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The Next Generation of Panel Management

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I. Introduction

a. Objectives of effective panel management

When discussing panel management, there are two categories of panel to consider, and different sets of objectives related to these categories:

- Coverage counsel:

The primary goal of a panel of coverage counsel is the development of long-term partnerships. In this case, the panel management process should be designed to reduce the number of law firms that have historically done coverage assignments for a carrier down to a smaller set. (Depending on the size of the carrier, this might mean reducing the number of firms from hundreds to tens of firms). This set should be firms that the carrier is interested in partnering with on a long-term basis going forward, and to which the carrier is willing to direct all of its coverage assignments.

- Defense counsel:

The objectives for forming panels of defense counsel are more strongly tied to specific assignment. The firms on each panel need to be those that the carrier has identified that have the strongest capabilities for the specific type of work in a specific jurisdiction. The relationship in this case is most likely going to be between a senior level business unit manager and a specific group of attorneys. By handpicking a particular practice area in a particular location of a firm – and reviewing the performance of these attorneys on a very regular basis -- the carrier ensures that its panel firms offer the best defense for its insureds. This means that defense panels are much more subject to change based on the performance of the firms and the judgment of the panel manager.

b. Current gaps and areas of opportunity for improving panel management

- i. Structuring panel selection to maximize value

The definition of “panel” varies widely among carriers. By instituting greater rigor in the panel selection process and the prerequisites for making changes to panels, a carrier can maximize value for both the carrier and the panel firms.

ii. Applying proven practices across the business

1. Across all jurisdictions

For carriers that operate in multiple regions of the world, it can be advantageous to apply panel management principles in all of the regions in which they operate. These advantages are discussed below.

2. Across all providers

Carriers engage many types of vendors, such as independent adjusters, court reporters, and forensic accountants. There are many benefits to be gained from applying the learnings from a successful law firm panel management program to these other vendors. These benefits are enumerated below.

II. Maximizing the value of panels

a. Mapping the right firms to the work to be done in each jurisdiction

For defense panels in particular, the types of work needed may vary considerably from one jurisdiction to another. The objective should be to identify the offices of firms in each jurisdiction that are most capable of handling the types of assignments required in the jurisdiction. Thus the decisions are made location by location, and specialty by specialty.

b. Limiting panel size

In the case of coverage counsel, limiting size of the panel means that the panel firms are able to make the most of the initial learning curve involved in understanding a carrier's policies and related specific provisions and to build on the knowledge gained as they handle successive disputes. For example, panel attorneys will have developed a working knowledge of the interpretation of underwriting and other issues that an attorney handling a first-time assignment would not have. This creates economies for the carrier. In addition, with a higher volume of work going to a limited set of firms, the carrier can minimize the possibility of conflict issues arising, and can maximize its ability to develop its coverage counsel firms, e.g., to encourage a firm to increase staffing in a jurisdiction where the carrier is experiencing greater activity.

Limiting the size of defense panels puts carriers in a better position to assure quality coverage for its insureds. It enables the relationship-building, as well as control and monitoring, needed to ensure a high level of performance on the part of defense counsel.

c. Performance evaluation

In the beginning, as a carrier begins to refine its panel management program, the selection process for defense counsel may be very subjective: "who do we think are good." However, it is important to put measures in place that will enable more objective evaluation. There is an array of measures that can provide useful input into panel selection and revision. These include:

- Budgeting – How do firms compare to their peers in their area of specialty and jurisdiction in providing realistic and actionable budgets? For example, if Firm A averages 12 budgets per assignment over the course of thousands of assignments but they are rarely accurate, and Firm B averages 2 budgets per assignment and their budgets match well to the ultimate costs, that becomes a valuable factor in decisions about which firm is selected – or kept – on a panel.
- Staffing models – Looking at the percentage of hours billed by timekeeper classification can give an indication of the firm’s efficiency. A firm using more partners, for example, may need to justify that by showing a greater value (e.g., fewer hours billed for similar tasks, better financial outcomes, etc.).
- Surveys – Asking claims handlers to rank a group of firms based on their judgment of each firm’s capabilities in specific skill categories can help to quantify more subjective criteria.
- Score cards – Conducting evaluations of firm performance immediately after a case has been closed enables the compilation of historical firm performance data that can be reviewed over time to determine which firms should be retained on a panel.

d. Mitigating the risk of bad faith litigation stemming from panel management practices

By implementing rigorous panel selection and management practices, carriers are better able to assure its policyholders that the firm selected to defend them will do the best possible job for them.

e. Creating value for panel law firms, not just the client

When the carrier’s expectations are shared with the law firm, the firm is in a better position to deliver on those expectations. A best practice for the firm is to designate a partner to act as a liaison with the carrier for implementing, administering, and ensuring compliance with the carrier’s program. Having the right teams in place for both parties and regular, close collaboration are key.

- i. The firm is assured a satisfactory volume of work, level of compensation
With limits on the number of firms a carrier uses in a given location for a given type of work, panel firms have some assurance of the volume of work they can expect as well as their level of compensation.
- ii. The firm is able to develop their areas of specialty
Similarly, with an adequate volume of work in specific areas of specialty, firms are better able to make staffing decisions that will support continued quality in these areas.
- iii. The firm understands performance criteria by which they will be judged
When a carrier shares the measures it uses for evaluating its panel firms, each firm can do its own internal monitoring, data collection, and analysis.

This increases the likelihood that the firm will be able to meet carrier expectations for performance.

III. Beyond law firms and beyond borders: extending proven panel management practices to other types of vendors, worldwide

a. Why extend panel management practice to other types of providers?

It's not unusual for large carriers to spend a significant amount of money with non-law firm providers worldwide. Where a carrier has established effective processes for defining processes for identifying the best alternatives to fulfill a given type of work, as well as processes that enforce the use of those alternatives, there is value in applying those processes as broadly as possible. The process of identifying panels, defining key business partners, and establishing a structure around hiring, rate negotiation, and performance monitoring and management is valid across categories.

b. For insurance carriers, the range of providers to consider include

- Independent adjusters
- Court reporters
- Forensic accountants

c. Challenges

i. Corporate culture must support

The carrier must have a corporate culture and set of norms to make this form of rigorous panel management work well. A key is developing a consensus among the senior management of the business units involved. They must come to agreement on the measures that will help to move the business forward. Then the business unit leaders must drive the decisions throughout the organization.

ii. Establishing electronic billing across vendors

Unlike the case with law firms, there are no industry standards for billing for non-legal vendors worldwide. E.g., there are no UTBMS task codes for independent adjusters or forensic accountants. Until these are developed, the carrier must develop its own. Similarly, there is no standard, automated process for producing coded invoices for these types of vendors. Thus putting e-billing in place will take longer.

IV. Leveraging technology to support next-generation panel management practices

a. Streamlining/optimizing panel assignments

Technology is a requirement to effectively enforce the type of rigorous panel selection and management processes described here. The right technology solution can provide the relationship management and panel assignment rules and workflows required to ensure that the policies established are followed.

Technology can also streamline these processes, providing the claims handlers and others responsible for assignment a full picture of the approved alternatives for each type of assignment and jurisdiction, including negotiated rates and

metrics collected on the approved vendors, as well as a means to request approval for off-panel assignments.

- b. Facilitating the extension of practices across providers/jurisdictions
Only with the aid of technology can these panel management practices be scaled to address the volume and complexity introduced when extending them across vendors and geographies.
- c. Defining requirements for a technology solution
Among the requirements for a technology solution to support next generation panel management are:
 - A workflow engine and rules engine that enables panel management policy enforcement
 - Robust reporting to enable metrics analysis and performance evaluation
 - Ease-of-use to promote user adoption
 - Configurability to address each carrier's unique circumstances and evolve to meet future requirements

In addition, it is critical that the solution vendor have the capabilities to provide the consultation, implementation, training, and support for both the carrier and its panel law firms and other providers to ensure success.