



Dear Industry Colleagues and Friends,

It was great to see many of you at the MWCEA Conference in September. FRR and Modern Medical, Inc. celebrated the occasion with our 10th Annual Client Appreciation Dinner ... enjoyed by us and all.

Here at FRR, we are always looking to develop services to answer the needs of our customers ... we now offer **RN Triage Case Management**. This program provides 24/7, immediate medical and education self-care consultative services to Injured Workers at their time of injury. Our Team consists of specialty-trained Registered Nurses, experienced in managing medically urgent situations. This immediate, one-on-one healthcare guidance may substantially reduce unnecessary medical costs and Employee lost time, resulting in significant cost savings to the Employer-Insured.

This issue of First Source includes articles on "Discovery" at the MD WCC, specialized case management techniques for Spanish-speaking Injured Workers, Trauma Case Management ... and more.

Please do read on - we hope you find First Source informational and beneficial!!



-The FRR Team

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#### MSAs and Liability Settlements

**Kaija Blalock, BSN, RN, JD, MSCC**

**Field Medical Case Management Supervisor/Medicare Set-Aside Coordinator**



Last month, The Centers for Medicare and Medicaid Services (CMS) released its first guidance memo specifically addressing liability settlements and Liability Medicare Set-Aside Arrangements (LMSAs). Many in the MSA industry have been anticipating LMSA review thresholds from CMS. The guidance memo of September 29, 2011 does not provide review thresholds but does provide a simple method for protecting Medicare's interests when settling claims with no future medical treatment needs. As stated in the memo, Medicare will consider its interests regarding a particular settlement "satisfied" when the treating physician certifies in writing that treatment for the related injury has been completed as of the date of the settlement and that future medical items and/or services for that injury will not be required. **With this certification, there is no need to develop or submit a proposed LMSA for review.** In fact, CMS does not require submission of the certification and will not issue confirmation letters. If a

beneficiary receives additional settlements related to the injury or illness, he or she must obtain a separate physician certification for those additional settlements.

Parties to liability settlements should contact the treating physician in advance of settlement for this written statement and maintain the certification in their records. Please let us know if FRR can be of assistance to you in obtaining a statement from your claimant's treating physician. Our nurses are experienced in requesting similar statements regarding MMI status and future medical treatment projections for our Workers' Compensation MSAs.

On a related note, the Medicare Secondary Payer Recovery Contractor (MSPRC) has published a liability threshold on its website, advising that they will not seek recovery against a liability settlement if:

- The total lump sum settlement is \$300 or less
- Involves only a liability settlement (not a no-fault Workers' compensation)
- The resolution of the claim is for alleged physical injuries (not ingestion, exposure or implantation)
- There are no additional settlements related to the claim; AND
- A demand has not been issued

### Ask the Attorney: Is there "Discovery" at the Commission?

Larry Giambelluca, Esquire of Semmes, Bowen & Semmes  
[www.semmes.com](http://www.semmes.com)

Discovery is the court mandated exchange of information amongst litigants prior to a hearing or trial. It is commonly characterized by such tools as interrogatories or request for production of documents/depositions. In this respect the answer to the title question is "no." In fact, practice before the Maryland Workers' Compensation Commission has often been described as the "Wild Wild West" or even "trial by ambush" in reference to the lack of such discovery tools.



However, the real answer is that practice before the Commission has its own forms of discovery that allow experienced litigators to gather significant information prior to hearing in order to prepare their cases. The Maryland Commission has a number of rules, forms, and common practices that allow the parties to quickly and efficiently litigate issues in dispute without the need for interrogatories or depositions.

The first and most common form of exchange of information comes in the form of the Employee's Claim Form and the Employer's First Report of Injury. The Commission requires these forms to be completed by the litigants, and they contain a wealth of information. The Claim Form provides an Employer with information to identify the Claimant and the allegations of how, when and where an accident occurred, to whom it was reported, the injuries alleged, the medical treatment sought, and whether it resulted in time lost from work. Similarly, the Employer's First Report of Injury supplies the Employer's version of events and whether there were any witnesses. Other forms, such as Wage Statements and even Issues, are geared toward providing information to the opposition that eliminates certain elements of surprise when the parties take their seat at the trial table.

While not provided for in any rule or regulation, claims adjusters often request and receive permission to take recorded statements from Claimants and other witnesses. While such statements are not taken under oath, they can be similar to depositions in many ways.

Commission Regulations do require the prompt exchange of "all relevant medical information" prior to a hearing and that the parties exchange lists of exhibits prior to the hearing. While there is room for interpretation as to what is considered relevant information or when such records need to be exchanged, there is a specific requirement in the Regulations that permanency ratings be exchanged five days prior to the hearing. Independent Medical Examinations themselves are a valuable form of discovery available to the parties.

Perhaps the lack of discovery at the Commission may be because there is no regulation, form, or common practice that requires the disclosure of witnesses intended to be called at hearing. Certainly the most dramatic example of this is when an investigator is called to present video surveillance. While most people in the hearing room can guess what is coming before the witness is called, the Claimant is often the last to know. The fact that the Claimant is required to testify before he or she is aware whether there is surveillance is a powerful tool used by the Commission to judge the credibility of Claimants.

While it may not be the "Wild Wild West," practice before the Maryland Workers Compensation Commission, it is a challenging arena for trial attorneys. However, the regulations, forms, and common practice allow skilled practitioners to gather information quickly and efficiently so that issues can be litigated fairly and promptly without the need to resort to formal discovery.

*Mr. Giambelluca represents Employers, Insurers and Self-Insured Employers in all phases of Workers' Compensation claims. He has handled countless hearings before the Maryland Workers' Compensation Commission as well as representing clients in jury trials and before Maryland's appellate courts.*

### Specialized Case Management Techniques for Spanish-Speaking Injured Workers Erika Subieta Aguilar, BSW Bilingual Vocational Case Manager

Increased challenges often face Spanish-speaking Injured Workers, searching for employment in today's diminished and therefore, more competitive labor market. Far more people are searching for far fewer jobs ... meaning, Employers select from a larger pool of qualified candidates. Additionally, many Employers may be

hesitant to select someone with limited or no current English-speaking skills due their perception of cultural differences, and perhaps their concern regarding non-communication or miscommunication potential with management, co-workers, customers, and even difficulties in the non-English speaking Workers' understanding of their new job duties. Prepare, prepare, prepare!!



- Participation in English as a Second Language (ESL) Program is a must! These are offered within community-based settings, free or at a very low cost. Immediately upon identifying this need (often even prior to a medical work release or at a minimum at the very 1<sup>st</sup> Initial Vocational Meeting), Program participation should be coordinated and implemented. This "classroom" experience may lead to further interest in Adult Basic Education (ABE) and/or General Education Development (GED) participation.
- Volunteering can greatly enhance the development of English fluency, while making contacts with hiring representatives and creating networking opportunities. Volunteering may range from a few hours per week to a few hours per day, and can easily be coordinated to not interfere with job search or medical appointments. An optimal result, which has occurred, is when the volunteer position translates into a paid employment situation.
- Spanish-speaking establishments often prefer to hire workers of their and their customer's same culture. A Spanish-speaking Vocational Case Manager's knowledge, familiarity and ability to fluidly communicate with this hidden job market, serves to expedite identification of vacancies and, therefore, quick matching of Employer to Employee.
- Spanish-speaking Vocational Case Manager's (VCM) professional understanding of the culture, "bonds" the working relationship between the VCM and the Injured Worker. This commonality is automatic, and reduces or eliminates time for rapport establishment. Job development can get off to a prompt start!
- Spanish-speaking VCM eliminates the need for a Translator, avoiding an extra expense and minimizing miscommunication due to interpretation.

Spanish-speaking Injured Workers can return to suitable gainful employment. Let's take the "right" steps early on.

### **FRR Employee Spotlight on ...**

#### **Christine LaCoy, RN, BSN, CCM**



FRR welcomes Christine LaCoy!!

Christine's professional background started with Emergency Room and Trauma Critical Care Nursing and then evolved into Occupational Health, Employee Wellness, Workers' Compensation, Geriatric Care Management and Hospice Case Management. She has worked for Insurance Companies such as Royal & Sun Alliance, RSKCo, and Liberty Mutual conducting field and telephonic case management, as well as Employee Health. Her experiences also include hospital management and Clinical Education.

Christine loves the challenge and responsibility of "juggling" multiple tasks and interacting with multiple personality types. She likes the autonomy involved with being a Case Manager and developing trust and relationships with the Clients, Customers, and Insureds.

Enhancing our Telephonic Medical Case Management Department, Christine's experience and expertise has fostered the growth of our RN Triage Case Management Program.

### **Sitting Comfortably at the Office?**

**Richard Brady, MA, CDMS, CEES**  
Senior Vocational Case Manager & Certified Ergonomics Evaluation Specialist

Have you ever been working toward a deadline, but only to be distracted by nagging pain in your lower back? If so, there are a number of easy adjustments to your workstation that will provide you an improved ergonomic environment to reduce discomfort and increase your productivity. With the assistance of the National Institute for Occupational Safety and Health (NIOSH), here are some ergonomic tips to help create your ideal workstation set-up:



**Chair:** Adjust chair height so your feet are fully supported by the floor, or use a footrest if the desk or keyboard height is not adjustable. Use the chair's backrest to support your lower back, or lumbar curve. You can use a pillow or rolled up towel as a back support. Sit with your entire upper body upright or leaning slightly back.

**Keyboard:** Your keyboard should be at a height to allow your shoulders to be relaxed and for upper arms to hang normally at the side of the body. Elbows stay in close to the body and are bent between 90 and 120 degrees. Hands, wrists, and forearms are straight, in-line and roughly parallel to the floor. The mouse should be positioned next to the keyboard and at the same height or slightly higher than the keyboard. If you do not have an adjustable keyboard tray, you can adjust the height of your chair and use a footrest if necessary.

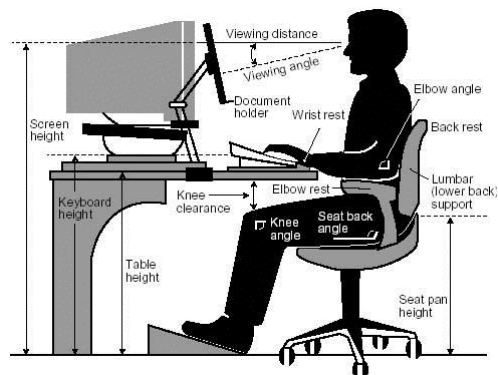
**Monitor:** Monitor should be placed directly in front of the keyboard to avoid twisting to view the screen. The monitor height should be adjusted so the top of the monitor screen is level or slightly lower than your seated eye height. The monitor should be placed 18-36" from eyes. Use a document holder, if you keyboard from written documents, to avoid constant flexing of your neck.

It is really the positioning of your body as a whole that is important. Having just one part of your body out of neutral can affect the rest of your posture. Try sitting with your feet hooked under your chair. You will notice that this tends to pull you forward in your seat, away from your chair's backrest. Now place your feet out in

front of you and you will notice that it is much easier to lean back into the chair. Similarly, if you place your monitor too low on your desk, this will also tend to make you lean forward. Practice adjusting your workstation to achieve a neutral posture for your whole body. It may help to have a co-worker take a look at you while you work and give you feedback on your posture.

**Remember: head level, shoulders relaxed, low back supported, elbows at sides, wrists straight, feet supported.**

There is no single "correct" posture. There are many variations of neutral posture, and depending on what tasks you perform and the furniture in your workstation, you may find one of these alternatives to be more comfortable for you. Change postures frequently. Regardless of how good your posture may be, sitting still for long periods of time isn't healthy. You should make small adjustments to your posture about every 15 minutes, by changing the height of your chair slightly, or leaning back a little further into the backrest. Larger changes in posture are also important; stand up and stretch or walk around for one or two minutes every hour.



### Case Study

#### Medical Case Management for the Trauma Claim

Kajja Blalock, BSN, JD, RN

Medical Case Management Supervisor

Life-threatening traumatic work injuries present immediate and ongoing challenges for all involved parties. The Injured Worker's (IW) condition is likely in constant flux during the first few days and reliable information on his or her status is very hard to come by. He or she might be undergoing emergency surgeries or procedures daily, making cost projections and management of a claim very difficult. Family members may not understand the options a physician is proposing, making it difficult for them to make informed decisions for the IW. FRR's Nurse Case Manager, Sherry Murphy, recently intervened in just such a case and assisted in bringing about an unexpectedly positive recovery.



The IW had fallen from the bed of a pickup truck, striking his head on concrete as he landed. He was airlifted to a Trauma Center, where imaging revealed life threatening injuries, including a fractured skull and subdural hematomas (bleeding) on both sides of the brain. Surgeons immediately removed part of his skull to make room for expected brain swelling. He was also placed on a ventilator to assist with breathing and moved to an ICU for close monitoring.

FRR received this referral five days following the accident and assigned Sherry Murphy to the case. Sherry made several visits to the Trauma Center during the first week to assess the IW's status and to discuss and make plans for his near future with treating physicians. As his condition improved, Sherry was able to coordinate supports so that he could be discharged home (per family wishes) rather than to an inpatient rehabilitation facility. She promptly found and coordinated the IW's enrollment in an outpatient traumatic brain injury rehabilitation program, allowing him to start the first week after discharge from the Trauma Center. The IW's follow-up physician appointments often required that he undergo imaging studies prior to each appointment so that results could be reviewed by the physician. With Sherry's proactive coordination, all required studies were completed well in advance, moving the case forward and allowing surgical replacement of his skull bone two months after his injury. The IW progressed in rehab and was able to return to work in a full duty capacity six months after the accident. He continues to work successfully. His only residual complaint from this potentially devastating accident is a partial hearing loss, a remarkable outcome brought about in large part by effective Nurse Case Management.

### RN Triage Case Management

FIRST REHABILITATION RESOURCES, INC.  
 Specialty Medical Case Management Solutions  
*now offers*



**A COMPREHENSIVE PROGRAM**  
 which provides 24/7 immediate medical  
 and educational self-care consultative  
 services to Injured Workers  
 ...utilizing *specially trained Registered Nurses*  
 to address immediate concerns and provide  
 early intervention.

.....

*With an emphasis on  
 fostering positive communication amongst all parties,  
 the Triage Nurse Case Manager acts as  
 a resource and educator for the  
 Injured Worker, while working on an expedited timeline to  
 meet the objectives of the individual case.*




**Immediate ONE-on-ONE  
 healthcare guidance that realizes  
 COST SAVINGS  
 for the insurer.**

∞




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### Pumpkin Bisque

Prevention.Com; Liz Vaccariello and Cynthia Sass

Prepares 4 servings in 40 minutes

*This elegant soup packs almost half a day's worth of fiber into 1 serving!*

#### Ingredients:

- \* 2 t olive oil
- \* 2 onions, chopped
- \* 1 large red bell pepper, chopped
- \* 1 potato, peeled and diced
- \* 1 T minced garlic
- \* 1 T oregano
- \* 4 c reduced-sodium veg. broth
- \* 1 can (15 oz) pumpkin
- \* 1/2 t salt
- \* 1/2 t black pepper
- \* 1/2 c chopped roasted unsalted pumpkin seeds
- \* 2 t balsamic vinegar



#### Preparation

1. Heat the oil in large pot or Dutch oven over medium heat. Add the onions, bell pepper, potato, garlic, and oregano. Cook, stirring occasionally, for 5 minutes or until the onion is softened. Add the broth, pumpkin, salt, and pepper. Simmer for 10 minutes or until the potato is very tender.
2. Transfer the soup to a food processor fitted with a metal blade or a blender (in batches, if necessary). Process until smooth.
3. Return the soup to the pot. If necessary, add water to thin to desired consistency. Reheat if needed.
4. Ladle into 4 bowls and top each with 2 tablespoons of pumpkin seeds. Drizzle lightly with the balsamic vinegar.

Enjoy!

Nutritional Info Per Serving:  
210 cal, 6 g pro, 36 g carb, 10 g fiber, 5 g fat, 1 g sat fat, 0 mg chol, 451 mg sodium



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