



Texas Department of Insurance Division of Workers' Compensation

Self-Evaluation Report

Submitted to the
Sunset Advisory Commission
September 2009





Texas Department of Insurance

Division of Workers' Compensation, Office of the Commissioner

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September 4, 2009

Mr. Joey Longley, Executive Director
Sunset Advisory Commission
1501 N. Congress
Robert E. Johnson Bldg, 6th Floor
Austin, Texas 78701

Dear Mr. Longley:

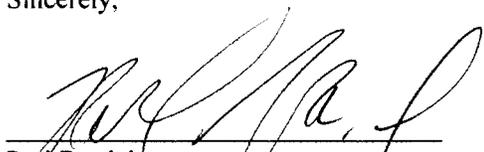
In accordance with the 2009 *Self-Evaluation Report Instructions*, the Texas Department of Insurance, Division of Workers' Compensation (Division) respectfully submits to the Sunset Advisory Commission the following materials:

- 41 hard copies of the Division's Self-Evaluation Report
- one hard copy of each required attachment
- an electronic version of the Division's Self-Evaluation Report (emailed)

Please contact the Division's Executive Deputy Commissioner for Operations, Patricia Gilbert, at (512) 804-4302 or via email at patricia.gilbert@tdi.state.tx.us with any questions regarding the content of the Self-Evaluation Report. Ms. Gilbert will serve as the Agency Sunset Liaison during the Sunset review process.

The Division appreciates the opportunity to share its self-evaluation report with the Sunset Advisory Commission and looks forward to the upcoming Sunset review process.

Sincerely,



Rod Bordelon
Commissioner of Workers' Compensation



Mike Geeslin
Commissioner of Insurance

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**Texas Department of Insurance
Division of Workers' Compensation
Self-Evaluation Report**

I. Agency Contact Information

| Texas Department of Insurance, Division of Workers' Compensation Exhibit 1: Agency Contacts | | | | |
|--|------------------|---|--|----------------------------------|
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II. Key Functions and Performance

A. Provide an overview of your agency's mission, objectives, and key functions.

Mission

The mission of the Division of Workers' Compensation (Division) is to regulate and administer the business of workers' compensation in Texas and ensure that the Texas Workers' Compensation Act, Texas Labor Code, and other laws regarding workers' compensation are implemented and enforced. The basic goals of the Texas workers' compensation system are:

- Each employee shall be treated with dignity and respect when injured on the job.
- Each injured employee shall have access to a fair and accessible dispute resolution process.
- Each injured employee shall have access to prompt, high-quality medical care within the framework established by the Texas Labor Code.
- Each injured employee shall receive services to facilitate the employee's return to employment as soon as it is considered safe and appropriate by the employee's health care provider.

Objectives

Division objectives as outlined in the Texas Department of Insurance Agency Strategic Plan for Fiscal Years 2009-2013 are:

- 5.1** Promote safe and healthy workplaces through appropriate incentives, education, and other actions.
- 5.2** Encourage the safe and timely return of injured employees to productive roles in the workplace.
- 6.1** Ensure appropriate payment of health care for injured employees and reimbursement for health care providers.

- 6.2 Promote compliance with workers' compensation law and rules through performance-based incentives and promptly detect and appropriately address acts or practices of noncompliance.
- 6.3 Effectively educate and clearly inform each system participant of the person's rights and responsibilities, taking maximum advantage of technological advances to provide the highest levels of service possible.
- 6.4 Certify and regulate large private employers that qualify to self-insure.
- 6.5 Minimize the likelihood of disputes and resolve them promptly and fairly when identified.
- 6.6 Ensure proper financial administration of and appropriate payment of benefits to injured employees and reimbursements to insurance carriers through the Subsequent Injury Fund.

Key Functions

The Commissioner of Workers' Compensation (Commissioner) is appointed by the Governor, with the advice and consent of the Senate, to administer the Division. The Commissioner oversees the Division's regulatory functions and has the authority to sanction system participants and to adopt rules in order to implement and enforce the Texas Workers' Compensation Act and the Texas Labor Code. The Commissioner makes recommendations to the Legislature regarding changes to state workers' compensation laws, appoints individuals to advisory committees, approves Certificates of Authority to Self-Insure for certain eligible employers, and serves as a member of the Texas Certified Self-Insurer Guaranty Association. The Division's key functions are listed below:

| Function | Objectives |
|---|------------------------------|
| System Monitoring and Enforcement | 3.1, 6.2 |
| Medical and Indemnity Dispute Resolution | 6.5 |
| Medical Services Utilization and Quality Review | 6.1 |
| Workplace Health and Safety Services | 5.1 |
| Customer Assistance and Education | 5.2, 6.3 |
| Self-Insurance Regulation | 6.4 |
| Subsequent Injury Fund Administration | 6.6 |
| General Administration | 7.1, indirectly supports all |

System Monitoring and Enforcement

The Division's System Monitoring and Enforcement function handles complaints and allegations of illegal activities regarding insurance carriers, health care providers, injured employees and other system participants. The Division's Enforcement program investigates allegations and may take a range of disciplinary actions, including denial, revocation or suspension of the right to practice in the workers' compensation system, administrative penalties and restitution. When appropriate, the Division's Enforcement program refers cases to the Department's Fraud Unit for further action. System Monitoring and Oversight reviews and reports on the performance of insurance carriers and health care providers operating in the workers' compensation system, performs general intake and processing of workers' compensation complaints, and monitors electronic data to identify workers' compensation compliance trends.

Medical and Indemnity Dispute Resolution

The Division's Medical and Indemnity Dispute Resolution function resolves individual claim disputes among system participants regarding medical fees, indemnity payments, and compensability issues. Additionally, the Division handles certain appeals of medical necessity dispute decisions rendered by Independent Review Organization for non-network claims. The Division attempts to resolve all disputes at the lowest level of dispute resolution available. For example, Medical Fee Dispute Resolution attempts

to educate participants in order to avoid fee disputes, encourages communication among the parties to facilitate informal resolution, and audits fee disputes and renders a decision only when other methods fail to resolve the dispute. The Hearings section also resolves disputes at the lowest level possible in accordance with statutory requirements. For indemnity disputes, the Division conducts Benefit Review Conferences, Contested Case Hearings and Appeals Panel reviews. For medical disputes on non-network claims, the Division's Hearings function handles appeals of low dollar fee and retrospective medical necessity disputes as well as appeals regarding all prospective medical necessity denials (i.e., pre-authorization denials).

Medical Services Utilization and Quality Review

The Division monitors the delivery of medical benefits and the quality of health care provided in the workers' compensation system to ensure that injured employees have access to prompt, high quality, cost effective medical care appropriate to their work-related injuries. The Division's Health Care Policy and Implementation program researches, develops and recommends medical care rules, such as treatment, return-to-work, and fee guidelines. The Division's Office of the Medical Advisor monitors the quality of health care in the workers' compensation system by conducting evidence-based medical quality reviews of health care providers and other system participants. The Office of Medical Advisor coordinates communications about health care provider reviews with state licensing boards. The Medical Advisor also recommends to the Commissioner of Workers' Compensation rules and policies regarding medical care and medical delivery systems and determines which doctors meet the qualifications to serve as Designated Doctors. Designated Doctors act on behalf of the Division and are statutorily charged with determining maximum medical improvement, whole body impairment rating, extent of injury issues, existence of disability issues, and the ability of injured employees to return to work.

Workplace Health and Safety Services

The Division's Workplace Safety function provides Texas employers and employees with health and safety resources and services to prevent occupational injuries and illnesses. The Workplace Safety program educates employees and employers about safe and healthy work practices, inspects insurance companies that write workers' compensation in Texas to ensure that they are providing required accident prevention and return-to-work coordination services to their policyholders, audits select high risk employers to confirm that required accident prevention plans have been properly implemented, and operates a 24-hour, bilingual, toll-free hotline to report suspected safety violations. Workplace Safety provides free, non-regulatory assistance to smaller employers in high-hazard industries to help them identify and abate occupational hazards and comply with federal safety regulations. This program also analyzes workers' compensation claims data to determine causes of injury and illness and collects, analyzes, and distributes occupational injury, illness, and fatality information for the state of Texas.

Customer Assistance and Education

Due to the complex nature of the workers' compensation system, the Division employs a variety of methods to assist customers and educate system participants. Personnel in the Division's field offices, which are located throughout the state, provide personal assistance and training to system participants. The field offices provide injured employees with a single point of contact at the Division for claims assistance and return-to-work information, coordinate with the Office of Injured Employee Counsel to ensure that unrepresented injured employees receive assistance with claim disputes, set proceedings and provide local venues for conducting Benefit Review Conferences and Contested Case Hearings, and conduct seminars on workers' compensation topics. They also process official requests from system participants such as requests for change of treating doctors, Required Medical Examinations, Supplemental Income Benefit first quarter entitlements, and Designated Doctor Examinations. The Division's Communications and Outreach program provides internal and external training on such subjects as return-to-work and medical benefits as well as outreach efforts to encourage more health care providers to become involved in the Texas workers' compensation system. Communications and

Outreach also provides support for the Division's internal and external communications, including web-based information, and coordinates the Division's educational and safety conferences. The Division's Records Management and Support program maintains records associated with injured employee claim files and insurance coverage information and assists both internal and external customers by providing the records upon request.

Self-Insurance Regulation

The Division administers the Certified Self-Insurance Program which allows private employers with operations and employees in Texas to self-insure their workers' compensation liabilities. The Division evaluates applicants' financial strength and liquidity, calculates and accepts security deposits, reviews claims administration plans and excess insurance, conducts safety program plan inspections, and performs on-site benefit delivery examinations as needed. If an employer withdraws from the program, the Division monitors ongoing claims and requires the employer to maintain a security deposit to cover those claims.

Subsequent Injury Fund Administration

The Division administers the Subsequent Injury Fund (SIF), which pays Lifetime Income Benefits to injured employees who meet the statutory criteria under Texas Labor Code, Section 408.161 for these benefits due to a work-related injury. The SIF also reimburses eligible insurance carriers for the overpayment of benefits resulting from a Division-issued interlocutory order or other Commissioner Orders and decisions that are later overturned. Additionally, the SIF reimburses insurance carriers for the payment of income benefits resulting from an injured employee's multiple employment, as well as the payment of pharmaceutical benefits for the first seven days of an injury when the injury is later determined to be non-compensable. Funding for the SIF comes from death benefits payable by insurance carriers when there is no legal beneficiary. In addition to administering the payment of benefits and reimbursements from the SIF, the Division monitors and seeks the payment of death benefits into the SIF, ensuring that there is an adequate revenue stream to cover expenditures, which are appropriated by the legislature. The Division's goal in administering the SIF is to pay all legitimate claims against the fund in a timely manner, while ensuring that the SIF remains actuarially sound.

General Administration

The Division's General Administration function encompasses areas that provide support to all of the other functions, including the General Counsel, the Workers' Compensation Research and Evaluation Group, Legal Services – Workers' Compensation Counsel, Business Process Improvement, and Information Management Services. The General Counsel advises the Commissioner of Workers' Compensation on legal matters affecting the Division, reviews litigation, provides support for compliance efforts, and coordinates policy issues. The Workers' Compensation Research and Evaluation Group conducts professional studies and research on the Texas workers' compensation system. The Division's Legal Services – Workers' Compensation Counsel responds to open records requests and serves as a resource to other program areas within the Division for rulemaking and drafting bulletins and proposed legislation. The Business Process Improvement section develops process-oriented solutions to streamline and increase the effectiveness of service delivery; and coordinates performance measures, agency policy, and administrative support functions with Department staff. The Information Management Services section provides the Division's program areas with data management, processing, integrity, analysis, and reporting.

B. Do each of your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?

System Monitoring and Enforcement

The Division's System Monitoring and Enforcement function contributes to the objective of ensuring the appropriate delivery of workers' compensation benefits by promptly detecting and appropriately addressing acts or practices of noncompliance (3.1, 6.2).

This function is still needed to identify non-compliant system participants, focus regulatory oversight on poor performers, correct non-compliance, identify educational and outreach opportunities, identify opportunities for rule development, and ensure that injured employees and health care providers receive the benefits owed. Complaint resolution provides a system of accountability for claims handling and is needed to ensure that injured employees and health care providers receive the benefits they are entitled to under the Act and rules. In fiscal year 2008, the Division returned in excess of \$1.1 million to system participants as a result of complaint resolution. If complaint resolution was unavailable, system participants would have to take additional steps in order to receive the benefits to which they are entitled.

The enforcement function is necessary to ensure appropriate administrative action to address violations of statutes or regulations by regulated entities. By incorporating compliance plans in disciplinary orders, Enforcement is effectively changing improper practices of system participants. Without this function, non-compliant activity could go undetected causing direct or indirect harm to the system. Active monitoring of the workers' compensation system increases overall compliance. In the absence of an enforcement function, system participants would have no incentive to comply with the Texas Workers' Compensation Act and rules promulgated by the Commissioner of Workers' Compensation.

Medical and Indemnity Dispute Resolution

The Division's Medical and Indemnity Dispute Resolution function contributes to the objective of encouraging the appropriate delivery of workers' compensation benefits by minimizing and resolving disputes promptly (6.5).

This function is still needed to promote timely resolution to workers' compensation claims by providing informal and formal dispute resolution processes. Medical Fee Dispute Resolution and Hearings provide system participants structured settings to resolve indemnity, medical necessity and medical fee disputes.

Without this function, it would be difficult for system participants to find an affordable forum to resolve claims disputes in a timely manner since the statute prohibits the use of compromise settlement agreements. Not performing this function would be particularly harmful to injured employees who may have experienced economic and personal hardship from a workplace injury.

Medical Services Utilization and Quality Review

The Division's utilization of medical care function contributes to the objective of ensuring the appropriate delivery of workers' compensation benefits (6.1).

This function is still needed to review the quality of care being provided to injured employees as well as the quality of Independent Review Organization decisions, Designated Doctor decisions, and insurance carrier utilization review decisions. This function also advises the Commissioner of Workers' Compensation regarding the development of rules regarding appropriate treatment and return-to-work procedures for injured employees and fair and reasonable reimbursement for health care providers.

Without this function, the system would experience increased medical costs and reduced quality of health care. In addition, there would be no mechanism to evaluate complaints from injured employees and health care providers regarding quality of care issues. Without the Office of the Medical Advisor, the Division's ability to closely manage and properly train designated doctors would be significantly impaired.

Workplace Health and Safety Services

The Division's Workplace Safety function contributes to the objective of promoting safe and healthy workplaces in Texas through incentives and education (5.1).

The mission and function of the Workplace Safety programs will continue to be necessary, as occupational safety and health is an ongoing process of growth and development. New hazards arise as business processes evolve, and there is a continuous flow of new and diverse employees into the Texas workforce. These issues necessitate the continuation of safety education, training and accident prevention programs, as well as the development of new and innovative means of helping employers safeguard the future of the Texas workforce. This function educates Texas employers about safety issues, allowing implementation of solutions that reduce injuries and loss of life.

Without this function, an increase in the incidence of work-related injuries, illnesses, and fatalities would likely occur, causing increased workers' compensation claims and costs to system participants. These costs can include direct costs associated with workplace injuries such as medical and income benefits, as well as indirect costs such as lost work days, downtime of accident witnesses and coworkers, training of replacement employees, retraining of injured employees, low morale, damaged materials, damaged equipment and products, loss of production, inability to fill orders or provide services, and possible fines and citations. Since the Division's workplace safety efforts benefit all Texas employers, the costs associated with increased occurrence of injuries and illnesses would also affect employers that do not carry workers' compensation insurance (non-subscribers).

Customer Assistance and Education

The Division's customer assistance and education function contributes to the objectives of promoting safe and healthy workplaces by providing education on disability management and return-to-work programs (5.2) and ensuring the appropriate delivery of workers' compensation benefits by providing service through information technology (6.3).

The function is still needed to assist system participants in navigating the complexities of the workers' compensation system, to assist system participants in accessing services provided by the Division (e.g. dispute resolution) and to inform system participants about existing and new regulatory requirements. Without this function, system participants would not have access to an unbiased source of workers' compensation information.

Self-Insurance Regulation

The Division's Self-Insurer Certification function contributes to the objective of ensuring the appropriate delivery of workers' compensation benefits (6.4).

This function is still needed to ensure that only trustworthy, financially healthy, and well-managed employers are allowed to individually self-insure their workers' compensation liabilities, thereby increasing the availability of workers' compensation coverage to Texas employees. This function ensures that security deposits are maintained by these Certified Self-Insurers.

Without this function, employers that choose to self-insure would not be required to meet stringent qualifications, become members of the guaranty fund, or maintain security deposits, leaving injured employees vulnerable in the event that the company fails.

Subsequent Injury Fund Administration

The Division's Subsequent Injury Fund Administration (SIF) function contributes to the objective of ensuring the appropriate delivery of workers' compensation benefits (6.6).

This function is still needed to ensure that employees with pre-existing injuries who qualify for Lifetime Income Benefits as a result of a subsequent work-related injury receive appropriate benefits. The function is also necessary to reimburse insurance carriers for payment of benefits on certain claims resulting from Division or Commissioner decisions or orders that are later overturned.

Without this function, insurance carriers that have overpaid workers' compensation claims as a result of Division or Commissioner decisions or orders would have no readily available source to recoup the excess payments. This could slow payments in the workers' compensation system as insurance carriers would attempt to be doubly sure of their liability before making such payments and could result in court cases that currently are unnecessary. Additionally, in situations where the compensability of an employee's claim is in question and the employee is in financial distress, it would prolong the payment of benefits until the dispute could be resolved. It could also raise workers' compensation premiums if insurance carriers were required to pay Lifetime Income Benefits that are currently the responsibility of the SIF.

General Administration

The services provided by general administration continue to be needed to support the overall mission of the Division to regulate the workers' compensation system. Without these functions, each program area within the Division would dedicate resources to establish its own administrative processes, legal opinions, research, and data management procedures. The consistency and efficiency created by providing these services across the Division would be lost.

| |
|---|
| C. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives? |
|---|

Reorganization and Consolidation

After the passage of HB 7 which integrated the Division's administrative functions with those of the Department of Insurance, sixty-one positions were eliminated that performed duplicative functions, allowing the Department to comply with a Governor's veto proclamation funding reduction of approximately \$8.8 million over the biennium. The positions that were eliminated were employees of the Division.

The Division also ensured that other similar functions such as fraud investigation, legal services and enforcement be combined with the Department's services to the extent possible while maintaining the necessary control and expertise to properly administer the Workers' Compensation Act. In addition, the Division ensured that the Department incorporate the Division's Independent Review Organization (IRO) assignments for workers' compensation medical necessity disputes into the process used by the Department for assigning Health Maintenance Organization disputes, thereby eliminating the dual system of assigning IROs.

In addition, reorganization within the Division has resulted in improved workflow, referrals, and coordination between program areas.

Use of Technology

The Division has implemented numerous initiatives to improve its services and operation through improved reliance on technology. Examples of these projects which affect programs throughout the Division include the following:

- In order to improve customer service to employers in high hazard industries, the Division created new safety and health web pages that categorize safety and health training and educational materials by target industry and occupation.
- Through a data exchange agreement with the Texas Workforce Commission, the Division validates and refines employer information to maximize receipt of appropriate, publishable statistical data on occupational injuries and illnesses
- The Division continues to utilize a Safety Violations Hotline that resulted in the elimination of 958 occupational safety hazards in Texas workplaces from January 1, 2004 through July 16, 2009.
- To facilitate efficient and effective processes and consistent decision-making, extensive electronic resources for Appeals Panel members, hearing officers and benefit review officers are provided on the Division's intranet site, including a precedent manual detailing important dispute decisions for commonly disputed issues.
- The Division implemented a new training initiative for field office staff. benefit review officers present monthly training courses. Eighteen training modules are currently in use.
- The Division implemented a quality assurance database to monitor hearing officers' and benefit review officers' performance and identify areas requiring improvement.
- The Division implemented new procedures, including an automated referral tracking system, in cooperation with OIEC regarding injured employee dispute referrals between the two agencies.
- The Division upgraded telephone system for all Division field offices to improve access to customer assistance by creating a virtual call center.
- The Division implemented a new proof of coverage portal on the Department's web site containing up-to-date coverage information from National Council on Compensation Insurance.
- The Division implemented new automated systems for receipt, processing and delivery of health plan claim matches, reducing the manual notification and monitoring previously required by trading partners and Division staff.
- The Division developed a web page dedicated to Designated Doctor resources as well as an online querying tool that allows system participants and interested parties to access appointment data.
- The Division completed two Biennial Reports on the impact to the 2005 legislative reforms, which included the Research and Evaluation Group's analysis of return-to-work rates using Texas Workforce Commission data.
- The Division completed two annual Employees Compensation Network Report Cards within the statutory timeframe allowed. The results from these report cards have been used by networks to advertise their effectiveness as well as used by the Department to target networks for examinations.

Stakeholder Input

In order to improve communication between the Division's staff and stakeholders, the Division implemented the following:

- Held quarterly stakeholder meetings to discuss performance expectations and measurement.
- Implemented quarterly Attorney Focus Group meetings to solicit input from attorney system participants to improve processes for indemnity dispute resolution. As a result, the Division refined its guidance to hearing officers regarding requests for continuing proceedings and issuing subpoenas.
- Created a Health Care Policy Communications Specialist position to facilitate effective working relationships with the medical community.
- Initiated a provider outreach effort to improve doctor participation in the system by providing information regarding positive changes made in the workers' compensation system and offering educational materials and ongoing assistance.
- Solicited input from public sector third party administrators, including the State Office of Risk Management, Texas Municipal League, Texas Association of Counties, and Texas Association of School Boards to discuss the *2008 BLS Survey of Occupational Injuries and Illnesses*.

Customer Service

In an effort to improve service to system participants, the Division has revised procedures, enhanced staff training, and reduced backlogs. Some examples are as follows:

- Revised policies and procedures for Change of Treating Doctor and Required Medical Examination to achieve statewide standardization of the decision making process for these official actions.
- Provided assistance to approximately 13,000 injured employees who called their Single Point of Contact in the field offices during fiscal year 2008 and 26,000 injured employees during fiscal year 2009.
- Implemented early vocational rehabilitation referral of injured employees to the Department of Assistive and Rehabilitative Services (DARS) and Texas Workforce Commission (TWC), increasing referrals from 2,000 to 24,000 annually.
- Developed a brochure containing information on multiple resources for injured employees, including information provided by DARS, TWC, OIEC and the *2-1-1 Texas* program.
- Educated small employers about the availability of reimbursement for costs associated with making workplace modifications to allow injured employees an earlier return to full or modified duty.
- Provided return-to-work training to Division field operations and customer service staff, DARS counselors, and other system participants about the value of early and medically appropriate return to work.
- Provided training to field office staff on TWC resources in order to make more effective referrals for job search and other programs.
- Reduced the backlog of medical fee disputes by approximately 4,000 cases in 2008.
- Due to settlements outside of MFDR which resulted from improved communication with system participants, decreased number of incoming medical fee disputes from an average of 731 per month in 2007 to an average of 522 per month during the first half of 2009.
- Reduced timeframes for resolution of medical fee disputes from an average of 71

days in 2007 to an average of 38 days for the first half of 2009 by revising options for the processing and tracking of cases.

Awards from Federal Agencies

The Division's Workplace Safety program received national recognition for the following achievements:

- Excelled in timelines, response rates, clean rates, and data quality for the 2006 Occupational Safety and Health Administration (OSHA) Data Initiative. Texas scored 9.8 out of a possible score of 10 and received a Certificate of Achievement and Recognition Memo from OSHA.
- Improved data collection process and case file completion for the Census of Fatal Occupational Injuries in fiscal year 2009, recognized by the Bureau of Labor Statistics.
- Participated on national OSHA workgroup to develop the new national data system for consultation programs and provided training to new administrators in other states on the existing data system. The Division's Occupational Safety and Health Consultation (OSHCON) Program employees' received national recognition for their contributions to this workgroup in fiscal years 2008 and 2009.
- Developed and delivered training curriculum on the practical use of OSHA's employer safety management assessment tool used in consultation programs across the country, received national recognition from OSHA.

Audit Reports

Since the passage of HB 7 the Department's internal audit team has conducted a number of audits regarding processes utilized by the Division. In many of the audits, it was clear that the Division had already identified some of the problem areas and undertaken the suggested solutions. In other instances the Division's management quickly implemented the recommendations of the auditors. The audits included scheduling of designated doctor appointments, database analysis, selection of alternate treating doctor, audit of the Texas Mutual Insurance Company grant, medical fee dispute resolution, security of confidential data, subsequent injury fund, controls over fines and restitution, electronic data exchange, and system monitoring and oversight.

Planning

The Division contributes to all Department planning initiatives. These activities are facilitated by the Department's agency planning team and include biennial business planning, information technology planning, disaster recovery planning, and succession planning. Additionally, the Division contributes to the Department's annual report, biennial strategic plan and legislative appropriation processes.

D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions? Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?

Yes, the Division's enabling law continues to reflect the Division's mission, objectives and approach to performing its functions. The enabling statute is found in Title 5 of Texas Labor Code and requires the Commissioner of Workers' Compensation to administer and enforce this title and other workers' compensation laws of the state.

The Texas Labor Code, Sections 402.066 and 402.074 require the Commissioner of Workers' Compensation to submit any recommended statutory changes to the legislature. In 2008, the Divisions'

recommendations were included in the Department's Biennial Report to the Legislature which is required under Texas Insurance Code, Section 32.022. In that report, the Division recommended statutory changes designed to facilitate injured employees' return to productive roles in the workplace. As a result, the 81st Legislature enacted SB 1814 which enhanced the Return-to-Work Reimbursement Program by:

- Increasing the amount of the reimbursements
- Allowing the Commissioner to include additional employers in the program
- Allowing the Commissioner to provide a portion of the reimbursements in advance
- Requiring insurance carriers to provide ongoing return-to-work coordination services to their policyholders when an employer's injured employee begins to lose time away from work
- Requiring insurance carriers to notify their policyholders regarding the Division's employer return-to-work reimbursement program.

E. Do any of your agency's functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?

The functions performed by the Division are specific to workers' compensation and do not duplicate those of other state or federal agencies. However, the Division works closely with other agencies, including agencies that provide rehabilitation services to injured employees, represent injured employees in workers' compensation disputes, and inspect workplaces to ensure safe and healthy work environments. Coordination among the agencies minimizes duplication and maximizes services to injured employees and other system participants.

System Monitoring and Enforcement

Other state agencies perform some functions that are similar to the Division's system monitoring and enforcement function. The Division collaborates with these agencies to avoid duplication of effort.

The Attorney General handles workers' compensation cases involving violations of other state laws such as the Deceptive Trade Practices Act or constitutional issues and may seek administrative and criminal penalties. The Division and the Office of the Attorney General collaborate to determine which agency will handle certain workers' compensation cases. The Attorney General's office refers workers' compensation complaints to the Division and the Division refers violators to the Attorney General for non-payment of assessed penalties.

Various boards that license health care providers such as the Texas Medical Board, the Texas Board of Chiropractors, and the Texas Board of Dental Examiners, monitor their licensees for proper standard of health care and take disciplinary actions. The Division also monitors these providers and takes disciplinary action as needed for violations of the standard of care required by workers' compensation laws and rules to return injured employees to productive roles in the workplace. The Division and these boards share information as statutorily permitted to avoid duplication of efforts and advance the regulatory goals of the Division, the Boards and the State of Texas.

The Office of Injured Employee Counsel (OIEC) receives complaints and assists injured employees with disputes. Careful coordination between the agencies ensures that efforts are not duplicated. OIEC refers complaints regarding workers' compensation claims, benefits and fee payment disputes, and enforcement cases identified in field offices to the Division.

The State Office of Administrative Hearings (SOAH) conducts Contested Case Hearings on behalf of the

Division. An Administrative Law Judge hears the case, and if a monetary penalty is proposed issues a final order, or if a non-monetary penalty is proposed, issues a proposal for decision and the Commissioner enters the final order. Enforcement represents the interests of the Division in these Contested Case Hearings.

Medical and Indemnity Dispute Resolution

The State Office of Administrative Hearings (SOAH) and the Division conduct appeals hearings for medical fee and medical necessity disputes. There is no overlap in the duties of SOAH and the Division with regard to appeals hearings because the amount in dispute determines where the case is heard.

This function is appropriately placed within the Division because Division hearing officers and the Commissioner of Workers' Compensation have the expertise necessary to resolve workers' compensation disputes. Dispute decisions that incorrectly interpret workers' compensation laws or regulations compromise the integrity of the system.

Medical Services Utilization and Quality Review

The Division's efforts to ensure appropriate utilization of medical care within the workers' compensation system are not duplicated by any state or federal agency. Licensing Boards such as the Texas Medical Board and the Texas Board of Chiropractic Examiners also review health care providers for compliance with required standards of care. The Office of the Medical Advisor (OMA) exchanges information with various licensing boards and refers egregious violations of the standard of care to those boards. This function is appropriately placed with the Division's Office of the Medical Advisor because licensing board reviews are general in nature while OMA's reviews are specific to the care that is required under the workers' compensation system in order to return injured employees to productive roles in the workplace.

Workplace Health and Safety Services

The Federal Occupational Safety and Health Administration (OSHA) provides compliance assistance to help employers understand safety regulations and general safety issues, similar to the activities performed by the Division's OSHCON consultants. However, OSHA does not provide consultative services on-site to employers in the same manner as the OSHCON program. The OSHCON program is partially funded by a grant from OSHA to perform these services and to supplement the OSHA efforts related to workplace safety.

Customer Assistance and Education

The Division's customer assistance and education function does not duplicate the services provided by any other state or federal agency. The Office of Injured Employee Counsel educates and provides general assistance to injured employees regarding the workers' compensation system. OIEC refers complaints regarding workers' compensation claims, benefits, and fee payment disputes to the Division and refers other workers' compensation complaints to the appropriate agency or licensing board.

Additionally, the Division, the Department of Assistive and Rehabilitative Services (DARS), and the Texas Workforce Commission (TWC) all provide assistance to encourage injured employees to return to productive roles in the workplace. The Division educates employers and insurance carriers about the benefits of implementing a return-to-work program and provides assistance to employers in the development of their programs. The Division also educates health care providers about the benefits of return to work and identifies and refers injured employees to DARS who would likely benefit from vocational rehabilitation services. DARS provides vocational rehabilitation services, including job retraining, to qualified injured employees. TWC provides general employment assistance to injured employees who need help identifying job openings and improving resume and interviewing skills.

Self-Insurance Regulation

Other agencies perform licensing, registration and certification for regulatory purposes. The Texas Department of Licensing and Regulation (TLDR) is the state's umbrella occupational regulatory agency, responsible for the regulation of various occupations and industries. While TLDR and other agencies perform licensing and certification, the certification of employers as Certified Self-Insured employers is most appropriately placed with the Division of Workers' Compensation because of the Division's extensive knowledge of the workers' compensation system and the laws and rules applicable to licensed insurance carriers and Certified Self-Insured employers as well as non-subscribing employers.

Subsequent Injury Fund Administration

No other state or federal agencies perform the services provided by the Division's Subsequent Injury Fund administration function. The management and distribution of unclaimed workers' compensation death benefits is correctly placed with the state's workers' compensation regulator to ensure that the funds are distributed in a timely and unbiased manner in accordance with legislative mandates and to ensure that the fund remains actuarially sound.

General Administration

The services performed by General Administration include administrative, research, legal, and data management services that are similar to those in other state agencies. These services provided within the Division are specific to workers' compensation and/or are provided to Division staff and do not duplicate services provided in other state or federal agencies. In accordance with legislation passed by the 79th Legislature, the Department handles central administrative functions, such as payroll, for the Division. The Division also coordinates with the Department to ensure there is no duplication of effort in other areas such as legal support services and information technology services.

F. In general, how do other states carry out similar functions?

In most states, including Texas, workers' compensation coverage is provided by commercial insurance carriers. Employers also have the option of self-insuring, provided they meet certain minimum requirements. Some states, like North Dakota, have a state fund that insures all employers and acts as both the insurance carrier and arbiter of disputes.

The structure, administration, and role of the body responsible for governing workers' compensation systems differ widely. In many states, the workers' compensation agency is an independent state agency. In Texas, the Division of Workers' Compensation is part of the Texas Department of Insurance. This is similar to states like Alabama and Florida, where the agency is a division of a larger department or state agency. For example, in Alabama the workers' compensation system is regulated by the Department of Industrial Relations, and in Florida the Department of Labor and Employment Security is responsible for this role.

In Texas, workers' compensation insurance is not mandatory except for governmental entities. While most states exempt small employers, Texas is the only state that does not require private employers to provide workers' compensation coverage for their employees.

The functions performed by the Division are generally included in other states' workers' compensation systems. However, there are variations in the ways different states choose to operate their systems which are detailed below by function.

System Monitoring and Enforcement

Enforcement functions vary depending on the role of the governing body in administering workers' compensation benefits and the authority granted by the applicable law. For example, statutes may allow a range of sanctions similar to Texas or may provide only for suspension of a license or certification.

Medical and Indemnity Dispute Resolution

In some states, as in Texas, the governing body rules on individual cases. In other states, the governing body is only concerned with policymaking and has no direct involvement in the claims process. Medical fee dispute resolution procedures in other states are generally similar to Texas' procedures. However, several states have no informal means to resolve these disputes, and the disputes are handled by hearing officers, attorneys, and the courts. Washington State differs from other states by handling all workers' compensation fee disputes through a single mediation board called the Washington Board of Industrial Appeals.

Medical Services Utilization and Quality Review

The approach to health care policy, implementation and cost-containment varies greatly from state to state. The Division's approach to these functions has been to follow nationally recognized standards, processes, and guidelines whenever possible. Like Texas, most states have adopted fee guidelines that utilize Medicare billing, documentation and payment policies. Like all major states, Texas utilizes networks in an effort to ensure appropriate utilization of medical care. A number of states have no limitations on medical treatment while others use utilization review or requirements included in their fee schedules to contain medical costs. Texas was one of the first states to adopt evidence-based treatment and return-to-work guidelines, implement e-billing regulations, implement updated Medicare billing, data reporting standards, and calculate return-to-work rates and publish report cards for workers' compensation networks.

Workplace Health and Safety Services

Other states have similar approaches to addressing the need to conduct inspections, but the approaches are tailored to the individual state's regulatory authority for imposing and enforcing safety regulations based on their relationship with OSHA. Twenty-four states have passed legislation to create state plans, which combine the ability to enforce safety violations and perform the consultations or inspections. In contrast, Texas conducts consultations but must refer potential safety violations to OSHA for enforcement purposes. For comparison purposes, Florida's program is structured similar to Texas, California's program is a state plan (with enforcement and consultations), and New York is a state plan but is limited to public sector employers.

| State | Relationship with OSHA |
|--|---|
| AK, AZ, CA, HI, IN, IA, KY, MD, MI, MN, NV, NM, NC, OR, Puerto Rico, SC, TN, UT, VT, VA, WA, WY | State enforcement of public sector (state and local government) and private sector; state consultation for public and private sector |
| CT, NJ, NY, Virgin Islands | State enforcement of public sector (state and local government); federal enforcement of private sector; state consultation for private sector |
| AL, AR, CO, DC, DE, FL, GA, ID, IL, KS, LA, MA, ME, MT, NB, NC, ND, NH, OH, OK, PA, RI, SD, TX, WI, WV | Federal enforcement of private sector; state consultation for private sector |

Customer Assistance and Education

Field Operations claim services are provided in other states in a manner similar to Texas. Other states generally perform records management and data support services functions in a manner similar to the

Division and Texas agencies. Some states (e.g. Louisiana) have opted to perform all functions in an electronic manner, centralizing all functions and eliminating all paper files. Many states utilize the services of a data collection agent to provide proof of coverage data in an electronic format for the purpose of identifying insurance coverage and linking claim to coverage. The Division recently contracted with the National Council on Compensation Insurance to perform this function in Texas.

Self-Insurance Regulation

Self-insurance programs in other states are generally administered in a manner which is similar to Texas. Almost all states, including Texas, allow individual employers to self-insure (North Dakota which has an exclusive state fund and no voluntary market is the only exception). Unlike Texas, a few states do not allow groups and/or political subdivisions to self-insure.

Subsequent Injury Fund Administration

Most states administer their subsequent injury funds (generally called second injury funds) in a manner similar to Texas. Although many states have such a fund, only approximately half of the funds are active at this time. Texas is one of the few remaining states whose fund remains economically viable, and although the fund can be replenished by carrier assessments, Texas has never had to trigger such assessments. The funding mechanisms for the funds vary, but usually include some combination of unclaimed death benefits and assessments on workers' compensation insurance carriers, self-insurers, and employers. The assessments may be based on premiums collected or compensation paid. In Texas the funding is provided solely through non-beneficiary fatal injury claims.

General Administration

Other states carry out the General Administration function in a manner similar to Texas agencies. Some states have opted to consolidate technology services, similar to the Texas data consolidation project, mandated by HB1516, 79th Legislature. Others have consolidated and centralized aspects of human resource management and payroll at the state level. Services provided by the Division's Business Process Improvement section are standard among state agencies and would be replicated in other state workers' compensation programs.

G. What key obstacles impair your agency's ability to achieve its objectives?

Number and Diversity of Stakeholders

Due to the nature of workers' compensation, there are a variety of stakeholders who are naturally opposing parties. The challenge for the Division is to maintain a balance based on objective criteria and policies that are fair to all parties. For example, an increase in medical fees designed to improve access to quality medical care for injured employees would increase costs and may cause insurance carriers to raise premiums which would adversely impact employers. To address this challenge, the Division regularly communicates with stakeholders and considers proposed actions from all perspectives before implementing system changes.

Legislative Changes

Significant changes to the workers' compensation system are regularly enacted by the legislature. The changes often have a positive effect on the system and may benefit injured employees as well as other system participants. However, rapid change presents a challenge to the Division because it may take several years for development of the full impact on the system.

Reclassification of Employees

A recent audit of employee positions and subsequent reclassification of a number of positions resulted in significant salary increases and a corresponding budgetary shortfall for the Division. The Division is addressing this challenge by implementing a hiring freeze and re-evaluating budgeted items.

Technology

The Division's current management system (Compass/TXComp) is outdated and creates duplicate work. Databases are not integrated, making it difficult to assemble and research comprehensive data. The Division is required to reduce the volume of paper generated within the workers' compensation system and assist external customers with easy access to information and increased efficiency in submitting and exchanging data. The current processes are cumbersome, paper-intensive and expensive for both staff and customers. Implementing new electronic processes will be difficult without rewriting COMPASS modules to a web-based platform. Moving off the legacy system to a web-based environment would allow the Division to better align with the agency's vision and mission.

Another challenge is the maintenance of the Division's millions of stored claim-related documents. All new paper records, regardless of the claim date, are scanned into TXCOMP for archive (old law claim documents are microfilmed). The Division is working toward receiving almost all paper documents as electronic images. Relating to existing documents, the Records Center houses over 429 million documents. To achieve the highest degree of efficiency possible, approximately 179 million documents are stored on microfilm and 175 million on microfiche. More than seventy-five million documents remain in paper files. The Division's record retention schedule requires records be retained for fifty years after the last activity is recorded, necessitating the continued storage of this data. Electronic imaging of the remaining paper files remains a challenge due to technological limitations at the Records Center. An internal audit of the Records Center found no procedures that need revision and determined that scanning paper documents and eliminating duplicate documents may be less cost effective than continuing to store them. The Division is currently conducting a comprehensive review and revision of its records retention policy.

Statutory Authority regarding Dispute Resolution

The statute gives SOAH judges the authority to make final decisions in workers' compensation disputes that exceed certain dollar amounts. As a general rule, after hearing a contested case, the administrative law judge at SOAH will issue to the state agency official making the final decision in the case a proposal for decision that contains a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision. The Administrative Procedure Act, specifically Texas Government Code § 2001.058(e)(1), allows a state agency to change an administrative law judge's conclusion of law if the state agency determines that the administrative law judge did not properly interpret applicable law, agency rules, or written policies provided by the state agency. An exception to this general rule exists for certain cases the Division refers to SOAH. Texas Labor Code § 402.073(b) provides that in hearings conducted by SOAH under Texas Labor Code §§ 413.031 (Medical Dispute Resolution), 413.055 (Interlocutory Orders), and 415.034 (Administrative Violations), the administrative law judge who conducts the hearing for SOAH enters the final decision in the case after completion of the hearing. Texas Government Code § 2001.058(e)(1) does not apply in these cases. Consequently, in these cases, the Division cannot correct an administrative law judge's incorrect interpretation of applicable law, Division rules, or written policies of the Division. The incorrect interpretations are then used by system participants to support their positions in other venues, e.g. enforcement cases, creating unnecessary obstacles for the Division.

The Division also faces certain obstacles to its ability to resolve claims disputes in a timely manner. The statute prohibits the scheduling of a Benefit Review Conference unless the parties have attempted to resolve their dispute and have exchanged pertinent information. In regard to Contested Case Hearings,

the parties on occasion do not develop the evidence required by statute to enable a contested case hearing officer to issue a decision without first continuing the hearing so that evidence can be developed. These obstacles impede meaningful mediation at Benefit Review Conferences and result in potential delays in Contested Case Hearings.

Service Delivery

Due to Texas' large size and diversity, one of the most challenging aspects of the Division's Operations is the delivery of consistent services at its 24 field office locations. The Division is providing staff and technological resources to enhance field office personnel training and deploying web-based training modules suited to individual or group training on a broad range of topics – including processing of official actions.

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| H. Discuss any changes that could impact your agency's key functions in the future (e.g., changes in federal law or outstanding court cases). |
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Various changes from external sources may affect the Division's key functions such as changes in federal or state law, court decisions, and economic trends.

Federal Legislation

The federal government delegated the regulation of insurance to the states under the McCarran Ferguson Act and more recently the Gramm-Leach-Bliley Act. This delegation to the states is subject to change through the enactment of subsequent federal law. As one example, certain insurance trade associations have been calling for federal reform through the creation of an optional federal charter for insurance companies. The states have generally responded that state-level regulation is more appropriate. The 80th Texas Legislature passed SCR 60 and the 81st Texas Legislature passed HR 798 opposing federal regulation of insurance.

Examples of federal legislation that could potentially impact the regulation of workers' compensation include:

- **HR 635** – The *National Commission on State Workers' Compensation Laws Act of 2009* would establish a federal commission to evaluate state workers' compensation laws in order to determine whether the regulations provide an adequate, prompt and equitable system of medical care and compensation for injury or death arising in the course of employment.

Proponents of HR 635, which has been referred to the House Committee on Education and Labor, say the Commission is necessary because a thorough review of state workers' compensation laws has not been conducted since 1972.

In response to the proposed legislation, the workers' compensation committee of the National Conference of Insurance Legislators (NCOIL), an organization of state lawmakers whose main area of public policy concern is insurance and regulation, drafted a resolution opposing the bill and reiterating the group's support for state workers' compensation systems. The Property and Casualty Insurers Association of America also indicated its opposition to HR 635 and supported the NCOIL resolution.

On January 22, 2009, HR 635 was referred to the House Committee on Education and Labor.

- **HR 1880** – The *National Insurance Consumer Protection Act* would form an optional national charter where insurers could select whether they are regulated at the state or federal level. It is

modeled after the regulation of the banking industry and creates an Office of National Insurance within the Treasury Department. It provides for the appointment of a national insurance commissioner that is charged with chartering insurers and insurance producers, exclusively regulating and supervising the operations and solvency of nationally chartered or licensed insurers and producers on a uniform, nationwide basis, including the conduct of such insurers and producers with policyholders; and protecting the interests of policyholders by establishing a comprehensive scheme for the receivership of nationally chartered insurers that requires nationally chartered insurers to participate in qualified state guaranty funds. The proposed legislation does not preempt state tax laws and allows state law to apply to nationally chartered workers' compensation insurers to a limited extent. Unless there is a conflict with other provisions of HR 1880, state law may prescribe minimum compulsory workers' compensation coverage requirements and may require participation in a workers' compensation administration mechanism, a residual market mechanism, or a statistical/advisory organization, except to the extent the state law requires a national insurer to use a particular rate, rating element, price or form.

On April 2, 2009, HR 1880 was referred to the House Committee on Financial Services, and to the Committees on the Judiciary, and Energy and Commerce, for a period to be determined by the Speaker, in each case for consideration of the provisions that fall within the jurisdiction of each committee.

- **HR 2609** – The *Insurance Information Act of 2009* would establish within the Department of the Treasury an Office of Insurance Information (OII). The duties of the Secretary of the Treasury would include serving as principal advisor to the President and Congress on domestic and international policy issues regarding all lines of insurance except health insurance. The OII would determine whether state laws and regulations are inconsistent with federal international policy and should be preempted. However, the bill also requires coordination with state regulators, and preemption of state law is not allowed if it would require the Department of the Treasury or OII to establish general supervisory or regulatory authority over the business of insurance.

On May 21, 2009, HR 2609 was referred to the House Committee on Financial Services.

- **HR 3200** – *America's Affordable Health Choices Act of 2009* is the national health care plan currently being debated by Congress. The bill as introduced sets forth provisions governing health insurance plans and issuers, including: exempting grandfathered health insurance coverage from requirements of the Act; prohibiting preexisting condition exclusions; providing for guaranteed coverage to all individuals and employers and automatic renewal of coverage; prohibiting premium variances, except for reasons of age, area, or family enrollment; and prohibiting rescission of health insurance coverage without clear and convincing evidence of fraud. The measure requires qualified health benefits plans to provide essential benefits and provides for affordability premium and cost-sharing credits for low-income individuals. It also requires the Secretary of Health and Human Services to provide for the development of quality measures, establishes an entity to conduct health care services effectiveness research, addresses electronic health care transactions, and sets forth provisions to reduce health care fraud.

The bill, as drafted, does not address workers' compensation directly, but provisions relating to quality measures, health care effectiveness, electronic transactions, fraud detection, and others may indirectly affect workers' compensation. The measure could affect the state's ability to align

health insurance and workers' compensation processes and to implement subrogation requirements.

On July 14, 2009, HR 3200 was referred to the following House committees: Energy and Commerce, Ways and Means, Education and Labor, Oversight and Government Reform, and Budget, for a period to be determined by the Speaker, in each case for consideration of the provisions that fall within the jurisdiction of each committee.

On July 31, 2009 HR 3200 was reported from committee as amended.

- The federal *Health Insurance Portability and Accountability Act* (HIPAA) enacted by Congress in 1996, established numerous requirements for regulated benefit plans and created national standards for a variety of electronic health care transactions. The law also addresses security and privacy requirements for entities that have access to private health information. Currently, workers' compensation is exempt from HIPAA regulations. CMS and the Office for Civil Rights periodically issue new regulations, bulletins, and updates regarding various HIPAA provisions. In some cases, these changes require revisions in state insurance laws or regulations. Most recently, CMS announced delays in implementation of the National Provider Identifier compliance requirements. Future regulations are expected that will affect electronic claim transactions, electronic health records, and health identification cards.
- Changes in the federal budget could impact the ability of the Division to fulfill the OSHA and BLS grant requirements, especially if appropriations are diminished. Changes in federal and state safety laws could impact how the Division interacts with employers and what information the Division provides to them.

State Legislation

Laws adopted by the Texas Legislature directly impact the Division's key functions. The Division implements new statutes enacted each session. An example is the small employer return-to-work reimbursement program passed by the 79th Legislature and amended by the 80th and 81st Legislatures. The 79th Legislature also set up networks as an option for providing workers' compensation benefits to injured employees. If insurance carriers expand their network offerings and employers choose to enroll in those networks, the volume and character of work of the Division would change substantially. Specifically, medical dispute resolution would be shifted to the networks. In addition, treatment, medical fee, and return-to-work guidelines would be provided and enforced by the networks.

Court Cases

Tex. Mutual Insur. Co. v. Vista Community Medical Center, LLP, 275 S.W.3d 538 (Tex. App. - Austin, 2008, *pet. filed*). In *Vista*, The Third Court interpreted the "stop-loss" provisions of the 1997 hospital acute care, inpatient fee guideline [former 28 TAC sec. 134.401(c)(6)]: (a) to permit insurance carriers' audit of hospital charges as permitted by applicable Division rules; (b) to prohibit insurance carriers from reducing charges for implantables, orthotics, and prosthetics to cost plus 10% when determining if the "stop-loss" provisions apply; and (c) to require that for a hospital to be eligible for reimbursement under the Stop-Loss Exception, the hospital's total audited charges must exceed \$40,000 and the underlying admission must involve unusually costly or unusually extensive services. The Court also found that a 2005 agency "Staff Report" was not an invalid rule and that the terms "unusually costly" and "unusually extensive" are not too vague or uncertain for use. This case currently has a petition pending before the Texas Supreme Court and may affect hundreds of pending medical fee dispute cases at the Division and in Travis County district court.

State Office of Risk Management v. Lawton, No. 08-0363, 2009 Tex. LEXIS 629 (Tex. Aug. 28, 2009) - In *Lawton*, the Texas Supreme Court overruled the Tenth Court's previous decision in *State Office of Risk Management v. Lawton*, 256 S.W.3d 436 (Tex. App. - Waco 2008, pet. granted) and held that the sixty-day period for challenging compensability of an injury under Texas Labor Code § 409.021(c) does not apply to a dispute over the extent of injury even if the basis for that dispute could have been discovered by a reasonable investigation within the waiver period. This decision affects the Division's current application of 28 Tex. Administrative Code, Section 124.3.

Texas Mutual Insurance Company v. Ruttiger, 265 S.W.3d 651 (Tex. App. - Houston [1st] 2008, pet. filed) - In *Ruttiger*, the First Court held that when parties enter into a binding benefit dispute agreement pursuant to Tex. Lab. Code §§ 410.029 and 410.030, that agreement exhausts the parties' administrative remedies for all issues settled in the agreement. Furthermore, the court held that in a bad faith claim against an insurer, a claimant may recover damages for additional aggravated injuries caused by the workers' compensation carrier's misconduct. A petition for review of this case has been filed with the Texas Supreme Court, and its final disposition will affect the binding effect and finality of all future Division benefit dispute agreements.

Sutton v. Tex. Dep't. of Insurance, Div. of Workers' Compensation, 53rd Judicial District Court of Travis County, Texas, Cause No. D-1-GN-09-00584 - In *Sutton*, the Plaintiff requested a class certification of certain injured employees and requested the Court to declare: (a) the Texas Workers' Compensation Act's provisions void concerning injured employee attorneys' fees and workers' compensation health care network disputes and (b) the Division's rule provisions concerning appointment of designated doctors and the timeframes when a record closes for contested case hearings. This case could have a significant impact on the implementation of certified health care networks as well as affect the Division's processes for assigning Designated Doctors.

Fanette v. City of Port Arthur, 98th Judicial District Court of Travis County, Texas, Cause No. D-1-GN-09-001187 - In *Fanette*, Plaintiff has requested: (a) a reversal of a Division Contested Case Hearing decision concerning a medical necessity dispute and judgment that the workers' compensation insurance carrier is liable for a right hip replacement surgery and an anticipated three-day hospital stay, (b) 28 Tex. Admin. Code, Section 137.600 is invalid as the Division's current treatment guideline, (c) the Texas Workers' Compensation Act cannot make venue for appeals of medical necessity disputes to Travis County district courts and that the Act allows for *de novo* contested case hearings for entitlement to medical treatment and benefits and that the Act's provisions for substantial evidence review of such contested case decisions violates the Texas Constitution. If decided, the outcome of this case could have significant effects on the implementation of the Division's current treatment guideline as well as impact the review standard for appeals of Division medical dispute decisions rendered at Contested Case Hearings.

Economic Trends

The current economic downturn has the potential to exert pressure on the workers' compensation market. According to industry research¹, the key impacts of previous recessions on workers' compensation include a decline in exposure due to slower job growth or reductions in wages; a decline in claim frequency due to layoffs of inexperienced workers who are more likely to be injured; and downward pressure on the severity of indemnity claims due to slower wage growth and reduced employment in more hazardous industries. However, economic forecasts also indicate that these effects may be less pronounced in Texas than nationally based on predictions that the state will emerge from the recession ahead of the rest of the country. Statistics that support that conclusion include the following:

¹ See National Council on Compensation Insurance, *State Advisory Forum Presentation: Texas*, 2008.

- The cumulative rise in Texas' jobless rate is well below the national average.
- Texas' job losses in service industries are more moderate than countrywide.
- The single family housing oversupply in Texas is less than in other parts of the country.

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| <p>I. What are your agency's biggest opportunities for improvement in the future?</p> |
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Streamlining the Claims Process

In order to make the workers' compensation system work more efficiently, the Division is striving to streamline the claims process. Opportunities exist in continued efforts to improve e-billing participation, as well as increasing the use of technology in order to convert to entirely electronic claim and medical dispute files. The roll out of Compass to TXComp will improve functionality and add automation to the system. Working from one database system will improve system flows to reduce duplicate work as well as increase the effectiveness and efficiency of the program. An important added benefit of these advancements is enhanced data collection which will improve the Division's ability to identify and analyze trends—ultimately allowing more effective interventions targeted at system outliers.

Intra-Departmental Coordination

The Division is continuing its efforts to coordinate its functions with those of the Department where appropriate. Opportunities for better coordination exist in the regulation of self-insurance and complaint handling.

Best Market Practices

As the workers' compensation market moves toward more market-driven models such as networks and sophisticated non-subscriber programs, the Division has an opportunity to learn from these models and apply the best practices to the regulated market.

Safety Compliance

Another opportunity for improvement—reduction in occupational injuries, illnesses, and fatalities—lays in continuous efforts to facilitate voluntary safety compliance and awareness among employers, especially small employers, business organizations, and trade groups in the state through alliances and partnerships. Promoting safety and educating Texas employers on the value of safety and how it can save them money that will not only save lives and prevent injuries, but will ultimately help the economy by keeping small employers' costs down and keeping them in business.

Addressing safety and health issues in the workplace saves the employer money and adds value to the business. According to OSHA, recent estimates place the business costs associated with occupational injuries at close to \$170 billion.

Customer Service

Due to advancements in technology, the Division is experiencing opportunities to provide enhanced service to its customers. A project is currently underway to increase the availability of safety training to employers by providing online training in addition to the on-site training currently available. In addition, advances in training the Division's Field Operations staff presents one of the most significant opportunities for improvement in the near future. Recruitment of two professional trainers and procurement of browser-based software will enable the Division to provide web-based training modules to field office staff and present a consistent training message to those processing official actions in the 24 field offices.

Rule Development

Pursuant to House Bill 7, numerous changes have been made to the Texas Labor Code that offer opportunities for improvement in the future administration of benefits. HB 7 required an expansive revision and repeal of several of the Division's key rules. This has provided an excellent opportunity for Workers' Compensation Counsel to better coordinate rule drafting between program areas. In addition, this ongoing effort will make the rule drafting process more efficient and save resources in the future.

Enforcement

Recent changes to the Texas Labor Code offer opportunities for continued improvement in enforcement in the future. For example, Texas Labor Code Section 415.021 authorizes expanded penalties that will enhance the Division's ability to deter future violations. In order to make the enforcement process more efficient and save resources in the future, violations that one entity committed can be bundled into one enforcement case, where appropriate. In addition, recent improved processes for referrals from other program areas will streamline case management.

J. In the following chart, provide information regarding your agency's key performance measures included in your appropriations bill pattern, including outcome, input, efficiency, and explanatory measures.

| Texas Department of Insurance, Division of Workers' Compensation Exhibit 2: Key Performance Measures for Fiscal Year 2008 | | | | |
|--|---|-----------------------|-----------------------------------|-----------------------------------|
| Measure Code | Key Performance Measures | FY 2008 Target | FY 2008 Actual Performance | FY 2008 % of Annual Target |
| 5.1.1 OC 1 | Statewide Incidence Rate of Injuries and Illnesses Per 100 Full-Time Employees | 3.9 | 3.7 | 94.87% |
| 5.1.1 OP 1 | Number of Consultations and Inspections Provided to Employers | 3,360 | 2,813 | 83.72% |
| 5.2.1 OC 1 | Percent of Temporary Income Benefits (TIBs) Recipients Returning to Work Within 90 Days of Injury (Based on TIBs Duration) | 56% | 52.71% | 94.13% |
| 5.2.1 OP 1 | Number of Persons Receiving Return-to-Work Training | 10,417 | 8,802 | 84.50% |
| 6.1.1 OC 1 | Percentage of Medical Bills Processed Timely | 95.00% | 98.28% | 103.45% |
| 6.1.1 OP 1 | Number of Quality of Care Reviews of Health Care Providers, Insurance Carriers, and Independent Review Organizations Completed | 82 | 82 | 100.00% |
| 6.1.1 EF 1 | Average Number of Days to Complete Quality of Care Reviews of Health Care Providers, Insurance Carriers, and Independent Review Organizations | 180 | 111.35 | 61.86% |
| 6.2.1 OC 1 | Dollar Amount Returned to Workers' Compensation System Participants through Complaint Resolution | \$500,000 | \$1,188,774 | 237.76% |
| 6.2.1 OP 1 | Number of Complaints Completed Involving Workers' Compensation System Participants | 2,885 | 3,027 | 104.92% |
| 6.2.1 EF 1 | Average Days to Complete a Complaint Involving Workers' Compensation System Participants | 120 | 121.23 | 101.03% |
| 6.5.1 OC 3 | Average Number of Days to Resolve Indemnity Disputes through Dispute Resolution Proceedings | 116 | 111.74 | 96.33% |

| | | | | |
|------------|---|-------------|-------------|---------|
| 6.5.1 OC 4 | Percentage of Medical Fee Disputes Resolved by Agency Decision | 95.00% | 80.47% | 84.71% |
| 6.5.1 EF 1 | Average Number of Days from the Request for Benefit Review Conference to the Conclusion of the Benefit Review Conference | 67 | 67.62 | 100.93% |
| 6.5.1 EF 2 | Average Number of Days from the Request for a Contested Case Hearing to the Distribution of the Decision | 77 | 84.61 | 109.88% |
| 6.6.1 OC 1 | Total Payments Made Out of the Subsequent Injury Fund for Lifetime Income Benefits and Reimbursements to Insurance Carriers | \$3,373,000 | \$3,283,131 | 97.34% |
| 6.6.1 OP 1 | Number of Injured Employees Receiving Lifetime Income Benefit (LIBs) Payments through the SIF | 41 | 35 | 85.37% |

III. History and Major Events

Provide a timeline of your agency's history, and key events, including:

- the date your agency was established;
- the original purpose and responsibilities of your agency;
- major changes in responsibilities or statutory authority;
- changes to your policymaking body's name or composition;
- significant changes in state/federal legislation, mandates, or funding;
- significant state/federal litigation that specifically affects your agency's operations; and
- key changes in your agency's organization (e.g., a major reorganization of the agency's Divisions or program areas).

Creation and Powers

The Division of Workers' Compensation, Texas Department of Insurance was created in September, 2005 as part of a broad legislative effort to reform the state workers' compensation system. The Division's legal authority, duties and powers are described in the Texas Workers' Compensation Act, Texas Labor Code, Title 5, Subtitle A.

The Division's primary responsibilities set out in the Texas Labor Code, § 402.021 (b) are to:

- Promote safe and healthy workplaces through appropriate incentives, education, and other actions
- Encourage the safe and timely return of injured employees to productive roles in the workplace
- Provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective
- Provide timely, appropriate, and high-quality medical care supporting restoration of the injured employee's physical condition and earning capacity
- Minimize the likelihood of disputes and resolve them promptly and fairly when identified
- Promote compliance with this subtitle and rules adopted under this subtitle through performance-based incentives
- Promptly detect and appropriately address acts or practices of noncompliance with

this subtitle and rules adopted under this subtitle

- Effectively educate and clearly inform each person who participates in the system as a claimant, employer, insurance carrier, health care provider, or other participant of the person's rights and responsibilities under the system and how to appropriately interact within the system
- Take maximum advantage of technological advances to provide the highest levels of service possible to system participants and to promote communication among system participants

History of Workers' Compensation

The idea that employees should be compensated for work-related injuries and that governments should administer programs to ensure compensation, spread to the United States from Europe during the opening decade of the 20th Century. Maryland and New York were the first states to enact workers' compensation laws, but both laws later were overturned by the courts. Courts of the time generally held that mandatory, government-administered workers' compensation programs denied employer property rights without due process of law.

To ease judicial objections, most states enacted laws that allowed employers to choose whether or not to participate in the state workers' compensation program. In 1911, Wisconsin became the first state to enact a workers' compensation law that was allowed to stand in court. Texas enacted its first workers' compensation law in 1913.

Under pressure from Congress and the President, the courts began to take a different view of workers' compensation. In 1917 the U.S. Supreme Court ruled that states could legally require employers to provide compensation to injured employees. As a result of the ruling, many states revised their laws to include mandatory workers' compensation.

History of Workers' Compensation in Texas

Texas also revised its workers' compensation law in 1917 but chose to retain voluntary employer participation in the system. Today, Texas is the only state that allows private employers to choose whether to provide workers' compensation, although public employers and employers that enter into a building or construction contract with a government entity must provide workers' compensation.

The 1917 Texas law provided the basic framework for the state workers' compensation system for the next 75 years. Between 1917 and 1987, the law was amended or modified a number of times:

- In 1947, the Legislature created the Second Injury Fund and classified certain occupational diseases as compensable.
- In 1957, the Legislature extended medical benefits through the injured employee's lifetime, established a maintenance tax paid by insurance carriers to fund the Industrial Accident Board (IAB), and extended the IAB's jurisdiction in medical disputes past the date of a judgment or award.
- In 1959, the Legislature prohibited attorney fees in fatal cases in which the insurance carrier accepted liability.
- In 1969, the Legislature established a pre-hearing system to resolve disputes.
- In 1973, the Legislature allowed injured employees unrestricted choice of health care providers.
- In 1975, employees of certain public entities in Texas were brought into the system.
- In 1987, the Legislature authorized the IAB to establish guidelines for medical treatments and charges, and appointed a Joint Select Committee on Workers' Compensation Insurance to study the state workers' compensation system and make recommendations for change.

1989 - 1994

The Joint Select Committee on Workers' Compensation conducted a comprehensive, two-year study of the system. In 1989, the Committee reported the following:

- Work-related fatality rates in Texas were among the highest in the nation. Statistics comparing state injury rates were unavailable or considered unreliable.
- Texas benefit rates and payment durations, especially those for seriously injured employees, were low when compared to other states.
- Nearly 50 percent of all compensable lost-time claims were filed with the help of attorneys, regardless of whether the claim was disputed.
- Workers' compensation-related medical costs were higher than in other states and had increased faster than medical costs outside the system and faster than indemnity costs.
- More claim disputes were resolved in the courts; therefore, settlements sometimes were inequitable or inappropriate for the injury.
- The cost of the Texas system to employers was among the highest in the nation. Insurance rates had more than doubled over the previous five years.
- Texas was one of only three states that did not allow private employers to self-insure.

Based on those and other findings, the Committee identified fourteen key policy objectives for the state workers' compensation system. The Committee reported that the system should do the following:

- Promote workplace safety and health through employer incentive programs
- Provide broad coverage of employees and work-related injuries and illness, regardless of fault
- Provide appropriate and quality medical care directed toward prompt restoration of the employee's physical condition and earning capacity
- Provide temporary benefits that replace a high proportion of after-tax lost earnings and permanent disability benefits that alleviate the economic hardships that occur because of the disability
- Provide similar benefits to employees who suffer similar injuries and provide benefits proportionate to the severity of the injury
- Provide benefits promptly and minimize the likelihood of claim disputes
- Ensure compliance with the law and rules
- Allow policymakers to exercise policy control to ensure that the system operates in accordance with the law
- Encourage employees to return to work as quickly as possible and medically safe
- Provide a safe, secure and efficient insurance and benefits delivery system
- Appropriately allocate costs of the system to employers
- Make insurance available to all employers at reasonable rates
- Allow methods for continued monitoring and input from both business and labor
- Prevent the transfer into the system of costs not related to workers' compensation

Legislators responded by adopting a new Texas Workers' Compensation Act in 1989. The Act included the following provisions:

- Created the Texas Workers' Compensation Commission and eliminated the IAB
- Consolidated and enlarged state-administered workplace health and safety programs and created health and safety assistance and incentive programs
- Established a new income benefit system and raised benefit levels
- Set specific payment and reporting deadlines for employers and insurance carriers to improve

benefits delivery

- Established a multi-level administrative system to resolve disputes and eliminated the use of compromise settlement agreements
- Established a program to allow disputes to be resolved informally and to assist unrepresented injured employees and other participants
- Mandated that the Commission assess administrative penalties against participants who violate the Act or Commission rules
- Granted the Commission authority to investigate fraud and changed Texas law to make some workers' compensation fraud a felony (until Sept. 1, 1994)
- Broadened the Commission's authority to develop and enforce medical fee and treatment guidelines and established other measures to control medical costs
- Limited attorney fees to time and actual expenses, up to a maximum of 25 percent of an employee's total income benefits recovered
- Established the Workers' Compensation Research Center to conduct independent studies on the performance of the system
- Established the Legislative Oversight Committee on Workers' Compensation to monitor the Commission and system and recommend changes to the Act to the Legislature

Benefit and administrative provisions of the Act were effective January 1, 1991. The following provisions came later:

- Provisions authorizing the Commission to enforce the Act and Commission rules by assessing administrative penalties became effective June 1, 1991.
- Provisions allowing arbitration as an alternate means of dispute resolution became effective January 1, 1992.
- Provisions allowing large private employers to self-insure their workers' compensation obligations, with Commission approval, became effective January 1, 1993.
- Provisions making most non-covered employers subject to health and safety requirements became effective on January 1, 1994.

Shortly after the Act was passed by the Legislature, the Texas AFL-CIO, the Texas Legal Services Union Local No. 2 and three Texas employees filed a lawsuit challenging its constitutionality on several grounds. The plaintiffs prevailed in the 365th District Court of Maverick County and the 4th Court of Civil Appeals in San Antonio. However, the Texas Supreme Court overturned the lower courts and issued an opinion February 7, 1995, declaring the Act constitutional.

Subsequent to the significant changes made in 1989 and in an attempt to provide more stability in the workers' compensation insurance market as well as increase the availability of workers' compensation coverage for Texas employers, the 72nd Legislature passed HB 62 in 1991, which called for the Texas Workers' Compensation Insurance Facility (the former insurer of last resort) to stop writing workers' compensation policies and created the Texas Workers' Compensation Insurance Fund (Fund) to serve as a competitive force in the market and as the insurer of last resort. The Fund began writing new workers' compensation insurance policies and assumed responsibility for the residual market at the beginning of 1994.

1995 Sunset Review

The Texas Workers' Compensation Commission (TWCC or the Commission) underwent Sunset review by the Texas Sunset Advisory Commission in 1994. As a result of that process, the Legislature enacted HB 1089 in 1995, which continued TWCC until 2007 (*In 2001, the 77th Legislature passed HB 2600 which changed the agency's Sunset date to 2005.*) HB 1089 also amended the Act to include the

following requirements:

- Make state agencies directly responsible for managing employees' injuries by defining each individual agency as the employer for workers' compensation purposes
- Require agencies to actively manage risks and require the Commission's Risk Management Division to review, verify, monitor, and approve agency risk management programs;
- Require state agencies to develop, implement, and maintain health and safety return-to-work programs
- Require the Commission's Risk Management Division to identify state agencies that do not comply with statutory risk management requirements in its biennial report to the Legislature;
- Require the Commission to establish training guidelines and continuing education requirements for ombudsmen
- Require the Commission to develop plain language information for injured employees about the workers' compensation process in English and Spanish
- Require the Commission to contact injured employees having missed eight or more days of work to provide information about the workers' compensation process
- Give the Commission's executive director the discretion to exclude a business from being identified as an extra-hazardous employer if the business can show that it would be identified only because of a fatal accident beyond the owner's control or not related to the work environment
- Require, for extra-hazardous employer designation, that the case must go through an Administrative Procedure Act hearing if the case history indicates that the employer or the employment environment was a proximate cause of the fatality
- Establish an inspection time window so the Commission can conduct an accident prevention plan implementation inspection for an extra-hazardous employer between six and nine months after the plan has been implemented
- Require the Commission to adopt rules to address fatalities that may not be related to the work environment, including heart attacks, diseases of life, homicides, suicides, third-party vehicle accidents, common insurance carrier accidents and natural events
- Authorize the Commission to impose an administrative fine of up to \$500 on non-covered employers with five or more employees who fail to file required reports on injuries and illnesses
- Authorize the Commission to develop the qualifications for field safety representatives by rule
- Require insurance carriers to file employer reports of injury on behalf of their policyholders
- Require employers to give a copy of the injury report to the employee
- Require the employee's copy of the injury report to contain a summary of the employee's rights and responsibilities under the statute written in plain language
- Transfer the Commission's Administrative Procedure Act hearings to the State Office of Administrative Hearings
- Remove the executive director of the Commission as a voting member of the Texas Certified Self-Insurer Guaranty Association Board and require continued service on the Board as a nonvoting member
- Require Commissioners to complete a training program before assuming their duties
- Require the governor to designate the chair of the Commission
- Make investigation files confidential
- Entitle sole proprietors, partners or corporate executive officers to workers' compensation benefits as employees
- Terminate income benefits for an occupational disease on the expiration of 401 weeks after the date on which benefits begin to accrue
- Require specific qualifications for Designated Doctors

- Restrict communication with a Designated Doctor to the injured employee or an appropriate staff member of the Commission
- Require an ombudsman to meet privately with an unrepresented claimant for at least 15 minutes before a hearing
- Make certain workers' compensation fraud a state jail felony

In a separate bill, the Legislature, in effect, combined the Legislative Oversight Committee on Workers' Compensation and the Workers' Compensation Research Center to create the Research Oversight Council on Workers' Compensation (ROC).

1997

The 75th Legislature passed HB 2133, which created the State Office of Risk Management (SORM) by merging the responsibilities of the Risk Management Division of the Texas Workers' Compensation Commission with the duties of the Workers' Compensation Division of the Attorney General's Office. By statute, SORM is charged with administering the workers' compensation program for state agency and public university employees, with the exception of the Texas A&M University System, the University of Texas System, and the Texas Department of Transportation.

1999

In 1999, legislators passed amendments to the Workers' Compensation Act to improve the efficiency of the workers' compensation system. Legislation was approved with the following provisions:

- Permit or require electronic transmission of information among system participants (HB 2511)
- Allow benefit review officers and hearing officers to issue interlocutory orders for payment of part or all medical and income benefits (HB 2512)
- Allow TWCC to accept a one-time grant from the Texas Workers' Compensation Insurance Fund to control medical costs and ensure delivery of quality medical care (HB 2510)

In 1999, legislators passed several amendments to the Workers' Compensation Act to improve the efficiency and equity of the workers' compensation system. Legislation was approved to:

- Require insurance carriers to provide income benefits to injured employees via electronic funds transfer (EFT) at the request of an injured employee (HB 729)
- Make several revisions to the Staff Leasing Services Act, including: 1) clarifying that a certificate of insurance coverage showing that a license holder maintains workers' compensation insurance constitutes proof of coverage for the license holder and the client company with respect to all employees of the license holder assigned to the client company; and 2) expanding the provisions that must be included in a contract between a license holder and a client company to specify those responsibilities that are shared with regard to assigned employees (HB 1184)
- Prohibit an insurance carrier from requesting a medical examination more than once a year for certain injured employees receiving Supplemental Income Benefits (SIBs) (HB 1826)
- Clarify that if an injured state employee chooses to exercise the right to exhaust sick leave under the Workers' Compensation Act (Act), the employee may also choose to use some or all annual leave before receiving workers' compensation income benefit payments (not applicable to employees of the Texas Department of Transportation, the University of Texas System and the Texas A & M University System, who are governed by separate sections of the *Texas Labor Code*) (HB 2509)
- Clarify that payments of medical and income benefits made by the State Office of Risk Management (SORM) are subject to the provisions of the Workers' Compensation Act

applicable to insurance companies, and not to payment provisions of the Government Code applicable to state agencies (HB 2509)

- Require that the insurance carrier pay interest on accrued but unpaid income benefits without an order from TWCC, at the time the accrued benefits are paid and increase the interest rate applicable under provisions of the Act from the current Treasury Bill rate to the current Treasury Bill rate plus 3.5 percent to better approximate business interest rates (HB 2510)
- Clarify that an injured employee is not entitled to Temporary Income Benefits (TIBs), and an insurance carrier may suspend payment of TIBs, if the employee fails, without good cause, to attend an insurance carrier Required Medical Exam (RME) (HB 2510)
- Require an insurance carrier to continue paying TIBs to an injured employee for at least 14 days from the date the carrier notifies TWCC and the employee of the intent to suspend benefits based on a medical report arising out of a carrier RME; require TWCC to set a Benefit Review Conference (BRC) within 10 days of receiving notice of the carrier's intent to suspend to determine whether an interlocutory order to continue benefits should be entered (HB 2510)
- Authorize an employee or a legal beneficiary to request, and an insurance carrier to pay, income or death benefit payments monthly rather than weekly, with the agreement of the insurance carrier. Additionally, allow a carrier to purchase an annuity to pay the benefits of an employee receiving Lifetime Income Benefits (LIBs), or a legal beneficiary receiving death benefits, subject to TWCC regulation (HB 2510)
- Authorize TWCC, by rule, to adopt the fourth edition of the American Medical Association's (AMA) *Guides to the Evaluation of Permanent Impairment*, for determining the existence and degree of an injured employee's impairment (HB 2510).
- Increase the maximum burial benefit from \$2,500 to \$6,000 to more accurately reflect the average cost of a burial in Texas (HB 2510)
- Authorize a political subdivision to provide volunteer fire fighters, police officers, or other specifically named emergency medical personnel, who are injured in the course of performing volunteer duties, with more than the minimum income benefits authorized by the Act (HB 2510)
- Allow TWCC to accept a one-time grant from the Texas Workers' Compensation Insurance Fund (Fund) to control medical costs and ensure delivery of quality medical care (HB 2510)
- Permit or require electronic transmission of information among system participants; require TWCC to develop a paperwork reduction plan; and allow TWCC to contract with a data collection agent to fulfill the agency's data collection requirements if necessary (HB 2511)
- Require Certified Self-Insurers and political subdivisions to provide TWCC with notice of coverage (i.e., whether the employer has a commercial workers' compensation policy or provides coverage through a pool or self-administered arrangement) and claim administration contact information, and require employers and insurance carriers to identify or confirm an employer's coverage status and claim administration contact information at TWCC's request (HB 2511)
- Allow benefit review officers and hearing officers to issue interlocutory orders for payment of part or all medical and income benefits and allow the TWCC executive director to enter interlocutory orders for all or part of accrued and/or future medical benefits as allowed by rule (HB 2512)
- Authorize TWCC to establish minimum qualifications and credentialing standards for private providers of vocational rehabilitation services within the workers' compensation system; require TWCC to inform insurance carriers of those injured employees eligible to receive Supplemental Income Benefits (SIBs) who are good candidates for vocational rehabilitation services; and clarify that an injured employee who refuses the services of (or refuses to cooperate with) a carrier-sponsored private vocational rehabilitation provider loses entitlement to SIBs (HB 2513)

- Require TWCC to develop a guideline which outlines expected return-to-work timeframes; to provide information to employers regarding effective return to work programs through the agency’s health and safety information and medical review outreach programs; and to establish a program that encourages communication between employers and health care providers regarding the availability of modified duty to encourage more timely return to work of injured employees (HB 2513)
- Allow TWCC, at the request of an employer, an insurance carrier, or on its own initiative, to request a functional capacity report from an injured employee’s treating or examining doctor to determine what ability, if any, an injured employee has to return to work (HB 2513)
- Change the name of the program from the “Extra Hazardous Employer Program” to the “Hazardous Employer Program” and limit the application of the program to comply with a 1996 Third Court of Appeals ruling which stated that provisions of the program that duplicated or regulated federal Occupational Safety and Health Act standards were preempted and, therefore, invalid (HB 2514)
- Require TWCC to re-inspect the accident prevention services of insurance carriers who fail an initial biennial inspection within 180 to 270 days, and to collect reasonable re-inspection costs from those insurance carriers (HB 2514)
- Provide workers’ compensation medical coverage for volunteers in a state declared emergency (HB 2706)
- Clarify that an employer may continue to pay the salary of an employee who sustains disability from a compensable injury in lieu of paying Temporary Income Benefits (TIBs) and that such payments are considered payment of income benefits for determining the accrual date of any subsequent income benefits (HB 2842)
- Authorize the Fund to establish multi-tiered premium systems to set prices for insurance policies; eliminate the Fund’s state premium tax credit; require the Fund to be a member of the Texas Property and Casualty Insurance Guaranty Association; refund part of the Fund’s surplus to policyholders who paid a maintenance tax surcharge between 1991 and 1996; and require the Research and Oversight Council on Workers’ Compensation to conduct specific research studies to examine:
 - methods to improve employee safety and facilitate return to work;
 - the quality and cost-effectiveness of the current workers’ compensation health care delivery system; and
 - medical provider treatment patterns and insurance carrier utilization review practices (HB 3697).
- Define members of the state’s military forces as “state employees” for the purposes of providing workers’ compensation coverage, effective for compensable injuries sustained on or after August 15, 1998 and clarify that a member’s average weekly wage for workers’ compensation purposes is equal to the sum of the member’s regular civilian weekly wage and regular military weekly wage (SB 525)

2001

Medical costs in the system continued to be of concern in 2001. Legislators approved HB 2600 containing numerous amendments to the Act designed to:

- Improve TWCC’s ability to regulate and sanction the various types of doctors providing services in the workers’ compensation system
- Require doctors to register with and be approved by TWCC (i.e., the Approved Doctor List)
- Require TWCC to establish impairment rating training and testing, and financial disclosure

- requirements for registered doctors
- Formalize the role of the Medical Advisor and create a Medical Quality Review Panel
 - Require a feasibility study on the creation of regional workers' compensation medical networks, and, if networks are determined to be feasible,
 - Require TWCC to contract with regional networks, and
 - Provide an option for injured employees and insurance carriers to participate in regional medical networks.
-
- Eliminate the current second opinion process for spinal surgery and include those services in the pre-authorization process
 - Establish a minimum list of medical services requiring pre-authorization and/or concurrent review
 - Allow insurance carriers and health care providers to voluntarily pre-certify health care services that do not require pre-authorization
 - Allow the Commission to adopt rules requiring insurance carriers to pay for pharmaceutical services for the first seven days after an injury if the health care provider receives verification of coverage and confirmation of injury
 - Modify the Required Medical Examination process to bring TWCC Designated Doctors into the process more quickly to resolve questions on impairment and maximum medical improvement.
 - Modify qualification requirements for Designated Doctors
 - Require the TWCC to adopt an open pharmaceutical formulary including generic and over-the-counter medications
 - Require the use of Independent Review Organizations for resolving pre-authorization and medical necessity disputes
 - Require employers to, by request, report to the employee, treating doctor, and insurance carrier whether they offer modified duty opportunities for injured employees
 - Require insurance carriers to offer return-to-work coordination services to their policyholders
 - Move the TWCC Sunset review date up from Sept. 1, 2007 to Sept. 1, 2005
 - Allow employees to count all IRS-reportable wages, including multiple jobs, for calculating their average weekly wage (applies to a compensable injury that occurs on or after July 1, 2002)
 - Amend the determination of Temporary Income Benefits for school district employees to be based on the wages earned in a week rather than wages paid in a week (Applies to a compensable injury that occurs on or after Dec. 1, 2001)
 - Provide that the cost of risk management services be allocated to state agencies in the same manner as workers' compensation premiums
 - Create a risk/reward program for workers' compensation costs of state agencies
 - Allow Texas Department of Transportation injured employees to elect to use sick and annual leave time prior to receiving income benefits for their injury
 - Expand the Subsequent (previously Second) Injury Fund's (SIF) responsibility for reimbursements to insurance carriers to include payment of pharmaceutical services for the first seven days after the injury where the injury is determined not to be compensable and for additional benefits paid due to multiple employment
 - Provide for the SIF to make partial payment of some insurance carrier requests, if necessary
 - Provide for a maintenance tax increase, if necessary, to fund the SIF
 - Require the Commission to use the treasury constant maturity rate for one-year treasury bills as published by the Federal Reserve Board for the computation of interest and discount rates
 - Prohibit the waiver of an employee's cause of legal action against a non-subscribing employer

before the employee's injury, illness, or death

In addition to the passage of HB 2600, a few other key pieces of workers' compensation legislation passed in 2001 containing the following provisions:

- Authorize the State Office of Risk Management (SORM) to provide risk management services for most state agencies (except the University of Texas System, the Texas A&M University System, and the Texas Department of Transportation) and to purchase or approve insurance coverage for most state agencies, with the above exceptions and an exception for Texas Tech University (HB 1203)
- Allow certain sub-claimants (as defined by Labor Code Section 409.009) on workers' compensation claims to access the claims records of the Texas Workers' Compensation Commission to determine whether or not sub-claims exist. To qualify for this access, such a sub-claimant must be an insurance carrier and must have adopted an anti-fraud plan (HB 1562)
- Change the structure of the Texas Workers' Compensation Insurance Fund, which writes a significant share of the workers' compensation insurance policies in the state and serves as the "insurer of last resort" for Texas employers. Under the bill, the Fund was renamed Texas Mutual Insurance Company and became a member-owned entity, with any surpluses in the Fund's operations available to be passed back to members as dividends (HB 3458)
- Allow for a disability payment for peace officers injured by criminal conduct in the course of their duties (SB 850)

2003

Given the significant reforms enacted by HB 2600 in 2001, the 78th Legislature enacted fewer changes in 2003; however, several significant bills were passed to:

- Reduce workers' compensation subrogation recovery potential by the percentage of the employer's responsibility for on-the-job injury (HB 4)
- Give TWCC authority to file suit to enforce its orders. Also require notice to TWCC of district court filings; if no notice is given, case cannot proceed (HB 145)
- Allow injured employees to pay to "upgrade" to brand-name drugs when generics are prescribed, resolving conflict with Pharmacy Act (HB 833)
- Allow employees of County Community Service and Corrections Departments to receive risk management services provided by the State Office of Risk Management (SORM) (HB 1230).
- Allow group self-insurance by private employers and allows the purchase of group workers' compensation coverage by trade associations (HB 1865 and HB 2095)
- Define employees of Texas Task Force 1 (emergency responders) as state employees for workers' compensation purposes (HB 2116)
- Change seven-day requirement for carrier to pay or deny benefits to 15 days; violation of 15-day requirement is not a waiver of compensability timeframe, but an administrative violation (HB 2199)
- Clarify that a suit filed in district court after the exhaustion of the TWCC administrative dispute process may be transferred if filed in the wrong court, and that the 40-day filing timeframe is satisfied if filed timely in the first court (HB 2323)
- Exempt the Employee Retirement System (ERS) from the state workers' compensation program administered by SORM (HB 2359 and HB 2425)
- Allow TWCC to create by rule a lower-cost medical dispute resolution process for medical services costing less than an IRO review (HB 3168)
- Designate the SIF as a dedicated general revenue fund (HB 3318 and HB 3378)
- Require the State Board of Medical Examiners (BME) to notify TWCC if BME discovers a potential violation of workers' compensation laws (SB 104)

- Provide confidentiality for Board of Chiropractic Examiners (BCE) investigation files, but require BCE to share information with TWCC at TWCC's request (SB 211)
- Clarify that a person who performs services that may benefit a political subdivision in connection with the operation of certain entertainment events, but who does not receive payment, is not eligible for workers' compensation benefits from the political subdivision (SB 478)
- Set a 90-day timeframe to dispute an assignment of an injured employee's date of Maximum Medical Improvement or impairment rating and provide certain statutory exceptions for both first and subsequent assignments or ratings (HB 2198, HB 3168 and SB 820)
- Make numerous changes to statute for Texas Property and Casualty Insurance Guaranty Association to conform Texas law more closely with model workers' compensation acts and facilitate cooperation with other states in liquidation issues (SB 1192)
- Clarify that for self-insured employers and political subdivisions, notice to the carrier of a work-related injury occurs when the third party claims administrator (TPA) receives notice, not the employer (SB 1282)
- Allow TWCC to adopt non-nationally recognized treatment guideline, if no nationally recognized guideline exists; guideline adopted by TWCC must still be scientifically valid and outcome-based. Also allows TWCC to adopt individual treatment protocols (SB 1572)
- Allow TWCC and Board of Medical Examiners/Board of Chiropractic Examiners to share information without compromising confidentiality; provides stronger immunity protection for members of TWCC's Medical Quality Review Panel (SB 1574)
- Set State Average Weekly Wage at dollar-certain amount for fiscal years 2004 (\$537) and 2005 (\$539) (SB 1574)
- Clarify that pharmacy services can be voluntarily pre-certified prior to delivery, and that carrier must pay for services that it voluntarily pre-certifies. Independent review organizations are required to consider payment policies of TWCC in deciding medical disputes, if payment policy is raised (SB 1804)

2005 Interim Studies

In 2005, legislators received two interim study reports recommending changes to the workers' compensation system. The Senate Select Interim Committee on Workers' Compensation and the House Business and Industry Committee both presented recommendations on implementing health care networks in the workers' compensation system and on other issues.

Among its recommendations, the Senate Select Interim Committee on Workers' Compensation recommended the following:

- The Texas workers' compensation system should define medical necessity in a manner that encourages evidence-based treatment focused on return to work and functional restoration.
- TWCC should adopt treatment guidelines that meet the statutory standards and are evidence-based, to the greatest extent possible. Since a major purpose of guidelines is education, TWCC and appropriate system stakeholders should take steps to more strongly emphasize education of employers and employees about the benefits of early return to work.
- Workers' compensation networks should be allowed in the workers' compensation system.
- TWCC should continue discussion with stakeholders on how to implement a treatment planning process designed to prospectively review problem claims on a pilot program basis.
- In regard to medical disputes, it is suggested to eliminate the ability of a party to a medical dispute to appeal an IRO decision to the State Office of Administrative Hearings. In regard to indemnity disputes, insert independent medical expertise into an evaluation of frequently disputed issues such as the extent of an employee's injury and the employee's ability to work through a review by a TWCC Designated Doctor.

- The TWCC Medical Advisor and Medical Quality Review Panel functions should continue with a redirected focus.
- Enhancements should be made to income benefits in the Texas workers' compensation system to approach the national medians. The retroactive period should be shortened from 28 to 14 days. The cap on weekly income benefits should be raised to more closely approximate the national median state (currently Tennessee, at about \$600 a week, compared to Texas' \$539).
- The workers' compensation administrative agency should operate under a single commissioner structure, with the commissioner appointed by the Governor with the advice and consent of the Senate.
- State agency enforcement activities must be enhanced to better ensure appropriate incentives are in place for compliance.
- The system should retain a workers' compensation research function, adequately staffed to complete a similar level of research projects to the former Research and Oversight Council.
- TWCC should take steps to implement electronic billing for health care providers.

In its report to the Legislature, the House Business and Industry Committee recommended:

- Health care networks in the workers' compensation system should maximize choice of treating doctors and allow a change of treating doctor.
- Health care networks should provide injured employees with adequate access to medical specialists.
- Networks should guarantee that health care providers be paid promptly and fairly.
- A reporting system should be established for networks so that the Legislature and others are aware of their effectiveness.
- Explore the idea of patient advocates to represent the injured employee in the network system.
- Utilize Workers' Compensation Research Group at the Department and contacts at the Workers' Compensation Research Institute to measure performance to ensure that employees are getting the care they deserve and employers are getting the best of network care for their money.
- Investigate incentives to make network concept more acceptable to employees and labor.
- Have the Department conduct a study to determine if there are measurable and/or significant differences between non-owned referrals and self-referrals.
- Establish return-to-work guidelines and education programs for employers.
- Implement electronic billing of workers' compensation insurance carriers by physicians.
- The Texas Commissioner of Insurance should study the effects of a managed care system on workers' compensation insurance rates.

2005 Sunset Review

The Commission underwent review by the Texas Sunset Advisory Commission in 2004. As a result of legislation containing recommendations from the House and Senate interim committees and from the Sunset Commission, the 79th Texas Legislature enacted HB 7 in 2005. HB 7 abolished the Commission and created the Division of Workers' Compensation within the Texas Department of Insurance with a Commissioner of Workers' Compensation appointed by the Governor to serve as Executive Authority for the Division.

HB 7 also amended the Act to:

- Remove the statutory designation of specific Divisions within the Division of Workers' Compensation, allowing the Commissioner of Workers' Compensation to determine the organizational structure of the Division to best meet performance goals
- Require the Division to assess the performance of insurance carriers and health care providers

against regulatory goals established by the Commissioner of Workers' Compensation

- Require the Division to implement a regulatory approach that emphasizes overall compliance, rewards performance, and efficiently handles complaints
- Establish specific duties and studies of the Workers' Compensation Research and Evaluation Group, including preparing workers' compensation network consumer report cards
- Establish the Office of Injured Employee Counsel (OIEC) to be administered by a Public Counsel appointed by the Governor. Transfer the Ombudsman Program from the Division to OIEC by March 1, 2006
- Simplify the provision of workers' compensation health care by allowing for the creation of networks similar to those found in group health insurance
- Provide that all employees of an employer covered by an insurance carrier that establishes or contracts with a certified network must obtain medical care for their work-related injuries through the network
- Provide that the insurance carrier is liable for approved, out-of-network referred care, emergency care and health care for an employee who does not live in the network service area
- Provide that an injured employee may request that his or her primary care provider under a group health HMO plan also serve as his or her treating doctor if the primary care provider agrees to abide by network requirements
- Provide that a network may operate under its own treatment guidelines and pre-authorization requirements. However, medical care may not be denied solely because it is not specifically addressed by the treatment guidelines used by the insurance carrier or network
- Create a pilot return-to-work program for small employers with workers' compensation insurance which provides grants of up to \$2,500 per employer to pay for workplace modifications that facilitate early return to work
- Require the Division to assist injured employees receiving income benefits to return to work, including referring injured employees to other employment assistance programs
- Streamline the medical benefit dispute resolution process by requiring that parties seeking to appeal a review by an Independent Review Organization (IRO) or the Division must seek judicial review directly rather than appeal the IRO decision to the State Office of Administrative Hearings
- Streamline the process for determination of compensable injury and the process for insurance carriers to either accept or dispute the findings of the treating doctor regarding the scope of the compensable injury
- Require that treatment for a diagnosis/injury that is accepted by the insurance carrier may not be reviewed later for compensability but may be reviewed for medical necessity
- Require that treatment for a diagnosis/injury that is not accepted by the insurance carrier must be pre-authorized before treatment is rendered
- Require that an injured employee receive written notice once a treating doctor certifies Maximum Medical Improvement (MMI) and assigns an impairment rating
- Provide that requests by insurance carriers for Required Medical Examinations (RME) are only allowed prior to a Designated Doctor Examination in order to examine the appropriateness of the health care received outside of a network
- Provide that an injured employee may have a doctor of the employee's choice present at an RME if the examination relates to the employee's impairment rating or MMI date
- Provide that a doctor in the health care network may not serve as a Designated Doctor or perform an RME for an employee receiving medical care through a network with which the doctor contracts or is employed
- Require the Commissioner of Workers' Compensation to adopt a pharmacy fee guideline as well as treatment and return-to-work guidelines that are "evidence-based, scientifically valid and outcome-focused"

- Provide that the Commissioner of Workers' Compensation may adopt disability management rules, including the use of treatment plans, for non-network claims
- Limit the validity of post-injury waivers signed by employees of non-subscribers, including a prohibition against the signing of a waiver before the tenth business day after the employee was injured
- Increase the maximum and minimum income benefit amounts paid to employees injured after October 1, 2006 by approximately 12 percent
- Reduce the amount of time an injured employee must be off work before that employee may recoup income benefits for the initial waiting period (i.e., the first seven days of disability) from four weeks to two weeks. The two-week waiting period applies only to injuries that occur after September 1, 2005
- Clarify that work-related injuries determined as non-compensable remain subject to the exclusive remedy provision of workers' compensation
- Prohibit the misuse of the Division's name, abbreviations, symbols, and logos
- Require the Division to ensure all workers' compensation forms and explanatory materials are prepared in plain language in both English and Spanish
- Expand the statutory definition of intoxication in the workers' compensation system
- Remove the requirement that the state show that a party committed a violation of the Act or rules "willfully and intentionally" in order to assess administrative penalties
- Clarify that employees in the University of Texas System and Texas A&M University System may use their accrued sick and annual leave in lieu of receiving Temporary Income Benefits (TIBs). If an employee chooses to use sick leave, the employee must exhaust all sick leave before receiving TIBs

80th Legislative Session 2007

During the 80th Legislative Session legislators passed thirteen bills relating to workers' compensation to improve the efficiency of the system and to provide licensing requirements for certain system participants. There were no bills passed that directly affected the organizational structure or management of the Division. Bills that were passed amended the Act to include the following provisions:

- Make it an administrative violation for an insurance adjuster, case manager, or other person who has authority under the Texas Workers' Compensation Act to request performance of a service affecting the delivery of benefits to an injured employee
- Require third party administrators performing administrative services in connection with workers' compensation benefits to obtain a certificate of authority from the Department
- Allow for deviation from fee guidelines by informal or voluntary network contracts and list specific information that informal and voluntary networks are required to provide to the Division
- Require that informal and voluntary networks be certified as workers' compensation health care networks under Texas Insurance Code Chapter 1305 no later than January 1, 2011
- Reinstate the authority of the benefit review officer who presides over a Benefit Review Conference to consider a request for interlocutory order for the payment or suspension of benefits, allow the opposing party the opportunity to respond before issuance of an interlocutory order, and allow the benefit review officer to issue an interlocutory order if determined to be appropriate
- Allow parties in a medical necessity or medical fee dispute an opportunity to administratively appeal a medical dispute resolution decision to either a Contested Case Hearing or the State Office of Administrative Hearings

- Provide a reimbursement procedure for an accident or health insurer to recover amounts paid for health care services provided to an injured employee from the workers' compensation insurance carrier in cases where an injury is determined to be compensable
- Add an "eligible parent" to the list of legal beneficiaries eligible for death benefits where there are no other legal beneficiaries
- Provide small employers with the option of submitting to the Division a pre-authorization plan for workplace modifications to accommodate an injured employee's return to work
- Allow an Office of Injured Employee Counsel ombudsman to request and receive from a health care provider at no cost the medical records of an injured employee
- Provide that, notwithstanding Texas Insurance Code Section 4202.002 relating to the Independent Review Organization (IRO), an IRO that uses doctors to perform reviews of health care services provided under the Labor Code or Insurance Code Chapter 1305, may only use doctors licensed in Texas
- Clarify that a health care provider who fails to submit a medical bill within ninety-five days after the services are provided to the injured employee does not forfeit the right to reimbursement if the provider submits proof that the bill was timely filed with a group accident and health insurer or a health maintenance organization that issues coverage under which the injured employee is covered or a workers' compensation insurance carrier other than the insurance carrier liable for the reimbursement
- Require that utilization review agents and insurance carriers use doctors licensed in Texas for performing utilization review or review conducted under the Workers' Compensation Act or Texas Insurance Code Chapter 1305
- Require that doctors performing peer review, utilization review, independent review, Required Medical Examination or Designated Doctor evaluation must be certified in the specialty appropriate to the care the injured employee is receiving
- Amend the definition of "health care" in Texas Labor Code, § 401.011 to include the fitting, training, change or repair of a "prosthetic" or "orthotic" device
- Require the Commissioner to establish by rule the information and reporting requirements that must be reported on workers' compensation claims and remove provisions specifying such information and requirements
- Provide that a person who commits an offense of fraud under the Texas Labor Code, Chapter 418 (Criminal Penalties) may be prosecuted under that chapter or any other applicable state law, including the Texas Penal Code

Litigation History – Major Cases, 2003 - Current

2003

- *Continental Cas. Co. v. Rivera*, 124 S.W.3d 705 (Tex. App. – Austin, 2003, pet. denied) and *Cervantes v. Tyson Foods, Inc.*, 130 S.W.3d 152 (Tex. App. – Austin 2003, pet. denied) – These two, separate appellate court decisions reach conflicting conclusions on whether a party must timely appeal the agency's hearing officer's decision to the agency's Appeals Panel in order to successfully seek judicial review of the agency's final decision. The *Rivera* court answered in the affirmative and the *Cervantes* court answered in the negative. The timeliness of the agency's dispute process, based partially on the promptness of appeal requests by the parties, may be affected by a resolution of these conflicting decisions.
- *Hospitals & Hospital Systems v. Continental Cas. Co.*, 109 S.W.3d 96 (Tex. App. – Austin 2003, pet. denied). The Commission's one-year rule limitation for filing requests for medical fee dispute resolution was applicable to allow rejection of the hospital's claims for additional reimbursement. The decision assists in the timely filing of medical fee disputes.

- *Hefley v. Sentry Insur. Co.*, 131 S.W.3d 63 (Tex. App. – San Antonio, 2003, pet. denied). – The Court found that a former Commission Advisory “...acknowledged the law regarding finality of judgments...” and that a separate appellate court decision’s precedential value would be limited until the judicial process had been completed in that case. The Court, also, found that the injured employee did not raise a Tex. Lab. Code § 409.021 (c) waiver argument during the administrative dispute process and, therefore, he could not raise that issue for the first time in judicial review. The decision helps clarify the law when a non-final court decision otherwise would have the effect of altering or negating existing agency rules.
- *Wingfoot Enterprises v. Alvarado*, 111 S.W.3d 134 (Tex. 2003) - In *Wingfoot*, the Texas Supreme Court held that an employee of a temporary employment agency who is "injured while working under the direct supervision of a client company is conducting the business of both the general employer [the temporary employment agency] and that employer's client." The Court also held that based on the provisions of the Act, that the injured "employee should be able to pursue workers' compensation benefits from either," and that "if either has elected not to provide coverage, but still qualifies as an 'employer' under the Act, then that employer should be subject to common law liability without the benefit of the defenses enumerated in Tex. Lab. Code § 406.033."

2004

- *Tex. Employees' Comp. Comm'n. v. Patient Advocates of Tex.*, 136 S.W.3d 643 (Tex. 2004) The Court found that the Commission’s 1996 Medical Fee Guideline rule at 28 Tex. Admin. Code § 134.201 and its “audit and dispute” rules formerly published at 28 Tex. Admin. Code §§ 133.301 - .305 were valid rules establishing maximum allowable reimbursement amounts, a one-year limitation for filing request for medical fee dispute resolution, and insurance carrier responsibilities for initially establishing “fair and reasonable” reimbursement amounts, under the criteria of Tex. Lab. Code § 413.011(d), when the services in a dispute were not covered by a specific fee guideline. The decision supports current, separate rule concepts for fee guideline rules, time deadlines for filing medical disputes, and the “fair and reasonable” current “default” fee guideline rule.
- *Tex. Med. Ass’n. v. Tex. Workers’ Comp. Comm’n.*, 137 S.W.2d 342 (Tex. App. – Austin, 2004, no pet.) The Court found that the Commission’s 2002, Medicare-based Medical Fee Guideline rule at 28 Tex. Admin. Code § 134.202 was a valid rule and was not an unlawful delegation to a federal agency and that a supplemental, adoption rule preamble, in response to the trial court’s remand under Tex. Gov’t Code §2001.040, did not require a new rule proposal preamble to be published. The decision supports current, separate rule concepts for fee guideline rules and upheld the Legislature’s direction for medical fees in the Texas workers’ compensation system to be based on Medicare’s payment methodology.
- *Tex. Workers’ Comp. Comm’n., v. East Side Surgical Center*, 142 S.W.3d 541 (Tex. App. – Austin, 2004, no pet.) The Court found that the Commission’s rules addressing criteria and procedures for insurance carriers to initially establish “fair and reasonable” reimbursement amounts were not invalid delegations of authority to those insurance carriers. The Court also found that a health care provider has no right to require the agency to promulgate a specific fee guideline by rule rather than utilizing the default “fair and reasonable” fee guideline. The decision supports the current “fair and reasonable” rule at 28 Tex. Admin. Code § 134.1(f) and (g).
- *Howell v. Tex. Workers’ Comp. Comm’n.*, 143 S.W.3d 416 (Tex. App. – Austin, 2004, pet. denied) The Court found that a workers’ compensation health care provider cannot sue insurance carriers in various Texas courts for additional payments on employees’ medical bills without first exhausting the medical dispute administrative remedies available under the Workers’

Compensation Act and rules. The decision helps to ensure more standardized reimbursements and lower system costs due to fewer cases of judicial review and only in Travis County district courts.

- *Schade v. Tex. Workers' Comp. Comm'n.*, 150 S.W.3d 542 (Tex. App. – Austin, 2004, pet. denied) The Court affirmed the Commission's authority to conduct a "desk review" of five, selected injured employee patient files of a participating doctor and to require responses from the doctor to an agency questionnaire on the doctor's business practices. The agency's authority was based upon its implied authority under Tex. Lab. Code Chapter 413 and upon federal case law on administrative subpoenas and because the specific request for documents and responses to the doctor met the Court's specified requirements for such subpoenas.
- *In re Tex. Mut. Insur. Co.*, 157 S.W.3d 75 (Tex. App. – Austin, 2004, no pet.) The Court found that a sub-claimant for medical services reimbursement under Tex. Lab. Code § 409.009 must first exhaust its administrative medical dispute remedies before a trial court has jurisdiction to consider its contract claims for workers' compensation benefits. This decision helps to ensure lower system costs by avoiding premature and costly litigation in courts throughout Texas on workers' compensation medical bill reimbursements.
- *Tex. Workers' Comp. Comm'n. v. Harris County*, 132 S.W.3d 139 (Tex. App. – Houston 2004, no pet.) The Court held that even when the agency's Appeals Panel does not address the merits of a party's appeal, no mechanism in the Texas Workers' Compensation Act allows trial court to remand back to the Appeals Panel. The decision helps to shorten the Tex. Lab. Code Chapter 410 dispute resolution process and alleviate additional administrative dispute work that would have been necessary on remanded cases.
- *Krueger v. Atascosa County*, 155 S.W.3d 614 (Tex. App. – San Antonio 2004, no pet.) The Court found that a party seeking judicial review of an adverse administrative dispute decision on a particular issue must first appeal that adverse ruling to the agency's Appeals Panel. In addition, the Court held that an injured employee's ignorance of the Texas Workers' Compensation Act's claim filing deadline is not "good cause" under Tex. Lab. Code § 409.004 to extend that deadline.

2005

- *Garza v. Exel Logistics, Inc.* 161 S.W.3d 473 (Tex. 2005). Both a temporary employment agency and its client company must establish they are "covered by workers' compensation insurance coverage" to utilize the exclusive remedy provisions of Tex. Lab. Code § 408.001(a).
- *Skilled Craftmen of Tex., Inc. v. Tex. Workers' Comp. Comm'n.*, 158 S.W.3d 89 (Tex. App. – Austin 2005, pet. denied) Clarified that the agency's notification of a workers' compensation participating employer as hazardous without any penalty (due to rate of injuries exceeding the industry norm) was preempted by the federal Occupational Safety & Health Act. After this case decision, the Texas Legislature repealed the former Hazardous Employer Program in Tex. Lab. Code Chapter 411, Subchapter D.
- *Zurcih Am. Insur. Co. v. Gill*, 173 S.W.3d 878 (Tex. App. – Ft. Worth 2005, pet. denied) An insurance carrier waives any dispute of compensability if it does not timely contest compensability even if the claimed workers' compensation injury was not an occupational injury and the injured employee did not timely notify her employer of her injury.
- *Tex. Mut. Insur. Co. v. Eckerd Corp.*, 162 S.W.3d 261 (Tex. App. – Austin 2005, pet. denied) An insurance carrier could not sue certain pharmacies or their agents or assigns for alleged pharmacy prescription overpayments prior to exhausting their administrative medical fee dispute refund remedies at the agency.
- *In re Hartford Underwriters Insur. Co.*, 168 S.W.3d 293 (Tex. App. Eastland, 2005, no pet.) Issue of judicial review of agency's award of attorney fees in a Tex. Lab. Code Chapter 410 proceeding must be brought in a Travis County district court under Tex. Lab. Code § 410.255

rather than a court in the county where the injured employee resided at the time of the injury under Tex. Lab. Code § 410.301.

- *State Office of Risk Management v. Conley*, 2005 (Tex. App. Waco 2005, pet. denied) The Court affirmed the agency's Appeals Panel decision and the trial court's judgment that the State Office of Risk Management was not entitled to reduce or suspend impairment income benefits to recoup a \$8,308.95 overpayment because it could show no statutory authority to do so.

2006

- *American Cas. Co. of Reading, PA v. Hill*, 194 S.W.3d 162 (Tex. App. Dallas 2006, no pet.) A trial court may change an injured employee's date of maximum medical improvement from the date found by the agency's dispute resolution process but the Tex. Workers' Compensation Act prevents the trial court from considering new evidence of the extent of impairment.
- *Tex. Mut. Insur. Co. v. Tex. Dep't. of Insur., Div. of Workers' Comp.*, 214 S.W.3d 613 (Tex. App. – Austin 2006, no pet.) The Court held that, even though the Texas Department of Insurance has combined workers' compensation and employer's liability coverages into a standard form policy, the Division has no jurisdiction to determine the effective date of the standard policy's coverage period for employer's liability coverage.
- *Mid Century Insur. Co. v. Tex. Workers' Comp. Comm'n.*, 187 S.W.3d 754 (Tex. App. – Austin 2005, no pet.) A 2001 amendment to the former Texas Workers' Compensation Commission rule at 28 Tex. Admin. Code § 131.1 (concerning Lifetime Income Benefits being payable retroactively from the date of disability) was declared invalid because Tex. Lab. Code § 408.161 does not permit payment of such benefits prior to the date the employee suffers one of the conditions specified in that statute.
- *GuideOne Insur. Co. v. Cupps*, 207 S.W.3d 900 (Tex. App. – Ft. Worth 2006, pet. denied) Workers' Compensation insurance carriers must exhaust their administrative dispute remedies before they may sue an injured employee for fraudulently obtaining Supplemental Income Benefits.
- *Tex. Dept. of Insur., Div. of Employees' Comp. v. Lumbermens Mut. Cas. Co.*, 212 S.W.3d 870 (Tex. App. – Austin, 2006, pet. denied) Former Texas Workers' Compensation Commission Advisories 2003-10 and 2003-10B were invalid because they were contrary to the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association as made applicable by Tex. Lab. Code § 408.124.
- *Alexander v. Lockheed Martin Corp.*, 188 S.W.3d 348 (Tex. App. – Ft. Worth 2006, pet. denied) An insurance carrier's failure to file a dispute of compensability within the 60-day period after it received notice of the injury waived its "course and scope" issue even though the agency's Contested Case Hearing officer found that the injured employee willfully intended to injure himself by staging the staircase injury. However, the waiver would not have occurred if no injury had been found.
- *Am. Home Assur. Co. v. Kristy Bayless and the Tex. Workers' Comp. Comm'n.*, 353rd Judicial District Ct. of Travis County, Tex., Cause No. GN203491 Judge John K. Dietz's Final Judgment of Aug. 3, 2006 found that Tex. Lab. Code § 408.026 ("Powers & Duties of benefit review officer") was constitutional and that Tex. Lab. Code § 410.255 (providing for "substantial evidence" review rather than "modified *de novo*" review for certain disputed issues) did not unconstitutionally deny a right to trial by jury in the context of an issue of whether proposed spinal surgery was medically necessary.
- *Tex. Prop. & Cas. Guar. Ass'n. v. Nat. Am. Insur. Co.*, 208 S.W.3d 523 (Tex. App. – Austin 2006, pet. denied) Disputed issue of which of two employers was the employer at the time of the employees were injured is an issue of compensability within the "modified *de novo*" review

standard of Tex. Lab. Code § 410.301 rather than the “substantial evidence” review standard of Tex. Lab. Code § 410.255.

- *Tex. Workers’ Comp. Comm’n. v. Horton*, 187 S.W.3d 282 (Tex. App. – Beaumont 2006, no pet.) The trial court did not have subject matter jurisdiction to grant a temporary injunction against the agency requiring it to reinstate a physician to its Approved Doctor List. The duty to provide reasonable and necessary care does not require the agency to provide care by a particular physician.
- *Tex. Muni. League v. Burns*, 209 S.W.3d 806 (Tex. App. – Ft. Worth 2006, no pet.) The 40-day deadline in Tex. Lab. Code § 410.252(a) to file a petition for judicial review of an agency’s Appeals Panel decision is mandatory and jurisdictional but may be equitably tolled in a misidentification of insurer case under certain, specified conditions not present in this case.
- *Newsom v. Ballinger Indep. Sch. Dist.*, 213 S.W.3d 375 (Tex. App. - Austin 2006, no pet.) - In *Newsom*, the Third Court held that judgments that are void for failing to meet the requirements of Tex. Lab. Code § 410.258 will nonetheless become final once the district court’s plenary jurisdiction expires
- *Metropolitan Transit Authority v. Jackson*, 212 S.W.3d 797 (Tex. App. - Houston [1st] 2006, pet. den.) - In *Jackson*, the First Court held that judgments that are void for failing to meeting the requirements of Tex. Lab. Code § 410.258 can never become final. The court reasoned that because Section 410.258 is jurisdictional any failure to comply with its provisions deprives a court of subject matter jurisdiction, and judgments void for subject matter jurisdiction can never become final. This decision is in direct conflict with the Third Court’s decision in *Newsom v. Ballinger Independent School District*.

2007

- *Morales v. Liberty Mut. Insur. Co.*, 241 S.W.3d 514 (Tex. 2007) Disputed issue of an injured employees’ employment status (independent contractor vs. an employee) is a question of compensability within Tex. Lab. Code § 410.301(a) rather than the “other issues” “substantial evidence’ review procedures in Tex. Lab. Code § 410.255.
- *Centre Insur. Co. v. Pollitt*, 242 S.W.3d 112 (Tex. App. – Eastland 2007, pet. denied) Unless an injured employee has or is scheduled for spinal surgery during the 104-week period after income benefits begin to accrue, the legislature has imposed a two-year deadline for reaching maximum medical improvement even if the injured employee’s condition substantially worsens (10% impairment rating vs. alleged 26% impairment rating).
- *HealthSouth Med. Ctr. V. Employers Insur. Co.*, 232 S.W. 3d 828 (Tex. App. – Dallas 2007, pet. denied) A health care provider must exhaust its remedies under Tex. Lab. Code §413.031 after the agency’s dismissal of its medical fee dispute before it can sue for additional reimbursement under a contract between the health care provider, the workers’ compensation insurance carrier, and an informal workers’ compensation health care network.
- *Vega v. Silva and Mid-American Services*, 223 S.W.3d 746 (Tex. App. - Dallas 2007, no pet.) - In *Vega*, the Fifth Court held that pursuant to Tex. Lab. Code §§ 91.006 and 91.042 if a staff leasing company has a workers' compensation insurance policy that covers employees leased to a client company, then that policy also applies to the client company. Thus, both the client company and leasing company would be employers under Tex. Lab. Code § 408.001, meaning injured leased employees sole remedy against both employers would be a workers' compensation claim.

- *Southwestern Bell Tele. Co. v. Mitchell*, 2008 Tex. LEXIS 1141, 52 Tex. Sup. Ct. J. 202 (Tex. 2008) The Court overruled its decision in *Continental Cas. Co. v. Downs*, 81 S.W.3d 803 (Tex. 2002) and held that an insurance carrier that fails to comply with Tex. Lab. Code § 409.021(a) requirements to begin paying any applicable benefits or give written notice of refusal to do so within seven days of receiving notice of injury does not waive its right to contest compensability if it does contest compensability within the 60-day period of § 409.021 (c).
- *Tex. Mut. Insur. Co. v. Ledbetter*, 251 S.W.3d 31 (Tex. 2008) Tex. Lab. Code Chapter 417 means that "...the compensation insurance carrier gets the first money an employee receives from a tortfeasor..." even if the tortfeasor settlement provides otherwise.
- *Hartford Insur. Co. v. Crain*, 246 S.W.3d 374 (Tex. App. – Austin, 2008, no pet.) Judicial review under Tex. Lab. Code § 410.255 affects the manner of conducting judicial review (i.e. "substantial evidence" review rather than "modified *de novo*" review) but does not affect the § 410.252, 40-day deadline for filing a petition for judicial review.
- *Combined Specialty Insur. Co. v. Deese*, 266 S.W.3d 653 (Tex. App. – Dallas 2008, no pet.) A party must timely appeal an agency's hearing officer's adverse decision to the agency's Appeals Panel and an appeal notice is timely if mailed within the 15-day period after receipt of the hearing officer's decision and the faxed copy is received within the 20-day period after receipt of the decision.
- *Frank v. Liberty Insur. Corp.*, 255 S.W.3d 314 (Tex. App. – Austin 2008, pet. denied) The agency's rules required it to send notice of its hearing officer's decision both to the injured employee and any legal counsel for that employee. When the agency did not send a copy to that legal counsel, the deemed receipt provisions of the agency's rules did not apply to the agency's notice to the injured employee. Therefore, the legal counsel's request for an appeal was timely when it was made on the same day she called and first received a fax copy of the hearing officer's decision.
- *Tex. Dep't. of Insur., Div. of Workers' Comp. v. Insur. Council of Tex.*, 2008 Tex. App. LEXIS 2024 (Tex. App. – Austin 2008, no pet.) (mem. op.) The Division's rule at 28 Tex. Admin. Code § 133.309 [i.e. creating an alternative, less-expensive medical necessity dispute process for smaller-dollar disputes under Tex. Lab. Code § 413.031(n)] was invalid because it did not allow for an appeal to receive a Contested Case Hearing at the State Office of Administrative Hearings and for judicial review as required by Tex. Lab. Code § 413.031(k) and (k-1).
- *Tex. Mut. Insur. Co. v. Havard*, 2008 Tex. App. LEXIS 1614 (Tex. App. – Austin, 2008, no pet.) and *Tex. Mut. Insur. Co. v. Adkins*, 2008 Tex. App. – San Antonio 2008, no pet.) Both courts found that "intoxication" under Tex. Lab. Code § 406.032(1)(A), for use of a controlled substance, has no statutory level or test that establishes per se when a person has lost use of his or her physical or mental faculties and, therefore, is subject to a "relatively subjective" test.
- *McClelland v. Gronwaldt*, 2008 Tex. App. LEXIS 164 (Tex. App. – Beaumont 2008, pet. denied) An employer is protected by the exclusive remedy provision of Tex. Lab. Code § 408.001(a) even if the employer's workers' compensation insurance policy was a sham due to various side agreements with various insurers.
- *Wilson v. Tex. Workers' Comp. Comm'n.*, 2008 Tex. App. LEXIS 9510 (Tex. App. – Austin, 2008, no pet.) and *Lee v. Tex. Employees' Comp. Comm'n.*, 272 S.W.3d 806 (Tex. App. – Austin 2008, no pet.) Both courts found that the agency's denial of a doctor's application to the Approved Doctor List, as it existed after Sept. 1, 2003 through Aug. 31, 2007, due to quality-of-care issues identified by the agency's Medical Quality Review Panel, did not deprive either doctor of a property interest without first providing him a hearing because the doctor had no constitutionally protected property right to participate in the workers' compensation system.

- *Tex. Prop. & Cas. Insur. Guar. Ass'n. v. Brooks*, 269 S.W.3d 645 (Tex. App. – Austin 2008, no pet.) Tex. Lab. Code § 410.258 requires that a party who initiates judicial review (of a final Chapter 410 agency dispute decision) must file with the Division, not later than the 30th day before the court is scheduled to enter judgment, any proposed judgment or settlement made by the parties to the proceeding or the judgment or settlement is void. The Court held that § 410.258 applies only to “judgments ‘made by the parties’ – i.e. without judicial oversight or without fully adversarial proceedings – and settlement agreements made by the parties.” The Court’s decision is contrary to *Insur. Co. of the State of PA v. Martinez*, 18 S.W.3d 844 (Tex. App. – El Paso 200, no pet.).
- *Childers v. Gallagher Bassett Services, Inc.*, 2008 Tex. App. LEXIS 2474 (Tex. App. – Ft. Worth 208, pet. denied) The accrual of a two-year statute of limitations for “bad faith” allegations against an insurance carrier or its agent begins on the date the insurer wrongfully denies coverage and does not await the outcome of the exhaustion of the necessary administrative dispute process.
- *Tex. Mutual Insur. Co. v. Vista Community Medical Center, LLP*, 275 S.W.3d 538 (Tex. App. - Austin, 2008, pet. filed). In *Vista*, The Third Court interpreted the "stop-loss" provisions of the 1997 hospital acute care, inpatient fee guideline [former 28 TAC sec. 134.401(c)(6)]: (a) to permit insurance carriers' audit of hospital charges as permitted by applicable Division rules; (b) to prohibit insurance carriers from reducing charges for implantables, orthotics, and prosthetics to cost plus 10% when determining if the "stop-loss" provisions apply; and (c) to require that for a hospital to be eligible for reimbursement under the Stop-Loss Exception, the hospital’s total audited charges must exceed \$40,000 and the underlying admission must involve unusually costly or unusually extensive services. The Court also found that a 2005 agency "Staff Report" was not an invalid rule and that the terms "unusually costly" and "unusually extensive" are not too vague or uncertain for use. This case currently has a petition pending before the Texas Supreme Court and may affect hundreds of pending medical fee dispute cases at the Division and in Travis County district court.
- *Texas Mutual Insurance Company v. Ruttiger*, 265 S.W.3d 651 (Tex. App. - Houston [1st] 2008, pet. filed) - In *Ruttiger*, the First Court held that when parties enter into a binding benefit dispute agreement pursuant to Tex. Lab. Code §§ 410.029 and 410.030, that agreement exhausts the parties' administrative remedies for all issues settled in the agreement. Furthermore, the court held that in a bad faith claim against an insurer, a claimant may recover damages for additional aggravated injuries caused by the workers' compensation carrier's misconduct. A petition for review of this case has been filed with the Texas Supreme Court, and its final disposition will affect the binding effect and finality of all future Division benefit dispute agreements.

2009

- *State Office of Risk Management v. Foutz*, 2009 Tex. App. LEXIS 381 (Tex. App. – Eastland 2009) The Court affirmed the basis of the trial court’s mandatory sanctions against the State Office of Risk Management (SORM) for filing a frivolous lawsuit seeking the overturn of the agency’s decision of compensable injury by a correctional officer because SORM had no reasonable basis for its lawsuit. The Court found that the officer’s “[w]itnessing an attack [on one inmate by another inmate], learning within minutes that it was fatal, and subsequent feeling of guilt for not preventing the victim’s death are not separate causes of mental trauma ...[but] are all directly attributable to a single event: the attack ... witnessed.”
- *Am. Protection Insur. Co. v. Leordeanu*, 2009 Tex. App. LEXIS 1063 (Tex. App. – Austin 2009, no pet.) The Court affirmed a Division’s Contested Case Hearing decision that an injured employee did not have a compensable injury because, under the “dual purpose rule” based upon Tex. Lab. Code § 401.011(12)(B), travel for both personal and business-related purposes is not in

the course and scope of employment "...unless (1) the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the travel; and (2) the travel would not have been made had there been no affairs or business of the employer to be fulfilled by the travel."

- *State Office of Risk Management v. Lawton*, No. 08-0363, 2009 Tex. LEXIS 629 (Tex. Aug. 28, 2009) - In *Lawton*, the Texas Supreme Court overruled the Tenth Court's previous decision in *State Office of Risk Management v. Lawton*, 256 S.W.3d 436 (Tex. App. - Waco 2008, pet. granted) and held that the sixty-day period for challenging compensability of an injury under Texas Labor Code § 409.021(c) does not apply to a dispute over the extent of injury even if the basis for that dispute could have been discovered by a reasonable investigation within the waiver period. This decision affects the Division's current application of 28 Tex. Administrative Code, Section 124.3.
- *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433 (Tex. 2009). - In *Entergy*, the Texas Supreme Court held that premises owners can qualify as "general contractors" for the purposes of Tex. Lab. Code § 406.123. Based on this conclusion, the Court further held that if premises owners do qualify as "general contractors" under Section 406.123, they are also entitled, as statutory employers, to immunity from common law tort claims by their employees.
- *HCBeck, Ltd. v. Rice*, 284 S.W.3d 349 (Tex. 2009) - In *Rice*, the Texas Supreme Court held that a general contractor sufficiently "provides" workers' compensation insurance to the employees of a subcontractor for purposes of Tex. Lab. Code § 406.123 if the general contractor incorporates the landowner's owner controlled insurance plan into its contract with a subcontractor. Thus, general contractors who provide workers' compensation insurance to subcontractor employees in this manner qualify as statutory employers of those employees and thus are immune to common law tort claims made by them.

IV. Policymaking Structure

A. Complete the following chart providing information on your policymaking body members.

| Member Name/City | Term/Appointment Dates/ Appointed by | Qualification |
|--|---|--|
| Rod Bordelon, Commissioner of Workers' Compensation Austin, Texas | 2-year term/ February 1, 2009 to February 1, 2011/ Appointed by Governor Rick Perry | (1) be a competent and experienced administrator; (2) be well-informed and qualified in the field of workers' compensation; and (3) have at least five years of experience as an executive in the administration of business or government or as a practicing attorney, physician, or certified public accountant. Tex. Labor Code §402.00118. |
| Mike Geeslin, Commissioner of Insurance Austin, Texas | 2-year term/ February 1, 2009 to February 1, 2011/ Appointed by Governor Rick Perry | 1) be a competent and experienced administrator; (2) be well informed and qualified in the field of insurance and insurance regulation; and (3) have at least five years of experience as an executive in the administration of business or government or as a practicing attorney or certified public accountant. Tex. Ins. Code §31.023. |

B. Describe the primary role and responsibilities of your policymaking body.

The Division of Workers' Compensation (Division) does not have a policymaking body such as a board or commission. The Division of Workers' Compensation has a single commissioner as its chief executive officer and administrative officer. Texas Labor Code, Chapter 402, designates the Texas Department of Insurance (Department) as the agency to oversee the workers' compensation system in this state and establishes the Division of Workers' Compensation within the Department. Unlike other Divisions or areas of the Department, the Division of Workers' Compensation is administered by a Commissioner who is appointed by the Governor. The Commissioner of Workers' Compensation has the powers and duties vested in the Division of Workers' Compensation including conducting daily operations and otherwise implementing Division policies. The Commissioner of Workers' Compensation has statutory authority to perform activities such as: adopting rules, resolving benefit disputes, conducting contested case hearings, intervening in judicial proceedings, entering into contracts, appointing advisory committees as necessary, and assessing administrative penalties.

C. How is the chair selected?

The Texas Department of Insurance, Division of Workers' Compensation does not have a chair.

D. List any special circumstances or unique features about your policymaking body or its responsibilities.

House Bill 7, enacted by the 79th Texas Legislature, Regular Session (2005), created the Division of Workers' Compensation as a Division within the Department (Texas Labor Code, Section 402.001). The Division of Workers' Compensation is administered by the Commissioner of Workers' Compensation, who is appointed by the Governor (Texas Labor Code, Sections 402.00111 and 402.00116).

E. In general, how often does your policymaking body meet? How many times did it meet in FY 2006? in FY 2007?

The Division of Workers' Compensation does not have a policymaking body such as a board or commission. The Division of Workers' Compensation has a single commissioner as its chief executive officer and administrative officer.

F. What type of training do members of your agency's policymaking body receive?

The Commissioner of Workers' Compensation receives training in the following areas pursuant to *Texas Labor Code*, Section 402.00127:

- Legislation that created the Division
- Programs operated by the Division
- Role and functions of the Division
- Rules of the Commissioner of Insurance relating to the Division, with an emphasis on the rules that relate to disciplinary and investigatory authority
- Current budget for the Division
- Results of the most recent formal audit of the Division
- Requirements of:
 - the open meetings law, Chapter 551, Government Code
 - the public information law, Chapter 552, Government Code
 - the administrative procedure law, Chapter 2001, Government Code
 - other laws relating to public officials, including conflict-of-interest laws
- Any applicable ethics policies adopted by the Division or the Texas Ethics Commission

The Commissioner of Insurance receives training in the following areas pursuant to *Texas Insurance Code*, Section 31.028:

- Legislation that created the Department
- Programs operated by the Department
- Role and functions of the Department
- Rules of the Department, with an emphasis on the rules that relate to disciplinary and investigatory authority
- Current budget for the Department
- Results of the most recent formal audit of the Department

- Requirements of:
 - the open meetings law, Chapter 551, Government Code
 - the public information law, Chapter 552, Government Code
 - the administrative procedure law, Chapter 2001, Government Code
 - other laws relating to public officials, including conflict of interest laws
- Any applicable ethics policies adopted by the Department or the Texas Ethics Commission.

In addition, the Commissioner of Workers' Compensation and the Commissioner of Insurance may attend seminars on issues related to workers' compensation and insurance.

G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.

The Division's policies and procedures are set out in the following agency manuals:

- Operations Manual
- Personnel Manual
- Computer Security Manual
- Employee Health, Safety and Risk Management Manual
- Open Records Manual
- Fraud Prevention Manual

The manuals are updated and/or revised every two years following each legislative session. Following adoption by the Commissioner of Insurance, the manuals are made available to all employees on the agency's Intranet, and on the agency shared drive of the Department's computers. In addition, hard copies of the manuals are maintained by the Division's program area supervisors and available for review in Human Resources. Employees are made aware through an agency-wide e-mail that the manuals have been adopted. Employees are required to sign an acknowledgement form indicating that they understand they must comply with the policies in the manuals and that the manuals are accessible through the agency's shared network drives.

H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?

The Commissioner of Workers' Compensation and the Commissioner of Insurance receive regular briefings and reports from staff regarding performance, which include:

- Quarterly information on the agency's budget, expenditure, performance measure, and revenue status, and on human resources and recruitment data
- Written biweekly or monthly reports from each agency program, including activities and status of program initiatives
- Monthly status of rulemaking efforts and contested cases
- Regular meeting with program areas

The information presented to the Commissioners is augmented by meetings between program area executive management and between key program personnel that meet separate from executive

management. This network of communication helps to foster intra-departmental communication at both strategic and tactical levels. These efforts in turn help to enhance the information presented to the Commissioners.

I. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?

The Division has no policymaking body but uses the following methods to communicate with and collect feedback from stakeholders:

- Daily telephone calls, mail, complaint submissions, and personal contacts
- Formal and informal dispute resolution processes
- Dissemination of information to public and stakeholders (e.g., bulletins, articles, letters)
- Formal and informal surveys
- Guidance from working groups and stakeholder groups
- Informational hearings to gather information on a particular topic
- Formal and informal administrative rule comments
- Compliance conferences
- National and regional meetings of organizations

Input from the public has resulted in process improvements, enhanced outreach efforts, publication development, rule changes, and legislative recommendations.

J. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart.

Not applicable

V. Funding

A. Provide a brief description of your agency's funding.

The Texas Department of Insurance, Division of Workers' Compensation (Division) is primarily funded from two accounts within the General Revenue fund. Division operations are mostly funded by the Department's operating account (Account 36). The Subsequent Injury Fund (appropriated Account 5101) is used to pay lifetime benefits to employees suffering subsequent injuries and to reimburse insurance carrier claims. The Workers' Compensation Research and Evaluation Group is funded by an additional maintenance tax collected on all workers' compensation insurance carriers and self-insurance groups, with the exception of government entities.

The Division maintenance tax is the primary source of Account 36 funding for Division operations. Other funding sources for Account 36 are federal funds, self-insurance taxes and fees, penalties, and appropriated receipts.

The Division maintenance tax is assessed against workers' compensation insurance carriers. The tax is collected by the Comptroller of Public Accounts and then amounts are transferred to the Texas Department of Insurance operating account. The Division maintenance tax also funds the operations of the Office of Injured Employee Counsel (OIEC). The Labor Code requires the Commissioner of Insurance to set a maintenance tax rate each year in order to generate sufficient revenues to fund the difference between projected revenues from non-maintenance tax sources and projected expenditures for the Division and OIEC. This mechanism ensures that enough funding is generated to cover the appropriations passed by the Legislature and is designed to be self correcting, as discussed below.

At the end of each fiscal year, Account 36 contains a substantial fund balance to cover continuing expenditures until maintenance taxes are collected and credited by the Comptroller in April or May, when the Account is usually at its lowest balance. In years when the Division maintenance tax produces more revenue than is spent from the Account, by statute the unspent funds remain in the Account and the maintenance tax rate is set to recover a lower level of revenue the following year. In other words, the statute governing the operation of Account 36 contemplates that revenue collection be a self-correcting mechanism, collecting only the revenue needed for Division/OIEC appropriations; any savings from current appropriations simply reduce the amount of maintenance taxes assessed against the insurance companies in the following year and do not result in a savings to General Revenue.

The source of revenue for the Subsequent Injury Fund is money from workers' compensation insurance carriers upon the death of covered employees when no person entitled to compensation survives such employees.

The Research Group's maintenance tax is capped statutorily at one-tenth of one percent of gross premiums collected by workers' compensation insurance carriers and one-tenth of one percent of the total tax base for workers' compensation self-insured employers. In accordance with Texas Labor Code, Section 405.003 (e), Research Group's maintenance tax collections are deposited into General Revenue and transferred to the Department's operating account for Research Group functions.

B. List all riders that significantly impact your agency's budget.

Riders that significantly impact the Division are presented below. The description of each rider is the language included in the General Appropriations Act. For additional information, please see the General Appropriations Act for the 2008-2009 biennium.

Capital Budget. None of the funds appropriated above may be expended for capital budget items except as listed below. The amounts shown below shall be expended only for the purposes shown and are not available for expenditure for other purposes. Amounts appropriated above and identified in this provision as appropriations either for "Lease Payments to the Master Lease Purchase Program" or for items with a "(MLPP)" notation shall be expended only for the purpose of making lease-purchase payments to the Texas Public Finance Authority pursuant to the provisions of Government Code § 1232.103. Upon approval from the Legislative Budget Board, capital budgeted funds listed below under "Acquisition of Information Resource Technologies" may be used to lease information resources hardware and/or software, if determined by agency management to be in the best interest of the State of Texas.

Appropriations Limited to Revenue Collections. The application of special provisions limiting appropriations to revenue collections elsewhere in this Article shall be consistent with relevant statutory provisions governing the agency's assessment of tax rates and fees. As provided by the Texas Insurance Code and the Texas Labor Code, the Commissioners shall take into account unexpended funds in the preceding year when adjusting rates of assessment necessary to pay all expenses of regulating insurance and conducting the operations of the State Fire Marshal and the Office of Injured Employee Counsel during the succeeding year.

Travel Cap. Out of the funds appropriated above, expenditures for out-of-state travel by the Department of Insurance are limited to \$651,697 in fiscal year 2008 and \$651,697 in fiscal year 2009. Of these amounts, \$483,000 in fiscal year 2008 and \$483,000 in fiscal year 2009 shall be utilized solely for out-of-state travel for the purpose of financial examinations. Notwithstanding any other provisions in this act, travel expenditures associated with federal programs and paid out of federal funds are exempt from this limitation.

Limit on Estimated Appropriations. Excluding appropriations for the Texas Online Authority, the combined appropriation authority from the General Revenue Fund, which includes Insurance Companies Maintenance Tax (Object Code 3203) and Insurance Department Fees (Object Code 3215), and General Revenue Fund-Dedicated-Texas Department of Insurance Operating Fund Account No. Fund 36 shall not exceed \$91,271,273 in fiscal year 2008 or \$89,968,015 in fiscal year 2009.

Administrative Penalties. The amounts appropriated above in Strategy E.2.1, Return-to-Work Education, include \$100,000 each year from revenues collected by the Division of Workers' Compensation as administrative penalties provided that expenditure of such funds appropriated above shall be limited to reimbursements under the Texas Workers' Compensation Act.

Appropriation of Unexpended Balances. Any unexpended balances as of August 31, 2008, not to exceed 5 percent for any item of appropriation above within Goals E and F, are hereby appropriated for the same purposes, in the same strategies, for the fiscal year beginning September 1, 2008.

Subsequent Injury Fund. Amounts appropriated above in Strategy F.6.1, Subsequent Injury Fund Administration, include an estimated \$3,670,140 in fiscal year 2008 and \$3,670,140 in fiscal year 2009 out of the GR Dedicated - Subsequent Injury Account No. 5101 for payment of liabilities pursuant to

Labor Code, Chapter 403. In the event that actual liabilities exceed the estimated amounts, the Division of Workers' Compensation shall furnish information supporting the estimated additional liabilities to the Comptroller of Public Accounts. If the Comptroller finds that there are sufficient balances in the GR Dedicated - Subsequent Injury Account No. 5101 to support the payment of projected liabilities, a finding of fact to that effect shall be issued and a contingent appropriation shall be made available for the intended purposes.

C. Show your agency's expenditures by strategy.

| Texas Department of Insurance, Division of Workers' Compensation | | | |
|---|---|------------------------|---|
| Exhibit 5: Expenditures by Strategy for Fiscal Year 2008 | | | |
| Goal/Strategy | | Total Amount | Contract Expenditures Included in Total Amount |
| 313 | Workers' Compensation Fraud | \$218,761.29 | \$60.60 |
| 511 | Health and Safety Services | 3,239,683.61 | 52,715.06 |
| 521 | Return-to-work Education | 196,307.64 | 120.73 |
| 611 | DWC Medical Cost Containment | 1,751,693.50 | 218,675.91 |
| 621 | DWC Monitoring and Enforcement | 2,973,208.47 | 1,155.52 |
| 631 | DWC Develop and Implement Processes | 6,180,238.71 | 582,248.25 |
| 641 | DWC Certify Self-Insurance | 636,764.24 | 151.56 |
| 651 | DWC Dispute Resolution | 14,514,165.23 | 928,065.57 |
| 661 | DWC Subsequent Injury Fund Administration | 4,805,889.26 | 49.41 |
| 711 | DWC Central Administration | 3,078,295.87 | 20,486.12 |
| 712 | DWC Information Resources | 5,201,524.60 | 3,261,580.47 |
| 713 | DWC Other Support Services | 1,465,377.06 | 147,220.14 |
| | TOTAL | \$44,261,909.48 | \$5,212,529.34 |

D. Show your agency's objects of expense for each category of expense listed for your agency in the General Appropriations Act for FY 2008.

| Texas Department of Insurance, Division of Workers' Compensation | | |
|---|----------------------------|------------------------|
| Exhibit 6: Objects of Expense for Fiscal Year 2008 | | |
| Object-of-Expense | | Amount |
| 1001 | Salaries & Wages | \$26,946,757.17 |
| 1002 | Other Personnel Costs | 1,485,579.98 |
| 2001 | Professional Fees/Services | 2,480,388.92 |
| 2002 | Fuels and Lubricants | 15,365.86 |
| 2003 | Consumable Supplies | 258,446.64 |
| 2004 | Utilities | 643,371.67 |
| 2005 | Travel In-State | 563,696.55 |
| 2006 | Rent - Building | 2,940,237.63 |
| 2007 | Rent - Machine and Other | 160,623.99 |
| 2009 | Other Operating Expense | 2,395,508.18 |
| 2105 | Travel Out-of-State | 58,141.55 |
| 3001 | Client Services | 1,809.94 |
| 5000 | Capital Expenditures | 1,225,924.31 |
| 5101 | Subsequent Injury Fund | 4,736,057.09 |
| | TOTAL | \$44,261,909.48 |

E. Show your agency's sources of revenue. Include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency, including taxes and fines.

| Texas Department of Insurance, Division of Workers' Compensation Exhibit 7: Sources of Revenue for Fiscal Year 2008 (Actual) | |
|---|------------------------|
| Source | Amount |
| General Revenue | |
| 0001 DWC Earned Federal Funds | \$573,726.43 |
| General Revenue Dedicated Funds | |
| 0036 DWC Regular Operating Fund | 47,248,761.47 |
| 5101 Subsequent Injury Fund | 5,399,808.64 |
| Subtotal, General Revenue Dedicated | 52,648,570.11 |
| Federal Funds | |
| 0036 DWC Federal Funds | 2,206,276.86 |
| Other Funds | |
| 0036 DWC Appropriated Receipts | 597,162.80 |
| TOTAL | \$56,025,736.20 |

F. If you receive funds from multiple federal programs, show the types of federal funding sources.

| Texas Department of Insurance, Division of Workers' Compensation Exhibit 8: Federal Funds for Fiscal Year 2008 (Actual) | | | | |
|--|---------------------------|---------------------|-----------------------|-----------------------|
| Type of Fund | State/Federal Match Ratio | State Share | Federal Share | Total Funding |
| OSHA Data (4031) | 0/100 | | \$115,060.92 | \$115,060.92 |
| BLS-ROSH (4041) | 50/50 | \$167,818.34 | 167,818.34 | 335,636.68 |
| BLS-CFOI (4051) | 50/50 | 76,384.13 | 76,384.13 | 152,768.26 |
| OSHCN (4061) | 10/90 | 268,971.10 | 2,420,739.90 | 2,689,711.00 |
| TOTAL | | \$513,173.57 | \$2,780,003.29 | \$3,293,176.86 |

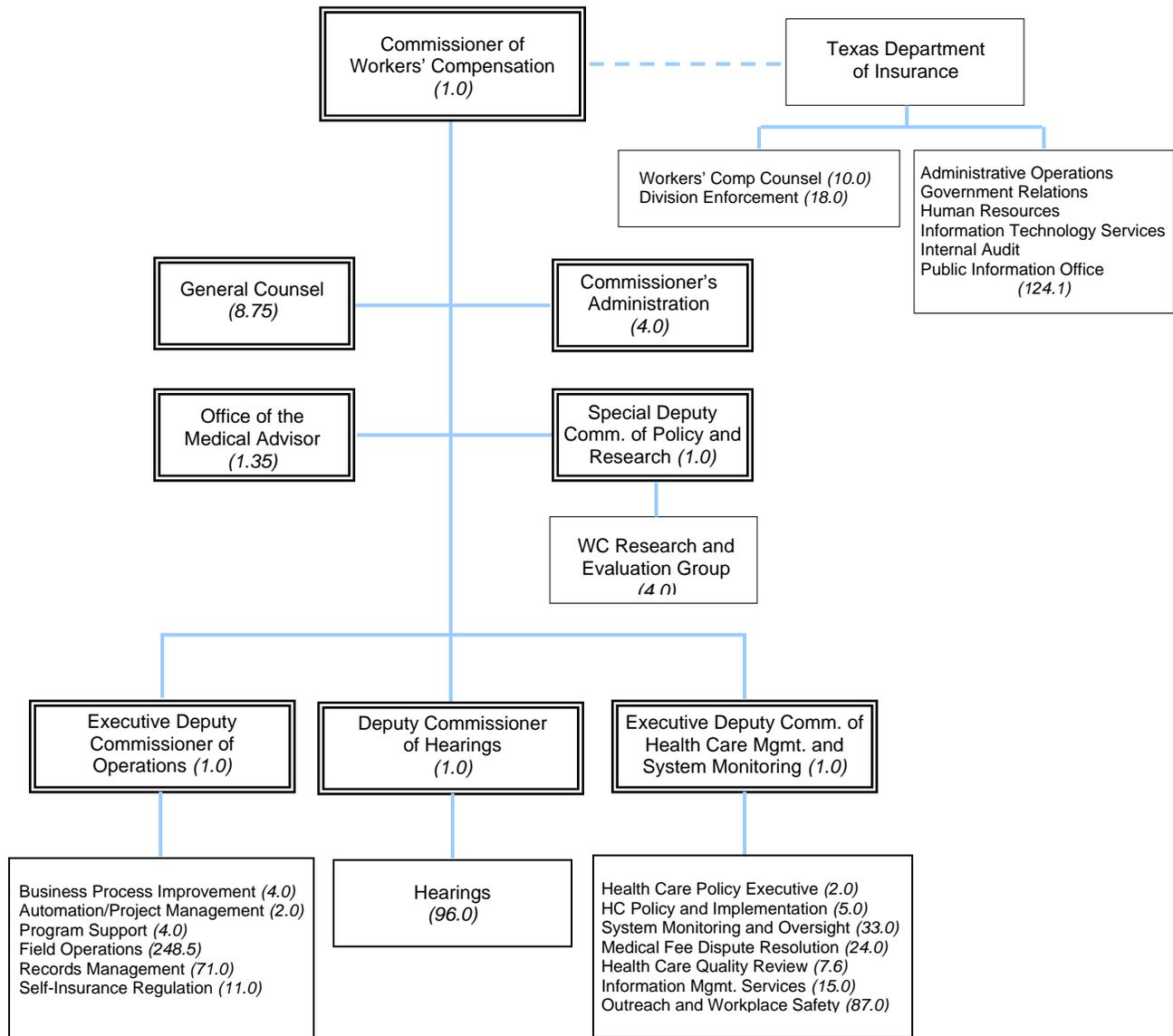
G. If applicable, provide detailed information on fees collected by your agency.

| Texas Department of Insurance, Division of Workers' Compensation Exhibit 9: Fee Revenue for Fiscal Year 2008 | | | | |
|---|---|---|------------------------|---|
| Fee Description/ Program/Statutory Citation | Current Fee/ Statutory Maximum | Number of Persons/ Entities Paying Fee | Fee Revenue | Where Fee Revenue is Deposited |
| Administrative Penalties / DWC Enforcement / Labor Code, Title V, Subtitle A | Varies / | 58 | \$1,184,727 | TDI Operating Account |
| Conference, Seminars, and Training Registration Fees/Workplace Safety / Labor Code 411.014, GAA, Art. IX, Sec. 8.08 | Varies / NA | 424 | \$106,159 | TDI Operating Account |
| Federal Fund Receipts Matched / Workplace Safety / Labor Code §411.013 | NA | 1 | \$2,113,665 | TDI Operating Account |
| Federal Fund Receipts Not Matched / Workplace Safety / Labor Code §411.013 | NA | 1 | \$92,612 | TDI Operating Account |
| Federal Receipts Earned Credit / Workplace Safety / Labor Code §411.013 | NA | 1 | \$573,726 | General Revenue |
| Fees for Copies / DWC Records Management / Govt. Code, Sec. 552.261 | Varies / | 1670 | \$233,367 | TDI Operating Account |
| Miscellaneous Governmental Revenue / TDI Administrative Operations / Govt. Code, Sec. 403.011 | Varies / NA | 1 | \$7 | TDI Operating Account |
| Sale of Publications/Advertising / DWC Records Management and Support / Govt. Code, Sec. 2052.301 | Varies / | 21 | \$2,483 | TDI Operating Account |
| Self-Insurance Application Fees / DWC Self-Insurance / Labor Code § 407.041 | 1000 / \$1,000 | 3 | \$3,000 | TDI Operating Account |
| Self-Insurance Maintenance Tax / DWC Self-Insurance / Labor Code §407.103 | Annually set / 2% | 54 | \$1,310,361 | TDI Operating Account |
| Self-Insurance Regulatory Fees / DWC Self-Insurance / Labor Code §407.102 | Varies / Set by Commissioner | 54 | \$1,059,799 | TDI Operating Account |
| Third Party Reimbursement / Medical Fee Dispute Resolution / GAA, Art. IX, Sec. 8.03 | Varies / NA | 432 | \$155,154 | TDI Operating Account |
| Workers' Compensation Insurance - Death Benefits to State / Legal Services / Labor Code § 403.007 | Varies / NA | 26 | \$5,399,809 | Subsequent Injury Fund |
| Workers' Compensation Insurance Companies DWC Maintenance Tax - Collected by Comptroller/ Transferred to TDI / Administrative Operations / Labor Code §403.003, §407A.301, §407.103 | Annually set / 2% | Unknown | \$43,790,866 | TDI Operating Account |
| TOTAL | | | \$56,025,736 | |

VI. Organization

A. Provide an organizational chart that includes major programs and divisions, and shows the number of FTEs in each program or division.

Texas Department of Insurance Division of Workers' Compensation Organization Chart and Budgeted Positions as of July 2009



B. If applicable, fill in the chart below listing field or regional offices.

| Texas Department of Insurance, Division of Workers' Compensation Exhibit 10: FTEs by Location for Fiscal Year 2008 | | | |
|---|-----------|-----------------------------------|-----------------------------------|
| Headquarters, Region, or Field Office | Location | Budgeted FTEs Fiscal Year 2008 | Actual FTEs as of August 31, 2008 |
| DWC – Hobby Located | Austin | 71.00 | 55.50 |
| DWC – Metro Located | Austin | 414.84 | 381.30 |
| DWC – Field Offices | See note* | 299.46 | 240.50 |
| TOTAL | | 785.30 | 677.30 |

*Note: As of August 31, 2008, the Division had field offices in the following cities: Abilene, Amarillo, Austin, Beaumont, Bryan, Corpus Christi, Dallas, Denton, El Paso, Fort Worth, Houston (East and West), Laredo, Lubbock, Lufkin, Midland, Missouri City, San Angelo, San Antonio, Tyler, Victoria, Waco, Weslaco, and Wichita Falls.

C. What are your agency's FTE caps for fiscal years 2008-2011?

| Texas Department of Insurance, Division of Workers' Compensation FTE Caps for Fiscal Years 2008 - 2011 | | | | |
|---|--------------|--------------|--------------|--------------|
| | 2008 | 2009 | 2010 | 2011 |
| DWC (Art. VIII-25) | 801.3 | 801.3 | 813.3 | 813.3 |
| Data Center Consolidation (Art. IX, Sec 18.02) | (16.0) | (16.0) | (16.0) | (16.0) |
| Subtotal | 785.3 | 785.3 | 801.3 | 801.3 |
| TOTAL | 785.3 | 785.3 | 801.3 | 801.3 |

D. How many temporary or contract employees did your agency have as of August 31, 2008?

The Division had one temporary employee and no contract employees as of August 31, 2008.

E. List each of your agency's key programs, along with expenditures and FTEs by program.

| Texas Department of Insurance, Division of Workers' Compensation Exhibit 11: List of Program FTEs and Expenditures for Fiscal Year 2008 | | |
|--|---------------------------------------|----------------------------|
| Program | FTEs as of August 31, 2008 | Actual Expenditures |
| DWC Commissioner's Administration | 2.50 | 354,939.01 |
| DWC General Counsel | 0.00 | 0.00 |
| DWC Office of Medical Advisor | 8.95 | 846,908.30 |
| DWC Internal Audit | 2.00 | 124,230.69 |
| DWC Government Relations | 2.00 | 121,198.25 |
| DWC Public Information | 1.00 | 73,410.59 |
| DWC Administrative Operations – Hobby Located – Financial Services | 11.50 | 566,280.50 |
| DWC Administrative Operations – Hobby Located – Information Technology Services | 33.00 | 4,858,642.58 |
| DWC Administrative Operations – Hobby Located – Human Resources | 9.50 | 448,060.02 |
| DWC Administrative Operations – Hobby Located – Purchasing and Contracts | 4.00 | 224,938.07 |
| DWC Administrative Operations – Hobby Located – Staff Services | 17.00 | 1,285,639.81 |
| DWC Operations | 9.00 | 875,383.08 |
| DWC Field Operations | 213.50 | 9,104,167.18 |
| DWC Records Management and Support | 68.00 | 3,090,774.97 |
| DWC Hearings | 96.00 | 6,376,556.08 |
| DWC Legal Services | 28.55 | 1,823,097.57 |
| DWC Workplace Safety & Outreach | 82.80 | 4,238,016.17 |
| DWC Fraud – Hobby Located | 5.00 | 231,724.16 |
| DWC Health Care Network – Hobby Located | 3.00 | 112,111.69 |
| DWC Policy & Research | 3.00 | 563,310.44 |
| DWC Health Care Policy and Implementation | 5.00 | 430,735.67 |
| DWC Information Management | 15.00 | 900,339.09 |
| DWC Medical Dispute Resolution | 30.00 | 1,495,826.95 |
| DWC System Monitoring and Oversight | 27.00 | 1,379,561.52 |
| DWC Subsequent Injury Fund Disbursements | 0.00 | 4,736,057.09 |
| TOTAL | 677.30 | 44,261,909.48 |

F. Fill in the chart below detailing your agency's Equal Employment Opportunity statistics.

| Texas Department of Insurance, Division of Workers' Compensation | | | | | | | |
|--|-----------------|--------------------------------|----------------------|----------|----------------------|--------|----------------------|
| Exhibit 18: Equal Employment Opportunity Statistics | | | | | | | |
| FISCAL YEAR 2006 | | | | | | | |
| Job Category | Total Positions | Minority Workforce Percentages | | | | | |
| | | Black | | Hispanic | | Female | |
| | | DWC | Civilian Labor Force | DWC | Civilian Labor Force | DWC | Civilian Labor Force |
| Officials/Administration | 42 | 9.52% | 7% | 16.67% | 11% | 59.52% | 31% |
| Professional | 353 | 13.03% | 9% | 26.91% | 10% | 62.04% | 47% |
| Technical | 53 | 9.43% | 14% | 32.08% | 18% | 39.62% | 39% |
| Protective Services | 0 | n/a | 18% | n/a | 21% | n/a | 21% |
| Para-Professionals | 170 | 17.65% | 18% | 50.00% | 31% | 91.76% | 56% |
| Administrative Support | 149 | 21.48% | 19% | 51.01% | 27% | 91.95% | 80% |
| Skilled Craft | 0 | 0.00% | 10% | 0.00% | 28% | 0.00% | 10% |
| Service/Maintenance | 3 | 0.00% | 18% | 100% | 44% | 0.00% | 26% |

| FISCAL YEAR 2007 | | | | | | | |
|--------------------------|-----------------|--------------------------------|----------------------|----------|----------------------|--------|----------------------|
| Job Category | Total Positions | Minority Workforce Percentages | | | | | |
| | | Black | | Hispanic | | Female | |
| | | DWC | Civilian Labor Force | DWC | Civilian Labor Force | DWC | Civilian Labor Force |
| Officials/Administration | 43 | 13.95% | 7.10% | 20.93% | 15.20% | 55.81% | 44.10% |
| Professional | 340 | 13.82% | 7.90% | 25.59% | 14.40% | 64.71% | 54.40% |
| Technical | 46 | 15.22% | 10.40% | 30.43% | 19.80% | 50.00% | 47.50% |
| Protective Services* | 0 | n/a | n/a | n/a | n/a | n/a | n/a |
| Para-Professionals* | 0 | n/a | n/a | n/a | n/a | n/a | n/a |
| Administrative Support | 122 | 22.95% | 9.90% | 45.90% | 23.20% | 90.98% | 61.50% |
| Skilled Craft | 0 | 0.00 | 4.70% | 0.00% | 34.10% | 0.00% | 7.00% |
| Service/Maintenance | 168 | 21.43% | 26.56% | 49.40% | 64.78% | 88.69% | 95.51% |

* Source: Texas Workforce Commission Civil Rights Division January 2007 FY06 Data

*In the past, the Protective Services (R) and Para-Professional (Q) categories were each reported as separate groups; however, these job categories are not contained in the Bureau of Labor Statistics, Geographic Profile of Employment and Unemployment, 2002. For this report, these job categories are combined with the Service/Maintenance (M) category.

| FISCAL YEAR 2008 | | | | | | | |
|--------------------------|-----------------|--------------------------------|----------------------|----------|----------------------|--------|----------------------|
| Job Category | Total Positions | Minority Workforce Percentages | | | | | |
| | | Black | | Hispanic | | Female | |
| | | DWC | Civilian Labor Force | DWC | Civilian Labor Force | DWC | Civilian Labor Force |
| Officials/Administration | 42 | 16.67% | 7.10% | 21.43% | 15.20% | 52.38% | 44.10% |
| Professional | 316 | 12.03% | 7.90% | 27.53% | 14.40% | 61.39% | 54.40% |
| Technical | 38 | 13.16% | 10.40% | 23.68% | 19.80% | 39.47% | 47.50% |
| Protective Services* | 0 | n/a | n/a | n/a | n/a | n/a | n/a |
| Para-Professionals* | 0 | n/a | n/a | n/a | n/a | n/a | n/a |
| Administrative Support | 114 | 19.30% | 9.90% | 47.37% | 23.20% | 87.72% | 61.50% |
| Skilled Craft | 0 | 0.00% | 4.70% | 0.00% | 34.10% | 0.00% | 7.00% |
| Service/Maintenance | 171 | 19.88% | 26.56% | 52.05% | 64.78% | 88.89% | 95.51% |

* Source: Texas Workforce Commission Civil Rights Division January 2007 FY06 Data

*In the past, the Protective Services (R) and Para-Professional (Q) categories were each reported as separate groups; however, these job categories are not contained in the Bureau of Labor Statistics, Geographic Profile of Employment and Unemployment, 2002. For this report, these job categories are combined with the Service/Maintenance (M) category.

G. Does your agency have an equal employment opportunity policy? How does your agency address performance shortfalls related to the policy?

The Texas Department of Insurance, Division of Workers' Compensation equal employment opportunity policy is in the Employee Rights section of the Department's Personnel Manual.

The Department has a Recruitment Plan in place but is always looking for new recruitment avenues. The current Recruitment Plan was reviewed and approved by the Texas Workforce Commission's Civil Rights Division as part of the 2006 compliance audit of the Department's personnel policies and procedures.

Equal employment opportunity statistics are analyzed on a monthly basis. In addition to comparisons with the civilian workforce, the Department also compares its workforce statistics to the state agency workforce. Recruitment efforts are periodically reviewed in order to direct job opening notices to those groups in which there are deficiencies with civilian or state agency workforces.

In July 2007, Human Resources asked the employee cultural committees at the Department to assist in recruitment efforts by providing representatives to work with Human Resources to review its current recruitment strategies and identify new recruitment strategies.

As part of the business planning process, the Department requires program areas to provide recruitment resources in order to have information readily available should the need to recruit for a particular job series or program area become necessary to fill vacant positions.

VII. Guide to Agency Programs

System Monitoring and Enforcement

A. Provide the following information at the beginning of each function description.

| | |
|---|--|
| Name of Function | Monitoring Stakeholder Activity and Taking Enforcement Action |
| Location / Division | Metro Center / System Monitoring and Oversight, Enforcement |
| Contact Name | Teresa Carney (System Monitoring and Enforcement) Cass Burton (Enforcement) |
| Actual Expenditures, FY 2008 | \$3,191,969.76 |
| Number of FTEs as of August 31, 2008 | 57.70 |

B. What is the objective of this function? Describe the major activities performed to implement this function.

To ensure the appropriate delivery of workers' compensation benefits, this function promotes compliance and addresses non-compliance with workers' compensation laws and regulations. The Division performs this function through two program areas: System Monitoring and Oversight, and Enforcement.

System Monitoring and Oversight

System Monitoring and Oversight consists of three sections: monitoring and analysis, complaint resolution, and audits and investigations. System Monitoring and Oversight monitors compliance of system participants, identifies non-compliance, resolves complaints and makes referrals to Enforcement. In addition, System Monitoring and Oversight is responsible for identifying complaint trends and administering the workers' compensation performance-based oversight system.

- Monitoring and Analysis* conducts ongoing reviews of system data and performs analysis of that data in order to identify workers' compensation trends and anomalies and to determine where education and outreach is needed. This section also administers the performance-based oversight assessment of health care providers and insurance carriers. As part of the overall compliance plan, Section 402.075 of the Labor Code mandates the Division to, at least biennially, assess the performance of insurance carriers and health care providers in meeting the key regulatory goals established by the Commissioner of Workers' Compensation. The key regulatory goals align with the general regulatory goals of the Division such as improving workplace safety and return-to-work outcomes, supporting timely payment of benefits and increasing communications. Based on the performance assessment, insurance carriers and health care providers are placed into regulatory tiers: poor performers, average performers, and consistently high performers. The Division focuses its regulatory oversight on the poor performers through its audit and enforcement functions. As part of the development of the performance-based oversight system, DWC utilized stakeholder input to identify potential measures and determine the appropriate review methodologies through the Performance-Based Oversight Working Group.

- *Complaint Resolution* reviews system participant complaints against insurance companies, health care providers, employers and other regulated entities. Insurance specialists resolve low level complaints, examine complaints for violations, and refer complaints containing violations to the Audits and Investigations section.
- *Audits and Investigations* conducts further investigation of complaints that are justified and takes corrective action, including referral to Enforcement when appropriate. This section also conducts audits of system participants and, based on the audit results, makes referrals to Enforcement if violations are found.

Enforcement

In October 2008, the Commissioner of Workers' Compensation and the Commissioner of Insurance agreed to consolidate all agency enforcement staff, resulting in five enforcement teams, one of which is located at Metro. The Division's Enforcement team operates under the direction of the Commissioner of Workers' Compensation and the Department's Enforcement Division's Associate Commissioner.

In response to violations of workers' compensation laws and regulations, the Division's Enforcement program pursues administrative penalties and/or other sanctions and may refer cases to other appropriate authorities, such as licensing agencies, district and county attorneys, or the Attorney General. Working in coordination with System Monitoring and Oversight and other program areas, the Enforcement team investigates allegations of violations, assists in the preparation of cases for prosecution, and initiates administrative action at the direction of the Commissioner of Workers' Compensation.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

System Monitoring and Oversight

Monitoring and Analysis

In May 2008, the Division began a new monitoring program by making outreach calls to insurance carriers on potential compliance issues. Since that time, the Division has made approximately 527 outreach calls to system participants regarding performance and potential compliance issues. These calls resulted in nine warning letters and 116 acknowledgments in which the carrier agreed to make corrections or otherwise come into compliance. In addition, thirteen insurance carriers were identified for a quarterly monitoring plan or future audits.

Complaint Resolution

Each year, the Division's intervention in complaints results in thousands of dollars of additional claims payments to system participants. In fiscal year 2008 the Division returned in excess of \$1.1 million to system participants as a result of complaint resolution.

Audits and Investigations

During fiscal year 2008, Audits and Investigations conducted forty-two audits of system participants. These audits were conducted on system participants who were deemed poor performers from the 2007 Performance-Based Oversight Assessment. Eight of the nineteen insurance carriers who were audited regarding their performance on timely initiating income benefits showed improved performance. One of the fourteen health care providers who were audited on timely filing of the Report of Medical Evaluation form showed improvement. In addition, nine audits were conducted on insurance carriers' accuracy of submitting electronic data to the Division.

Enforcement

The Enforcement section prioritized its resources for maximum impact on market behavior. In each administrative action, staff attorneys negotiate meaningful compliance plans in all consent orders. The following cases or categories of cases highlight the program area’s effectiveness and efficiency in performing its assigned function:

- Quickly resolved eleven peer review violations as identified by a 2008 data call by the Workers’ Compensation Research and Evaluation Group, by negotiating ten consent orders (including compliance terms in each offer of settlement) and filing one administrative action currently pending at State Office of Administrative Hearings (SOAH).
- Utilized negotiated consent orders in an effort to change Designated Doctors’ behavior, and organized its resources to efficiently take action against the system’s worst violators. Designated Doctor violations identified in fiscal year 2008 audits resulted in two consent orders, one warning letter, one potential hearing, four cases currently in settlement negotiations, and one case where no action was warranted. In addition, four older cases were settled and consent orders were issued.
- Bundled administrative violations into several large cases in order to efficiently deal with many referrals involving the same system participant in one order (or, in some cases, broken down into several orders during the course of negotiations) and effectively change the subject party’s market behavior by demanding compliance plans as a condition of settlement. For example, in one instance 38 administrative violations were included in one case resulting in \$200,000 in penalties, and in another instance sixty-three violations were included in one case resulting in a total of \$299,800 being assessed against the system participant.

The following performance measures demonstrate the effectiveness and efficiency of this function.

| 6.2.1 Outcome 1 - Dollar Amount Returned to System Participants through Complaint Resolution | | | | | |
|---|--|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | N/A | N/A | \$1,058,958 | \$1,188,774 |
| Annual Target | N/A | N/A | N/A | \$525,000 | \$500,000 |
| Percentage of Target | N/A | N/A | N/A | 201.71% | 237.76% |
| <i>Desired Performance</i> | <i>Desired performance is higher than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

| 6.2.1 Efficiency 2 – Average Number of Days to Complete a Performance Review | | | | | |
|---|--------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | 152.08 | 168.09 | 143.91 | 224.62 | 124.17 |
| Annual Target | 120 | 120 | 140 | 140 | 180 |
| Percentage of Target | 126.73% | 140.08% | 102.79% | 160.44% | 68.98% |
| <i>Desired Performance</i> | <i>Lower than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

| 6.2.1 Explanatory 1 - Total Number of Administrative Remedies Issued for Violations | | | | | |
|--|---------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | N/A | N/A | 166 | 1,002 |
| Annual Target | N/A | N/A | N/A | 657 | 657 |
| Percentage of Target | N/A | N/A | N/A | 25.27% | 152.51% |
| <i>Desired performance</i> | <i>Higher than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

D. Describe any important history regarding this function not included in the general agency history section, including how the function has changed from the original intent.

1989 - Comprehensive workers' compensation reform mandated that TWCC assess administrative penalties against system participants that violate the Act or Commission rules.

1991 - TWCC maintained a Compliance and Practices Section to investigate violations.

2005 - After HB 7 the Division combined the Compliance and Practices Section was combined with the Division's Legal Services program area as an investigative unit. An enforcement unit was also created within the Legal Services program.

HB 7 required the Commissioner of Workers' Compensation to adopt key regulatory goals and required to Division to biennially complete a performance-based oversight assessment by reviewing individual insurance carriers and health care providers regarding their compliance in the Texas workers' compensation system and designating them as "consistently high," "generally average," or "poor" performers. The Division was mandated to apply additional regulatory scrutiny to "poor" performers and establish incentives (such as reduced penalties, a lower chance of being audited, etc.) to high performers. HB 7 also removes individual classes of administrative penalties and aligns the penalty provisions of the Insurance Code and the Texas Workers' Compensation Act (i.e., penalties not to exceed \$25,000 per day per occurrence).

2007 - The Division separated the investigative unit from the Division's Legal Services program and created the System Monitoring and Oversight program area. System Monitoring and Oversight completed the initial performance-based oversight assessments as required by HB 7. The Division implemented and published the first performance-based oversight assessment of health care providers and insurance carriers. An appropriation rider (rider 19) was placed on the Department's budget to require the Division to evaluate non-subscribing employers' compliance with statutory reporting requirements.

2008 - The Division separated its Legal Services and Enforcement Program and subsequently merged these functions into the Department's Legal and Enforcement sections, operating under the direction of the Commissioner of Workers' Compensation.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

All system participants are subject to the Division's enforcement, monitoring and oversight activities. System participants include insurance carriers, health care providers, covered employers, and injured employees. Other potential subjects of monitoring, oversight or enforcement actions are Independent Review Organizations, utilization review agents, adjusters, case managers, attorneys, peer review doctors,

Required Medical Examination doctors, and Designated Doctors. The Division also has limited jurisdiction over employers that do not participate in the workers' compensation system, generally referred to as non-subscribers. This jurisdiction consists of monitoring non-subscribing employers' compliance with certain reporting requirements, including the requirement to annually notify the Division if the employer is a non-subscriber and reporting all fatalities, occupational diseases and injuries that result in more than one day of lost time.

Performance-based oversight assessments are completed in odd-numbered years and directly affect insurance carriers and health care providers. In 2007 approximately 147 insurance carriers and 325 health care providers were assessed and placed into regulatory tiers.

F. Describe how this function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The Division primarily administers its system monitoring and enforcement function through two cooperating program areas: System Monitoring and Oversight, and Enforcement. Additionally, these two programs collaborate with all Division program areas as appropriate during each phase of an investigation or enforcement action.

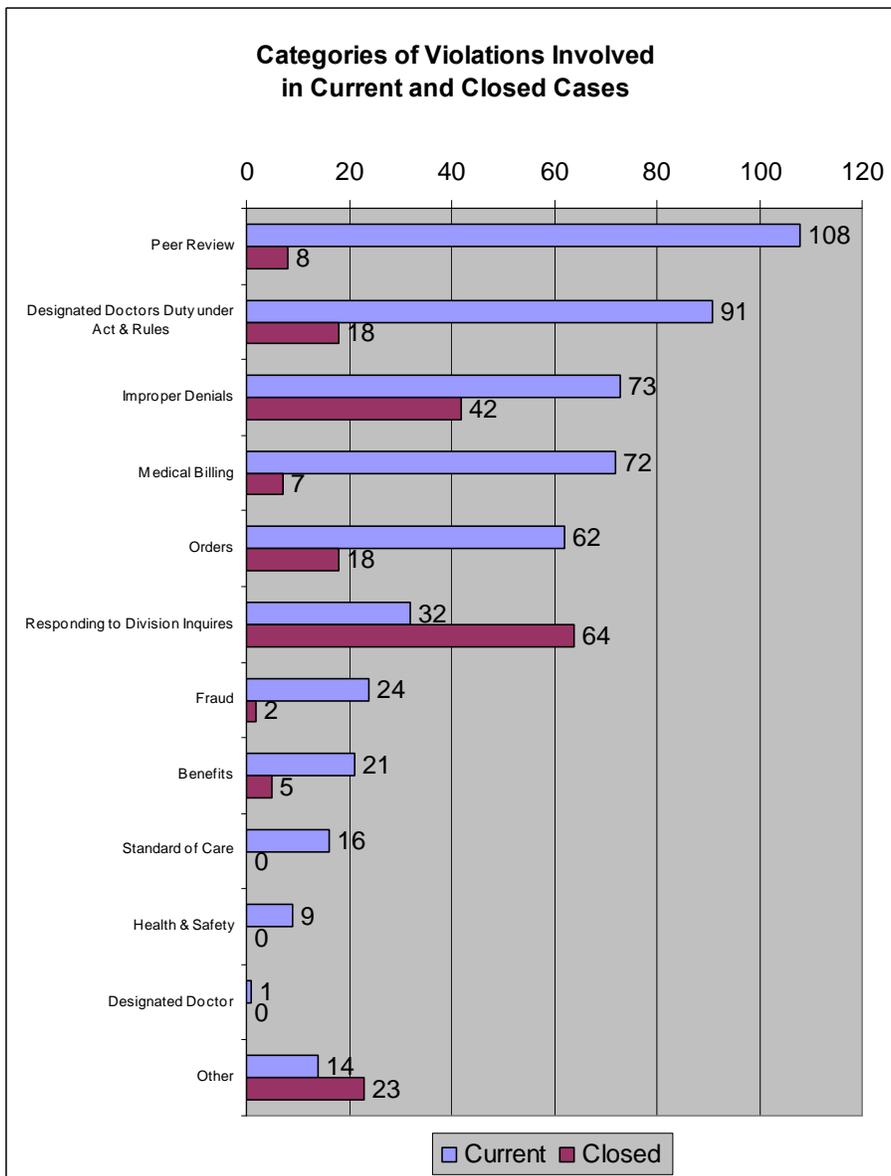
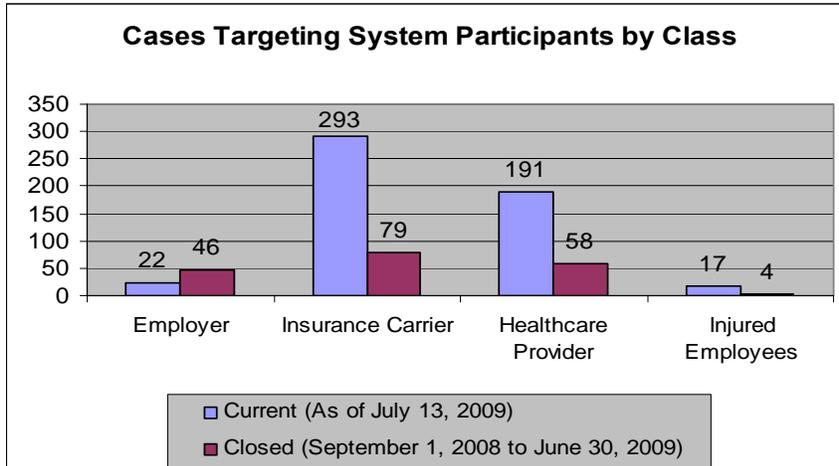
System Monitoring and Oversight

System Monitoring and Oversight is administered by the *Executive Deputy Commissioner for Health Care Management and System Monitoring* and the *Director of System Monitoring and Oversight*.

Enforcement

The Division's Enforcement Program is administered by the Department's *Associate Commissioner for Enforcement* located at Hobby and the *Workers' Compensation Team Manager* located at Metro under the direction of the Commissioner of Workers' Compensation.

The following graphs illustrate the cases handled by Enforcement.



The following illustrates the procedures used in Performance-Based Oversight.

Performance-Based Oversight Process

Step one: Define Compliance Objectives (Key Regulatory Goals)

- Meet with stakeholders
- Specify measures to assess
- Determine weights of measures
- Establish the criteria/scope of the assessment
- Determine a scoring methodology
- Select entities for assessment
- Notify participants

Step two: Measure Overall Performance

- Gather data to use in the assessment
- Evaluate the data
- Distribute preliminary results
- Afford the assessed entities an opportunity to review and refute the preliminary findings
- Make any necessary changes made to the preliminary findings

Step three: Report Performance Data (Tiers)

- Distribute the final results with appropriate tier designation
- Post the results on the Division's website
- Present a certificate of performance to the high performing entities

Step four: Utilize Performance Data to Drive Improvement (Incentives)

- Review data for compliance improvement
- Inform entities of ongoing performance
- Review complaints on assessed entities
- Conduct audits on poor performing entities

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Texas Workers' Compensation Act establishes a self-balancing maintenance tax that is collected on gross workers' compensation insurance premiums. The maintenance tax is paid by workers' compensation insurance carriers for the administration of the Division and may not exceed two percent of gross workers' compensation insurance premiums. The maintenance tax is collected by the Comptroller and deposited in general revenue.

As submitted in the Division's Legislative Appropriations Request for the 2010-2011 biennium, the programs that perform this function are under budget strategy 6.2.1, the goal of which is to ensure the appropriate delivery of workers' compensation benefits by promoting compliance and addressing non-compliance with workers' compensation rules and laws.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Internal

Complaint handling – The Department's Complaint Resolution Division performs complaint handling activities similar to the activities performed by System Monitoring and Oversight. Separate complaint units are necessary because, unlike the Department's Complaint Resolution Division, the Division of Workers' Compensation is statutorily authorized to resolve factual disputes.

Independent Review Organizations (IRO) – The Division and the Department have similar responsibilities regarding compliance monitoring of IROs. However, the Texas Insurance Code grants distinct authority to the Commissioner of Insurance and the Commissioner of Workers' Compensation with regard to IROs. The statute authorizes the Department to oversee the IRO process in general, certifying IROs, assigning individual disputes to IROs and ensuring compliance with Department rules. It also authorizes the Commissioner of Workers' Compensation to oversee compliance of IROs with the Texas Labor Code to ensure the quality and timeliness of IRO decisions on workers' compensation claims.

External

Attorney General – The Attorney General handles workers' compensation cases involving violations of other state laws such as the Deceptive Trade Practices Act or constitutional issues and may seek administrative and criminal penalties.

Licensing boards – Various boards that license health care providers such as the Texas Medical Board, the Texas Board of Chiropractors, and the Texas Board of Dental Examiners, monitor their licensees for proper standard of health care and take disciplinary actions. The Division also monitors these providers and takes disciplinary action as needed for violations of the Workers' Compensation Act and rules and procedures of the Division.

Office of Injured Employee Counsel (OIEC) - OIEC receives complaints and assists injured employees with disputes.

State Office of Administrative Hearings (SOAH) - SOAH conducts Contested Case Hearings on behalf of the Division. An Administrative Law Judge hears the case, and if a monetary penalty is proposed issues a final order, or if a non-monetary penalty is proposed, issues a proposal for decision and the Commissioner enters the final order. Enforcement represents the interests of the Division in these Contested Case Hearings.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Internal

Complaint handling – The Division coordinates with the Department to efficiently handle complaint resolution. The Department offers a standard complaint form for both workers' compensation participants and insurance consumers and the Department's Complaint Intake Unit handles the initial processing of complaints related to workers' compensation before forwarding the complaint to the Division for resolution.

Independent Review Organizations –The Division communicates and coordinates with the Department regarding rules and procedures regarding the IRO process for workers' compensation disputes.

External

Attorney General – The Division and the Office of the Attorney General collaborate to determine which agency will handle certain workers' compensation cases. The Division refers violators to the Attorney General for non-payment of assessed penalties.

Licensing boards – The Division and licensing boards, such as the Texas Medical Board, share information as statutorily permitted to avoid duplication of efforts and advance the regulatory goals of the Division, the Boards and the State of Texas.

Office of Injured Employee Counsel – Careful coordination between the agencies ensures that efforts are not duplicated. OIEC refers enforcement cases to the Division. The Division refers injured employees to OIEC on request.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

System Monitoring and Oversight, and Enforcement work with the following local, regional, and federal units of government:

- Office of the Attorney General, which provides legal representation to the Division in civil court cases
- District Attorneys' offices, which prosecute criminal matters referred by the Department's Fraud Unit and Division staff
- Federal Bureau of Investigation which investigates federal criminal matters for referral to the appropriate U.S. Attorney for criminal prosecution
- Texas Medical Board which shares information on health care providers and to which

- the Division provides medical quality review information
- Texas Board of Chiropractic Examiners which shares information on chiropractors and to which the Division provides medical quality review information
- Texas Board of Dental Examiners which shares information on dentists and to which the Division provides medical quality review information
- Local units of government in their role as “insurance carriers” for political subdivisions which are treated in the same manner as other insurance carriers for performance-based oversight

K. If contracted expenditures are made through this program please provide:

- the amount of those expenditures in fiscal year 2008;
- the number of contracts accounting for those expenditures;
- a short summary of the general purpose of those contracts overall;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

| Vendor Name | Service Provided | Amount |
|---|-----------------------------|-----------------|
| Work-Loss Data Institute LLC | Subscription Renewal to ODG | 498.88 |
| Pais Janitorial Serv. and Supplies Inc. | Janitorial Service | 717.24 |
| TOTAL | | 1,216.12 |

L. What statutory changes could be made to assist this program in performing its functions? Explain.

See Section IX for recommended changes.

M. Provide any additional information needed to gain a preliminary understanding of the function.

No additional information needed

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Many entities participate in the workers’ compensation system. System Monitoring and Oversight, and Enforcement are essential regulatory tools to ensure compliance with the Act and rules. These program areas support timely and efficient delivery of workers’ compensation benefits by monitoring and enforcing compliance with statutory and administrative guidelines to ensure appropriate delivery of benefits to injured employees and by applying performance-based oversight of insurance carriers and health care providers to recognize high performers while increasing oversight of poor performers.

Consumer and public complaints may result in further investigation or audits of system participants. Inspections and audits are also conducted by other program areas at the Division. However, Enforcement handles referred cases once non-compliance is identified and further investigates matters to ensure all facts are considered as legally appropriate and sufficient for taking disciplinary action. Some cases are closed once compliance has been obtained, but others warrant some form of disciplinary action despite corrective action by the system participant. These cases are resolved in one of three ways: an official warning letter, a negotiated settlement memorialized by a consent order, or an order of the Commissioner of Workers' Compensation or SOAH after notice and a hearing. Where settlement is not possible, a hearing is held, resulting in a final order, issued by either SOAH or the Commissioner of Workers' Compensation depending on whether the order includes monetary penalties. Enforcement always seeks to include compliance plans in official orders, and depending on the nature of the violation, the ordering language may include monetary fines, non-monetary penalties, or both sanctions.

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

| Texas Department of Insurance, Division of Workers' Compensation Exhibit 12: Information on Complaints Against Regulated Persons or Entities | |
|---|----------------|
| | FY 2008 |
| Total number of regulated persons: | |
| Insurance carrier attorneys | 289 |
| Injured employee attorneys | 279 |
| Injured employees | 104,788 |
| Health care providers | 95,982 |
| Total number of regulated entities: | |
| Insurance carriers | 461 |
| Employers (who filed injury claims) | 22,479 |
| Non-subscribing employers | 13,901 |
| Total number of entities audited | 42 |
| Total number of complaints received from the public | 3,898 |
| Total number of complaints initiated by agency | 3,963 |
| Number of complaints pending from prior years | 399 |
| Number of complaints found to be non-jurisdictional | 884 |
| Number of complaints resolved | 3,027 |
| Average number of days for complaint resolution | 121.23 |
| Number of complaints resulting in disciplinary action | 290 |
| Amount of administrative penalties resulting from complaints | \$1,015,225.00 |

Medical and Indemnity Dispute Resolution

A. Provide the following information at the beginning of each program description.

| | |
|---|--|
| Name of Program or Function | Minimize and Resolve Indemnity and Medical Disputes |
| Location / Division | Metro Center / Medical Fee Dispute Resolution (MFDR), Hearings |
| Contact Name | Mary Landrum (MFDR), Bob Lang (Hearings) |
| Actual Expenditures, FY 2008 | \$14,514,165.23 |
| Number of FTEs as of August 31, 2008 | 272.00 |

B. What is the objective of this function? Describe the major activities performed to implement this function.

To ensure the appropriate delivery of workers' compensation benefits, this function attempts to resolve indemnity and medical disputes. The Division performs this function through two program areas: Medical Fee Dispute Resolution (MFDR) and Hearings.

Medical Dispute Resolution

Medical Fee Dispute Resolution (MFDR) provides fee dispute resolution services to health care providers, insurance carriers, injured employees, and sub-claimants who are in dispute over the reimbursement for compensable and medically necessary non-network medical treatment already provided. MFDR minimizes and resolves fee disputes through the following activities:

- Providing education to workers' compensation system participants
- Encouraging communication between parties through low level dispute resolution (LLDR)
- Auditing fee disputes and rendering decisions

By providing education and encouraging communication between system participants, MFDR prevents future disputes and lowers system costs by resolving disputes more quickly. Disputes that are withdrawn due to LLDR cannot be appealed.

Hearings

Hearings provides a dispute resolution process to resolve indemnity disputes as well as handle appeals of certain medical necessity and fee disputes between injured employees or their beneficiaries, insurance carriers, sub-claimants, employers and health care providers. It is the goal of the Division to resolve disputed issues at the lowest level of dispute resolution, thereby ensuring prompt medical care and payment of workers' compensation income benefits to injured employees and prompt payment of medical fees to health care providers.

Hearings provides indemnity dispute resolution for benefit disputes regarding compensability or eligibility for, or the amount of, income, death, or burial benefits. The multi-tiered administrative system for indemnity benefit dispute resolution consists of Benefit Review Conferences (BRC), Contested Case Hearings (CCH), and Appeals Panel reviews.

BRCs and CCHs are held at Division field offices throughout the state, and Appeals Panel reviews are conducted at Division headquarters in Austin. If a party disagrees with the Appeals Panel decision, the decision may be appealed to a court of law. Review by the court of Division dispute resolution decisions is on a modified *de novo* basis. In addition, after a BRC is held, the parties may choose to participate in binding arbitration instead of continuing through the multi-tiered administrative process. However, this option is not often utilized.

In addition to resolving indemnity disputes on individual claims, Hearings also conducts Medical Contested Case Hearings (MCCH) as an appeal process for resolving certain medical fee disputes (i.e., appeal of an MFDR decision) and medical necessity disputes (i.e., appeal of an Independent Review Organization or IRO decision) for non-network claims. Texas Labor Code, Section 413.031 allows a party to appeal all IRO decisions regarding prospective (i.e., pre-authorization) or concurrent denials of medical necessity by requesting a MCCH. Additionally, a party may appeal an MFDR decision or an IRO decision regarding a retrospective denial of medical necessity if the amount of the dispute does not exceed \$2,000 for medical fee disputes and \$3,000 for retrospective medical necessity disputes. All other retrospective medical necessity and medical fee dispute appeals for non-network claims are handled by the State Office of Administrative Hearings (SOAH). Parties dissatisfied with a CCH or a SOAH hearing officer's decision may appeal to a court of law. Review by the court is based on substantial evidence.

Per Insurance Code, Chapter 1305, the appeal process for medical treatments provided in certified health care networks is different than the appeal process for non-network medical treatments. Fee disputes between network health care providers and insurance carriers are resolved contractually and appeals are handled internally by the networks. Parties who remain dissatisfied with the results of IRO decisions regarding network claims (prospective, concurrent and retrospective medical necessity denials) may appeal those decisions directly to court under a *de novo* standard of review.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Medical Fee Dispute Resolution

- The Division continued to hold low-level dispute resolution meetings and communication via telephone with parties to resolve disputes when possible. Of the 17,239 medical disputes resolved between September 1, 2007 and May 31, 2009, approximately 7,400 were withdrawn by the requestor as a result of low-level dispute resolution.
- The Division continued to transfer requests for medical fee dispute cases to the Hearings section when unresolved compensability or extent-of-injury dispute issues existed. These issues must be resolved prior to medical fee dispute. The Hearings section processed and closed 975 of these cases from September 1, 2007 to May 31, 2009.
- The Division reduced the backlog of medical fee disputes by approximately 4,000 cases in 2008.
- Due to settlements outside of MFDR which resulted from improved communication with system participants, the Division decreased number of incoming medical fee disputes from an average of 731 per month in 2007 to an average of 522 per month during the first half of 2009
- The Division reduced timeframes for resolution of medical fee disputes from an average of 71 days in 2007 to an average of 38 days for the first half of 2009 by revising options for the processing and tracking of cases.

| Medical Fee Dispute Resolution | | | |
|---------------------------------------|--|--|--|
| Year Dispute Received | Total Number of Disputes Docketed | Total Number of Disputes Resolved | Average Number of Days to Resolve Dispute |
| 2007 | 8774 | 3389 | 71 |
| 2008 | 9351 | 4376 | 66 |
| 2009 (Jan.-May) | 5387 | 1993 | 38 |

Source: Texas Department of Insurance, Division of Workers' Compensation, 2009.

Hearings

- The Division developed separate precedent manuals for indemnity disputes and medical disputes. The Appeals Panel Decision Manual is required by statutory change made by HB 7 and covers indemnity disputes. It is available on the Internet to all customers. The Medical Contested Case Hearing Decision Manual was created as a service to all customers and covers medical disputes. It is in the final stages of coordination for placement on the Internet. The primary purpose of both manuals is to help the Appeals Panel and hearing officers achieve consistency in their decisions and inform system participants of the legal principles the Division expects to follow in deciding Hearings' disputes. The manuals are updated regularly based on changes in the statute, rules, appeal court decisions, and Hearings' decisions.
- The Division implemented a new training initiative for field office staff using benefit review officers to present monthly training courses. Eighteen training modules are currently in use.
- The Division implemented statutory change made by HB 7 to restrict multiple BRCs held on the same issue per claim (no more than 2 BRCs).
- The Division implemented an ongoing quality assurance process to monitor hearing officers' and benefit review officers' performance and identify areas requiring improvement. Reviewers enter information into a database which is used to identify training opportunities and substandard performance.
- The Division implemented quarterly Attorney Focus Group meetings to solicit input from attorney system participants to improve processes for Hearings' dispute resolution. As a result, the Division refined its guidance to hearing officers regarding requests for continuances and issuing subpoenas.

The following two tables show statistics relating to indemnity disputes during the period from September 1, 2004 through May 31, 2009 and medical appeals during the period from September 1, 2007 through June 22, 2009.

| Indemnity Disputes - 9/1/04-5/31/09 | | | | | |
|---|-------------|-------------|-------------|-------------|-------------|
| Disputes Received, BRC and CCH Sessions Held, BRCs and CCHs Concluded, and Appeal Requests Received | | | | | |
| | FY05 | FY06 | FY07 | FY08 | FY09 |
| Disputes Received | 46,073 | 35,657 | 29,678 | 26,457 | 18,419 |
| BRC Sessions Held | 24,639 | 16,318 | 14,072 | 11,460 | 8,077 |
| CCH Sessions Held | 7,652 | 6,697 | 6,198 | 5,079 | 3,642 |
| BRCs Concluded | 18,624 | 14,077 | 12,127 | 9,838 | 6,703 |
| CCHs Concluded | 7,210 | 6,233 | 5,814 | 4,603 | 3,344 |
| Appeals Requests Received | 3,258 | 2,811 | 2,514 | 2,019 | 1,426 |
| Average Number of Days From Date of Request to Completion | | | | | |
| Benefit Review Conferences | 77 | 67 | 65 | 68 | 67 |
| Contested Case Hearings | 79 | 78 | 88 | 85 | 90 |
| Appeals to Appeals Panel | 46 | 60 | 64 | 64 | 64 |

Source: Texas Department of Insurance, Division of Workers' Compensation, 2009.

| Medical Appeals - 9/1/07 - 6/22/09 | | | | |
|---|-------|-------------------|------|-------|
| Type of Appeal | Venue | FY08 | FY09 | Total |
| | | Number of Appeals | | |
| Fee Disputes, \$2000 or less | MCCH | 1224 | 56 | 1,280 |
| Fee Disputes, more than \$2000 | SOAH | 111 | 164 | 275 |
| Retrospective Medical Necessity, \$3000 or less | MCCH | 8 | 2 | 10 |
| Retrospective Medical Necessity, more than \$3000 | SOAH | 25 | 5 | 30 |
| Prospective & Concurrent Medical Necessity | MCCH | 281 | 277 | 538 |
| Spinal Surgeries | MCCH | 168 | 127 | 295 |
| TOTAL | | 1,817 | 631 | 2,448 |

Source: Texas Department of Insurance, Division of Workers' Compensation, 2009.

The following performance measures demonstrate the effectiveness and efficiency of this function.

| 6.5.1 Outcome 2 (now OC1) - % of Indemnity Disputes Resolved in Dispute Resolution Proceedings | | | | | |
|---|--|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | N/A | N/A | 58.07% | 97.58% |
| Annual Target | N/A | N/A | N/A | 57.00% | 56.00% |
| Percentage of Target | N/A | N/A | N/A | 101.88% | 174.25% |
| <i>Desired Performance</i> | <i>Lower than target.</i> | | | | |
| <i>Analysis/Variance Explanation</i> | <i>DWC no longer performs informal dispute resolutions prior to the BRC. Accordingly, effective FY 2008, the Legislative Budget Board approved a definition change to reflect the transfer of pre-BRC dispute resolutions to the Office of Injured Employee Counsel. The FY08 and FY09 targets were not changed and still reflect the inclusion of the pre-BRC dispute resolution.</i> | | | | |

| 6.5.1 Output 1 - Number of Indemnity Disputes Concluded in Benefit Review Conference | | | | | |
|---|---|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | 20,506 | 18,624 | 14,077 | 12,127 | 9,838 |
| Annual Target | 20,000 | 20,000 | 20,000 | 20,000 | 15,000 |
| Percentage of Target | 102.53% | 93.12% | 60.64% | 60.64% | 65.59% |
| <i>Desired Performance</i> | <i>Lower than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | <i>The number of indemnity disputes received by the Division has declined an average of 14 percent a year since fiscal year 1991; the highest drop, 22.6 percent occurring in fiscal year 2006.</i> | | | | |

| 6.5.1 Output 2 - Number of Indemnity Disputes Concluded in Contested Case Hearings | | | | | |
|---|---|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | 7,339 | 7,210 | 6,233 | 5,814 | 4,603 |
| Annual Target | 6,800 | 6,800 | 7,200 | 7,200 | 6,600 |
| Percentage of Target | 107.93% | 106.03% | 86.57% | 80.75% | 69.70% |
| <i>Desired Performance</i> | <i>Lower than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | <i>The number of indemnity disputes received by the Division has declined an average of 14 percent a year since fiscal year 1991; the highest drop, 22.6 percent occurring in fiscal year 2006.</i> | | | | |

| 6.5.1 Output 3 - Number of Medical Fee Disputes Resolved Prior to a Decision | | | | | |
|---|---------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | N/A | N/A | 4,045 | 4,316 |
| Annual Target | N/A | N/A | N/A | 1,979 | 1,778 |
| Percentage of Target | N/A | N/A | N/A | 204.81% | 242.75% |
| <i>Desired Performance</i> | <i>Higher than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

| 6.5.1 Efficiency 1 - Average Number of Days From the Request for BRC to the Conclusion of BRC | | | | | |
|--|--------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | 78 | 77 | 67 | 63 | 67.62 |
| Annual Target | 74 | 74 | 80 | 80 | 67 |
| Percentage of Target | 105.41% | 104.05% | 83.75% | 78.75% | 100.93% |
| <i>Desired Performance</i> | <i>Lower than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

2005 - The legislature passed a comprehensive workers' compensation reform bill (HB 7) which:

- Eliminated the State Office of Administrative Hearings' (SOAH) role in appeals of workers' compensation medical fee and medical necessity issues. Appeals of non-network medical fee disputes and network and non-network Independent Review Organization (IRO) decisions went directly to judicial review.
- Restructured the Appeals Panel for appeals judges, in a three-member panel, to conduct administrative appeals proceedings instead of several panels of administrative law judges and

required the Appeals Panel to issue decisions only on reversed or remanded cases. Previously, the Appeals Panel would render a decision on every case.

- Required more coordination of indemnity and medical disputes to the extent feasible.
- Limited the number of BRCs and required additional mediation training for benefit review officers. This change was intended to streamline the process to provide faster and more effective resolution of disputes and encourage participants to be better prepared and possibly more willing to resolve disputes informally at a BRC.

2006 - On November 1, 2006, a Travis County district court determined in *HCA Healthcare Corp. v. Texas Department of Insurance and Division of Workers' Compensation, Cause No. D-1-GN-06-000176*, that the medical dispute resolution process as revised by HB 7 did not provide due process to parties and determined the removal of SOAH to be facially unconstitutional.

2007 - The 80th Legislature passed HB 724, which brought SOAH back into the workers' compensation hearings process on a limited basis by creating a system whereby certain non-network medical fee and medical necessity disputes are decided in CCHs and others are decided at SOAH based on the type of medical dispute and the reimbursement amount requested.

In addition, HB 724 granted health insurance carriers the ability to request payment as sub-claimants from workers' compensation insurance carriers for medical treatment that was paid on work-related injuries and allowed disputes between the health insurance carrier and the workers' compensation insurance carrier to be resolved through the Division's indemnity or medical dispute resolution process.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Division's indemnity dispute resolution processes are available to all system participants, including insurance carriers, sub-claimants, health care providers, covered employers, and injured employees. The Division's medical fee dispute resolution process and medical CCHs are available to all non-network system participants, including health care providers, insurance carriers, and injured employees. The following are often involved as parties to dispute resolution:

- Insurance carriers are typically the respondents in disputes over payment of medical treatments provided and indemnity benefits.
- Health care providers may seek relief for unpaid or underpaid medical bills.
- Injured employees may file indemnity disputes or medical necessity or fee disputes for reimbursement of out-of-pocket expenses paid by the injured employee or for medical treatments denied by the insurance carrier prospectively.
- Health insurance carriers as sub-claimants may seek relief for unpaid or underpaid medical bills on work-related injuries.
- Employers may file indemnity disputes or medical disputes for reimbursement of expenses paid directly by the employer. An employer may also dispute a claim of its employee if the claim is accepted for payment of workers' compensation benefits by its insurance carrier.

Other entities that may be indirectly affected by dispute resolution include IROs, utilization review agents, insurance adjusters, case managers, attorneys, and doctors conducting peer review, Required Medical Examinations and Designated Doctor examinations.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The Division administers its dispute resolution function through two program areas, Medical Fee Dispute Resolution and Hearings. These two programs collaborate with the Office of the Medical Advisor, Legal Services, Enforcement, System Monitoring and Oversight, Field Services, State Office of Administrative Hearings, Health and Workers' Compensation Network Certification and Quality Assurance (HWCN), and the Office of Injured Employee Counsel (OIEC).

Medical Fee Dispute Resolution

Medical Fee Dispute Resolution is administered by the *Executive Deputy Commissioner for Health Care Management and System Monitoring* and the *Health Care Business Management Director*.

MFDR is administered through two main activities.

- The *Intake Section* receives and screens mail; creates and maintains dispute files; receives and responds to telephonic requests via the Medical Dispute Information Line; and mails medical dispute resolution Findings and Decisions to the appropriate parties.
- The *Audit Section* monitors and reviews dispute files for response timeframes; provides education and low level dispute resolution; renders decisions, and closes cases in the automated system.

MFDR prioritizes fee disputes in order to determine the appropriate method for adjudicating the disputes: education, LLDR, or rendering decisions.

Hearings

The Hearings Program area is administered by the *Deputy Commissioner of Hearings* through the following sections: Chief Clerk of Proceedings, Dispute Processing, Benefit Review Conferences, Arbitration, Contested Case Hearings, and Appeals Panel reviews.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Texas Workers' Compensation Act establishes a self-balancing maintenance tax that is collected on gross workers' compensation insurance premiums. The maintenance tax is paid by workers' compensation insurance carriers for the administration of the Division and may not exceed two percent of gross workers' compensation insurance premiums. The maintenance tax is collected by the Comptroller and deposited in general revenue.

As submitted in the Division's Legislative Appropriations Request for the 2010-2011 biennium, the programs that perform this function are under budget strategy 6.5.1, the goal of which is to ensure the appropriate delivery of workers' compensation benefits by minimizing and resolving indemnity and medical disputes.

H. Identify any programs, internal or external to your agency that provide identical or similar services or functions. Describe the similarities and differences.

Internal

MFDR located at Metro resolves *non-network* medical fee disputes and medical fee disputes that arise as a result of a contractual agreement through an informal network, voluntary network, and out-of-network treatment for an enrollee of a certified network. *Health and Workers' Compensation Network Certification and Quality Assurance Program at the Department (HWCN)* located at Hobby handles complaints regarding *certified networks*, including complaints from health care providers who are dissatisfied with the certified networks' administration of its internal fee dispute resolution processes. Certified network medical fee disputes are appealed to and resolved by the certified networks. If the system participant has an issue with the administration of a certified network's dispute process, the system participant may submit a complaint to the Department's Complaint Resolution section. There is no duplication of effort since MFDR handles non-network fee disputes and HWCN resolves network complaints. MFDR and HWCN collaborate to educate system participants on where to submit medical fee disputes.

External

Both the Hearings Program and State Office of Administrative Hearings (SOAH) conduct appeals hearings for medical fee and medical necessity disputes. There is no overlap in the duties of *SOAH* and the Division with regard to appeals hearings because the amount in dispute or the type of dispute determines where the case is heard.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

External

It is possible for the Division and SOAH to decide differently on legal issues pertaining to medical fee and medical necessity disputes. Hearings has prepared a precedent manual, Medical Contested Case Hearing Decision Manual, to try to ensure consistency in its decisions on medical fee and medical necessity disputed issues. Hearings has shared its draft of this manual with the lead SOAH judge for these medical disputes. This precedent manual will be available on the Division's Internet site.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

MFDR works with the following units of government:

The Federal Center for Medicare and Medicaid Services (CMS): The workers' compensation system is required by Texas law to use the same payment policies as Medicare. In order to apply CMS policies to the findings and decisions rendered on disputes, MFDR has access to CMS information.

Medicare TrailBlazer: MFDR obtains free information from TrailBlazer which is the contracted regional insurance carrier for CMS.

Texas Department of Health and Human Services, Texas Medicaid Program: The Division’s dental fee guideline rule requires that system participants apply the Texas Medicaid Dental Fee Schedule in effect on the date of service for coding, billing, reporting, and reimbursement of dental treatment and services. In order to apply the proper dental fees to the findings and decisions rendered on disputes, MFDR consults with the Texas Medicaid Program as needed.

K. If contracted expenditures are made through this program please provide:

- the amount of those expenditures in fiscal year 2008;
- the number of contracts accounting for those expenditures;
- a short summary of the general purpose of those contracts overall;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

| Vendor Name | Service Provided | Amount |
|---|---|-------------------|
| Computer Express | Toner Cartridges | 9,856.19 |
| State Office of Admin. Hearings | SOAH Contract | 54,231.56 |
| Affiliated Telephone Inc | Hardware/Software Upgrade | 735,096.63 |
| Affiliated Telephone Inc | Hardware/Software Upgrade | 9,878.02 |
| Work-Loss Data Institute LLC | Subscription Renewal to ODG | 8,931.70 |
| Ingenix | Subscription Renewal of Encoder Pro.com | 7,348.81 |
| Pais Janitorial Serv. and Supplies Inc. | Janitorial Service | 3,859.08 |
| Masterword | Interpreter Services - Spanish | 62,675.13 |
| Masterword | Interpreter Services - Foreign Language | 29,123.27 |
| Masterword | Interpreter Services - Foreign Language | 3,442.68 |
| The University of Texas at Austin | Mediation Services | 3,622.50 |
| TOTAL | | 928,065.57 |

L. What statutory changes could be made to assist this program in performing its functions? Explain.

See Section IX for recommended changes.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

No additional information needed

- N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**
- why the regulation is needed;
 - the scope of, and procedures for, inspections or audits of regulated entities;
 - follow-up activities conducted when non-compliance is identified;
 - sanctions available to the agency to ensure compliance; and
 - procedures for handling consumer/public complaints against regulated entities.

Not applicable

- O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.**

Not applicable

Medical Services Utilization and Quality Review

- A. Provide the following information at the beginning of each program description.**

| | |
|---|--|
| Name of Function | Ensure Appropriate Utilization of Medical Services |
| Location / Division | Metro Center / Office of the Medical Advisor (OMA), Health Care Policy and Implementation |
| Contact Name | Matthew Zurek |
| Actual Expenditures | \$1,751,693.50 |
| Number of FTEs as of August 31, 2008 | 18.39 |

- B. What is the objective of this program or function? Describe the major activities performed under this program.**

To ensure the appropriate delivery of workers' compensation benefits, this function promotes delivery of reasonable, necessary and quality health care to injured employees. The Division performs this function through two program areas: the Office of the Medical Advisor, and Health Care Policy and Implementation.

Office of the Medical Advisor

The *Office of the Medical Advisor* (OMA) recommends to the Commissioner of Workers' Compensation rules and policies regarding medical care and medical delivery systems. In addition, OMA monitors the quality of health care in the workers' compensation system by conducting medical quality reviews of health care providers and other system participants by applying nationally recognized, evidence-based standards of medical care that include the Division's adopted treatment and return-to-work guidelines—*Official Disability Guides—Treatment in Workers' Comp* and *Medical Disability Advisor—Workplace Guidelines for Disability Duration*. Medical quality reviews are performed by the Medical Advisor, the Assistant Medical Advisor, Associate Medical Advisors, the Medical Quality Review Panel (MQRP), and

the Quality Assurance Panel (QAP). The MQRP is a panel of independent medical experts selected by the Medical Advisor based on education, training and experience. These experts are under contract with the Division to conduct clinical reviews of medical case files. The MQRP may recommend referral of cases to Enforcement for sanctions against health care providers, carriers, and other system participants under review. The QAP is an independent group comprised of MQRP members, many of whom are on the Designated Doctor List, which provides an additional level of quality assurance for all reviews conducted by MQRP members. QAP members are selected by the medical advisor based on levels of expertise pertaining to quality medical care. The QAP meets regularly to provide medical expertise to the medical advisor, discuss pending reviews and medical policy issues, and to counsel the medical advisor regarding appropriate actions related to reviews. The QAP meeting is presided over by a QAP-selected chairperson.

Each year, the Division selects categories of workers' compensation health care providers and other system participants for review using a random selection process and complaints received by OMA. System participants include doctors, other health care providers, insurance carriers, utilization review agents, and Independent Review Organizations. The review categories are based on recommendations from the Medical Advisor and the Workers' Compensation Research and Evaluation Group. Complaints reviewed are received through the Division's complaint resolution section and other independent sources.

The Office of the Medical Advisor also determines which doctors meet the qualifications to serve as Designated Doctors in the workers' compensation system. The MQRP may make recommendations to the Medical Advisor regarding which doctors are included in the Designated Doctor List (DDL) and which are excluded based on performance within the statutory requirements of Designated Doctor examinations. To be included on the DDL, doctors are required to have a high level of expertise and must be able to demonstrate their skills in a specialized area of medicine to be considered for appointments involving those medical specialties. Administrative requirements for the DDL consist of acceptance of an appropriate number of offered appointments per year, providing reports in a timely manner, and responsiveness to requests for additional information regarding those reports. Designated Doctors are statutorily charged with determining maximum medical improvement, whole body impairment rating, extent of injury issues, and return-to-work capability of injured employees. The Division may require an examination by a Designated Doctor at the request of the insurance carrier, an injured employee, the employee's representative, the Medical Advisor, or on the Commissioner's own order.

Health Care Policy and Implementation

Health Care Policy and Implementation researches and analyzes economic factors and treatment protocols that form the basis for advising the Commissioner of Workers' Compensation regarding development of medical rules and fees, treatment, and return-to-work guidelines. This program area's primary purpose through rule and guideline development is to help ensure the quality and appropriateness of health care and injury-specific treatment while also achieving effective medical cost containment and encouraging the prompt and appropriate return to work of injured employees. In developing or revising these rules and guidelines, Health Care Policy and Implementation may seek input from system stakeholders and system participants.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

- The Division created a health care policy communications specialist position to facilitate effective working relationships with the medical community. Examples include:

- The communications specialist advises individual providers and provider organizations of the availability of educational seminars such as *Basics Workers' Compensation for Medical Office Staff*. To date 15 one-day seminars have been conducted for over 600 health care provider staff.
 - The communications specialist created a spreadsheet that allows the field office staff or Commissioner's ombudsman to identify and track doctors that are unwilling to see workers' compensation patients. The communications specialist uses this data to contact the doctors to provide assistance and encouragement to join the system. To date, 40 doctors (and one Ambulatory Surgical Center) have been entered and 24 have been contacted. In addition, 16 medical associations have been contacted.
 - The communications specialist has been key in developing a health care provider call center and database to record inquiries and recurring questions from health care providers and carriers regarding medical benefits, including requests to become providers in the workers' compensation system.
- The Division developed Hospital Inpatient, Hospital Outpatient, Ambulatory Surgical Center and Medical Fee Guidelines that utilize the Medicare reimbursement methodology, which were adopted by the Commissioner of Workers' Compensation in 2008.
 - The Division utilized the results of a data call issued by the Workers' Compensation Research and Evaluation Group to analyze medical peer review data in February 2008. The Office of the Medical Advisor analyzed the data to select review peer review doctor subjects for medical quality reviews.
 - The Division reviewed application information for Designated Doctors to evaluate the doctors' education, training, and experience to evaluate specific injuries.

The following performance measures demonstrate the effectiveness and efficiency of this function.

| 6.1.1 Outcome 1 - Percentage of Medical Bills Processed Timely | | | | | |
|---|---------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | N/A | N/A | 97.42% | 98.28% |
| Annual Target | N/A | N/A | N/A | 94% | 95% |
| Percentage of Target | N/A | N/A | N/A | 103.64% | 103.45% |
| <i>Desired Performance</i> | <i>Higher than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

| 6.1.1 Output 1 - Number of Quality Care Reviews Completed | | | | | |
|--|---------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | N/A | N/A | 82 | 82 |
| Annual Target | N/A | N/A | N/A | 82 | 82 |
| Percentage of Target | N/A | N/A | N/A | 100.00% | 100.00% |
| <i>Desired Performance</i> | <i>Higher than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

| 6.1.1 Efficiency 1 - Average Number of Days to Complete Quality of Care Reviews | | | | | |
|--|--------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | N/A | N/A | 337.86 | 111.35 |
| Annual Target | N/A | N/A | N/A | 150 | 180 |
| Percentage of Target | N/A | N/A | N/A | 225.24% | 61.86% |
| <i>Desired Performance</i> | <i>Lower than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

2001 - The Legislature passed HB 2600, which required the Texas Workers' Compensation Commission to utilize the reimbursement structure of the Medicare system, including Medicare's billing, payment and documentation requirements. HB 2600 also required doctors who treat or review medical care in the Texas workers' compensation system to register to be on the Approved Doctors List (ADL) and instituted financial disclosure requirements for these doctors. The bill also required doctors to be trained and tested in order to perform impairment rating examinations and required the use of Independent Review Organizations (IROs) certified by the Department to resolve all medical necessity disputes.

2002 - The Texas Workers' Compensation Commission adopted a new professional services fee guideline utilizing the Medicare reimbursement structure. Workers' compensation fees were set at 125 percent of Medicare (previously fees were set at approximately 140 percent of Medicare). The Texas Medical Association and Texas AFL-CIO filed suit against the Commission challenging the methodology used by the Commission to set the fees and challenging the Commission's adherence to the Administrative Procedure Act for rulemaking purposes.

2003 - The professional services fee guideline adopted by the Commission was upheld in district court and went into effect on August 1, 2003. On September 1, 2003, all doctors treating or reviewing medical care in the Texas workers' compensation system were required to be registered on the ADL.

2005 - The Legislature passed HB 7, which eliminated the ADL on September 1, 2007 in an effort to improve access to care for injured employees. Financial disclosure and impairment rating training and testing requirements remained intact. HB 7 also authorized the Division to designate underserved areas in Texas and provided a financial incentive to health care providers who treat injured employees in those underserved areas. HB 7 also required peer review doctors to be Texas licensed, but allowed utilization review doctors to operate under the supervision of a Texas licensed doctor. HB 7 also required the Division to adopt a pharmacy closed formulary and a pharmacy fee guideline.

2007 - The Legislature passed HB 1003, HB 1006, and HB 2004, which required doctors performing peer review, utilization review, retrospective review, as well as doctors employed by Independent Review Organizations (IROs) to be Texas licensed and to hold a professional certification in a health care specialty appropriate to the type of health care that the injured employee is receiving.

2008 - The Division adopted a new professional services fee guideline utilizing the Medicare reimbursement structure and increased fees to approximately 174 percent for specialty surgery services performed in a facility setting and 139 percent for all other professional services. As part of this fee guideline, a ten percent bonus was added for certain health care providers who treat injured employees in 122 ZIP codes in Texas designated as underserved areas. The Division also adopted new hospital

inpatient, hospital outpatient and ambulatory surgical center fee guidelines utilizing the Medicare reimbursement structure. The Division also posted the first informal draft of the pharmacy closed formulary rule and hosted the first stakeholder meeting on the rules.

2009 - The Division held additional stakeholder meetings and published a second informal draft of the pharmacy closed formulary rule. Formal rule proposal is expected in the fall of 2009.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Because this function may determine the level and type of care provided to an injured employee and the amount paid for the care, it affects all system participants. The participants most directly affected are injured employees, health care providers practicing within the workers' compensation system, Independent Review Organizations, Designated Doctors and workers' compensation insurance carriers/utilization review agents/peer review doctors.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The Division administers its Medical Services Utilization function through two complementary program areas: the Office of the Medical Advisor and Health Care Policy and Implementation. The Office of the Medical Advisor is administered by the *Medical Advisor* who reports directly to the *Commissioner of Workers' Compensation*. The Health Care Policy and Implementation program is administered by the *Executive Commissioner for Health Care Management and System Monitoring* and the *Health Care Policy and Implementation Manager*.

The *Office of the Medical Advisor* is responsible for reviewing the quality of care provided to injured employees by health care providers and the quality of medical decisions made by insurance carriers, utilization review agents, peer reviewers, Designated Doctors and Independent Review Organizations. Quality of care reviews are triggered by complaints received by the Division as well as through a random selection review process based on certain criteria outlined in the medical quality review plan.

The *Health Care Policy and Implementation program* area advises the Commissioner of Workers' Compensation regarding the development of rules regarding appropriate treatment and return-to-work procedures for injured employees and fair and reasonable reimbursement for health care providers. The rule development function of this program is primarily guided by statutory changes and Commissioner or management direction.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Texas Workers' Compensation Act establishes a self-balancing maintenance tax that is collected on gross workers' compensation insurance premiums. The maintenance tax is paid by workers' compensation insurance carriers for the administration of the Division and may not exceed two percent of gross workers' compensation insurance premiums. The maintenance tax is collected by the Comptroller

and deposited in general revenue.

Additional funding for the Office of the Medical Advisor is provided through a one-time \$2.2 million grant from the Texas Mutual Insurance Company (TMIC) – authorized by HB 2510 in 1999. In early 2003, the Texas Workers' Compensation Commission submitted a grant request to TMIC. The statutory language of the grant clearly defines the parameters regarding how the grant money can be used. It may not be used to review insurance carriers or their agents. The Division continues to use these grant funds to review treating doctors and Designated Doctors in the workers' compensation system.

As submitted in the Division's Legislative Appropriations Request for the 2010-2011 biennium, the programs that perform this function are under budget strategy 6.1.1, the goal of which is to ensure the appropriate delivery of workers' compensation benefits.

H. Identify any programs, internal or external to your agency that provide identical or similar services or functions. Describe the similarities and differences.

Licensing Boards such as the Texas Medical Board and the Texas Board of Chiropractic Examiners review health care providers for compliance with required standards of care. The Texas Medical Board performs reviews of doctors practicing medicine in the state based on complaints received. Similarly, the Texas Chiropractic Board and the Texas Physical Therapy Board provide oversight to the care provided by their licensed members. However, these reviews are not specific to issues related to occupational health issues or compliance with the Texas Workers' Compensation Act or rules.

Certified Workers' Compensation Health Care Networks develop fee and treatment guidelines that may be similar to the Division's guidelines. However, the Division's fee and treatment guidelines apply only to *non-network* medical services and to services provided as a result of a contractual agreement through an informal network, voluntary network, or out-of-network treatment for an enrollee of a certified network.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Licensing Boards - The Office of the Medical Advisor exchanges information with various licensing boards (e.g., the Texas Medical Board and Texas Board of Chiropractic Examiners) and refers potential violations of the standard of care directly to those boards.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Not applicable

K. If contracted expenditures are made through this program please provide:

- the amount of those expenditures in fiscal year 2008;
- the number of contracts accounting for those expenditures;
- a short summary of the general purpose of those contracts overall;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

| Vendor Name | Service Provided | Amount |
|---|---|-------------------|
| DeLoitte Consulting LLP | Actuarial Services | 125,000.00 |
| Work-Loss Data Institute LLC | Subscription Renewal to ODG | 3,635.81 |
| Clinbio Corporation | Temporary Services - Contract Nurse | 9,865.75 |
| Ingenix | Subscription Renewal of Encoder Pro.com | 4,810.55 |
| Casey G. Cochran DO | Medical Quality Review Services | 1,050.00 |
| Jarrold Cashion | Medical Quality Review Services | 700.00 |
| Jarrold Cashion | Medical Quality Review Services | 2,400.00 |
| Mark A Doyne, M.D. | Medical Quality Review Services | 875.00 |
| Timothy Fahey | Medical Quality Review Services | 3,500.00 |
| Andrew P. Kant | Medical Quality Review Services | 300.00 |
| Brad Mckechnie, D.C. | Medical Quality Review Services | 3,700.00 |
| William Gaines, Jr. | Medical Quality Review Services | 150.00 |
| John Sklar | Medical Quality Review Services | 1,775.00 |
| Concentra Medical Center | Medical Quality Review Services | 550.00 |
| Jay M. Barrash | Medical Quality Review Services | 900.00 |
| Suzanne Novak | Medical Quality Review Services | 5,200.00 |
| William Defoyd | Medical Quality Review Services | 5,737.50 |
| J. William Wellborn, M.D. | Medical Quality Review Services | 2,125.00 |
| Clark Watts, M.D. | Medical Quality Review Services | 825.00 |
| Jose J. Monsivais, M. D. | Medical Quality Review Services | 450.00 |
| Pais Janitorial Serv. and Supplies Inc. | Janitorial Service | 373.80 |
| Milliman USA | Actuarial Services | 40,500.00 |
| The University of Texas at Austin | Mediation Services | 4,252.50 |
| TOTAL | | 218,675.91 |

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Not applicable

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

No additional information needed

- N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**
- **why the regulation is needed;**
 - **the scope of, and procedures for, inspections or audits of regulated entities;**
 - **follow-up activities conducted when non-compliance is identified;**
 - **sanctions available to the agency to ensure compliance; and**
 - **procedures for handling consumer/public complaints against regulated entities.**

The Office of the Medical Advisor regulates the quality of care provided by treating health care providers as well as medical decisions made by insurance carriers, utilization review agents, peer reviewers, Designated Doctors and Independent Review Organizations in the Texas workers' compensation system. Regulation regarding health care providers is needed to ensure that injured employees are receiving high quality and cost-effective medical treatments in a timely manner and to ensure that health care providers comply with the requirements of the Texas Workers' Compensation Act and rules. Through its reviews, the Office of the Medical Advisor may identify standard of care and other licensure issues regarding an individual health care provider that are communicated to the appropriate licensing board. Additionally, reviews of medical decisions made by insurance carriers, utilization review agents, peer reviewers, Designated Doctors and Independent Review Organizations are needed to ensure that any denial or delay of medical treatment that takes place during the course of an injured employee's recovery is not detrimental to the healing process and is based on medically sound, evidenced-based guidelines.

Reviews of the system participants are initiated as a result of a complaint or a random selection of system participants. The scope of these reviews involving health care providers includes whether the participant is adhering to the standard of care specific to their practice area and whether or not the health care provider is adhering to the *Official Disability Guidelines* (ODG) for treatment and the *Medical Disability Advisor* (MDA) for return-to-work issues. Both the ODG and the MDA have been adopted by the Division as guidelines to be used by health care providers and insurance carriers when making decisions regarding treatment practices and treatment approval. Medical treatment rendered within these guidelines is presumed by statute to be reasonable. Deviation from the guidelines does not necessarily indicate improper treatment but it may require pre-authorization by the insurance carrier and an explanation from the health care provider.

Procedurally, a review is initiated through a complaint or a data analysis that identifies potential review participants using billing or other objective measures. The Office of Medical Advisor then randomly selects cases for each participant to be reviewed. Documentation regarding treatment is requested from both the health care provider and the insurance carrier. Following specific procedures, the documentation is sorted chronologically, reviewed, and summarized before determining whether the review should be closed, more information should be requested, the case should be referred to a member of the Medical Quality Review Panel for outside review, or the case illustrates a violation that warrants direct referral to Enforcement.

Sanctions typically recommended by the Office of Medical Advisor include: education, ongoing monitoring with the cost being paid by the system participant, monetary penalties, restrictions on participation in the system, or removal from participation in the Texas workers' compensation system.

The Office of the Medical Advisor receives complaints from the general public, workers' compensation system participants, and other program areas within the Division. The source of a complaint is always kept confidential. All complaints received are routed through the Division's Complaint Intake System and are reviewed by the Assistant Medical Advisor to determine whether a formal follow-up is required.

The Assistant Medical Advisor may decide to close the complaint with no action; request a number of cases be randomly selected to review for practice patterns related to the complaint; open a full quality of care review; or refer the complaint directly to Enforcement for immediate action if the complaint involves the threat of imminent danger to a system participant.

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

| Texas Department of Insurance, Division of Workers' Compensation Office of the Medical Advisor Information on Complaints Against Regulated Persons or Entities Fiscal Year 2008 | |
|---|----------------|
| | FY 2008 |
| Total number of regulated persons | |
| Insurance carriers | 461 |
| Health care providers | 95,982 |
| Total number of complaints received from the public | 416 |
| Total number of complaints initiated by agency | 22 |
| Number of complaints pending from prior years | 0 |
| Number of complaints found to be non-jurisdictional | 4 |
| Number of complaints resolved | 438 |
| Average number of days for complaint resolution | 73 |
| Complaints resulting in reprimands | 41 |

Workplace Health and Safety Services

A. Provide the following information at the beginning of each program description.

| | |
|---|--|
| Name of Program or Function | Provide Health and Safety Services in Texas Workplaces |
| Location / Division | Metro Center / Workplace Safety |
| Contact Name | Karen Puckett |
| Actual Expenditures, FY 2008 | \$3,239,683.61 |
| Number of FTEs as of August 31, 2008 | 59.95 |

B. What is the objective of this program or function? Describe the major activities performed under this program.

To promote safe and healthy workplaces, this function provides Texas employers and employees with health and safety resources and services to prevent occupational injuries and illnesses. The Division performs this function through its Workplace Safety Services function.

Workplace Safety Services consists of three sections: Safety Training and Inspections, Occupational Safety and Health Consultation (OSHCON), and Federal Data Collection.

Safety Training and Inspections consists of four programs that administer its services:

- The *Safety Outreach and Training* program educates employees and employers across the state about safe and healthy work practices through on-site company training, regional seminars, an annual statewide safety conference, safety and health publications, and other forms of outreach. In addition, the program collaborates with employers, business groups, trade associations, and other state and federal agencies to provide training to the public. This program also manages the state's Peer Review Safety Award Program, which recognizes Texas employers for exemplary safety programs.
- The *Accident Prevention Services* program inspects insurance companies that write workers' compensation in Texas to ensure that they are providing required accident prevention and return-to-work coordination services to their policyholders. This program also conducts policyholder visits to verify the adequacy of the accident prevention services provided by insurance carriers. In addition, this program investigates safety hazards reported through the Safety Violations Hotline and facilitates elimination of the hazards through a cooperative effort between the insurance carriers and employers. Serious problems or imminent dangers are referred to OSHA.
- The *Rejected Risk* program requires select high risk employers to implement safety programs. Employers that request workers' compensation coverage from Texas Mutual Insurance Company as the insurer of last resort after being rejected in the voluntary market are placed into the program. These rejected risk employers must employ a consultant to help them resolve workplace safety and health issues and develop the accident prevention plans. Division inspectors audit these employers to confirm that the required plans have been properly implemented.

- The *Safety Violations Hotline* is a tool for Texans to report violations of occupational safety and health laws. This 24-hour, bilingual, toll-free hotline (800-452-9595) can be used by anyone wishing to report suspected violations. Possible safety hazards reported to hotline staff are referred to Accident Prevention Services for further investigation.

Occupational Safety and Health Consultation (OSHCON) provides free assistance to smaller employers (employers with 250 or fewer employees on site and no more than 500 nationwide) in high-hazard industries to help them understand and comply with federal Occupational Safety and Health Administration (OSHA) safety regulations. Limited assistance is available to larger employers. The program is largely funded by a grant from OSHA. OSHCON consultants offer employers solutions to resolve workplace safety and health issues without issuing fines or citations. If serious problems or imminent dangers exist and the employer will not correct them, OSHA is notified. Qualifying employers with exemplary safety programs are awarded the Safety and Health Achievement Recognition Program (SHARP) designation, which provides exemption from scheduled OSHA inspections. The program also maintains a free safety and health training video/DVD loan library, which houses over 3,000 titles, available to all Texas employers.

Federal Data Collection collects, analyzes, and distributes occupational injury, illness, and fatality information for the state of Texas (including employers with workers' compensation coverage as well as non-subscribing employers). The analysis is derived from data collected for the U.S. Department of Labor, Bureau of Labor Statistics (BLS) Survey of Occupational Injuries and Illnesses and the BLS Census of Fatal Occupational Injuries. This program also collects data from Texas employers for the annual OSHA Data Initiative. OSHA uses the data to identify employers with high injury rates for enforcement inspections. These collection programs are partially funded through grants from BLS and OSHA.

In addition, this function analyzes workers' compensation claims data to determine causes of injury and illness.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

- Exceeded grant requirements for data collection and survey response rates in its 2008 publication of the 2006 Survey of Occupational Injuries and Illnesses.
- Received national recognition from OSHA in fiscal year 2007 for excellence in timelines, response rates, clean rates, and data quality for the 2006 OSHA Data Initiative. Texas scored 9.8 out of 10 and received a Certificate of Achievement and Recognition Memo from OSHA.
- Recognized by BLS for improvements in data collection process and case file completion for the Census of Fatal Occupational Injuries in fiscal year 2009.
- Participated on a national OSHA workgroup to develop the new national data system for consultation programs and provided training to new administrators in other states on the existing data system. The Division's OSHCON employees' received national recognition for their contributions to this workgroup in fiscal years 2008 and 2009.

- Received national recognition from OSHA in fiscal year 2008 for developing and delivering training curriculum on the practical use of OSHA’s employer safety management assessment tool used in consultation programs across the country.
- Conducted 2,610 consultations, policyholder visits, and Rejected Risk inspections with employers in fiscal year 2008.
- Conducted seven regional safety summits in fiscal year 2008 to provide information to target industries on preventing the leading types of nonfatal occupational injuries (sprain and strain) and the leading causes of fatal injuries (transportation-related incidents). Nine regional safety summits were held in fiscal year 2009. The Division hosted the 13th Annual Health and Safety Conference, the Texas Safety Summit in May 2009.
- Provided safety education products and services to 107,352 Texas employees and 7,485 Texas employers from September 1, 2008 to July 31, 2009.
- In order to improve customer service to employers in high hazard industries, the Division created new safety and health web pages that categorize safety and health training and educational materials by target industry, occupation and demographic. The Division’s website statistics indicate more than 13,000 individuals accessed these pages between May 2008 and July 2009.
- Through a data exchange agreement with the Texas Workforce Commission (TWC), the Division validates and refines employer establishment information used in the BLS data collection processes to maximize receipt of appropriate, publishable statistical data on occupational injuries and illnesses.
- Reports of unsafe working conditions that were investigated through the Safety Violations Hotline resulted in the elimination of 958 occupational safety hazards in Texas workplaces from January 1, 2004 through July 16, 2009.

The following performance measures demonstrate the effectiveness and efficiency of this function.

| 5.1.1 Outcome 1 (now EX1) - Statewide Incidence Rate of Injuries and Illnesses Per 100 FTEs | | | | | |
|--|--------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | 4.3 | 4.0 | 3.7 | 3.6 | 3.7 |
| Annual Target | 5.2 | 5.2 | 4.8 | 4.8 | 3.9 |
| Percentage of Target | 82.69% | 76.92% | 77.08% | 75.00% | 94.87% |
| <i>Desired Performance</i> | <i>Lower than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

| 5.1.1 Efficiency 1 - Average Cost Per Consultation and Inspection | | | | | |
|--|--------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | N/A | N/A | \$784.59 | \$835.19 |
| Annual Target | N/A | N/A | N/A | \$820.00 | \$820.00 |
| Percentage of Target | N/A | N/A | N/A | 95.68% | 101.85% |
| <i>Desired Performance</i> | <i>Lower than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

The Division also reports the Texas occupational injury and illness incidence rate per 100 full-time employees, and compares it to the national rate. The Texas incidence rate reflects calendar year and has remained below the national rate since Texas data collection began in 1990:

| Calendar Year | 2003 | 2004 | 2005 | 2006 | 2007 |
|---------------|------|------|------|------|------|
| U.S. | 5.0 | 4.8 | 4.6 | 4.4 | 4.2 |
| Texas | 4.0 | 3.7 | 3.6 | 3.7 | 3.4 |

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1995 - The Extra Hazardous Employer Program was implemented requiring employers identified by the Texas Workers' Compensation Commission (TWCC) as having significantly higher than average incidence rates of injuries and illnesses to hire a consultant to develop and implement an accident prevention plan. These employers were later inspected by TWCC to ensure effective implementation of these plans.

1998 - Employer litigation resulted in a decision that OSHA's jurisdiction over health and safety regulations for private employers preempted the TWCC Extra Hazardous Employer Program. As a result, the Extra Hazardous Employer Program was changed to allow TWCC to continue to identify extra-hazardous private employers, but only require public sector (state and local governments) employers to implement accident prevention plans and undergo compliance inspections. Legislation changed the name of the Extra Hazardous Employer Program to the Hazardous Employer Program.

2005 - HB 7 eliminated the Hazardous Employer Program and the Drug-free Workplace Program; made inspection of insurance carrier accident prevention services by the Division discretionary rather than mandatory every two years; and added specific requirements that educational materials and the 24-hour Safety Violations Hotline be provided in both English and Spanish.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Generally, Safety Training and Inspections affects workers' compensation insurance carriers and their policyholders (employers). However, the Safety Violations Hotline affects all Texas employers and employees, and safety training materials are available to all employers, regardless of whether they obtain workers' compensation coverage.

Safety Outreach and Training: Safety training courses and materials are available to all employers.

Accident Prevention Services: This program regulates insurance carriers that write workers' compensation insurance in Texas. In the course of inspecting insurance carriers to ensure that they provide required accident prevention services to their policyholders, the Division also consults with a percentage of their policyholders to verify provision of service. The Division selects policyholders based on several factors, including premium size, industry, claims history, and reports made to the Division's Safety Violations Hotline.

Rejected Risk: This program affects select policyholders that Texas Mutual Insurance Company places into the program in accordance with the Texas Insurance Code, Section 2054.509 due to high loss history or lack of loss history because they are new businesses.

Safety Violations Hotline: The Safety Violations Hotline affects Texas employers and their employees. The Texas Labor Code and Division rules require all non-exempt Texas employers to post the workers' compensation coverage notice or notice of non-coverage in the workplace, which includes information about the Safety Violations Hotline. The Hotline affects any employer on which the Division received a report of a safety-related issue.

Occupational Safety and Health Consultation (OSHCON)

OSHCON provides services to private-sector Texas employers upon request. The program focuses on high-hazard industries with 250 or fewer employees on-site and no more than 500 employees nationwide. Limited assistance is available to larger employers.

The Safety and Health Achievement Recognition Program (SHARP), which is an OSHA inspection exemption program available through OSHCON, is available only to employers in a high hazard industry or an industry with a high national average for Days Away Restricted Time (DART) that have met all of the following requirements:

- Worked with OSHCON for at least one year
- Had a comprehensive OSHCON consultation
- Corrected all identified hazards
- Instituted all attributes of an exemplary safety and health program
- Achieved DART and Total Recordable Case rate that is below the national average for that industry

Federal Data Collection

The Workplace Safety Program collects data for federal agencies from OSHA 300 logs maintained by Texas employers in accordance with federal requirements. The Division may ask employers that are exempt under OSHA to keep logs for one year for subsequent analysis.

Survey of Occupational Injuries and Illnesses: The Division collects occupational injury and illness data from employers' OSHA logs in a stratified statistical sample chosen by BLS.

OSHA Data Initiative: The Division collects occupational injury and illness data from employers' OSHA logs from a sample chosen by the OSHA.

Census of Fatal Occupational Injuries: The Division collects data regarding work-related fatalities from all Texas employers that experience fatalities for BLS. The Division uses various mechanisms of notification about work-related fatalities, including death certificates, news clippings, motor vehicle accident reports, and OSHA reports.

Safety Information Systems: The Division prepares research and analysis of BLS and workers' compensation claims data as requested by internal and external customers, as well as internal project plans.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The workplace safety program is administered by the *Executive Deputy Commissioner for Health care Management and System Monitoring* and the *Director of Outreach and Workplace Safety*.

Safety Training and Inspections

The Safety Training and Inspections program is administered by the *Manager of Safety Training and Inspections*. Fourteen additional employees work in this area.

Accident Prevention Services and *Rejected Risk* operate in accordance with Division rules (Chapter 166 Employees Health and Safety: Accident Prevention Services and Chapter 165 Rejected Risk: Injury Prevention Services) as well as internal procedures.

The *Safety Violations Hotline* and *Safety Outreach and Training* are administered according to specific internal guidelines and procedures.

Occupational Safety and Health Consultation (OSHCON)

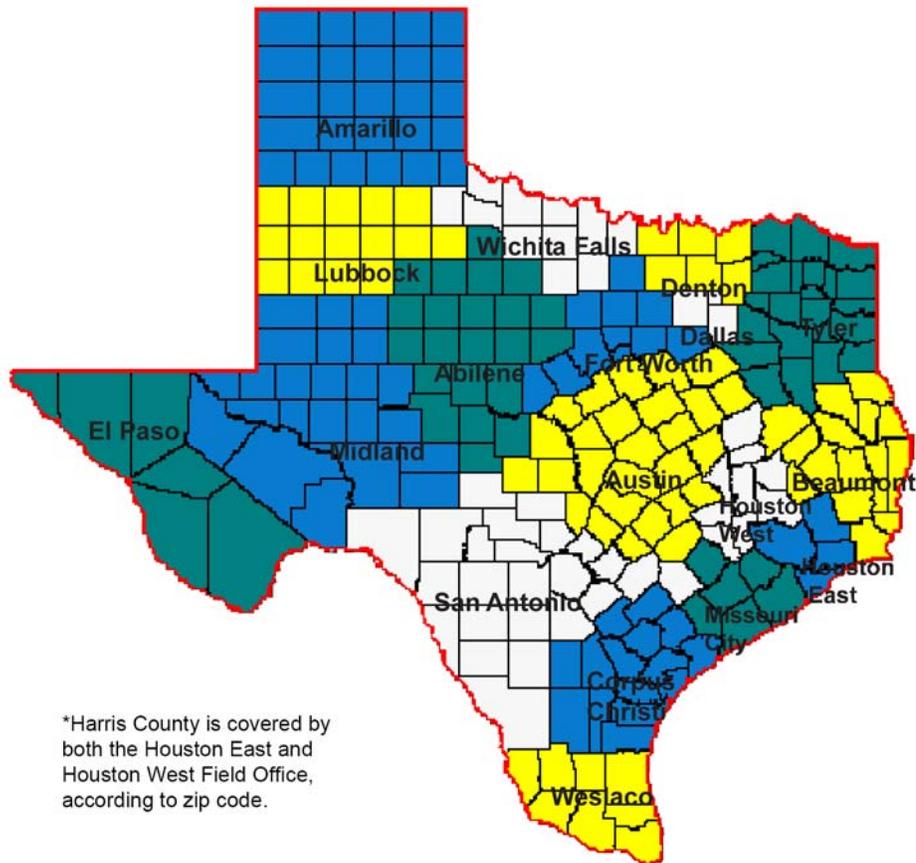
The OSHCON program is administered by the *OSHCON Manager*. Forty-two additional employees are budgeted for this program, nine of which are located at Metro.

The remaining thirty-three employees work in the field offices. Field consultants are located in Amarillo, Austin, Beaumont, Corpus Christi, Dallas, Denton, El Paso, Fort Worth, Houston, Lubbock, Midland, Missouri City, San Antonio, Tyler, Weslaco, and Wichita Falls, and are managed by two team supervisors located in Beaumont and San Antonio. In addition, statewide administrative support is provided by three administrative assistants located in the Corpus Christi, Fort Worth, and Missouri City field offices.

The OSHCON policies, procedures and work requirements are found in the Occupational Safety and Health Administration Cooperative Agreement (grant application), the federal Consultant Policies and Procedures Manual, and the internal OSHCON Policies and Procedures Manual.

The following map shows the counties served by OSHCON consultants located in the field offices.

TDI-DWC OSCHON Field Office and Counties Covered



Federal Data Collection

The Federal Data Collection program is administered by the *Supervisor of Federal Data Collection*. Thirteen additional employees work in this area at Metro. The procedures followed by these employees are outlined below.

The *Survey of Occupational Injuries and Illnesses*, the *OSHA Data Initiative*, and the *Census of Fatal Occupational Injuries* are conducted in accordance with the Bureau of Labor Statistics Occupational Safety and Health Survey Operating Manual, Log Data Collection Data System Version 7.0 Users Manual, Log Data Collection Initiative Version 14.0 Procedure Manual, and Census of Fatal Occupational Injuries Program Guide.

The Safety Information Systems program is administered according to internal procedures contained in the *Customized Report Instructions: Workers' Compensation Claims Data*, and follows BLS and Division confidentiality guidelines when data is published or released.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Texas Workers' Compensation Act establishes a self-balancing maintenance tax that is collected on gross workers' compensation insurance premiums. The maintenance tax is paid by workers' compensation insurance carriers for the administration of the Division and may not exceed two percent of gross workers' compensation insurance premiums. The maintenance tax is collected by the Comptroller and deposited in general revenue.

As submitted in the Division's Legislative Appropriations Request for the 2010-2011 biennium, the programs that perform this function are under budget strategy 5.1.1, the goal of which is to promote safe and healthy workplaces in Texas through incentives and education.

This function also receives federal funding for certain projects as detailed in the chart below. Amounts are for fiscal years 2008-2009.

| | |
|---|--|
| Accident Prevention Services | 100% State funds, GR \$304,594.29 budgeted |
| Rejected Risk | |
| Safety Violations Hotline | |
| Safety Training | 100% State Funds, GR \$513,213.63 |
| Survey of Occupational Injuries and Illnesses | 50% Federal funds; 50% State funds, GR \$281,585.54 budgeted* |
| Census of Fatal Occupational Injuries | 50% Federal funds; 50% State funds, GR \$160,282.36 budgeted* |
| OSHA Data Initiative | 100% Federal funds \$83,758.61 budgeted* |
| Safety Information Systems | 100% State funds, GR \$101,980.62 budgeted |
| OSHCON | 90% Federal Funds; 10% State funds \$2,911,398 |

*Note: Budgeted amounts may vary from fiscal year to fiscal year, depending on allocation amounts from the federal government. Figures do not include indirect costs applied to the grants.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Safety Training and Inspections: Several state and federal entities outside of the Division provide occupational safety and health training to employers and employees, however, the scope of safety training provided by these entities may be limited by their jurisdiction to a smaller audience than the Division's training. These entities include:

- State Office of Risk Management (SORM)
- Texas Department of State Health Services
- Texas Commission on Environmental Quality
- Texas Department of Transportation
- Texas Railroad Commission
- U.S. Department of Labor
- Occupational Safety and Health Administration (OSHA)
- Centers for Disease Control
- National Institute of Occupational Safety and Health (NIOSH)
- U.S. Environmental Protection Agency
- U.S. Department of Transportation

Business, trade and labor associations, workers' compensation insurance carriers, and private safety training companies may offer free or fee-for-service occupational safety and health training and publications to the public or their members. Through grants, OSHA provides funding for outside entities to develop and deliver free safety training and materials. OSHA also provides a free 24-hour hotline for reporting workplace safety or health emergencies, accidents, unsafe working conditions, or safety and health violations. The OSHA hotline only handles issues involving private sector and federal employers.

OSHCN: OSHA employs Compliance Assistance Specialists who conduct safety outreach to employers. However, the OSHA specialists address only OSHA safety regulations and general safety issues and do not provide consultative services on site to employers. For a fee, there are consultants in the private sector who provide safety consultation to employers.

The Texas Labor Code and Division rules require insurance companies to provide accident prevention services to their policyholders, including surveys, consultations, industrial hygiene services, claims history, accident analysis, and training.

The Division's OSHCON safety services emphasize OSHA compliance. Safety services provided by insurance carriers may or may not address OSHA compliance issues. Insurance carriers are not required to provide all services offered by the Division (surveys, consultations, industrial hygiene services, claims history, accident analysis, and training). Insurance carriers provide claims history and accident analysis to every policyholder, but provide other services only as needed. In addition, the Division's safety services are available to non-subscribing employers as well as employers with workers' compensation coverage.

Federal Data Collection: The Division's Records Management and Support program collects workers' compensation claims data, which contains some data elements that are identical or similar to the BLS and OSHA data collected by Workplace Safety. The claims files maintained by the Division and the OSHA data are derived from different sources and maintained or collected for different purposes.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Safety Training and Inspections: The Division endeavors to develop and provide safety training and materials that address industries and occupations with high incidences of injuries and illnesses in this state. Efforts are made to coordinate with OSHA, labor, business organizations, trade associations, and other governmental agencies to foster referrals and prevent duplicative initiatives, and to maximize the use of state resources.

OSHCON: OSHA funds the majority of the OSHCON Program through a grant, and thus OSHCON supports OSHA's strategic goals and initiatives. The program also coordinates its outreach to the Local Emphasis Programs of the OSHA Area Offices in Texas as part of its grant requirements.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Safety Training and Inspections: When reports of safety hazards are made to the Safety Violations Hotline concerning local, regional or federal government employers, the Division works with those employers and their workers' compensation insurance carriers to validate and abate the reported hazards. If reported hazards are not abated in a timely fashion, Division staff report these hazards to OSHA for further action.

OSHCON: The Division coordinates the marketing of training seminars and events through the OSHA area offices and OSHCON program, and involves OSHA compliance assistance specialists and OSHCON consultants in the execution of these events to assist employers with OSHA compliance issues.

The Division's cooperative agreement with OSHA requires the OSHCON program to support OSHA's strategic management plan and emphasis. OSHCON maintains working relationships with the OSHA Region VI office in Dallas, the OSHA area offices in Austin, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, and Lubbock, and the OSHA San Antonio district office to support their outreach efforts and local and regional emphasis programs. On occasion, OSHCON consultants receive on-the-job training and professional development by accompanying OSHA enforcement officers on inspections.

OSHCON does not provide consultative services to local or regional units of government since those entities are not under OSHA's jurisdiction and are outside the scope of the Division's cooperative agreement with OSHA.

Federal Data Collection: In the process of collecting information about work-related fatalities, the Census of Fatal Occupational Injuries program deals with local governments to obtain medical examiner and coroner reports, law enforcement accident reports, and other similar information.

K. If contracted expenditures are made through this program please provide:

- the amount of those expenditures in fiscal year 2008;
- the number of contracts accounting for those expenditures;
- a short summary of the general purpose of those contracts overall;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

| Vendor Name | Service Provided | Amount |
|---|-----------------------------|------------------|
| Paragon Printing & Mailing | Printing Services | 15,749.54 |
| Pais Janitorial Serv. and Supplies Inc. | Janitorial Service | 979.92 |
| Doubletree Hotel Austin | Hotel - Texas Safety Summit | 35,985.60 |
| TOTAL | | 52,715.06 |

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None identified

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

Not applicable

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

The Accident Prevention Services and Rejected Risk Programs are regulatory in nature, but do not directly involve licensing, registration, certification, or permitting of a person, business, or other entity. These programs are necessary to reduce the incidence of injuries and illness in Texas workplaces. Audits and investigations of workers' compensation insurance carriers are performed every two years. Any non-compliance issue is referred to the Division's Enforcement team for investigation and sanctions if appropriate.

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Each year this function receives approximately 400 safety-related complaints against employers who are not regulated entities.

Customer Assistance and Education

A. Provide the following information at the beginning of each program description.

| | |
|---|--|
| Name of Program or Function | Educate System Participants and Provide Service through Information Technology |
| Location / Division | Metro Center / Field Operations, Communications and Outreach, Records Management and Support |
| Contact Name | Patricia Gilbert |
| Actual Expenditures, FY 2008 | \$6,376,546.35 |
| Number of FTEs as of August 31, 2008 | 148.50 |

B. What is the objective of this program or function? Describe the major activities performed under this program.

To assist customers and effectively educate system participants, this function provides training through a variety of methods and uses technology to efficiently collect, maintain and utilize workers' compensation records. The Division performs this function primarily through three program areas: Field Operations, Communications and Outreach, and Records Management and Support.

Field Operations

Field Operations delivers customer assistance and claims service in twenty-four field offices located throughout the state as well as through centralized support functions in the Austin headquarters. There are two additional field locations that provide limited services. Field office staff assists system participants by:

- Providing information about the Texas workers' compensation system;
- Providing injured employees with a single point of contact (SPOC) at the Division for claims assistance and return-to-work information;
- Setting/docketing official proceedings and providing local venues for conducting Benefit Review Conferences and Contested Case Hearings;
- Processing official actions such as requests for change of treating doctors, requests for Required Medical Examinations, Supplemental Income Benefit first quarter entitlement determinations, and requests for Designated Doctor Examinations; and
- Conducting quarterly seminars on workers' compensation topics.

To receive assistance, system participants may call or e-mail field offices, or they may go to the field office for assistance in person. A new virtual call center routes calls to an appropriate field office representative based first on the proximity of the field office to the caller and then on the availability of a customer assistant. If the caller is routed to a field office other than his/her local office and the customer assistant is unable to resolve all of the caller's concerns, the remaining issues are referred to the caller's single point of contact in the local field office.

Communications and Outreach

Communications and Outreach provides support for the Division's internal and external written communications, web-based information, forms management, coordination of speaking engagements, and translation services. This program area also provides internal and external training on such subjects as return to work and medical benefits, as well as outreach efforts to encourage more health care providers to become involved in the Texas workers' compensation system. The Communications and Outreach program coordinates communication with system participants regarding general or specifically targeted information on an appropriate level using a variety of delivery methods specifically tailored to the message. Communications and Outreach also coordinates the Division's educational and safety conferences.

Records Management and Support

Records Management and Support maintains records associated with injured employee claim files and insurance coverage information. The section:

- Stores and maintains injured employee claim files and employer insurance coverage files according to the Division's records retention schedule and established quality standards;
- Provides information pertaining to injured employees or coverage files to internal and external customers;
- Receives and updates claims information from source documents;
- Processes claim information received from Electronic Data Interchange (EDI) transactions and provides EDI customer service to insurance carriers/trading partners; and
- Receives and processes required forms (DWC 5 and DWC 7 forms) submitted by employers that do not have workers' compensation coverage (i.e., non-subscribers).

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

- Revised policies and procedures for a request to change treating doctors and a request for a Required Medical Examination to achieve statewide standardization of the decision making process for these official actions.
- Implemented new procedures, including an automated referral tracking system, in cooperation with the Office of Injured Employee Counsel (OIEC) regarding injured employee dispute referrals between the two agencies.
- Upgraded telephone system for all Division field offices and implemented Division call centers to improve injured employees' access to customer assistance.
- Implemented a new proof-of-coverage portal on the Department's web site containing up-to-date coverage information from the National Council on Compensation Insurance.
- Implemented a Single Point of Contract (SPOC) customer assistance model for injured employees. Provided assistance through the SPOC to approximately 13,000 injured employees during fiscal year 2008 and 26,000 injured employees during fiscal year 2009.
- Initiated a health care provider outreach effort to improve doctor participation in the system by providing information regarding positive changes made in the workers' compensation system and offering educational materials and ongoing assistance
- Developed a web page dedicated to Designated Doctor resources. Revised policies and procedures for Designated Doctor selection and appointment scheduling and developed an online querying tool that allows system participants and interested parties to access appointment data.

- Implemented early vocational rehabilitation referral of injured employees to the Department of Assistive and Rehabilitative Services (DARS) and Texas Workforce Commission (TWC), increasing referrals from 2,000 to 24,000 annually.
- Developed a brochure containing information on multiple resources for injured employees, including information provided by DARS, TWC, OIEC and the 2-1-1 Texas program.
- Educated small employers about the availability of reimbursement for costs associated with making workplace modifications to allow injured employees an earlier return to full or modified duty.
- Provided return-to-work training to Division field operations and customer service staff, DARS counselors, and other system participants about the value of early and medically appropriate return to work.
- Provided training to field office staff on TWC resources in order to make more effective referrals for job search and other programs.
- Of the injured employees referred by the Division and OIEC who actually contacted DARS, the percentage of those eligible for vocational programs increased from 17 percent in 2007 to 82 percent during May through December of 2008.

The following performance measures demonstrate the effectiveness and efficiency of this function.

| 5.2.1 Output 2 – Number of Workers’ Compensation Income Benefit Recipients Referred to DARS | | | | | |
|--|---|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | N/A | N/A | 3,788 | 10,923 |
| Annual Target | N/A | N/A | N/A | 4,226 | 4,437 |
| Percentage of Target | N/A | N/A | N/A | 89.64% | 246.18% |
| <i>Desired Performance</i> | <i>Higher than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | <i>In May 2008 the Division enhanced the process for referring injured employees to vocational services. These new parameters resulted in a larger number of injured employees eligible for referral to DARS. Referrals are now occurring earlier in the workers’ compensation claims process, at 12 weeks of Temporary Income Benefits, in addition to 17 weeks prior to eligibility for Supplemental Income Benefits and when the nature of an injury or illness necessitates automatic referral.</i> | | | | |

| 5.2.1 Efficiency 1 - Average Number of Participants Per Return-to-Work Seminar | | | | | |
|---|---------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | 65.33 | 69.50 | 88.69 | 105.15 | 117.47 |
| Annual Target | 65 | 68 | 65 | 65 | 70 |
| Percentage of Target | 100.51% | 102.21% | 136.45% | 161.77% | 167.80% |
| <i>Desired Performance</i> | <i>Higher than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

| 6.3.1 Output 4 - Number of Workers’ Compensation Educational Publications Provided to System Participants in an Electronic Format | | | | | |
|--|---------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | N/A | N/A | 1,279,092 | 3,545,049 |
| Annual Target | N/A | N/A | N/A | 1,786,800 | 1,788,800 |
| Percentage of Target | N/A | N/A | N/A | 71.59% | 198% |
| <i>Desired Performance</i> | <i>Higher than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

| 6.3.1 Efficiency 1 - Average Number of Days to Create Reportable Injury Records | | | | | |
|--|--------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | 1.49 | 1.08 | 9.84 | 4.02 | 1.37 |
| Annual Target | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| Percentage of Target | 74.50% | 54.00% | 492.00% | 201.00% | 68.50% |
| <i>Desired Performance</i> | <i>Lower than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1993 - The Electronic Data Interchange (EDI) was implemented and insurers began electronically reporting initial claims payment transactions to the Texas Workers' Compensation Commission (TWCC).

1995 - TWCC expanded the EDI to require insurers to report subsequent claims payment transactions electronically. The Legislature also required all insurance carriers to file the employer's first report of injury electronically with TWCC.

2005 - HB 7 also established the Office of Injured Employee Counsel (OIEC) as a separate state agency, charged with providing assistance to unrepresented injured employees in Division dispute resolution proceedings and advocating for injured employees as a class. The Texas Workers' Compensation Commission's ombudsman program was transferred to OIEC on January 1, 2006.

2006 - The Legislature authorized and the Division established the small employer return-to-work reimbursement pilot program for small employers and return-to-work training programs for system participants.

2007 - Field Operations redefined office space and support to accommodate additional OIEC employees as authorized by the 80th Legislature (2007). The Legislature also transferred additional dispute resolution functions and personnel from the Division to OIEC to provide enhanced customer assistance to injured employees and facilitate the informal resolution of disputes. The Division worked closely with OIEC to facilitate this transition and to fully implement a single point of contact (SPOC) customer assistance model for injured employees in Division field offices. In January the Designated Doctor Scheduling section was centralized in the Austin Metro location. This centralization created improved supervision and monitoring of Designated Doctor scheduling activities to ensure consistent application of procedures and appropriate scheduling.

2008 - Rules adopted to allow employers to obtain pre-authorization of worksite modification expenses from the Division as part of the small employer return-to-work reimbursement program authorized under Labor code, Chapter 413.

2009 - HB 673 passed during the 81st Legislature, which provides OIEC's Public Counsel the authority to adopt, with input from the Commissioner of Workers' Compensation, the injured employee's rights and responsibilities. Previously these rights and responsibilities were adopted by the Commissioner of Workers' Compensation and Commissioner of Insurance. The Division will continue to distribute the injured employee's rights and responsibilities.

The Division centralized the assignment of Designated Doctors for claims where the injured employee resides out-of-state.

The Division created a health care provider educational outreach program (Comp Connection), which provides a toll-free telephone number and e-mail address for health care providers to make inquiries about workers' compensation rules, policies and procedures, including questions about billing and dispute resolution.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

All system participants are affected by the Division's customer assistance and education services. System participants include insurance carriers, health care providers, employers, injured employees, Independent Review Organizations, utilization review agents, adjusters, case managers, attorneys, peer reviewers, Required Medical Examination doctors, and Designated Doctors. The Division also provides training and educational materials to employers that do not participate in the workers' compensation system, generally referred to as non-subscribers.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The Division administers its customer assistance and education function through three program areas: Field Operations, Records Management and Support, and Communications and Outreach.

Field Operations

Field Operations is administered by the *Executive Deputy Commissioner of Operations* and supervised by the *Director of Field Operations*.

The twenty-four field offices are grouped geographically into four regions, each anchored by one large field office. Each Division field office is under the management direction of a *Regional Administrator*, *Assistant Regional Administrator*, and *Field Office Manager*.

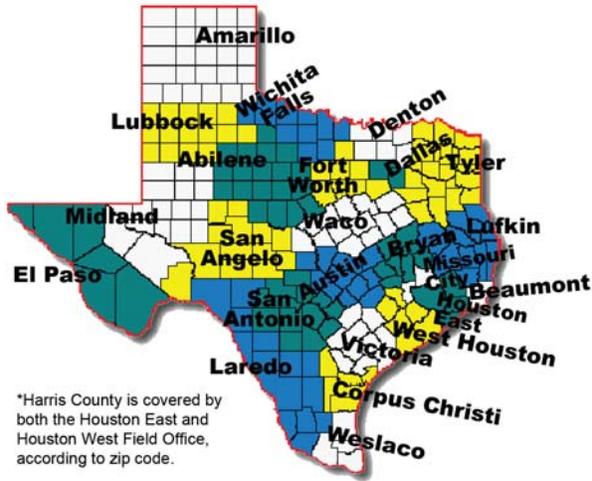
The Division field offices are headquarters to more than 400 state employees, including two other Division programs (Hearings and Health and Safety), and employees of OIEC. On site management of the field offices is provided by Field Operations.

The administration unit develops and maintains web-based training modules, monthly core training for field staff, and material for external outreach sessions.

The centralized scheduling section in Austin processes approximately 55,000 *Requests for Designated Doctor* annually and coordinates this official action process with the Office of the Medical Advisor and with affected field offices to assure compliance with the Act, rules, and procedures. As appropriate, this section also makes referrals to System Monitoring and Oversight and Enforcement when evidence of a violation of the Act or rules is found.

The following maps and charts illustrate the organization and activities of the Field Operations program. The statistics detailed in the charts are shown for January - May 2009.

**TDI-DWC
Field Office and Counties Covered**



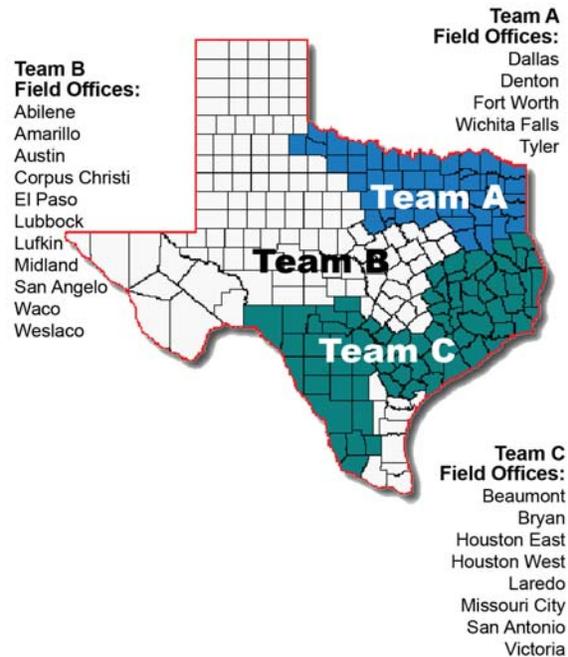
**TDI-DWC
Field Office Regions**

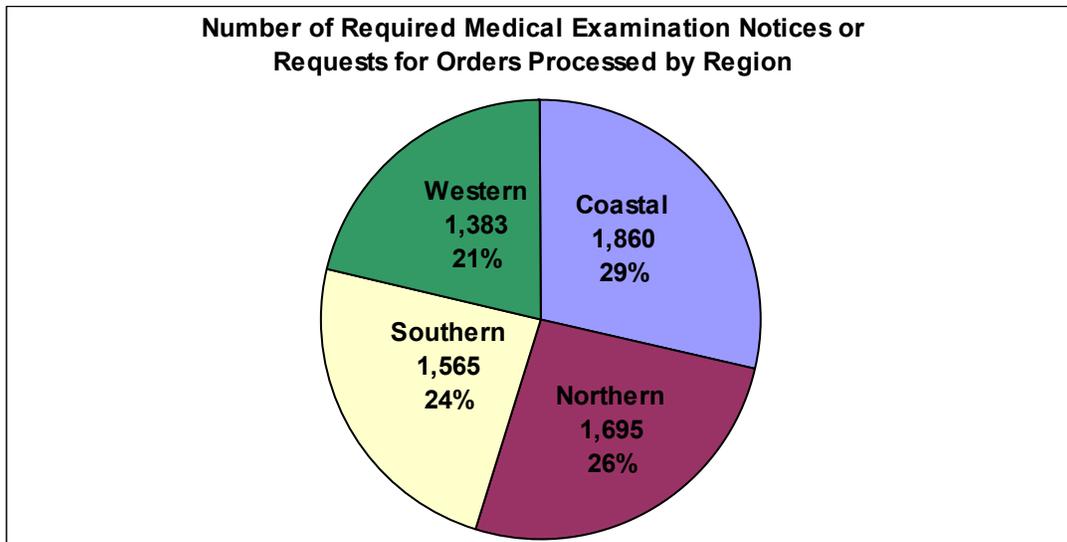
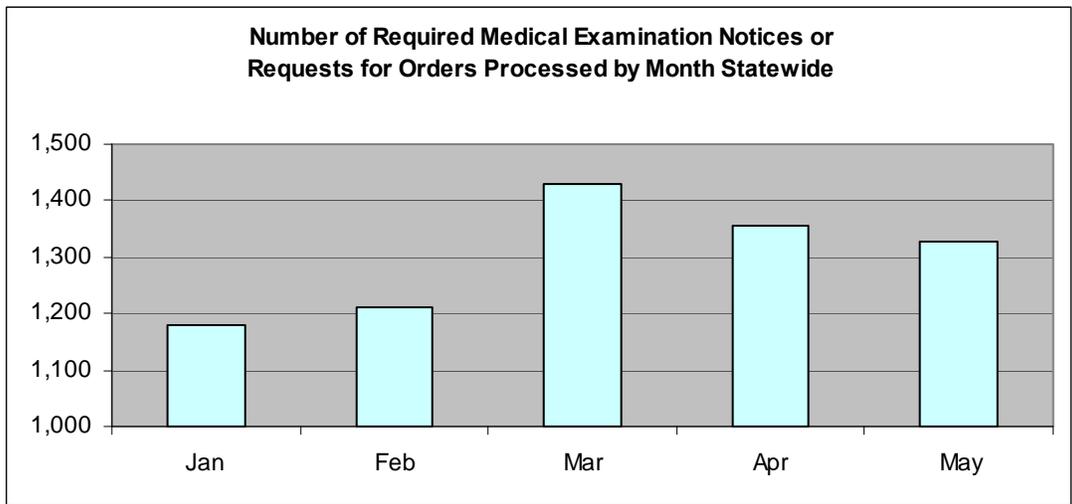
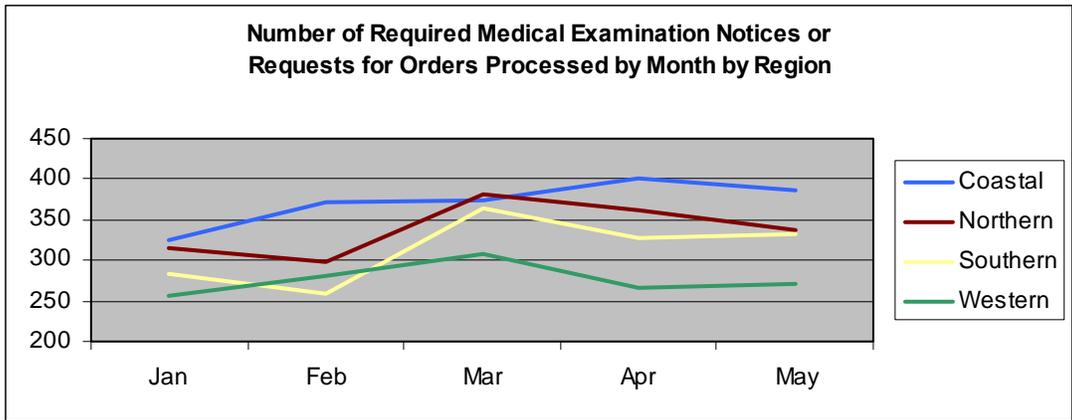


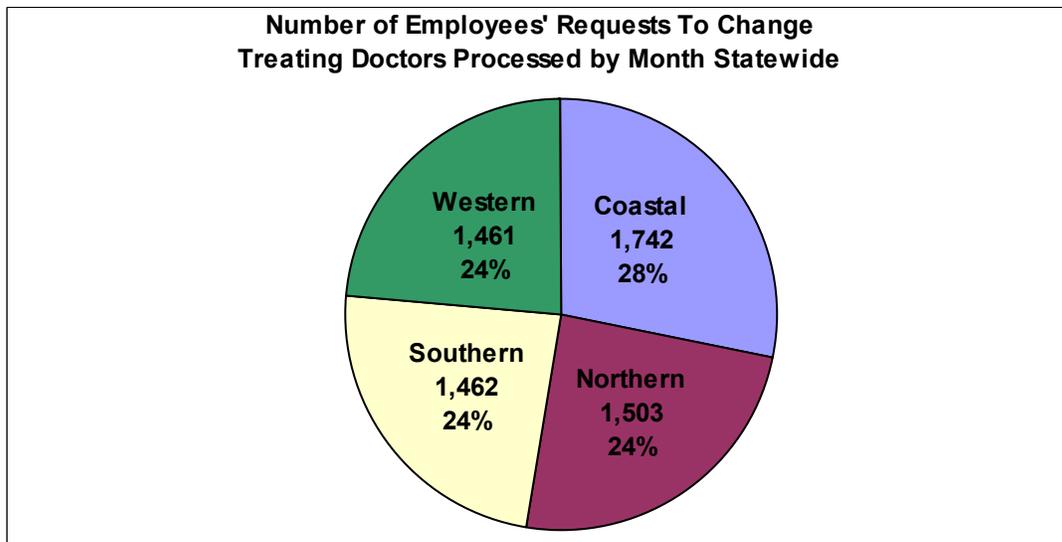
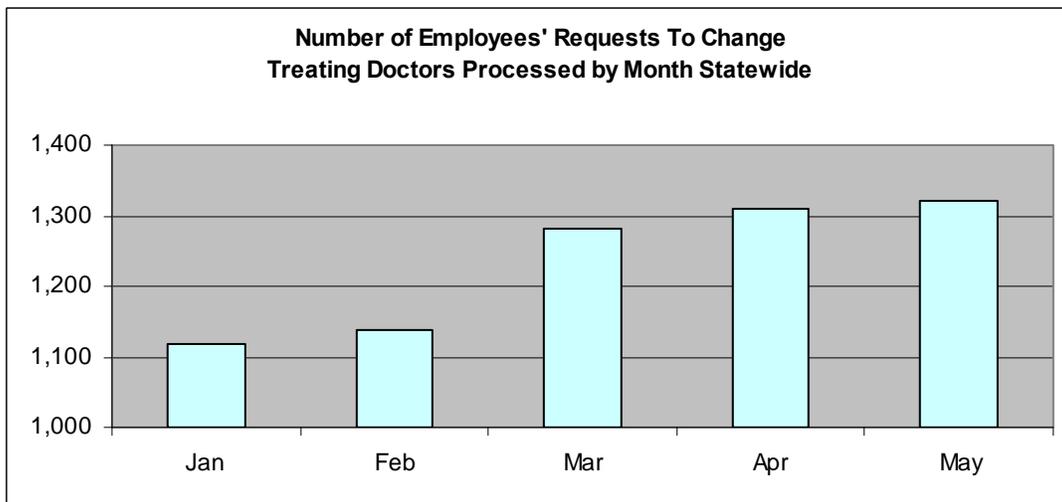
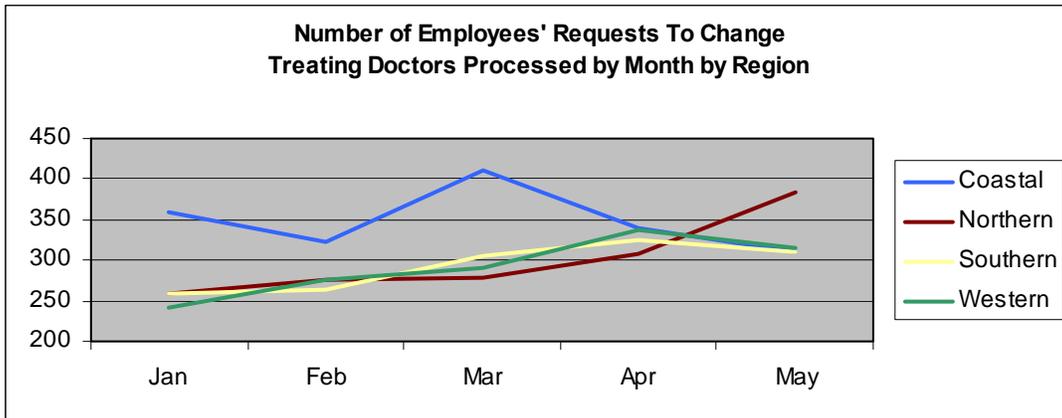
**TDI-DWC
Benefit Review Officers Regions**

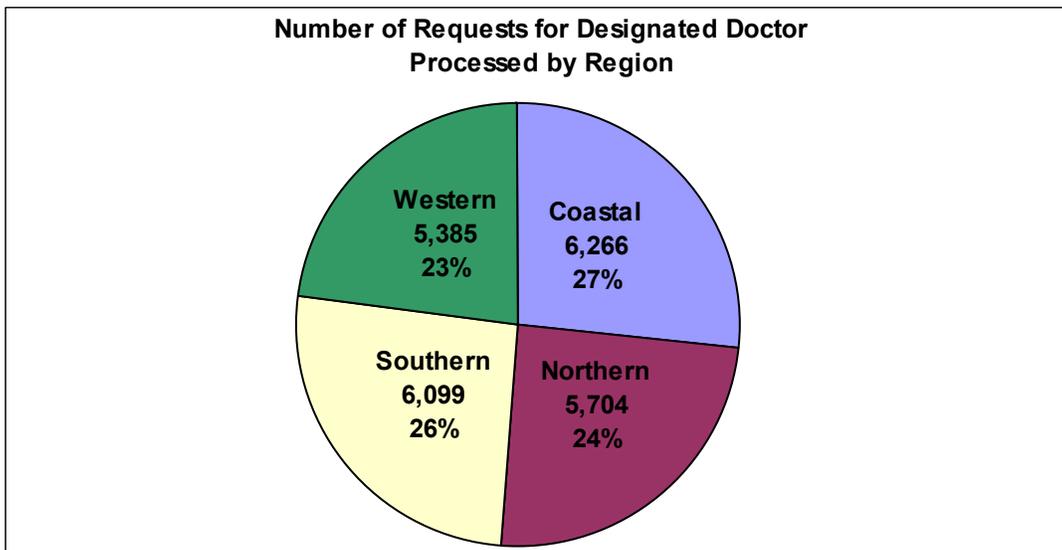
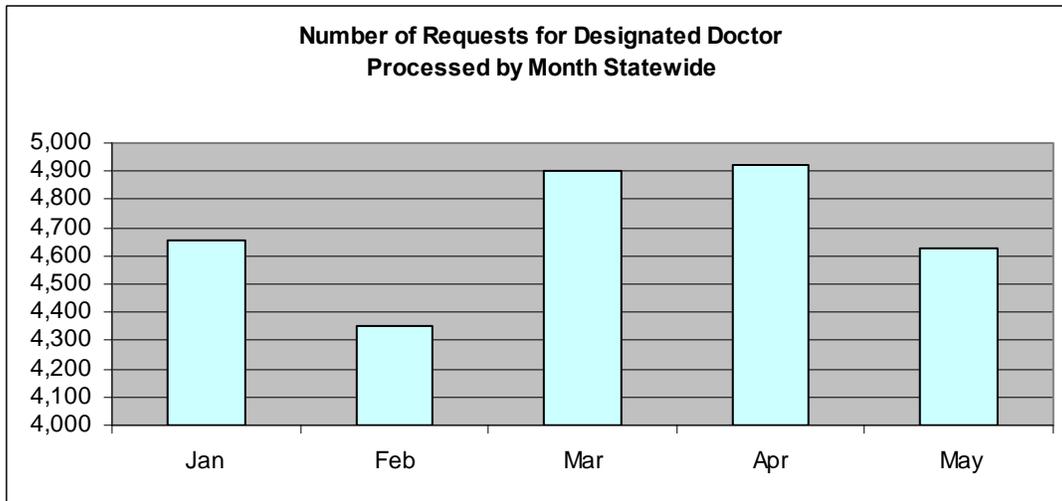
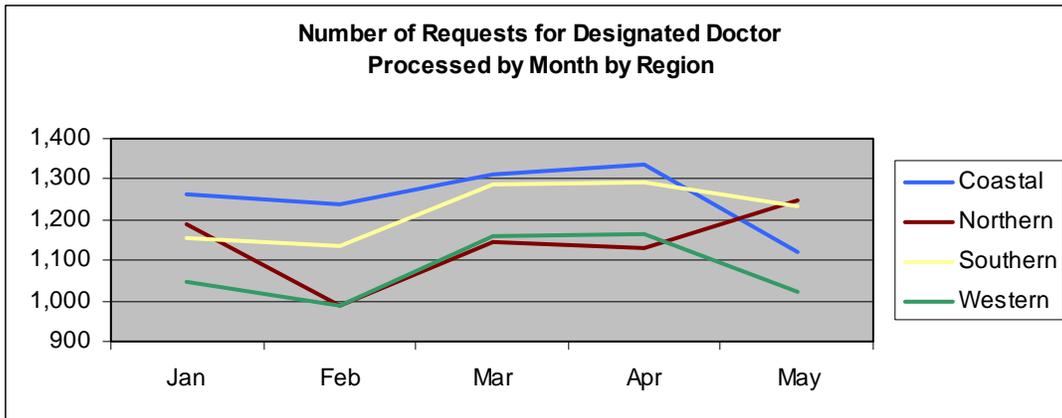


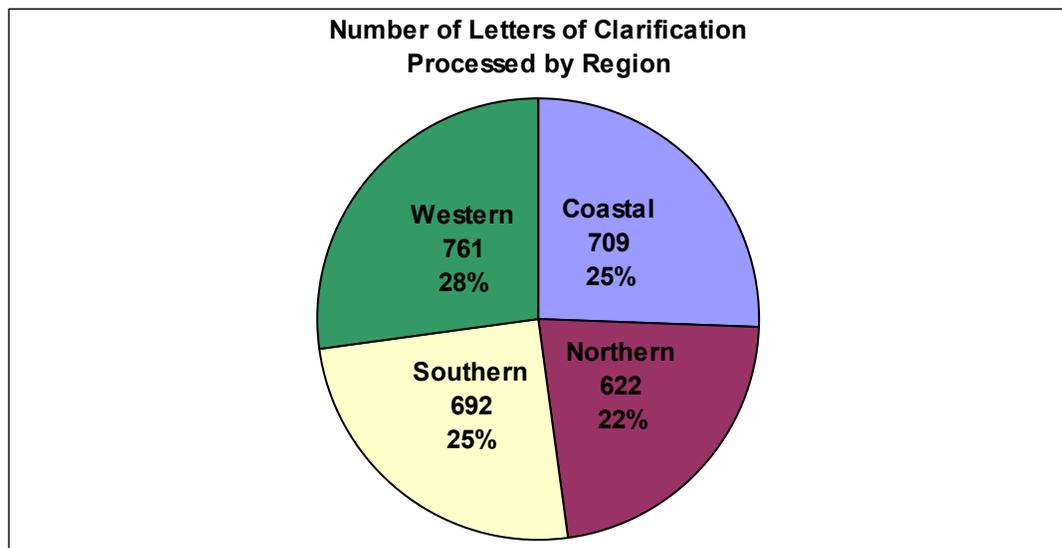
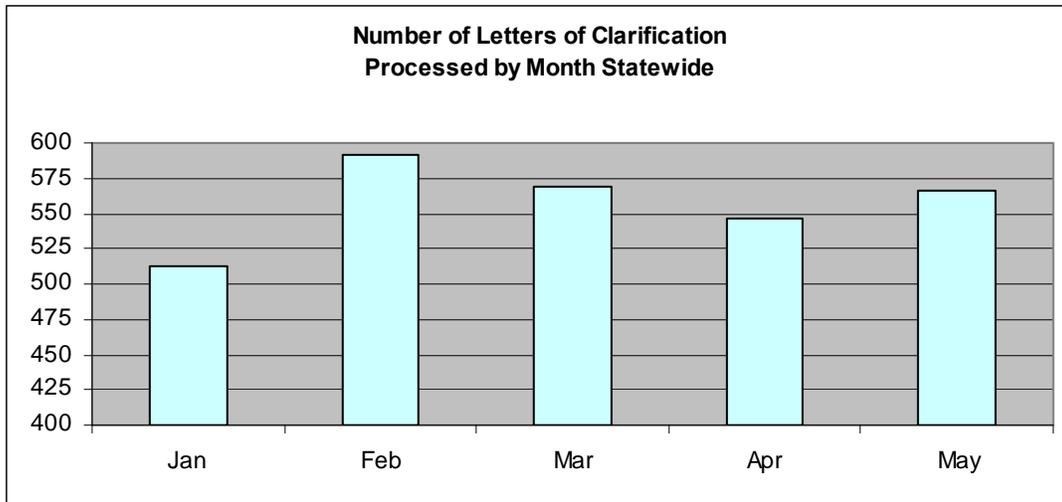
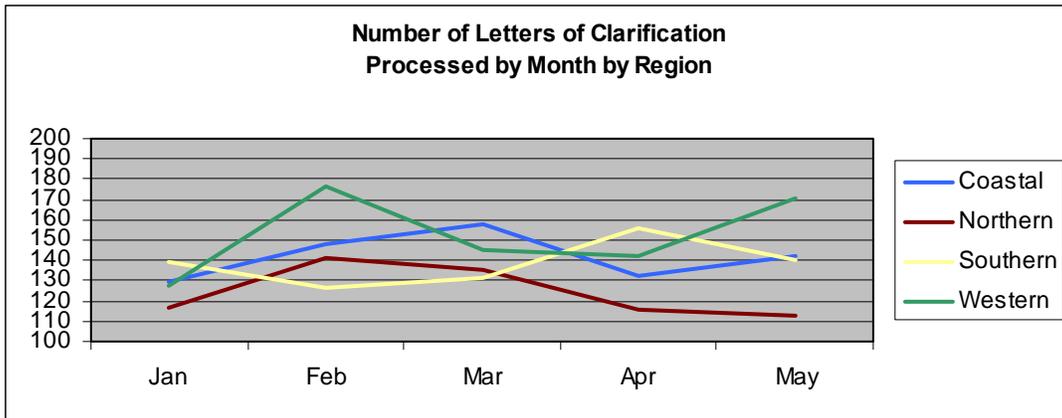
**TDI-DWC
Hearing Officers Regions**

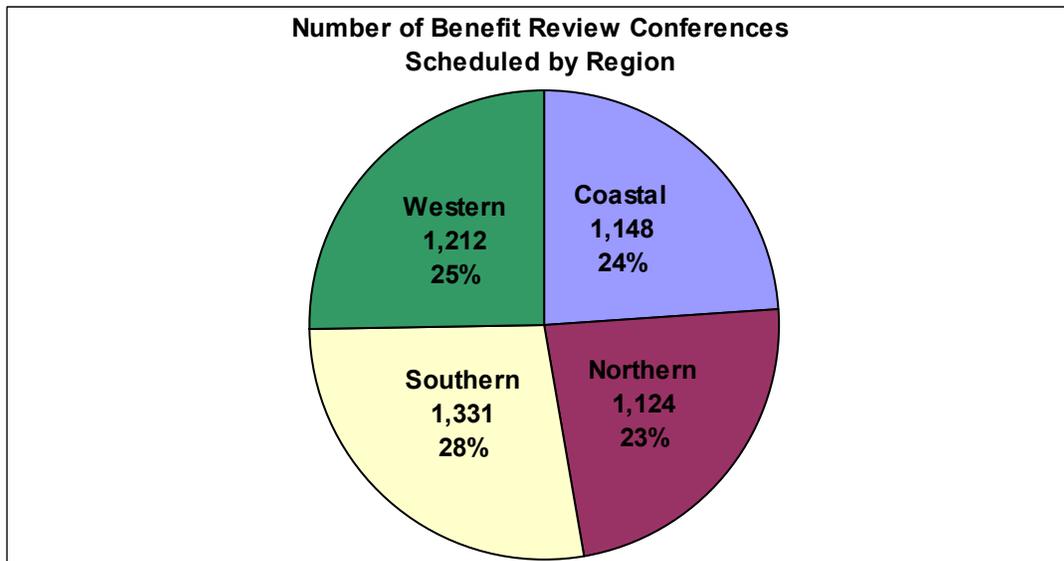
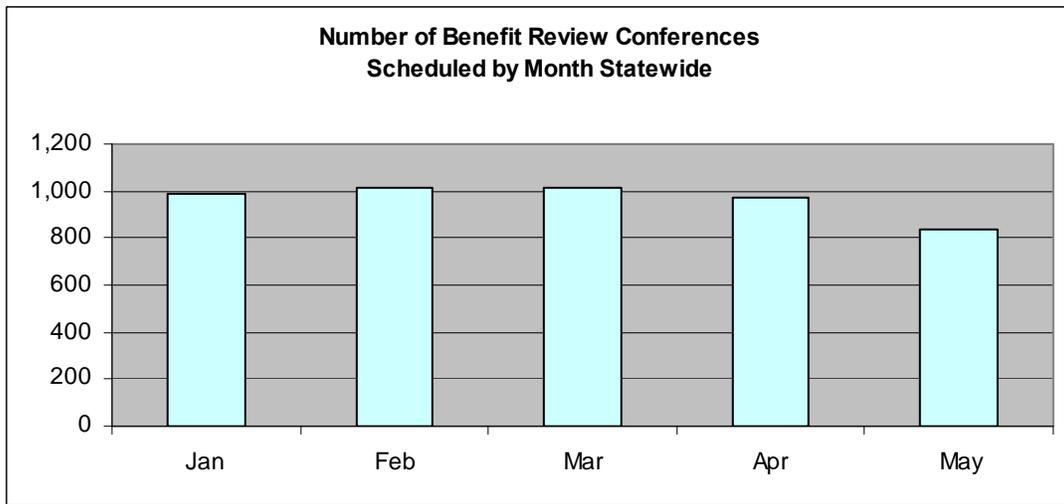
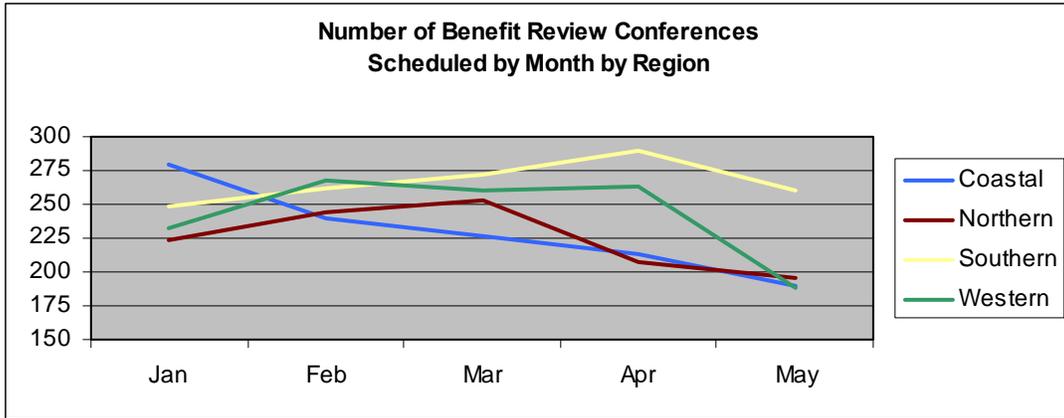


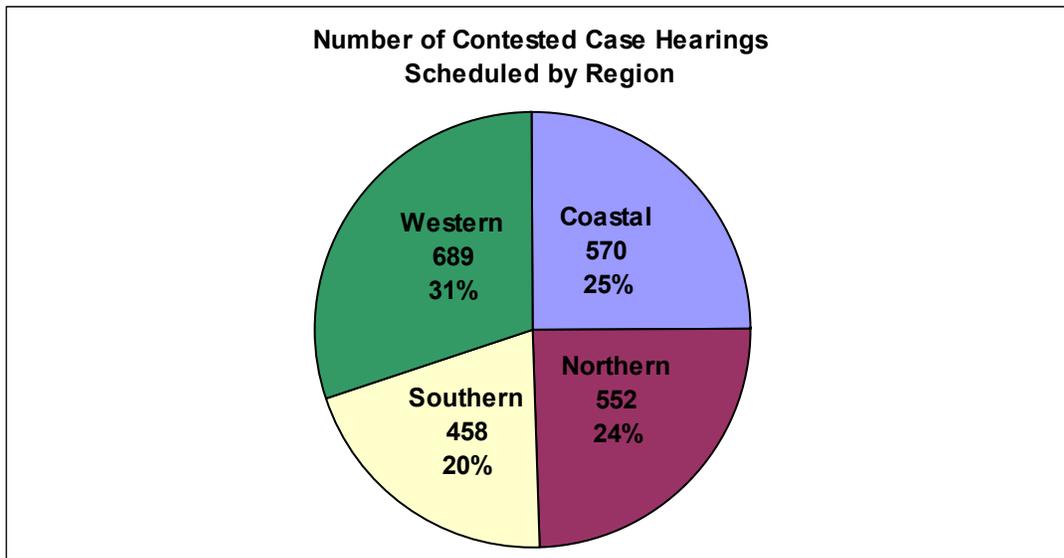
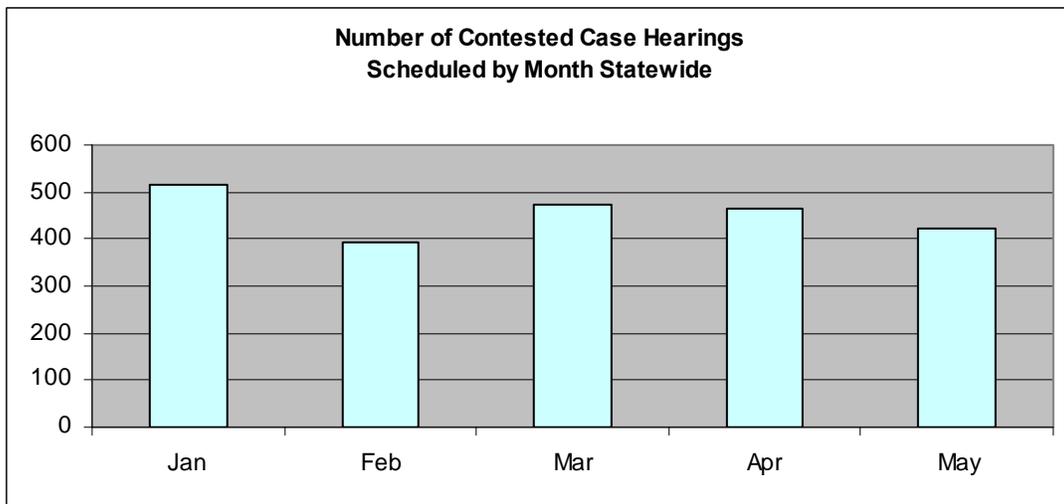
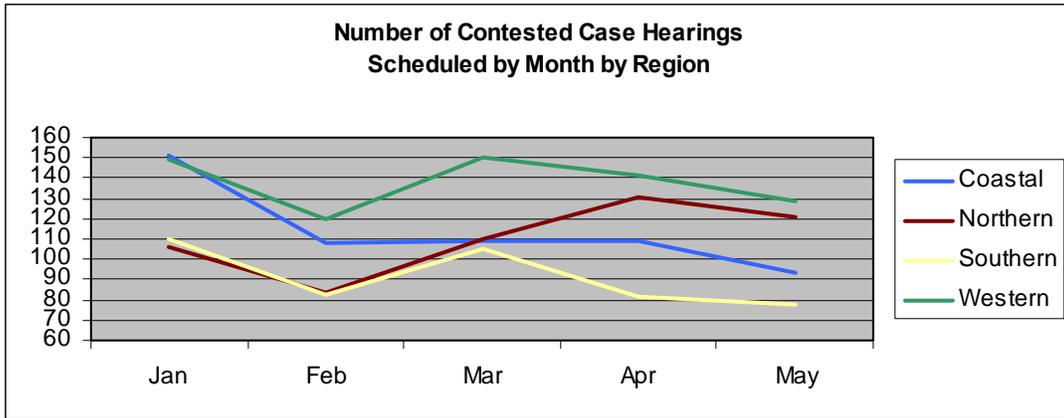












Communications and Outreach

Communications and Outreach is administered by the *Executive Deputy Commissioner for Health Care Management and System Monitoring* and the *Director of Outreach and Workplace Safety*.

Records Management and Support

Records Management and Support is administered by the *Executive Deputy Commissioner for Operations* and managed by the *Records Management and Support Manager*.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Texas Workers' Compensation Act establishes a self-balancing maintenance tax that is collected on gross workers' compensation insurance premiums. The maintenance tax is paid by workers' compensation insurance carriers for the administration of the Division and may not exceed two percent of gross workers' compensation insurance premiums. The maintenance tax is collected by the Comptroller and deposited in general revenue.

As submitted in the Division's Legislative Appropriations Request for the 2010-2011 biennium, the programs that perform this function are under budget strategies 5.2.1 and 6.3.1. The goal of strategy 5.2.1 is to promote safe and healthy workplaces by providing education on disability management and return-to-work programs. The goal of strategy 6.3.1 is to ensure the appropriate delivery of workers' compensation benefits by providing service through information technology.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

External

Proof of Coverage: The Division and the National Council on Compensation Insurance (NCCI) collect and store proof of coverage information. All insurance companies licensed to write workers' compensation insurance in Texas are required to submit proof of coverage information to NCCI, who serves as the Division's designated statistical agent. The data collected by NCCI can be accessed by the public (e.g., health care providers or injured employees who want to verify an employer's proof of coverage and identify the employer's insurance carrier) through an online web portal from the Division's website. Currently, the Division gathers and stores proof of coverage information from certified self-insurers and political subdivisions and is currently working with NCCI to add this data to the online web portal.

Training: The Division and the following entities host training and provide educational materials on workers' compensation to their customers, members and/or the general public, including:

- Insurance carriers
- Risk management and consulting firms
- Law firms
- Insurance Council of Texas
- International Association of Industrial Accident Boards and Commissions
- American Federation of Labor and Congress of Industrial Organizations

- Employees Compensation Research Institute
- Texas Medical Association
- Texas Osteopathic Medical Association
- Texas Physical Therapy Association
- Texas Orthopaedic Association
- Texas Chiropractic Association
- Texas Association of Responsible Non-subscribers
- Texas Alliance of Non-subscribers
- Texas Association of Counties
- Texas Association of School Boards
- Texas Municipal League

The Division’s training differs from the training offered by the entities listed above. The Division offers unbiased information to system participants on their rights and responsibilities within the workers’ compensation system with the goal of reducing disputes and fostering early return to work. Many of the Division’s outreach activities, educational materials, and training events are in response to new rules, policies, or statutory changes.

Return-to-Work Outreach and Assistance: The Division, the Department of Assistive and Rehabilitative Services (DARS) and Texas Workforce Commission (TWC) all provide assistance to encourage injured employees to return to productive roles in the workplace. The Division educates employers and insurance carriers about the benefits of implementing a return-to-work program and provides assistance to employers in the development of their programs. The Division also educates health care providers about the benefits of return to work and identifies and refers injured employees to DARS who would likely benefit from vocational rehabilitation services. DARS provides vocational rehabilitation services, including job retraining, to qualified injured employees. TWC provides general employment assistance to injured employees who need help identifying job openings and improving resume and interviewing skills.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency’s customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

External

Training: The Division frequently provides subject matter experts to participate in events hosted by the entities listed above. In particular, industry associations provide an avenue for the Division to readily reach system participants with targeted messages instead of scheduling a separate training event. The Division works closely with Small Business Development Centers across the state to schedule workers’ compensation training seminars geared toward health care providers, medical office staff, employers, adjusters, and general audiences.

Return-to-Work Outreach and Assistance: The Division has a Memorandum of Agreement (MOA) with the DARS, under which the Division automatically refers injured employees who have received twelve weeks of Temporary Income Benefits (TIBs) and may be eligible to receive vocational rehabilitation services to DARS. Previously, the Texas Workers’ Compensation Commission would automatically refer those injured employees to DARS that the Division determined to be eligible for Supplemental Income Benefits (SIBs). However, the Division, OIEC and DARS determined that these referrals were made too

late in the claim (2+ years into the claim generally) to effectively retrain and assist injured employees to return to work. The purpose of this agreement and the new referral process is to facilitate early and medically appropriate return of injured employees to productive work.

In addition to automatic referrals, Division and OIEC staff may refer individual injured employees to DARS if they determine that these injured employees may benefit from vocational rehabilitation services. Division staff also initiates follow up contacts with selected injured employees referred by the Division on a monthly basis to determine if they have contacted DARS or if they have returned to work. The Division, OIEC and DARS are in the process of signing a second MOA to allow for exchange of data on the outcome of these referrals. This data exchange will allow the Division, OIEC and DARS to evaluate the effectiveness of the new referral process and assess return-to-work results. The Division works with TWC to exchange data that is used by the Division for health and safety outreach efforts and by the Workers' Compensation Research and Evaluation Group to calculate annual return-to-work rates for injured employees. Division field offices provide basic information to injured employees about TWC services and can make referrals to TWC if necessary.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

As noted in H. above, the Division coordinates with DARS, OIEC and TWC on return-to-work outreach and assistance, as well as working with other entities, including local and regional units of government, to provide subject matter experts and information on the workers' compensation system.

K. If contracted expenditures are made through this program please provide:

- the amount of those expenditures in fiscal year 2008;
- the number of contracts accounting for those expenditures;
- a short summary of the general purpose of those contracts overall;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

| Vendor Name | Service Provided | Amount |
|---|---|-------------------|
| Texas State Library and Archives Com | Storage Services | 61,495.20 |
| Texas State Library and Archives Com | Microfilming Services | 2,109.20 |
| TIBH | Copy Paper Purchase | 9,745.79 |
| TIBH | Paper Shredding Contract | 6,227.69 |
| TIBH | Shelving | 10,159.75 |
| Computer Express | Toner Cartridges | 3,832.95 |
| Work-Loss Data Institute LLC | Subscription Renewal to ODG | 242.13 |
| Affiliated Telephone Inc | Hardware/Software Upgrade | 428,818.33 |
| 2M Business Products | Shelving | 18,773.89 |
| Pais Janitorial Serv. and Supplies Inc. | Janitorial Service | 2,283.12 |
| Masterword | Interpreter Services - Spanish | 26,016.42 |
| Masterword | Interpreter Services - Foreign Language | 11,325.69 |
| Masterword | Interpreter Services - Foreign Language | 1,338.82 |
| TOTAL | | 582,368.98 |

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Clarify by statute (DARS' statute and the Texas Labor Code), the ability for DARS, the Division and OIEC to exchange confidential claim information for the purpose of tracking injured employee referrals for vocational rehabilitation services. Exchanging this information is necessary for the Division to meet its obligation to track return-to-work outcomes and identify injured employees who would benefit most from vocational rehabilitation services.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

No additional information needed

- N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**
- why the regulation is needed;
 - the scope of, and procedures for, inspections or audits of regulated entities;
 - follow-up activities conducted when non-compliance is identified;
 - sanctions available to the agency to ensure compliance; and
 - procedures for handling consumer/public complaints against regulated entities.

One of the activities conducted by field office staff is to identify non-compliance by system participants and refer such matters to System Monitoring and Oversight for review and investigation.

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not applicable

Self-Insurance Regulation

A. Provide the following information at the beginning of each program description.

| | |
|---|--|
| Name of Program or Function | Certify and Regulate Private Employers that Qualify to Self-Insure |
| Location / Division | Metro Center / Self-Insurance Regulation |
| Contact Name | Patricia Gilbert |
| Actual Expenditures, FY 2008 | \$636,764.24 |
| Number of FTEs as of August 31, 2008 | 10.80 |

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Workers' Compensation Act allows private employers the option of providing workers' compensation coverage to their employees by purchasing a workers' compensation insurance policy, participating in a group self-insurance program certified by the Department or being certified by the Division to individually self-insure. The Division performs this function through its Self-Insurance Regulation Program area.

The Self-Insurance Regulation function administers the Certified Self-Insurance Program for individual private employers with operations and employees in Texas. The Self-Insurance Regulation function receives and processes applications from private employers that request to self-insure their workers' compensation liabilities, as well as monitors certified self-insurers that withdraw from the program. As part of the certification process, the Self-Insurance Regulation function evaluates an applicant's financial strength and liquidity; calculates and accepts security deposits; reviews claims administration plans and excess insurance; conducts safety program plan inspections; performs on-site benefit delivery examinations as needed; and oversees the billing of required self-insurance regulatory fees and workers' compensation maintenance taxes.

Each certified self-insurer must be a member of the Texas Certified Self-Insurer Guaranty Association (TCSIGA). When the Division determines that a certified self-insurer is impaired, the TCSIGA takes over the administration of claims and pays workers' compensation benefits on behalf of the impaired employer. Benefits are paid from the proceeds of the posted security deposit funds first. If these funds are not adequate to pay outstanding liabilities on workers' compensation claims, then an assessment may be made to other members of the TCSIGA to meet the impaired employer's claim obligations.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Since the creation of the Certified Self-Insurer Program in 1993, there have been no instances of claims unpaid as a result of the insolvency of a certified self-insurer.

The following performance measure demonstrates the effectiveness and efficiency of this function.

| 6.4.1 Efficiency 1 - Average Cost Per Certified Self-Insured Employer | | | | | |
|--|--------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | N/A | N/A | \$16,500.92 | \$18,312.07 |
| Annual Target | N/A | N/A | N/A | \$18,000 | \$18,039 |
| Percentage of Target | N/A | N/A | N/A | 91.67% | 101.51% |
| <i>Desired Performance</i> | <i>Lower than target</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1993 - Texas Labor Code, Chapter 407 was added, which authorized the Texas Workers' Compensation Commission to certify individual private employers to self-insure. The Texas Certified Self-Insurer Guaranty Association was also established with a governing board made up of the following members:

- Two certified self-insurer representatives
- One employer representative
- One employee representative
- The Public Insurance Counsel
- The executive director of Texas Workers' Compensation Commission as an ex-officio member

2005 - HB 7 changes the makeup of the TCSIGA governing board to include the following members:

- Three certified self-insurer representatives
- One member appointed by the Commissioner of Workers' Compensation
- The Public Insurance Counsel

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Self-Insurance Regulation function directly affects qualified, private employers who choose to become certified self-insurers (both active and withdrawn) and their employees. To apply to individually self-insure in Texas, a company must have a total unmodified manual premium of \$500,000 in Texas, or ten million dollars nationally. Additional qualifications include the following:

- Qualifying credit/debt rating (one of the following)
 - Dun & Bradstreet rating of 3A1 or better
 - Standard & Poor's Rating of BBB or better
 - Moody's rating of Baa or better
 - Minimum tangible net worth of five million dollars with a ratio of tangible net worth to long term debt of 1.5 to 1 or greater
- Audited financial statements
- Security deposits of the greater of \$300,000 or 125 percent of outstanding liabilities

- Excess insurance with a minimum of five million dollars per occurrence
- A plan for claims administration that designates a qualified claims servicing contract
- An effective safety program plan

| Self-Insurance Regulation Program Statistics as of | 8/31/2008 |
|---|------------------|
| Number of Active Certificates Issued | 47 |
| Active Entities Represented * | 211 |
| Number of Employees Covered | 304,376 |
| Number of Withdrawn Certificates being Monitored | 47 |
| Withdrawn Entities Represented* | 169 |

**Certificates of Authority to Self-Insure in Texas are issued at the Parent Level of the applicant's corporate structure in order to minimize unnecessary duplication of effort. Depending on an applicant's corporate structure, a certificate may cover one company or a parent company with many subsidiaries.*

The Self-Insurance Regulation function also indirectly affects workers' compensation insurance carriers by giving an employer an additional choice for providing workers' compensation coverage to employees.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Responsibility for the administration of the Self-Insurance Regulation function is shared by the Division and the Texas Certified Self-Insurer Guaranty Association (TCSIGA). The Self-Insurance Regulation function is administered by the *Executive Deputy Commissioner of Operations* and the *Director of Self-Insurance Regulation*.

The Self-Insurance Regulation function accepts and processes applications from large private employers that request to become Certified Self-Insurers. An applicant's financial stability, safety program plans, claims administration plan and ability to provide benefits are evaluated to determine eligibility to self-insure. Upon completion of this evaluation, the Self-Insurance Regulation function presents a report and a recommendation regarding the applicant to the TCSIGA Board in a public meeting. If the TCSIGA Board approves the applicant, the Commissioner of Workers' Compensation may deny the application or may issue a Certificate of Authority to self-insure for a one year period as defined in the Texas Labor Code. Thereafter, Self-Insurance Regulation staff reevaluates companies for renewal on an annual cycle.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Texas Workers' Compensation Act establishes a self-balancing maintenance tax that is collected on gross workers' compensation insurance premiums. The maintenance tax is paid by workers' compensation insurance carriers for the administration of the Division and may not exceed two percent of gross workers' compensation insurance premiums. The maintenance tax is collected by the Comptroller and deposited in general revenue.

As submitted in the Division's Legislative Appropriations Request for the 2010-2011 biennium, the Self-Insurance Regulation function falls under budget strategy 6.4.1 - to ensure the appropriate delivery of workers' compensation benefits.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Internal

In addition to the Division's Self-Insurance Regulation function for individual employers, groups of similarly situated small employers are certified as self-insurers by the Department's Financial program.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Internal

Texas Labor Code, Chapters 407 and 407A detail the certification requirements for individual and group self-insurers in Texas. Although these functions are both performed by staff at the Department and the Division, the certification and application requirements for these self-insurers is slightly different. Currently, the Division is responsible for certifying individual self-insurers, while the Department's Financial Program is responsible for certifying group self-insurers. The Division communicates and coordinates with the Department's Financial program to ensure consistent application of financial standards and valuations and procedures where appropriate.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Not applicable

K. If contracted expenditures are made through this program please provide:

- the amount of those expenditures in fiscal year 2008;
- the number of contracts accounting for those expenditures;
- a short summary of the general purpose of those contracts overall;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

| Vendor Name | Service Provided | Amount |
|---|--------------------|---------------|
| Pais Janitorial Serv. and Supplies Inc. | Janitorial Service | 151.56 |
| TOTAL | | 151.56 |

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None identified

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

No additional information needed

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

The Self-Insurance Regulation function has an ongoing regulatory responsibility to monitor the financial condition, benefit delivery systems, and effective safety programs of certified self-insurers. Regulation is needed to ensure that only financially qualified companies with effective safety programs and claims administration are allowed to become certified self-insurers. By requiring adequate security deposits and working with the TCSIGA, this function ensures proper payment of workers' compensation claims.

Each applicant undergoes a safety plan inspection conducted by Self-Insurance Regulation staff. In 2008 inspections were conducted for twenty-five companies, encompassing forty business locations. In addition, on-site benefit delivery examinations are conducted as needed to verify the proper reporting of claims payments and reserves.

Potential violations of the Workers' Compensation Act and Rules are referred to Enforcement for further investigation and sanctions, if appropriate. Sanctions available to ensure compliance with the program requirements include non-renewal or revocation of the employer's certificate of authority to self-insure. If appropriate, a hearing is scheduled with the State Office of Administrative Hearings to begin the revocation process. Certified self-insurers are also subject to the sanctions and penalties that apply to both employers and insurance carriers for non-compliance with the Workers' Compensation Act and Division rules.

Complaints against Certified Self-Insurers generally relate to specific claims and are handled by Customer Service and Complaint Resolution.

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not applicable

Subsequent Injury Fund Administration

A. Provide the following information at the beginning of each program description.

| | |
|---|---|
| Name of Program or Function | Subsequent Injury Fund (SIF) Administration |
| Location / Division | Metro Center / General Counsel Section |
| Contact Name | Dirk Johnson |
| Actual Expenditures, FY 2008 | \$4,805,889.26 |
| Number of FTEs as of August 31, 2008 | 2.09 |

B. What is the objective of this program or function? Describe the major activities performed under this program.

To ensure appropriate delivery of workers' compensation benefits, this function pays authorized income benefits to injured employees who qualify for Lifetime Income Benefits (LIBs) as a result of a subsequent work-related injury and distributes reimbursements to eligible insurance carriers for overpayment of benefits. This function includes the following activities:

- Facilitating payment of LIBs to eligible injured employees who meet the statutory criteria due to a subsequent work-related injury;
- Reimbursing insurance carriers for benefits paid as a result of an interlocutory order or decision of the Commissioner that has been reversed or modified by a subsequent order or decision by the Commissioner or a court;
- Reimbursing insurance carriers for benefits paid to injured employees based on wages earned at multiple jobs held at the time of injury;
- Reimbursing insurance carriers for certain initial pharmaceutical costs incurred on claims that are ultimately determined to be non-compensable; and
- Reimbursing insurance carriers for certain benefits that are ultimately determined to be non-compensable because of a reversal of a Designated Doctor's opinion.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The following performance measures demonstrate the effectiveness and efficiency of this function.

| 6.6.1 Outcome 1 - Total Payments Made Out of the SIF for Benefits and Reimbursements | | | | | |
|---|-----------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | \$2,700,211 | \$2,119,594 | \$2,372,049 | \$3,283,131 |
| Annual Target | N/A | \$2,977,415 | \$2,726,179 | \$2,947,231 | \$3,373,000 |
| Percentage of Target | N/A | 90.69% | 77.75% | 80.48% | 97.34% |
| <i>Desired Performance</i> | <i>Lower than projected</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

| 6.6.1 Output 1 - Number of Injured employees' Receiving LIBs Payments through the SIF | | | | | |
|--|-----------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | 37 | 36 | 36 | 35 |
| Annual Target | N/A | 38 | 39 | 40 | 41 |
| Percentage of Target | N/A | 97.37% | 92.31% | 90.00% | 85.37% |
| <i>Desired Performance</i> | <i>Lower than projected</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

| 6.6.1 Output 2 (now EX1) - Number of Requests for Reimbursement for Overpayment of Benefits Processed | | | | | |
|--|-----------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | 119 | 112 | 127 | 86 |
| Annual Target | N/A | 145 | 150 | 155 | 133 |
| Percentage of Target | N/A | 82.07% | 74.67% | 81.94% | 64.60% |
| <i>Desired Performance</i> | <i>Lower than projected</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

| 6.6.1 Efficiency 1 - Average Days from SIF Receipt of Reimbursement Request to Payment | | | | | |
|---|-----------------------------|----------------|----------------|----------------|----------------|
| | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| Actual Performance | N/A | 66 | 56.55 | 60.36 | 61.32 |
| Annual Target | N/A | 57 | 62 | 62 | 62 |
| Percentage of Target | N/A | 115.79% | 91.21% | 97.35% | 98.90% |
| <i>Desired Performance</i> | <i>Lower than projected</i> | | | | |
| <i>Analysis/Variance Explanation</i> | | | | | |

The SIF administrator also reviews claims involving fatalities to determine if a payment should be made to the SIF. Beginning in fiscal year 2009, a new performance measure will go into effect to document the percentage of such claims reviewed.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1947 - The Legislature created the Second Injury Fund to facilitate the employment of disabled persons, including a large number of World War II veterans, by providing a mechanism for funding increased benefit costs arising from pre-existing injuries.

1989 - The Legislature (HB 1) changed the name of the fund to the "Subsequent Injury Fund" and authorized reimbursement to insurance carriers for overturned decisions of the former Texas Workers' Compensation Commission.

2001 - The Legislature (HB 2600) authorized reimbursement of income benefits to insurance carriers in situations where an injured employee's multiple employment causes an increase in income benefits. This legislation also authorized reimbursement to insurance carriers for certain initial pharmaceutical costs that are paid during the first seven days of a claim that is ultimately determined to be non-compensable.

2003 - The Legislature (HB 3318 and HB 3378) designate the SIF as a dedicated general revenue fund, requiring the Texas Workers' Compensation Commission to request a legislative appropriation each biennium to pay for the SIF's statutory obligations during the next biennium.

2007 - The Legislature (SB 1169) authorized reimbursement to insurance carriers for benefits that are determined to be non-compensable due to the reversal of a Designated Doctor's opinion. This legislation also expanded multiple employment reimbursement to include death benefits in addition to the previously authorized reimbursement of income benefits. HB 724 also expanded eligible beneficiaries to include "eligible parent", thereby reducing revenue available to the SIF.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

This function mainly affects injured employees who receive Lifetime Income Benefits (LIBs) from the SIF as a result of a subsequent injury and insurance carriers who are eligible to receive reimbursement from the SIF for those instances in which benefits should not have been paid by the insurance carrier.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

This function is administered by the *Administrator of the Subsequent Injury Fund* under the direction of the Division's *General Counsel*.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Texas Workers' Compensation Act establishes a self-balancing maintenance tax that is collected on gross workers' compensation insurance premiums. The maintenance tax is paid by workers' compensation insurance carriers for the administration of the Division and may not exceed two percent of gross workers' compensation insurance premiums. The maintenance tax is collected by the Comptroller and deposited in general revenue.

SIF payments to injured employees and insurance carriers are funded solely by death benefit payments from insurance carriers in situations where a compensable death occurs and there is no eligible beneficiary or the claim for death benefits is not made in a timely manner. These payments are collected by the Division and forwarded to the Comptroller for deposit into the SIF dedicated fund within the general revenue fund. Amounts deposited in the SIF fund that are not appropriated to the SIF remain in general revenue. A rider to the appropriations bill allows the Division to request additional appropriations as necessary to fund statutorily required payments from the SIF.

As submitted in the Division's Legislative Appropriations Request for the 2010-2011 biennium, the program that performs this function is under budget strategy 6.6.1, the goal of which is to ensure the appropriate delivery of workers' compensation benefits.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

None identified

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The SIF interacts with the State Office of Risk Management (SORM), other state employee workers' compensation programs, and other political subdivisions (i.e., cities, counties, school districts) solely in their role as "insurance carriers" under the Workers' Compensation Act.

K. If contracted expenditures are made through this program please provide:

- the amount of those expenditures in fiscal year 2008;
- the number of contracts accounting for those expenditures;
- a short summary of the general purpose of those contracts overall;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

| Vendor Name | Service Provided | Amount |
|---|-----------------------------|--------------|
| Work-Loss Data Institute LLC | Subscription Renewal to ODG | 29.25 |
| Pais Janitorial Serv. and Supplies Inc. | Janitorial Service | 20.16 |
| TOTAL | | 49.41 |

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Subsequent Injury Fund Payments

Amend Texas Labor Code, Section 410.209, and possibly Section 410.033, to require insurance carriers to seek indemnification from all other sources prior to seeking reimbursement from the SIF.

Currently, if benefits are erroneously ordered to be paid by the wrong insurance carrier, the insurance carrier is not required to attempt to pursue reimbursement from the correct insurance carrier prior to requesting reimbursement from the SIF. Instead, the SIF must reimburse the wrong insurance carrier and then seek subrogation against the correct insurance carrier liable for the claim.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

No additional information needed

- N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**
- why the regulation is needed;
 - the scope of, and procedures for, inspections or audits of regulated entities;
 - follow-up activities conducted when non-compliance is identified;
 - sanctions available to the agency to ensure compliance; and
 - procedures for handling consumer/public complaints against regulated entities.

Not applicable

- O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.**

Not applicable

General Administration

- A. Provide the following information at the beginning of each program description.**

| | |
|---|--|
| Name of Program or Function | General Administration |
| Location / Division | Metro Center and Hobby / General Counsel, Workers' Compensation Research and Evaluation Group, Legal Services, Operations Support, and Information Management Services |
| Contact Name | Patricia Gilbert |
| Actual Expenditures, FY 2008 | \$9,745,197.53 |
| Number of FTEs as of August 31, 2008 | 107.87 |

- B. What is the objective of this program or function? Describe the major activities performed under this program.**

The Division's General Administration function provides support to all of the other functions of the Division. General Administration is performed by the following areas: General Counsel, Workers' Compensation Research and Evaluation Group, Legal Services - Workers' Compensation Counsel, Operations Support, and Information Management Services.

General Counsel

The General Counsel advises the Commissioner of Workers' Compensation on legal matters affecting the Division, oversees litigation, provides support for compliance efforts, and coordinates Division-wide consistency in the application of the Texas Workers' Compensation Act, and other applicable laws.

The key activities of the General Counsel include:

- Advising management and programs regarding interpretation and application of the Texas Workers' Compensation Act and other applicable laws for rules, policies, and procedures
- Supporting program areas in development and drafting of rules for adoption
- Advising the Commissioner of Workers' Compensation and providing litigation support to the Office of the Attorney General for lawsuits involving the Division
- Providing legal support to the Administrator of the Subsequent Injury Fund
- Advising the Commissioner of Workers' Compensation on proposals for decision issued by the State Office of Administrative Hearings in contested cases under the Texas Labor Code § 402.073(c)
- Advising the Commissioner of Workers' Compensation and Division Contract Administrators on contracts, Memorandums of Understanding, and Memorandums of Agreement
- Evaluating and providing legal analysis of proposed Division enforcement actions and priorities
- Supporting other legal staff in responding to complex requests for litigation discovery in cases where the Division is not a party and in Texas Public Information Act requests for information made confidential under the Texas Workers' Compensation Act or other laws

Workers' Compensation Research and Evaluation Group

The Workers' Compensation Research and Evaluation Group (Research Group) conducts professional studies and research on the operational effectiveness of the Texas workers' compensation system.

Texas Labor Code, Section 405.0026 requires the Commissioner of Insurance to adopt an annual agenda of research projects for the Research Group on the most current issues affecting the workers' compensation system. This includes an annual consumer report card comparing workers' compensation health care networks certified by the Department with one another and with non-network claims. HB 7 (2005) required the first report card to be published in September 2007.² Two report cards have been published at this time and the third is scheduled for September 2009. Additionally, the Research Group produces a biennial report evaluating the impact of the reforms enacted by the 79th Legislature on the cost and the quality of medical care provided to injured employees. The first biennial report was issued on December 1, 2008.³

The Research Group disseminates its research findings through reports on the Department's website, printed reports, legislative hearings, and speeches to stakeholder groups, workers' compensation workgroups, and at public hearings.

In addition to its statutorily required research activities, the Research Group regularly performs the following activities:

- Responding to public information requests regarding workers' compensation issues;
- Providing stakeholder education through its reports and speeches to various organizations

² See Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, *2008 Workers' Compensation Network Report Card*, 2008.

³ See Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, *Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System, 2008 Results*, 2009.

- Reviewing proposed TDI and Division rules affecting workers' compensation issues, Commissioner bulletins, and agency articles
- Producing data for market conduct examinations and enforcement investigations
- Preparing information for legislative offices, assisting legislative offices in the drafting of bills and amendments, and providing legislative testimony on proposed legislation

Legal Services - Workers' Compensation Counsel

The Division's Legal Services - Workers' Compensation Counsel section coordinates the Division's responses to open records requests and serves as a resource to other program areas within the Division for rulemaking and drafting bulletins and proposed legislation. The key activities of the Workers' Compensation Counsel include:

- Advising management and Division program areas regarding interpretation and application of the Texas Workers' Compensation Act and other applicable laws for the development of rules, policies, and procedures;
- Supporting program areas in drafting, tracking, publication, and adoption of rules;
- Assisting the Division General Counsel in providing litigation support to the Office of the Attorney General of Texas;
- Advising management and programs on requests under the Public Information Act and other laws; and
- Drafting and reviewing contracts, Memorandums of Understanding and Memorandums of Agreement.

Operations Support

The Operations Support function consists of Business Process Improvement and Administrative Support. This section's objective is to provide administrative support and business process analysis for the Division's program areas by performing the following activities:

- The *Business Process Improvement* group supports long-term automation development and business process analysis and efficiency studies. Designated Doctor scheduling, the medical quality review process and Field Operations management reporting are examples of this group's involvement with program efficiency improvement. The Business Process Improvement group also identifies opportunities to enhance the Division's automation environment. This group also interacts with the Division's Information Management Services group to ensure workload reporting is relevant and accurate. Workload reporting is used by Field Operations, Records Management and other programs within the Division.
- The *Administrative Support* group serves as the Division's liaison to Department staff regarding human resource, performance measure, and budget tracking activities.

Information Management Services

Information Management Services supports the Division's statutory and organizational objectives by assisting the Division's business areas with data management, processing, integrity, and reporting.

- The *Electronic Data Interchange Help Desk* provides production control and quality assistance to insurance carriers' trading partners to ensure that valid data is transmitted to the Division.
- The *Data Reporting* section not only maintains a reporting database (a type of data warehouse), but also assists with the development of reports that are critical to the calculation of performance measures, statistical analysis, responses to public information requests, and business management

needs. The management of the reporting database is critical to monitoring system performance and is used by both the Research Group and System Monitoring.

- *Information Management Services* is also responsible for the implementation of e-billing initiatives in the workers' compensation system through the development, refinement, publication, and monitoring of rules and implementation guidelines.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Workers' Compensation Research and Evaluation Group

The Workers' Compensation Research and Evaluation Group's effectiveness is best demonstrated by the use of its research findings by legislators, administrators, and workers' compensation system participants. During the Sunset review of the Texas Workers' Compensation Commission, Sunset Advisory Commission staff used the Research Group statistics as a basis for their recommendations and in the Sunset staff report. Sunset staff also cited the results of the Research Group's comparison of the four state workers' compensation programs (i.e., the State Office of Risk Management, University of Texas System, Texas A&M University System, and the Texas Department of Transportation) during their evaluation of the State Office of Risk Management in 2006. Legislative offices often use the Research Group's research results to provide justification for new legislative initiatives, explain the impact of previous legislation, or to provide information on how other state workers' compensation systems implement similar initiatives. One recent example is the testimony the Research Group provided on proposed bills during the 80th Legislature regarding Texas licensure of peer review and utilization review doctors (HB 1003 and HB 1006).

In fiscal year 2008, the Research Group completed nine projects, which included a combination of research plans, statistical analyses, research reports, and surveys of employers and injured employees. Project results are posted on the Department's website.

Projects included on the approved research agenda for FY 2009 include:

- Completion and publication of the third edition of the Workers' Compensation Health Care Network Report Card.
- Continuing examination of the frequency of employers and workers' compensation claims participating in certified health care delivery networks.
- An annual update of return-to-work outcomes for injured employees, including an examination of the characteristics associated with injured employees and employers who could benefit most from return-to-work outreach and coordination efforts.
- An analysis of the expanded role and impact of Designated Doctors in the Texas workers' compensation system since the passage of HB 7 in 2005 in resolving new issues pertaining to compensability, extent of injury, and return to work.
- A preliminary analysis of the impact of the adoption of the Official Disability Treatment Guidelines in workers' compensation
- A survey of the types of benefit data non-subscribing employers currently collect for occupational injuries and illnesses and a survey of the methods used by non-subscribing employers to evaluate the cost and quality of their benefit programs.

The Research Group is currently implementing its FY 2009 research agenda projects. The research agendas for fiscal years 2006 – 2008 are available on the Department's website.

General Counsel/Legal Services - Workers' Compensation Counsel

Workers' Compensation Counsel implemented negotiated rulemaking techniques that invite stakeholder input throughout the process, including during early stages of rule development. Rules are released for informal comments and stakeholder meetings are held prior to formal publication. This process may be repeated if necessary to ensure that all stakeholders' perspectives have been adequately considered.

In addition to rulemaking, the Workers' Compensation Counsel assists the Division in maintaining compliance with the Texas Public Information Act. In fiscal year 2008 Workers' Compensation Counsel assisted Division program areas with responding to 328 open records requests within statutory deadlines and prepared 191 subpoenas. General Counsel and Workers' Compensation Counsel help ensure that the Division's policies and procedures correspond to adopted rules by providing legal opinions and responding to approximately fifty legal-related inquiries per month from the Division's program areas.

As part of its administration of the Subsequent Injury Fund (SIF), General Counsel has ensured that this fund remains actuarially solvent and able to fulfill its statutory responsibilities to pay Lifetime Income Benefits (LIBs) to qualified injured employees and to reimburse insurance carriers for certain benefit overpayments. Texas' SIF remains one of the few actuarially sound second injury funds in the country currently.

Operations Support

The *Business Process Improvement* group utilizes a structured, creative planning process to identify critical business processes where analysis and refinement offer opportunities for enhanced effectiveness of the Division. Recent projects include development of the Legacy System Rewrite Project and Project Analysis Model documents, and development of tracking systems for the Division's enforcement and health care provider inquiry responses. This group also engaged in several business process improvement projects, specifically for the Designated Doctor scheduling and medical quality review processes.

Administrative Support serves as the Division's liaison for human resources, performance measure reporting, and budget tracking. Because Administrative Support provides centralized administrative liaison services to other Division program areas, programs are better able to focus on their core responsibilities. The Division's programs are able to provide accurate information in a timely manner through the liaison framework. Further, centralizing these functions enables executive management to more readily access critical administrative information needed to effectively and efficiently run the Division.

Information Management Services

Information Management Services' efficiency is demonstrated by the following approximate monthly statistics:

- Processes 30 to 40 ad hoc report requests for program areas per month
- Provides 40 standard performance measure and management reports per month
- Resolves 150 Electronic Data Interchange problems per month (involves providing assistance to insurance carriers' trading partners with rejected files and related technical assistance)
- Oversees the receipt of 450,000 Electronic Data Interchange transactions per month

In addition, Information Management Services implemented new automated systems for receipt, processing and delivery of health plan claim matches, reducing the manual notification and monitoring previously required by trading partners and Division staff.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1988 - The Joint Select Committee on Workers' Compensation issued a comprehensive report calling for major reform of the Texas workers' compensation system. One of the report's conclusions was that Texas did not collect adequate data to track its own performance over time and, as a result, the state was too dependent on the anecdotal findings of special interest groups during policy debates.

1989 - Overhaul of the Texas workers' compensation system included creation of the Texas Workers' Compensation Research Center to serve as an independent source of workers' compensation research findings.

1995 - The 74th Legislature merged the Research Center and the Legislative Oversight Committee on Workers' Compensation to form the Research and Oversight Council on Workers' Compensation (ROC). The ROC, governed by a nine-member legislative and regulatory board, performed both research and oversight functions for the system and state agencies involved in workers' compensation.

2003 - HB 28, 78th Legislature, Third Special Session, transferred ROC's research function to the Texas Department of Insurance after the Governor vetoed funding for ROC in the General Appropriations Act.

2005 - The 79th Legislature renamed the research function the "Workers' Compensation Research and Evaluation Group" and clarified its statutory role to analyze both the effectiveness of the system and the impact of HB 7 reforms on medical costs, access to and satisfaction with medical care, and return-to-work outcomes. By statute, the Research Group is also charged with publishing an annual consumer report card comparing medical costs, and return-to-work and quality of care outcomes for individual certified health care networks and non-network claims.

HB 7 also established the Office of Injured Employee Counsel (OIEC) as a separate state agency, charged with providing assistance to unrepresented injured employees in Division dispute resolution proceedings and advocating for injured employees as a class. The Texas Workers' Compensation Commission's ombudsman program was transferred to OIEC on January 1, 2006.

HB 7 also prescribed the administrative attachment of the Division to the Texas Department of Insurance, creating the need for the Division's administrative liaisons for human resource, performance measure and budget activities.

2007 - The Division created the Information Management Services program to ensure that electronic data and reporting needs are appropriately managed, addressed, and maintained by a single business owner.

The legislature transferred additional FTEs and budget from the Division to OIEC to allow OIEC to provide enhanced customer assistance to injured employees and facilitate the informal resolution of disputes. The Division worked closely with OIEC to facilitate this transition and to fully implement a single point of contact (SPOC) customer assistance model for injured employees in Division field offices.

2008 - The Division separated its Enforcement and Legal Services programs and subsequently merged these programs with the Department's Legal and Enforcement sections, operating under the direction of the Commissioner of Workers' Compensation.

The Workers' Compensation Research and Evaluation Group was transferred organizationally to report to the Special Deputy Commissioner of Policy and Research at the Division instead of the Commissioner of Insurance. The Commissioner of Insurance retained the authority to approve the Research Group's annual research agenda.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

General Counsel

The General Counsel's activities affect all workers' compensation system participants as a result of advice provided to the Commissioner of Workers' Compensation and legal support to program areas within the Division.

Workers' Compensation Research and Evaluation Group

Statistics and other research findings published by the Research Group are routinely used by legislators, administrators, and the public to make public policy and regulatory decisions regarding the operational effectiveness of the Texas workers' compensation system.

Legal Services – Workers' Compensation Counsel

The Workers' Compensation Counsel affects all workers' compensation system participants through implementation of the Texas Labor Code and Division rules.

Operations Support

The *Business Process Improvement* group focuses on internal operations but coordinates with the Department's Administrative Operations, especially Information Technology Services, to facilitate their assistance to Division programs.

Administrative Support collaborates with all Division program areas and various programs within the Department, including Planning, Financial Services, Human Resources, Information Technology Services, Purchasing, Contract Administration, Government Relations, Internal Audit, Public Information and Staff Services.

Information Management Services

This area supports the other business areas of the Division and related entities within the Department and affects system participants, such as insurance carriers and health care providers, by creating and implementing electronic data reporting systems.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

General Counsel

The Division's General Counsel section consists of the *General Counsel*, the *Assistant General Counsel* and a support team of staff attorneys. The General Counsel advises the Commissioner of Workers' Compensation on legal matters affecting the Division, reviews litigation, provides support for compliance efforts, and coordinates requests for legal opinions from Division program areas.

Workers' Compensation Research and Evaluation Group

The Workers' compensation Research Group is administered by the *Special Deputy Commissioner for*

Policy and Research. The group consists of a *Research Director* and four research specialists. Research Group staff plan and manage projects, write computer programs, analyze data, interpret results, present research findings, and extrapolate findings to assist administrators and policymakers with policy decisions.

Legal Services – Workers’ Compensation Counsel

The Division’s Legal Services – Workers’ Compensation Counsel is administered by the Department’s *Senior Associate Commissioner for Legal and Regulatory Affairs* located at Hobby and the *Section Chief* located at Metro under the direction of the Commissioner of Workers’ Compensation.

Legal and Regulatory Affairs receives formal referrals and informal requests for assistance from within the Division. The Section Chiefs work closely with program staff to establish priorities and address issues.

Staff attorneys refer to the Department’s *Rule, Form and Procedures Manual* for agency procedures regarding rule proposals and adoption orders, regulatory orders, hearing notices, and bulletins. Workers’ Compensation Counsel follows written procedures for drafting and reviewing orders drafted by the programs and relies on specific statutes and rules to define case parameters and refers to its forms library and previously drafted letters, orders, and memos.

Operations Support

The Operations Support area is administered by the *Executive Deputy Commissioner of Operations* who oversees *Business Process Improvement and Administrative Support*.

Information Management Services

Information Management Services is administered by the *Executive Deputy Commissioner for Health Care Management and System Monitoring*, the *Director of Health Care Business Management*, and the *Director of Information Management Services*.

The Electronic Data Interchange (EDI) Help Desk and the Data Reporting Section report to a team leader, who reports to the Director of Information Management Services. Help Desk staff members are assigned trading partners and transaction types for monitoring and quality control purposes. In addition, they are supported by a second level of staff that has broader expertise related to EDI transaction support.

The Data Reporting Section staff members are assigned specific business areas to support for data reporting purposes. This section recently developed a project tracking system to help monitor incoming requests to assist in establishing prioritization and resource allocation. A designated staff member is responsible for specific cross-departmental projects and serves as a liaison between the Division’s program areas and Information Technology Services. In addition, the reporting database is available to internal staff for routine queries through the COMPDATA system.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Texas Workers’ Compensation Act establishes a self-balancing maintenance tax that is collected on gross workers’ compensation insurance premiums. The maintenance tax is paid by workers’

compensation insurance carriers for the administration of the Division and may not exceed two percent of gross workers' compensation insurance premiums. The maintenance tax is collected by the Comptroller and deposited in general revenue.

The Workers' Compensation Research and Evaluation Group is funded by an additional maintenance tax collected on all workers' compensation insurance carriers and self-insurance groups, with the exception of government entities. The Research Group's maintenance tax is capped statutorily at one-tenth of one percent of gross premiums collected by workers' compensation insurance carriers and one-tenth of one percent of the total tax base for workers' compensation self-insured employers. In accordance with Texas Labor Code, Section 405.003 (e), Research Group's maintenance tax collections are deposited into General Revenue and transferred to the Department's operating account for Research Group functions. Additionally, the Research Group has the ability to seek and accept grant funds (Texas Labor Code, Section 405.002). The Research Group is not currently participating in any grant-funded projects.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

None identified

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Workers' Compensation Research and Evaluation Group/Information Management Services

The Research Group works regularly with other state agencies on issues of policy, research, rules, legislation, and data collection.

The *Texas Workforce Commission* (TWC) oversees and provides workforce development services to Texas employers and employees. The Research Group works with TWC to acquire employee wage data to calculate annual return-to-work and wage patterns of injured employees. Additionally, the Research Group uses TWC's master employer database as a source of information for its biennial survey regarding employer participation in the Texas workers' compensation system.

The *Department of Assistive and Rehabilitative Services* (DARS) provides vocational rehabilitation services to injured employees and disabled employees without work-related injuries. The Research Group and the Information Management Services function are working with DARS to exchange and collect outcome data regarding vocational rehabilitation referrals made by the Division to DARS. The purpose of the data collection is to track existing referral trends and, if possible, identify ways to improve the referral process and return-to-work outcomes for injured employees.

The State Office of Risk Management (SORM) administers the workers' compensation program for State of Texas and public university employees, with the exception of the University of Texas System, Texas A&M University System, and the Texas Department of Transportation. The Research Group and SORM

are working together to exchange data for the purposes of calculating return-to-work rates for individual state agencies.

The Office of Injured Employee Counsel (OIEC) assists unrepresented injured employees in Division dispute resolution proceedings and represents injured employees as a class. The Research Group and the Information Management Services function assist OIEC with information and data for the calculation of performance measures and the compilation of their legislatively required biennial report.

Legal Services – Workers’ Compensation Counsel

The Workers’ Compensation Counsel coordinates with the *Office of the Attorney General* which provides legal representation of the Division in court cases.

K. If contracted expenditures are made through this program please provide:

- the amount of those expenditures in fiscal year 2008;
- the number of contracts accounting for those expenditures;
- a short summary of the general purpose of those contracts overall;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

| Vendor Name | Service Provided | Amount |
|--|-------------------------------------|---------------------|
| Internat’l Assoc. of Industrial Boards | IAIABC Membership Dues | 12,000.00 |
| Work-Loss Data Institute LLC | Subscription Renewal to ODG | 328.23 |
| Department of Information Resources | Software Maintenance - PC SAS | 6,303.12 |
| Department of Information Resources | Data Center Fees | 2,795,792.36 |
| Carahsoft Technology Corporation | Software Maintenance - MAGIC | 2,697.00 |
| Affiliated Telephone Inc | Telecommunication Systems | 5,300.00 |
| Flores and Associates | Fax Machine Repair Services | 19,309.34 |
| SHI-Government Solutions Inc. | Shelving | 24,946.22 |
| Valcom Computer Center | Laptop Purchase | 225,440.00 |
| Commonwealth Computer Co | Anti-virus Software Service | 3,335.00 |
| Genesis Networks, Inc. | Router Purchase | 38,332.00 |
| Austin Ribbon and Computer Supplies | Personal Computer Purchase | 23,780.00 |
| Taylor Security Systems Inc. | Building Maintenance | 10,870.00 |
| BearingPoint Inc | Attorney Fee Processing | 50,796.00 |
| Software AG Inc | Software Maintenance | 61,423.00 |
| TIBH | Toner Cartridges | 22,510.44 |
| ComData Corp./TransMontaigne Product Ser | Fuel | 3,721.53 |
| UPS Mail Innovations | Expedited Parcel Services | 17,090.81 |
| Ameritex | Security Guard Contract | 21,550.43 |
| Pais Janitorial Serv. and Supplies Inc. | Janitorial Service | 1,717.56 |
| United Parcel Service | UPS Delivery Service | 82,043.69 |
| University of North Texas* | Customer Service Survey | 79,500.00 |
| Quality Metric* | Customer Service Software and Forms | 4,324.00 |
| TOTAL | | 3,513,110.73 |

*These contracts for the Research Group were paid from Department funds and are not listed in Section V.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None identified

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

No additional information needed

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Not applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not applicable

VIII. Statutory Authority and Recent Legislation

A. Fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact your agency. Do not include general state statutes that apply to all agencies, such as the Public Information Act, the Open Meetings Act, or the Administrative Procedure Act. Provide information on Attorney General opinions from FY 2003 - 2007, or earlier significant Attorney General opinions, that affect your agency's operations.

| Texas Department of Insurance, Division of Workers' Compensation Exhibit 13: Statutes/Attorney General Opinions | |
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| Statutes | |
| Citation/Title | Authority/Impact on Agency |
| Texas Labor Code §§402.001 – 402.0014 | Describes the Division of Workers' Compensation's (Division) relationship with and attachment to the Texas Department of Insurance (Department). |
| Texas Labor Code §§402.0016 – 402.00128 | Names the Commissioner of Workers' Compensation (Commissioner) as the Division's chief executive and describes his general powers and duties. |
| Texas Labor Code §§402.022 – 402.024 | Requires the Division to develop complaint procedures, public information regarding those and other Division procedures, and for the Division to provide a forum for the public to speak to the Division about issues under its jurisdiction. |
| Texas Labor Code §402.061 | Requires the Commissioner to adopt rules as necessary for the implementation and enforcement of the Texas Labor Code. |
| Texas Labor Code §402.062 | Requires the Commissioner to adopt rules providing how the Division may accept gifts, grants, or donations. |
| Texas Labor Code §402.064 | Requires the Commissioner to set reasonable fees for services provided to persons requesting services from the Division. |
| Texas Labor Code §402.065 | Authorizes the Commissioner to employ counsel to represent the Division in legal actions. |
| Texas Labor Code §402.0665 | Authorizes legislature to adopt requirements for legislative oversight of the Division; and requires the Division to comply with any adopted requirements. |
| Texas Labor Code §402.067 | Authorizes the Commissioner to appoint advisory committees. |
| Texas Labor Code §402.068 | Generally prohibits the Division from delegating its rights or duties. |
| Texas Labor Code §402.070 | Requires the Division to prepare annually a complete and detailed written report accounting for all funds received and disbursed by the Division during the preceding fiscal year. |
| Texas Labor Code §402.071 | Requires the Commissioner to establish qualifications for advisory committee representatives and adopt rules establishing procedures for authorization of representatives. |

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| Texas Labor Code §402.072 | Authorizes the Division to impose sanctions against any person regulated by the Division under the Texas Labor Code; states only the Commissioner may impose certain sanctions; and states that a sanction imposed by the Division is binding pending appeal. |
| Texas Labor Code §402.073 | Requires the Commissioner to enter into a memorandum of understanding with State Office of Administrative Hearings (SOAH) regarding hearings conducted by SOAH under the Texas Labor Code; and specifies which hearings the Division issues the final order and which hearings SOAH issues the final order. |
| Texas Labor Code §402.074 | Requires the Commissioner to implement a strategic management plan. |
| Texas Labor Code §402.075 | Requires the Commissioner to adopt requirements by rule that provide incentives for compliance with the workers' compensation system and emphasize performance-based oversight; requires the Division to assess the performance of insurance carriers and health care providers biennially; and requires the Division to audit accident prevention services offered by insurance carriers. |
| Texas Labor Code §402.076 | Requires the Division to perform the workforce education and safety functions of the workers' compensation system. |
| Texas Labor Code §402.077 | Requires the Division to provide education on best practices for return-to-work programs and workplace safety. |
| Texas Labor Code §402.078 | Requires the Division to operate regional offices as necessary to implement its duties. |
| Texas Labor Code §§403.001 – 403.005 | Establishes the Division's general sources of financing. |
| Texas Labor Code §§403.006 – 403.007 | Establishes the funding and purpose of the Division's subsequent injury fund. |
| Texas Labor Code §404.002 | States the Office of Injured Employee Counsel is administratively attached, but not under the direction of the Division. |
| Texas Labor Code, Chapter 405 | Establishes the Workers' Compensation Research and Evaluation Group that serves as a resource for the Commissioner of Insurance on workers' compensation issues; and allows the Workers' Compensation Research and Evaluation Group to access Division files as necessary. |
| Texas Labor Code §406.004 | Requires the Commissioner to prescribe forms for employer notice of workers' compensation coverage to the Division; requires employers to provide the Division with a reasonable amount of information about their business; and permits the Division to contract with the Texas Workforce Commission or Comptroller of Public Accounts for assistance in collecting employer notice of coverage. |
| Texas Labor Code §406.005 | Permits the Division to adopt rules prescribing the form and manner of employer notice of workers' compensation coverage to employees. |
| Texas Labor Code §406.006 | Permits the Commissioner to adopt rules regarding the coverage and claim administration contact information |

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| Texas Labor Code §406.009 | Requires the Division to collect and maintain the information required by Texas Labor Code, Chapter 406, Subchapter A; permits the Commissioner to adopt rules as necessary to enforce the statute; permits the Commissioner to designate a data collection agent, implement an electronic reporting and public information access program; permits the Division to establish the form, manner, and procedure for the transmission of information to the Division; and permits the Division to require employers or insurance carriers subject to the Texas Labor Code to identify and confirm an employer's coverage status and claim administration contact information as necessary to achieve the purposes of the Texas Labor Code. |
| Texas Labor Code §406.010 | Permits the Commissioner to specify requirements regarding claims service under Texas Labor Code §406.010 by rule. |
| Texas Labor Code §406.011 | Permits the Commissioner to require by rule that insurance carriers designate an agent in Austin. |
| Texas Labor Code §406.053 | Requires the Department to coordinate with other appropriate agencies to share information regarding employers who obtain all states coverage and to ensure that the Department has knowledge of all such employers who also fail to file notice with the department. |
| Texas Labor Code §406.074 | Permits the Commissioner to enter into an agreement with appropriate agencies from other jurisdictions with respect to conflicts of jurisdiction and other inter-jurisdictional issues. |
| Texas Labor Code §406.093 | Requires the Commissioner to adopt procedures, by rule, relating to the method of payment of benefits to legally incompetent injured employees. |
| Texas Labor Code §406.095 | Requires the Commissioner to adopt rules that establish procedures and requirements for professional athletes to elect either statutory workers' compensation benefits or benefits under a collective bargaining agreement or contract. |
| Texas Labor Code §406.145 | Requires the Commissioner to prescribe forms for contractor and independent subcontractor joint agreements; and requires the Division to maintain a system for accepting and maintaining the joint agreements. |
| Texas Labor Code §§407.023, 407.041 – 407.047 | States that the Commissioner must either approve or deny the issuance or revocation of a certificate of authority to self-insure; and certify that a Certified Self-Insurer has suspended payment of compensation or has otherwise become an impaired employer. |
| Texas Labor Code §407.061 | Requires the Commissioner to adopt rules stating the requirements for financial statements submitted by applicants for certificates of authority to self-insure. |
| Texas Labor Code §407.062 | Lists factors the Commissioner must consider when assessing the financial strength and liquidity of self-insurer applicants. |

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| Texas Labor Code §407.065 | Lists specific requirements and procedures regarding the Commissioner's authority over self-insurer security deposits. |
| Texas Labor Code §407.066 | Requires the Commissioner to resolve certified self-insurer disputes concerning the deposit, renewal, termination, release, or return of all or part of the security, liability arising out of the submission or failure to submit security, or the adequacy of the security or reasonableness of the administrative costs, including legal fees. |
| Texas Labor Code §407.067 | States the Commissioner must require certified self-insurers to purchase excess insurance or reinsurance in at least the amount of \$5 million per occurrence. |
| Texas Labor Code §407.081 | Permits the Division to require that Certified Self-Insurers' annual reports must include additional financial and statistical information; and permits the Commissioner to require certain Certified Self-Insurers to report more often than annually. |
| Texas Labor Code, Chapter 407, Subchapter F | Explains the financing of the self-insurance program |
| Texas Labor Code, Chapter 407, Subchapter G | Describes the Commissioner's and Division's authority over and relationship with the Texas Certified Self-Insurer Guaranty Association. |
| Texas Labor Code §408.004 | Permits the Commissioner to require an injured employee to submit to a required medical examination. |
| Texas Labor Code §408.0041 | Establishes the Division's authority over designated doctor examinations. |
| Texas Labor Code §408.0042 | States the Division must require an injured employee to submit to a medical examination to define compensability upon insurance carrier request; and permits the Division to adopt rules regarding the requirements of the report of such an examination. |
| Texas Labor Code §408.0046 | Permits the Division to adopt rules as necessary to determine which professional health care specialties are appropriate for treatment of certain compensable injuries. |
| Texas Labor Code §408.005 | Establishes the Division's authority over settlements or agreements regarding an injured employee's benefits. |
| Texas Labor Code §408.022 | Requires the Commissioner to prescribe criteria to be used by the Division in granting an injured employee authority to select an alternate doctor. |
| Texas Labor Code §408.023 | Establishes the Division's authority over treating doctors in the workers' compensation system. |
| Texas Labor Code §408.0231 | Establishes the Division's authority to sanction doctors in the workers' compensation system and the procedures for such sanctions; and requires the Division to adopt rules regarding doctors who perform peer review functions for insurance carriers. |
| Texas Labor Code §408.024 | Permits the Commissioner to relieve an insurance carrier of liability for health care that is furnished by a health care provider or other person in a manner inconsistent with the requirements of Texas Labor Code, Chapter 408, Subchapter B. |

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| Texas Labor Code §408.025 | States the Commissioner must adopt rules specifying the requirements for reports and records filed with the Division or provided to the injured employee, the employee's attorney, or the insurance carrier by a health care provider; and states the Commissioner must also adopt rules stating the requirement for reports and records that are to be made available by a health care provider to another health care provider. |
| Texas Labor Code §408.0251 | Requires that the Commissioner, along with the Commissioner of Insurance, adopt rules regarding the electronic submission and processing of medical bills by health care providers to insurance carriers; permits the Commissioner to adopt rules that establish the criteria for granting exceptions to insurance carriers and health care providers who are unable to submit or accept medical bills electronically; and permits the Commissioner to adopt rules regarding the electronic payment of bills by insurance carriers to health care providers. |
| Texas Labor Code §408.0252 | Permits the Commissioner to identify by rule areas of Texas in which access to health care providers is less available and adopt appropriate standards, guidelines, and rules regarding the delivery of health care in those areas. |
| Texas Labor Code §408.026 | Requires the Commissioner to adopt rules regarding insurance carrier liability for spinal surgery. |
| Texas Labor Code §408.027 | Requires the Commissioner to adopt rules regarding the payment of health care providers. |
| Texas Labor Code §408.0272 | States the Commissioner may still allow reimbursement of health care providers who submitted untimely claims to insurance carriers if the claims were untimely for specific, listed reasons. |
| Texas Labor Code §408.028 | Authorizes the Commissioner to adopt rules specifying the requirements and procedures for providing pharmaceutical services in the workers' compensation system. |
| Texas Labor Code §408.030 | Requires the Division to report physicians to the State Board of Medical Examiners for certain violations. |
| Texas Labor Code §408.031 | Explains that in the case of a conflict between the Texas Labor Code and the Texas Insurance Code, Chapter 1305, the Insurance Code prevails. |
| Texas Labor Code §408.032 | Requires the Division to study the issue of required accreditation of interdisciplinary pain rehabilitation programs or facilities that provide services to injured employees and report to the legislature any statutory changes the Division considers necessary to require accreditation. |
| Texas Labor Code §§408.041 – 408.047 | Establishes the Commissioner's authority regarding the computation of an employee's average weekly wage. |
| Texas Labor Code, Chapter 408, Subchapter D | Establishes the Commissioner's authority regarding the computation of benefits. |
| Texas Labor Code, Chapter 408, Subchapter E | Establishes the Commissioner's authority over income benefits in general. |

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| Texas Labor Code §408.102 | Requires the Commissioner to establish by rule a presumption that maximum medical improvement has been reached based on a lack of medical improvement in the employee's condition. |
| Texas Labor Code §408.104 | Requires the Commissioner to adopt rules regarding maximum medical improvement after spinal surgery. |
| Texas Labor Code §408.1225 | Authorizes the Division to develop qualification standards, administrative policies, and rules as necessary to determine designated doctor eligibility; requires the Commissioner to ensure the quality of designated doctor reviews and decisions through active monitoring; permits the Division to take action as necessary to remove or restrict a designated doctor on the Division's list; and requires the Division to adopt rules to ensure that a designated doctor has no conflicts of interest when conducting an examination. |
| Texas Labor Code §408.123 | Requires the Commissioner to adopt a rule that provides that, at the conclusion of any examination in which maximum medical improvement is certified and any impairment rating is assigned by a doctor, written notice of the employee's ability to dispute the certification of maximum medical improvement and impairment rating must be given to the employee. |
| Texas Labor Code §408.124 | Requires the Division to adopt by rule the fourth or any subsequent edition of the "Guides to the Evaluation of Permanent Impairment," published by the American Medical Association for determining the existence and degree of an employee's impairment. |
| Texas Labor Code §408.127 | Requires the Commissioner to adopt rules and forms to ensure full reporting and the accuracy of reductions and reimbursements made under this section. |
| Texas Labor Code §408.129 | Permits the Commissioner to approve injured employee requests to accelerate benefits. |
| Texas Labor Code §408.1415 | Requires the Commissioner to, by rule, adopt compliance standards for supplemental income benefit recipients that require each recipient to demonstrate an active effort to obtain employment. |
| Texas Labor Code §408.148 | Permits the Commissioner to reinstate supplemental income benefits to an employee who is discharged within 12 months of the date of losing entitlement to supplemental income benefits. |
| Texas Labor Code §408.150 | Requires the Division to refer an injured employee to the Department of Assistive and Rehabilitative Services with a recommendation for appropriate services if the Division determines that the employee could be materially assisted by vocational rehabilitation or training in returning to employment. |
| Texas Labor Code §408.182 | Permits the Commissioner to extend the time for filing a claim under this subsection for certain compelling reasons. |
| Texas Labor Code §408.187 | States the Commissioner must require an insurance carrier to pay the costs of an autopsy to determine the cause of death in an occupational disease claim. |
| Texas Labor Code §408.202 | Permits the Commissioner to allow legal beneficiaries to assign their rights to death benefits. |

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| Texas Labor Code §408.221 | Requires the Commissioner to, by rule, provide guidelines for maximum attorney's fees for specific services; and permits the Commissioner to provide by rule for commutation of an attorney's fee. |
| Texas Labor Code §408.222 | Requires the Division or court to approve the amounts of all attorneys' fees for defending an insurance carrier in a workers' compensation action. |
| Texas Labor Code §409.005 | Permits the Commissioner to adopt rules relating to the information that must be contained in a report of injury and the development and implementation of an electronic filing system for injury reports. |
| Texas Labor Code §409.006 | Permits the Commissioner to adopt rules relating to the information that must be contained in an employer record of injury. |
| Texas Labor Code §§409.009 – 409.0091 | Permits the Division to allow certain sub-claimants into the Division's dispute resolution processes and permits the Commissioner to adopt rules regarding certain sub-claimant procedures. |
| Texas Labor Code §409.011 | Requires the Division to send certain information to the employer immediately after receiving from any person notice of an employee's injury or death. |
| Texas Labor Code §409.012 | Explains the Division's duties and authority regarding vocational rehabilitation information. |
| Texas Labor Code §409.013 | Requires the Division to develop public information about the benefit process and compensation procedures; and requires that this information must be written in plain language and available in English and Spanish. |
| Texas Labor Code §409.0231 | Requires the Commissioner to adopt rules in consultation with the Texas Department of Information Resources regarding payment of benefits by electronic funds transfers. |
| Texas Labor Code §410.003 | Exempts the Division's hearings process from the Administrative Procedure and Texas Register Act except as Texas Labor Code, Chapter 410 provides. |
| Texas Labor Code §410.007 | Requires the Division to determine the types of information most useful to parties to help resolve disputes regarding income benefits; and requires the Division to publish a list of this information. |
| Texas Labor Code, Chapter 410 Subchapter B | Establishes the Division's authority over and duties regarding Benefit Review Conferences. |
| Texas Labor Code, Chapter 410, Subchapter C | Establishes the Division's authority and duties regarding its arbitration procedures. |
| Texas Labor Code, Chapter 410, Subchapter D | Establishes the Division's authority and duties regarding contested case hearings held by the Division. |
| Texas Labor Code, Chapter 410, Subchapter E | Establishes the Division's authority and duties regarding its appeals panel and judges. |
| Texas Labor Code, Chapter 410, Subchapter F | Establishes the general procedures for judicial review of Division appeals panel decisions, including the Division's authority to intervene into a judicial review case. |
| Texas Labor Code, Chapter 410, Subchapter G | Establishes separate procedures for judicial review of issues regarding compensability, income benefits, and death benefits. |

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| Texas Labor Code §411.011 | Requires the Division to coordinate and enforce the implementation of state laws and rules relating to employees' health and safety. |
| Texas Labor Code §411.012 | Requires the Division to serve as a repository for statistical information on employees' health and safety; and requires the Division to coordinate and supervise the collection by state or federal entities of information relating to job safety. |
| Texas Labor Code §411.013 | Permits the Division to enter into contracts with the federal government to perform occupational safety projects and to apply for federal funds through any federal program relating to occupational safety. |
| Texas Labor Code §411.014 | Requires the Division to promote employees' health and safety through educational and other innovative programs; and requires the Division to cooperate with other entities in the development and approval of safety courses, plans, and programs and develop means and methods of educating employees and employers concerning workplace safety. |
| Texas Labor Code §411.015 | Requires the Division to publish or procure educational materials for specific high-risk industries and business and industry generally. |
| Texas Labor Code §411.016 | Requires the Division to certify safe employers to provide peer review safety programs. |
| Texas Labor Code §411.017 | Requires the Division to advise insurance carrier loss control organizations of safety needs and priorities developed by the Division. |
| Texas Labor Code §411.018 | Requires the Division to consult with employers regarding compliance with federal occupational safety laws and rules; and collect information relating to occupational safety as required by federal laws, rules, or agreements. |
| Texas Labor Code, Chapter 411, Subchapter C | Requires the Division to maintain a job safety information system. |
| Texas Labor Code §411.064 | Permits the Division to conduct inspections to determine the adequacy of the accident prevention services for each insurance company writing workers' compensation insurance in this state. |
| Texas Labor Code §411.067 | Requires the Division to employ personnel necessary to enforce Texas Labor Code, Chapter 411, Subchapter E regarding accident prevention services. |
| Texas Labor Code §411.081 | Requires the Division to maintain a 24-hour toll-free telephone service in English and Spanish for reports of violations of occupational health or safety law; and states the Commissioner must adopt rules requiring employers to post notice of this service for their employees. |
| Texas Labor Code, Chapter 411, Subchapter H | Imposes general duties upon the Division regarding employees' health and safety. |
| Texas Labor Code, Chapter 413, Subchapter A | Generally requires the Division to monitor health care providers, Independent Review Organizations, and workers' compensation claimants who receive medical services to ensure those persons comply with Division rules regarding medical policies and fee guidelines. |

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| Texas Labor Code §413.011 | Requires the Commissioner to adopt health care reimbursement policies and guidelines based on the standardized reimbursement methodologies used by the Centers for Medicare and Medicaid Services; and requires the Division to adopt treatment, return-to-work, and disability management guidelines. |
| Texas Labor Code §413.013 | States the Commissioner must adopt rules that establish programs to systematically monitor the medical necessity of treatments and fees of workers' compensation medical services and monitor the unreasonable denials of payment by insurance carriers. |
| Texas Labor Code §413.014 | Requires the Division to adopt rules regarding the pre-authorization of workers' compensation medical services. |
| Texas Labor Code §413.021 | Requires the Commissioner to adopt rules necessary to collect data on return-to-work outcomes. |
| Texas Labor Code §413.022 | Establishes the Division's return-to-work pilot program. |
| Texas Labor Code §§413.023 – 413.025 | Requires the Division to assist employers and employees to accomplish return-to-work goals. |
| Texas Labor Code, Chapter 413, Subchapter C | Establishes the Division's medical dispute resolution process. |
| Texas Labor Code §413.041 | Requires the Commissioner to adopt rules regarding doctor disclosure of financial interests in other health care providers; also requires the Commissioner to adopt by rule the federal standards that prohibit payment or acceptance of payment in exchange for health care referrals relating to fraud, abuse, and anti-kickbacks. |
| Texas Labor Code §413.044 | Permits the Commissioner to impose additional sanctions against designated doctors for certain violations. |
| Texas Labor Code §413.051 | Permits the Division to contract with review organizations or health care providers to implement its medical review powers and duties. |
| Texas Labor Code §413.0511 | Authorizes the Division to employ or contract with a medical advisor; establishes the duties of the medical advisor. |
| Texas Labor Code §413.0512 | Requires the medical advisor to establish a medical quality review panel. |
| Texas Labor Code §413.0514 | Permits the Division to share investigation information and cooperate with certain Texas occupational licensing boards. |
| Texas Labor Code §413.0515 | Requires the Division to report certain violations to the Texas State Board of Medical Examiners or the Texas Board of Chiropractic Examiners. |
| Texas Labor Code §413.055 | Permits the Commissioner to enter interlocutory orders for the payments of all or part of medical benefits. |
| Texas Labor Code §414.002 | Requires the Division to monitor system participants' compliance with the Texas Labor Code and Division rules. |
| Texas Labor Code §414.003 | Requires the Division to compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under Texas Labor Code, Chapter 414. |

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| Texas Labor Code §414.004 | Requires the Division to review regularly the workers' compensation records of insurance carriers as required to ensure compliance with this subtitle. |
| Texas Labor Code §414.005 | Requires the Division to maintain an investigation unit to conduct investigations relating to alleged violations of this subtitle, Division rules, or a Commissioner order or decision, with particular emphasis on violations of Texas Labor Code, Chapters 415 and 416. |
| Texas Labor Code §414.006 | Permits the Division to refer the persons involved in a case subject to an investigation to other appropriate authorities, including licensing agencies, district and county attorneys, or the attorney general. |
| Texas Labor Code §414.007 | Requires the Division to review information concerning alleged violations of this subtitle regarding the provision of medical benefits. |
| Texas Labor Code, Chapter 415, Subchapter A | Enumerates prohibited acts that constitute administrative violations under the Texas Labor Code. |
| Texas Labor Code, Chapter 415, Subchapter B | Authorizes the Division to sanction or penalize a person who commits an administrative violation under the Texas Labor Code; requires the Division to provide an opportunity for a hearing before it may assess penalties against violators; generally makes any violation of the subtitle, or Division rules, decisions, or orders an administrative violation. |
| Texas Labor Code, Chapter 415, Subchapter C | Establishes the administrative violation procedures for the Division. |
| Texas Labor Code, Chapter 418 | Lists prohibited acts that qualify for criminal penalties. |
| Texas Labor Code, Chapter 419 | Prohibits misuse of the Division's name; authorizes the Commissioner to adopt rules relating to the regulation of the use of the Division's name and other rules as necessary to implement Texas Labor Code, Chapter 419. |
| Texas Labor Code, Chapters 501 – 506 | Establishes general provisions for workers' compensation insurance coverage for certain government employees. |
| Texas Labor Code §91.006 | States that if a leasing company under the Staff Leasing Services Act (Texas Labor Code, Chapter 91) has a certificate of insurance coverage showing that it maintains a policy of workers' compensation insurance, that certificate constitutes proof of workers' compensation insurance coverage for the leasing company and the client company with respect to all employees of the license holder assigned to the client company. The state and a political subdivision of the state shall accept a certificate of insurance coverage described by this section as proof of workers' compensation coverage under Texas Labor Code, Chapter 406. |

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| Texas Labor Code §91.042 | States that for workers' compensation insurance purposes, a leasing company and the leasing company's client company shall be co-employers. If a leasing company elects to obtain workers' compensation insurance, the client company and the license holder are subject to Texas Labor Code §406.034 and §408.001; and states that if the leasing company does not elect to obtain workers' compensation insurance, both the leasing company and the client company are subject to Texas Labor Code §406.004 and §406.033 |
| Texas Insurance Code, Chapter 426 | Establishes the reserves requirements for workers' compensation insurers and authorizes the Commissioner of Insurance to adopt rules regarding these reserves. |
| Texas Insurance Code, Chapter 1305 | Authorizes the establishment of workers' compensation health care networks for the provision of workers' compensation medical benefits; and provides standards for the certification, administration, evaluation, and enforcement of the delivery of health care services to injured employees by these networks. |
| Texas Insurance Code, Chapter 2051 | Establishes the general provision for workers' compensation insurance. |
| Texas Insurance Code, Chapter 4151, Subchapter F | Establishes basic requirements for agreements between employers and third-party administrators and between insurance carriers and third-party administrators for the purpose of administering workers' compensation insurance coverage. |
| Texas Insurance Code §4201.054 | Applies the Texas Insurance Code, Chapter 4201 to utilization review of a health care service provided to a person eligible for workers' compensation medical benefits; authorizes the Commissioner to regulate as provided by Texas Insurance Code, Chapter 4201 a person who performs utilization review of such a medical benefit; and authorizes the Commissioner to adopt rules as necessary to implement this authority. |
| Texas Government Code §2001.003(7) | Regarding proceedings and activities under the Texas Workers' Compensation Act, excludes from the definition of "state agency" the Department, the Commissioner of Insurance, and the Commissioner of Workers' Compensation. |

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| <p>OR2009-01072 (January 27, 2009)</p> | <p>The open records request sought information on five named entities that submitted an application as a workers' compensation self-insured group. Texas Government Code §552.136 states that "[n]otwithstanding any other provisions of this chapter, a credit card, debit card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Therefore, the Office of the Attorney General (OAG) found that the Department must withhold the insurance policy number under Texas Government Code §552.136.</p> <p>Although OR2009-01072 (January 27, 2009) concerns non-Division records, the Division will need to seek guidance from OAG as to whether the Division can disclose policy numbers pursuant to numerous open record requests for information which contains policy numbers.</p> |
| <p>OR2009-02400 (February 24, 2009)</p> | <p>The open records request sought "a list of all businesses in Texas that have had workplace fatalities."</p> <p>The OAG's decision held that "the identity of an employer must be withheld only in those cases where release of an employer's identity would reveal a claimant's identity. Accordingly, to the extent that an employer's identity would reveal a claimant's identity, it must be withheld under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. To the extent an employer's identity would not reveal a claimant's identity; the employer's identity may not be withheld under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code and must be released." In the case of this request, the Department's Information Technology Services division is conducting manual internet searches on each of the approximately 6,200 employers to determine whether disclosure of the identity of the employer would reveal a claimant's identity. Such research is necessary to satisfy due diligence before releasing the relevant names of requested employers. The Department's Agency Counsel has indicated that there is no charge to the requestor.</p> <p>This scenario could occur in a number of requests where the identity of the employer is requested in conjunction with another factor, such as all employers in Travis County that had one or more compensable injuries reported for some period of time. Depending on the size of the company and the number of injuries reported during that time, the response could be used to identify specific injured employees. The amount of time and effort required to do the due diligence before release could be substantial and might not be reimbursable.</p> |

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| <p>OR2009-03331(March 13, 2009)</p> | <p>The open records request sought information pertaining to administrative complaints or medical dispute reviews against a named doctor. Texas Labor Code §402.092(e) provides for the identity of the complainant in an investigation file maintained under Texas Labor Code §414.005 when the Division determines the complaint was groundless or made in bad faith, the complaint lacks any basis in fact or evidence, the complaint is frivolous, or the complaint is done specifically for competitive or economic advantage. Texas Labor Code §402.092(f) provides that upon completion of an investigation file in which the Division determines a complaint is described by Subsection (e), the Division shall notify the person who was the subject of the complaint of its finding and the identity of the complainant. The OAG ruling held that “as the Division determined the complaint lacked any basis in fact, the department must release the identity of the complainant to the requestor. The department must, however, withhold the remaining information at issue in the investigative file under Section 552.101 in conjunction with section 402.092(c).”</p> <p>In light of this ruling the agency will need to reexamine the codes used to close files to possibly track the language of the Texas Labor Code §402.092(e). In addition, the agency needs to have a procedure to notify the subject of the complaint that the case was closed pursuant to the Texas Labor Code 402.092(e).</p> |
| <p>OR2004-9096 (October 25, 2004)</p> | <p>The Division receives thousands of injured employee claim file requests annually. This letter ruling serves as a previous determination that claim file information relating to a workers’ compensation claimant is excepted from public disclosure unless the Texas Labor Code requires its release. However, under Open Records Decision No. 619 (1993) the confidentiality only extends to that information that explicitly or implicitly discloses the identities of the injured employees. Finally, the Texas Labor Code §402.084(a)(2) provision that requires a requestor of claim file information to make the request on the Division’s prescribed form did not exempt the Division from making timely requests for exceptions to disclosure under the Texas Public Information Act.</p> |
| <p>OR2005-00409 (January 12, 2005)</p> | <p>This letter ruling serves as a previous determination that a Division’s compliance investigative file maintained under Texas Labor Code §414.005 is excepted from release under the Texas Public Information Act unless the information is subject to release under the Texas Labor Code.</p> |

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| OR2005-01938 (March 7, 2005) | This letter ruling serves as a previous determination that a Division's medical policy investigative file maintained under Texas Labor Code §§413.002, 413.0511, or 413.0512 is excepted from public disclosure under the Texas Public Information Act unless the information is subject to release under the Texas Labor Code. |
| OR2004-6624 (August 5, 2004) | This letter ruling found that the identities of injured employees contained in required employer's reports to the Division of work-related employee injuries under Texas Labor Code §411.032 are excepted from public disclosure under the Texas Public Information Act. |
| OR2009-02400 (February 24, 2009) | This letter ruling found, in pertinent part that: "Only in those cases where release of the employer's identity would reveal the claimant's [i.e injured employee's] identity may the identity of the employer be withheld." The ruling addressed "...a request for `a list of all businesses in Texas that have had workplace fatalities and/or that have had an above average incident rate.'" The Division determined that the letter ruling would require a review of 6,200+ employer names and related searches because the Division typically does not maintain sufficient information on any workers' compensation employer to be able to make the determination required by the letter ruling. |
| OAG Opinion No. GA-0399 (February 13, 2006) | This opinion found that the Division's fee schedule applied for workers' compensation insurance carriers to pay hospitals only for hospital reports and records required to be prepared and submitted under the Division's rules and that the fees specified in Texas Health & Safety Code §241.154(b) applied to all other copies requested. |

B. Provide a summary of recent legislation regarding your agency by filling in the chart below or attaching information already available in an agency-developed format. Briefly summarize the key provisions. For bills that did not pass, briefly explain the key provisions and issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation).

| Texas Department of Insurance, Division of Workers' Compensation Exhibit 14: 81 st Legislative Session Chart | | |
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| Legislation Enacted, 81st Legislative Session | | |
| Bill Number | Author/Sponsor | Summary of Key Provisions |
| HB 673 | Rep. Solomons /Sen. Watson | <p>Contains several provisions relating to the operations of the Office of Injured Employee Counsel (OIEC), including.</p> <ul style="list-style-type: none"> • The bill allows OIEC to refuse to provide or to terminate services to injured employees who are abusive or violent or threaten an employee of OIEC. • It also clarifies OIEC's authority to assist injured employees before the Division or the State Office of Administrative Hearings (SOAH) in administrative dispute proceedings and in enforcement actions against injured employees. • It authorizes the OIEC Public Counsel to adopt, with consultation with the Commissioner of Workers' Compensation, the injured employees' rights and responsibilities, which will continue to be distributed by the Division. • Finally, HB 673 clarifies OIEC's access to confidential information for the performance of their statutory duties. It restricts OIEC's access to the Division's investigation file and any other information which injured employees would otherwise not be entitled to obtain on their own while assisting injured employees in an enforcement action against the injured employee. • This bill originated from a legislative recommendation by the Office of Injured Employee Counsel. • Effective date: September 1, 2009. |
| HB 1058 | Rep. Solomons /Sen. Lucio | <ul style="list-style-type: none"> • Extends death benefits to non-dependent parents who do not receive burial benefits and clarifies that a failure to file a claim for death benefits in the time required bars the claim unless "good cause" exists for the failure to file a claim under this section. • Previously, the standard for failing to file for these benefits within the statutory timeframe required a "compelling reason." • This bill originated from a legislative recommendation by OIEC. • Effective date: Applies to a compensable injury that occurs on or after September 1, 2009. |

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| HB 2547 | Rep. Giddings /Sen. Deuell | <ul style="list-style-type: none"> • Allows a treating doctor to request job description information from an injured employee's employer and requires the Commissioner of Workers' Compensation to prescribe a form to be used to identify the scope and functions the employee performed prior to the injury as well as a contact person for the employer. • The purpose of this legislation is to facilitate communication between employers and treating doctors regarding the availability of alternate duty or other return-to-work options for the injured employee. • Effective date: September 1, 2009. |
| HB 3625 | Rep. Elkins/Sen. Van de Putte | <ul style="list-style-type: none"> • Changes the timeframe for an insurance carrier to respond to a request for pre-authorization from three calendar days to three working days, which conforms the pre-authorization timeframes for network and non-network claims. • Effective date: Applies to a request for pre-authorization that occurs on or after September 1, 2009. |
| HB 4290 | Rep. Smithee /Sen. Duncan | <ul style="list-style-type: none"> • Makes conforming changes to the definition of "retrospective review" in the Labor Code and Chapter 1305, Insurance Code. • Clarifies that an Independent Review Organization (IRO) may review disputes regarding retrospective medical necessity denials for group health plans the same way that IROs review these disputes currently for workers' compensation. • Also clarifies that IROs may review issues relating to whether a health care procedure is "investigational" or "experimental" in nature. • Effective date: September 1, 2009. |
| HB 4545 | Rep. Raymond /Sen. Van de Putte | <ul style="list-style-type: none"> • Changes the timeframe for a party to dispute a decision by the Division's Appeals Panel to district court from 40 days to essentially 50 days from the date the decision was filed with the Division. • The actual language in the bill requires a request for judicial review to be filed no later than 45 days from the date the decision was mailed by the Division to the parties. • However, additional language was added to deem the decision to be mailed no later than 5 days from the date the decision was filed with the Division, giving a party up to 50 days, rather than 40 days to seek judicial review. • Effective date: Applies to a request for judicial review that occurs on or after September 1, 2009. |

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| SB 1814 | Sen. Van De Putte/Rep. Deshotel | <p>Contains several provisions relating to return-to-work reimbursements for Texas employers and return-to-work coordination services, including:</p> <ul style="list-style-type: none"> • Extends a pilot program that was created by HB 7 in 2005 to allow small employers to be reimbursed up to \$2,500 annually for making workplace modifications to help return an injured employee to work. The bill increases those reimbursements to up to \$5,000 annually and allows the Commissioner of Workers' Compensation to extend these reimbursements to other categories of employers as needed. • Additionally, this bill clarifies an insurance carrier's statutory responsibility to provide return-to-work coordination services on an <u>ongoing basis</u> when an employer's injured employee begins to lose time away from work and requires insurance carriers to notify their policyholders regarding the availability of the Division's employer return-to-work reimbursement program. • The bill originated from a legislative recommendation by the Division of Workers' Compensation. • Effective date: Immediate effect. |
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| Legislation Not Passed, 81st Legislative Session | | |
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| Bill Number | Author | Summary of Key Provisions/Reason the Bill Did Not Pass |
| HB 32 | Rep. Leibowitz | <p>Relating to prohibiting discrimination against certain employees who sustain an injury in the course and scope of employment.</p> <p>Last status: Referred to Business and Industry. Left Pending in Subcommittee.</p> |
| HB 33 | Rep. Leibowitz | <p>Relating to certain requirements for employers not covered by workers' compensation insurance.</p> <p>Last status: Referred to Business and Industry. Left pending in subcommittee.</p> |
| HB 34 | Rep. Leibowitz | <p>Relating to the enforceability of certain contracts between an employer who does not have workers' compensation coverage and an employee of the employer.</p> <p>Last status: Referred to State Affairs. Left pending in committee.</p> |
| HB 35 | Rep. Leibowitz | <p>Relating to reporting requirements for employers not covered by workers' compensation insurance.</p> <p>Last status: Referred to Business and Industry. Left pending in subcommittee.</p> |
| HB 321 (companion to SB 65) | Rep. Raymond | <p>Relating to leave for junior college district or university system employees who are physically assaulted while on duty.</p> <p>Last status: Referred to Higher Education Committee.</p> |

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| HB 520 (Entergy-related bill) | Rep. Giddings | Relating to workers' compensation insurance coverage under certain agreements and to liability of third parties for an injury to an employee. Last status: Referred to Business and Industry. |
| HB 560 | Rep. Menendez | Relating to injury leave for peace officers injured by an intoxicated driver of a motor vehicle or boat. Last status: Referred to Public Safety Committee. |
| HB 698 (OIEC legislative recommendation; companion to SB 378) | Rep. Zerwas | Relating to the Designated Doctor's examination under the workers' compensation system. Last status: Referred to Business and Industry. Left pending in subcommittee. |
| HB 699 (OIEC legislative recommendation; companion to SB 394) | Rep. Zerwas | Relating to the appointment of an attorney for a workers' compensation claimant in certain judicial review proceedings initiated by a workers' compensation insurance carrier. Last status: Referred to Business and Industry. Left pending in subcommittee. |
| HB 1166 | Rep. Leibowitz | Relating to certain requirements for doctors providing professional services under the workers' compensation system. Last status: Referred to Business and Industry. Out of Committee. Committee report sent to Calendars. |
| HB 1657 (Entergy-related bill) | Rep. Giddings | Relating to workers' compensation insurance coverage regarding certain contractors. Last status: Engrossed. Referred to Senate State Affairs. Scheduled for Public Hearing. Placed on Senate Intent Calendar. |
| HB 1820 | Rep. John Davis | Relating to provision of workers' compensation medical benefits to a police officer or firefighter injured in the line of duty; providing an administrative violation. Last status: Referred to Business and Industry. |
| HB 2198 (OIEC legislative recommendation; companion to SB 1924) | Rep. Solomons | Relating to the notice required of certain political subdivisions. Last status: Referred to Business and Industry. Left pending in committee. |
| HB 2271 | Rep. Truitt | Relating to the regulation of certain chiropractic clinics; providing administrative and criminal penalties. Last status: Referred to Public Health. Out of Committee. Committee report sent to Calendars. |
| HB 2428 (DWC legislative recommendation; similar to SB 1815) | Rep. Deshotel | Relating to immunity from liability for doctors performing certain medical services at the request of the Division of Workers' Compensation. Last status: Referred to Business and Industry. Left pending in subcommittee. |

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| HB 2429 (DWC legislative recommendation; similar to SB 1814, which passed) | Rep. Deshotel | Relating to return-to-work coordination services and the return-to-work reimbursement program for employers participating in the Texas workers' compensation system. Last status: Referred to Business and Industry. Left pending in subcommittee. |
| HB 2544 | Rep. Giddings | Relating to the payment of attorneys' fee liens in certain workers' compensation benefit matters. Last status: Referred to Business and Industry. Out of Committee. Committee report sent to Calendars. Placed on General State Calendar. |
| HB 2815 (OIEC legislative recommendation) | Rep. Giddings | Relating to requirements regarding information to be provided to employees covered by workers' compensation health care networks. Last status: Referred to Business and Industry. Out of Committee. Committee Report sent to Calendars. Placed on General State Calendar. |
| HB 3262 | Rep. Naishtat | Relating to providers of vocational rehabilitation services under the workers' compensation program. Last status: Referred to Business and Industry. Left pending in committee. |
| HB 3667 | Rep. Hopson | Relating to allowing health care providers to provide services across state lines in catastrophic circumstances. Last status: Referred to Public Health Committee. Left pending in committee. |
| HB 3724 | Rep. Jackson | Relating to the amount of attorney's fees awarded to a claimant's counsel in certain employees compensation proceedings. Last status: Referred to Business and Industry Committee. |
| HB 3759 | Rep. Smithee | Relating to the operation and regulation of certain consolidated insurance programs. Last status: Referred to Insurance Committee. |
| HB 3821 (OIEC legislative recommendation) | Rep. Leibowitz | Relating to waiver of an insurer's right to contest compensability of certain workers' compensation claims. Last status: Referred to Business and Industry. |
| HB 3822 (OIEC legislative recommendation) | Rep. Leibowitz | Relating to review of the medical necessity of certain health care provided in connection with a workers' compensation claim. Last status: Referred to Business and Industry. |
| HB 3823 (OIEC legislative recommendation) | Rep. Leibowitz | Relating to certifications of maximum medical improvement and assignments of impairment ratings under the workers' compensation system. Last status: Referred to Business and Industry. |
| HB 3960 | Rep. McReynolds | Relating to workers' compensation for employees and volunteers of an emergency service organization. Last status: Referred to Business and Industry. Committee report printed and distributed. Placed on General State Calendar. |

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| HB 4371 | Rep. Elkins | Relating to failure to submit to a Designated Doctor Examination. Last status: Referred to Business and Industry. Committee report sent to Calendars. Placed on General State Calendar. |
| HB 4372 | Rep. Elkins | Relating to income benefits in the workers' compensation system. Last status: Referred to Business and Industry. Committee report sent to Calendars. Placed on General State Calendar. |
| HB 4398 | Rep. Deshotel | Relating to workers' compensation Supplemental Income Benefits. Last status: Referred to Business and Industry. Left pending in committee. |
| HB 4624 | Rep. Lucio III | Relating to certain requirements for doctors providing professional services under the workers' compensation system. Last status: Referred to Business and Industry Committee. |
| SB 65 (companion to HB 321) | Sen. Zaffirini | Concerning certain workers' compensation benefits. Last status: Engrossed. Referred to House Higher Education Committee. |
| SB 180 | Sen. Gallegos | Relating to the creation of a state occupational health and safety plan; establishing a maintenance tax. Last status: Referred to State Affairs. |
| SB 378 (OIEC legislative recommendation; companion to HB 698) | Sen. Van de Putte | Relating to the Designated Doctor's examination under the workers' compensation system. Referred to State Affairs. Passed Senate. Last status: Referred to House Business and Industry. Out of Committee. Committee report sent to Calendars. |
| SB 394 (OIEC legislative recommendation; companion to HB 699) | Sen. Lucio | Relating to the appointment of an attorney for a workers' compensation claimant in certain proceedings initiated by a workers' compensation insurance carrier. Last status: Engrossed. Referred to House Business and Industry. Committee report sent to Calendars. |
| SB 442 (OIEC legislative recommendation; companion to HB 1058, which passed) | Sen. Lucio | Relating to the receipt of death benefits in the workers' compensation system. Last status: Referred to State Affairs. Committee report printed and distributed. |
| SB 556 | Sen. Hinojosa | Relating to requirements for certain contracts with physicians and health care providers. Last status: Referred to State Affairs. |
| SB 1213 (companion to HB 4560, which passed) | Sen. Gallegos/Sen. Deuell | Relating to certain diseases or illnesses suffered by certain emergency first responders. Last status: Referred to State Affairs. |

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| SB 1551 | Sen. Carona | Relating to the operation and regulation of certain consolidated insurance programs. Last status: Referred to State Affairs. |
| SB 1696 | Sen. Ogden | Relating to workers' compensation compensability disputes, examinations to define the compensable injury and notifications to health care providers regarding compensability disputes. Last status: Referred to State Affairs. Left pending in committee. |
| SB 1815 (DWC legislative recommendation - similar to HB 2428) | Sen. Van de Putte | Relating to immunity from liability for doctors performing certain services at the request of the Division of workers' compensation of the Texas Department of Insurance. Last status: Passed Senate. Referred to House Business and Industry. Committee report sent to Calendars. Placed on General State Calendar. |
| SB 1924 (OIEC legislative recommendation – companion to HB 2198) | Sen. Watson | Relating to the notice required of certain political subdivisions. Last status: Referred to State Affairs. |
| SB 1925 (OIEC legislative recommendation – companion to HB 673, which passed) | Sen. Watson | Relating to certain services provided by the office of injured employee counsel under the workers' compensation program of this state. Last status: Referred to State Affairs. |
| SB 1985 | Sen. Uresti | Relating to workers' compensation health care reimbursement policies and fee guidelines for certain health care services. Last status: Referred to State Affairs. |
| SB 2063 (Entergy-related bill) | Sen. Duncan | Relating to workers' compensation insurance coverage regarding certain contractors. Last status: Referred to State Affairs. Left pending in committee. |
| SB 2200 (TDI legislative recommendation - companion to HB 4290, which passed) | Sen. Duncan | Relating to retrospective utilization review and utilization review to determine the experimental or investigational nature of a health care service. Last status: Referred to State Affairs. |
| SB 2419 | Sen. Deuell | Relating to preventative treatment for state employees exposed to HIV while performing duties of employment. Last status: Referred Health and Human Services. Passed Senate. Referred to House State Affairs. |

IX. Policy Issues

Overview

Since the passage of significant legislative reforms in 2001 (HB 2600) and in 2005 (HB 7), the workers' compensation system has improved considerably and continues to show signs of progress. Although evaluation continues on the impact of many of the 2005 legislative reforms, including health care networks and treatment guidelines, indications are that the frequency of claims continues to decline, medical costs have stabilized and return-to-work rates continue to improve in the system. In addition, the system has experienced a decrease in workers' compensation insurance rates and premiums.⁴ In light of these improving system trends, the Texas Department of Insurance (Department), Division of Workers' Compensation (Division) focused its efforts on identifying policy recommendations that will:

- help clarify the agency's existing statutory authority to adequately administer and enforce the Workers' Compensation Act;
- improve access to care for injured employees;
- monitor the cost and quality of medical care provided in all types of health care networks; and
- clarify the agency's role in certain claims administration functions.

These policy recommendations include:

- Provide the Commissioner of Workers' Compensation with the same power as the Commissioner of Insurance to review proposed decisions made by the State Office of Administrative Hearings (SOAH) regarding the appeal of all Division enforcement actions and to issue final enforcement orders.
- Provide the Division with the right to appeal a SOAH decision regarding medical fee or medical necessity disputes in certain circumstances.
- Provide health care providers with an adequate amount of time to communicate with insurance carriers and/or their utilization review agents about medical necessity issues prior to a denial.
- Eliminate the need for an alternative medical dispute process for low cost medical treatments by requiring workers' compensation insurance carriers to pay IRO fees for non-network retrospective medical necessity disputes.
- Require political subdivisions that directly contract with health care providers under Texas Labor Code, Section 504.053 (b) to register with the Texas Department of Insurance.
- Examine whether insurance carriers, rather than the Division should perform specific claims administration functions and clarify whether the Division's statutory role should be to resolve any individual claim disputes that arise between insurance carriers and injured employees.

⁴ See Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, *Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System, 2008 Results*, 2009.

In addition to specific policy recommendations regarding the agency's statutory authority to administer and enforce the Texas Workers' Compensation Act and rules, the Division also lays out two additional policy issues that impact the system as a whole and will likely be the subject of considerable discussion among system stakeholders and policymakers during the 82nd legislative session:

- the adequacy of income benefits for injured employees; and
- the role of "bad faith" in the Texas workers' compensation system.

A1. Brief Description of Policy Issue

Should the Division's statutory authority be clarified to enhance the agency's ability to enforce the Workers' Compensation Act and rules and ensure consistent medical dispute resolution decisions?

B1. Discussion

The following discussion examines two issues where changes in statutory authority could allow the Division to more effectively enforce the provisions of the Workers' Compensation Act and rules as well as improve the consistency of medical dispute resolution decisions.

The Current Role of the State Office of Administrative Hearings (SOAH) in Determining Final Enforcement Actions for Violations of the Texas Workers' Compensation Act and Rules

Currently, in situations where the Department or the Division pursue administrative penalties or other types of sanctions against regulated entities (such as insurance carriers, agents, health care providers, etc.) for violations of the Texas Insurance Code, the Texas Workers' Compensation Act in the Texas Labor Code, or Department or Division rules, the regulated entity has the ability to request a hearing before the State Office of Administrative Hearings (SOAH) to review the facts and issue a decision.

If the violation is in regard to the Texas Insurance Code and Department rules, then the SOAH administrative law judge conducts the contested case hearing, makes findings of fact and conclusions of law, and issues a proposed decision back to the Department for consideration. Once the Department reviews the proposed decision by the SOAH administrative law judge, the Commissioner of Insurance has the authority to issue the final enforcement order. The joint Memorandum of Understanding (MOU) between the Department and SOAH, as well as the rule found in 28 Texas Administrative Code, Section 1.90 addresses these procedures in detail. This same procedure is also used in situations where the Division is seeking non-monetary sanctions against a health care provider (such as suspension or deletion from the Designated Doctor List). However, if the violation is in regard to the Texas Workers' Compensation Act and Division rules (e.g., violations against insurance carriers and other regulated entities) and the Division is seeking monetary penalties against a regulated entity, then the SOAH administrative law judge conducts the contested case hearing, makes findings of fact and conclusions of law, and issues a final decision on the enforcement action (per Texas Labor Code, Section 402.073). In these cases, the Commissioner of Workers' Compensation does not have the ability to issue a final decision regarding the enforcement action.

As a result, there are different notice provisions prior to the imposition of administrative penalties for regulated entities under the Texas Insurance Code and the Texas Workers' Compensation Act in the Texas Labor Code, as well as different notice provisions for regulated entities that violate the Texas Workers' Compensation Act, depending on whether the Division decides to seek monetary or non-monetary penalties or sanctions. With the merger of the Texas Workers' Compensation Commission and the Department and the removal of specific classifications of penalties under the Texas Workers'

Compensation Act in 2005, the Department's and Division's understanding of these changes is that the legislature intended the enforcement function and the procedures used by the Division to be aligned as much as possible with the Department. Additionally, the lack of harmonization of notice provisions between the Insurance Code and the Texas Workers' Compensation Act in the Texas Labor Code, as well as the inability for the Commissioner of Workers' Compensation to make final enforcement decisions restricts the Division's ability to utilize both monetary and non-monetary penalties efficiently on individual cases. By statute, the Commissioner of Workers' Compensation is ultimately responsible for the administration and enforcement of the Texas Workers' Compensation Act and rules; however, the inability to make final enforcement decisions in cases where monetary penalties are sought makes it difficult to ensure that these statutory responsibilities are fully realized.

Final Medical Dispute Decisions Issued by the State Office of Administrative Hearings ("SOAH")

House Bill (HB) 7 (79th Legislature, Regular Session, 2005) made several changes to the medical dispute resolution process, including: requiring that all Independent Review Organization (IRO) decisions meet certain statutory standards;⁵ clarifying that the Department and the Division are not a party in the medical dispute; making the decision of the IRO binding pending appeal; and requiring that appeals of medical dispute decisions go directly to district court (removing the appeal of medical dispute decisions to the State Office of Administrative Hearings or SOAH).

On November 1, 2006, a Travis County district court determined in *HCA Healthcare Corp. v. Texas Department of Insurance and Division of Workers' Compensation, Cause No. D-1-GN-06-000176*, that the medical dispute resolution process as revised by HB 7 did not provide due process to parties and determined the removal of SOAH to be facially unconstitutional. As a result, the 80th Texas Legislature passed HB 724 in 2007, and the Division enacted rules, which require appeals of non-network medical fee dispute decisions in which the amount in dispute does not exceed \$2,000, all non-network pre-authorization (medical necessity) disputes, and non-network retrospective medical disputes in which the amount in dispute does not exceed \$3,000 to be heard in a contested case hearing (CCH) in the Division's local field offices. Appeals of non-network medical disputes that do not meet these requirements may be appealed directly to SOAH. If the parties to the dispute, generally the health care provider and the insurance carrier, are not satisfied with the result of the CCH or SOAH appeal, either party may request judicial review.

As a general rule for state agencies, after hearing a contested case, the administrative law judge at SOAH will issue to the state agency official making the final decision in the case, a proposal for decision that contains a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision. Texas Government Code, Section 2001.058(e)(1) allows a state agency to change an administrative law judge's conclusion of law if the state agency determines that the administrative law judge did not properly interpret applicable law, agency rules, or written policies provided by the state agency. However, Texas Labor Code, Section 402.073 states that for appeals of medical dispute decisions (including non-network medical fee disputes and appeals of IRO decisions) under Section 413.031, appeals of interlocutory orders under Section 413.055, or appeals of certain administrative violations under Section 415.034, the SOAH administrative law judge enters the final decision in the case after completion of the hearing. Consequently, in these cases, the Division cannot correct an administrative law judge's incorrect interpretation of applicable law, Division rules, or written policies of the Division.

⁵ Under HB 7, IRO decisions must contain all of the following elements: the qualifications of the doctor reviewer, a description of the clinical criteria used in making the decision, a list of the medical evidence reviewed, and an analysis and explanation of the decision. See Section 413.032, Texas Labor Code.

The inability to make such corrections is not only problematic from the perspective of ensuring that the Commissioner of Workers' Compensation is able to fulfill his statutory responsibilities to administer and enforce the Texas Workers' Compensation Act and rules, but it also makes it more difficult to ensure consistency in medical dispute decisions made by Division Contested Case Hearing (CCH) officers and SOAH. Also, the inability to appeal a SOAH decision that is based on a misinterpretation of the Texas Workers' Compensation Act and rules may complicate the ability of the Division to resolve other similar types of medical disputes in the future.

C1. Possible Solutions and Impact

Provide the Commissioner of Workers' Compensation with the same power as the Commissioner of Insurance to review proposed decisions made by the State Office of Administrative Hearings (SOAH) regarding the appeal of all the Division enforcement actions and issue final enforcement orders.

Amend Texas Labor Code, Section 402.073 to allow Texas Government Code, Section 2001.058(e)(1) to apply to enforcement actions pursued by the Division and allow the Division to enter into a Memorandum of Understanding (MOU) with SOAH (or allow the Division to be added to the existing MOU with the Department) to utilize the same procedures for receiving proposed decisions and rendering final enforcement decisions. Additionally, align the notice provisions for violations under the Workers' Compensation Act in the Texas Labor Code, Chapters 402 and 415 to allow the Division to more effectively utilize monetary and non-monetary penalties in conjunction with each other when it is appropriate in order to promote compliance with the Texas Workers' Compensation Act and rules.

Provide the Division with the right to appeal a SOAH decision regarding medical fee or medical necessity disputes in certain circumstances.

Although the Workers' Compensation Act in the Texas Labor Code, Chapter 413 makes it clear that the Division is not a party to medical disputes, the Division suggests that Chapter 413 be amended to allow the Commissioner of Workers' Compensation to appeal a SOAH decision in limited situations where the Division believes there has been a misinterpretation of the Workers' Compensation Act or rules. This recommendation is particularly relevant if none of the other parties to the dispute (i.e., the insurance carrier, the injured employee or the health care provider) appeal a SOAH decision since that decision may be used as precedence in later medical disputes.

A2. Brief Description of Policy Issue

Should the Department's and Division's statutory roles be expanded to improve the availability and delivery of prompt and medically necessary health care to injured employees, while ensuring that costs unrelated to work-related injuries or illnesses are not transferred into the workers' compensation system?

B2. Discussion

The following discussion examines three issues that currently serve as friction points between health care providers and insurance carriers in the Texas workers' compensation system:

- compensability and extent of injury denials;
- health care provider and insurance carrier communication during the pre-authorization process; and
- the availability of cost-effective dispute resolution for low cost medical procedures.

These friction points often impact health care providers' decisions to participate in the workers' compensation system, resulting in ongoing legislative discussions regarding how to reduce administrative hassles for health care providers, while maintaining a cost-effective system for Texas employers.

Compensability and Extent of Injury Denials and Disputes

Since 2005, several changes have been made to the Texas workers' compensation system in an effort to improve access to care for injured employees, including increasing overall reimbursement rates for individual health care providers,⁶ providing financial incentives to health care providers who treat in underserved areas of Texas,⁷ adopting evidence-based treatment and return-to-work guidelines in 2007 to provide greater certainty regarding what is reasonable and necessary medical treatment for specific types of work-related injuries, and new medical dispute resolution rules in 2007 and 2008 to ensure that health care providers and insurance carriers have adequate due process during appeals.

Despite these significant changes to the system, some injured employees continue to face challenges in certain circumstances when searching for a health care provider. Since workers' compensation insurance carriers are only responsible for paying for medical treatment that is related to the work-related injury, there are situations where health care providers render care only later to discover that some portion or the entire workers' compensation claim itself is being disputed by the insurance carrier, and payment for the services provided is denied. This can create a potential financial burden for the health care provider because most group health insurance policies (and Medicare and Medicaid) specifically exclude payment for work-related injuries. As a result, payments to health care providers may be delayed until a dispute over whether all or part of the claim is work-related is finally adjudicated. Additionally, injured employees may have difficulty trying to locate a health care provider who is willing to provide necessary medical treatment and supply medical documentation to support their claim that the injury is work-related.

In 2005, HB 7 added new provisions to Texas Labor Code Section 408.027, which allows group health insurance carriers to request reimbursement for any medical treatments paid out on a work-related injury and also allows a workers' compensation insurance carrier to request similar reimbursement from a group

⁶ In March 2008, the Texas Department of Insurance, Division of Workers' Compensation (DWC) adopted an updated fee guideline for professional services and increased reimbursement rates for surgical services provided in a facility setting to approximately 174 percent of Medicare and increased reimbursement rates for all other professional services to approximately 139 percent of Medicare. Additionally, this updated fee guideline made important changes to the reimbursement formula to add an annual inflation factor (the Medicare Economic Index) to help keep reimbursement rates in tune with increases in providers' overhead costs over time and to remove the connection between workers' compensation reimbursement rates and federal budget neutrality provisions for Medicare reimbursements.

⁷ The Division also included a provision in the 2008 professional services fee guideline to provide an additional 10 percent reimbursement for health care providers treating injured employees in selected underserved areas in Texas (see rule 134.2).

health insurance carrier for any medical treatments paid out of a claim determined to be non-compensable. Additionally, provisions were added by HB 1562 in 2001 and HB 724 in 2007 to allow group health insurance carriers to request confidential claim information from the Division for the purpose of identifying potential sub-claims, and to provide group health insurance carriers with access to the IRO process and Division medical fee dispute resolution to resolve any disputes raised between the group health insurance carrier and the workers' compensation insurance carrier about the medical necessity or the fee for treatment rendered on a work-related injury. Despite the ability to request reimbursements from each other and the ability for group health insurance carriers to identify potential sub-claims and resolve disputes administratively at the Division, it is not clear whether it is the group health insurance carrier or the workers' compensation insurance carrier's statutory responsibility to pay for medically necessary treatment on an injury that has been denied or disputed as not being work-related.

Complicating this issue is the confusion among system stakeholders about what a workers' compensation insurance carrier's statutory duty is during the first sixty days of the claim. Texas Labor Code Section 409.021(c) currently states that an insurance carrier who does not contest compensability of an injury on or before the 60th day after the date, on which the carrier is notified of the injury, waives its right to contest compensability. However, disputes regarding the extent of the employee's compensable injury (i.e., whether additional diagnoses or body parts are related to the compensable injury) routinely occur on certain claims after the 60th day and there is no statutory timeframe associated with these types of disputes.⁸ The major concern for the Division and policymakers is how to encourage prompt investigation and payment of medical and income benefits on workers' compensation claims, while not allowing the opportunity for "diagnosis creep," which can add considerable and unnecessary cost to the workers' compensation system.

Communication between Health Care Providers and Insurance Carriers during the Pre-Authorization Process

Currently, certain medical treatments (e.g., surgery, hospitalization, investigational and experimental procedures) are required to be pre-authorized (i.e., pre-approved) by the insurance carrier prior to being rendered by the health care provider.⁹ Although the list of services requiring pre-authorization may differ for network and non-network claims (certified health care networks may develop their own pre-authorization lists and are not required to use the list developed by the Division for non-network medical treatments), the general process for conducting the pre-authorization remains the same, including the requirement that any adverse determination (i.e., denial) be rendered at the end of the third working day from the date the request for pre-authorization is received by the insurance carrier.¹⁰

Although Texas Insurance Code, Section 4201.206 requires the insurance carrier's utilization review agent to provide the requesting health care provider with the opportunity to discuss any potential pre-

⁸ One recent case from the Texas Supreme Court, *State Office of Risk Management v. Lawton*, addresses the issue of whether the waiver provision in Texas Labor Code, Section 409.021 applies only to general disputes over the existence of a work-related injury or whether it also applies to disputes regarding the extent of the compensable injury. The question before the court was whether the standard currently applied by the Division's Appeals Panel in these cases (i.e., if a diagnosis that could have been reasonably discovered during the insurance carrier's initial investigation of the claim was not disputed at the conclusion of the 60th day, then the insurance carrier has waived its right to dispute the compensability of that particular diagnosis) should be upheld or whether an insurance carrier's responsibility during the first 60 days of the claim is simply to determine whether a work-related injury has occurred or not. On August 28, 2009, the Court ruled the latter.

⁹ See Texas Labor Code, Section 413.014, Texas Insurance Code, Section 1305.351, Division rule 134.600 and Department rule 10.102.

¹⁰ See Chapter 4201, Texas Insurance Code. HB 3625 passed by the 81st Legislature, aligned the statutory timeframe for processing pre-authorization requests for certified network and non-network claims. Prior to HB 3625, insurance carriers had three working days to process pre-authorization requests for non-network medical treatments and three calendar days to process pre-authorization requests for network medical treatments. As of September 1, 2009, insurance carriers will have three working days to respond to all pre-authorization requests in the Texas workers' compensation system.

authorization denial prior to the issuance of the denial, this communication can be complicated by the relatively short timeframe for an insurance carrier's review (three working days) coupled with the business schedule of the requesting provider - particularly if the provider is a surgeon and has limited office availability. In some cases, a discussion between the requesting health care provider and the insurance carrier's utilization review doctor can resolve the insurance carrier's concern regarding medical necessity and avoid a denial. However, currently the statute does not provide a health care provider and an insurance carrier with adequate time to discuss potential medical necessity denials and/or request and exchange any documentation that may be needed to make a final determination about medical necessity. Additionally, the statute does not currently allow the three-day pre-authorization requirement to be extended upon mutual agreement of the provider and the insurance carrier in situations where additional documentation may need to be exchanged and reviewed.

Medical Dispute Resolution Options for Low-Cost Medical Procedures

Prior to 2001, all medical necessity and medical fee disputes were resolved by Texas Workers' Compensation Commission staff. In an effort to reduce the timeframe for medical dispute resolution and to ensure that medical necessity disputes (both prospective and retrospective medical necessity) were resolved by medical experts, the 77th Legislature passed House Bill (HB) 2600 in 2001, which required that medical necessity disputes be resolved by private panels of health care providers certified by the Department called Independent Review Organizations (IROs). IROs have been used to resolve prospective medical necessity disputes between health care providers and Health Maintenance Organizations (HMOs) since 1997. In the Texas workers' compensation system, IROs resolve both prospective and retrospective medical necessity disputes.¹¹

The cost of an IRO review varies depending on the type of health care provider conducting the review (\$650 per review for Medical Doctors and Doctors of Osteopathic Medicine and \$460 other types of health care providers). These IRO costs for resolving a prospective denial of medical treatment as not medically necessary (i.e., pre-authorization denial) or for any injured employee requests for an IRO are always paid by the insurance carrier (HMO or workers' compensation insurance carrier). Additionally, if the dispute concerns a retrospective denial of medical necessity and the treatment was rendered in a certified health care network, the workers' compensation insurance carrier is responsible for the payment of the IRO fee. However, if the treatment is retrospectively denied as not being medically necessary and it was not rendered in a certified health care network, then Texas Labor Code, Section 413.031 currently states that the IRO fee be paid by the non-prevailing party. This generally requires a health care provider to "pre-pay" the IRO fee when he or she requests the medical dispute resolution. If the health care provider ultimately prevails in the dispute, then the insurance carrier is required to refund the cost of the IRO fee to the health care provider.

Health care providers have expressed concerns that the requirement that the non-prevailing party pay the IRO fee for retrospective medical necessity disputes would discourage health care providers from disputing denials of medical services that cost less than the IRO fee. In 2003, the 78th Legislature passed HB 3168, which allowed the Texas Workers' Compensation Commission to adopt an alternative medical dispute resolution process designed for lower cost medical treatments. In response, the Texas Workers' Compensation Commission adopted Rule 133.309 in 2004, which allowed the agency to assign an independent doctor from the Approved Doctors List to resolve these low-cost medical necessity disputes. Decisions rendered by these reviewing doctors were deemed a Commission decision and order and not subject to further review.

¹¹ In 2009, the 81st Legislature passed HB 4290, which allows retrospective medical necessity disputes between health care providers and Health Maintenance Organizations to be resolved by IROs effective September 1, 2009.

In 2004, several insurance carriers sued the Commission regarding the adoption of this rule, stating that the rule did not provide either party with adequate due process since the rule did not provide a way to appeal the decision of the reviewing doctor to the State Office of Administrative Hearings and the district court in the same way that other medical disputes can be appealed. In 2008, in *Texas Department of Insurance, Division of Workers' Compensation v. Insurance Council of Texas*, No. 03-05-00189-CV (mem. op.) the 3rd Court of Appeals affirmed a district court decision stating that the rule was invalid because it interpreted Texas Labor Code, Section 413.031 (k) (which provides the ability to appeal a medical dispute to either the State Office of Administrative Hearings or a Division Contested Case Hearing and then to district court) to also apply to the alternative medical dispute resolution process for low cost medical treatments. As a result, there is a lack of clarity regarding the legislature's intent in terms of providing an alternative medical dispute resolution process for low cost medical treatments. Particularly challenging is how the Division should balance the need for adequate due process for these types of disputes, with the fact that these appeal processes (Contested Case Hearings, State Office of Administrative Hearings, and district court appeals) are costly in and of themselves and may discourage the use of the alternative dispute process. Health care providers may believe that in the absence of a cost-effective medical dispute resolution process, there is an incentive for insurance carriers to deny low cost medical treatments. On the other hand, insurance carriers may believe that requiring them to pay all IRO fees will provide an incentive to health care providers to dispute every medical necessity denial.

C2. Possible Solutions and Impact

Examine and identify statutory barriers that prevent an injured employee whose claim is being denied or disputed from getting necessary medical treatments, while ensuring that costs unrelated to work-related injuries or illnesses are not transferred into the workers' compensation system

Several options exist that may encourage health care providers to treat injured employees, while preventing costs for non-work-related claims to be transferred into the workers' compensation system, including:

- Require workers' compensation insurance carriers to provide a written notice to health care providers when the insurance carrier is disputing whether the injury is work-related or not;
- Allow an injured employee to request that the treating doctor perform a medical examination to define the employee's injury the same way an insurance carrier can currently request this type of examination under Texas Labor Code, Section 408.0042;
- Clarify whether a workers' compensation insurance carrier's duty in the first sixty days of the claim is to simply acknowledge whether there is a work-related injury or not, or whether this duty extends to actually defining the extent of the work-related injury;
- Examine what, if any, statutory barriers exist that prevent a workers' compensation insurance carrier from requesting reimbursement from a health insurance carrier for any medical treatment that is ultimately determined to be non-compensable ;
- Examine what, if any, statutory barriers exist that prevent a health insurance carrier from seeking reimbursement from a workers' compensation carrier for any medical treatment that is ultimately determined to be compensable (i.e., the workers' compensation carrier's liability);
- If no statutory barriers exist preventing health insurance carriers and workers' compensation carriers from seeking reimbursements from each other; then clarify which carrier's responsibility it is to pay health care providers for medically necessary care when a workers' compensation claim has been denied or disputed;

- Examine whether any of the following actions would be appropriate to help limit an insurance carrier's liability for medical treatment rendered on denied or disputed claims:
 - increased pre-authorization requirements for injuries that have been denied or disputed as not being work-related;
 - a requirement that an injured employee in a disputed claim seek medical care from the insurance carrier's certified health care network during the pendency of any compensability or extent of injury dispute if the claimant is not already enrolled in a network; or
 - other statutory limitations on a workers' compensation insurance carrier's liability.

Provide health care providers with an adequate amount of time to communicate with insurance carriers and/or their utilization review agents about medical necessity issues prior to a denial.

It should be noted that there will always be situations where a proposed medical treatment is not medically necessary and the current statutory framework governing medical care in the Texas workers' compensation system contemplates that insurance carriers have the right to only pay for medical care that is medically necessary and related to the on-the-job injury. The issue being discussed here is whether the system can avoid unnecessary medical necessity denials and delays in medical treatment (i.e., denials that could be avoided with better communication between health care providers and insurance carriers about the need for the medical treatment and/or documentation about the medical necessity of the proposed medical treatment). A couple of options exist that would help encourage effective communication between health care providers requesting pre-authorization and insurance carriers/utilization review agents, including:

- Clarify Texas Insurance Code, Chapter 4202 to require insurance carriers/utilization review agents that question the medical necessity of a proposed medical treatment to contact the requesting health care provider to discuss the potential denial and provide the requesting health care provider at least one working day to respond; and
- Allow health care providers and insurance carriers/utilization review agents to extend the three-working day requirement for processing pre-authorization requests by mutual agreement, limited to a specific timeframe (e.g., five working days).

Eliminate the need for an alternative medical dispute process for low cost medical treatments by requiring workers' compensation insurance carriers to pay IRO fees for non-network retrospective medical necessity disputes.

Currently HMOs pay the IRO fee for all pre-authorization and concurrent review disputes and as of September 1, 2009, HMOs will also be responsible for paying IRO fees for retrospective medical necessity disputes. Additionally, workers' compensation insurance carriers currently pay the IRO fees for all medical necessity disputes related to certified network claims as well as all pre-authorization and concurrent review disputes for non-network claims and all medical necessity disputes requested by injured employees (in which the injured employee has paid for medical treatment out-of-pocket). Requiring workers' compensation insurance carriers to pay the IRO fees for non-network retrospective medical necessity disputes will not only further align the workers' compensation IRO process with group health and align the IRO process for network and non-network claims, but it will eliminate the need for providing an alternative medical dispute resolution process for low cost medical treatments.

A3. Brief Description of Policy Issue

Should political subdivisions that directly contract with health care providers under Texas Labor Code, Section 504.053 (b) be required to register with the Texas Department of Insurance, Division of Workers' Compensation?

B3. Discussion

Texas Labor Code, Section 504.053 (added by HB 7 in 2005) allows political subdivisions of this state (e.g., cities, counties, school districts) and intergovernmental risk pools the following options to provide health care to their injured employees:

- elect to use a workers' compensation health care network certified by the Department under Chapter 1305, Insurance Code;
- continue to allow their injured employees to seek medical treatments as non-network claims; or
- contract directly with health care providers if the use of a certified network is not "available or practical," essentially forming their own health care network.

If the political subdivision or risk pool chooses to contract directly with health care providers, then injured employees whose claims are being administered by those entities must choose a treating doctor from the list of treating doctors selected by the political subdivision or risk pool.

Because they are not required to be certified by the Department, Texas Labor Code Section 504.053 requires certain general standards for these political subdivision health care networks, including standards governing access to care, utilization review, dispute resolution and complaints, and reporting of data to the Division. Additionally, the statute requires that these political subdivision networks be subject to inclusion in the annual workers' compensation health care network report card published by the Workers' Compensation Research and Evaluation Group.

To date, the Division is aware of three individual political subdivision networks that are treating approximately 12,000 workers' compensation claims – one large network servicing multiple intergovernmental risk pools and two other networks servicing three political subdivisions. These networks are relatively new (less than two years old) and it is likely that more political subdivisions in Texas will explore this health care delivery option in the near future, particularly once the ability to contract with health care providers for discounts off of the Division's fee guideline is eliminated on January 1, 2011.¹²

Monitoring the quality and usage of these political subdivision networks has been challenging since political subdivisions that elect to directly contract with health care providers are not currently required to register with the Department or the Division. Without direct knowledge of which political subdivisions are contracting directly with health care providers and which claims are being serviced by these political

¹² House Bill (HB) 473 (80th Legislature, 2007) added Section 413.0115 and Section 413.011 (d-1) – (d-6), Labor Code, allows insurance carriers to continue to contract with health care providers for fees that are different than the Division's fee guidelines for non-network claims until January 1, 2011. At that time, these "informal or voluntary networks" as they are described in statute, must be certified by the Department. However, insurance carriers or their informal or voluntary networks must register with the Division and notify health care providers regarding any person who has access to the health care provider's contractual discount. This legislation was enacted, in part, to eliminate the use of "silent PPOs" for non-certified network claims by allowing health care providers to determine which insurance carriers have access to their contractual discounts.

subdivision networks, the Workers' Compensation Research and Evaluation Group cannot ensure that all political subdivision networks are included in the annual network report card.

Additionally, since certain requirements of the Workers' Compensation Act in the Labor Code do not apply to political subdivision networks (e.g., the requirement that the Division approve change of treating doctor requests, e-billing requirements, medical fee dispute resolution requirements, the use of required medical exams and designated doctor exams for issues other than a worker's entitlement to income benefits, etc.), and not all political subdivisions are using these networks, it is sometimes difficult for the Division and OIEC staff to assist health care providers and injured employees with questions about individual claims. This problem is often exacerbated because many times these employees and health care providers don't realize that they are participating in a network.

C3. Possible Solutions and Impact

Require political subdivisions that elect to directly contract with health care providers to register with the Division the same way that informal or voluntary networks do under Texas Labor Code, Section 413.0115.

To address concerns about the Workers' Compensation Research and Evaluation Group's ability to produce a complete network report card and to effectively assist all injured employees and health care providers in the Texas workers' compensation system, the Division proposes that political subdivisions utilizing the ability to directly contract with health care providers register with the Division and be required to participate in regular Division-sponsored data calls to identify affected claims.

Registration and/or certification requirements exist for other types of health care networks in the workers' compensation system, including "informal" or "voluntary" networks which allow insurance carriers to directly contract with health care providers for discounts off of the Division's fee guideline for medical treatment in non-network claims. The Division contemplates that a registration process similar to the one that is currently used for informal or voluntary networks, coupled with increased agency monitoring of other existing insurance carrier data reporting requirements (e.g., medical billing data), will enable the agency to more effectively monitor the outcomes of these political subdivision network arrangements and assist injured employees.

A4. Brief Description of Policy Issue

What role, if any, should the Division play in certain specific claims administration functions?

B4. Discussion

The statutory role and responsibilities of the Division and the Commissioner of Workers' Compensation consist of the administration of the Texas workers' compensation system and the enforcement of the Texas Workers' Compensation Act and rules. This includes ensuring that the key statutory goals outlined in Texas Labor Code, Section 402.021 are met. As a result, the Division takes on multiple roles in the system, including setting of general policies and rules regarding the administration of claims and amount and delivery of benefits; resolving individual claim disputes; educating system stakeholders about the requirements of the Act and rules; advising Texas employers regarding safety and return-to-work issues; monitoring stakeholder compliance; and pursuing enforcement actions when necessary.

In addition to these statutory roles, the Workers' Compensation Act in the Texas Labor Code currently requires the Division to perform certain administrative functions for individual claims. Examples of some of these functions include:

- Processing injured employee requests to change treating doctors (Texas Labor Code, Section 408.022);
- Processing injured employee requests to accelerate the payment of Impairment Income Benefits (Texas Labor Code, Section 408.129);
- Processing injured employee requests for advance payments of income benefits (Texas Labor Code, Section 408.085);
- Processing injured employee or insurance carrier requests to extend the date of statutory maximum medical improvement in cases where the injured employee has spinal surgery (Texas Labor Code, Section 408.104); and
- Initial determination of an injured employee's entitlement to the first quarter of Supplemental Income Benefits (Texas Labor Code, Sections 408.143 and 408.147).

In some cases, the Division may be required to perform a specific claims administrative function (e.g., the processing of an injured employee's request for change of treating doctor), as well as resolve disputes if either party disagrees with the Division's determination as part of that function.

C4. Possible Solutions and Impact

Examine whether insurance carriers, rather than the Division should perform specific claims administration functions and clarify whether the Division's statutory role should be to resolve any individual claim disputes that arise between insurance carriers and injured employees.

The Division suggests that its statutory role be clarified to remove certain claims administration requirements and instead focus its statutory responsibility on administering the system as a whole; enforcing the Act and rules; and resolving individual claim disputes between insurance carriers and injured employees. These claims administrative functions require the expenditure of state resources that could be spent performing other statutory responsibilities, and responsibility for these sometimes conflicting duties complicate the Division's role as an independent arbiter of individual claim disputes. Insurance carriers administer their claims in accordance with the Act and rules, including the initial acceptance or denial of a claim and payment of benefits. The Division recommends that insurance carriers be responsible for these specific claims administration duties the same way they are responsible for other aspects of claims administration and that the Division continue to resolve any disputes that arise between insurance carriers and injured employees regarding an individual injured employee's claim.

In addition to the policy issues that directly relate to the agency's statutory authority to administer the Texas workers' compensation system, the Division addresses two additional policy issues that have generated recent attention.

A5. Brief Description of Policy Issue

Does the current workers' compensation income benefit structure currently in statute ensure the adequacy, efficacy, and efficient delivery of income benefits to injured employees, while promoting the safe and timely return to productive employment?

B5. Discussion

The following discussion examines the current income benefit structure, how it generally compares with similar benefit structures in other state workers' compensation systems, and the issues that have highlighted the need to possibly re-examine the income benefit structure for certain groups of injured employees.

Overview of Current Income Benefit Structure.

Currently five types of income benefits are payable to injured employees under the Texas Labor Code. The table below provides a brief description of each of these benefits, including their statutory eligibility requirements, compensation rates, statutory maximum and minimum payments, and payment durations. The income benefit structure currently in place in Texas has remained largely the same since the 1989 legislative overhaul of the system; however, because income benefits in Texas are largely based on an injured employee's pre-injury wages, the actual amount of benefits received by injured employees increase over time as wages increase.

| Overview of the Income Benefit Structure in the Texas Workers' Compensation System | | | | |
|---|--|---|--|--|
| Benefit Type | Eligibility Requirements | Benefit Compensation Rates | Maximum and Minimum Payments | Payment Durations |
| <p>Temporary Income Benefits (TIBs)</p> <p>Paid during the period of temporary disability (lost time from work) while the worker is recovering from a compensable on-the-job injury</p> | <p>Employee qualifies after 1 week of lost time. If an employee is off work for 2 weeks, then the employee receives TIBs retroactively for the first week of disability.</p> | <p>70% of employee's pre-injury average weekly wage if employee makes more than \$8.50/hr</p> <p>75% of employees average weekly wage if employee makes less than \$8.50/hr</p> | <p>Maximum weekly benefit is based on 100% of the State Average Weekly Wage.</p> <p>Minimum weekly benefit is based on 15% of the State Average Weekly Wage</p> <p>Current Max - \$750 Current Min - \$112</p> | <p>Benefits are paid weekly until:</p> <ul style="list-style-type: none"> employee returns to work at pre-injury weekly wage; reaches maximum medical improvement (MMI); or receives TIBs for 104 weeks from the date that disability began (also known as statutory maximum medical improvement) |

Overview of the Income Benefit Structure in the Texas Workers' Compensation System (continued)

| Benefit Type | Eligibility Requirements | Benefit Compensation Rates | Maximum and Minimum Payments | Payment Durations |
|---|--|--|---|---|
| <p>Impairment Income Benefits (IIBs)</p> <p>Paid to injured employees who experience a permanent impairment as a result of a compensable on-the-job injury.</p> | <p>If employee has reached maximum medical improvement (MMI), then a doctor assigns an impairment rating using the American Medical Association's Guides to the Evaluation of Permanent Impairment (AMA Guides).</p> | <p>70% of employee's pre-injury average weekly wage 70% of employee's pre-injury average weekly wage</p> | <p>Maximum weekly benefit is based on 70% of the State Average Weekly Wage.</p> <p>Minimum weekly benefit is based on 15% of the State Average Weekly Wage</p> <p>Current Max - \$525 Current Min - \$112</p> | <p>Benefits are paid for 3 weeks for each percentage point of impairment assigned to the injured employee based on the <i>AMA Guides</i>.</p> |
| <p>Supplemental Income Benefits (SIBs)</p> <p>Paid to injured employees for ongoing disability after IIBs have been exhausted.</p> | <p>To receive SIBs, an injured employee must:</p> <ul style="list-style-type: none"> • have at least a 15% impairment rating; • be unemployed or underemployed; • not elected to receive IIBs in a lump sum; and • made an active effort to comply with work search requirements laid out by the Division <p>Eligibility for SIBs is determined quarterly and benefits are paid monthly.</p> | <p>80% of 80% of the difference between the injured employee's pre- and post- injury weekly wage.</p> | <p>Maximum weekly benefit is based on 70% of the State Average Weekly Wage.</p> <p>Current Max - \$525</p> | <p>Eligibility for all income benefits expires at 401 weeks from the injured employee's date of injury.</p> |

| Overview of the Income Benefit Structure in the Texas Workers' Compensation System (continued) | | | | |
|---|--|---|--|--|
| Benefit Type | Eligibility Requirements | Benefit Compensation Rates | Maximum and Minimum Payments | Payment Durations |
| Lifetime Income Benefits (LIBs) Paid for the life of the injured employee. | Paid for specific catastrophic injuries listed in Section 408.161, Labor Code. | 75% of the injured employee's pre-injury average weekly wage. A 3% annual cost of living increase is added annually thereafter. | Maximum weekly benefit is based on 100% of the State Average Weekly Wage. Minimum weekly benefit is based on 15% of the State Average Weekly Wage Current Max - \$750 Current Min - \$112 | Paid for the life of the injured employee. |
| Death Benefits Paid to eligible beneficiaries as a result of a death from a compensable on-the-job injury. | A spouse is eligible to receive death benefits for life unless he/she remarries. Upon remarriage, the insurance carrier will pay a two (2) year (104 weeks) lump sum payment. If there are minor children, the benefit is divided between the spouse and the minor children. If no legal beneficiaries are present, a non-dependent parent may receive death benefits. | 75% of the injured employee's pre-injury average weekly wage. | Maximum weekly benefit is based on 100% of the State Average Weekly Wage. Current Max - \$750 | Eligible spouse – lifetime benefits unless he/she remarries. Eligible children - receive death benefits until age eighteen or twenty-five if enrolled as a full time student in an accredited college. Non-dependent parent - may receive up to 364 weeks of death benefits. |

Source: Texas Department of Insurance, Division of Workers' Compensation, 2009.

Comparisons of Income Benefit Structures in Other State Workers' Compensation Systems

Each state workers' compensation system is unique; however, the vast majority of state workers' compensation systems have a tiered income benefit structure designed to compensate injured employees for lost wages as well as compensate more severely injured employees for any permanent impairment received as the result of a work-related injury. See the table below for a high-level comparison of the income benefit structure in Texas and selected states.

| Comparison of Workers' Compensation Income Benefit Structures in Selected States | | | | | | | | |
|--|--|--|--|---|---|---|--|--|
| State | Compensation Rate for Temporary Disability Benefits | % of State Average Weekly Wage (SAWW) for Temporary Disability Benefit Maximum Compensation Rate | Compensation Rate for Permanent Partial Disability Benefits | % of SAWW for Permanent Partial Benefit Maximum Compensation Rate | Compensation Rate for Permanent Total Disability Benefits | Compensation Rate for Permanent Total Disability Benefits | Death Benefits Basis of Payment for One Dependent | Maximum Burial Allowance |
| California | 66 2/3 of pre-injury wage | 150% of SAWW | 66 2/3 of pre-injury wage | Set by Legislature | 66 2/3 of pre-injury wage | Established Legislatively | \$250,000.00 | \$5,000.00 |
| Florida | 66 2/3 of pre-injury wage | 100% of SAWW | 75% of TTD but reduced if RTW and earnings => pre-injury AWW | 100 % SAWW | 66 2/3 of pre-injury wage | 100% of SAWW | To spouse 50% of AWW. If no spouse, 33 1/3% of AWW to dependent child. | \$7,500.00 |
| Louisiana | 66 2/3 of pre-injury wage | 75% of SAWW | 66 2/3 of pre-injury wage | 75% of SAWW | 66 2/3 of pre-injury wage | 75% of SAWW | 32 1/2% of AWW | \$7,500.00 |
| New Mexico | 66 2/3 of pre-injury wage | 100% of SAWW | 66 2/3 of pre-injury wage | 100% of SAWW | 66 2/3 of pre-injury wage | 100% of SAWW | 66 2/3% of AWW | \$7,500.00 |
| Oklahoma | 70% of pre-injury wage | 100% of SAWW | 70% of pre-injury wage | 50% of SAWW | 70% of pre-injury wage | 100% of SAWW | 70% of AWW | \$8,000/ if no other benefits payable \$10,000 |
| Texas | 70% of pre-injury wage or 75% if less than \$8.50/hr | 100% of SAWW | IIBs - 70% of pre-injury wage/ SIBs – 80% of 80% of lost wages | 70% of SAWW | 75% of pre-injury wage | 100% of SAWW | 75% of AWW | \$6,000.00 |

Note 1: Temporary Total Disability Benefits are called Temporary Income Benefits (TIBs) in Texas. Permanent Partial Disability Benefits are called Impairment Income Benefits (IIBs) and Supplemental Income Benefits (SIBs) in Texas. Permanent Total Disability Benefits are called Lifetime Income Benefits (LIBs) in Texas.

Note 2: Distribution of Death Benefits in state workers' compensation systems is generally based on the type and number of beneficiaries (example: spouse and no children – spouse receives 100 percent of the benefit amount; spouse and 2 eligible children – spouse receives 50 percent and each child receives 25 percent each).

Source: Texas Department of Insurance, Division of Workers' Compensation, 2009.

While individual compensation rates and payment durations may vary among states, many states elected to utilize the recommendations made by the 1972 National Commission on State Workmen's Compensation Laws to set compensation rates for wage replacement benefits. This commission recommended that wage replacement benefits (such as Temporary Income Benefits or TIBs in Texas) equal at least 80 percent of an injured employee's after tax income since workers' compensation income benefits are not taxable. It's important to note that generally, wage replacement benefits for injured employees do not fully compensate for lost wages in order to provide an incentive for the injured

employee to return to work. According to a 1995 analysis conducted by the Texas Workers' Compensation Research Center (a predecessor to the Workers' Compensation Research and Evaluation Group), the average TIBs income replacement rate for injured employees who missed at least four weeks of work was 88 percent, which is higher than the recommended minimum level of 80 percent recommended by the National Commission.¹³ The Workers' Compensation Research and Evaluation Group intends to update this 1995 analysis during FY 2010.

When wage replacement benefits (i.e., TIBs in Texas and temporary partial or temporary total benefits in other states) in the Texas workers' compensation system are compared with other states, Texas's benefits appear favorable. According to a recent comparison of fourteen states (including Texas) by the Workers' Compensation Research Institute, of those workers injured in 2006/2007 that had claims with more than seven days of lost time (i.e., claims that qualify to receive wage-replacement income benefits), the average temporary disability payment in Texas was \$4,881 compared to the fourteen state median of \$4,702. However, income benefits paid to the most severely injured employees (i.e., Impairment Income Benefits and Supplemental Income Benefits in Texas and permanent partial disability benefits in other states) appear lower in Texas than other states. Almost twice as many injured employees with more than seven days of lost time received permanent partial disability benefits in Texas compared to the fourteen state median (34.3 percent compared to 18.6 percent); however, the average permanent partial disability benefit payment per claim in Texas was almost half of the median benefit payment for all fourteen states (\$4,089 compared to \$7,606).¹⁴

Although Texas has significantly improved the return-to-work rates for injured employees (approximately 78 percent of employees injured in 2006 with at least seven days of lost time returned to work within six months compared to 70 percent in 2001) and reduced the amount of time injured employees are off of work (an average of approximately 14 weeks for workers injured in 2006 compared to almost 18 weeks in 2001), some system participants and policymakers remain concerned that the current income benefit structure may not adequately compensate certain groups of injured employees.

Recent debate by the 81st Legislature regarding the issue of whether workers' compensation benefits are truly the exclusive remedy available to injured employees in certain circumstances (i.e., *Entergy v. Summers*) as well as reductions in system costs over time (resulting from a combination of fewer claims filed, better return-to-work rates, and lower medical costs per claim) continue to fuel these discussions. As a result, the 82nd Legislature may examine the issue of whether the current statutory income benefit structure put in place back in 1989 adequately compensates high wage earners or injured employees with permanent impairments (i.e., permanent partial disability benefits). If a determination is made to examine the adequacy of benefits, consideration should first be given to what benchmark should be used to measure adequacy as well as consider the cost of any change in the income benefit structure and the impact that those costs will have on workers' compensation insurance premiums. Any significant increase in workers' compensation premiums could result in some employers making the decision to not participate in the workers' compensation system.¹⁵

¹³ See Texas Workers' Compensation Research Center, *Income Replacement from Temporary Income Benefits in the Texas Workers' Compensation System*, 1995.

¹⁴ See Workers' Compensation Research Institute, *CompScope Benchmarks for Texas, 9th Edition*, 2009. These comparisons have been adjusted for differences in injury types, industry mix and wages among states included in the comparison.

¹⁵ See Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, *Employer Participation in the Texas Workers' Compensation System: 2008 Estimates*, 2008.

A6. Brief Description of Policy Issue

What is the role of bad faith in the Texas workers' compensation system?

B6. Discussion

When and how an injured employee may pursue a “bad faith” cause of action against an insurance carrier and what constitutes “bad faith” has been an ongoing issue within the workers’ compensation system for many years. However, recent litigation and increased claim and medical denial rates in the Texas workers’ compensation system have spurred a renewed interest in clarifying the role of bad faith in the Texas workers’ compensation system.¹⁶ Generally speaking, a “bad faith” cause of action may occur when there is a breach of the duty of good faith and fair dealing, including the unreasonable denial or delay in the processing of a claim. Injured employees in Texas have had the ability to pursue a bad faith claim in the Texas workers’ compensation system since at least the 1989 reform. However, indications are that the number of bad faith allegations against insurance carriers has risen in recent years.

These issues raise questions about the legislative intent regarding what constitutes “bad faith” in workers’ compensation and the ability to pursue a bad faith cause of action before all administrative remedies under the Texas Labor Code have been exhausted (e.g., requests for interlocutory orders, requests for dispute resolution by the Division). Currently, Texas Labor Code, Chapter 416, which sets statutory limits on exemplary damages and clarifies that an insurance carrier’s compliance with a Division order or dispute resolution decision cannot be the cause of a bad faith claim, represents the only statutory guidance regarding the interaction of bad faith allegations and the administration of the Act and rules.

Complicating this issue is a recent court case out of Michigan - *Brown et al. v. Cassens Transport et al.*, No. 05-2089, in which six injured employees argued that Cassens Transport Company (a self-insured employer), its third-party administrator and the insurance carrier’s doctor violated the federal Racketeer Influenced and Corrupt Organizations Act (RICO) when they inappropriately denied their workers’ compensation claims. The 6th Circuit allowed the RICO action to stand arguing that RICO claims are not pre-empted by state law, and the U.S. Supreme Court is currently considering a petition for a writ of certiorari. The outcome of this case may have a significant impact for all state workers’ compensation systems, including Texas, and will likely result in renewed discussions about states’ abilities to administer their own workers’ compensation systems as well as discussions about how this decision will impact how courts treat the “exclusive remedy” provisions of state workers’ compensation laws.

One recent bad faith case *Texas Mutual Insurance Company v. Ruttiger* has been appealed to the Texas Supreme Court. The petition for review remains pending. Before the Court is the issue of whether a benefit dispute agreement signed by the injured employee and the insurance carrier at a Benefit Review Conference represents a final dispute determination by the Division and whether the ability to pursue a bad faith claim is necessary given the Division’s ability to enforce the Act and rules. Regardless of whether the Court agrees to hear the petition, the issue of the role of bad faith in the Texas workers’ compensation system and how the ability to pursue a bad faith allegation interacts with the ability of the Division to enforce the Act and rules on an individual claim may need further clarification.

¹⁶ See Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, *Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers’ Compensation System, 2008 Results*, 2009 for additional information regarding claim and medical treatment denial rates in the Texas workers’ compensation system.

X. Other Contacts

A. Fill in the following chart with updated information on people with an interest in your agency, and be sure to include the most recent e-mail address.

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| State Health Services | State of Texas Serv. Center 622 S. Oakes, Suite E San Angelo, TX 76903 | (325) 659-7800 | |
| State Office of Administrative Hearings (SOAH) Natalie Howard | 300 W. 15th Street, #502 Austin, TX 78701-1649 | (512) 475-4993 | natalie.howard@soah.state.tx.us |
| State Office of Risk Management (SORM) Jonathan Bow Tshau Todman (EDI contact) Red Tripp Stephen Vollbrecht | P.O. Box 13777 Austin, TX 78711 | (512) 936-1502 (512) 472-0228 (512) 936-1516 (512) 470-1989 | jonathan.bow@sorm.state.tx.us tshau.todman@sorm.state.tx.us red.tripp@sorm.state.tx.us stephen.vollbrecht@sorm.state.tx.us |
| Texas A&M University System Kevin McGinnis Deanna Holladay | 200 Technology Way College Station, TX 77845 | (979) 458-6249 | mcginnis@tamu.edu d-holladay01@tamu.edu |
| Texas Dept. of Transportation Jim Baker Bessie Mayfield (EDI contact) Brandi Roundtree | 125 East 11th Street Austin, TX 78701 | (512) 416-3405 (512) 416-3429 (512) 486-5432 | jbaker2@dot.state.tx.us bmayfield@dot.state.tx.us broundtree@dot.state.tx.us |
| Texas House of Representatives Members | P.O. Box 2910 Austin, TX 78768 | | |
| Texas Medical Board | 333 Guadalupe Tower 3, Suite 610 Austin, TX 78701 | (512) 305-7010 | verificic@tmb.state.tx.us |
| Texas Senate Members | P.O. Box 12068 Capitol Station Austin, TX 78711-2068 | | |
| Texas State Library Neal Chapman | P.O. Box 12927 Austin, TX 78711 | (512) 421-7254 | neal.chapman@tsl.state.tx.us |
| Texas Workforce Commission | 101 E. 15th Street Austin, TX 78778 | (512) 463-2222 | |
| University of Texas System Javier Garza Barbara Craig (EDI contact) | 201 West 7 th Street Austin, TX 78701 | (512) 499-4655 (512) 499-4657 | jgarza@utsystem.edu bcraig@utsystem.edu |

XI. Additional Information

A. Fill in the following chart detailing information on complaints regarding your agency. Do not include complaints received against people or entities you regulate. The chart headings may be changed if needed to better reflect your agency's practices.

The Division of Workers' Compensation sets high standards for customer service and strives to meet customer expectations. In accordance with the Government Code, Chapter 2114, the Division's customer service standards are outlined in the Texas Department of Insurance's Compact with Texans and posted on the agency's web site. The Division's standard is to respond to telephone calls, correspondence, and e-mail as soon as possible, typically within the same business day.

The Division has several avenues by which customers may complain about the service they received or the outcome of the complaints they filed against insurers, employers, health care providers, or other system participants.

- The Commissioner's ombudsman helps system participants get information requested, use the complaint process or bring a customer service issue to the attention of the appropriate manager.
- Field office staff assists system participants with their inquiries and refer complaints to the appropriate personnel within the Division or at OIEC.
- The complaint resolution manager in System Monitoring and Oversight may reopen a complaint against a regulated person if the complainant is not satisfied with the resolution of the complaint.
- Allegations from a customer or a Division employee of potential fraud, waste or abuse of the Division's resources are reported to the Department's Fraud Unit and referred for possible investigation to the Fraud Prevention Panel.

The Division received a total of seven written complaints regarding the Division in 2008. In each instance, Division staff contacted the complainant, provided the customer with requested information, and referred the matter to the appropriate program manager.

B. Fill in the following chart detailing your agency's Historically Underutilized Business (HUB) purchases.

| Texas Department of Insurance– Division of Workers' Compensation | | | | |
|---|------------------------|-----------------------|--------------|----------------|
| Exhibit 17: Purchases from HUBs | | | | |
| Fiscal Year 2006, HUB Purchases | | | | |
| Category | Total \$ Spent | Total HUB \$ Spent | Percent | Statewide Goal |
| Heavy Construction | \$0.00 | \$0.00 | 0.0% | 11.9% |
| Building Construction | \$0.00 | \$0.00 | 0.0% | 26.1% |
| Special Trade | \$20,390.00 | \$2,461.00 | 12.0% | 57.2% |
| Professional Services | \$271,049.00 | \$87,820.00 | 32.4% | 20.0% |
| Other Services | \$8,499,039.00 | \$2,938,051.00 | 34.5% | 33.0% |
| Commodities | \$1,458,087.00 | \$818,742.00 | 56.1% | 12.6% |
| TOTAL | \$10,248,567.00 | \$3,847,074.00 | 37.5% | |

| Fiscal Year 2007, HUB Purchases | | | | |
|--|-----------------------|---------------------------|----------------|-----------------------|
| Category | Total \$ Spent | Total HUB \$ Spent | Percent | Statewide Goal |
| Heavy Construction | \$0.00 | \$0.00 | 0.0% | 11.9% |
| Building Construction | \$0.00 | \$0.00 | 0.0% | 26.1% |
| Special Trade | \$8,584.00 | \$1,625.00 | 18.9% | 57.2% |
| Professional Services | \$272,326.00 | \$16,930.00 | 6.21% | 20.0% |
| Other Services | \$9,722,284.00 | \$3,195,471.00 | 32.8% | 33.0% |
| Commodities | \$2,003,812.00 | \$488,603.00 | 24.3% | 12.6% |
| TOTAL | \$12,007,007.00 | \$3,702,631.00 | 30.8% | |

| Fiscal Year 2008, HUB Purchases | | | | |
|--|-----------------------|---------------------------|----------------|-----------------------|
| Category | Total \$ Spent | Total HUB \$ Spent | Percent | Statewide Goal |
| Heavy Construction | \$0.00 | \$0.00 | 0.0% | 11.9% |
| Building Construction | \$7,998.00 | \$0.00 | 0.0% | 26.1% |
| Special Trade | \$17,800.00 | \$0.00 | 0.0% | 57.2% |
| Professional Services | \$360,470.00 | \$15,545.00 | 4.31% | 20.0% |
| Other Services | \$8,223,238.00 | \$2,001,849.00 | 24.3% | 33.0% |
| Commodities | \$1,341,428.00 | \$763,118.00 | 56.8% | 12.6% |
| TOTAL | \$9,950,935.00 | \$2,780,512.00 | 27.9% | |

C. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy?

The Texas Department of Insurance administers purchasing, including HUB purchases, for the Division of Workers' Compensation. The Department has a HUB policy which addresses performance shortfalls by continually reviewing HUB participation. The Department makes a good faith effort to identify and utilize HUB vendors within all procurement processes. In addition, the Department hosts and participates in HUB forums across the state and educates HUBs on how to do business with the Department and the state.

D. For agencies with contracts valued at \$100,000 or more: Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available for contracts of \$100,000 or more? (Tex. Government Code, Sec. 2161.252; TAC 111.14)

Yes.

E. For agencies with biennial appropriations exceeding \$10 million, answer the following HUB questions.

| | Response / Agency Contact |
|---|--|
| 1. Do you have a HUB coordinator? (Tex. Government Code, Sec. 2161.062; TAC 111.126) | Yes. Regina B. Durden (512) 475-1782 |
| 2. Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Tex. Government Code, Sec. 2161.066; TAC 111.127) | Yes. Each year the agency sponsors HUB forums allowing minority and women-owned businesses to meet agency staff and learn about TDI's procurement opportunities. |
| 3. Has your agency developed a mentor-protege program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Tex. Government Code, Sec. 2161.065; TAC 111.128) | Yes. |

*Texas Department of Insurance
Division of Workers' Compensation*



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