

FOLLOW-UP - CONTRACT COMPLIANCE REVIEW

- On December 13th, 2017, your Board of Supervisors received a contract compliance review by William Morgan, C.P.A., and the Auditor–Controller’s Office entitled “Report on Compliance Review of County’s Claims Procedures for General Liability and Workers’ Compensation Claims”.
 - *The report summarized review of prior Third-Party Administrator (TPA) contracts for both General Liability and Worker’s Compensation, and included recommendations regarding TPA contract compliance and improving the Risk Management function.*
 - *The Auditor also provided additional recommendations regarding reorganization of the Risk Management function within the County.*
 - *Board of Supervisors requested CAO Recommendations Regarding the Report.*

General Risk Management Functions

- **General Liability and Medical Malpractice.** Management of liability claim programs and defense of claims and lawsuits. Risk Management staff evaluate claims for acceptance, rejection or settlement, work closely with County Counsel, TPAs, and the (excess) insurance carriers, settle, and make recommendations to Boards of Supervisors for settlement.
- **Workers' Compensation.** Overseeing third party claim administrators and county departments to reduce injuries and their impact. Review and make recommendations regarding settlement of Workers' Compensation claims.
- **Disability Management Program.** Disability Analysts act as liaisons to county agencies in regard to extended disability absences, complex accommodation and disability retirement.

General Risk Management Functions (*continued*)

- **Insurance Program.** Risk Managers oversee county insurance programs. Many counties are members of (CSAC-EIA) California State Association of Counties, a joint power association. Typical insurance programs are General Liability, Workers' Compensation, Medical Malpractice, Property, Crime Policy, Aviation and Marine.
- **Insurance Requirements for Contracts.** Risk Analysts review contracts for compliance with county insurance requirements and acts as a liaison with county agencies to determine appropriate insurance requirements for specific risks.
- **Safety Program.** Safety Analysts conduct safety training, oversee AED programs, DOT drug testing and Injury Illness and Prevention Programs. Safety Analysts ensure counties are compliant with OSHA regulations and assist county departments in developing required CalOSHA mandated safety programs.

Typical County Organizational Risk Management Structures

- **Division of Human Resources Departments.**
- **Division of Administrative or Executive Offices**
- **Division of County Counsel's Offices**
- **Shared Duties between Above Offices/Departments**

Key Report Recommendations – General Liability	Proposed Implementing Actions
<p>Provide specification of duties with parties involved in review and settlement of claims by amending Ordinance 5.16.010 and 020 to clearly define specific duties of the:</p> <ul style="list-style-type: none"> • County Counsel • Risk Management Division • Third Party Administrator (when contracted) 	<p>Government Code section 26521 provides that the County Counsel (as successor to the duties of the District Attorney) shall defend all litigation brought against the County. Government Code section 26526 provides that the County Counsel shall oppose all claims against the County. Under the current structure, County Counsel has statutorily designated responsibility for all claims and litigation. Monterey County Code also specifies duties. Any amendment of County Code will depend on the organizational choice the Board of Supervisors makes with respect to Risk Management functions. Recommended additions of CAO and HR to settlement authority will also provide additional checks and balances.</p>

Key Report Recommendations – Workers Compensation	Proposed Implementing Actions
Take Actions regarding non-compliance of prior General Liability TPA	Prior TPA contract terminated and new TPA retained; new TPA contract provisions clarify duties; prior TPA requested to turn over all files related to IRS form 1099 – response pending.
Improve Claims Reserve Processes for cases being litigated where County is using outside TPA	New TPA contract, and claims and litigation handling procedures, have been implemented addressing reserve setting matters.
Claims Investigations: TPA contracts should detail expected investigative services; or County should recruit and hire investigators	Third Party investigators are available upon request under current TPA contract at additional expense; County staff initial review of departmental claim reports is appropriate, other investigatory needs addressed on a case-by-case basis; recruiting and hiring of qualified investigators can be assessed with CAO – Budget and HR for cost/budgetary impact and cost/benefit impact compared to contracted TPA services.

Key Report Recommendations – Workers Compensation	Proposed Implementing Actions
TPA Contractor should perform general review of all claims and adjust claims reserves	Currently being performed by Staff with TPA.
Fill vacant positions in the Risk Management Division	Worker’s Compensation Manager has been hired – to start in February 2018. Human Resources requested to prioritize and recruit other positions.
Implement a Light-Duty Back to Work Program	The County currently has a Modified/Alternative Work Program Policy. It should be updated and more formally implemented into the Workers Compensation Program overseen by the Workers Compensation Manager.
Ensure TPA filing Labor Code 4850 Compensation Reports	Completed according to Staff.

Key Report Recommendations – Workers Compensation	Proposed Implementing Actions
On Regular Basis provide Public Report on General Liability and Workers Compensation Costs and steps to mitigate identified risks throughout County.	On-going; Risk Management reports to the Budget Committee and the Board of Supervisors on a semi-annual basis.
Ensure IRS 1099 Reporting in TPA contracts	Currently in existing TPA contracts.
Ensure separation of duties in Settlement of cases under \$100,000	Under current organization, separation of duties exists in that decisions to settle under \$100,000 are made by consensus with County Counsel, Risk Management and the TPA. Auditor-Controller issues all checks. Any action to modify the process will depend on the organizational structure for Risk Management function chosen by Board. Recommended additions of CAO and HR to settlement authority provide additional checks and balances.

Key Report Recommendations – Workers Compensation	Proposed Implementing Actions
Follow the County of Los Angeles Model for County Wide Risk	The current structure (all Risk Management functions within County Counsel) is implemented in several other counties of similar size, structure, as Monterey County. Other models such as Los Angeles are common practice. Change of Risk Management Structure in Monterey County will require significant reorganization and re-prioritization of duties. The Board of Supervisors is the final authority to determine organizational structure for all County departments and functions.

RECOMMENDED ACTIONS

- Receive Report on County's Claim Procedures for General Liability and Worker's Compensation, and Provide Direction to Staff on:
 - Implementing recommended improvements to Third Party Administrator (TPA) contracts and the risk management function;
 - Alternative options for the organization of the risk management function; and
 - Drafting of amendments to the County Code to implement the recommended organizational structure and/or recommended improvements to the claims handling procedures and other Risk Management functions.

EXHIBIT D - SELECTED RISK MANAGEMENT ORGANIZATIONAL OPTIONS

- i. OPTION 1 - RISK MANAGEMENT DIVISION IN HUMAN RESOURCES DEPARTMENT** (San Mateo, Sonoma, others)
 - i. All Risk Management functions and programs re-organized into HR Department with staffing analysis.
- ii. OPTION 2 - RISK MANAGEMENT DIVISION IN COUNTY COUNSEL'S OFFICE** (Tulare & Kern – Recommended by Management Partners, Inc)
 - i. Risk management functions and authority remain in the County Counsel's Office.
- iii. OPTION 3 – RISK MANAGEMENT DIVISION IN ADMINISTRATIVE OFFICE** (Los Angeles, Contra Costa County, others)
 - i. Risk Management functions and programs reorganized into CAO Office with staffing analysis.
- iv. OPTION 4 – WORKER'S COMPENSATION TO HR; CLAIMS MANAGEMENT TO COUNTY COUNSEL** (San Diego, San Francisco, and Tuolumne)
 - i. Transfer Workers' Compensation, Return to Work, Safety, and Ergonomics programs and positions to HR. Eliminate unnecessary positions. (Some jurisdictions retain WC litigation in County Counsel).
 - ii. County Counsel manages all claims and litigation

SUMMARY OF RECOMMENDATIONS

- Throughout California Counties, the Risk Management function is effectively organized in multiple ways generally involving HR, County Counsel, and Administrative Departments.
- The existing structure of Risk Management under County Counsel's Office, as recommended by Management Partners, is an acceptable structure and recommend the following actions:
 - HR continue to recruit and fill vacant Risk Management positions;
 - Staff update and adopt administrative procedures for Workers' Compensation and General Liability claims and litigation;
 - Workers' Compensation settlements within statutory limits require joint approval by the Human Resources Director, CAO and County Counsel, or their designee;
 - General Liability claims and litigation settlements within statutory limits require joint approval County Counsel and the CAO;
 - Major settlements above statutory limits continue to be approved by the Board of Supervisors;
 - 1099 reporting by TPAs be designated by contract per requirements of the Auditor-Controller's Office;
 - Regular RFP schedules for TPAs be initiated;
 - Code provisions related to binding insurance contracts be drafted and adopted.
 - Risk management should focus methods to expedite contract insurance provision approvals while minimizing contract liability exposure and formalize a light-duty back to work program.