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# COUNTY ADVISORY BULLETIN

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BULLETIN 2012-08

October, 2012

## ALLOCATION OF THE WORKERS' COMPENSATION ADMINISTRATIVE EXPENSES INCURRED BY COUNTIES

An update to [Bulletin 2005-01](#), "Allocation of Workers Compensation Costs to Non-General Funds on the Basis of Exposure and Loss Experience".

**APPLICABLE LEGISLATION:** Am. Sub. HB 509

**REVISED CODE SECTIONS:** Amends ORC Sections 4123.41

**SPONSORS:** Blair

**Reps.** Amstutz, Anielski, Antonio, Baker, Batchelder, Beck, Blessing, Boose, Brenner, Combs, Conditt, Derickson, Garland, Grossman, Hackett, C. Hagan, Hill, Mallory, McClain, Newbold, Pelanda, Ruhl, Schuring, Sears, Thompson, Uecker, Young

**Sens.** Coley, Eklund, Hite, Jones, LaRose, Niehaus, Patton, Seitz, Wagoner

**EFFECTIVE DATE:** September 28, 2012

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### INTRODUCTION

In 2003, the legislature adopted language in HB 95 of the 125<sup>th</sup> General Assembly (the 2004-2005 biennial budget) to provide clarity and specific authority for the allocation of workers' compensation premium to the various county offices and departments.

In 2012, this authority was further clarified, as HB 509 of the 129<sup>th</sup> General Assembly (the local government mid-biennium review bill) specified administrative costs incurred in managing the county's workers' compensation program could also be cost allocated on the basis of payroll, exposure or experience.

Prior to 2003, a board of county commissioners was allowed to reimburse the fund from which workers compensation premium was paid by transferring to the fund from any other fund the proportionate amount of the contribution that should be chargeable to the fund. What this meant in most counties was that the workers compensation premium, which is based on a certain dollar amount per one-hundred dollars of payroll, was paid from the county general fund and then the general fund was reimbursed from the various special revenue funds and other non-general funds on the basis of the amount of payroll attributable to these funds.

While some counties have provided for reimbursements to the general fund on the basis of loss experience in the past, the law was not clear as to whether the law authorized the use of any factors other than payroll when determining the “proportionate amount” to be reimbursed from special revenue or other funds.

While HB 95 addressed the methodology of allocating workers’ compensation premium expenses, the Ohio Revised Code remained silent as to the costs counties incur for administering the workers’ compensation program on behalf of departments and offices within the county.

As such, CCAO worked to amend language into HB 509, the local government mid-biennium review budget bill, granting counties this explicit authority for most county entities (the exception being that authority for county behavioral health and developmental disability boards is limited.)

### **THE PURPOSE OF THE LAW**

There were two primary reasons that CCAO sought this authority, the first of which was included in the two-year budget by the Taft Administration at the request of CCAO, and the second which was adopted by a floor amendment carried by State Senator Bob Peterson into HB 509.

First, allowing the county to allocate workers compensation premiums on the basis of exposure or loss experience should foster better loss control and risk management practices within the county. If all county offices pay only on the basis of payroll, there is less incentive for the various offices to attempt to manage and reduce workers’ compensation claims.

Allocating the cost to the various offices on the basis of exposure and claims experience should give elected officials and department heads an incentive to reduce workers’ compensation losses within their offices, as well as to participate in the various claims management strategies and programs that are essential in controlling workers’ compensation costs. (One example is the transitional work program. For other specific program ideas and resources, counties can consult the Bureau of Workers Compensation or CORSA’s Claim and Litigation Manager Beth Miller at (888) 757-1904 or email at [emiller@ccao.org](mailto:emiller@ccao.org).)

Second, since loss experience may be comparatively high in some non-general fund offices, without experience-based cost allocation there could be increased costs incurred by the county general fund. For example, workers’ compensation losses are often higher at offices like the developmental disabilities board (see exemption to administrative expenses below), the county nursing home, and the county engineer’s office than in some of the offices funded by the general fund. Allocating the cost of workers compensation to these offices on the basis of exposure or loss experience would increase the cost to the special revenue funds associated with these functions and would correspondingly reduce the cost to the county general fund.

In addition, the ability to cost allocate administrative expenses, which can include the costs of participating in rating programs such as group rating or group retrospective rating, further incentivizes county offices to more actively participate in the program's main objectives of safety and a return-to-work strategy that gets injured workers appropriately treated and back to the workplace as fast as possible.

Overall, a cost allocation approach based on both experience and payroll is a fair and reasonable way of assuring that fair and appropriate costs are paid by the offices that do the riskiest type of work and are also incurring the most claims.

It is recommended that if a county takes advantage of the existing authority to cost allocate premium, or in addition to that, the authority to cost allocate administrative expenses, that the new cost allocation methodology should be used for all offices and agencies in the county for which the county is paying workers compensation premium and authority exists. Even those offices that are entirely funded from the general fund should be included in the cost allocation plan.

Some counties may be tempted to only use the allocation methodology for non-general fund entities. Such an approach, however, is ill advised because the primary goal is to give all county entities an incentive to reduce their losses through active management - even if there are not savings to the county general fund.

### **WHAT THE LAW SPECIFICALLY ALLOWS**

The new law grants specific authority to a board of county commissioners to, when determining the "proportionate amount" of workers' compensation premium or administrative expenses chargeable to non-general funds, base the amount on any of the following factors, individually or in any combination:

1. Payroll - amount of payroll attributed to each office;
2. Relative exposure - site nature of the work in each office and the risk of injury to employees;
3. Relative loss experience - frequency and severity of previous workers compensation claims in that office.

Commissioners interested in exercising this authority should consult with their workers' compensation third party administrator (TPA), service company or actuary to determine the final allocation of workers' compensation premiums. It will be necessary to have claims history by county office or agency in order to implement this cost allocation methodology.

In addition, it is vital that county commissioners work with the county auditor early in the process of allocating the cost on the basis of exposure or loss experience. The allocation set by commissioners must be fair and credible. Commissioners may consider phasing-in a new or modified cost-allocation, particularly when charge-backs are first implemented.

### **DEFINING ADMINISTRATIVE COSTS**

HB 509, which goes into effect on September 28<sup>th</sup>, provides commissioners with the ability to cost allocate (1) payments required by any BWC rating plan (such as group experience rating,

group retrospective rating and individual retrospective rating) and (2) direct administrative costs incurred in the management of the county's workers compensation program and indirect administrative costs that are necessary and reasonable. As it relates to direct administrative and indirect administrative costs, HB 509 allows workers' compensation payments to include:

(a) Direct administrative costs incurred in the management of the county, district, district activity, or institution's workers' compensation program;

(b) Indirect costs that are necessary and reasonable for the proper and efficient administration of the workers' compensation program as documented in a cost allocation plan. The indirect cost plan shall conform to the United States office of management and budget circular A-87 "cost principles for state and local governments," 2 C.F.R. 225, as most recently amended on May 10, 2004. The plan shall not authorize payment from the fund of any general government expense required to carry out the overall governmental responsibilities.

Direct administrative costs may include expenses such those associated with participation in the drug-free workplace safety program, special investigations, salary for full-time workers' compensation administrative staff, etc.

Indirect administrative costs could include expenses such as the overhead costs for workers' compensation administrative staff and other eligible indirect costs as documented in a cost allocation plan. In many counties, their cost allocation plan is prepared by Maximus, a CCAO endorsed provider. Any county that intends to implement the new authority as it relates to administrative costs should contact Bob Fink at Maximus or the appropriate staff person with Maximus or another indirect cost provider to discuss the timing and implementation of charging for workers compensation administrative costs.

Counties with questions about whether a workers' compensation-related expense is required by a BWC group rating plan or is a direct or indirect administrative cost should consult with their prosecutor.

#### **EXEMPTION FOR DEVELOPMENTAL DISABILITY AND BEHAVIORAL HEALTH BOARDS FOR ADMINISTRATIVE EXPENSE COST ALLOCATION**

The 2012 law adopted around cost allocation of administrative expenses prohibits a board of county commissioners from cost allocating direct and indirect administrative expenses for workers' compensation programs to developmental disability, alcohol and drug addiction, mental health, or alcohol and drug addiction, and mental health boards unless such administrative expenses had already been allocated to that board prior to September 28, 2012. The law, however, appears to allow for the allocation of payments required by a BWC group rating plan to these entities. Again, counties should consult with their prosecutor to determine eligible costs related to group rating plans.

During the legislative process, these boards opposed language that would give counties explicit authority to charge workers' compensation administrative expenses. Their opposition was based on the broad principle that they should not be charged for any indirect cost – including workers' compensation – because current law provides that interest earned from levies those boards may have remains in the county general fund.

However, given that some counties already have arrangements whereby these boards reimburse the general fund for workers' compensation administrative expenses, a grandfather provision was agreed to and is included in ORC Section 4123.41(D).

### **NOTIFICATION AND CONSULTATION WITH ELECTED OFFICIALS PRIOR TO CHANGING METHODOLOGY**

Current law requires the board of county commissioners to notify and consult with any elected official who will be affected by a change in the method used for calculating proportionate shares of the county's workers' compensation premium. In addition, the law requires the commissioners to give elected officials information supporting the change. The communication must include information supporting the change and must occur 60 days prior to making the cost methodology change. CCAO believes that if a county currently allocates premium on the basis of exposure or loss experience and now wants to include costs required by a BWC rating plan or direct and indirect administrative expenses as a cost that will be allocated, then the notice provisions of current law apply to this change in methodology.

In order to comply with this provision of law, it is recommended that the board of county commissioners give written notice of the proposed change along with detailed information on how the new cost allocation system will work to each affected office or agency. In addition, it is recommended that in addition to the written notice, the commissioners schedule a meeting where any office or agency may express concerns, ask questions, or make recommendations in order to meet the consultation requirement of the statute. This meeting should take place at least 60 days before the new cost allocation approach becomes effective.

### **TRANSFER OF FUNDS FROM SPECIAL REVENUE AND OTHER FUNDS TO THE COUNTY GENERAL FUND**

HB 509 maintains the exemption in ORC Section 4123.41 that workers' compensation allocation transfers are not subject to ORC Section 5705.16. Generally, ORC Section 5705.16 requires, before transfers are made from any non-general funds to the county general fund, that a resolution of the taxing authority must be passed and a petition must be addressed to the court of common pleas. Before the petition is filed with the court, however, it must be submitted to the tax commissioner for approval. If approved by the tax commissioner, the petition is then filed with the court that must approve the transfer.

While we understand that this procedure was often not used as it relates to transfers to the general fund for workers compensation contributions, this statute specifically exempts workers' compensation allocation transfers from the general transfer procedure for moving funds from special revenue and other funds to the county general fund.

### **FOR ADDITIONAL INFORMATION**

Special thanks to Russ Hocutt, Stephanie McCloud and Heather Vogus at CompManagement, Inc. for their review of this bulletin.

Again, for specific program ideas and resources that foster better loss control and risk management practices within the county, counties can consult the Bureau of Workers' Compensation or CORSA's Claim and Litigation Manager Beth Miller at (614) 221- 5627 or e-mail at [emiller@ccao.org](mailto:emiller@ccao.org).

If you have questions about this bulletin, please feel free to contact Laura Abu-Absi, CCAO policy analyst, at [labu-absi@ccao.org](mailto:labu-absi@ccao.org).

Attached to this advisory bulletin as Exhibit 1 is ORC Section 4123.41 as amended by HB 95 of the 125<sup>th</sup> General Assembly. Also included as Exhibit 2 is this section as amended by HB 509 of the 129<sup>th</sup> General Assembly.

EXHIBIT 1

OHIO REVISED CODE SECTION 4123.41

AS AMENDED BY H. B. 95 OF THE 125TH GENERAL ASSEMBLY

EFFECTIVE SEPTEMBER 23, 2003

**Sec. 4123.41.** (A) By the first day of January of each year, the bureau of workers' compensation shall furnish to the county auditor of each county and the chief fiscal officer of each taxing district in a county and of each district activity and institution mentioned in section 4123.39 of the Revised Code forms containing the premium rates applicable to the county, district, district activity, or institution as an employer, on which to report the amount of money expended by the county, district, district activity, or institution during the previous twelve calendar months for the services of employees under this chapter.

(B) Each county auditor and each fiscal officer of a district, district activity, and institution shall calculate on the form it receives from the bureau under division (A) of this section the premium due as its proper contribution to the public insurance fund and issue ~~his~~ a warrant in favor of the bureau for the amount due from the county, district, district activity, or institution to the public insurance fund according to the following schedule:

- (1) On or before the fifteenth day of May of each year, no less than forty-five per cent of the amount due;
- (2) On or before the first day of September of each year, no less than the total amount due.

The legislative body of any county, district, district activity, or institution may reimburse the fund from which the contribution is made by transferring to the fund from any other fund of the county, district, district activity, or institution, the proportionate amount of the contribution that should be chargeable to the fund, whether the fund is derived from taxation or otherwise. The proportionate amount of the contribution chargeable to the fund may be based on payroll, relative exposure, relative loss experience, or any combination of these factors, as determined by the legislative body. Within sixty days before a legislative body changes the method used for calculating the proportionate amount of the contribution chargeable to the fund, it shall notify, consult with, and give information supporting the change to any elected official affected by the change. A transfer made pursuant to division (B)(2) of this section is not subject to section 5705.16 of the Revised Code.

(C) The bureau may investigate the correctness of the information provided by the county auditor and chief fiscal officer under division (B) of this section, and if the bureau determines at any time that the county, district, district activity, or institution has not reported the correct information, the administrator of workers' compensation may make deductions or additions as the facts warrant and take those facts into consideration in determining the current or future contributions to be made by the county, district, district activity, or institution. If the county, district, district activity, or institution does not furnish the report in the time required by this section, the administrator may fix the amount of contribution the county, district, district activity, or institution must make and certify that amount for payment.

(D) The administrator shall provide a discount to any county, district, district activity, or institution that pays its total amount due to the public insurance fund on or before the fifteenth day of May of each year as its proper contribution for premiums. The administrator shall base the discount provided under this division on the savings generated by the early payment to the public insurance fund. The administrator may provide the discount through a refund to the county, district, district activity, or institution or an offset against the future contributions due to the public insurance fund from the county, district, district activity, or institution.

(E) The administrator may impose an interest penalty for late payment of any amount due from a county, district, district activity, and institution at the interest rate established by the state tax commissioner pursuant to section 5703.47 of the Revised Code.



EXHIBIT 2

OHIO REVISED CODE SECTION 4123.41

AS AMENDED BY AM. SUB. HB 509 OF THE 129<sup>TH</sup> GENERAL ASSEMBLY

EFFECTIVE SEPTEMBER 28, 2012

**Sec. 4123.41.** (A) By the first day of January of each year, the bureau of workers' compensation shall furnish to the county auditor of each county and the chief fiscal officer of each taxing district in a county and of each district activity and institution mentioned in section 4123.39 of the Revised Code forms containing the premium rates applicable to the county, district, district activity, or institution as an employer, on which to report the amount of money expended by the county, district, district activity, or institution during the previous twelve calendar months for the services of employees under this chapter.

(B) Each county auditor and each fiscal officer of a district, district activity, and institution shall calculate on the form it receives from the bureau under division (A) of this section the premium due as its proper contribution to the public insurance fund and issue a warrant in favor of the bureau for the amount due from the county, district, district activity, or institution to the public insurance fund according to the following schedule:

(1) On or before the fifteenth day of May of each year, no less than forty-five per cent of the amount due;

(2) On or before the first day of September of each year, no less than the total amount due.

(C) The legislative body of any county, district, district activity, or institution may reimburse the fund from which the ~~contribution is~~ workers' compensation payments are made by transferring to the fund from any other fund of the county, district, district activity, or institution, the proportionate amount of the ~~contribution payments~~ that should be chargeable to the fund, whether the fund is derived from taxation or otherwise. The proportionate amount of the ~~contribution payments~~ chargeable to the fund may be based on payroll, relative exposure, relative loss experience, or any combination of these factors, as determined by the legislative body. ~~Within~~

(1) The workers' compensation program payments of any county, district, district activity, or institution may include all payments required by any bureau of workers' compensation rating plan.

(2) The workers' compensation program payments of any county, district, district activity, or institution, except for a county board of developmental disabilities, a board of alcohol, drug addiction, and mental health services, a board of mental health services, and a board of alcohol and drug addiction services, also may include any of the following:

(a) Direct administrative costs incurred in the management of the county, district, district activity, or institution's workers' compensation program;

(b) Indirect costs that are necessary and reasonable for the proper and efficient administration of the workers' compensation program as documented in a cost allocation plan. The indirect cost plan shall conform to the United States office of management and budget circular A-87 "cost principles for state and local governments," 2 C.F.R. 225, as most recently amended on May 10, 2004. The plan shall not authorize payment from the fund of any general government expense required to carry out the overall governmental responsibilities.

(3) Within sixty days before a legislative body changes the method used for calculating the proportionate amount of the ~~contribution~~ payments chargeable to the fund, it shall notify, consult with, and give information supporting the change to any elected official affected by the change. A transfer made pursuant to division (B)(2) of this section is not subject to section 5705.16 of the Revised Code.

~~(C)~~(D) Any county board of developmental disabilities, board of alcohol, drug addiction, and mental health services, board of mental health services, or board of alcohol and drug addiction services whose workers' compensation payments, on or before the effective date of this section, includes costs referred to in division (C)(2) of this section may continue to do so on and after the effective date of this amendment.

(E) The bureau may investigate the correctness of the information provided by the county auditor and chief fiscal officer under division (B) of this section, and if the bureau determines at any time that the county, district, district activity, or institution has not reported the correct information, the administrator of workers' compensation may make deductions or additions as the facts warrant and take those facts into consideration in determining the current or future contributions to be made by the county, district, district activity, or institution. If the county, district, district activity, or institution does not furnish the report in the time required by this section, the administrator may fix the amount of contribution the county, district, district activity, or institution must make and certify that amount for payment.

~~(D)~~(F) The administrator shall provide a discount to any county, district, district activity, or institution that pays its total amount due to the public insurance fund on or before the fifteenth day of May of each year as its proper contribution for premiums. The administrator shall base the discount provided under this division on the savings generated by the early payment to the public insurance fund. The administrator may provide the discount through a refund to the county, district, district activity, or institution or an offset against the future contributions due to the public insurance fund from the county, district, district activity, or institution.

~~(E)~~(G) The administrator may impose an interest penalty for late payment of any amount due from a county, district, district activity, and institution at the interest rate established by the state tax commissioner pursuant to section 5703.47 of the Revised Code.