aascif NEWS

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british columbia
california
colorado
hawaii
idaho
kentucky
louisiana
maine
manitoba
maryland
minnesota
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prince edward island
puerto rico
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saskatchewan
south carolina
texas
utah
washington
west virginia
wyoming
yukon

Summer 2002

www.aascif.org
Welcome to the summer issue of the AASCIF News. I’m pleased to report that the annual AASCIF conference held in New York from August 4 through the 8th was a resounding success. The theme of the conference was “Open for Business – Against All Odds.”” After the terrible events of 9-11, British Columbia’s Workers’ Compensation Board, which is scheduled to host next year’s event in Vancouver, BC generously offered to switch dates with New York. NYSIF President Ken Ross declined the offer, demonstrating the ‘can do’ attitude that New Yorkers are famous for. Ken and his staff then proceeded to put together one of the most successful conferences in AASCIF history. I applaud their dedication and stand in awe of their determination and skill.

The conference covered a wide variety of useful topics including disaster recovery, policyholder service teams, controverted claims, anti-fraud measures, human resources, information technology and e-business. One of the most topical and thought-provoking sessions explored how the New York Fund successfully tackled the problem of getting back in business after the 9-11 attack. Roger Crawford was our motivational speaker and is no stranger beating the odds. Roger has faced multiple physical problems as a result of birth defects. Roger is living proof that it’s possible to overcome the most staggering obstacles through determination and desire. The topic of mental stress claims provided food for thought, as did a very interesting session on a team approach to servicing accounts. The program provided something for all attendees including vendors, delegates, spouses and children. (Needless to say, “The Lion King” proved to be a roaring success with the kids.) Even the weather cooperated as a summer heat wave ended shortly after the conference was called to order.

[I was] extremely proud to be able to host the President’s reception aboard the USS Intrepid, which is such a stirring symbol of our country’s resolve and courage. I thank all of you who attended and made my hosting chores so pleasurable. Monday night was an unforgettable experience. The dinner cruise was first-rate and when the ship passed the general vicinity of where the World Trade Towers’ once stood, passengers observed a minute of silence. We then circled the illuminated Statue of Liberty. And once again, a hush fell over everyone. That memory once stood, passengers observed a minute of silence. We then circled the illuminated Statue of Liberty. And once again, a hush fell over everyone. That memory

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I extend my gratitude to the various committees whose hard work made the conference such a success. As I said during the conference, the real asset of AASCIF is the wealth of ideas and information we collectively possess. Our strength lies in sharing such ideas and supporting each other through research, communication and education. The members of AASCIF are family. Yes, it’s true that families sometimes disagree, but we always move beyond such differences for the greater good.

On another topic, I would like to extend my gratitude to Russ Oliver for his coordination of efforts which have enabled us to get our terrorism coverage issue before Congress. The nation must have a terrorism reinsurance mechanism in place as soon as possible and I think AASCIF has made a sound case to members of Congress on this very important matter.

Well, I’m running out of allotted space, but I don’t want to sign off before I thank all the contributors to this quarter’s newsletter. On page 4, Dave Sandy of North Dakota previews this fall’s meeting of the Finance and Investment Committee in San Diego. The conference will explore effective ways to maintain profitable investment portfolios. On the following page, Oklahoma’s Ann Seibel explores issues surrounding chronic pain and the search for effective treatment of this malady. What happens when a state’s workers’ compensation system buckles up against a federal system? Ohio’s John A. Annarino details efforts to work with representatives of the federal Medicare program. John’s article can be found on page 11. Crisis recovery strategies and business continuity planning are two important topics explored by Kentucky’s Scott McConnell beginning on page 13. Nina T. Brollier of Utah and Mary Beard of Kentucky give an overview of the U.S. Supreme Court’s ruling on the Toyota Motor v. Williams case and its significance to workers’ compensation. Return-to-work coordinators may find this instructive article on page 15. On the facing page, California’s Patrick Andersen reports that the rates of nonfatal occupational injuries and illness decreased in the latter half of the 1990s. Our regular features include a helping of “Dim Sum,” a guide to what’s going on “Around AASCIF,” and a calendar of “Upcoming Events.” And finally, congratulations to the newly elected AASCIF officers for 2002-2003: President Patricia Johnson (MN), First Vice President Lane Summerhays (UT), Vice Presidents Russ Oliver (TX), David Stuewe (NS), Carl Swanson (MT) and Ken Ross (NY), and Secretary/Treasurer Frances Kaitala (MN).

I hope you enjoy this issue and I wish you all a warm and beautiful fall season.

Kenneth C. Bollier
AASCIF President

message from the president
A sharpened focus on safety and a shift in the economy have resulted in a steady decrease in workplace injuries and illnesses in the past decade, according to the U.S. Bureau of Labor Statistics (BLS). A total of 5.7 million such cases were reported in private industry workplaces in 2000. This resulted in a rate of 6.1 cases per every 100 full-time-equivalent workers, the lowest rate since the BLS began reporting this information in the early 1970s.

U.S. AASCIF members’ home states that participated in the survey have all witnessed a general decrease in the rate of nonfatal occupational injury and illness rates. In some states the decrease has been dramatic in just the past five years.

Loss control representatives attribute their improved success partly to a change in their mission from enforcement to consulting. (See AASCIF News, Spring 2002.) They now spend more time advising policyholders how to avoid injuries, rather than focusing primarily on detection of safety code violations. Experts also attribute part of the decline to a shift in employment from heavy production sectors to service industries.

Of the 5.7 million cases, 5.3 million were injuries. Mid-size firms employing 50 to 249 workers generally experienced higher injury rates than smaller or larger establishments.

There were approximately 362,500 newly reported cases of occupational illnesses in private industry. Manufacturing accounted for nearly three-fifths of these cases.

In cases causing lost time from work during 2000, BLS figures show that repetitive motion injuries caused a median of 19 days away from work, followed by falls to lower level (11 days), transportation accidents (10 days), fires and explosions (nine), falls on same level (seven), slips or trips without falls (seven), overexertion (seven) assaults and violent acts (five), contact with objects and equipment (four), and harmful substances (three).

New York experienced just 3.9 cases per 100 full-time workers in 2000. According to the Albany Business Review, this represented a 14.2 percent decrease in the past five years, and reflected a decline of 9,000 cases from 1999 despite an increase of more than 100,000 people in the workforce. New York’s injury and illness incidence rate was the lowest among the 41 states that participated in the BLS survey in 2000.

The Baltimore Sun reported that, due to increased health care costs resulting in higher insurance premiums, heavy-industry employers are providing their workers with tools to prevent injuries, such as back belts for lifting, tough Kevlar gloves for butchers, and box cutters with guards on the blades.

### Nonfatal occupational injury and illness rates per 100 full-time workers, private industry, 1996-2000

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**Source:** U.S. Department of Labor, Bureau of Labor Statistics

### U.S. workplace injury and illnesses per 100 full-time workers

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Another timely topic will involve fixed income investments. We all know that bonds increase in value as interest rates decline; however, the opposite effect holds true when interest rates rise. And so with interest rates being at the lowest level in almost 40 years, strategies need to be developed and implemented to ensure that your bonds can continue to add value as interest rates begin to rise sometime in the not-so-distant future.

So what’s up with the Dow these days? Equity investments are always ripe for discussion, especially now that the pretenders have been separated from the contenders. This year’s presentation on equity will feature a panel of experts in a “point/counter-point” discussion to illustrate the pros and cons of growth, value, and core equity investing styles.

Closely related to equity investing is the ever-changing global economy, where many variables need to be considered to develop accurate projections. No Finance and Investment Workshop would be complete without looking ahead, and the best way to anticipate what’s going to happen in the future is with a professional analysis and forecast of the economy.

An interesting addition to this year’s workshop will be the focus on reinsurance. More important than ever, reinsuring risk has grabbed the attention of almost everyone, especially now that some are viewing reinsurance as an investment decision. Whether you’re a monopoly or operating in a competitive environment, you’re not immune from the effects of this industry. How can you justify the cost? What’s going to happen in the future? A panel of experts will discuss reinsurance from the broker, reinsurer, and actuarial perspectives.

Another item on the Finance & Investment agenda this year is an initiative to provide more timely investment information utilizing the AASCIF web site. The annual AASCIF investment performance results will be presented and discussed. Highlighting successful investment performances within the AASCIF peer group has become one of the workshop’s keynote presentations over the years. The survey conducted of all 38 AASCIF members was coordinated again this year by Bob Merritt from the Injured Workers Insurance Fund of Maryland.

While many insurers have been reporting underwriting losses lately, the added woes of poor investment performances and rising reinsurance costs have many of us wondering what’s going to hit us next. Looking back, 2001 was probably a year that was due to come sooner or later. The stock market bounced up and down in reaction to an uncertain economy, and interest rates were continually reduced to hold back recession.

For appropriate reasons “Lessons Learned from 2001” has been selected as the theme for this year’s Finance and Investment Workshop. Our workshop has been scheduled for September 22-24, 2002 in San Diego, California and is targeted to give participants a better understanding of the past year as well as provide some valuable information for the future. “The intent is to provide an interactive forum where AASCIF members can benefit from exposure to different investment opportunities and strategies,” said workshop chair Leslie Dawe from the State Compensation Insurance Fund of California.

The workshop is expected to draw more than 50 participants from the U.S. and Canada. The format is structured to feature presentations on investment performance and strategies, economic forecasts, technological developments, optimizing surplus, and reinsurance programs, as well as to allow for the exchange of ideas through networking. “The workshop also serves as an excellent opportunity for AASCIF members to share ideas as well as to learn from one another through the individual lessons we have each learned during 2001,” added Dawe.

A welcoming social and dinner are planned for Sunday evening for participants arriving on the weekend. The workshop programs will begin Monday morning and extend through noon on Tuesday.

Workshop Preview

This year’s workshop will feature a well-balanced selection of educational programs for all participants. Here’s a preview of some of the topics that will be addressed:

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Another item on the Finance & Investment agenda this year is an initiative to provide more timely investment information utilizing the AASCIF web site. The goal is to create a universe of quarterly AASCIF investment results that can be shared for comparison and benchmarking purposes. A question was added to this year’s survey that will provide valuable information for developing this population.

Committee members include Chair Leslie Dawe (California), Advisor Jeff Tetrick (Colorado), Ralph Chase (Pennsylvania), Bing Garrido (New York), Mark Johnson (New Mexico), Shawn Johnson (Utah), Bob Merritt (Maryland), and Dave Sandy (North Dakota). The committee’s Executive Monitor is Lane Summerhays from the Workers Compensation Fund of Utah.

So make plans to be in San Diego September 22-24. The 2002 AASCIF Finance and Investment Workshop will be sure to provide you with some valuable information to benefit your organization.
Pain has been recognized as the symptom that most commonly causes people to seek health care. Pain is normally temporary. If no significant tissue damage is present, pain may persist until the healing process is complete, but it is typical for pain to resolve itself. Some people, however, experience a persistent, intractable sensation known as “chronic pain.” It is a part of their daily lives.

Chronic pain continues a month or more beyond the usual recovery period of an illness or injury, or continues for months or years as a result of a chronic condition. It may be continuous or it may come and go. An affliction that disables millions of Americans, it is a source of frustration for many health care professionals seeking to provide care and assistance to their patients. It is a condition that affects the quality of life and the economic security of not only the person with pain, but also his or her family. Its economic costs are high with estimates that U.S. businesses lose about $90 billion annually to sick time, reduced productivity, direct medical costs, and other benefits costs due to chronic pain among their employees.

Millions of people suffer the effects of chronic pain. A recent news poll found that one in every five Americans reports suffering from some form of chronic pain, and seven in 10 say it interferes with their daily lives.

Unlike acute pain, in which the body’s alarm system signals that something is wrong, chronic pain serves no such purpose but it causes untold misery to its sufferers and their families.

The first pain doctors were anesthetists, because they were trained to do epidural injections that blocked the nerves carrying the pain messages. In the late 1940s and early 1950s the first pain clinics began springing up in the United States. University College Hospital set up the first nerve block clinic in 1948. Since modern medicine was saving more lives, more people were surviving longer, but often they were in pain. Many patients had permanent changes in their body as a result of an illness or injury and they suffered from chronic pain that was untouched by the best pain-killing drugs of the time.

Today, many still live in pain, even after attending pain clinics. With varying degrees and causes of chronic pain, both known and unknown, more research is needed into the causes and treatments for this insidious affliction.

In the United States, back pain is probably the most common form of chronic pain, responsible for the loss of millions of workdays a year. Back pain has many causes. Many suffer from acute back pain which comes on suddenly. This can usually be treated with a few days of bed rest, followed by an early, but gradual, return to work. Frequently, chronic back pain is treated with anti-inflammatory drugs, however, sometimes if the pain persists, epidural injections are considered.

Learning how to cope with chronic pain may become a reality for many. At some point most chronic pain sufferers are told simply, “Learn to live with it.” For many the solution may be found in practicing pain management. Sound pain management techniques help by focusing on reducing the sense of suffering experienced by the person with the chronic pain. It blends physical, emotional, intellectual and social skills in such a way as to help chronic pain sufferers regain control of their lives, thus enhancing the quality and pleasure of life. Although the pain may never go away, it is possible to reduce it substantially, and more importantly, to improve the quality of life. Many who have tried every available medical intervention without success, have found that a comprehensive pain management program can provide them with the necessary skills, medical interventions, and direction to effectively cope with chronic pain.

What to look for when choosing a pain management program? First, contact local health care facilities and rehabilitation centers and have them send information to you about their pain management programs. Once you have all the facts, review each program to determine which one best meets your needs. Be sure to consider the following:

- Are the services covered under medical insurance?
- Do you need a referral?
- What is the length of the program?
- Is the program in-patient or out-patient?

To prevent duplicate testing, obtain copies of your medical records. Talk with both present and past program participants to get feedback about the program.

Most people rarely think about pain until it affects them or someone close to them – then they are unable to think of anything else. Working within a pain management program can be difficult, but pain management can make a significant difference in one’s life.

In an effort to address pain management issues that are of concern to both employers and the medical community, California’s State Compensation Insurance Fund worked with Kaiser Permanente to create the Delayed Recovery Center (DRC). They wanted to address such issues as:

- Why do some patients not recover as expected after a work-related injury?
- Why do they not respond to medical treatment?
- What can be done to get these injured workers back to work?

The goal of the DRC is both to find answers to these questions and to develop effective ways of treating the problem of delayed recovery (chronic pain) so that patients can return to productive employment and live satisfying lives.

(continued on page 14)
**NCCI: 2001 Not A Good Year**

BOCA RATON – Not surprisingly, NCCI Holdings, Inc. announced that the combined ratio for the workers’ compensation market deteriorated for the sixth consecutive year during 2001. The combined ratio reached 121 percent, an increase of three points over the 118 percent in 2000.

But even though industry observers had expected the 9/11 attacks to have a severe impact on the market, NCCI reported that less than 2 percentage points – or $500 million – of the Calendar Year 2001 combined ratio on a net basis is attributable to the terrorist attacks. As additional claims such as respiratory diseases and stress become more certain, the ultimate impact of 9/11 will probably change.

NCCI also reported that in 2001:

- The potential reserve deficiencies on an ultimate payout basis could be as much as $21 billion in 2001.
- During the most recent six years the average annual increase in medical claim costs has risen to 7.5 percent.
- The workers’ compensation residual market grew by 74 percent to $615 million.

**Legislators Lust for Comp Funds**

DOWNERS GROVE, Ill – A number of states facing shortfalls in their operating budgets are turning to their workers’ compensation systems for bailouts, the Alliance of American Insurers complained.

Recent examples include a legislative move in Nebraska to transfer $4 million from the state’s Compensation Court Cash Fund. Minnesota’s legislature also voted in early spring to transfer $95 million from the assigned risk residual fund and $230 million from the second injury fund, according to National Underwriter, and two months later voted to take another $14 million and $20 million from the two funds, respectively. Montana, Colorado, Maryland and New Jersey are also reportedly contemplating such measures.

**White-Collar Claims More Costly**

SAN FRANCISCO – The average costs for workers’ compensation claims filed by professional and clerical workers are more expensive than those filed in other industries, according to the California Workers’ Compensation Institute (CWCI).

The CWCI studied 2.1 million claims filed in California between 1993 and 2000, of which 350,000 involved professional and clerical workers. Business Insurance noted that in 1997, for instance, indemnity and medical payments for such workers averaged $8,657 one year after injury and $21,762 after two years, compared to $8,365 and $20,247, respectively, for all other industries.

**White House Neighbors See Premium Hikes, Non-Renewals**

WASHINGTON – Businesses located near the White House are seeing significant increases in their insurance premiums due to the threat of terror attacks since 9/11, reported the Washington Times.

The International Economic Development Council, whose office is a little more than a block from the White House, received notice from its workers’ compensation carrier that its policy would not be renewed. A nearby law firm was informed its policies henceforth would contain exclusions of war and terrorism, the paper reported.

“Obviously, proximity to the White House would raise issues,” said a senior insurance executive.

**Injured Kids Not Covered**

NEW YORK – Most newspapers fail to provide workers’ compensation coverage for the children who deliver papers to subscribers’ homes, reported the Wall Street Journal.
around aascif is a regular feature of the AASCIF News. It briefly covers items of interest submitted by AASCIF members or gleaned from their websites, newsletters and other published news sources. To ensure that your organization is included, send information to Patrick Andersen, c/o Communications—15th floor, State Compensation Insurance Fund, P.O. Box 420807, San Francisco, CA 94142-0807, (415) 703-7013, Fax (415) 703-7028, pwandersen@scif.com.

Alberta

The Board of Directors of the Workers' Compensation Board-Alberta named Guy Kerr President and CEO, effective July 1, 2002. "After an extensive search process, we are confident that we have hired the best candidate to lead the WCB-Alberta forward in our continued commitment to be fair, open and accountable to all our stakeholders,” said WCB Chairman Rick LeLacheur.

In addition to his extensive knowledge of WCB-Alberta operations, and insight into the challenges faced by the workers' compensation system, Kerr brings 11 years senior management experience to this appointment. Since joining the WCB, Kerr has had executive responsibility for key areas of the business, including the Customer Contact Centre, Medical Services, Strategic Planning, and Communications. He was previously the Vice-President of Customer Service and Disability Management. Prior to joining the WCB, Kerr was the President and CEO of Payment Systems Corporation, an IBM subsidiary.

In addition to his role at the WCB, he is currently the Chair of the Board of Directors for the Edmonton Corporate Challenge, and also serves on the University of Alberta Alumni Council. He has a Master of Business Administration from the U of A.

“The WCB is a good organization, and it’s getting better thanks to the dedication and commitment of its people. I’m looking forward to leading the organization in meeting the challenges and opportunities it faces now, and in the future,” said Kerr.

The WCB announced the opening in April of the Millard Health Centre near the Edmonton Airport. The new facility, which provides physical, social, psychological, vocational and other rehabilitative services to injured workers, will house 280 staff and treat an average of 5,000 Albertans annually.

More than 3,000 employers shared $24.7 million in Partners in Injury Reduction (PIR) rebates for the 2001 program, the WCB reported. PIR is a voluntary premium incentive program designed to encourage injury prevention and workplace health and safety practices. About 39 percent of Alberta's workforce was employed by PIR participants, according to Chairman LeLacheur.

Arizona

SCF of Arizona closed the books on the 2001 year servicing more than 51,000 policyholders, the largest number in its 32-year history. SCF is now handling cases for six insolvent carriers in the state. In accordance with state statute, SCF is mandated to “manage the claims of any insurance carrier or self insured employer that is unable to fully comply with the provisions of the workers’ compensation law relating to the payment of compensation, medical benefits or the final orders of the commission.”

British Columbia

The Workers’ Compensation Board’s Research Secretariat announced that $3.3 million had been made available for projects falling within five research themes. The recipients of the grants will be announced this summer.

California

The Insurance Commissioner approved a 10.1 percent average increase in workers' compensation rates effective July 1. The mid-year increase had been proposed by California’s Workers’ Compensation Insurance Rating Bureau.

A repeat of the Great Earthquake of 1906 in San Francisco could cause as many as 78,000 injuries, 5,000 deaths and $7 billion in workers' compensation losses if it occurred today, according to a report by Risk Management Solutions. That quake measured 8.3 on the Richter scale. In the wake of 9/11, insurers are increasingly gathering more detailed information on workers' compensation exposures due to catastrophic events.

A baker in Orange County received more than $500,000 in medical benefits and workers’ compensation payments after a restaurant explosion and fire left burns on 60 percent of his body two years ago. But a deputy district attorney says the fire was actually caused by a methamphetamine lab the baker was operating upstairs in the attic, and has charged the baker with workers’ comp fraud and grand theft, according to the Los Angeles Times.

Seventy-four percent of personnel managers in the Sacramento area believe some workers take unfair advantage of workers' compensation insurance, and 26 percent believe one-fourth to one-half of all workers' comp claims involve fraud, according to a report in the Sacramento Business Journal.

(continued next page)
Hawaii

Hawaii Employers’ Mutual Insurance Company (HEMIC) is releasing two web-enabled service enhancements, an account inquiry/information system and an on-line application and quoting system. Also underway is conversion to a more robust and fully integrated claim system.

HEMIC has recently launched a new series of television commercials featuring key agents and policyholders. The ads also create a link to HEMIC’s widely recognized and well established print media advertising. Previously, HEMIC’s television advertising focused on name recognition. The new campaign includes specific messages about workplace safety and fraud prevention.

GEO Bob Dove has recently joined the NAII Workers’ Compensation Committee. A major topic at the May 15th meeting in Des Plaines, Illinois, his first: “State Funds.” Timing is everything.

Manitoba

The Workers’ Compensation Board observed the national Day of Mourning on April 26 by lowering its flag to half-mast and observing a moment of silence in honor of workers who were killed or seriously injured on the job.

Mississippi

A new state law will allow the Commerce Department to create an insurance fraud investigation unit but provides no funding for its operation, according to a report in the Minneapolis Star Tribune. But with observers estimating that fraud costs the industry in Minnesota hundreds of millions of dollars each year, political observers predicted that a funding mechanism would be worked out for the new unit.

Missouri

The Missouri Division of Workers’ Compensation Fraud & Non-compliance unit recently announced that 32 employers had agreed to pay nearly $90,000 in fines for failing to provide coverage for their employees, according to a report in the St. Louis Business Journal. The report also noted that several workers had pled guilty to filing fraudulent claims.

Montana

The Montana State Fund (MSF) Board of Directors authorized new rates effective July 1, 2002. Overall, the average price for coverage rose less than 4 percent, in sharp contrast to national trends toward much higher rates of increase.

“The most recent survey data on insurance rates taken by the Council of Insurance Agents and Brokers shows that the marketplace, which had been hardening more than two years before the (9/11) attacks, is experiencing sharply higher premiums, higher deductibles, lower reinsurance limits and restricted capacity from coast to coast and across the major lines of commercial insurance,” said Herbert Leuprecht, chairman of the MSF Board. “While no one likes a price increase, the reality in today’s world is that the costs associated with risk are rising, and insurance premiums need to reflect that fact.” (continued next page)
Montana  (continued)

MSF President & CEO Carl Swanson added, “The good news is that in stark contrast to the significant price increases occurring nationally, our competitive financial position and surplus is really going to work for Montana businesses in providing market stability and more manageable price increases of less than 4 percent overall on our entire customer base. Some Montana businesses will face increases above this percentage based on their individual characteristics and losses, just as some, for similar reasons, will be priced below our average price increase.”

Since 1994 the cost of workers’ compensation coverage for Montana businesses has actually decreased by 38.9 percent. There was a downward trend in the frequency of claims in the 1990s due to a strong economy and increased awareness of the importance of safety in the workplace. However, costs for medical care continue to rise, driven by inflation and advancements in medical technology and procedures. Added to this are the impacts from the 9/11 attacks.

North Dakota

North Dakota Workers’ Compensation (NDWC) rolled out online payroll reporting for sole proprietors and partnerships. While programmers were especially focused on reducing employers’ reporting time requirements and easing administrative workloads, they also paid particular attention to keeping the data confidential, noted NDWC CEO Brent J. Edison.

NDWC has appointed Mark Armstrong as its new public relations manager. He previously performed in a variety of assignments at radio station KFYR, including hosting the popular “What’s on Your Mind” and “ProChat” talk shows aired each weekday.

Northwest Territories & Nunavut

Andrew Wong was appointed chairman of the Board of Directors of the Workers’ Compensation Board. Already a board member for the past two years, he brings extensive WCB experience and a strong financial background to his new role.

Ohio

The Bureau of Workers’ Compensation (BWC) will keep rates at their current level for the 2002 premium year beginning in July, and will also grant a one-time 75 percent break on premium bills for the first half of the year, the Cincinnati Business Journal reported.

Employers in the state will pay about $187 million less next year than they did in 1998, while the one-time dividend will save employers more than $600 million.

“Our unique efforts in Ohio to improve safety in the workplace and to speed medical treatment and return-to-work efforts to injured Ohioans is truly paying off,” said BWC Administrator James Conrad.

The Ohio Supreme Court ordered the Baltimore Ravens to pay a $50,000 fine for failing to pay workers’ compensation benefits to five players injured when the team was still playing in Ohio as the Cleveland Browns. The team was self-insured.

In March the BWC debuted a CD-ROM training program designed to reduce workplace injuries. The Industrial Learning Alliance (ILA) will distribute the free program of five CDs to Ohio’s 23,000 manufacturers. The program is a result of a partnership of the BWC, ILA, Department of Development, Department of Education, Ohio Board of Regents and the Ohio Manufacturers Association.

(continued next page)
Oklahoma

Governor Frank Keating approved House Bill 2370 which provides for the renaming of the managing executive of CompSource. Pursuant to HB2370, Commissioner Terry McCullar's title is changed to President and Chief Executive Officer.

CompSource Oklahoma’s newly implemented agent plan may be just what the doctor ordered to boost Oklahoma’s ailing workers’ compensation insurance market. As more national carriers continue to exit the Oklahoma market, many independent insurance agents have been scrambling to find a viable market to write coverage for their clients. The plan opened the door for both independent and direct agents to write coverage through the state’s only assured market for workers’ compensation. CompSource has written in excess of $7.5 million in premium through the new plan to date. “We’re receiving an average of 20 submissions daily from agents,” said David Fain, CompSource’s underwriting manager.

Gov. Keating signed into law a bill that will regulate professional employment organizations (PEOs). According to the Oklahoman newspaper, the law will ensure that PEOs are in compliance with state insurance laws and will settle the question of whether workers are employees of the business client or the out-sourcing co-employer. The law becomes effective in November.

Pennsylvania

A recent article in the Philadelphia Inquirer indicated that an increasing number of construction laborers in this area are undocumented aliens who work for low wages paid in cash, receive no workers’ compensation coverage and fear deportation if they complain. The lower labor costs enjoyed by subcontractors who employ illegal aliens create an unfair competitive edge over construction companies that follow the rules; for instance, an undocumented carpenter might work for as low as $8 an hour compared to the usual wage of $18 to $24 plus benefits. But the events of 9/11 have forced the Immigration & Naturalization Service to devote its enforcement activities toward investigating possible terrorists. “Our number-one priority now is national security and counter-terrorism. Drywall and construction are pretty far down the line,” an INS official told the paper.

The Workplace Safety & Insurance Board (WSIB) recently awarded prizes to high school students who participated in the first Ontario Workplace Safety Student Video Contest. The $1,000 first prize went to students of Ancaster High; the $750 second prize was won by Banting Memorial High in Alliston; and Ottawa’s Canterbury High won the third prize of $500.

Mitch Lyons, a former player for the Pittsburgh Steelers whose football career was ended by an injury in December 1999, lost his appeal of a section of Pennsylvania’s workers’ compensation law that limits workers’ compensation benefits for professional athletes. According to the Associated Press, Lyons now works at a financial management company making about one-eighth what he earned in football. In addition, he gets $117 a week in workers’ compensation benefits.

A 1998 Texas Mutual investigation led to a March 1999 audit of Recovery Analysis Inc. entered into a plea agreement to the second-degree felony charge of aggravated theft of over $100,000. Recovery Analysis will pay a $10,000 fine and $168,346 in restitution to Texas Mutual Insurance Co. and 16 other participants in the federal and state workers’ comp systems.

The Workers’ Compensation Board released a report on “Estimating Earnings Capacity,” commonly known as “deeming.” The report recommends, among other things, the creation of medical review panels and that benefits for workers be extended beyond the date of deeming. Committee members representing both employers and workers voiced disagreements with various parts of the report.

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Coping With MSP in Ohio

By John A. Annarino, Ohio

“What’s that?” and “I hope it is not terminal” were the likely responses to any mention of MSP (Medicare Secondary Payer Act) in the workers’ compensation arena in Ohio in the not-too-distant past. Now, the mere mention of the three letters often results in not an interrogative, but an expletive. At the very least, there will be heard a collective groan from those of us who are in the trenches of the workers’ compensation practice. It remains to be seen whether or not the “condition” of MSP is terminal.

A November 2000 article in The Ohio Lawyer, a publication of the Ohio State Bar Association, probably served as the greatest impetus to bring MSP into this state’s spotlight. To this point we had assumed the federal government had absolutely no interest in Ohio workers’ compensation matters.

The relevant U.S. Code provision is not particularly complex — Medicare will not make payment “with respect to any item or service to the extent that... payment has been made or can reasonably be expected to be made promptly (as determined in accordance with regulations) under a workmen’s compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance.” [42 USC Sec. 1395y (b)(2)(A)(ii)] With this language Congress has made it clear that any coordination of benefits between the federal government and a state’s workers’ compensation program is one-way — if a medical bill could be paid under workers’ compensation, it will not be paid by Medicare, with exceptions not relevant here. The position is most succinctly stated in numerous places under virtually every topic on the CMS (formerly HCFA) website:

Payment under Medicare may not be made for any item or service when payment has been made or can reasonably be expected to be made for such item or service under a Workers’ Compensation (WC) law or plan of the United States or any State. If it is determined that Medicare has paid for any item or services that can be or could have been paid for under WC, the Medicare payment constitutes an overpayment.

www.hcfa.gov/medicare/coh/providers/pro_src.btm

The Code of Federal Regulations specifically addresses recovery by Medicare of “conditional payments,” and payments made in settled cases. In view of the strict timeframes in which a claim must be adjudicated in Ohio, it is unlikely Medicare will make a conditional payment as a result of delay. Additionally, Ohio’s reimbursement to service providers is typically greater than that of the federal government, further minimizing the likelihood Medicare will be making conditional payments in Ohio.

Of far greater concern is the emphasis Medicare appears to be placing on settlements. The regulations specifically address a “shift” of the medical costs of a workers’ compensation settlement to Medicare, and contemplate that insurers and beneficiaries may conspire to maximize indemnity benefits, leaving Medicare to hold the medical “bag.” To minimize the shenanigans of workers’ compensation participants, the regulations go so far as to permit Medicare the opportunity to ignore the settlement, or, if Medicare is not satisfied with the parties’ allocation of settlement amounts to future benefits, provide Medicare with a formula to make its own calculation of future medical costs in the settlement amount.

For each of the past several years, Ohio has expended approximately $150 million to settle nearly 25,000 claims. To address Medicare’s interests in this area, representatives from the Ohio Bureau of Workers’ Compensation held a meeting for claimant and employer representatives, including trade associations and self-insuring employers. Representatives from the Office of the Attorney General and the Industrial Commission of Ohio were also present. We learned that a few claimant representatives had received inquiries from Medicare Intermediaries, and some had begun to draft correspondence requesting Medicare’s approval of proposed settlements. Not one representative indicated having received such approval; to the contrary, most reported receiving no return correspondence whatsoever, even after a period of several months. A few indicated multiple receipts of the same inquiry. Employer representatives reported no dealings with Medicare on settlements or other workers’ compensation matters.

While it is exceedingly rare that representatives from such diverse and adversarial groups can agree on anything, we were “of one mind” on two points: first, all agreed that the state’s settlement practices were a valuable aspect of and benefit to the Ohio workers’ compensation system; and second, medical bills that should be paid under Ohio workers’ compensation laws, would be paid in the respective Ohio claims. The challenge was to determine a methodology for satisfying Medicare’s interests, without jeopardizing Ohio’s administrative settlement process.

An Ohio “delegation” consisting of agency representatives, as well as representatives from the Ohio Academy of Trial Lawyers and the Ohio State Bar Association, accepted CMS’s invitation to attend a meeting with its representatives in Baltimore. Our goal was to persuade Medicare representatives that Ohio intended to be in full compliance with MSP.

At that meeting we learned an extremely important aspect of Medicare’s approach to the MSP is the role of the Coordination of Benefits Contractor, GHI, whose representatives played a large part in the presentation. GHI is not really involved on the enforcement side of Medicare; rather, it is in the business of collecting data. Indeed, the focus of GHI’s inquiry centered on retrieval of workers’ compensation settlement data by Social Security number and diagnostic code. GHI and Medicare had no experience with Ohio workers’ compensation. While their representatives discussed obtaining the data necessary to “contact the underwriter” and “negotiate” reimbursement of a bill paid by Medicare, we were trying to explain that we were the underwriter, and there was no negotiation necessary — if the bill was properly payable under Ohio workers’ compensation laws, it would be paid.

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Much of our approach was to convince the Medicare representatives that we had no intention of shifting costs from the state program to the federal government. We brought with us revised settlement forms to which we added language apportioning the settlement amount among indemnity, medical treatment and prescription drug categories, a practice that is not required under Ohio law, but is assumed by Medicare. We also included on our settlement documents specific instructions advising the parties that Medicare will not pay for medical bills for which the settlement amount contemplates future payment. We suggested a “pilot” program in which we would forward a random selection of settlements to Medicare to ensure that Ohio’s actions reasonably accommodated Medicare’s interests. The Medicare representatives appeared generally pleased with our efforts, and suggested that Ohio was far down the list of states with which it should be concerned. We were promised a follow-up communication.

The follow-up communication came in the form of a conference call, with a rather surprising new direction by Medicare. To this point our discussions had focused exclusively on settlements; now Medicare was requesting Social Security numbers, diagnostic codes and additional data on all open claims. Again, the Ohio delegation attempted to persuade the Medicare representatives that we intended to comply fully with MSP, but that Medicare should be reasonable in its approach, and that reviewing all files from eternity past was not reasonable. At another follow-up meeting in November 2001, Medicare representatives traveled to Columbus. We proposed Medicare consider a review of a meaningful population of claims defined by the following:

• claims in which the medical costs were of a sufficient amount to trigger Medicare’s interest, and
• claims in which the injured worker was at least 65, or
• claims in which the injured worker had been receiving workers’ compensation indemnity benefits for more than two years.

While the Medicare representatives agreed to review our request, they also requested we review the electronic methodology available to forward to them a number of requested data elements, most notably, diagnostic codes and Social Security numbers.

Subsequent to the December meeting the Ohio Attorney General advised against releasing Social Security numbers for injured workers, without specific authorization. After receiving that decision, Medicare representatives hinted at a possible arrangement in which Medicare would contact OBWC against releasing Social Security numbers. We suggested a “pilot” program in which we would forward a random selection of settlements to Medicare to ensure that Ohio’s actions reasonably accommodated Medicare’s interests. The Medicare representatives hinted at a possible arrangement in which Medicare would contact OBWC with the Social Security number of the injured worker in whose claim(s) Medicare was interested. This proposal appeared to be unbelievably simple, effective and reasonable. If Medicare has reason to believe it is paying bills in a specific claim that it should not be paying, let us know! It avoids the problems with releasing Social Security numbers, it avoids countless wasted hours in human and technological resources, and it does not gum-up the settlement process. Moreover, such arrangement would permit a reasonable investigation of not only settled claims, but could serve as a model for investigating potential conditional payments in other workers’ compensation claims. If this kind of arrangement could be instituted on a “go-forward” basis, it seemed like the greatest potential for the “win-win” situation for both the state of Ohio and the federal government.

Unfortunately, we recently received word from the Medicare representatives that our discussions have been put “on hold.” Apparently, Medicare has decided to pursue its data matching efforts on a larger scale, and to seek workers’ compensation data through some kind of national database. Let us hope, at the very least, that Medicare’s search parameters will consider more than diagnostic codes and Social Security numbers. Let us also hope that Medicare will continue to review its own programs and provide the states with reasonable and certain guidelines, which in turn will maximize the states’ compliance with MSP with minimal invasion into the states’ workers’ compensation programs.
Business interruptions can range from something as minimal as a brief power outage to the complete destruction of a facility.

Since September 11 the need to be prepared for an event that would disrupt the continuity of your business operations should be more significant now than ever before. If there is some indecision within your organization about the need to be prepared for such an event, just ask some of your counterparts at the New York State Insurance Fund about their experiences.

Yes, it is true that the chances of another event similar to that September 11 affecting your business may be unlikely, but the causes of business interruptions are varied and they ultimately all have a negative effect on your organization.

The purpose of this article is to provide an overview and some common sense advice concerning the development and maintenance of a business continuity plan (BCP), some critical plan elements, and some common plan failures. My experience and role in the BCP process has been that of an auditor who has participated in or reviewed each phase of the BCP from development to testing.

Plan Components & Development

For any BCP to be successfully implemented there must be a commitment to the development and maintenance of the plan by management. Support for the plan must be unequivocal and understood throughout the organization. Resources must be dedicated in terms of capital and personnel.

To initiate the project, at least one person should be assigned the responsibility of plan development. This individual must establish a framework within which the plan will be developed that includes project timelines and budgets. Plan development assistance can be solicited from one of several vendors that specialize in BCP development. Assistance provided can range from simple consultation on how to initiate the project to assuming responsibility for the project. Software can also be purchased from vendors that assist in the development of the BCP.

One of the primary exercises that must be conducted during the BCP development process is to perform a business impact analysis. This analysis really provides the infrastructure of the BCP and in essence is an exercise in understanding your business. There are several goals associated with the analysis including identifying and quantifying organizational risks for business continuity, identifying critical business processes, determining maximum allowable downtimes for critical business processes, identifying the resources necessary to recover from an interruption, and quantifying the impact of an interruption to an organization.

Because business interruptions can range from something as minimal as a brief power outage to the complete destruction of a facility, this infrastructure must be detailed and it must be applicable to all interruption scenarios. It is during this phase of the BCP development that cooperation and support from staff is critical. The owners of the business processes must participate with enthusiasm knowing that management supports the BCP development effort.

After the infrastructure of the plan has been developed, an effort must be made to understand and document what business recovery strategies will be utilized for various types of interruptions. The primary factors that determine what recovery strategy will be employed is the length of time an interruption is expected to continue, whether or not the business premises and infrastructure can still be utilized, and the length of time an interruption can continue before risks to the organization in terms of financial loss, image degradation, or statutory non-compliance become unacceptable. Matching the correct recovery strategy to the business interruption is important for the recovery to be effective and efficient.

To this point, exercises in performing a business impact analysis, quantifying risk associated with the impact analysis, and defining appropriate recovery strategies have been performed. The BCP now needs to be implemented and personalized to the organization. Responsibility for recovery processes need to be understood and assigned on a role and personnel basis. Vendors that interact with your organization need to be identified and contact information documented. The plan needs to be disseminated to personnel in the organization so that responses to crisis situations will be uniform and understood.

After the development and implementation of the plan is complete, plan testing needs to be performed. Testing does not have to be an all-or-nothing proposition. On the contrary, to limit the disruptive effects of a BCP test, the test scope can be limited to a particular segment of the BCP. If testing is performed on a piecemeal basis, a rolling test schedule needs to be established to assure that all aspects of the plan are periodically tested. Regardless of scope, testing strategies and objectives should consider both the technical and administrative components of the plan and recovery strategy.

After the BCP has been established, it must be maintained. Just like plan development, the responsibility for plan maintenance must be assigned to an individual within the organization. Maintenance efforts must be consistent, follow an established schedule, and encompass both the technical and administrative components of the plan.

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Critical Plan Elements

There are several plan elements that are absolutely critical to the success of a BCP:

- A data backup and management program must be established and maintained without failure;
- A variety of insurance coverages should be maintained in the appropriate amounts to provide financial support in the event of an interruption;
- Appropriate recovery facilities with the necessary infrastructure need to be available and contracted with for use;
- Complete and updated information with respect to the organization’s staff must be maintained; and
- Back-up procedures and infrastructure to facilitate communication with staff and customers must be established and transparent to both.

Maintaining the BCP in a current state of readiness is probably one of the most common plan failures encountered. Plan maintenance requires constant effort with respect to both the administrative and technical components of the plan. Another problem is maintaining an appropriate level of plan awareness and preparedness with management and staff given the turnover ratios that are generally experienced. Inappropriate or inadequate plan testing is also a principle cause for plan failure.

Claims Experts Eye Program to Manage Chronic Pain

The DRC bases its approach on the latest neuroscientific research into the workings of the brain and nervous system. Tremendous advances have been made in understanding the biological underpinnings of human behavior and how pain signals are conducted to and processed by the brain. The DRC has used this information to understand why disability persists in some individuals and to shape the approach to therapy with these patients.

Initially, 90 percent of the patients referred to the DRC were off work at the time they were referred to the program. Following the program, 80 percent of the participants were either working or going through vocational rehabilitation and they reported a dramatic decrease in pain as well as less use of medication. More than 35 percent reported no need for continued medical treatment for the injury.

Dr. Herington is Board Certified in Occupational Medicine and Internal Medicine. He has a Master’s Degree in psychology and is completing his doctorate.

With the advent of technology that is improved, more robust and more affordable, organizations now have options with respect to BCP recovery strategies that they have not had before. For example, some organizations are now opting to purchase redundant equipment and lease dedicated recovery facilities versus contracting for the right to share the use of a BCP vendor’s equipment and space.

Business continuity planning can be viewed as a necessary evil, but there is no doubt it is necessary. It is an insurance policy that we cannot afford to be without.

Conclusion

The information presented in this article is limited and just begins to provide some of the details necessary to make informed business decisions with respect to the BCP development process. Much of what I have detailed is a direct result of my efforts to improve the business continuity plans of the organizations for which I have been employed.

For information e-mail bill.dyer@icpro.org, call (604) 684-4148, or log onto http://www.icpro.org.

October 16-18, 2002, San Francisco
Four AASCIF Standing Committees including Claims/Rehab, Law, National Issues and Safety & Health, will hold joint workshops at the Westin St. Francis Hotel on Union Square. Contact the committee chairpersons for information.

October 30-31, 2002, Las Vegas
AASCIF CEO Conference.

January 6-7, 2003, Las Vegas
AASCIF All-Committees Meeting.
Many employers and insurers anxiously awaited the January 2002 United States Supreme Court decision in Toyota Motor v. Williams. At issue was whether an employee’s impairment required the employer to make a “reasonable accommodation” under the Americans with Disabilities Act of 1990.

The case heard by the Supreme Court involved Ella Williams, a former employee at the Toyota Manufacturing Plant in Georgetown, Kentucky. While working on an assembly line, Ms. Williams developed repetitive motion disorders in both arms and hands, including carpal tunnel syndrome. Toyota transferred her to a different, less demanding job. After approximately three years Toyota expanded Williams’ job duties. The disorders returned and Williams requested further accommodations. Ms. Williams claimed that Toyota refused her request. According to Toyota, Ms. Williams was eventually terminated from her job for poor attendance.

Ms. Williams filed suit, alleging Toyota’s actions violated the ADA. A lower court dismissed the case, but an appeals court ruled in favor of Williams, citing her inability to hold her hands above her shoulder disqualified her from a “class” of similar jobs.

The Supreme Court disagreed. An opinion authored by Justice Sandra Day O’Connor held that for plaintiffs to prove that they are disabled in the major life activity of manual tasks, they must show that the manual tasks have central importance to their daily lives. The “central inquiry,” O’Connor stated, “must be whether the claimant is unable to perform the variety of tasks central to most people’s daily lives, not whether the claimant is unable to perform the tasks associated with her specific job.” This ruling refined the definition of an impairment that must be permanent and must substantially limit the performance of major activities important to daily life, such as brushing one’s teeth or doing one’s laundry. Therefore, Ms. Williams did not prove that she is disabled by showing only that she cannot perform the specific tasks associated with her job as an assembly line worker.

How does this landmark decision affect workers’ compensation and human resources professionals?

Here is an excerpt from an article written for policyholders in Utah by Barbara W. Sharp, an attorney for WCF in Utah who also has additional law school training in ADA programs.

While the Williams case is of paramount importance to employers facing compliance with the complex federal scheme of laws presented by the ADA, it has no effect on state workers’ compensation law. Employees who become injured in the course and scope of employment may become eligible for lifetime permanent total disability benefits if their injuries prevent them from returning to their previous job duties or any other gainful employment; thus, long-term “reasonable accommodations.” Modifications or other efforts by the employer to allow injured workers to return to work with medically appropriate employment are essential to prevent permanent total disability status. It makes no difference whether the accommodations are required for ADA compliance. For example, in the Williams case Toyota is not required under the ADA to make reasonable accommodations so that she may return to work for Toyota. However, if Ms. William’s carpal tunnel and tendinitis was caused by her work on the Toyota assembly line, the employer’s failure to accommodate her by modifying her position or finding another job for her in the company may mean she will be eligible for permanent total disability benefits under the Kentucky workers’ compensation laws.

We each need to know our state’s workers’ compensation laws regarding permanent total disability and emphasize return-to-work programs whether as the carrier managing the claim or human resources benefit issues. Here is a list of options we need to address when an employee is ready to return to work from a workers’ compensation/FMLA leave or an employee personal illness FMLA leave. The courts look favorably on employers and carriers who focus on returning employees back to work.

- Same job/same duties
- Same job/modified duties
- Different job
- Train in new field

It is especially important for managers to not assume a disability exists. Your human resources professionals must examine each case based on the medical certification received from the employee and his or her physician. You may be able to make a short-term accommodation to get the employee back to work as long as you state it in writing and have an end date. It is also necessary to understand the definition of “disability” and the criteria in your short and/or long-term disability plan. Utilizing cost-effective methods can reduce your medical benefit costs.

While this is a landmark decision for the United States, it may not be for our Canadian counterparts, according to our human resources colleague, Kim Collins-Riffler, WCB, NT. Canadian bureaus should check with their legal counsel regarding this type of situation.

By Mary Beard, Kentucky, and Nina T. Brollier, Utah
AASCIF members’ use of the Internet or the Web to deliver policy and claims information to policyholders, brokers and employees has increased dramatically. This increasing use of the Web means an increased risk to host organizations’ information systems environments. For example, over a one-week period, SecurityFocus of San Mateo, California, tracked 10 million security incidents. The results indicate that 64 percent of the threats targeted the victim’s web applications.

Hackers are a lazy lot - they will target a weak link within a system, the door with the easiest lock to pick! Increased focus over the years has been on hardening systems through firewalls, segmented networks, strong authentication, Virtual Private Networks, and Intrusion Detection Systems. However, it is the internal end user and trusted business partner who are the most important parts of an organization’s information systems security posture. Threats to the trusted user are many, including:

- “Social Engineering” (i.e., the use of non-technical means to obtain information to break into a system);
- Laptop and media theft;
- Remote machine attacks; and
- Malicious code.

The attacker will exercise these threats through a variety of means, exploiting particular known system vulnerabilities by:

- Taking advantage of user trust and user ignorance of corporate policy that it is poor practice to share his or her passwords with anyone regardless of who they are. Earning this unqualified end user’s trust is accomplished via Social Engineering;
- Stealing laptops and removable unprotected media and accessing (and selling) the private data to their advantage;
- Attacking remote host operating system and application vulnerabilities that have not been updated with the latest security patches; and
- Introducing malicious code such as viruses, worms or Trojan horses onto the end user’s machine unprotected from viruses that can later be used for entry into the corporate information system.

Managing the Risk: Security Controls

There is no “silver bullet”; however, there are a number of things management can do to make your network more secure. You can manage the risk by deploying particular security controls to your users’ environment.

1. Periodically require users to read and acknowledge the latest corporate security policies and procedures covering good password management practices and incident reporting. Ensure that they know whom to contact when someone has asked them for their password. Reporting these incidents now may protect others within your organization from the same threat in the future.

2. Ensure that users physically protect their laptops and removable media. If they cannot physically secure their laptop, ensure that they have at least properly encrypted the media or are using strong passwords to protect the media, and have backed up the data to ensure minimum impact of its loss.

3. Ensure that users update their remote computers with the latest software and application security patches. Additionally, they should add a personal firewall to their machines if they are attached to the network remotely via a dial-up or broadband (DSL, cable modem) connection.

4. Ensure that your organization installs virus protection software on each and every host, desktop, and laptop and that the latest virus definitions are installed and are protecting those machines from malicious code.

Resources

This article did not intend to provide all the information necessary to protect the State Funds from Internet threats. There are many other places to go for help. Here are just a few: