entire payroll of the individual employee must be assigned to the highest rated classification that represents any part of his or her work.
- When a division of payroll exists for an individual employee, payroll for holiday, vacation, sick pay, overtime and all other forms of payroll not directly attributable to a specific classification code shall be allocated to the classification code with the greatest amount of payroll

applicable to the individual employee. If no one classification code applicable to the employee has the greatest amount of payroll, the payroll for holiday, vacation, sick pay, overtime and all other forms of payroll not directly attributable to a specific classification code shall be allocated to the highest rated classification code applicable to the employee.

For examples of the application of this rule, please refer to the USER'S GUIDE section of the Minnesota Basic Manual, pages UG 26 and UG 27, **Rule 2-G Interchange of Labor**.

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### **NOTABLES & REMINDERS**

#### **Assigned Risk Plan Volume (As of January, 2014)**

<u>Policy Count</u>	27,330	0.40 %
<u>Premium</u>	\$ 59,998,220	-0.94%
<u>Policy Average</u>	\$ 2,195	

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#### **MCPAP**

**The 2015 MCPAP applications are due April 1, 2014.** Applications with a postmark later than April 1, 2014 will be subject to a two-point (.02) late penalty adjustment in their 2015 MCPAP credit.

The Minnesota Contractor's Premium Adjustment Program (MCPAP) was designed to adjust an employer's (contractors) workers' compensation premium by way of a premium credit based upon the employers average wage level. It was created to provide some premium

equity between union and non-union shops performing the exact same operation because union shops typically pay a higher hourly wage. Since workers' compensation premium is based upon a rate x payroll, MCPAP helped to level the playing field.

MCPAP was originally approved effective October 1, 1992. Due to some legislative changes, the implementation of MCPAP was delayed until April 2, 1993, for the voluntary market and June 1, 1993, for the Assigned Risk Plan.

Currently, about 1,800 MCPAP factors are issued each year.

For more information about MCPAP, please visit the MWCIA website ([www.mwcia.org](http://www.mwcia.org)) or click [here](#).

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### **MISCELLANEOUS**

MWCIA plans to conduct a survey of our readership (you) to be certain we are delivering value with each edition of MWCIA News. Like the last survey we conducted, the survey will be brief and allow you to respond to questions and offer comments. Thank you in advance for your participation and contributions.

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**MWCIA News** is a periodic publication of the Minnesota Workers' Compensation Insurers Association as a service to its members and the workers' compensation industry. Please direct any questions, comments or suggestions you may have concerning this publication to Glenn Colby, CPCU, editor of MWCIA News, e-mail ([gcolby@gmail.com](mailto:gcolby@gmail.com)).

### **MWCIA PURPOSE**

*As the preferred provider of quality Minnesota Workers' Compensation information, we are committed to developing products, services and markets that meet our customers' evolving needs, and to providing a work environment rich in opportunities for personal and professional growth.*



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