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ENR
Engineering News-Record

When Virginia Insurance Brokers Sought to End EMR Misuse



Bradshaw found little opposition to Virginia law.

PHOTO COURTESY OF ROBERT BRADSHAW

April 17, 2019

Virginia is the only state that has solved the EMR misuse problem with a law.

Since 2016, the state has prohibited use of a particular EMR as a condition for eligibility to participate in solicitations for construction services, including private construction projects not covered by the state's public procurement rules. The state's Dept. of Transportation does gather EMRs from prospective contractors, but they are a small part of the overall safety evaluation.

Insurance agents, among the most vocal critics of EMR abuse and its effects on their contractor clients, took the legislative initiative in Virginia. The impetus for change came from complaints by several contractors to state legislators that their EMRs had suffered as a result of off-site vehicle accidents in which employees were not at fault.

In 2015, the agents lobbied but failed to secure a state law to require the National Council on Compensation Insurance, the workers' compensation insurers' main rate-making organization, to segregate such incidents from EMR calculations. So the agents lobbied for a bill the following year that called for dropping EMRs entirely from prequalification requirements.

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“We took the position that the use of the EMR for prequalification purposes was harming safe contractors, and thus to allow its use was bad public policy,” says Robert Bradshaw, CEO of the Independent Insurance Agents of Virginia. He recalls that the state's contractor associations were split on the issue, with the Associated General Contractors chapter refraining from taking a position.

Once it reached lawmakers, however, the legislation met with little resistance, even from private companies. “I expected the big ones [large private employers] to come in and say, ‘How dare you tell us how to prequalify!’ But they didn't.” He knows of only one complaint filed over the past two years regarding EMRs and prequalification but admits that not all contractors and agencies may be aware of the 2016 law.

For its contractor prequalification process, the Virginia Dept. of Transportation uses a six-year average Experience Modification Factor, which makes up only 5% of the submitter's overall score. State contract engineer Harold Caples explains that the scoring process, which the agency has used for about 20 years, designates no specific score threshold for consideration. “A contractor could make up for a poor EMF by scoring higher in other safety and performance categories,” he points out.

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