# WORKERS' COMPENSATION REINSURANCE ASSOCIATION

# CLAIMS REFERENCE GUIDE OPERATING RULE

**Effective January 1, 2024**

# Table of Contents

# Claims and Medical Management Services Overview

## Background

Claims and medical management services are an integral part of the reinsurance protection the WCRA provides its Members. To maximize this protection, the WCRA has developed a philosophy that emphasizes a collaborative relationship between Members and the Association's claims and medical management staff. Only with the cooperation and support of each Member can the WCRA achieve the best possible results in its mission of providing high-quality, low-cost workers' compensation reinsurance for all of its Members in Minnesota.

## WCRA's Role in Claims Management and Reimbursement

The WCRA provides its Members with criteria that facilitate the early recognition and reporting of serious Claims that may present reinsurance exposure to the WCRA. Once reported, Claims are monitored and opportunities are identified for cost-effective claims, rehabilitation, and medical management. When Member Payments for Ultimate Loss relative to a single Loss Occurrence exceed the applicable Retention Limit, the WCRA assists the Member to properly file reimbursement requests, assuring prompt payment of the correct reimbursement amount. The WCRA staff can also assist Members in areas such as reserving practices and settlement evaluations.

This Claims Reference Guide (Guide) sets forth a number of the procedures Members must follow to comply with the requirements of the WCRA Reinsurance Agreement (Reinsurance Agreement) and Plan of Operation (Plan). Capitalized terms used in this Guide and included in the Definitions section have the meanings set forth in the definitions in Part Thirteen of the Reinsurance Agreement and Section I of the Plan. In the event of any conflict between this Guide and either the Reinsurance Agreement or the Plan, the terms and conditions, including definitions, of the Reinsurance Agreement and Plan shall control. In connection with this Guide, Entities in Interest have the same rights and responsibilities as Members except where specifically noted.

## Loss Detection: Claims Reviews, Account Reviews, and Claims Listing Audits

The WCRA claims services staff seeks to maintain close working relationships with Members. As part of our due diligence, the WCRA claims staff engages with Members each year to conduct a Claims review, a Claims listing audit, or both. The Claims review gives the WCRA staff the opportunity to identify unreported Claims that may involve exposure to the WCRA, verify reported Claims data and payment information, assess medical management/rehab practices, and review for effective implementation of cost containment measures. The Claims review also provides Members (and/or their designated third-party administrators (TPA)) with an evaluation of the effectiveness of their overall claims management practices and verification that their claims procedures are adequate to protect the WCRA's interests. A Claims review may be conducted on-site at the Member's or their TPA's office, virtually, or a combination of on-site and virtual.

An account review is a limited version of the onsite Claims review and may be completed in lieu of a Claims review. Account reviews may be conducted with a Member or TPA who has established

effective claims management practices, has limited exposure, and/or has minimal open WCRA Claims, where a detailed review of the individual Claim files is not warranted.

The Claims listing audit focuses primarily on identifying reportable Claims based on the financial data provided (total incurred loss), but they also identify areas where the WCRA can be of assistance. Member Claims listings may be requested by WCRA staff on an annual basis and must be reported electronically via the WCRA Portal in the manner prescribed by the Association. Both Claims reviews and Claims listing audits give Members the opportunity to ask questions about the WCRA and to learn about the reinsurance services available to them from WCRA staff.

**WCRA Website and Calculators**

The WCRA website at www.wcra.biz provides general information regarding the WCRA and has links to other workers' compensation entities in Minnesota. The site also provides a variety of calculators to assist in claims and premium management. We urge our Members to utilize these calculators because they save time, improve accuracy, and simplify the claims process for both Members and the WCRA claims staff.

- *CompCalc* calculates workers' compensation indemnity benefits on Minnesota Claims.
- *Benefit Weeks Calc calculates the number of weeks between two dates.*
- *Dependency Calc* calculates benefits in fatality Claims.
- *TPDCalc* computes temporary partial disability benefits.
- *InterestCalc* calculates interest on late workers' compensation benefits.
- *PPD Calc* consists of calculators that compute the percent of whole body disability when two or more body parts are injured and the amount of permanent partial disability payable.
- *PresentValueCalc* lets the user choose escalation and discount rates to compute present value.
- *LifeExpectancyCalc* computes the additional life expectancy depending on gender and current age. The program uses the 2000 Minnesota life expectancy tables from the Minnesota Center for Health Statistics.
- *Ultimate Value Calc* computes the total of future payments based on selected escalation rate.
- *SubroCalc* allocates third party proceeds according to statutory formula.

**WCRA Portal Access**

The WCRA Portal offers secure access to view Claims information, receive electronic correspondence, report new Claims, submit interim updates, request reimbursements, and upload requested information. The WCRA Portal can only be accessed after an account has been set up and a username and password created. WCRA Portal access is granted on an individual basis after an application has been reviewed and approved by WCRA staff. All Claims reporting and reimbursement requests must be submitted electronically via the Portal. If you do not have a Portal account, go to the WCRA website at www.wcra.biz to access the application form and additional information about this service.

## Third-Party Administrators (TPAs)

Some Members outsource all or part of their WCRA reporting responsibilities to a third-party administrator. When a Member contracts with a TPA to perform some or all of its business responsibilities with the WCRA, *it is ultimately the Member's responsibility to ensure that the TPA is reporting properly to the WCRA*. Members contracting with TPAs to work with the WCRA are required to submit to the WCRA a completed WCRA TPA Authorization Agreement. The agreement notifies the WCRA that a TPA is authorized to receive information and correspond with the WCRA on behalf of a Member. The authorization also provides indemnification for the WCRA by a Member for any legal action that may arise out of or in connection with any violation of the Agreement by the TPA or its employees. The form is available upon request.

# Claims Reporting

Timely reporting of serious Claims by WCRA Members to the Association is extremely important. Such reporting allows the Association to establish appropriate reserves for these Claims. In addition, the Association has substantial information and resources to assist Members in the management of Claims involving catastrophic and/or complex injuries. All Claim reporting must be submitted electronically via the WCRA Portal.

Claims that meet the below requirements involving a Loss Occurrence that occurred on or after October 1, 1979, during the Member's membership in the Association, may be appropriate for reporting to the WCRA.

### Catastrophic Injuries

Claims involving the following injuries must be reported to the WCRA within 10 business days of notification of the injury to the Member.

- Spinal cord injury resulting in paraplegia or quadriplegia.
- Moderate to severe brain injuries.
- Major burns, defined as second- or third-degree burns involving covering 30 percent or more of the body, electrocution injuries, or if significant medical costs can be anticipated.
- Amputations of a significant portion of one extremity or multiple limb amputations.
- Complete vision loss.

### Serious Injuries

Claims involving the following injuries should be promptly reported to the WCRA after taking into consideration the applicable Retention Limit that was in effect at the time of the Loss Occurrence:

- Impairment of total vision by 50 percent or more.
- Partial paralysis in an upper or lower extremity.
- Crushing or massive internal injuries.
- Multiple fractures or significant degloving injuries.
- Occupational disease allegedly caused by working conditions or other job-related factors, including asbestosis, chronic pulmonary disease, or other occupational disease which results in a disability expected to last two years or more. In cases of occupational disease, each person who has been exposed is considered a separate Loss Occurrence.
- A Loss Occurrence that is likely to produce multiple post-traumatic stress disorder Claims under Minn. Stat. § 176.011, subd. 15(d) and is considered likely to affect the interests of the Association.

### Incurred Claim Cost Threshold

A Claim should be reported promptly to the Association when the total incurred cost of a Claim exceeds the lesser of 50 percent of the applicable Retention Limit that was in effect at the time of the

Loss Occurrence or $1,000,000.

Over time, some injuries that do not meet the reporting criteria for catastrophic or serious injuries develop into Claims that may reach a Member's selected Retention Limit. In determining whether the total incurred cost of a Claim exceeds the reporting requirement, Members should include all medical and indemnity Member Payments made to the claimant(s) involved in the loss plus the undiscounted medical and indemnity reserves, including the aggregate reserve in a multi-claimant loss, established by the member for future claim costs. Setting accurate and adequate lifetime reserves is as important for Members as it is for the WCRA. Each Member has its own reserving philosophy. The WCRA claims staff, when performing its Claims reviews, examines case reserves and reserving methodologies for reasonableness.

Please note that there are some exceptions to these criteria. A Claim need not be reported to the WCRA if it has been settled on a full, final, and complete basis with limited medical exposure, and the total Member Payments are not expected to exceed the applicable Retention Limit. Nor is it necessary to report a second injury fund Claim that's responsible for 100 percent of the Ultimate Loss or a Claim where a recovery is being made such that total Member Payments will not exceed the applicable Retention Limit.

**How to Report a Loss**

Initial Claim reports must be submitted electronically via the WCRA Portal. The information requested on the initial Claim report is designed to provide the WCRA with sufficient data to determine if the Claim may involve liability to the WCRA. Initially, the WCRA needs the basic claimant information, a complete description of the Loss Occurrence and injury, payment information, and the current status of the Claim, including recovery potential. The WCRA also requests the First Report of Injury (FROI) be submitted with the initial Claim report to provide any additional clarifying information.

If the information submitted by the Member on the initial Claim report is inadequate for the Association to evaluate and determine its liability, if any, additional or explanatory information may be requested from the Member. If the Association determines the claim will not involve exposure to the WCRA, a Claim will not be opened or reserved. Any Claims that are anticipated to present exposure to the WCRA based on WCRA's independent reserving calculations will be opened and placed on a diary schedule for interim Claim update reporting.

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To be able to report using the WCRA Portal, an individual account with a username and password needs to be set up. If you do not have a WCRA Portal account, go to the WCRA website at www.wcra.biz to access the application form and additional information about this service.

# Interim Claim Updates

If a reported Claim has been opened by the WCRA, the claims services staff will request periodic updates regarding the status of the Claim from the Member or authorized TPA. Generally, a Claim update report will be requested every 6 to 12 months, but the frequency depends on the severity and stability of the Claim. Some stable permanent total, temporary partial, settled, and dependency benefit Claims are placed on a two-year reporting schedule. If the total medical and indemnity Member Payments made on a Claim are over the applicable Retention Limit, a reimbursement request may be submitted in lieu of a Claim update report (See Reimbursement Request Procedures). As part of their membership, Members and authorized TPAs agree to receive information requests, updates, and other Claims-related material electronically.

The Claim update report must be submitted electronically via the WCRA Portal. Scheduled reminder notifications are sent by the WCRA claims services staff to designated Member contacts approximately 30 days prior to the Claim update report due date. Claim update reports not submitted by the 15th of the month following the due date will be considered past due. As part of the Claim update report, the Member must provide the current weekly indemnity rate, medical status, payment information, and any applicable comments on vocational, litigation, settlement, or recovery developments.

Claim update reports can be submitted off-schedule under either of these conditions:

- Claim file is closed.
- Claim file is reopened after a final closure report had been submitted previously.

If the information contained in a Claim update report is not adequate for the WCRA to evaluate its potential liability, the WCRA claims services staff may request additional explanatory material from the Member.

If you do not have a WCRA Portal account, please go to the WCRA website at www.wcra.biz to access the application form and additional information about this service.

**Reporting Significant Developments or Changes in Claim Status**

Regardless of the scheduled Claim update reporting, the WCRA claims services staff should be notified promptly via Claim update report, email, or phone under any of the following situations:

1. A claimant's medical condition undergoes any material change that affects the degree of permanent impairment, need for extensive/high cost medical treatment (e.g. repeat surgeries, spinal cord stimulator implants, limb prosthetics, etc.), acceptance of significant consequential conditions, extended hospitalizations, considerations for home remodeling, or requests for family-paid home care.
2. The Member experiences any material change in liability, rights to reimbursement, indemnity loss offsets, determination of permanent and total disability (PTD), or other potential recoveries relative to a Claim.

# Reimbursement Request Procedures

Under the Enabling Act, the WCRA shall provide indemnification to a Member for 100 percent of the Member Payments of Ultimate Loss sustained in each Loss Occurrence in excess of the applicable Retention Limit selected by the Member. Ultimate Loss is defined more specifically in the Definitions section herein but generally includes the required benefits payable under Minnesota Statutes Chapter 176 and excludes Claim Expenses and penalties. This policy applies whether the loss is paid pursuant to statutory benefit provisions, in a lump-sum settlement, or in other forms of settlement, such as through the purchase of an annuity to fund a structured settlement.

Recognizing the importance of timely reimbursement, the WCRA aims to reconcile and pay all approved and complete reimbursement requests within five business days of their receipt, barring unusual circumstances. Lack of appropriate or adequate documentation may delay the processing of a request. See the section "Components of a Reimbursement Request" below for details regarding the information required with each reimbursement request.

All WCRA reimbursement requests must be submitted electronically via the WCRA Portal.

The WCRA is required by statute to obtain the documentation necessary to properly substantiate reimbursement payments to Members, and to ensure that all Members are upholding their fiduciary responsibility to protect the interests of the WCRA. Member claims files are periodically reviewed at the Member's or TPA's office to verify previously reported information and to ensure data integrity.

**Initial Reimbursement Requests**

In response to a scheduled Claim update reminder notification, a Member can submit an initial reimbursement request to the WCRA after Member Payments to the claimant, or claimants involved in the same Loss Occurrence, exceed the applicable Retention Limit selected by the Member and in effect at the time of the Loss Occurrence. Reimbursement requests submitted on a Loss Occurrence involving multiple claimants are aggregated, except for occupational disease Claims which are submitted on a per person, per occurrence basis. All reimbursement requests, initial and interim, must be submitted electronically via the WCRA Portal.

Submission of an initial reimbursement request satisfies the Claim update reporting requirement, so a Claim update report does not need to be submitted in addition to a reimbursement request.

**Interim Reimbursement Schedule**

Following the initial reimbursement request, interim reimbursement requests should be submitted to the WCRA during the anniversary and half-year anniversary months of the date of loss for each separate Loss Occurrence (i.e.: six-month schedule). A reimbursement request may be submitted at any time during the eligible month of the applicable cycle.

Submission of an interim reimbursement request satisfies the Claim update reporting requirement, so a Claim update report does not need to be submitted in addition to a reimbursement request. If the

member does not have all the necessary documentation to support the reimbursement being requested, a Claim update report can be submitted in lieu of a reimbursement request.

**Exceptions to the Six-Month Reimbursement Schedule**

Members may also submit a reimbursement request off-schedule under the following three circumstances:

1. If a Claim is settled on a full, final, and complete basis, whether or not medical benefits remain open, a reimbursement request may be filed at any time after the Member Payments have been made in accordance with the Award on Stipulation.
2. If Member Payments for a Loss Occurrence for which reimbursement is due exceed $30,000 within three months, beginning with the month a reimbursement request may be filed, a request may be filed at the quarter month. For example, a Member on a January/July reimbursement schedule may request reimbursement in April if Member Payments made subsequent to the January request exceed $30,000 by the end of March.
3. If a Member is closing its Claim file, a reimbursement request may be filed at any time instead of waiting for the scheduled six-month request.

**Components of a Reimbursement Request**

The following information should be provided to the WCRA with each initial or interim reimbursement request.

1. *Reimbursement Request Form*. The Reimbursement Request Form must be submitted electronically via the WCRA Portal. A Reimbursement Request Form should be completed for each separate Loss Occurrence. If a Loss Occurrence includes multiple claimants, the reimbursement amount will be aggregated. The form should provide the WCRA with a current status of the Claim and with the information necessary for the WCRA to evaluate its exposure and establish the correct reserve.
2. *Indemnity Documentation*. If indemnity benefits are being paid on the Claim, payment ledgers are required in order to process the reimbursement request.
    - Payment ledgers are required to be submitted in an electronic spreadsheet format like Microsoft Excel that identifies the amount, time frame, and nature of benefits paid (TTD, TPD, PPD, Supplemental, etc.). Exceptions to this requirement should be discussed with the Claim Account Manager or Vice President-Claims.
    - For initial reimbursements, the payment ledgers should cover from the date of injury to the current date of the request.
    - For interim reimbursements, the payment ledgers should cover just for the time frame being requested.
    - It is also necessary to document lump-sum payments such as permanency benefits, settlements, or awards.
    - The WCRA may reimburse any overpayment created by a retroactive finding of permanent total disability and offset, provided that a 20 percent credit is being taken on further benefits. Other overpayments may also be reimbursed if they were made in good faith and a credit is being taken.

- Initial reimbursement requests involving permanent total disability (PTD) or dependency benefits must include a copy of the SSDI benefit history from the Social Security Administration. The WCRA may periodically request Social Security information as needed to confirm any government offsets and reconcile reimbursement requests. Reimbursement of indemnity benefits may be withheld until Social Security information is provided as requested.

3. *Medical and Vocational Rehabilitation Reports*. If the medical and vocational rehabilitation status of the Claim is active, submission of narrative reports is necessary to better evaluate the Claim. Documents explaining past medical treatment and vocational rehabilitation activities are also necessary to support an initial reimbursement request if not previously submitted. Specifically, copies of independent medical examinations, operative reports, or general Claim summaries are helpful. It is not necessary to submit all physical therapy notes, chart notes, or job search logs.
4. *Medical and Vocational Rehabilitation Payment Documentation*. If medical or vocational rehabilitation benefits are being paid on the claim, payment ledgers are required in order to process the reimbursement request. Payment ledgers are required to be submitted in an electronic spreadsheet format like Microsoft Excel. The ledgers should identify the payee, date of the payment, dates of service associated with the payment, and amount of the payment. If the nature of the service rendered by the payee is not readily identifiable, a description of the service is necessary. Additionally, the nature of all reimbursements to the claimant must be identified, such as mileage, prescriptions, job-search costs, etc.
5. *Legal Documents*. The WCRA requires fully executed copies of Stipulations and Awards on Stipulation that settle a Claim full, final and complete; establish permanent total disability; or resolve a permanency, medical, or any other certified dispute. Copies of court decisions that determine compensability, contribution, apportionment, or other benefits are also required.
6. *Apportionment*. The issue of per-occurrence coverage can arise when a member submits for reimbursement and the request includes payments for treatment the claimant may have received that may be due, in part or all, to a different Claim and/or different date of injury. Because the WCRA coverage is on a per-occurrence basis, it may be necessary to apportion the benefits paid on the respective losses or to provide documentation to support the contention that the other losses were minor in nature and do not require apportionment.

**Initial reimbursement requests should contain documentation for all Member Payments made since the Loss Occurrence. Interim reimbursement requests need only contain documentation for Member Payments made since the previous reimbursement request.**

**If portions of a Claim file are not available and no documentation exists for specific Member Payments, the WCRA will not reimburse the undocumented payments.**

**Insufficient Documentation**

Members are contacted when the WCRA claims services staff determines that a reimbursement request contains errors or inadequate supporting information. It is in the Member's best interest to provide the needed information as quickly as possible, since processing the request cannot be completed until such information is received. If the Member is unable to provide adequate

supporting documentation for certain payments, the WCRA may either withhold or reduce the reimbursement for those Member Payments.

Often a phone call to the WCRA claims services staff can resolve a question or concern. If additional documentation is required, Members are encouraged to promptly submit the necessary information via our secure email function within the WCRA Portal, by email to claimservices@wcra.biz, or by email to the reinsurance claims specialist.

If the WCRA has not received the information within ten business days of its request, the WCRA claims services staff will send the Member an email reminder detailing the information that must be received before the reimbursement can be processed. If the documentation still has not been received within 20 business days, the WCRA claims services staff will close the reimbursement and send it back to the Member with a letter explaining why the request is being returned.

A Member may resubmit a new reimbursement request at any time after it has been returned if the necessary information is provided or other concerns have been resolved.

**Reimbursement Payments**

Reimbursement payments by the WCRA for properly documented reimbursement requests will be made within five business days barring unusual circumstances. Any apparent discrepancies or unreimbursed expense payments are itemized in a remittance letter accompanying the reimbursement payment. Members are encouraged to contact the WCRA claims services staff to discuss any questions or concerns.

# Reimbursable and Nonreimbursable Benefits and Expenses

## Benefits Eligible for Reimbursement

The WCRA shall provide indemnification to a Member for 100 percent of the Member Payments of Ultimate Loss sustained in each Loss Occurrence in excess of the applicable Retention Limit selected by the Member. Ultimate Loss is defined more specifically in the Definitions section herein but generally includes the required benefits payable under Minnesota Statutes Chapter 176 and excludes Claim Expenses and penalties. The Association may also choose to reimburse other reasonable, nonstatutory benefits that are paid to assist the injured worker and mitigate the cost of the Claim. The following benefits are eligible for reimbursement:

1. Indemnity benefits, including temporary total disability, temporary partial disability, permanent total disability, retraining benefits, dependency benefits, impairment compensation, economic recovery compensation, and permanent partial benefits.
2. Medical benefits, including services by physicians, chiropractors, and hospitals; diagnostic procedures; prescriptions; durable medical equipment; medical mileage, etc. subject to the applicable fee schedule, statutes, and treatment parameters.
3. Vocational Rehabilitation benefits incurred in accordance with a rehabilitation plan authorized by the Department of Labor and Industry; including utilizing qualified rehabilitation consultants and job placement vendors; job search mileage and related expenses; vehicle modifications identified as part of a retraining plan; and all costs delineated in a training plan.
4. Home remodeling expenses that are paid for in accordance with Minn. Stat. § 176.137. Home remodeling benefits will be eligible for reimbursement if: a) the criteria outlined in Minn. Stat § 176.137 are met and b) an Award on Remodeling of Residence is issued by the Minnesota Department of Labor and Industry. Any exceptions to following Minn. Stat § 176.137, must be discussed in advance with the WCRA claims services staff.
5. Vehicle modifications that are necessary to cure and relieve the injury and are documented as medically necessary. The base cost of a modified van may be eligible for reimbursement if it allows the injured worker to maintain gainful employment and is discussed in advance with the WCRA claims services staff.
6. Plaintiff attorney fees, including Heaton fees, Roraff fees, appellate court fees, taxable costs and disbursements, and Minnesota Statute 176.081, subd. 7 fees.
7. Nonstatutory discretionary payments. The WCRA will consider reimbursement of other benefits and expenses that are paid to mitigate the cost of the claim on a case-by-case basis. However, these benefits must be documented as reasonable and necessary. Such discretionary payments should be discussed in advance with the WCRA claims services staff. Examples of this type of benefit may include the following items. This list is not inclusive nor exclusive.
    - preapproved catastrophic case management services;
    - nurse case management (if there is a documented medical need);
    - pharmacy reviews;
    - secondary medical bill reviews;
    - pharmacogenomic testing;

- independent medical evaluations;
- surveillance;
- professional administration fees for Medical Set-Asides; and/or
- Other discretionary payments such as health club fees, home exercise equipment, orthopedic mattresses, ergonomic chairs, uniforms, and tools may also be eligible with adequate documentation.

**Payments Not Eligible for Reimbursement**

The WCRA is prohibited from reimbursing some Claims expenses, according to statute or the WCRA Plan of Operation. Following is a list of nonreimbursable Claims expenses:

1. Penalties, interest, and civil damages, including penalties associated with failure to pay or deny benefits in a timely manner, civil damages associated with an obstruction of an employee seeking benefits, improper discontinuances, failure to provide rehabilitation or vocational benefits, failure to pay pursuant to an order, interest on late benefits, and interest payable pursuant to an Award.
2. Claims administration expenses, including fees for services of investigators, claims adjusters, defense attorneys and related costs; non-preapproved independent medical examinations and surveillance expenses; medical records retrieval and photocopying fees; and other reports in connection with the determination of facts or the disposition of a claim, loss, or legal proceeding.
3. Housekeeping services and yard care, as the courts have generally denied payments.
4. Supplemental benefits and Special Compensation Fund special assessments.
5. Employer's liability payments under Coverage B of the workers' compensation policy.
6. Vocational Rehabilitation services provided by a consultant or vendor that are rendered in the absence of, in a manner inconsistent with, or outside the scope of a rehabilitation plan.

# Medical Management Advisory Services

Medical management advisory services are provided to Members through individual case consultation, onsite training, serious injury guidebooks, advisories, literature research, and educational/training seminars.

### Individual Case Consultation

Catastrophic, serious injury, or high-cost complex Claims can be very challenging—even for the most experienced claims professional. Once the initial injury information is gathered, our experienced claims and medical management staff assess the level of reinsurance exposure and seriousness of the injury. As a part of our involvement, the WCRA medical management staff assists by:

- Reviewing Claims and making recommendations for case management, including potential treatment options and case outcomes.
- Participating in roundtable discussions with claims and rehabilitation professionals to strategize regarding case direction.
- Providing average medical costs in similar injuries, including initial medical cost projections and short- and long-term medical cost drivers.
- Identifying potential short- and long-term rehabilitation needs.
- Providing resource information to assist in making medical treatment decisions.
- Identifying appropriate rehabilitation facilities, centers of excellence, and providers.

To better understand the complex challenges surrounding a particular Claim, the WCRA medical management staff may at times participate in an on-site care conference being held by either a rehabilitation facility or medical provider and/or request an on-site review with the Member/TPA. Our goal with these onsite reviews is to gather information as well as to provide the Members with more case-specific recommendations in order to ensure that effective care is being provided.

### Serious Injury Guidebooks

WCRA's Guidebooks for Management of Serious Claims contain valuable and comprehensive information about anticipated medical and rehabilitation treatment; cost projections; guidance for home care, home modifications, and transportation issues; durable medical equipment needs; prosthetics; as well as information regarding permanent partial disability (PPD) ratings and reimbursement questions. Individuals who have created WCRA Portal accounts may access these guidebooks online. In addition, any Member or TPA may request an electronic version of these guidebooks by contacting the WCRA at 651-293-0999 or claimservices@wcra.biz.

### Medical Management Advisories

In addition to the guidebooks, the WCRA medical management staff also provides brief informational reports on medical and rehabilitation issues relevant to managing catastrophic and complex claims. These advisories are available on the WCRA website at www.wcra.biz.

## Literature Research

The WCRA medical management staff is available to perform basic literature and internet searches for information on various surgical recommendations, rehab centers of excellence, and industry trends in treatment of certain conditions. As part of the literature search, the WCRA has access to nationally and locally recognized resources for current information targeting evidence-based medicine and high-tech treatments.

## Training and Educational Seminars

The WCRA medical management staff is available to provide training (onsite or virtual) at the request of our Members or TPAs. The WCRA also periodically hosts educational webinars and seminars featuring both local and nationally recognized experts speaking on aspects related to catastrophic/serious injury Claims. Continuing education hours are usually available for Minnesota adjuster licensure, CCM, CRC, and CDMS certifications.

# Settlement of Claims

The WCRA policy regarding settlement of workers' compensation Claims by our Members is based on several related provisions in the WCRA Enabling Act, Plan, and Reinsurance Agreement.

### Member Settlement Authority

Under the Plan and Reinsurance Agreement, Members have the primary responsibility for the investigation, management, and defense of all Claims. As part of that responsibility, a Member may settle and compromise disputed Claims that are within the terms and conditions of the original insurance policies or programs of self-insurance issued by the Member provided that such settlement or compromise is consistent with the claims procedures established by the Association. The WCRA generally does not attend or participate in settlement or pretrial conferences, nor should the WCRA be included as a signatory on a stipulation for settlement.

For more details on what information and documentation is needed by the WCRA claims services staff to evaluate a Member's proposed settlement, please request a copy of the *Settlement Advisory*. At a minimum, a comprehensive analysis of the exposure and any factors impacting settlement is required by the WCRA to develop an independent settlement exposure analysis.

### WCRA Settlement Guidelines

Members are required to notify the WCRA prior to entering into Claim settlements that may involve present or future WCRA reimbursements. Members must notify the WCRA of a proposed settlement in a timely manner so that the WCRA claims services staff has sufficient time to adequately review the proposed settlement and discuss with the Member the accuracy and reasonableness of the settlement and its potential impact on the WCRA. If a settlement involving Association funds is executed without such notification to the Association, and the Association has no disagreement with the terms of the settlement, the Ultimate Loss shall include the entire portion of the settlement amount that satisfies the definition of Ultimate Loss. If the Association disagrees with the terms of a settlement entered into by a Member because of errors in applying the provisions of Minn. Stat. Ch. 176 in determining the settlement amount, or because it believes the settlement is excessive and materially and adversely affects the Association's interests, Ultimate Loss shall include only that portion of the settlement amount that the Association does not dispute.

### Discounting Indemnity Settlements

The WCRA uses a discount rate that reflects the expected annual rate of return on the WCRA's investment portfolio. This allows the Association to earn sufficient funds over the life of the Claim to reimburse the Member. Members must take into consideration the WCRA discount rate in evaluating a settlement that involves or may involve future WCRA reimbursements. Escalation rates for benefits should be appropriate for the date of injury. The WCRA's current discount rate and escalation rates are available on its website (www.wcra.biz). The present value represents the highest cost scenario of the claim and assumes that the claimant will be eligible for benefits for the maximum period of time. Therefore, a reasonable settlement amount should be less than the present value. In the WCRA's experience, the settlement value of most Claims tends to be 50–75 percent of

the present value. If significant savings cannot be realized, the WCRA believes that the Claim should not be settled, and benefits should simply be paid out over time. The WCRA calculator called *PresentValueCalc* may be used to evaluate whether a Claim should or should not be settled.

**Discounting Permanent Partial Disability and Medical Settlements**

During the 2000 legislative session, Minnesota workers' compensation law was amended to permit the lump-sum payment of permanent partial disability (PPD) awards at the request of the injured worker. Effective October 1, 2000, the lump-sum payment allowed is the present value of the PPD award using a discount rate as published in the statute. For PPD settlement purposes, the Member is expected to follow the statutory discounting provision. WCRA's *PPD Calculator* may be used to evaluate the amount of PPD due if paid out weekly or via a lump sum.

For settlements including medical, the WCRA requests the Member take into consideration a structured settlement annuity to fund any Medicare-covered treatments and services. Settlement of non-Medicare treatments and services should take into account discounting to present value.

**Settlements Below the Retention Limit**

Under the Enabling Act and Plan, the WCRA is responsible for reimbursing Members for 100 percent of the Ultimate Loss sustained in each Loss Occurrence in excess of the applicable Retention Limit selected by each Member and in effect at the time of the Loss Occurrence. Conversely, the WCRA has no authority to reimburse Members for Member Payments that do not exceed the applicable Retention Limit. This policy applies whether the Ultimate Loss is paid pursuant to statutory benefit provisions, in a lump-sum settlement, or in other forms of settlement, such as through the purchase of an annuity to fund a structured settlement.

# Per-Occurrence Coverage

## Statutory Provision

The law which established the WCRA specifically states that the Association customarily provides reimbursement to Members on a per-occurrence basis, with one Retention Limit applying to each separate Loss Occurrence. In cases of occupational disease, each person suffering from the disease is treated as a separate Loss Occurrence. Post-traumatic stress disorder (PTSD) Claims are treated on a per-occurrence basis. Minnesota Statute 79.34, subd. 2 reads as follows:

> ***The reinsurance association shall provide and each member shall accept indemnification for 100 percent of the amount of ultimate loss sustained in each loss occurrence relating to one or more claims arising out of a single compensable event, including aggregate losses related to a single event or occurrence which constitutes a single loss occurrence, under chapter 176 on and after October 1, 1979…***

## Potential for Apportionment

The issue of per-occurrence coverage often arises when a Member settles a Claim or a portion thereof, and the settlement covers any and all claims that a claimant may allege. The WCRA recognizes that this is sometimes prudent claims practice. However, because the WCRA Reinsurance applies on a per-occurrence basis, the Member may have an obligation to apportion the benefits paid among each of the claims alleged and Loss Occurrences involved, or to provide documentation to support the contention that the other claims or Loss Occurrences covered by the settlement were minor in nature and do not require apportionment. Typically, a reasonable apportionment can be derived by looking at lost time, permanent partial disability, and the extent of medical costs associated with each Loss Occurrence.

The WCRA recommends that Members be aware of this issue and consult with the WCRA in advance when considering whether to enter into a lump-sum settlement or establishment of permanent and total disability when multiple Loss Occurrences are involved.

# Subrogation Waivers and Recoveries

## Subrogation Requirement

The Reinsurance Agreement requires Members to pursue subrogation claims unless the WCRA agrees otherwise.

The Reinsurance Agreement, in Part Eight states:

> ***Each Member shall, to the extent permitted by law, prosecute or intervene in any and all claims the Member or an employer, employee, beneficiary, or other person may have against any third party arising out of any Loss Occurrence. All recoveries therefrom shall be applied to reduce the Ultimate Loss***.

Members may, in limited circumstances, waive subrogation rights. This section outlines the procedures and standards governing the WCRA's approval of a waiver of subrogation request and sets forth the WCRA's remedies for a Member's failure to obtain approval of these waivers.

## Waiver Procedures and Standards for Approval

Members may waive their subrogation rights in advance of any Loss Occurrence without notice to the WCRA. Once a Loss Occurrence has occurred, however, a Member must follow these procedures, including obtaining the written approval of the WCRA, if it wishes to waive its subrogation rights relative to that Loss Occurrence. In all Claims which have been reported to the WCRA, or which are required to be reported according to the criteria listed in the "Initial Claims" section of this WCRA Guide, the Member must notify the WCRA in writing of its desire to obtain the WCRA's approval to waive subrogation as soon as practicable. All requests asking the WCRA to agree to a waiver of subrogation must be submitted in a timely manner so that the WCRA staff may adequately review and respond to the request. If a reply is needed from the WCRA by a specific date, the request should so specify.

The WCRA will determine whether a Member's request to waive subrogation would be reasonable from the perspective of the Association. The value of a possible recovery by the Member or WCRA in each case, and the probability of such recovery, will be evaluated. However, the Association's decision also takes into account other considerations and interests besides potential financial recovery from a subrogation action, such as its duties to and relationships with its Members.

The WCRA will consider all factors involved in the request to waive a subrogation claim. When requesting consideration of a subrogation waiver, please provide the WCRA claims services staff with the following information.

1. All available facts about the accident.
2. The monetary effect of the proposal on the Member's exposure below the WCRA Retention Limit, in comparison with the effect on the exposure above the Retention Limit.
3. The probability of the Claim ultimately exceeding the WCRA Retention Limit.
4. The costs of recovery.

5. Potential Coverage B liability and coverage limits.
6. The Member's stated reasons for its request.
7. The Member's realistic and legal evaluation of the case and the likely range of recovery.
8. Whether refusal to waive subrogation would be detrimental to the Member or its insured.

**Failure to Obtain WCRA Approval**

If a Member waives subrogation without obtaining prior WCRA approval, the WCRA will review the waiver after the fact to determine whether it would have been approved. If the Association determines that the waiver was not in its best interests, the Association may reduce the Ultimate Loss by the amount the Association determines could have been recoverable through subrogation. The Association may withhold reimbursements to the Member for other Claims and may offset any other amount due to the Member pursuant to Part Ten of the Reinsurance Agreement, to recover reimbursements already made in connection with the Claim for which subrogation was waived in violation of the Reinsurance Agreement.

**Subrogation Recoveries**

If a Member recovers from a third party an amount for which it has already been reimbursed by the Association, the Member shall promptly turn such proceeds over to the Association, less the costs of recovery, to the extent of any reimbursement already received from the Association.. If a Member obtains a successful subrogation, contribution, or other third-party cash recovery, its attorney fees and costs incurred as a result of pursuing this action may be deducted from the proceeds turned over to the Association.

Should the Member, employer, employee, beneficiary, or other person have such a claim against a third party which it fails or neglects to enforce within a reasonable time, the Association may reduce the Ultimate Loss by the amount the Member would have recovered from such third parties. In the alternative, the Association, which shall be subrogated to the Member's interest in such claim, may, in the Association's sole discretion, prosecute such a claim. The Member shall execute any and all papers and documents necessary to vest full right, title and interest in said claim in the Association. The Member shall cooperate to the fullest extent with the Association in the enforcement of any such claim. Whenever, as a result of the prosecution of such a claim, the Association recovers from third parties an amount for which the Association has already reimbursed a Member, the Association shall retain such proceeds, plus the costs of recovery, to the extent of any reimbursement already paid by the Association, and any excess shall be paid to the Member or other party entitled thereto.

# Dispute Resolution

The dispute resolution process is detailed in Part Twelve of the Reinsurance Agreement. Before invoking that formal process, the Association recommends that Members first address the dispute directly with WCRA claims services staff, with an escalation to the WCRA VP of Claims or the WCRA President as warranted, before invoking the formal dispute resolution process.

# Intervention in Legal Proceedings or Member Claims Management

## Background

The primary objective of the WCRA's claims services department is to promote expert administration of serious workers' compensation Claims and to ensure that proper and cost-effective medical and rehabilitation services are provided to injured workers while protecting the Association's financial integrity. The Minnesota Legislature recognized that achieving these goals might, at times, require the WCRA's involvement in Members' Claims.

## Intervention in Legal Proceedings

The Association may intervene in legal proceedings resulting from a workers' compensation injury after consultation with the Member if it determines that intervention is in the best interests of the Association; if the amount sought by any party exposes the Association to potential financial liability; or the matter involves a legal issue which may affect the liability of the Association in pending or future Claims. In determining whether to intervene in such legal proceedings, the Association may consider, among other things, whether intervention would likely promote standardization and promptness in the administration of serious Claims; whether intervention would likely contribute to minimizing the costs of workers' compensation insurance; whether intervention would be likely to promote the availability of effective and economical rehabilitation programs for seriously injured employees; and whether intervention would protect the Association's interests.

## Intervention in Member Claims Management

Normally, the responsibility for managing and administrating Claims belongs to the Members and the WCRA assumes only an advisory and monitoring role regarding the management of Claims that might expose the Association to financial liability. However, pursuant to Part Seven of the Reinsurance Agreement, if the Association determines that the claims procedures, practices, or reporting of a Member are inadequate to properly service the liabilities of the Association, or may, in any way, jeopardize the interests of the Association, the Association may take one or more of the following four actions.

1. The Association may reduce Ultimate Loss, reduce reimbursements to the Member, and/or withhold reimbursements or any other amounts due to the Member until the Association determines that the deficiencies in the claims procedures, practices, or reporting have been resolved.
2. The Association may impose a premium surcharge on the Member (except for an Entity in Interest in its capacity as a Net Worth Employer).
3. The Association may, with the approval of the Board and at the Member's expense, undertake directly or contract with another person, including another Member, to adjust or assist in the adjustment of a Claim or Claims which create a potential liability to the Association. Except as provided in Minn. Stat. § 79.35(7), the Association may charge the costs and expenses of these activities, including legal expenses, to the Member (except an

Entity in Interest in its capacity as a Net Worth Employer). The Member shall cooperate fully with the Association in such claims management.

4. The Association may recommend to the Commissioner and the Commissioner of Commerce that an Insurer's license to transact workers' compensation insurance, or a Self-Insurer's authorization to self-insure workers' compensation liability pursuant to Minn. Stat. § 176.181, be revoked.

**Examples of Inadequate Procedures**

Following are examples of claims procedures that could be deemed inadequate to properly service a Claim or to limit the WCRA's liabilities.

1. Failure to maintain timely reporting of required Claim updates.
2. Failure to employ prompt and cost-effective medical management and vocational rehabilitation procedures.
3. Failure to properly and timely pursue a finding of permanent total disability and assist eligible employees in applying for social security or other governmental benefits which might offset workers' compensation benefits.
4. Failure to pursue subrogation or other potential recovery claims against third parties as outlined in the "Waiver of Subrogation" section of this *WCRA Claims Reference Guide*.
5. Failure or refusal to diligently defend a Claim.
6. Failure to provide a claims listing of open Claims or cooperate with the WCRA's loss detection activities.
7. Failure of the Member, its counsel, or a third-party administrator to protect the interests of the WCRA.

This list is neither inclusive nor exclusive. In determining whether intervention serves the Association's best interest, the WCRA will consider past and anticipated frequency of the questionable practice, as well as the total financial exposure it may cause.

# Definitions

A. Act. "Act" means Minn. Stat. §§ 79.34 to 79.40, as they may be amended.

B. Association. "Association" means the Workers' Compensation Reinsurance Association created by the Act.

C. Board. "Board" means the Board of Directors of the Association.

D. Claim. "Claim" means a notice, demand, or other written or oral communication by or on behalf of an insured employer or an employee or beneficiary for the payment of benefits under Minn. Stat. Ch. 176.

E. Claim Expenses. "Claim Expenses" means those expenses incurred in determining the facts or disposition of a Claim, Loss Occurrence, or legal proceeding, in evaluating the extent of disability, or in connection with any legal proceeding, and other such expenses incurred in administering workers' compensation Claims. Without in any way limiting the foregoing, "Claim Expenses" include, but are not limited to, investigation and legal expenses, court costs, interest, and penalties. Except to the extent otherwise provided by Claims Operating Rule, Claim Expenses are not subject to indemnification by the Association and are not Ultimate Loss.

F. Claims Operating Rule. "Claims Operating Rule" means rules relating to Claims or Claim Expenses adopted by the Board, from time to time, for the management of the affairs of the Association, pursuant to Minn. Stat. § 79.36(5).

G. Commissioner. "Commissioner" means the Commissioner of Labor and Industry for the State of Minnesota.

H. Commissioner of Commerce. "Commissioner of Commerce" means the Commissioner of Commerce for the State of Minnesota.

I. Entity in Interest or Entities in Interest. "Entity in Interest" or "Entities in Interest" means one or more entities, associations, political subdivisions, or persons, which, by agreement or operation of law, succeed, in whole or in part, directly or indirectly, to the rights, liabilities, or obligations of a Member to which this Plan applies, provided, however, that such entity, association, political subdivision, or person is only an Entity in Interest for purposes of and to the extent that such entity, association, subdivision, or person succeeds to such rights, liabilities, or obligations of a Member. For the avoidance of doubt, "Entity in Interest" and "Entities in Interest" include Net Worth Employers, statutory successors (including, without limitation, liquidators, receivers, and conservators), and any entity, association, political subdivision, or person that has reinsured a part or all of Member's business; provided, however, that, with the exception of a Net Worth Employer in its capacity as such, Entity in Interest and Entities in Interest do not include an insured employer, employee, or beneficiary that has made a Claim, regardless of whether that employer, employee or beneficiary has received an actual or purported assignment of a Member's rights under this Plan or any Reinsurance Agreement.

J. Insurer. "Insurer" means any insurance carrier licensed by the Commissioner of Commerce and authorized to transact the business of workers' compensation insurance in Minnesota.

K. Loss Occurrence. "Loss Occurrence" means a single compensable event, as determined by the Association, under Minn. Stat. Ch. 176, out of which one or more Claims arise.

L. Member. "Member" means an Insurer or Self-Insurer.

M. Member Payments. "Member Payments" means that portion of the Ultimate Loss which has been paid by the Member or its Entity in Interest, including any deductible amounts paid by insured employers. "Member Payments" include, without limitation, that portion of the Ultimate Loss which has been paid by the Member or its Entity in Interest after the termination of a Member's membership, or a Member's withdrawal from membership, in the Association.

N. Net Worth Employer. "Net Worth Employer" means an employer whose Insurer became insolvent and the employer is liable for Claims that were covered under the employer's policy with the insolvent Insurer, pursuant to Minn. Stat. §§ 176.185, subd. 8a.(a) and 60C.09, subd. 2.(3) and (4).

O. Operating Rule. "Operating Rule" means rules adopted by the Board, from time to time, for the management of the affairs of the Association, pursuant to Minn. Stat. § 79.36(5). The Operating Rules include but are not limited to the Claims Operating Rule and the Premium Operating Rule.

P. Plan. "Plan" means the Plan of Operation adopted or amended by the Association pursuant to Minn. Stat. § 79.38.

Q. Premium. "Premium" means the amount or amounts charged for Reinsurance pursuant to Minn. Stat. § 79.35(4).

R. Reinsurance Agreement. "Reinsurance Agreement" or "Agreement" means a document adopted or amended by the Board and approved by the Commissioner to govern the provision of Reinsurance by the Association as required by the Act and the Plan.

S. Retention Limit. "Retention Limit" means the level of risk selected by the Member from the Retention Limits available pursuant to Minn. Stat. § 79.34, below which the Association will have no liability for indemnification of any Ultimate Loss.

T. Self-Insurer. "Self-Insurer" means any employer, employer group, trust, pool, political subdivision, the State of Minnesota, or other entity approved by the Commissioner of Commerce or authorized by law to self-insure its workers' compensation liability.

U. Ultimate Loss. "Ultimate Loss" means the amount which is paid or payable by a Member or Entity in Interest in accordance with Minn. Stat. Chs. 79 and 176 for a Claim or Claims arising out of a Loss Occurrence, subject to the reductions permitted in Parts Seven, Eight, and Ten of the Reinsurance Agreement, but does not include Claim Expenses, assessments, damages, penalties, or other payments specifically excluded by the Association. Any amounts paid pursuant to Minn. Stat. §§ 176.183; 176.221, subd. 1; 176.225; and 176.82 shall not be included

in Ultimate Loss and shall not be indemnified by the Association. Employers' liability coverage is not provided by the Association. The Association does not cover claims under the Federal Employers' Liability Act, the Jones Act, the Longshoremen's and Harbor Workers' Compensation Act, or any other federal law.

V. Unallocated Claim Expenses. "Unallocated Claim Expenses" means those expenses incurred by the Association to administer Loss Occurrences reported to the Association.