

Workshop W7

Wednesday, October 29, 1:30–3:00 p.m. and 3:30–5:00 p.m.

MAKING “CENTS” OF EXPERIENCE MODIFICATION

Presented by



Sonja J. Guenther
Senior Vice-President
Willis HRH

Most contractors know that their workers compensation experience modifier can make or break them in terms of qualifying to bid on a project and being competitive in their pricing. What many contractors do not understand is that errors are common, and it is up to them to monitor the accuracy of this critical calculation. This workshop uses sample work sheets to demonstrate how the experience modifier is calculated and provide tools for ensuring its accuracy.

- Reviews the calculation of an experience modifier and the impacts loss frequency, severity, and deductibles have on the modifier.
- Demonstrates the importance of systematically reviewing work sheets and how to identify errors that impact premiums.
- Shows how the same loss experience produces different modifiers across states and the implications for using modifiers as a prequalification tool.

Construction Imaging and Archiving

- **Certified Forensic Field Consultants**
- **Patented Software Program**
- **Online Reporting System Accessible 24/7 Worldwide for Authorized Users**
- **Secure Archival of all Photographic Documentation**
- **Verification of Closure On Identified Construction Defects**
- **Reduced Insurance Premiums**
- **Building Exterior Consultation and Inspection**



Construction Imaging and Archiving, Inc was started by David Blackburn a developer who was sick and tired of facing the same problems that lead to construction defect litigation on some of his own developments so he decided to photographically document one of his own projects. His progress in successfully fighting against the litigious nature of the construction market was so successful that it provided the foundation for the services that Construction Imaging and Archiving currently offers. With it's patented software program and highly trained field technicians Construction Imaging and Archiving provides a wide array of services for the entire construction project from the pre-pour all the way through the wrap of the exterior identifying construction defects and verifying the appropriate action is taken to correct them. Construction Imaging and Archiving will securely store all documentation on the project until construction defect litigation no longer poses a threat on the project.

Quality Assurance Risk Management

Insuring Accountability and Reducing Liability One Snapshot at a Time



Construction Imaging and Archiving, Inc was established to increase quality, communication, confidence and accountability, and thus reduce exposure to liability in the construction industry. It is our intent to work as a team to be leaders within the network of skilled construction consultants to achieve the highest level of finish at all levels of every project

with which we are involved. We aim to instill a sense of security and forge lifelong relationships with our valued clients by constantly upgrading our methods to deliver the unmatched quality our clients deserve.



Construction Imaging & Archiving

A division of Forensic Imaging and Archiving

Sonja J. Guenther
Senior Vice-President
Willis HRH

Ms. Guenther, who is presenting Workshop W7, "Making 'Cents' of Experience Modification," on Wednesday afternoon, has more than 30 years' experience in the insurance industry, including property/casualty, workers compensation, reinsurance, and excess lines. She has facilitated numerous workshops and seminars on topics from basic insurance to statutory issues. In addition to more than 10 years with Hill, Rogal & Hobbs as Workers' Compensation Specialist, her experience includes 2 years with the National Council on Compensation Insurance, where she counseled policyholders, carriers, and agents on workers compensation issues and worked closely with the Appellate Board and regulatory agencies on specific cases. She is certified by the Colorado Division of Insurance as a continuing education instructor on workers' compensation topics.

She holds a B.S., *cum laude*, in Criminal Justice from Regis University in Denver (1992), and the professional designations Associate in Risk Management (ARM), Associate in Loss Control Management (ALCM), Certified Insurance Counselor (CIC), and Certified Risk Manager (CRM).

Her recent industry-related presentations include: Independent Insurance Agents—Grand Junction, "Understanding Experience Modifiers" and "Cost Containment Certification," September 2007; Associated General Contractors, "Work. Comp. Legislative Update," August 2007; and American Subcontractors Assn. Safety Awards Presentation Monitor, December 2005. She is author of "New Workers' Comp Laws for Colorado Employers," *The Constructor's Voice*, January 2008; "Workers' Comp. Legislative Update," AGC and ASA article, June 2007; and *Offering Modified Duty to Your Injured Workers in Colorado*, 2nd ed., Jan. 2003 (a complete guide to offering light-duty within Colorado statutes). Her recent Legislative activities include participation in an emergency meeting on Experience Rating Adjustment Plan, Division of Insurance, December 2007, and testimony before House Business Affairs and Labor Committee, HB1176, in April 2007, before Senate Business Affairs Committee SB225 in April 2005, and before House Bus. Affairs & Labor Committee, HB1018, in January 2005. She is a Professionals in Workers' Compensation member and past president and also served as Workers' Compensation Coalition board member and American Subcontractors Association Government Relations Committee member.

Notes

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.

Understanding the Experience Modification Factor

**Sonja J. Guenther, ALCM, ARM, CIC, CRM
Senior Vice-President,
Willis HRH**

NCCI

- **The National Council on Compensation Insurance**
 - **Administrator for 39 states/600 carriers**
 - **Collects claims and payroll data**
 - **Formulates rates for assigned states**
 - **Produces experience modification factors for each employer who meets qualifications**
 - **Performs classification audits**
 - **Houses the classification system (Scopes Manual)**
 - **Files rules/regulations per state direction:**
 - **ownership**
 - **experience rating**
 - **premium audit rules**

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Experience Mod Factors (EMRs)

- **Compare each employer's experience to that of other employers in the same industry**
 - **Debit Mod Factors**
 - **Greater than 1.00 ("unity mod"/average)**
 - **May jeopardize bidding on jobs**
 - **May be viewed as less than safety-oriented**
 - **Associations**
 - **General contractors/Owners**
 - **Underwriters/Impact workers comp premiums**
- Agencies see an average of 35% error ratio on these factor work sheets**

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Situations That Create Debit Mods in Which Safety Plays No Role

- **Errors/Contingent EMR/Preliminary EMR**
- **Changing policy periods—90 days only**
- **State administrators/NAIC**
 - **Average mod < or > 1.00**
 - **NCCI adjusts ELR factors to raise mods, statewide**
- **Economic environment**
 - **Layoffs=Lower Payrolls=Higher Mod Factor**
 - **Growth Period=Higher Payrolls=Lower EMR**

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Experience Mods

• Credit Mods

- Credit on workers comp. premiums**
- Less than 1.00 (i.e., .75 =25% credit)**
- Downside to .50 mod factor**
 - Fewer markets/Lower profit margins**
- Impression of a “safe” company**
 - Underwriters/Premium Savings**
 - Associations**
 - Peer groups**
 - General contractors/Owners**

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Ways To Achieve a Credit EMR

SAFETY, SAFETY, SAFETY

NCCI Net Reporting States:

Alabama
Colorado
Florida
Georgia
Hawaii
Idaho
Iowa
Kansas
Kentucky

Maine
Maryland
Missouri
New Mexico
Oklahoma
Rhode Island
South Carolina
South Dakota

Source: NCCI Basic Manual, 2007

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Achieving a Credit EMR (cont.)

**Have carrier/agent/independent firm check accuracy
-35% error ratio**

Work with carrier/agent to check classifications

Designated medical provider/primary care provider

Claims management

communication:

Carrier/Agent/Injured worker

Designated med provider

Adjust reserves (7 mos. pre-renl)

Invoke statutes:

Positive drug test, failure to RTW

Return to work:

Temporary

Progressive

Be committed!

Frequency vs. Severity claims

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Reading the NCCI Work Sheet

- **Produces annually 90 days prior to policy renewal**
 - **Carriers report claims/payroll data to NCCI 6 mos. prior to renewal date**
 - Employers/Agents must review claims 7 mos. prior to ren'l
 - **Includes 3 years of historical data**
 - Situations when mod factor has less/more than 3 years of data
 - **Preliminary mod factors**
 - Rate changes are pending
 - **Contingent mod factors**
 - Data is missing
 - Employer and agent/carrier should be helping to audit and correct any errors
 - Agent should project impact of missing data on the mod factor

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Reading the NCCI Work Sheet

Codes 9940/41/42, etc. are deductible codes

Claims column has numerous small claims—could be an error

ELR expected loss rate factor

- ELR factor times payroll=expected or “allowable” losses

D Ratio – developed loss factors

(Exp. x D=Expected primary losses/under \$5k)

Payrolls on the left, by class code

Payrolls should match employer’s final audit, but there are common errors:

- Payrolls are estimated
- Payroll data missing completely
- Payrolls reported for audits in dispute
- Payrolls for incorrect class code

What do changes in payrolls say about how the business is changing?

Agent/Carrier should correct errors

Classification Appeals Board

Errors can impact livelihood—construction industry

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Effective Date 1/1/05

Name Of Risk Hoorah, Inc

Risk Ident. No. 052999999
State Colorado

CODE	ELR	D-RATIO	PAYROLL	EXPECTED LOSSES	EXP PRIM LOSSES	CLAIM DATA	IJ	O F	ACT INC LOSSES	ACT PRIM LOSSES
CARRIER	99999	POLICY	NO. 999999		EFF-DATE					
4452	193	30	634162	12239	3672	09999	4	F	8017	5000
8742	021	27	499829	1050	284	09998	4	F	62900	5000
8810	014	30	589977	826	248	09997	4	O	100014#	5000
						09996	5	F	767	767
POLICY-TOTAL			1723968	(SUBJECT PREMIUM = 51457)					171698	
CARRIER	99999	POLICY	NO. 999999		EFF-DATE	1/1/02			EXP-DATE	1/1/03
4452	193	30	637813	12310	3693	19999	4	F	6045	5000
8742	021	27	448274	941	254	19998	5	F	651	651
8810	014	30	646346	905	272	19997	6	F	157	157
POLICY-TOTAL			1732433	(SUBJECT PREMIUM = 58540)					6853	
CARRIER	99999	POLICY	NO. 999999		EFF-DATE	1/1/03			EXP-DATE	1/1/04
4452	193	30	727304	14037	4211	29999	4	F	10757	5000
8742	021	27	555006	1166	315	29998	6	F	238	238
8810	014	30	685406	960	288	29997	6	F	322	322
POLICY-TOTAL			1967716	(SUBJECT PREMIUM = 62054)					11317	
	(A)	(B)	(C) EXPECTE EXCESS (D-E)	(D)	(E)	(F) ACTUAL EXCESS (H-I)	(G)		(H)	(I)

#

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Primary Losses	Stabilizing Value	Ratable Excess	Totals	(J)
Actual	(I)	(C)X(1-A)+G	(A)X(F)	(J)
Expected	(E)		(A)X(C)	(K) 1.41

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Effective Date 1/1/05

Name Of Risk: Okie-Fanokey Co. Risk Ident. No. 051999999 State Colorado

CODE	ELR	D-RATIO	PAYROLL	EXPECTED LOSSES	EXP PRIM LOSSES	CLAIM DATA	IJ	O F	ACT INC LOSSES	ACT PRIM LOSSES
CARRIER	99999	POLICY	NO. 999999		EFF-DATE	1/1/01			EXP-DATE	1/1/02
3632	197	28	12300	242	68	4008	4	F	13094	5000
3724	175	26	197433	3455	898	4009	5	F	4008	4008
5183	242	26	392069	9488	2467	4010	6	F	2006	2006
8742	021	27	939479	1973	533					
8810	014	30	129343	181	54					
POLICY-TOTAL			1670624	(SUBJECT PREMIUM = 105577)					19108	
CARRIER	99999	POLICY	NO. 999999		EFF-DATE	1/1/02			EXP-DATE	1/1/03
3632	197	28	4500	153	43	5008	4	F	9573	5000
3724	175	26	167400	13275	3452					
5183	242	26	351900	22944	5965					
8742	021	27	400500	1482	400					
8810	014	30	476100	857	257					
POLICY-TOTAL			1400400	(SUBJECT PREMIUM = 182176)					9573	
CARRIER	99999	POLICY	NO. 999999		EFF-DATE	1/1/03			EXP-DATE	1/1/04
3724	175	26	178265	14136	3675	6008	4	F	2386	2386
5183	242	26	492043	32081	8341	6009	6	F	1402	1402
8742	021	27	804565	2976	804	6010	5	F	5103	5103
8810	014	30	603104	1086	326					
POLICY-TOTAL			2077977	(SUBJECT PREMIUM = 206431)					8891	
	(A)	(B)	(C) EXPECTE EXCESS (D-E)	(D)	(E)	(F) ACTUAL EXCESS (H-I)	(G)		(H)	(I)

Primary Losses	Stabilizing Value	Ratable Excess	Totals
Actual	(I)	(C)(X)(1-A)+G	(A)(X)(F) (J)
Expected	(E)		(A)(X)(C) (K) (L)(X)(K) 1.18

WORKERS COMPENSATION EXPERIENCE RATING

Effective Date 1/1/05

Name Of Risk Okie-Dokey

Risk Ident. No. 059999999
State Colorado

CODE	ELR	D- RATIO	PAYROLL	EXPECTED LOSSES	EXP PRIM LOSSES	CLAIM DATA	IJ	O F	ACT INC LOSSES	ACT PRIM LOSSES
CARRIER	99999	POLICY	NO. 999999		EFF-DATE	1/1/01			EXP-DATE	1/1/02
1710	413	27	279063	11525	3112	01234	5	F	4225	4225
5507	301	23	38034	1145	263	01235	6	F	158	158
8742	021	27	102449	215	45	01236	6	F	199	199
8810	014	30	388262	544	163	01237	6	F	215	215
9941	DED	\$1,000								
			807808						4797	
POLICY-TOTAL				(SUBJECT PREMIUM = 138009)						
CARRIER	99999	POLICY	NO. 999999		EFF-DATE	1/1/02			EXP-DATE	1/1/03
1710	413	27	191273	7900	2133	912134	5	F	552	552
5506	267	24	764	20	5	91235	6	F	309	309
5606	077	23	89385	688	158	91236	5	F	146	146
8742	021	27	89951	693	187	91237	6	F	123	123
8810	014	30	391406	548	77					
9941	DED	\$1,000								
			762779						1130	
POLICY-TOTAL				(SUBJECT PREMIUM = 160242)						
CARRIER	99999	POLICY	NO. 999999		EFF-DATE	1/1/03			EXP-DATE	1/1/04
1710	413	27	204106	8430	2276	81234	5	F	846	846
5506	267	24	28762	768	184	81235	5	F	732	732
5606	077	23	92105	709	163	81236	6	F	565	565
8742	021	27	100643	211	57	81237	6	F	103	103
8810	014	30	420561	589	177					
9941	DED	\$1,000								
			846177						2246	
POLICY-TOTAL				(SUBJECT PREMIUM = 180149)						
	(A)	(B)	(C) EXPECTE EXCESS (D-E)	(D)	(E)	(F) ACTUAL EXCESS (H-I)	(G)	(H)	(I)	

NOTE: Deductible codes include

- 9940 \$500 9943 \$2000
- 9941 \$1000 9944 \$2500
- 9942 \$1500 9945 \$5000

Primary Losses	Stabilizing Value	Ratable Excess	Totals	
Actual	(I)	(C)X(1-A)+G	(A)X(F)	(J)
Expected	(E)		(A)X(C)	(K) (J)/(K) .94

Reading the Work Sheet (cont.)

- **Claims data on the right side of page, by claim # from the carrier**
 - **Frequency vs. Severity claims**
 - **Actual vs. Expected claims**
 - **Maximum caps on claim dollars, per state**
 - **Common errors:**
 - **Not the employee of the policyholder**
 - **Not net of deductibles—common error in net states**
 - **Claims reported into the wrong state data**
 - **Dollars never credited for third-party recovery**
 - **Data is for another employer—not combinable**

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Items That Will Affect the Mod Factor:

- **The greater the payrolls, the more deflating effect upon the mod factor**
- **Changing policy periods can result in data not reporting in the mod factor (90-day rule)**
- **Policyholder wants to change class codes for lower rate**
 - **lower rates likely = lower ELR factors – makes mod factor rise**
 - **lower rate on one class for work. comp. can mean higher rate on general liability policy**
- **Purchasing/Merging co.'s affects the mod**
 - **client should use it in their negotiations**
- **Injuries by third parties require subrogation**

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More Things That Will Affect the Mod

- **Rate changes—ELR factors also change**
- **Construction wrap-up projects: OCIPs, CCIPs, ROCIPs**
- **Offering light duty to injured workers**
- **Deductibles in net reporting states**
- **Legal expenses—excluded from mod calculation**
 - » **Reserves/settlement dollars are included**
- **Experience Rating Adjustment Plan (“med-ERA”)**

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States with ERA:

All medical-only claims have 70% of dollars removed from the mod calculation

- | | | |
|-----------------------|----------------------|--------------------|
| • Alabama | Kentucky | S. Carolina |
| • Arkansas | Maine | Tennessee |
| • Arizona | Maryland | Utah |
| • Colorado | Mississippi | Vermont |
| • Dist of Col. | Montana | Virginia |
| • Florida | Nebraska | W. Virginia |
| • Hawaii | Nevada | |
| • Idaho | New Hampshire | |
| • Illinois | N. Carolina | |
| • Indiana | Oklahoma | |
| • Kansas | R. Island | |

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Net Reporting—Small Deductible States (16) * states with ERA

source: NCCI Basic Manual, 2008

- **Alabama** *
- **Colorado** *
- **Florida** *
- **Georgia**
- **Hawaii** *
- **Idaho** *
- **Iowa** *
- **Kansas** *
- **Kentucky** *
- **Maine** *
- **Missouri**
- **New Mexico**
- **Oklahoma** *
- **Oregon**
- **S. Carolina** *
- **S. Dakota** *
- **In states with ERA, the benefit of the small deductible/net reporting is reduced for employers**

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THANKS !

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The Workers' Compensation Experience Modification Factor (EMR): An Inadequate Tool to Measure a Company's Safety Commitment.

Sonja J. Guenther, ALCM, ARM, CIC, CRM. Senior Vice-President, Willis HRH

In order to qualify for bidding on many construction projects today, contractors must continue to meet a broad spectrum of requirements by the owner.

For example, owners typically require that the contractor's insurance company meet certain financial ratings, the contractor must maintain specific insurance coverage levels and bonding limits and in many cases provide higher excess limits in the form of an umbrella/excess liability policy.

Over the past twenty years, however, another requirement has become commonplace in the pre-bid qualification criterion to gauge the safety commitment of construction companies. This tool is called the Workers' Compensation Experience Modification Rate, or "EMR". Sometimes referred to as a "mod factor" or "mod", the EMR, for 38 states, is formulated by the National Council on Compensation Insurance (NCCI). Other states such as monopolistic states or those that have their own statistical rating bureaus, often produce a similar modification factor, based on the employer's injury experience in their state.

NCCI gathers workers' compensation payroll and injury data from nearly 600 insurance carriers. Contractors who have reached a minimum premium threshold size in their state are "experience rated" receiving a new EMR, annually. The formulation contains not only payroll and injury data for each contractor, but this data is then multiplied against additional actuarial factors, and stabilizing values to develop the final EMR. The EMR is then sent by

NCCI to the contractor's insurance carrier, with a copy to the employer, to be utilized in the calculation of the annual workers' compensation insurance premiums.

If the EMR is a 1.00, it is referred to as a "unity mod factor", what is considered to be the "average" for employers of that size in that industry, in that same state. Thus, with a unity mod factor, the contractor pays no more and no less for workers compensation premiums when they are assigned a 1.00 EMR.

However, if the EMR is below 1.00, it is referred to as a "credit mod". This credit mod factor can result in substantial discounts on insurance premiums for the contractor. For example, a .70 EMR results in a credit of 30 percent on the base premiums that the contractor will pay.

The opposite impact, of course, occurs if a contractor is assigned a "debit mod." This debit mod factor, say a 1.25 EMR, for example, translates into a 25 percent surcharge on the base insurance premiums.

Because EMRs include data on injuries, many general contractors and owners use it in their bidding process – as a gauge in determining if a subcontractor is running a "safe" operation. Today's bid requirements will often disqualify contractors who have a debit mod (an EMR greater than 1.00) from bidding on a project, entirely.

Some owners may require mod factors of .85 or less to bid on the job. While, in practice, they are attempting to attract subcontracting firms that are the very best in job safety performance, what they may be doing, inadvertently, is eliminating smaller companies from being able to bid on the jobs.

The assumption is, that employers who have debit EMR's are "unsafe." However, using an insurance tool such as the EMR to gauge safety is a gross error on the part of owners and general contractors.

Keep in mind that this document is one that is developed and formulated by the insurance industry. It does not take into consideration employee hours, nor if the subcontractor has a full-time safety professional on staff. There is no adjustment for those employers who have instituted sophisticated safety program and been certified on state or federal levels for such programs. The EMR is an actuarial tool that allows underwriters to assess a premium rate structure for the next renewal. It is influenced by many external mechanisms that have no bearing on the injuries the subcontractor has had, nor the effectiveness of their safety program.

Our staff completes a detailed analysis of experience modifiers for more than 300 clients each year, in just our Denver, Colorado office, alone. More than 30% of these reviews result in the identification of errors in the data that was submitted to NCCI. Errors are widespread – in the payroll information, in the type of injury that was coded to NCCI, or in the dollar amounts that were submitted by the insurance carrier to NCCI.

Common errors include payrolls being reported as estimated payrolls, instead of the final, audited payrolls that were assessed by the carrier at the conclusion of the policy year. As the EMR is specifically based off of payrolls, if the estimated payrolls were lower than the actual payrolls the contactor experienced, it can easily make the mod factor higher. Smaller employers cannot access an EMR in the 60's (40% credit) that they may seek, because the payroll is not large enough, mathematically, to develop a mod factor in that range.

In some instances, the carriers fail to report an entire class code and its associated payroll, to NCCI. Any payroll that is missing from the mod calculation can quickly inflate the final EMR.

Sixteen NCCI states are “net-reporting states.” This means that for each dollar a subcontractor pays in a

deductible option, towards each injury, that dollar amount will be removed from the calculation of the mod factor (up to each state's maximum limit). If the carrier fails to net out these dollars from the calculation of the experience mod factor, it results in a higher EMR.

Some NCCI states are utilizing the Experience Rating Adjustment Plan (ERA or “med-ERA”). This formula removes 70% of all medical-only claims dollars from the calculation of the experience modifier. While on the surface, this may appear to be beneficial for employers, if the employer is carrying a deductible, and reimbursing the carrier for their injuries, the ERA formula in their state can actually lessen the benefit of their deductible program, as well as drive up the mod factors in state's where it is implemented.

Some injuries are inadvertently reported into the wrong employer's data. In one instance, recently, our office identified a \$100,000 claim for an employee that was included in our client's EMR. After a thorough review and some inquiries of the carrier, we found that that employee was not employed by our client and the carrier had inadvertently put their claim on the wrong employer's EMR. This type of situation is not an uncommon scenario.

Data that can often be missing from an EMR is wrap-up or OCIP/CCIP data. Several years ago, as more than 200 subcontractors were working on Denver International Airport, our office found more than \$17 million in missing payrolls for just a handful of our contractors. The carrier had mistakenly reported all of the payrolls under Denver International Airport, rather than assigning it to each of the subcontractors on the job. Once again, the less payroll used to calculate the mod factor, the higher it can drive the final EMR. Wrapup projects are regularly missing from the NCCI experience modsheets that we review.

Another issue that must be considered when relying on the EMR, is

the traditional claims handling and administration by each carrier. If the insurance carrier posts a reserved dollar amount for every claim that is reported and does not enter into the file data to remove that reserve when the claim is resolved, that reserve amount impacts the final calculation of the EMR.

Other insurance carriers strive to reach a full and final settlement on every workers' compensation claim (so it cannot re-open at some future date). While this may be a good strategy for future financial projections for the carrier's reserve pooling, these additional dollars on every single claim can drive a subcontractor's mod factor much higher. It certainly is not a reflection of their safety program or commitment to safety, but is a cultural reality of the insurance carrier they chose to provide their required insurance coverages.

Other carriers may seek a full and final settlement on claims that may appear non work-related, rather than to dispute those in court. Ironically, if taken to court, the defense dollars are considered "expenses" and not included in the calculation of the mod factor. However, monies paid toward the injured worker via full and final settlement are all award dollars and ultimately factored into the EMR. Again – no reflection on the safety program of the subcontractor, but on the aggressiveness or reluctance of their particular workers' compensation carrier to go to court on cases that may have fraud potential or on which compensability is questionable .

Injury dollars in the EMR also include those in which another party caused the injury. It can take years to subrogate against another subcontractor, driver of the at-fault vehicular accident, or manufacturer of the equipment that malfunctioned. During this period, those dollars adversely impact the EMR of the subcontractor, until such time that the dollars can be subrogated against the negligent party. Any recovered dollars are then credited out of the calculation of

the mod factor and it is re-issued at the revised rate.

Transactions in which companies merge, split, or sell also impact the calculation of the EMR. In fact, the simple act of changing the effective date of a policy period more than 90 days (in either direction) can have dire consequences to the calculation of the EMR. Again, changing the policy period has no bearing on a subcontractor's safety program, but it certainly can increase the EMR factor – even into the debit range, resulting in companies being disqualified from bidding on certain projects.

Nationwide, companies have made great strides in safety and claims management. In addition, several states have enacted sweeping legislative reforms in the workers' compensation arena. With those efforts have come reduced premiums for many states. However, as rates are reduced, so is the Expected Loss Rate factor, or "ELR." This factor is included in each NCCI modsheet, and varies by each classification/industry code. As those ELR factors are reduced, commensurate with rates, it has an inflationary impact on the mod factor/EMR. Again, it is the result of a safer industry reflected in an actuarial formula – not a reflection on the performance of any single contractor's safety program.

More than a dozen years ago, the National Association of Insurance Commissioners (NAIC) met and agreed that should the average EMR in their state increase too great above 1.00, or to far below 1.00, that each Commissioner would take action in their state to adjust the average mod closer to that 1.00 unity EMR, so that actuarial predictors would remain stable. In 2002, our Colorado Commissioner was faced with an average EMR in the state of .93. As a result, he asked NCCI to inflate the mod factors in the state to correct the problem. NCCI did just that and mod factors in Colorado increased, accordingly. Mod factors are subject to legislative and regulatory

influence by administrators. These changes can cause EMRs to increase or decrease, but are not a reflection of the safety program of the contractor, and another reason why they should not be used as such.

Economic fluctuations can also cause payrolls to increase or decrease, depending on the strength of the building industry at any given time. If an economic downturn forces a subcontractor to layoff workers, it results in less payroll used in their mod calculation – thus a higher EMR. Again, no reflection on the safety program of that employer, but the result of the mathematical anomaly of an actuarial calculation.

In essence, while the use of EMR's in the construction bidding process may be a convenient way of profiling a "safe" company, it remains not only an unreliable factor, but also one that is externally influenced by many administrative, legislative and economic factors that have no reflection, at all, on the safe performance of a contractor.

Sonja J. Guenther is a Senior Vice-President with HRH of Colorado. She has 30 years of insurance experience and is a former employee of the NCCI. She holds four professional insurance designations; ALCM, ARM, CIC and CRM. She graduated cum laude with a BA degree in Criminal Justice from Regis University, in Denver Colorado and is presently seeking her graduate degree from that same institution.

Notes

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