



**Workers'
Compensation
Board**

INVITATION FOR BID

New York State Workers' Compensation Board

On Behalf of the Fund for Reopened Cases

Assumption of Liability Policy
for a Group of Claims

Bid Due Date: October 16, 2020

Bid delivery location and additional information:

Courtney Souza
Office of Financial Administration
New York State Workers' Compensation Board
328 State Street, 3rd Floor
Schenectady, NY 12305

INVITATION FOR BID

NEW YORK STATE WORKERS' COMPENSATION BOARD ON BEHALF OF THE FUND FOR REOPENED CASES Table of Contents

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I. INTRODUCTION

A. Background

The New York State Workers' Compensation Board (Board) protects the rights of employees and employers by ensuring the proper delivery of benefits to those who are injured or ill, and by promoting compliance with the law. Workers' compensation benefits provide weekly cash payments and the cost of full medical treatment, including rehabilitation, for covered employees who become disabled as a result of a disease or injury connected with their employment. Benefits may also be paid to qualified dependents of a worker who died as a result of a compensable injury or illness.

New York State employers are required to provide coverage for these benefits to their employees. The Workers' Compensation Law (WCL) states that employers may provide this coverage in one of the following ways: (1) by insuring and keeping insured the payment of such compensation from the State Insurance Fund; (2) by insuring and keeping insured the payment of such compensation with any insurance carrier authorized to transact such business in New York State; or (3) by becoming self-insured.

In 1933, the Fund for Reopened Cases (Fund) was created within WCL §25-a to accept the financial and claims management responsibility for certain qualified claims from insurance carriers and self-insured employers. Liability was transferred to the Fund for claims that were reopened, or death occurred, after a lapse of seven years from the date of injury and either: (1) the claim was previously disallowed or closed without compensation, or (2) at least three years had passed since the last compensation payment. Acceptance of the claim into the Fund shifted all associated liability away from the insurer. In 2013, WCL §25-a(1-a) directed the closing of the Fund for Reopened Cases to new applications on or after January 1, 2014.

On behalf of the Fund, the Board has assigned third party claims administrators to assume responsibility for claims administration, including direct payment of all compensation and medical benefits. WCL §25-a and §50(3) establish the Chair's authority to administer existing claims, procure management for the claims, and to sell such liability. In accordance with this statutory authority, a sale of WCL §25-a claims liability may be accomplished through an Assumption of Liability Policy (ALP), which must be issued for a single complete premium paid in advance for an amount deemed acceptable by the Chair of the Board and the Superintendent of the Department of Financial Services (DFS). The policy must be issued on the prescribed Assumption of Liability form which has the following requirements:

- transfers all "risk" without recourse;
- non-cancelable; and
- unlimited statutory coverage.

B. Purpose

The Chair desires on behalf of the Fund for Reopened Cases to execute an ALP transaction (or transactions) which transfers to a Carrier a group of workers' compensation claims.

C. Proposed Claims for Buy-Out

Ultimately, it is the Board's intention to purchase assumption of liability policies for most (if not all) of the claims of the Fund for Reopened Cases. Towards that end, we have made every effort to group claims for bid in a way that the potential exposure is as predictable and consistent as possible. The claims in this first tranche were strategically selected to include claims with payment history since 2017.

Summary information about the claims included in this bid is as follows (all data as of 5/31/2020):

- Total claims: 1,961
- Total open: 1,339
- Total closed: 622
- Total Reserves Indemnity: \$42,463,415
- Total Reserves Medical: \$75,428,599
- Total Reserves Allocated Expenses: \$2,921,394
- Total Reserves All: \$120,813,408
- Total claims with current biweekly indemnity payments: 406
- Total claims having a medical payment during 2019: 1,302
- Total claims that are apportioned*: 207
- Claims with Indemnity Reserves: 427
- Claims with Medical Reserves: 1,246
- Claims with Defense of Funds Reserves: 1,253
- Total Incurred: \$298,560,217

* Apportionment: Liability for the medical and/or indemnity payments has been deemed to be less than 100%. The balance of the liability can rest with another claim or may have been found unrelated to a workers' compensation event.

The average monthly claims payments for the 12 months prior to 5/31/2020 are approximately:

	Gross Payments
Indemnity Payments	\$165,380/month
Medical Payments	\$501,711/month
Allocated Expenses	\$20,812/month

Until 2018, all the claims within the Fund were administered by the Special Funds Conservation Committee (SFCC). Marsh Risk Consulting conducted various claim audits during SFCC's claims administration period, the most recent of which is included in Appendix I. In 2018, claims administration services were transferred to several third-party administrators. All the claims in Schedule A are currently being administered by NCAComp Inc. (NCA). (See Appendix H for further information on TPA.)

NCA's reserving philosophy is as follows:

- Indemnity: NCA reserves to the most likely outcome of a claim using undiscounted life expectancy tables. In most cases for the 25-a claims, this represents life reserves. NCA reserves do not reflect any potential recoveries. NCA updates these reserves annually.

- Medical: NCA reserves to the most likely outcome of a claim using undiscounted life expectancy tables. NCA uses one year of medical payment history and reduces it for hospital stays or surgeries. These are multiplied by the claimant's life expectancy to calculate a life reserve. If there is an MSA procured, it is used as the reserve. Medical reserves are updated annually.
- Allocated Expenses: NCA reserves to the most likely outcome of a claim using undiscounted life expectancy tables. NCA reserves for IME, litigation and MSA costs if necessary. This is a life reserve.

D. Definitions

The term "Bidder" in this Invitation for Bid shall mean those entities who submit a response in relation to this invitation for bid.

The term "Carrier" in this Invitation for Bid shall mean the selected Bidder whose name and principal address appear on the proposal and signature page.

The term "Effective date" shall mean the date the claims become the financial responsibility of the carrier, including all administrative costs for services provided by any third-party administrator. For purposes of this invitation for bid the effective date shall be 5/31/2020.

The term "Execution date" shall mean the date the policy is issued, claims are fully transitioned to alternative TPA if applicable, and funds are received by the selected Bidder.

The term "Gross Claims Payments" shall refer to all indemnity, medical, and allocated expense payments made less any voided checks from the Effective date through the Execution date.

The term "Reconciliation Fund amount" shall mean the amount equal to the Gross Claims Payments plus third party expenses incurred between Effective date and Execution date.

The term "ALP Execution Amount" shall mean the net of the approved bid amount less the Reconciliation Fund amount.

E. Bidder's Review

Once a Bidder files the intent to bid and Non-Disclosure Agreement (See Appendix A) with the Board, the following will be provided:

- A listing of claims numbers included in this invitation for bid (Schedule A),
- A loss run dated 5/31/2020; and
- Remote access to claims files.

Bidders are provided the opportunity to conduct an in-depth claims review of the book of claims listed in Schedule A and are presumed to conduct their own due diligence with respect to any and all potential claims liabilities they may acquire as part of the contemplated transaction. Please note that traditional historical payment triangles are not available due to the nature of 25-a claims.

F. Claims Files/Data

All the claims files are currently maintained by the Board's assigned third-party administrator, which utilizes a computerized system for claims information. Each bidder must specify its planned course of action for claims administration. Bidders must identify any third-party administrator they may contract with for administration services, including if they intend to contract with the Board's current third-party administrator.

All costs to transfer and convert files will be incurred by the selected Bidder. Once the Bidder is selected, a preliminary transfer schedule will be established (See Appendix G). This will include the transfer of all relevant case materials in paper and electronic format. The Board's assigned administrator will begin working with the new administrator as soon as selected to ensure a smooth transition for claimants.

The selected Bidder will be responsible for any third-party administration costs the Board incurs between the Effective date (5/31/2020) and the Execution date of the transaction (See Appendix F).

G. Bidder's Quote

Bidders proposed quote should be valued as of 5/31/2020 and include a separate component for third party administration costs. It is important to note that payment to the Carrier at the time of execution will be reduced by the Reconciliation Fund amount (See Appendix F).

II. BIDDER QUALIFICATIONS

To be eligible to bid on this contract, a Bidder must meet all the following mandatory requirements:

- 1) Must be: An insurance company licensed to write workers' compensation coverage or workers' compensation reinsurance in New York State which is rated "A minus" or better by A.M. Best for the prior three years;
- 2) Has been writing direct workers' compensation business (primary and/or excess) in New York State (as shown in the Annual Statement, Statutory Page 14 for New York, line 16 and line 17.3) for the prior three years;
- 3) Has an RBC ratio of 300% or higher in the year prior to the release of this Invitation for Bid. The RBC ratio is computed as the ratio of line 28 divided by line 29 as shown in the Annual Statement, Five-Year Historical Data;
- 4) The sum of: i) the Bidder's net booked L&LAE reserves, as shown in the Annual Statement of the Liabilities, Surplus and Other Funds, line 1 plus line 3; and ii) the total of the price that is bid is not more than 300% of the Bidder's surplus as of the most recent year end, as reflected in the Annual Statement of the Liabilities, Surplus and Other Funds, line 37. In the event the Bidder does not meet this criterion, surplus as of the most recent year end may be increased through an additional capital contribution by the Bidder's parent company to meet this criterion prior to the execution of this ALP; and

- 5) Execute a Non-Disclosure Agreement approved by the Board prior to being provided access to the relevant claims material and data (See Appendix A).

III. BIDDER REQUIREMENTS

- 1) Bidder must submit a quote in the form set forth in the Bidder Quote Sheet (See Appendix D). All quotes must have an expiration date no less than 90 days from submission date.
- 2) Bidder must submit the following pages of the most recent Annual Statement submitted to the New York State Department of Financial Services: i) Statutory Page 14 for New York; ii) Page 3; and iii) Page 17 - Five Year Historical Data (See Appendix E).
- 3) Upon acceptance of the bid and terms by the Board, the selected Bidder must submit the appropriate documents and rate filings in support of the Bidder's price, as required by the DFS via SERFF for their approval. For example, support for discounted loss reserves and internal company expenses, including risk margin. Information regarding the SERFF filing process can be found on the DFS website.
- 4) Upon receipt of approval to execute the contemplated ALP by the DFS and the Board, the Bidder will submit a draft executed ALP Policy Form (See Appendix B) and accompanying Policy Information Page (See Appendix C) to the Board for their review and request payment. Upon receipt of payment by the selected Bidder, a fully executed policy will be provided to the Board.
- 5) Upon filing via SERFF with DFS, if the claims are to be transferred, the current third-party administrator will begin testing the transfer of claims to the selected Bidder's administrator to ensure that all claims are transferred by the Execution date.

IV. SCOPE OF SERVICES TO BE PROVIDED

The terms and conditions of the ALP are contained in the ALP policy materials attached hereto as Appendices B, C and D. All the terms and conditions of this Invitation for Bid must be strictly complied with and only minor variations with respect to the style of Appendices B, C and D will be allowed. The Bidder must certify to the DFS that the language contained in the submitted Appendices B, C and D does not materially vary from the language contained in Appendices B, C and D attached hereto.

The Carrier agrees to all terms and conditions as stated in the executed policy. No modifications, endorsements or riders are allowed other than those set forth in Appendices B, C and D.

V. ADMINISTRATIVE SPECIFICATIONS

A. Issuing Office

The Board's representative, Courtney Souza, is the sole point of contact at the Board for matters related to this Invitation for Bid. All bids responding to this Invitation for Bid must be submitted to:

Courtney Souza
Office of Financial Administration
New York State Workers' Compensation Board
328 State Street, 3rd Floor
Schenectady, NY 12305

B. Response Date

Bids may be submitted in response to this IFB until October 16, 2020 at 2:00PM (EDT). Electronic submission may be allowable upon request. **Faxed bids will not be accepted. Late and incomplete bids will not be considered.**

C. Tentative Timetable (Invitation for Bid Calendar)

The Board reserves the right, in its sole discretion, to modify any event, time, or date in the Invitation for Bid Calendar. The Board will notify all Bidders of any changes to the Invitation for Bid Calendar.

	Event	Day	Date	Time
1	Release of IFB	Friday	7/17/20	
2	WCB releases all detailed claim data and permits access to assigned administrator and claims upon receipt of Non-Disclosure Agreement and receipt of Intent to Bid via email	ASAP	ASAP	
3	Written Questions Due from Bidders	Friday	7/31/20	2:00PM (EDT)
4	Official Response to Bidders' Questions Due	Monday	8/17/20	2:00PM (EDT)
5	Bidders Submit Final Audited Quote	Friday	10/16/20	2:00PM (EDT)
6	Selection of Prospective Carrier	Wednesday	10/28/20	2:00PM (EDT)
7	Prospective Carrier's Form and Rate Filing via SERFF with DFS	Friday	11/6/20	2:00PM (EST)
8	Estimated Approval to Execute ALP Policy	Monday	12/7/20	2:00PM (EST)
9	Estimated Execution of ALP Policy	Monday	12/14/20	2:00PM (EST)

D. Questions Regarding this Invitation for Bid

All questions regarding this IFB, supporting documentation or other matters related to this IFB must be submitted in writing to the Board at 328 State Street, 3rd Floor, Schenectady, NY 12305 to the attention of Courtney Souza, via fax: 518-388-1803, or email: WCBContracts@wcb.ny.gov. Formal written questions must be received by **July 31, 2020 at 2:00PM (EDT)**. The Board reserves the right to hold a WebEx depending on nature and extent of questions received.

Bidder may pose specific claims-related questions in writing via email to the Board's assigned administrator once remote access is obtained. Responses from the assigned administrator shall be directed back to the Bidder in the same manner. WCBContracts@wcb.ny.gov must be copied on all such correspondence.

E. Bid Submission

Bidders who wish to be considered must submit to the Board a complete bid in response to this IFB, in a sealed envelope which shall be clearly identified with their name and the words "NYS Workers' Compensation Board – Invitation to Bid Fund for Reopened Cases." A complete bid shall contain all the following:

- 1) Cover letter that includes documentation of Bidders' qualifications;
- 2) Completed Bidder Quote Sheet (See Appendix D);
- 3) Annual Statement for the Year 2019 of the Liabilities, Surplus and Other Funds (NAIC);
- 4) Annual Statement for the Year 2019 of the Exhibit of Premiums and Losses (Statutory Page 14) (NAIC); and
- 5) Annual Statement for the Year 2019 of the Five-Year Historical Data (NAIC).

See Appendix E for sample NAIC pages referenced above.

If a Bidder has any suggestions or anticipated difficulty with any policy provisions, the Bidder must explicitly set forth those issues in its cover letter. The Board reserves the right to reject any or all issues raised by the Bidder and require full acceptance of the terms of this IFB. The Board will consider these issues when evaluating bids. The Board will not consider any issue with a selected Bidder if the issue was not raised in the cover letter.

The cover letter must be submitted on the Bidders' official business letterhead and must be signed by an authorized representative of the Bidder. The Bidder must appoint an official representative for its proposal. The cover letter must include all of the following:

- 1) Name and title of Bidder's official representative;
- 2) Name of Bidder;
- 3) Address;

- 4) Telephone number of Bidder's representative, and fax number; and
- 5) A representation that the signatory to the cover letter is authorized to bind the Bidder to any ensuing policy/contract.

Bids must be submitted to the Board's representative, Courtney Souza, by October 16, 2020 at 2:00PM (EDT). Electronic submission may be allowable upon request. **Faxed bids will not be accepted. Late and incomplete bids will not be considered.**

F. The Board's Rights in Awarding the Policy

In accepting, evaluating and selecting the policy/contract resulting from this Invitation for Bid, the Board, in its sole discretion, reserves the right to:

- 1) Select the Bidder deemed most acceptable to the Board and whose bid represents the "Best Value" to the Board ("Best Value" being the bid having the lowest price that meets the minimum specifications and requirements among responsible Bidders).
- 2) Disqualify a Bidder from receiving the award if such Bidder, or anyone in the Bidder's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- 3) Revise/amend any provision of this IFB, including evaluation instruments and process, by written notification to Bidders.
- 4) Reject any and all bids received as a result of this IFB.
- 5) Waive procedural technicalities in bids received, after prior notification to the Bidder, including the right to waive or modify minor irregularities in the bid or adjust/correct arithmetical errors.
- 6) Eliminate any mandatory requirement that is not met by all Bidders.
- 7) Make inquiries using any means it chooses into the Bidder's background or statements made in the bid to determine the truth and accuracy of all statements made therein.
- 8) Consider late or non-conforming bids in the event that compliant bids are not received.

These specific reservations of rights shall not be construed as a waiver of any other rights of the Board in accepting, evaluating and awarding the policy/contract resulting from this IFB.

G. Policy Term

The term is outlined on the Policy Information Page (See Appendix C). In addition, the conditions are outlined in Appendices B and D. This policy transfers all risks without recourse and cannot be canceled. The submitted Appendices B, C and D cannot materially vary from the language contained in Appendices B, C and D attached hereto.

H. Incurred Costs

The Board is not liable for any cost incurred by Bidders prior to the selection of the winning bid and is not responsible for costs associated with responding to this IFB. The Carrier is responsible for the cost to transfer the claims to an alternative third-party administrator.

I. Disclosure of Proposal Contents

To the extent permitted by law, Bidders' quotes will not be disclosed to any party outside the Board or approving State agencies or their consultants, except for purposes of evaluation, prior to approval of the resulting policy. All material submitted becomes the property of the Board and may be returned at the Board's sole discretion. The Board reserves the right to use any and all non-proprietary ideas presented in any response to this IFB.

If a Bidder believes that any information in its proposal constitutes a trade secret and wishes such information not to be disclosed if requested pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law, the Bidder shall submit, with its cover letter, specifically identifying by page number, line, or other appropriate designation, that information which is alleged to be a trade secret and explaining in detail why such information is allegedly a trade secret. Failure by a Bidder to submit such a letter with its bid identifying alleged trade secrets shall constitute a waiver by the Bidder of any rights it may have under Section 89, Subdivision 5, of the Public Officers Law relating to the protection of trade secrets.

In no event will the Board consider Bidder information to be a trade secret if such information is not identified as propriety information or ideas by the Bidders and so designated in the bid, or if that information:

- 1) was known to the Board before submission of such proposal;
- 2) properly became known to the Board thereafter through other sources; or
- 3) is in the public domain.

J. Media Releases

No publicity or news releases pertaining to this Invitation for Bid or resulting policy may be made without prior written approval of the Board.

K. Non-Endorsement

By selecting a Bidder to supply services to the Board, the Board is neither endorsing nor suggesting that the Bidders' services are the best or only solution for the Board's requirements. The Bidder agrees to make no reference to the Board or this Invitation for Bid or resulting policy in any literature, promotional material, brochures, sales presentation or the like without the express prior written consent of the Board.

VI. AWARD

The Board expects to exercise its right to award the policy to one Bidder based on “Best Value” to the Board. Best Value shall mean the bid having the lowest price that meets the specifications and requirements of this IFB. Once the Best Value Bidder is selected, the selected Bidder will proceed to file all required documents via SERFF with the DFS for approval. DFS will review both the amount of the bid as well as the actuarial valuations and other assumptions that form the basis of the bid. All Bidders agree to fully cooperate with all requests for information and/or clarification of the assumptions used in developing the bid. If a Bidder fails to cooperate with DFS, its bid shall be deemed disqualified.

As a result of DFS’ regulatory and actuarial review of any bid, the Bidder’s quote may be changed. In such event, the Bidder is not required to adhere to the bid as revised by DFS. Rather, the Bidder will be provided five (5) business days within which to either accept or reject the bid amount as revised by DFS. If the revisions of DFS cause the low bid to no longer be the low bid, the Board will proceed to the next best value Bidder and so forth.

Subsequent to the Bidder’s notification of the DFS approval, an Execution date will be scheduled and coordinated with the Board.

VII. PAYMENT METHOD AND FUNDING

After acceptance and approval of the rate filing by the DFS and the Board, execution of the policy will be made upon payment to the selected Bidder. ALP Execution amount, as defined in this Invitation for Bid, will be paid via the Statewide Financial System (SFS). Selected Bidder will be required to establish a vendor profile in order to receive payment.

VIII. APPENDICES

- A. Appendix A Non-Disclosure Agreement
- B. Appendix B Assumption of Liability Policy Form
- C. Appendix C Policy Information Page
- D. Appendix D Bidder Quote Sheet
- E. Appendix E Example of Required Pages of Bidders Annual Statement
- F. Appendix F Reconciliation of Funds Calculation
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APPENDIX A: Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT Between the New York State Workers' Compensation Board and

THIS AGREEMENT is between the New York State Workers' Compensation Board (Board), having its principal place of business at 328 State Street, Schenectady, New York, 12305, and _____ (Vendor), having its principal place of business at _____.

NOW THEREFORE, for and in consideration of the provision to Vendor of information in connection with the Invitation to Bid (IFB) for an Assumption of Liability Policy (ALP) with respect to the _____ (the Trust(s)), Vendor agrees to the following:

1. The Vendor, its officers, agents, and employees shall treat all workers' compensation documents and information that is obtained from the Board as confidential information to the extent required by the laws of the State of New York and the United States and any regulations promulgated hereunder. Unauthorized disclosure of personal, confidential, and/or medical information may result in civil and/or criminal penalties under New York State and Federal laws.

Workers' Compensation Law (WCL) §110-a prohibits any oral description of any Board record as well as the dissemination, release, disclosure, duplication, or publication of Board claim files except in certain limited situations as set forth therein. Pursuant to WCL §110-a(5), any person found in violation of this statute may be subject to criminal and civil prosecution, and fines, and may form the basis for termination of the contractual arrangement between the Vendor and the Board.

All individually identifiable information relating to any claimant, employer, or insurance carrier shall be held confidential and shall not be disclosed by the Vendor, its officers, agents and employees without the prior written approval of the Executive Director of the Workers' Compensation Board or a designee.

The use of information obtained by the Vendor in the performance of its duties to the Board shall be limited to purposes directly connected with such duties. The Vendor agrees that its officers, agents, and employees shall not disclose, show, or otherwise make available any portion of the materials or their contents to any one other than its officers, agents, and employees in connection with the performance of its duties to the Board. The Vendor shall advise the Board of all requests made to the Vendor for information described in this Agreement within twenty-four (24) hours of receipt of such request.

2. All proprietary information (whether oral, visual, written, electronic or in any other form) of which Vendor becomes aware as the result of the performance of services for the Board shall be deemed to be "Confidential Information." Such Confidential Information shall be used by Vendor solely for the performance of services for the Board pursuant to the Contract. Notwithstanding the foregoing, information which falls into any of the following categories shall not be considered Confidential Information:

- (a) Information that is previously rightfully known to the Vendor without restriction on disclosure;
- (b) Information that becomes, from no act or failure to act on the part of the Vendor, generally known in the relevant industry or is in the public domain; and
- (c) Information that is independently developed by Vendor without use of information of the Board or the State of New York ("State")
- (d) Vendor is required to disclose by law, regulation or order of a competent authority; provided, however, that Vendor shall give Board not less than fifteen business (15) days advance written notice of any such requirement in order that Board may seek a restraining order or similar equitable relief or protection which the Board may deem necessary to protect the subject Information; and, if still required, such disclosure shall be permitted only to the extent required to comply therewith and Vendor shall request, upon disclosure, such authority to protect the confidentiality of such Information by protective order or similar restriction against further disclosure.

3. Except as specifically permitted in this Nondisclosure Agreement, Vendor shall not, at any time, in any fashion, form or manner, either directly, indirectly or accidentally, divulge, disclose, communicate or use, any Confidential Information received, obtained, acquired, directly, indirectly or accidentally, or developed relating to the IFB. Vendor further agrees not to divulge information or methods of accessing State data to any person not authorized by the Board to obtain such information and/or data.

4. Vendor agrees that any Confidential Information received from the onset of his/her activities at the Board shall be provided only to those individuals having a "need to know" such Confidential Information.
5. Vendor shall not use the Confidential Information of the Board or the State for any other commercial purposes, other than this IFB.
6. Vendor agrees to be bound by applicable Federal and State laws governing confidentiality and/or privacy of information.
7. Vendor agrees not to issue any press releases, give or make any presentations, or give to any print, electronic or other news media information regarding his/her employment without the advance written approval of the Board.
8. Vendor shall not attach or load any additional hardware or software to the State equipment unless authorized by the Board. Vendor also agrees to use only those access rights authorized for his/her use by the Board to access New York State confidential or proprietary data.
9. Vendor shall access only those directories in the Board's computer information systems as are expressly made available to Vendor by the Board.
10. Vendor agrees to take no actions which intrude upon, disrupt or deny services to the Board's computer information systems, unless directed by the Board's Systems Administrator or his/her designee.
11. Vendor shall abide by all the terms and conditions set forth in the Board's Information Security Policy (Subject Number 419-23, Published May 25, 2005 – Revised October 2, 2012)
12. Independent Contractor Status:
 - (a) Vendor agrees that the legal status of Vendor is that of an employee of an independent contractor and in no manner shall Vendor be deemed to be an employee of the Board or of the State of New York, and, therefore, is not entitled to any of the benefits associated with such employment.
 - (b) Vendor agrees not to use Board or State provided equipment to engage in non-Board related work or communications.
13. Vendor understands that if he/she breaches, or threatens to breach this Agreement, in addition to having his/her services terminated, the Board and the State of New York shall have all equitable and legal rights (including the right to obtain injunctive relief) to prevent such breach and/or to be fully compensated (including reasonable attorneys' fees) for losses or damages resulting from such breach awarded by a court of competent jurisdiction. Vendor acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the confidential or proprietary information identified in this Agreement.
14. This Agreement shall terminate only upon the issuance by the Vendor of an ALP with respect to the Trust(s) covered by this IFB process. In the event the Vendor does not issue an ALP with respect to the Trust(s) covered by this IFB process, this Agreement shall not expire.

IN WITNESS WHEREOF, Vendor has caused this Nondisclosure Agreement to be signed as of the date set forth below.

Signature: _____
 Title: Vendor
 Date: _____

STATE OF _____)
 COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me known, and who, being dully sworn by me, did for himself/herself depose and say that he/she executed the foregoing instrument.

 Notary Public

APPENDIX B: Assumption of Liability Policy Form

ASSUMPTION OF SPECIAL FUNDS FOR REOPENED CASES WORKERS COMPENSATION LIABILITY POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and one Schedule A. It is a contract of insurance between you (the insured entity named in Item 1. of the Information Page) and us (the insurer named on the Information Page). This policy is subject to approval of the Superintendent of the New York State Department of Financial Services and the Workers' Compensation Board and is consistent with the requirements of the New York Workers' Compensation Law. This policy provides for a complete novation without recourse of each and every one of the Workers' Compensation Claims listed by Workers' Compensation Board number attached in Schedule A. The terms of this policy may not be changed, waived or altered.

B. Workers' Compensation Insurance Replacement

As used herein, Workers Compensation Insurance Replacement means the assumption by us of all outstanding or incurred but not yet paid, known and unknown obligations of the claims identified in Schedule A, under one or more specified Workers' Compensation Acts, to pay workers' compensation, volunteer firefighters', and volunteer ambulance workers benefits, as applicable.

C. Who Is Insured

The insured entity named in Item 1 of the Information Page is insured for any and all of the claims listed in Schedule A

D. Workers' Compensation Law

Workers' Compensation Law means the Workers or Workmen's Compensation Law, the Volunteer Firefighters Benefits Law, and the Volunteer Ambulance Worker Benefits Law of New York State. It includes any amendments to those laws. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provision of any law that provides non-occupational disability benefits.

PART ONE – WORKERS' COMPENSATION INSURANCE

A. How This Insurance Applies

This workers' compensation insurance applies to bodily injury by accident or bodily injury by disease and applies to each and every one of the claims identified in Schedule A. Bodily injury includes resulting death.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers' compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claims, proceeding or suit we defend:

1. Litigation costs taxed against you;
2. Interest on a judgment as required by law until we offer the amount due under this insurance; and
3. Expenses we incur.

E. We Will Not Pay

This policy does not obligate us to reimburse you for any amounts you have paid as benefits or any expenses that you have incurred, including, but not limited to, any defense costs or expenses similar to those described in Part One (Workers' Compensation Insurance) Section D that you paid before the policy's effective date.

F. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance. We will not request or accept reimbursement from the Special Disability Fund established within Workers' Compensation Law section 15(8) for any payments we make under this insurance.

G. Recovery from Others

We have your rights as permitted by law, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury.

H. Statutory Provisions

These statements apply where they are required by law.

1. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of your duties under this insurance after an injury occurs.
2. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us.
3. Jurisdiction over you is jurisdiction over us for purposes of the workers' compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
4. This insurance conforms to the parts of the workers' compensation law that apply to:
 - a. benefits payable by this insurance; and
 - b. special taxes, payments into security or other special funds, and assessments payable by us under the law.
5. Terms of this policy that may conflict with the workers' compensation law will be changed to conform to that law.

PART TWO – PREMIUM

A. Single Complete Premium

You will pay the premium for this policy in a single lump sum payment and this policy shall be non-cancelable.

B. Records

All records for the claims listed in Schedule A for the insured entity named in item one of the Information Page will become the records of carrier, as permitted by law.

PART THREE – CONDITIONS

A. Cancellation

You may not cancel this policy.

APPENDIX C: Policy Information Page

Assumption of Special Funds for Reopened Cases Workers' Compensation Liability Insurance Policy

Effective Assumption Date: 5/31/2020	12:01 A.M. Standard Time at the address of the Insured as stated herein
1. Name of Insured Entity and Address	Insured Entity Contact
The Chair of the New York State Workers' Compensation Board on behalf of the Special Fund for Reopened Cases, 328 State Street, Schenectady, New York 12305	Telephone:

2. The Policy is effective as of _____ 12:01 a.m. Standard Time at the address of the Insured's.

3. A. Workers Compensation Insurance: The policy applies to the Workers Compensation Law of the State of New York.

B. This policy includes one Schedule A (listing of covered claims).

4. The premium for this policy will be a single complete premium.

Premium	\$
Taxes	\$
Total Premium Cost	\$

This is a Lump Sum Single Premium

Counter signed this _____ Day of _____

Issued Date: _____

Issuing Office: _____ Authorized Representative

APPENDIX D: Bidder Quote Sheet

BIDDER QUOTE SHEET

**Invitation for Bid
Assumption of Liability Policy
Special Fund for Reopened Cases**

Limit: There are no limits and policy provides full statutory coverage.

Valuation Date of Losses as of 5/31/2020:

Net Bid Amount: \$

Add: TPA fees \$

Gross (Total) Bid Amount: \$

Requirements To Be Stated On Submitted Quote:

- Quote must state it is for all past, present, and future liabilities which will be transferred as outlined in Schedule A of Appendix C.
- Expiration date of quote must be at least 90 days and can be extended based on mutual agreement.
- Quote must state the TPA to be used.
- Quote must state: "This quote is subject to the review and approval of the NYS Workers' Compensation Board, and the NYS Department of Financial Services".
- Quote must state any other item the quote is subject to.

APPENDIX E: Example of Required Pages of Bidders Annual Statement

**ANNUAL STATEMENT FOR THE YEAR 2019
OF THE LIABILITIES, SURPLUS AND OTHER FUNDS**

	1 Current Year	2 Prior Year
1. Losses (Part 2A, Line 35, Column 8).....		
2. Reinsurance payable on paid losses and loss adjustment expenses (Schedule F, Part 1, Column 6).....		
3. Loss adjustment expenses (Part 2A, Line 35, Column 9).....		
4. Commissions payable, contingent commissions and other similar charges.....		
5. Other expenses (excluding taxes, licenses and fees).....		
6. Taxes, licenses and fees (excluding federal and foreign income taxes).....		
7.1 Current federal and foreign income taxes (including \$..... on realized capital gains (losses)).....		
7.2 Net deferred tax liability.....		
8. Borrowed money \$..... and interest thereon \$.....		
9. Unearned premiums (Part 1A, Line 38, Column 5) (after deducting unearned premiums for ceded reinsurance of \$..... and including warranty reserves of \$..... and accrued accident and health experience rating refunds including \$..... for medical loss ratio rebate per the Public Health Service Act).....		
10. Advance premium.....		
11. Dividends declared and unpaid:		
11.1 Stockholders.....		
11.2 Policyholders.....		
12. Ceded reinsurance premiums payable (net of ceding commissions).....		
13. Funds held by company under reinsurance treaties (Schedule F, Part 3, Column 19).....		
14. Amounts withheld or retained by company for account of others.....		
15. Remittances and items not allocated.....		
16. Provision for reinsurance (including \$..... certified) (Schedule F, Part 8).....		
17. Net adjustments in assets and liabilities due to foreign exchange rates.....		
18. Drafts outstanding.....		
19. Payable to parent, subsidiaries and affiliates.....		
20. Derivatives.....		
21. Payable for securities.....		
22. Payable for securities lending.....		
23. Liability for amounts held under uninsured plans.....		
24. Capital notes \$..... and interest thereon \$.....		
25. Aggregate write-ins for liabilities.....		
26. Total liabilities excluding protected cell liabilities (Lines 1 through 25).....		
27. Protected cell liabilities.....		
28. Total liabilities (Lines 26 and 27).....		
29. Aggregate write-ins for special surplus funds.....		
30. Common capital stock.....		
31. Preferred capital stock.....		
32. Aggregate write-ins for other than special surplus funds.....		
33. Surplus notes.....		
34. Gross paid in and contributed surplus.....		
35. Unassigned funds (surplus).....		
36. Less treasury stock, at cost:		
36.1 shares common (value included in Line 30 \$.....)		
36.2 shares preferred (value included in Line 31 \$.....)		
37. Surplus as regards policyholders (Lines 29 to 35, less 36) (Page 4, Line 39).....		
38. Totals (Page 2, Line 28, Col. 3)		
DETAILS OF WRITE-INS		
2501.		
2502.		
2503.		
2598. Summary of remaining write-ins for Line 25 from overflow page.....		
2599. Totals (Lines 2501 through 2503 plus 2598) (Line 25 above)		
2901.		
2902.		
2903.		
2998. Summary of remaining write-ins for Line 29 from overflow page.....		
2999. Totals (Lines 2901 through 2903 plus 2998) (Line 29 above)		
3201.		
3202.		
3203.		
3298. Summary of remaining write-ins for Line 32 from overflow page.....		
3299. Totals (Lines 3201 through 3203 plus 3298) (Line 32 above)		

ANNUAL STATEMENT FOR THE YEAR 2019 OF THE EXHIBIT OF PREMIUMS AND LOSSES (Statutory Page 14)

NAIC Group Code _____

BUSINESS IN THE STATE OF _____ DURING THE YEAR _____

NAIC Company Code _____

Line of Business	Gross Premiums, Including Policy and Membership Fees, Less Return Premiums and Premiums on Policies not Taken		3 Dividends Paid or Credited to Policyholders on Direct Business	4 Direct Unearned Premium Reserves	5 Direct Losses Paid (deducting salvage)	6 Direct Losses Incurred	7 Direct Losses Unpaid	8 Direct Defense and Cost Containment Expense Paid	9 Direct Defense and Cost Containment Expense Incurred	10 Direct Defense and Cost Containment Expense Unpaid	11 Commissions and Brokerage Expenses	12 Taxes, Licenses and Fees
	1 Direct Premiums Written	2 Direct Premiums Earned										
1. Fire												
2.1. Allied lines												
2.2. Multiple peril crop												
2.3. Federal flood												
3. Farmowners multiple peril												
4. Homeowners multiple peril												
5.1 Commercial multiple peril (non-liability portion)												
5.2 Commercial multiple peril (liability portion)												
6. Mortgage guaranty												
8. Ocean marine												
9. Inland marine												
10. Financial guaranty												
11. Medical professional liability												
12. Earthquake												
13. Group accident and health (b)												
14. Credit A & H (group and individual)												
15.1 Collectively renewable A & H (b)												
15.2 Non-cancelable A & H (b)												
15.3 Guaranteed renewable A & H (b)												
15.4 Non-renewable for stated reasons only (b)												
15.5 Other accident only												
15.6 Medicare Title XVIII exempt from state taxes or fees												
15.7 All other A & H (b)												
15.8 Federal employees health benefits program premium (b)												
16. Workers' compensation												
17.1 Other liability—Occurrence												
17.2 Other Liability—Claims-Made												
17.3 Excess workers' compensation												
18. Products liability												
19.1 Private passenger auto no-fault (personal injury protection)												
19.2 Other private passenger auto liability												
19.3 Commercial auto no-fault (personal injury protection)												
19.4 Other commercial auto liability												
21.1 Private passenger auto physical damage												
21.2 Commercial auto physical damage												
22. Aircraft (all perils)												
23. Fidelity												
24. Surety												
26. Burglary and theft												
27. Boiler and machinery												
28. Credit												
29. International												
30. Warranty												
34. Aggregate write-ins for other lines of business												
35. TOTALS (a)												
DETAILS OF WRITE-INS												
3401.												
3402.												
3403.												
3498. Summary of remaining write-ins for Line 34 from overflow page												
3499. Totals (Lines 3401 through 3403 Plus 3498) (Line 34 above)												

- (a) Finance and service charges not included in Lines 1 to 35 \$
- (b) For health business on indicated lines report: Number of persons insured under PPO managed care products _____ and number of persons insured under indemnity only products _____.

ANNUAL STATEMENT FOR THE YEAR 2019 OF THE FIVE-YEAR HISTORICAL DATA

Show amounts in whole dollars only, no cents; show percentages to one decimal place, i.e., 17.6

	1 2019	2 2019	3 2017	4 2016	5 2015
Gross Premiums Written (Page 8, Part 1B, Cols. 1, 2 & 3)					
1. Liability lines (Lines 11.1, 11.2, 16, 17.1, 17.2, 17.3, 18.1, 18.2, 19.1, 19.2 & 19.3, 19.4)
2. Property lines (Lines 1, 2, 9, 12, 21 & 26)
3. Property and liability combined lines (Lines 3, 4, 5, 8, 22 & 27)
4. All other lines (Lines 6, 10, 13, 14, 15, 23, 24, 28, 29, 30 & 34)
5. Non-proportional reinsurance lines (Lines 31, 32 & 33)
6. Total (Line 35)
Net Premiums Written (Page 8, Part 1B, Col. 6)					
7. Liability lines (Lines 11.1, 11.2, 16, 17.1, 17.2, 17.3, 18.1, 18.2, 19.1, 19.2 & 19.3, 19.4)
8. Property lines (Lines 1, 2, 9, 12, 21 & 26)
9. Property and liability combined lines (Lines 3, 4, 5, 8, 22 & 27)
10. All other lines (Lines 6, 10, 13, 14, 15, 23, 24, 28, 29, 30 & 34)
11. Non-proportional reinsurance lines (Lines 31, 32 & 33)
12. Total (Line 35)
Statement of Income (Page 4)					
13. Net underwriting gain (loss) (Line 8)
14. Net investment gain (loss) (Line 11)
15. Total other income (Line 15)
16. Dividends to policyholders (Line 17)
17. Federal and foreign income taxes incurred (Line 19)
18. Net income (Line 20)
Balance Sheet Lines (Pages 2 and 3)					
19. Total admitted assets excluding protected cell business (Page 2, Line 26, Col. 3)
20. Premiums and considerations (Page 2, Col. 3)
20.1 In course of collection (Line 15.1)
20.2 Deferred and not yet due (Line 15.2)
20.3 Accrued retrospective premiums (Line 15.3)
21. Total liabilities excluding protected cell business (Page 3, Line 26)
22. Losses (Page 3, Line 1)
23. Loss adjustment expenses (Page 3, Line 3)
24. Unearned premiums (Page 3, Line 9)
25. Capital paid up (Page 3, Lines 30 & 31)
26. Surplus as regards policyholders (Page 3, Line 37)
Cash Flow (Page 5)					
27. Net cash from operations (Line 11)
Risk-Based Capital Analysis					
28. Total adjusted capital
29. Authorized control level risk-based capital
Percentage Distribution of Cash, Cash Equivalents and Invested Assets (Page 2, Col. 3) (Item divided by Page 2, Line 12, Col. 3) x 100.0					
30. Bonds (Line 1)
31. Stocks (Lines 2.1 & 2.2)
32. Mortgage loans on real estate (Lines 3.1 and 3.2)
33. Real estate (Lines 4.1, 4.2 & 4.3)
34. Cash, cash equivalents and short-term investments (Line 5)
35. Contract loans (Line 6)
36. Derivatives (Line 7)	XXX	XXX
37. Other invested assets (Line 8)
38. Receivables for securities (Line 9)
39. Securities lending reinvested collateral assets (Line 10)	XXX	XXX
40. Aggregate write-ins for invested assets (Line 11)
41. Cash, cash equivalents and invested assets (Line 12)	100.0	100.0	100.0	100.0	100.0
Investments in Parent, Subsidiaries and Affiliates					
42. Affiliated bonds, (Sch. D, Summary, Line 12, Col. 1)
43. Affiliated preferred stocks (Sch. D, Summary, Line 18, Col. 1)
44. Affiliated common stocks (Sch. D, Summary, Line 24, Col. 1)
45. Affiliated short-term investments (subtotals included in Schedule DA Verification, Col. 5, Line 10)
46. Affiliated mortgage loans on real estate
47. All other affiliated
48. Total of above Lines 42 to 47
49. Total investment in parent included in Lines 42 to 47 above
50. Percentage of investments in parent, subsidiaries and affiliates to surplus as regards policyholders (Line 48 above divided by Page 3, Col. 1, Line 37 x 100.0)

APPENDIX F: Reconciliation of Funds Calculation

Effective date: the official date, as set forth in the quote (5/31/2020). This is the date the claims become the financial responsibility of the carrier.

Execution date: the date the policy is issued, claims are fully transitioned to alternative TPA if applicable, and funds are transferred by the Board.

Gross Claims Payments: all indemnity, medical, and allocated expense payments made less any voided checks from the Effective date and Execution date.

Reconciliation Fund amount: the amount equal to the Gross Claims Payments plus third party expenses incurred between Effective date and Execution date

ALP Execution amount: the net of the Approved Bid amount less the Reconciliation Fund amount.

The Board will continue to make timely indemnity and medical payments until the Execution date. Where necessary, the Board may also agree to make indemnity payments after the Execution date to ensure the timely receipt of benefits. These payments are considered reconciliation funds. All calculated reconciliation funds will be netted from the approved bid amount. Check registers will be provided by the current TPA as proof of payment.

Third-Party Administration Costs

The TPA expenses paid from the Effective date to the Execution date will also be netted against the approved bid amount. An estimate amount will be provided to bidders prior to the date quotes are due.

Below is a sample mathematical representation of the above reconciliation fund calculation:

Gross Claims Payments from Effective date to Execution date	\$
<i>plus</i> TPA Costs from Effective date to Execution date	\$
<i>equals</i> Reconciliation Fund amount	\$\$
Approved Bid amount	\$
<i>less</i> Reconciliation Fund amount	(\$)
<i>equals</i> ALP Execution amount	\$\$

APPENDIX G: Third-Party Administrator (TPA) Transition Schedule

In the event the carrier plans to move the claims from the current TPA, the following is the necessary action items to be scheduled and agreed upon prior to execution.

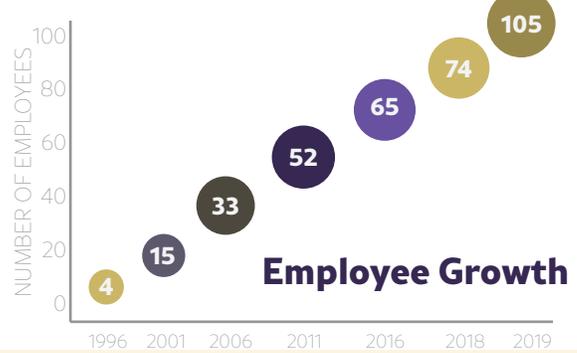
Note: The costs for transition are the responsibility of the assuming carrier.

- Meeting (via Conference Call) to set transfer schedule – prior to execution
- Sample of complete data transfer – prior to execution
Discussion of the following items:
FTP or jump drive
Summary by year and detail loss runs
Explanation of how reimbursements and reimbursement request will be handled
Explanation of any other information on losses
Excess information
- Sample document transfer – prior to execution (complete claim transfer as of X date)
- Date claimants notified of transfer
- Date providers notified of transfer
- Date current TPA stops paying and processing medical bills
- Date current TPA termination of prescription cards
- Date current TPA pay claimant checks through
- Date of final data transfer from current TPA to carrier
- Date of final document transfer from current TPA to carrier
- Date carrier will begin handling claims (**EXECUTION DATE**)
- Date carrier prescription card will become active
- Date current TPA will send all paper documents to new carrier (# of boxes)
- Date carrier will make first indemnity payment

NCAComp, Inc

Company Profile

Incorporated in New York State, and has been doing business since 1991. NCAComp is based in Downtown Buffalo, New York with a Satellite office outside Syracuse, New York.



Our Mission

We strive to offer our clients better control of their workers' compensation programs by utilizing technologically advanced strategies and team-based, flexible problem-solving initiatives to achieve superior outcomes for our clients.

Our Core Values

Communication Honesty/Integrity Teamwork Positive Attitude Adaptability Respect



Types of Business

- Self-Insured Entities
- Large Deductible Plans
- First Dollar Coverage
- Captives
- Run Off claims
- Run Off claims for NYS, WCB and NYLB

Internal Departments

- Bill Review Ancillary Service
- Recoveries
- Nurse Case Management



Types of Clients

- Private Business
- Municipal Entities
- Carrier (Active and Bankrupt)
- Group self-insured trusts in Runoff and bankrupt
- Special funds for reopened Cases

NCAComp, has been involved in 90% of all ALP Transactions in New York State

Why we are Successful in the ALP arena?

We Close Claims!

ALP Experience

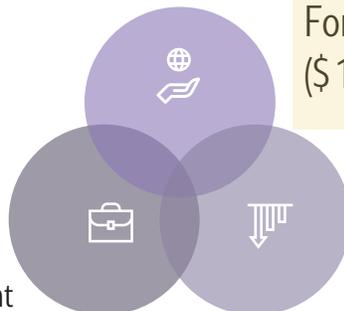
NCA has assisted in 7 of our own runoff clients in successful execution of an ALP Policy. Partnered with a large client to execute 26 ALP Policies and have taken over 3 more groups post-ALP purchase.

Employee Incentive Program

Employees financially benefit from aggressive cost savings on claims.

Cost Containment Services

Negotiations, settlement services, reimbursement efforts, regulatory reporting, and denial of inappropriate medical treatment or services.



2018 Close Claim Statistics

12.1% Of our ALP/Bankrupt Run off Claims
173 Section 32 Settlements
 For a total savings of \$24,801,574
 (\$ 143,362 Average Savings Per Claim)

NCAComp INC.

Special Funds Conservative Committee 25-A Criteria and Standards File Audit

NOVEMBER 27, 2017

Prepared by:
Michael Antonucci

CONTENTS

- 1. Executive Summary 1
- 2. 25A Hearing Representative Files **Error! Bookmark not defined.**
- 3. 25A Examiner Files **Error! Bookmark not defined.**
- 4. Conclusions and Future Recommendations 8
- 5. Scoring Reports 10

1

Executive Summary

Marsh Risk Consulting ('MRC') is pleased to present The Special Funds Conservation Committee ('SFCC') with the results of the 2017 25A Criteria and Standards Audit. This audit was completed the week of October 16th, 2017 at the SFCC's New York, NY location. The results are based upon our consultants' review of the SFCC's electronic files as well as information contained within the WCB E-Case and Stratacare websites.

The project manager for this audit was Michael Antonucci, Vice President, MRC. Senior level oversight was provided by Peter Keane, Senior Vice President, MRC, and Joan Considine, Senior Vice President, Marsh. Peter also participated in the audit as one of our auditors. This report was prepared by Michael Antonucci.

Two (2) types of files handled within the SFCC offices of Albany/NYC, Buffalo and Dewitt were audited. Those file types were as follows:

- 25A Hearing Representative
- 25A Examiner

It was agreed upon that the audit would involve a total of three hundred (300) 25-A files. MRC audited one hundred and twenty six (126) 25-A Hearing Representative files and one hundred and eighty three (183) 25-A Examiner files for a total of three hundred and nine (309) files.

We are happy to report that the combined overall audit score in 2017 for both 25A file types was 98%. This is an excellent score and is equal to the overall 2016 audit score. Note that in 2016 the audit process also included 15-8 Hearing Representative & Examiner files however the 2017 audit did not. As an 'apples-to-apples' comparison, the 2016 combined 25A audit score was also 98%.

As you know, this audit has evolved over the years in response to many things (SFCC process change, technology updates, etc.). The major change to the 2017 audit over prior years, as noted above, was that no 15-8 files were audited as a result of those files being transitioned away from SFCC management. One other change to note is the combining of the New York City & Albany offices.

With regard to our audit process, it remained essentially the same as it was in 2016. Files were selected at random from loss runs provided by Benn Lee of the SFCC. We attempted to have the final file selection as balanced as possible (by office and examiner/hearing representative).

The audit was performed on-site at the SFCC's New York City offices. Our auditors were provided with access to the SFCC electronic claim files within the *STARS* claim management system. The electronic files warehoused almost all of the information needed to audit the 25A files (i.e. activity notes, action plans, payment histories, reserves, hearing reports and related scanned documents data fields).

We were also provided with access to the New York State Workers' Compensation Board's *E-Case* system to view findings of the Board and other scanned documents. In addition, access to the *Strataware* system was provided to examine bill review activity and related scanned medical documentation. *Stratacare* also provided us with access to activity check information.

MRC was asked to only review claim handling activities that took place within the twelve (12) months preceding the date of the audit. We utilized our proprietary audit tool known as *ClearSight Performer* to conduct the audit.

Below is a side-by-side comparison that illustrates the total combined audit scores in each office from the 2015 audit to present. Please note that due to the combining of the Albany & NYC offices the exhibit below provides the combined 2017 score for those offices:

Office	2015 Overall Audit Score	2016 Overall Audit Score	2017 Overall Audit Score
Albany	99%	99%	See below
Buffalo	97%	98%	98%
Dewitt	99%	97%	98.5%
New York	97%	99%	See below
Albany/New York			97%

The overall audit scores were very high and continue a year-over-year trend of excellent results for all file types in every office. We have seen more consistency in the work product of each office over the past couple of years and believe that this is a result of the SFCC utilizing the audit as a tool to not only measure performance but to also improve and further standardize quality amongst the examiners and hearing representatives. In 2015 we began to see clear evidence of this and it has continually gotten better since that time.

Two of the areas where we have seen noticeable improvement and positive change over the past couple of years are with the quality & detail of the 25A hearing reports and the diary approach for the larger reserved 25A examiner files whereby the examiners are setting shorter diaries for files with higher exposure. Both practices are sound and should continue by all representatives and examiners.

All of the areas audited within in both file types continue to be consistent and compliance is generally very good to excellent across the board.

The following two (2) sections of this executive summary provide detail on the results of each file type. Section 4 contains our conclusions and some recommendations for the future. We have also included various scoring reports for each file type and those reports are detailed within Section 5.

Once you have had the opportunity to review this executive summary and the corresponding scoring reports, please feel free to contact me if you have any questions or concerns.

2

25A Hearing Representative Files

Scoring, Observations and Recommendations

	2015	2016	2017
Number of files reviewed:	125	125	126
Total Score:	98% out of 100%	98% out of 100%	98% out of 100%
Highest Scoring Office(s):	Dewitt – 99%	NYC – 99%	Dewitt – 100%
Lowest Scoring Office(s):	Buffalo – 96%	ALB/BUF/DEW – 97%	Albany – 94%

Breakdown by Location

Albany	94%
Buffalo	98%
Dewitt	100%
New York	99%

The three areas audited were file preparation, actions at hearing, and hearing report and follow-up action. The 2017 overall score of 98% matches the 2016 overall score. Overall we continue to see high quality hearing representation and corresponding file documentation within all of the offices. Dewitt continues to be the scoring leader however all of the offices scored excellent. This has been a year-to-year trend for the past few audits and we are pleased to see the ongoing consistency. It is clear that the hearing representatives are aware of the standards that are in place and that they have a firm grasp on the outstanding issues of each case and what needs to be done to address and resolve those issues.

The notes in the file are easy to locate and current. Attachments are clearly labeled within STARS. Hearing prep-sheets were found in almost all of the files audited and provide good overviews of each case as well as direction to counsel. Only one office, Albany, did not score as well as we would like in this area. Further detail is found later on in this section.

The hearing reports, all in WORD format, continue to be very detailed and allow for a clear understanding of what transpired at hearings. They provide a clear summary as well as solid direction to the 25A claims examiners. Each report generally outlines all of the important aspects of the case/hearing by separating the report into the following sections: Decision, Issues, Discussion and Action Plan for Examiner. This practice of utilizing structured hearing reports is an excellent one.

We were happy to see the improvement in file preparation within the Buffalo & Dewitt offices. In 2016, their file preparation scores were both 87.10%. In 2017, Buffalo improved to a 93.75% and Dewitt scored a 100%. One of our recommendations in 2016 was to see improvement in this area from both of these offices and it is clear that there was a focus on doing so. Albany did not score well in the area of file preparation in 2017 – their score was a 70.97%. In 2016 they scored 93.55% in this category. There were instances where we could not locate the file prep

sheet and this was the main driver to the low score. The file prep sheets that we did review are all solid but as noted, they were missing in some files.

Recommendations

Due to the excellent scores within each office, we only have a couple of recommendations. One is to simply continue to focus upon solid file preparation, structured & detailed hearing reports and sound file documentation. In that regard, as is always our recommendation, the reps should continue to effectively utilize the *STARS* system and maximize its capabilities to ensure that reports, results and action plans are documented appropriately.

The one office-specific recommendation is to discuss with the Albany office that the hearing prep sheets must all be attached to each file. As noted above, when we did find the prep sheets in the Albany files they were very good.

3

25A Examiner Files

Scoring, Observations and Recommendations

	2015	2016	2017
Number of files reviewed:	172	170	183
Total Score:	97% out of 100%	97% out of 100%	98% out of 100%
** Highest Scoring Office(s):	Dewitt – 98%	Albany – 99%	Albany/NYC – 98.26% out of 100%
Lowest Scoring Office(s):	NYC – 95%	Dewitt – 96%	Dewitt – 97% out of 100%

** The Albany/NYC and Buffalo scores were so close that we provided the exact scores below to denote which office scored highest. However, they essentially are tied.

Breakdown by Location

Albany/New York	98.26%
Buffalo	98.02%
Dewitt	97%

The 2017 overall score for this category was 98%, and improvement over the 97% scores of 2014, 2015 and 2016. The year-to-year high scores exemplify the ongoing consistency of quality amongst each office.

As you know, the 25A Examiner files are largest and most in-depth file type for this audit and therefore their scores can affect the overall audit score more than the hearing rep files.

There are ten (10) areas of claim handling reviewed and audited within the 25A examiner category and they are as follows: Reserving, Recent CIB in file, Activity Checks, Medical Bill Processing, Medical Documentation to Support Bill Payment, IME / Medical Cost Containment, Pharmacy, Claim Notes, Claim Notes Reflect Open Action Items and WCB forms.

Reserving continues to be an area of strength for the 25A examiners in all offices. We have been finding this yearly as the examiners use the tools available to them within STARS to set a reserve. In addition, they understand the exposure and the details are usually found within the file notes. One practice that we observed more frequently than in years past pertains to the larger reserved files whereby shorter diaries are set for follow-up and review. This is an excellent practice.

The score for recent Central Index Bureau (CIBs) checks stayed steady at 87% in 2017, the exact same score as in 2016. You might recall that in 2014 our audit found an issue with timely CIBs (the score was 75% that year) and it has been getting better since then. We are happy to see the improvement however we do believe that more consistency is needed. The standard set by the SFCC is that CIB reports are to be requested on all claims that were newly accepted

for 25A within the past year or if activity caused the need for requesting reports, such as knowledge of subsequent accidents, gaps in treatment, etc. We found instances where there were alleged exacerbations after periods of time where there had been no treatment activity but updated CIBs were not filed. It is our belief that a CIB should be considered in these instances to ensure that there was no intervening incident that may have caused the exacerbation.

The examiners' score in 2017 for compliance with scheduling activity checks annually on PPD/PTD/Death claims improved to 94%, up from 84% in 2016. In 2014 this was also an area where the overall score was below an acceptable standard (76%) so the improvement from that time is good to see as activity checks are an important tool to ensure continuing benefits are appropriate. Only a small number of files met the activity check criteria in 2017.

The Medical Bill Processing process remains a timely and efficient one within all of the offices. The score was nearly perfect in this category. Medical bill payments are consistently supported by the appropriate documentation.

The IME/medical cost containment scores remained high at 97%, down only slightly from the 98% score in 2016. The examiners have improved in this area from 2014 when the score was a 91%. When reviewing the files it is apparent that there is a focus upon containing the cost of medical. The examiners are generally good at identifying non-related treatment and prescriptions and take the appropriate steps to address those issues when they arise. In that regard, the appropriate forms are filed timely with the WCB when needed to deny treatment/bills.

With regard to Pharmacy, we are asked to audit two related areas: 1) Whether or not the examiner considered conducting drug utilization review on claims with long term prescription usage, and 2) The usage of Express Scripts for claims where there is long term drug usage if a claim is not apportioned, otherwise an adequate explanation should be provided in the claim notes as to why it is not being utilized. The score in this category did improve slightly from an 85% in 2016 to an 88% in 2017.

Buffalo improved greatly in 2017 over their 2016 Pharmacy score of 74%, scoring 93%. Dewitt's score dropped to a 78% from a 96% in 2016. The drop in score is mainly related to the need for more DUR's when appropriate. It is important to note that the number of files where Pharmacy applied in the Dewitt office was thirty two (32). We were happy to see the high scores for the Albany/NYC office as the 2016 scores were below 90% for those offices.

Finally, the files are consistently documented with timely action plans that are detailed and easy to follow. Files are generally maintained on a six (6) month diary however, as noted earlier, for larger valued cases we do see shorter diaries and we believe this is a good practice that all examiners should follow. We noted last year that the evolution of the action plans and consistent diaries has improved the quality of the files and it has also allowed enabled us to audit more efficiently. This practice also helps with supervision and ease of file transition between examiners.

Recommendations

CIB's should continue to be requested at the appropriate time to ensure that no intervening incidents have taken place that might be driving treatment, lost time, etc. We specifically saw a gap amongst all offices in this area when there was treatment after a long period of no treatment. A simple reminder to the examiners of the established protocols related to CIB filings

is likely all that is needed here. The potential benefit of obtaining an updated CIB clearly outweighs the nominal cost of filing for one.

Dewitt needs to be more consistent with considering DUR's when a claim involves long term drug use or in the alternative, documenting why such a review is not necessary. This recommendation was made in 2015 for all of the offices and in 2016 specifically for Dewitt. Other offices have shown improvement here and we believe that Dewitt can as well with a renewed focus.

If not already an established protocol, consider incorporating the shorter term diaries for larger reserved cases, for example 90 day diaries for cases with total incurred reserves set at \$250K or higher.

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Conclusions and Future Recommendations

The 2017 combined audit score of 98% is excellent. Within both 25A file types we have outlined some specific areas where we see opportunity for improvement however no alarming trends were identified nor do we have any major concerns. Overall, the results are very good to excellent. File quality has improved over the years and it is clearly more consistent than it was in the past. It is evident that the hearing reps and the examiners are in tune with the established protocols and standards. Historically our audit results and recommendations appear to have been used by The SFCC to foster improvement where it has been identified as necessary. We have seen upgrades in quality, compliance and scoring and where possible, we hope to see the same moving forward. The very high scores found within certain areas and offices don't leave a lot of room for improvement however, we believe that the scoring should be shared with all of the individuals involved to acknowledge their efforts as well as to help them learn where the opportunities might be to get better in the future.

The following summarizes our observations and significant findings from the 2017 audit and our recommendations for the future:

- Reserving continues to be an area of strength within the 25A Examiner files. There is consistent accuracy with the setting of reserves and the available tools within *STARS* are utilized. Reserve rationales are consistently documented in each file.
- The 25A hearing representatives and examiners continue to exhibit their awareness of the standards and protocols that are in place.
- 25A examiner claim handling quality continues to be on par with the industry standards for workers' compensation claims handling that we see with the major insurers and third party administrators.
- Case summaries are consistently documented every 6 months. Some examiners are updating them every 90 days. We do recommend considering a 90 day diary protocol for higher valued cases (i.e. total incurred equal to or greater than \$250K). We have begun to see evidence of this in some files via the audit process.
- Medical cost containment focus is evident within the 25A Examiner files. Treatment is questioned or denied when not related and/or not within guidelines.
- WCB filings are made timely by the 25A Examiners.
- The usage of DUR's and/or more consistent documentation as to why a DUR is not necessary is needed by the Dewitt office.
- CIB usage amongst the 25A examiners needs to improve in instances where treatment begins after a long period of no activity. A simple reminder to the examiners of the established protocols related to CIB filings is likely all that is needed.
- Compliance with the scheduling of activity checks annually on PPD/PTD/Death greatly improved in 2017 within the 25A examiner files. This was an area identified for improvement in 2016.
- 25A Hearing files continue to be handled extremely well overall. An improvement opportunity related to more consistent attachment of the hearing prep sheets to the files was identified within the Albany files.

- All of the office-specific recommendations identified earlier in this report should be communicated accordingly as there is more than enough time to impact the 2018 audit scores. In addition, the overall audit results should be shared with the offices to acknowledge their success and commitment to quality and continuous improvement.
- We recommend that if/when The SFCC decides to market the bill review services provided by *Stratacare* that it include in their evaluation an analysis of the financial outcomes of each competing vendor. In that regard, the Marsh proprietary tool VCORE (Variable Cost of Risk Evaluator) was created to allow clients to measure each vendor's ability to reduce medical costs, along with a calculation of the bill review fees. We would be happy to further discuss this service with you.

In closing, on behalf of Marsh, I would like to thank The Special Funds Conservation Committee for the opportunity to assist with this annual audit initiative. We are also very appreciative of the long-term commitment you have made to our partnership.

Once you have had a chance to review the report, please do not hesitate to contact me at any time if you have any questions.

Best regards,

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Scoring Reports

- 25A Hearing Representative
 - Scoring by Category
 - Scoring by Category by Office
 - Claim Summaries by Claim Number

- 25A Examiner
 - Scoring by Category
 - Scoring by Category by Office
 - Claim Summaries by Claim Number