RESOLUTION - ACTION REQUESTED 2015-296

MEETING: June 23, 2015

TO: The Board of Supervisors

FROM: Steve Johnson, Human Resources Director - Risk Manager

RE: Approve One Year Amendment to Tristar Agreement

RECOMMENDATION AND JUSTIFICATION:

Approve an Agreement with Tristar Risk Management Services ("Tristar") for the Administration of the County's Workers' Compensation Claims for the Period from July 1, 2015 Through June 30, 2016; Authorize the Board of Supervisors Chairperson to Sign the Amended Agreement, and Authorize Staff to Issue a Request for Proposal for Workers' Compensation Administration Services for Mariposa County, During the Second Six Month Term of This Agreement.

Tristar is responsible for Workers' Compensation bill review, utilization review, and both telephonic and field nurse case management services for Mariposa County. The annual claims administration fee is recommended to increase by 2.2 percent, or $680, from $30,280 to $30,960 per year. The not-to-exceed amount for the entire cost of the agreement is recommended at $93,000, which includes the administrative fee, for the following reasons:

- An increase in Mariposa County’s Workers' Compensation claims severity, and
- A 50 percent increase in the number of reported Mariposa County Workers' Compensation claims since 2006.

Based on this information, Mariposa County currently utilizes 35 percent of a full time Tristar Workers' Compensation Adjustor, whose annual, fully loaded cost runs between $175,000-$185,000 per year.

Human Resources/Risk Management staff recommends that the Board of Supervisors also authorize staff to move forward with a Request for Proposal ("RFP") for Workers' Compensation Administration Services for Mariposa County, during the second six month term of this Agreement, in order to award a service agreement that will include the administration of existing Workers' Compensation claims and all new claims beginning at the program inception date of July 1, 2016, for Mariposa County.

At that time, the RFP will identify a Workers' Compensation Third Party Administrator partnership that will deliver the following objective and measurable results:
• Reduce the cost and duration of Workers' Compensation claims;
• Provide claim processing in a timely and professional manner;
• Actively pursue subrogation;
• Assist in returning injured employees back to work, and
• Maintain strong communications with the injured worker and Mariposa County.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board of Supervisors initially approved a 3-year agreement with Tristar effective July 1, 2006, with subsequent approved contracts through June 30, 2015. The principals have been administering the County's Workers' Compensation claims since 1992 from their Fresno location, initially under the name of Ross and Castillo Claims Management, until this firm was subsumed into the firm Tristar Risk Management Services in 2006.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
A negative action would result in staff needing to identify another company to perform claims services which could impact the management of current open claims.

FINANCIAL IMPACT:
Funding is budgeted in the Workers' Compensation fund in the Requested Fiscal Year 2015-16 Budget.

ATTACHMENTS:
Tristar Contract 2015  (DOC)

CAO RECOMMENDATION
Requested Action Recommended

Mary Hudson
Mary Hudson, CAO  6/18/2015

RESULT:  ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER:  Marshall Long, District III Supervisor
SECONDER:  Rosemarie Smallcombe, District I Supervisor
AYES:  Smallcombe, Jones, Long, Cann, Carrier
TWO PARTY CLAIMS SERVICING AGREEMENT

This Agreement is by and between TRISTAR Risk Management, a California Corporation ("TRISTAR") with principal offices at 100 Ocean Gate, Suite 700, Long Beach, CA 90802, and Mariposa County ("Client"), with principal offices at P.O. Box 1917, Mariposa, CA 95338.

In consideration of the covenants and agreements contained herein, the parties agree as follows:

I. RECITALS

1.1 This Agreement is made and entered into with respect to the following facts:

[a] TRISTAR, for the purposes of this Agreement, is in the business of providing claims adjusting and administrative services on behalf of self-insured employers.

[b] Client desires to purchase the services of TRISTAR and TRISTAR desires to provide such services to the Client in connection with their self-insured program.

II. EFFECTIVE DATE/TERM

2.1 This Agreement shall be effective as of July 1, 2015, and shall continue in full force and effect until June 30, 2016 or until termination in accordance with the provisions of Article XIV.

III. CLAIMS ADJUSTING AUTHORITY AND RESPONSIBILITIES OF TRISTAR

3.1 Subject to all the terms and conditions of this Agreement, TRISTAR shall have the authority and responsibility to provide claims adjusting and administration services for the Client in connection with claims or losses relating to occurrences during the period specified in Article II, as identified in Exhibit B.

3.2 In connection with its authority and responsibilities under this Agreement, TRISTAR shall:

[a] Receive and examine, on behalf of the Client, all claims reported to it and initiate procedures for the proper servicing of each claim.

[b] Investigate and adjust, settle or deny all claims in accordance with applicable insurance laws and Client authority as provided in Article IV hereof.

[c] Upon approval of the Client, engage the services of persons or firms outside its organization for work in connection with investigations and
adjustment of claims and to incur other “Allocated Loss Adjustment Expense” (as hereinafter defined) at the Client’s expense. Client shall have the right to require TRISTAR to remove any person or firm considered unsatisfactory by the Client.

[d] Establish and adequately reserve a claim file for each claim for which there is injury and/or anticipated liability and/or a formal claim has been made and code such claim in accordance with Client’s statistical data requirements as may be mutually agreed upon, such Agreement not to be unreasonably withheld by either party.

[e] Make timely payments of valid claims for compensation, rehabilitation expenses, and other required benefits payable under applicable insurance laws, together with Allocated Loss Adjustment Expenses, out of funds provided by the Client pursuant to Article V hereof subject to the limitations and requirements of this Agreement. If an authorized representative of the Client directs in writing that any payment not be made, and if after receipt of such notice TRISTAR nevertheless makes such payment, the Client shall be under no obligation to repay TRISTAR for such payment.

[f] Maintain an accurate and complete claim file on each reported claim which shall be available during normal business hours for inspection by the Client, its representatives or by appropriate regulatory authorities. The Client shall have the right to copy any and all claims files or any documents related to any claim. TRISTAR shall maintain and store closed claim files for no less than one year after the expiration of the statute of limitations applicable to each claim file or as otherwise directed by state. The provisions of this subsection may be restricted by state laws in which case the applicable law will govern.

[g] Provide all forms necessary for efficient claims administration and prepare and timely file all legally required forms and reports with the appropriate state and federal agencies, including but not limited to filings required by Section 6041 of the Internal Revenue Code.

[h] In connection with the performance of its obligations under this Agreement, provide licensed claims adjusters and perform the services to be rendered herein under in good faith, and in accordance with all applicable laws and regulations. At no time shall the case load per claims adjuster exceed 175 active indemnity claims without prior written approval of the Client.

[i] Protect and pursue any subrogation rights to the Client which may arise upon payment of claims and notify the Client of any subrogation rights which, through litigation or otherwise, may be available to the Client.
Perform all administrative and clerical work in connection with Qualified Claims including the preparation of checks and/or drafts drawn on the loss fund established herein.

Respond immediately to any inquiry, complaint or request received from an Insurance Department, other Regulatory Agency, client, claimant, agent, broker, or other interested party relating to a claim serviced under this Agreement; a copy of both the original inquiry and the TRISTAR’s response shall be provided in a timely manner to Client.

Upon prior approval of Client, engage the services of licensed and/or Certified Health and Rehabilitation firms or individuals for Rehabilitation Management as may be required by state regulations.

Report all cases involving suspected fraud to the appropriate state mandated agency. Settlement authority is not permitted on cases of suspected fraud unless TRISTAR receives written authority from Client. When operating in states that require fraud to be reported to the state insurance department, TRISTAR must maintain an internal special investigative unit or contract with an entity to provide such services.

IV. CLAIM SETTLEMENT AUTHORITY

4.1. Unless otherwise advised by the Client or in cases of suspected fraud, TRISTAR shall have authority and control in all matters, pertaining to the handling of claims under this Agreement, except which involve or which are expected as follows:

[a] All settlements on a single claim file shall first be approved by the Client.

[b] Single payments of any allocated expense in excess of $5,000 shall first be approved by the Client.

[c] Any settlement of a single claim file, which would involve an aggregate expenditure (of loss and Allocated Loss Expenses) in excess of the Client’s SIR, must first be approved by Excess Carrier.

4.2. The Client shall retain ultimate settlement authority for all claims. Notwithstanding the authority delegated to TRISTAR under this Agreement, the Client shall have the option of taking over the handling and settlement of any or all claims upon written notice to TRISTAR.

4.3. TRISTAR shall comply with claims procedures and guidelines as may be agreed to by TRISTAR and the Client, such agreement not to be unreasonably withheld.
V. VOUCHER ISSUANCE

5.1 TRISTAR will process all indemnity, medical and allocated expense payments by use of a voucher system. Vouchers will be faxed to Client who will in turn process payment of the expenses. Client will provide TRISTAR with copies of all checks issued for inclusion in the claim file in compliance with State guidelines.

VI. COMPENSATION/REIMBURSEMENT

6.1 The Client agrees to pay TRISTAR a fee as set forth in Exhibit A which is attached hereto and made a part hereof. Unless otherwise agreed upon, each year this program renews, this contract will be amended by way of an Exhibit indicating the claims servicing fees for the renewal year.

6.2 TRISTAR shall be responsible for all expenses (other than actual claim payments) incurred in investigating and adjusting claims except that Client shall reimburse TRISTAR for Allocated Loss Adjustment Expenses reported to Client in its monthly reports required by Article VII.

6.3 "Allocated Loss Adjustment Expenses" shall be defined as and include all out-of-pocket expense items such as fees for attorneys retained on behalf of Client, expert witness fees, fees for independent medical examinations, bill review and case management fees, witness fees, Claimant travel expense, extraordinary travel expense incurred by TRISTAR at the request of Client, court reporters' fees, transcript fees, the cost of obtaining public records and other similar fees, costs or expenses associated with the investigation, negotiation, settlement or defense of any subrogation claim or as required for investigation and pursuit of subrogation on behalf of the Client. Allocated Loss Adjustment Expense shall include prejudgment interest and other interest penalties. Allocated Loss Adjustment Expense shall not include any part of the salaries of employees of TRISTAR, its overhead, ordinary travel expenses, or other normal and ordinary costs incurred in connection with the services provided under this Agreement or its business as a whole.
VII. REPORTING REQUIREMENTS

7.1 TRISTAR shall provide monthly loss run reports to Client by hard copy on paper or in an acceptable electronic data format detailing by report period and inception to date, the following information by accident date: claim number, state, location number, total incurred expense, broken down by loss coverage/peril, allocated loss adjustment expense, outstanding reserves (loss and loss adjustment), salvage, subrogation, and such other information requested by Client.

7.2 TRISTAR shall provide to Client monthly documentation identifying all loss payments and allocated loss expenses.

7.3 Monthly loss reports shall be due within five (5) working days after the end of the month for which they relate.

7.4 Upon written notice of the involvement of an Excess Carrier and any reporting criteria thereof, TRISTAR will provide the Client and Excess Carrier with Notice and a Narrative Report in a form to be mutually agreed upon, for claims with reserves in excess of 50% of retention, claims involving serious injuries as defined by the Excess Carrier and claims involving issues of coverage or bad faith. Additional Narrative Reports will be submitted whenever there is a substantive change in the claim file information or evaluation. Unless otherwise advised by the Client, TRISTAR shall continue to handle the claim but shall not settle the claim without first obtaining the approval of the Client.

7.5 Client will be responsible to notify TRISTAR in writing of any changes in Excess Carrier retention levels or reporting requirements.

VIII. STATUS OF PARTIES

8.1 The parties hereto agree that TRISTAR, its affiliated corporations, and the agents and employees of TRISTAR and its affiliated corporations, in the performance of this Agreement, shall act in an independent capacity as independent contractors and not as officers or employees of Client, or any other affiliate of Client.

IX. AUDIT RIGHTS

9.1 In order to assure itself of TRISTAR’s compliance with the terms of this Agreement, Client, upon reasonable notice to TRISTAR, shall have the right to conduct audits of the books and records of TRISTAR pertaining to the claims of Client either with its own employees or independent outside auditors. See Exhibit C for additional information.
9.2 Upon reasonable notice, TRISTAR shall permit authorized employees and representatives of the Client to review the operations of TRISTAR, both at its places of business and in the field, in order to evaluate the quality and accuracy of TRISTAR’s employees and operations.

X. REPRESENTATIONS AND WARRANTIES

10.1 Mariposa County warrants and represents that the transactions contemplated hereby are within the governmental powers of Mariposa County.

10.2 TRISTAR warrants and represents that the transactions and activities contemplated herein are (i) within the corporate powers of TRISTAR, (ii) have been duly authorized by all necessary corporation action of TRISTAR; (iii) constitute the legal, valid and binding obligation of TRISTAR, enforceable against it in accordance with its terms; and (iv) do not and will not conflict with, result in a breach in any of the provisions of, or constitute a default under the provisions of any law, regulation, licensing requirement, charter provision, by-law or other instrument applicable to TRISTAR or its employees or to which TRISTAR is a party or may be bound.

XI. DISPUTE RESOLUTION

11.1 In the event of any controversy or dispute arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. To invoke the dispute resolution process set forth in this Section, the invoking party shall give to the other party written notice of its decision to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Within ten (10) days, a face-to-face meeting by TRISTAR and Client will take place to attempt to resolve the issues. If the designated representatives cannot resolve the dispute, the parties shall meet within 30 days and describe the dispute and their respective proposals for resolution to a mediator who shall act in good faith to resolve any dispute. All dispute resolution must take place in Mariposa, California unless otherwise agreed to by the parties.

XII. INDEMNITY AND INSURANCE

12.1 TRISTAR agrees to defend and hold harmless Client, their officers, agents and employees, from and against any and all liability, loss, damage or expense, including extra contractual and punitive damages and attorney’s fees, incurred in connection with claims or demands for damages arising out of the services provided under this Agreement, except to the extent such claims or demands arise from or are caused by the negligence or willful misconduct of Client.
12.2 Client agrees to defend and hold harmless TRISTAR, their officers, agents and employees, from and against any and all liability, loss, damage or expense, including extra contractual and punitive damages and attorney’s fees, incurred in connection with claims or demands for damages arising out of the services provided under this Agreement, except to the extent such claims or demands arise from or are caused by the negligence or willful misconduct of TRISTAR.

12.3 TRISTAR shall, at all times while obligations under this Agreement remain to be performed by TRISTAR, maintain in force such insurances as are normal and customary or required by law to protect itself and its clients, including the following:

[a] Workers’ Compensation Insurance under the laws of the states in which operations are conducted.

[b] Comprehensive General Liability Insurance with limits of not less than $1 million including contractual liability and personal injury for libel, slander and assault insuring this Agreement.

[c] An Errors and Omissions policy providing coverage in the amount of not less than $3 million.

[d] A Fidelity bond providing coverage for all officers and other employees of TRISTAR (including “money and securities” coverage) in the amount not less than $1 million.

12.4 Client shall have the right to inspect each of the above-mentioned policies and bonds and TRISTAR, upon Client’s request, shall cause its insurers to provide Client with a certificate of insurance or other evidence of coverage which provides Client with 30 days notice of cancellation.

12.5 In the event TRISTAR is unable, after using its best efforts, to obtain any of the above-mentioned coverages, it shall immediately notify Client. Client shall then have the opportunity to immediately terminate this Agreement or continue the Agreement upon the understanding that TRISTAR will continue to use its best efforts to obtain and thereafter immediately obtain any or all such coverages when and if they become available.

XIII. DEFAULT

13.1 The following are events of default under this Agreement.

[a] Any material breach of a term of this Agreement which is not cured by breaching party within ten (10) days after receipt of notice of such breach by the other party.
[b] The discovery by Client of the falsity of any representation or warranty made to Client by TRISTAR pursuant to Article X hereof.

[c] The levying of any attachment, execution of any process against TRISTAR which is not promptly removed or the filing of any petition under any bankruptcy statute against TRISTAR or the appointment of any receiver or trustee to take possession of TRISTAR’s properties which is not set aside or terminated within ten (10) days from the occurrence thereof.

13.2 The failure of either party to declare a default upon the occurrence of an event constituting a default shall not waive that party’s right to declare a default upon the occurrence of any subsequent event.

XIV. TERMINATION

14.1 This Agreement may be terminated by Client or TRISTAR as follows:

[a] Upon sixty (60) days prior written notice for any reason.

[b] Upon ten (10) days prior written notice in the event of a default in this Agreement by the other party.

[c] Immediately upon written notice in the event of fraud, abandonment, gross or willful misconduct, insolvency, or lack of legal capacity to act by the other party.

14.2 Notwithstanding the termination of this Agreement as hereinabove provided, the provisions of this Agreement shall continue to apply to the extent needed for all obligations and liabilities incurred by each party hereunder prior to such termination to be fully performed and discharged by such parties.

14.3 TRISTAR agrees that Client shall have the right in the event of a termination of this Agreement to immediate possession of all claims files and other records, including electronic records, relating to such claims and that this right may be exercised at any time after termination. In the event Client takes over handling of any or all outstanding claims after termination, TRISTAR agrees to cooperate with and instruct its employees to cooperate with Client in connection with the Client’s handling of such claims.

XV. GENERAL PROVISIONS

15.1 The subject headings of the Articles of this Agreement are included for purposes of convenience only and shall not affect the construction of interpretation of any of its provisions.

15.2 This Agreement sets forth the entire understanding of the parties and supersedes
any prior Agreement or understanding relating to the subject matter hereof. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

15.3 TRISTAR may not assign, sell, transfer or otherwise convey, pledge or encumber any of its rights, obligations or interests under this Agreement without the prior written consent of the Client.

15.4 Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

15.5 This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or void in any jurisdiction, the other provisions of this Agreement shall remain in full force and applicable law shall be construed in order to effectuate the purpose and intent of this Agreement.

15.6 Each notice or other instrument referred to in this Agreement shall be in writing and shall be deemed “given” to a party when delivered by hand, when given by facsimile transmission during normal business hours or three (3) days after a writing is deposited in the mail, postage prepaid and registered, addressed to each party at the address set forth below or at such other address as such party, by notice to the other party, may designate from time to time.

If to TRISTAR:
TRISTAR Risk Management
100 Oceangate, Suite 700
Long Beach, CA 90802
Attention: Thomas J. Veale

Telephone: (562) 495-6600
Fax: (562) 432-8619

If to Client:
Mariposa County
PO Box 1917
Mariposa, CA 95338
Attention: Steve Johnson

Telephone: (209) 742-1379
Fax: (209) 742-1378
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their authorized representatives on the dates set forth below.

TRISTAR RISK MANAGEMENT

Date: 6/21/15

By: 

Thomas J. Veale
President

MARIPOSA COUNTY

Date: 7-6-15

By: 

Merlin Jones
Chair of the Mariposa County Board of Supervisors

APPROVED AS TO FORM:

STEVEN W. DAHLEM
COUNTY COUNSEL
EXHIBIT A

COMPENSATION

This Exhibit, effective July 1, 2015, is attached to and made part of the Two Party Claims Servicing Agreement between TRISTAR Risk Management ("TRISTAR") and Mariposa County ("Client") effective July 1, 2015.

Claims Administration Fees
For services rendered pursuant to the attached Agreement, Client will pay TRISTAR an annual Claims Administration Fee of $30,960, payable, in arrears, in four (4) quarterly installments of $7,740.00 for the period July 1, 2015 to June 30, 2016.

These fees are premised on an estimated annual (open) indemnity claims volume of 60 files. Should the actual claim volumes be less than or exceed these estimates by 15%, then both parties will agree to negotiate in good faith, as reasonable fee adjustment.

Bill Review Fees
TRISTAR shall utilize TRISTAR Managed Care (TMC) for Medical Bill Review and PPO Network Access. TMC fees for such services will be paid against individual claim files. The following TMC fees have been agreed to:

- For medical treatment and pharmacy bills reviewed to the Official Medical Fee Schedule or IMFS (Inpatient Medical Fee Schedule): The fee is ten percent (10%) of savings.

- For medical treatment and pharmacy bills that belong to the PPO: The fee is twenty five percent (25%) of the PPO savings.

- For Specialty Bill Review reductions: The fee is thirty percent (30%) of savings.

Case Management Fees
For nurse case management services provided by TRISTAR Managed Care, the fees will be as follows:

- Utilization Review: $95.00 per hour
- Telephonic Case Management: $95.00 per hour
- Field Case Management: $105.00 per hour, plus expenses
- Peer Review: $200.00 flat rate for record review without MD discussion $250.00 flat rate for record review with MD discussion

In consideration of such compensation, TRISTAR shall handle all claims for the period of the Agreement.

Fees for all services are not to exceed $93,000 per year.
In consideration of such compensation, TRISTAR shall handle all claims for the period of the Agreement only.

TRISTAR RISK MANAGEMENT

Date: 6/27/15

By: [Signature]

Thomas J. Veale
President

MARIOPOSA COUNTY

Date: 7-6-15

By: [Signature]

Merlin Jones
Chair of the Mariposa County Board of Supervisors

APPROVED AS TO FORM:

[Signature]

STEVEN W. DAHLEM
COUNTY COUNSEL
EXHIBIT B

GENERAL CLAIMS PROCEDURES & GUIDELINES

This exhibit describes general claims handling guidelines utilized by TRISTAR on our clients’ behalf.

TRISTAR will comply with all rules, regulations and reporting requirements promulgated by state regulatory authorities as to adjusting, licensing, tenancy and claim settlement in each state where claims handling activities are contemplated or where claims adjusting takes place.

All claims must be handled in compliance with these guidelines, incorporating the authority and reporting criteria outlined in the individual account contracts, as well as any special handling instructions agreed to by TRISTAR and its client where they may differ from these guidelines.

CONTACTS & INVESTIGATIONS:

- Upon first notice of injury or claim, the examiner must contact the employer (client) within one (1) working day in order to substantiate causation/compensability and evaluate subrogation possibilities. This contact should also be utilized to facilitate return to work as soon as possible, reinforce prompt reporting and the use of designated medical providers.

- Within one (1) working day of knowledge, contact with the injured worker should be made. This contact sets the tone for positive communication and will provide the examiner the opportunity to establish a good relationship with the injured worker which may eliminate future problems that could lead to litigation.

- Within three (3) working days, contact with the treating medical provider should occur. The purpose of this contact is to evaluate the nature and extent of injury, verify causal relationship, determine disability status and treatment plan, including diagnosis and prognosis, and to provide any necessary authorization. Discussion of return to work should also occur with an effort to identify current physical restrictions with a consideration of potential modified or alternate work.

- Initial investigation should be completed and a reserve established within five (5) working days.

- Prompt follow-up work should be accomplished to complete or investigate new or ongoing issues.

- Appropriate field investigations should be conducted in order to properly evaluate and defend questionable claims, to develop and advance subrogation and contribution claims.
• All coverage issues must be identified, investigated and evaluated. Refer any actual or potential coverage issues to the Client, with recommendations.

RESERVING:

• Initial reserves should be promptly established (within five (5) working days in most cases), and should reflect the estimated ultimate value of each reported claim. Reserving should be realistic and should be established based on the available evidence in the file along with the experience and expertise of the examiner handling the case.

• Revisions to outstanding case reserves must be made immediately when significant developments occur that change the established ultimate value of a claim.

• Claims exceeding the authority level indicated within the Agreement must be reviewed and approved by the Client. Reporting requirements should be followed as outlined below.

REPORTING GUIDELINES:

• TRISTAR will provide a Narrative Serious Loss Report when loss and allocated loss reserves exceed $50,000 the designated authority level established within the Claims Servicing Agreement and/or when one or more of the following situations exist regardless of the level of reserving.

  • Severe head injury involving loss of consciousness and/or hospitalization.

  • Death claim.

  • Spinal cord injury resulting in paraplegia or quadriplegia, either partial or complete.

  • Major amputations.

  • Burn unit cases.

  • Bilateral extremity fractures.

  • ICU or CCU hospitalization.

  • AIDS.
• Employer Liability (Coverage B) claims.

• Bad faith actions.

• Questionable coverage claims.

• All lawsuits naming the Client as a defendant.

• TRISTAR will notify the Client by phone or fax within 24 hours of their knowledge of a reportable claim. This notification will be followed by the required written information within ten (10) working days.

• The Narrative Serious Loss Report will include the following information:

  • TRISTAR Claim Number and Client Claim Number, if available.

  • Coverage confirmation.

  • Complete description of how accident occurred.

  • Information regarding the injured worker, including but not limited to age, occupation, date of hire, average weekly wage and compensation rate.

  • Description of injury, treatment plan, and prognosis.

  • Discussion of all outstanding issues and the plan of action to resolve.

  • Reserve calculations including loss and expense paid to date. The report should clearly indicate on what the reserves are based. For example, if permanent disability reserves are indicated, provide the PD rating equation and the reasoning behind the level of estimated PD.

• Subsequent Reports will be provided upon request.

MEDICAL MANAGEMENT/COST CONTAINMENT PROGRAMS:

• Treatment should be performed and supervised by certified medical care providers of the highest caliber and quality.

• Medical treatment should be directed toward the best result possible, aiming at a return to pre-injury status whenever possible.
• Where possible, given the limitations of litigation and legislated constraints, directing and guiding the injured worker as to the appropriate treating physician should occur.

• Use of Medical Management Nurses is a valuable tool in coordinating medical care and getting injured workers back to work. Cases appropriate for referral may involve:
  
  • Hospitalization or surgery (pre/post).
  
  • Home care nursing requested or needed.
  
  • Pain management program or substance abuse detoxification.
  
  • Non-compliance with physician’s recommended treatment.
  
  • Unclear medical diagnosis or prognosis.
  
  • Frequent extensions of disability by the physician where the injured worker reports little or no improvement.
  
  • Pre-existing condition is complicating recovery or multiple problems are not being adequately addressed by the treating physician.
  
  • All catastrophic cases: spinal cord injury blindness major amputations severe head injuries severe burns multiple fractures or crush injuries massive internal injuries severe hand injuries.

• Cost containment Programs should be utilized on all claims. These programs will include but not be limited to, bill reviews for reduction of billing overcharges, use of PPO/HMO programs when possible, and utilization reviews. Use of independent medical evaluations is appropriate in certain circumstances.
RETURN TO WORK PROGRAMS:

- Every effort should be made to identify modified work the injured worker can perform while recuperating from his or her industrial injury. A modified job might consist of a modification of the duties or hours worked in the employee’s customary job, or it could be an alternative job that meets the worker’s physical requirements.

- When an injured worker is medically eligible for vocational rehabilitation services, the service company should work with the employer and employee to permanently modify or alternate his or her job whenever possible to meet vocational rehabilitation benefit requirements.

- When a vocational rehabilitation specialist or counselor is required, the service company should timely secure the services of a qualified individual. If required by state regulations, rehabilitation counselors should be properly certified or licensed.

LITIGATION MANAGEMENT:

- Cases requiring legal representation will be assigned to an attorney selected from a panel approved by The County of Mariposa which is maintained and reviewable on an annual basis. Attorneys on the approved panel should provide quality services, be familiar with the Workers’ Compensation jurisdiction of the selected case, and charge reasonable rates relative to the local market. Attorneys will work under the direction of County Counsel.

- All assignments to attorneys should contain specific instructions and direction. Discovery and legal activity should be limited to that which is needed to best defend and resolve the pertinent issues of the case.

- Responsibility for maintaining control of defense counsel and expenses remain with TRISTAR.

- Consultation with Client should occur when the exposure exceeds the authority outlined in the Claims Servicing Agreement.

SUBROGATION AND CONTRIBUTION:

- Potential subrogation and contribution situations should be identified and investigated as soon as possible.

- TRISTAR is responsible for developing evidence to support recovery. Assignments to appropriate investigators should occur. Consideration
must be given to the quality of the case, the value of the case, and the cost of various aspects of the investigation. Authority levels must be adhered to as stated in the Claims Servicing Agreement.

- All recoveries must be posted to the claims file and reported in the monthly reconciliation report required by the Claims Servicing Agreement.

**DOCUMENTATION AND FILE MATERIALS:**

- Every claim file should be thoroughly documented. Mandatory forms should be completed and copied to the file. All phone conversations and investigative work should be summarized within the file. Medical information should be updated on a regular basis. Copies of all correspondence should be within the file. All supporting documentation for defending or supporting our position on various issues should be in the file. All bills and payment information should be within the file or readily available electronically.

- File documentation can consist of hardcopy paper files, computerized information, or a combination of both.

- TRISTAR will maintain confidentiality of all data which is of a protected class. This includes work product in litigated and third party cases and medical reports and records relating to the injured employees. Confidentiality of medical records will be maintained pursuant to applicable state laws.
EXHIBIT C

AUDIT UNIT PENALTY ASSESSMENT GUIDELINES

Under the guidelines of legislation regarding Workers' Compensation in the State of California effective January 1, 1990 there are procedures for the assessment of penalties in varying amounts for specific violations of either claim practices or the timely, accurate, and effective provision of benefits to the injured Employees as determined through the audit process of the Department of Workers' Compensation Audit Unit.

It has been clearly stated by the Audit Unit that in the case of a self-insured Employer whose claims are administered by a third party administrator (TPA) that "the penalty imposed shall be joint and several, and shall be served upon both the self-insured and third party administrator."

This is to say that both parties will have the obligation to resolve the payment of the assessment, pay the penalty assessed or to lodge the appropriate defense against such payment if the penalty is felt to be either inappropriate or unreasonable under the specific circumstances that have given rise to the assessment of the penalty in question.

In the event that the penalty assessed is for work done or not done properly by a prior administrator, where there has been a subsequent change in third party administrators the penalty again will be issued as a joint and several document with notice being served upon both the self-insured and the prior administrator.

The schedule of penalties has once again been refined and it is possible that it will be further refined as The Audit Unit continues to draft its procedure manual for the conduction of an audit and the determination of penalty assessment.

In order to determine in an orderly manner who should be responsible for the payment of any penalties assessed, the following guidelines will be utilized by TRISTAR.

NATURE OF VIOLATION AND RESPONSIBLE PARTY (Statutory & Administrative Penalties)

STATUTORY PENALTIES

Labor code §4650 (10% Self-imposed penalty)

Where it is found that an indemnity payment is issued late or inaccurately due to a calculation error, TRISTAR will be responsible for the penalty.

However, in the event that the late payment and or calculation error was based on information the CLIENT had knowledge of, but failed to provide to TRISTAR or the CLIENT provided inaccurate information to TRISTAR, then the penalty would be the responsibility of the CLIENT.
Failure to pay the first Temporary Disability (TD) payment within 14 days of date of knowledge of injury and disability

The “date of knowledge” is determined to be the CLIENT’s date of knowledge, obtained by any source, on the part of an employer or their agent. Where the information has been provided to TRISTAR by the fifth day following the CLIENT’s date of knowledge and the employee and/or CLIENT has filed the claim form with TRISTAR, but the benefit is issued late, then TRISTAR would be responsible for the penalty. Where TRISTAR is not provided notice and sufficient information within five (5) days of the CLIENT’s date of knowledge, or where it is determined after investigation or discovery that the CLIENT’s date of knowledge was actually earlier than stated, the CLIENT will be responsible for the penalty.

Payment of medical bills and mileage requests

TRISTAR will be responsible for penalties incurred for failing to appropriately object to and/or pay medical bills and mileage requests.

The CLIENT will be responsible for penalties incurred as a result of a late objection and/or payment, if first receipt of the bill or mileage request was to the CLIENT and the CLIENT sent the bill late (or not at all) to TRISTAR. Where a penalty arises in this situation the CLIENT MUST provide proof that the bill or request was sent timely to TRISTAR in order for TRISTAR to accept responsibility for the penalty.

All other payment requirements, subsequent to the first TD payment

If all available and accurate information has been provided to TRISTAR and payment is not issued timely, then TRISTAR will be responsible for the penalty. Where the required information is within the knowledge of the CLIENT but has not been provided to TRISTAR, the CLIENT will be responsible for the penalty.

Failure to pay a final Workers’ Compensation Appeals Board Order or Award timely

If an Order or Award is paid late, TRISTAR will be responsible for the penalty, provided the Order or Award was received within the time frame allowed for payment or compliance of same. If TRISTAR did not have service of the Order or Award, but the CLIENT did and failed to make such Order or Award available to TRISTAR within the time frame allowed, such penalty would be the responsibility of the CLIENT.
ADMINISTRATIVE PENALTIES (ASSESSED BY THE AUDIT UNIT)

Failure to comply with any rule or regulation of the Administrative Director (AD).

This is certain to be the area of most discussion in any penalty assessment. TRISTAR’s ability to control the receipt of much of the information identified is difficult if not impossible to control. In light of the ambiguous nature of this penalty, the determination of who is responsible for payment will have to be determined on a case-by-case basis. The following guidelines on specific areas will be the starting point for determining responsibility.

Failure to complete the “Employer” section of a claim form

It should be noted that for this assessment to apply, the claim form must have been returned to the CLIENT and the CLIENT in sending the Carrier/TPA a copy of the form, neglected to complete the appropriate information required. This penalty would be the responsibility of the CLIENT.

Additionally, it should be noted that from time to time TRISTAR may receive a claim form from sources other than the CLIENT (i.e., doctors or Applicant’s Attorney). When that occurs, TRISTAR will document the file that the claim form was originally received from a source other than the CLIENT and forward a copy of the claim form to the CLIENT for completion of the appropriate information and for return to TRISTAR. If the form is not returned to TRISTAR with the required information, the CLIENT will be responsible for the payment of any resulting penalty.

The CLIENT fails to provide an employee with a claim form or provides the claim form late

The legal obligation to provide a claim form to an injured Employee under §5401 rest with the CLIENT. TRISTAR will not provide the claim form to the Employee except on specific request by the Employee or the Employee’s representative, otherwise the claims examiner will advise the requesting party to notify the CLIENT, while at the same time the claims examiner will call the CLIENT identifying the request so that the documentation provision of the claim form can be maintained at the CLIENT’s premises.

Where TRISTAR has documented a request to the CLIENT for state required forms for the purpose of documenting the claim file, as required by §10101.1, but the CLIENT fails to provide the required forms, then the CLIENT will be responsible for the penalty.

Failure to act on required notices/applications

Where receipt of a specific notice is documented by proof of service or any other accepted means and TRISTAR fails to act upon the notice within the required time frame as required by the governing statute, and then the penalty will be the responsibility of TRISTAR. However, if the CLIENT first receives the notice and fails to provide to
TRISTAR in a timely manner then the CLIENT would be responsible for the penalty.

**Division of Workers’ Compensation Notices**

Provided that all required information is available at the time a notice is due, TRISTAR will be responsible for a penalty resulting in the failure to issue a notice, issuing a notice late or issuing an inaccurate notice. Any penalty arising from the CLIENT, or its agent, failing to provide TRISTAR with information available only to the CLIENT or providing inaccurate information to TRISTAR will be the responsibility of the CLIENT.

The CLIENT will be responsible for any penalty incurred as a result of failing to issue a notice specifically required of the CLIENT by the Division of Workers’ Compensation.

**State reporting requirements**

TRISTAR will be responsible for penalties incurred, as a result of failure to timely, accurately and completely file any report specifically required of TRISTAR.

**Failure to pay or appeal Notice of Assessment within 15 days of the issue date**

All such penalties will have to be evaluated on an individual basis and determination made both as to appropriateness of the penalty and identification of the party responsible. The need to act promptly is imperative and any party that delays action in such determination of liability or the need to appeal any notice of assessment will bear the responsibility of this penalty. If liability for the penalty assessment is agreed upon and payment is appropriate, the party responsible for the payment of the assessment will pay the penalty.

**Insufficient documentation to support denial of liability for a claim**

The determination to deny a claim is generally the result of both TRISTAR and CLIENT involvement. Where TRISTAR acts unilaterally in the denial of a claim under such circumstances, the penalty would be TRISTAR’s responsibility. Where the CLIENT has participated in the decision, the penalty would be a shared responsibility. In the event that the CLIENT insists upon denial of a claim against the recommendation of TRISTAR, the entire penalty would be the CLIENT’s responsibility.

**Failure to comply with or appeal any lawful written request of the AD regarding a claim filed within 30 days**

These penalties are TRISTAR’s responsibility provided that TRISTAR has access to the information requested. If the information or action requested requires information within the control of the CLIENT and that information is not provided to TRISTAR in a timely manner so that the written request can be complied with in the time allowed, the penalty assessment will be the responsibility of the CLIENT.
Notwithstanding the above, TRISTAR will only reimburse CLIENT for penalties in excess of 2% of the total contract amount per year.