



COUNTY ADVISORY BULLETIN

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ALLOCATION OF WORKERS COMPENSATION COSTS TO NON-GENERAL FUNDS ON THE BASIS OF EXPOSURE AND LOSS EXPERIENCE

Effective Date: September 26, 2003.

Revised Code Section Affected: 4123.41.

INTRODUCTION

House Bill 95 of the 125th General Assembly, the state's two-year budget bill for state fiscal years 2004 and 2005, contained language to provide clarity and specific authority for the allocation of workers' compensation premium to the various county offices and departments.

Under former law, 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.

THE CHANGE IN THE LAW

The change in the law involved an amendment to Division (B)(2) of Section 4123.41 of the Revised Code which reads as follows (note that the new language is underlined):

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.

THE PURPOSE OF THE LAW

There were two primary reasons that CCAO sought this language, which was included in the two-year budget by the Taft Administration at the request of CCAO.

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 the elected officials 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 Director of Risk Control Services Beth Miller at (888) 757-1904 or email at emiller@ccao.org.

Second, since loss experience may be comparatively high in some non-general fund offices, there could be increased cost shifted to non-general fund agencies, which would result in reduced costs to the county general fund. For example, workers' compensation losses are often higher at offices like the MRDD Board, 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. This approach is a fair and reasonable way of shifting costs to 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 new law 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. 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” chargeable to non-general funds, base the amount of workers compensation premiums 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; and
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.

NOTIFICATION AND CONSULTATION WITH ELECTED OFFICIALS PRIOR TO CHANGING METHODOLOGY

The law also 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.

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

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 under current law 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 procedure in this section.

FOR ADDITIONAL INFORMATION

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 Director of Risk Control Services Beth Miller at (614) 221-5627 or e-mail at emiller@ccao.org. If you have questions about this bulletin, please feel free to contact either Larry Long, CCAO Executive Director, or CCAO Staffer Cheryl Subler at (614) 221-5627 or e-mail at llong@ccao.org or csubler@ccao.org.

CCAO also would like to express its appreciation to Comp Management for reviewing this bulletin.