



Self-Evaluation Report

Submitted to:

The Sunset Advisory Commission

By:

The Office of Injured Employee Counsel

September 4, 2009

Signed:

Norman Darwin, Public Counsel



Table of Contents

I.	Agency Contact Information	1
II.	Key Functions and Performance	2
III.	History and Major Events	35
IV.	Policymaking Structure	40
V.	Funding	43
VI.	Organization	46
VII.	Guide to Agency Programs	50
	Ombudsman Program	50
	Customer Services Program	64
	Legal Services	76
	Administration and Operations	85
	Operations Section	85
	Quality Assurance Section	95
	Internal Audit.....	99
VIII.	Statutory Authority and Recent Legislation	107
IX.	Policy Issues	119
X.	Other Contacts	160
XI.	Additional Information	169
	Complaint Data	169
	HUB Data	170
	EEO Data	172
XII.	Agency Comments	174



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Attachments

Attachment 1	Enabling Statute: Chapter 404 of the Texas Labor Code
Attachment 2	Legislative Reports Published Fiscal Year (FY) 2006 – 2008
Attachment 3	Newsletters Published FY 2007 – 2008
Attachment 4	Agency Publications/Brochures Describing OIEC
Attachment 5	N/A – List of Studies Required by Legislation/Riders
Attachment 6	N/A – Current Legislative / Interagency Studies
Attachment 7	Studies from Other States/Groups/Associations <ul style="list-style-type: none">• A Comparison of Injured Workers Who Use Attorneys or Ombudsmen in the Texas Dispute Resolution System• Workers' Compensation Laws, 2nd Edition – A Joint Publication of IAIABC and WCRI – June 2009
Attachment 8	Biographical Information of Norman Darwin, Public Counsel
Attachment 9	Agency's Recent Rules: Chapter 276 of the Texas Administrative Code
Attachment 10	FY 2010-2011 Legislative Appropriations Request
Attachment 11	Annual Financial Reports from FY 2006 – 2008
Attachment 12	Operating Budget FY 2008
Attachment 13	Map of Field Offices
Attachment 14	Quarterly Performance Reports FY 2008
Attachment 15	N/A – Recent Studies of Agency Functions Conducted by Outside Management Consultants / Academic Institutions
Attachment 16	Current Agency Internal Audit Plan
Attachment 17	FY 2009 – 2013 Strategic Plan
Attachment 18	List of Internal Audit Reports from FY 2005 – 2009 Completed or In Progress.



Attachment 19	N/A – List of State Auditor Reports from FY 2005 – 2009 that Relate to the Agency or Any of the Agency’s Functions
Attachment 20	Customer Satisfaction Surveys Conducted by or for OIEC in FY 2008 <ul style="list-style-type: none"> • Ombudsman Program: Customer Satisfaction Survey (2008); • Agency Customer Satisfaction Survey (2009)
Attachment 21	Survey of Organizational Excellence
Attachment 22	Survey of Other States
Attachment 23	Crosswalk of OIEC FY 2008 – 2009 and FY 2010 – 2011 Performance Measures
Attachment 24	Texas Department of Insurance and OIEC Roles and Responsibilities for Administrative Assistance and Services
Attachment 25	Memorandum of Understanding between The Texas Department of Insurance, Division of Workers’ Compensation and the Office of Injured Employee Counsel
Attachment 26	Receivership Guidelines for the HUB Subcontracting Plan
Attachment 27	Proposed Changes to the State Classification Plan



Exhibits

1. Agency Contacts	1
2. Key Performance Measures – FY 2008	33
3. Policymaking Body	40
4. Subcommittees and Advisory Committees	42
5. Expenditures by Strategy – FY 2008 (Actual).....	44
6. Objects of Expense by Program Function – FY 2009-FY 2010	44
7. Sources of Revenue – FY 2008 (Actual).....	45
8. Not Applicable	
9. Not Applicable	
10. FTEs by Location – FY 2008.....	47
11. List of Program FTEs and Expenditures – FY 2008	49
12. Not Applicable	
13. Statutes / Attorney General Opinions	107
14. 80 th Legislative Session Chart	112
15. Contacts.....	160
16. Complaints Against the Agency – Fiscal Years 2007 and 2008	169
17. Purchases from HUBs.....	170
18. Equal Employment Opportunity Statistics	172



Tables

Table 1: Outcome Measures Results FY 2007 – FY 2009	9
Table 2: Survey Dimensions and Constructs	11
Table 3: Construct Summary	16
Table 4: OIEC’s Customer Satisfaction Survey Results – Excerpt	21
Table 5: FY 2010 – FY 2011 Key Performance Measures and Targets	34
Table 6: FTEs by Location – FY 2009	48
Table 7: FY 2008 Performance Measures – Ombudsman Program	52
Table 8: Early Intervention and Case Development Impact	53
Table 9: Number of Disputed Issues Resolved per Month	54
Table 10: Number of Workers’ Compensation Claims	57
Table 11: OIEC’s Customer Satisfaction Survey Results – Excerpt	67
Table 12: FY 2008 Performance Measures – Customer Service Program	68
Table 13: FY 2008 Performance Measures – Legal Services	79
Table 14: Payments to Insurance Carriers in Judicial Review Cases	126

Figures

Figure 1: Participants’ Profiles by Age, Race/Ethnicity, and Gender	10
Figure 2: Supervisors and Directors Mean Scores by Rank and by Program	18
Figure 3: Percentages of Responses that Somewhat Agree or Strongly Agree	19
Figure 4: Overall Satisfaction with Ombudsman / Attorney – 2008	20
Figure 5: Overall Satisfaction with Ombudsman/Attorney – 1997 v. 2008	20
Figure 6: Percentage of Texas Employers That Are Non-subscribers	29
Figure 7: Percentage of Texas Employees That Are Employed by Non-subscribers	29
Figure 8: Injured Employee Representation at Medical Contested Case Hearings	56
Figure 9: Injured Employee Win/Loss Ratio at Medical Contested Case Hearings	57
Figure 10: Average Age of Injured Employee with Ombudsman Assistance	58
Figure 11: Gender of Injured Employee with Ombudsman Assistance	58
Figure 12: Number of Workers’ Compensation Claims Reported to DWC	69
Figure 13: Number of District Court Cases Where the Injured Employee is Plaintiff ..	127
Figure 14: Distribution of Workers’ Compensation Civil Activity	128



I. Agency Contact Information

Office of Injured Employee Counsel (OIEC)				
Exhibit 1: Agency Contacts				
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**Brian White, Agency Sunset Liaison/
Deputy Public Counsel**



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II. Key Functions and Performance

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

Mission:

OIEC's mission is to assist, educate, and advocate on behalf of the injured employees of Texas.

Objectives:

- 1.1:** To provide assistance to all unrepresented injured employees requesting assistance in each year through 2013.
- 2.1:** To increase the knowledge of all injured employees contacted about their rights and responsibilities and refer injured employees to agencies or service entities when appropriate in each year through 2013.
- 3.1:** To advocate on behalf of injured workers as a class in all of the proposed workers' compensation statutory changes and rules that have an impact on the class each year.



Note: For the FY 2010-2011 biennium, OIEC's goal sequence will change from previous years. Goal 1 will change from Advocate to Assist, and Goal 3 will change from Assist to Advocate. Goal 2 (Educate) will not change; however, the two strategies (Educate and Refer) in Goal 2 in FY 2008-2009 will be consolidated into one strategy for the FY 2010-2011 biennium.



Key Functions:

ASSIST: Provide Assistance to Unrepresented Injured Employees – Ombudsman Program.

The Ombudsman Program consists of specially trained employees whom assist unrepresented injured employees with disputes relating to their workers' compensation claim at no cost to the injured employee. Ombudsmen strive to resolve disputed issues at the earliest point prior to an administrative dispute resolution proceeding administered by the Texas Department of Insurance (TDI), Division of Workers' Compensation (DWC). Ombudsmen assist the injured employees in preparing for Benefit Review Conferences, Contested Case Hearings, and appeals of the Hearing Officer's decision through the Appeals Panel. Ombudsmen also attend Benefit Review Conferences and Contested Case Hearings with the injured employee and communicate on their behalf with the other participants.

EDUCATE: Provide Education and Information Regarding the Texas Workers' Compensation System, and Referral Services to Injured Employees – Customer Service.

The Customer Service Program educates injured employees by responding to questions they have about the workers' compensation system. Outreach presentations, workshops, seminars, and speaking engagements are also held across the state regarding OIEC's role and services.

Customer Service Representatives also identify and try to resolve disputed issues that may arise in an injured employee's claim within the first seven days after the disputed issue is identified. Appropriate parties are contacted and information is requested in an attempt to resolve the dispute prior to entering DWC's administrative dispute resolution process. Early intervention and resolution of disputes are high priorities for the Customer Service Program. However, educating injured employees on their rights and responsibilities remains paramount.

Customer Service Representatives work with injured employees and refer them to federal, state, or local financial or social services agencies as appropriate. Referrals are made to the Department of Assistive and Rehabilitative Services (DARS) for services in an effort to return the injured employee to work. Referrals are also made to the Texas Workforce Commission (TWC), TDI, the Texas Medical Board, or other social and regulatory services. Injured employees' complaints regarding health care providers are referred to the appropriate licensing boards or oversight agencies. OIEC also provides education and information to health care providers, employers, insurance carriers, attorneys, family members and other system stakeholders on behalf of injured employees as a class.

ADVOCATE: Advocate for Injured Employees as a Class – Legal Services. Legal Services identifies systemic issues that may increase burdens or create problems for injured employees and addresses those issues in the legislative and rulemaking processes. Legal Services advocates on behalf of injured employees as a class by analyzing and participating in workers' compensation system initiatives and encouraging the simplification of procedures and forms. Legal Services files amicus curiae (friend of the court) briefs when a case is pending before a court and the decision may impact a large number of injured employees. Regional Staff Attorneys serve as a legal resource for all OIEC staff, particularly Ombudsmen as they fulfill their mandate to assist, educate, and advocate for injured employees. Regional Staff Attorneys



monitor the work of the Ombudsman Program and advise Ombudsmen in how to provide assistance to injured employees in preparation for informal and formal proceedings.

Additionally, Legal Services provides Practical Skills Training and other training to Ombudsmen and Customer Service Representatives several times each year, leadership to the OIEC Training Committee, and information to Ombudsmen and other OIEC staff in monthly teleconferences. Legal Services also administers Employee Relations issues and provides legal counsel to the agency's program areas.

Provide Technical and Administrative Support Services to Internal and External Customers – Administration and Operations Division. OIEC is administratively attached to TDI as provided by Labor Code §404.002(b). TDI provides: 1) administrative assistance and services to OIEC, including budget planning and purchasing; 2) personnel services; and 3) computer equipment and support. Administration and Operations provides technical and administrative support to the agency, which is necessary for the agency to fulfill its statutory mandates. *See Attachment 24 for a detailed description of The Roles and Responsibilities for Administrative Assistance and Services for TDI and OIEC.*

As of June 2009, the Administration and Operations Division was divided into two Sections: the Operations Section, and the Quality Assurance Section.

- **The Operations Section** provides technical and administrative support for the agency, including functions such as strategic planning; performance measure tracking, monitoring, and reporting; recommending and tracking legislation; developing and submitting reports required by statute, such as the Legislative Report; budget and fiscal monitoring; and rulemaking. Staff serves as administrative support to the Public Counsel and Deputy Public Counsel and schedules meetings and hearings. Operations' staff also provides support to all OIEC staff in the 23 field offices throughout Texas and the Central Office regarding website maintenance, facility issues, human resource issues, office supply needs, and other purchasing. Finally, Operations' staff receives, reviews, and processes travel vouchers.

The Operations Section provides customer service to injured employees who visit or contact the Central Office. Operations' staff processes complaints, and refers injured employees to financial, social services, regulatory and other applicable agencies when appropriate. Additionally, staff processes "Rights and Responsibilities" distributed to injured employees that have been returned by the U.S. Postal Service due to an incorrect address. Staff provides assistance in outreach initiatives including production and mailing of brochures, pamphlets, and other informational documents for distribution to injured employees and other workers' compensation system stakeholders.

The Operations Section monitors the OIEC Inbox for emails, and responds to inquiries; provides advocacy services to TDI, DWC, and the Legislature; develops and provides training to agency staff; and serves as liaison to Legislative Offices, the Governor's Office, and other Legislative staff.

- **The Quality Assurance Section** provides informal audit and review functions for the agency to ensure the quality and efficiency of the procedures and services provided by the agency.



The development of a comprehensive Quality Assurance Program is a new undertaking for OIEC. The program develops training specifically tailored to address exceptions identified through the reviews by the Internal Auditor. Quality Assurance also performs research and evaluation, data analysis, and conducts internal documentation reviews. The Quality Assurance Program also ensures consistent and accurate information is being provided to the agency's customers.

Provide Auditing Services to the Agency – Internal Audit. OIEC established the Internal Audit Section in accordance with the provisions of the Texas Internal Auditing Act, Government Code, Chapter 2102. Internal Audit is represented by one FTE who serves as the agency's Internal Auditor and Director of the Internal Audit Section. The Internal Auditor prepares an Annual Report of Internal Audit Activities, a risk assessment of the agency's operations, an Annual Audit Plan based on the agency's risk assessment, and consultation to OIEC management.

The duties of the Internal Auditor include: furnishing independent analyses, appraisals, and recommendations about the adequacy and effectiveness of the agency's systems of internal control policies and procedures and the quality of performance in carrying out assigned responsibilities. Audits are performed in accordance with the Standards for the Professional Practice of Internal Auditing, the Code of Ethics contained in the Professional Practices Framework as promulgated by the Institute of Internal Auditors, and generally accepted government auditing standards.

OIEC is also subject to audits by the Texas State Auditor's Office, which may include financial statement opinion audits, financial audits, compliance audits, economy and efficiency audits, effectiveness audits, and other special audits, as well as Texas Workforce Commission audits administered by the Division of Human Rights.

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?

Each current function of OIEC serves a clear and ongoing objective. OIEC's mission is to assist, educate, and advocate on behalf of the injured employees of Texas. Only 63 percent of Texas employers carry workers' compensation insurance; however, 77 percent of all employees in the state are covered by workers' compensation insurance. OIEC predicts a continuing need for its services for those unrepresented injured employees who require assistance and information to navigate the workers' compensation system. Disputes inevitably arise within the workers' compensation system and unrepresented injured employees will require the Ombudsman Program's services. Specifically, most injured employees seek the assistance of an Ombudsman for medical disputes, since there is not a provision in Texas for attorneys to be paid for their services in the medical dispute resolution process. Approximately 76 percent of injured employees seek assistance from an Ombudsman in medical dispute resolution proceedings each year.



The Ombudsman Program provides free assistance to unrepresented injured employees before and during DWC's informal and formal administrative dispute resolution proceedings. Ombudsmen can also help to resolve issues informally without hearings, thereby reducing costs in the workers' compensation system and helping to reach more timely resolution of issues that arise. Assisting injured employees through the Ombudsman Program ensures that the injured employee involved in a workers' compensation dispute but not represented by an attorney will receive fair treatment during those disputes.

Insurance companies and other parties to a dispute employ experts in the workers' compensation system (typically workers' compensation adjusters or attorneys) to represent their interests in disputes. It is therefore necessary to afford injured employees assistance by similarly trained experts at no cost to the injured employee. Ombudsman assistance is particularly needed in disputes where the only issue is denial of medical benefits, because attorneys are not paid for representing injured employees in the medical dispute resolution system.

OIEC recognizes that there may be cases where attorney representation of an injured employee is more appropriate. In some cases, OIEC may make referrals to the Texas State Bar for assistance in finding an attorney to represent an injured employee (e.g., in district court where OIEC's Ombudsmen are not statutorily authorized to provide assistance to injured employees). Injured employees have reported, and OIEC believes, that it may be difficult for injured employees to find attorneys to represent them in certain cases, particularly in rural areas. Attorneys are able to select the injured employees they wish to represent, while Ombudsmen are required to assist all non-represented injured employees that have a dispute, regardless of the circumstances and difficulty of resolving the disputed issues.

The Customer Service Program provides general and claim-specific education, information, and assistance; refers injured employees to other appropriate agencies for additional assistance; attempts to resolve or refers complaints, as appropriate; and identifies and attempts to resolve disputes and denials of benefits through the early intervention process.

Most injured employees are not familiar with the laws and procedures of the Texas Workers' Compensation System, nor are they familiar with their legal rights and responsibilities in the system. Without the education, information, assistance, and early intervention initiatives provided by Customer Service, injured employees would likely proceed blindly through this unfamiliar system. This could produce delays in the injured employee's receipt of proper and adequate medical treatment, which further results in delaying the return to appropriate and sustainable work.

The ongoing Customer Satisfaction Survey administered by OIEC since the beginning of 2009 shows that injured employees are grateful for the information they receive, even when the information received is unfavorable. Injured employees report feeling comfortable and open when speaking with OIEC Customer Service. Injured employees often express the opinion that the OIEC Customer Service Representative is the first person that has truly listened to them and provided helpful information and assistance. Injured employees want to get the medical treatment necessary to heal their injuries so they can return to work and go back to their normal



lives. See Attachment 20 for the Customer Satisfaction Survey. Additional comments from the survey can be provided upon request.

OIEC's Customer Service Program provides injured employees with the information necessary to make sound decisions about their workers' compensation claim and understand their responsibilities in the workers' compensation system. This permits injured employees to receive appropriate benefits, allowing for timely return to work. Money is also saved through early intervention initiatives. This creates savings for insurance carriers, Texas employers, and taxpayers.

The Legal Services Division provides advocacy for injured employees and serves as a legal resource for all team members. Advocating for injured employees in rulemaking helps to ensure a level playing field in the worker's compensation environment. Employers, insurance companies, and health care providers employ experts who promote their interests in rulemaking and other forums; therefore, it is important to provide a similar level of assistance for injured employees individually and as a group.

Legal Services provides Regional Staff Attorneys as a resource for the Ombudsmen as they fulfill their mandate to assist, educate, and advocate for injured employees. Regional Staff Attorneys monitor the work of the Ombudsman Program and advise Ombudsmen in providing assistance to injured employees in preparation for informal and formal hearings. Legal Services develops and conducts Practical Skills training to help Ombudsmen refine their skills. The training also enables the Ombudsmen to receive continuing education credits for participating in the training which helps them fulfill the requirements for maintaining their Type 03 workers' compensation adjuster's licenses.

Legal Services analyzes and provides comments on rules proposed by TDI and DWC, and suggests legislative recommendations that will protect the interests of injured employees. The department also determines whether there are issues pending before either the Texas appellate courts or the Supreme Court where OIEC needs to intervene to serve as a voice for the injured employees of Texas.

Training and advocacy by Regional Staff Attorneys ensure that the interests of injured employees as a class are adequately considered during critical decision-making processes, especially legislative or rulemaking proceedings.

The Administration and Operations Division performs day-to-day operational and quality assurance functions to ensure quality and efficiency of the services provided by the agency. The Administration and Operations Division is separated into two sections:

- **The Operations Section** provides technical support to internal and external customers, and works in the best interest of the agency. Without these functions, staff would not be reimbursed for travel; rulemaking would not occur; statutory reporting requirements would not be met; OIEC would not be in compliance with State and federal regulators; employees would not be hired; the website would be non-existent; contracting services, budget, policy and planning would be needed. Similarly, performance measures would not be reported without this function.



- **The Quality Assurance Section** ensures effective and efficient policies and procedures are followed. The Quality Assurance section verifies procedures and functions, identifies the quality of programs, initiates and recommends solutions for identified performance issues, and verifies the implementation of the solutions. The Quality Assurance section administers surveys, institutes training initiatives, ensures consistency of services state-wide, and conducts research and evaluation of programs.

The Internal Audit Section functions are required by the Texas Internal Auditing Act, Texas Government Code, Title 10, Chapter 2102, Internal Auditing.

The Internal Audit functions are necessary "to establish guidelines for a program of internal auditing to assist agency administrators and governing boards by furnishing independent analyses, appraisals, and recommendations about the adequacy and effectiveness of a state agency's systems of internal control policies and procedures and the quality of performance in carrying out assigned responsibilities". TEX. GOV'T. CODE §2102.002. The agency would not be in compliance with the Texas Internal Auditing Act if these functions were not performed.

The internal audit function applies to state agencies that meet the following criteria: 1) more than 100 full-time equivalent employees (FTEs), 2) an annual operating budget that exceeds \$10 million, or 3) receives and processes more than \$10 million in cash in a fiscal year. At the time that OIEC became operational, the agency did not employ more than 100 FTEs. However, under the FY 2008-2009 General Appropriations Act, the agency is authorized to employ 183 FTEs, which is considered a mid-sized agency, and satisfies the first and second requirements under the Internal Audit Act.

Other mid-sized state agencies either contract for the internal audit function or employ their own internal auditor. OIEC previously contracted for this service; however, the agency believes such in-house services may be more efficient and cost-effective by employing an Internal Auditor. The 81st Texas Legislature, Regular Session, 2009, affirmed this belief by appropriating OIEC the additional FTE (for a total of 184 FTEs as authorized by the FY 2010 – 2011 General Appropriations Act).

Additionally, other mid-sized state agencies were contacted by OIEC to receive feedback regarding their respective internal audit functions. While some of the agencies contracted for this service, most of the agencies employed an internal auditor. Some of the agencies had previously contracted and now employ their own internal auditor. Agencies explained that the reasons they chose to employ their own internal auditor included: 1) failure to receive the required reports in a timely manner, 2) the contracted auditor did not understand the functions of the agency, and 3) the results and performance did not meet expectations.

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

Table 1 indicates OIEC's outcome measure results for FY 2007 (which were not formally reported), FY 2008, and FY 2009 (through the 3rd quarter). The performances highlighted in



blue indicate that the targets were met within a variance of five percent; the performances highlighted in green indicate that the targets were not met but that the performances were desirable; and the performances highlighted in red indicate that the targets were not met and that the performances were undesirable. Targets for the three years were set based on the limited data that was available to OIEC as a new agency at the time. OIEC became operational in March 2006. Targets based on the additional data available have been adjusted for FY 2010-2011 to better reflect desired performance.

Table 1. Outcome Measures FY 2007 – FY 2009						
Outcome Measures	FY 2007		FY 2008		FY 2009	
	<i>Target</i>	<i>Actual Performance</i>	<i>Target</i>	<i>Actual Performance</i>	<i>Target</i>	<i>Performance Through 3rd Qtr</i>
Percentage of Workers' Compensation Formal or Informal Rules Analyzed by OIEC	100%	100%	100%	100 %	100%	100%
Percentage of Workers' Compensation Formal or Informal Rulemaking Processes in Which OIEC Participated	80%	96%	85%	71%	85%	80%
Percentage of Workers' Compensation Rules Changed for the Benefit of the Injured Employee as a Result of OIEC Participation	50%	100%	50%	58%	50%	20%
Percentage of Injured Employees Educated Regarding their Rights & Responsibilities	75%	92%	75%	96%	75%	95%
Percentage of proceedings Held before the Division of Workers' Compensation in which the Injured Employee was assisted by an Ombudsman	45%	41%	45%	40%	45%	39%
Percentage of Issues Raised at Contested Case Hearings (CCH) where the Injured Employee Prevailed When Assisted by an Ombudsman	40%	43%	40%	42%	40%	40%
Percentage of Issues Raised on Appeal where the Injured Employee Prevailed When Assisted by an Ombudsman	40%	29%	40%	32%	40%	35%
Average Indemnity Cost Avoided per Injured Employee Assisted by an Ombudsman	\$500.00	\$2,135	\$500.00	\$2,215	\$500.00	\$2,175

In addition to outcome measures reported to the Legislature, internal and external surveys confirm OIEC's effectiveness and efficiency in meeting the needs of the injured employees of Texas.

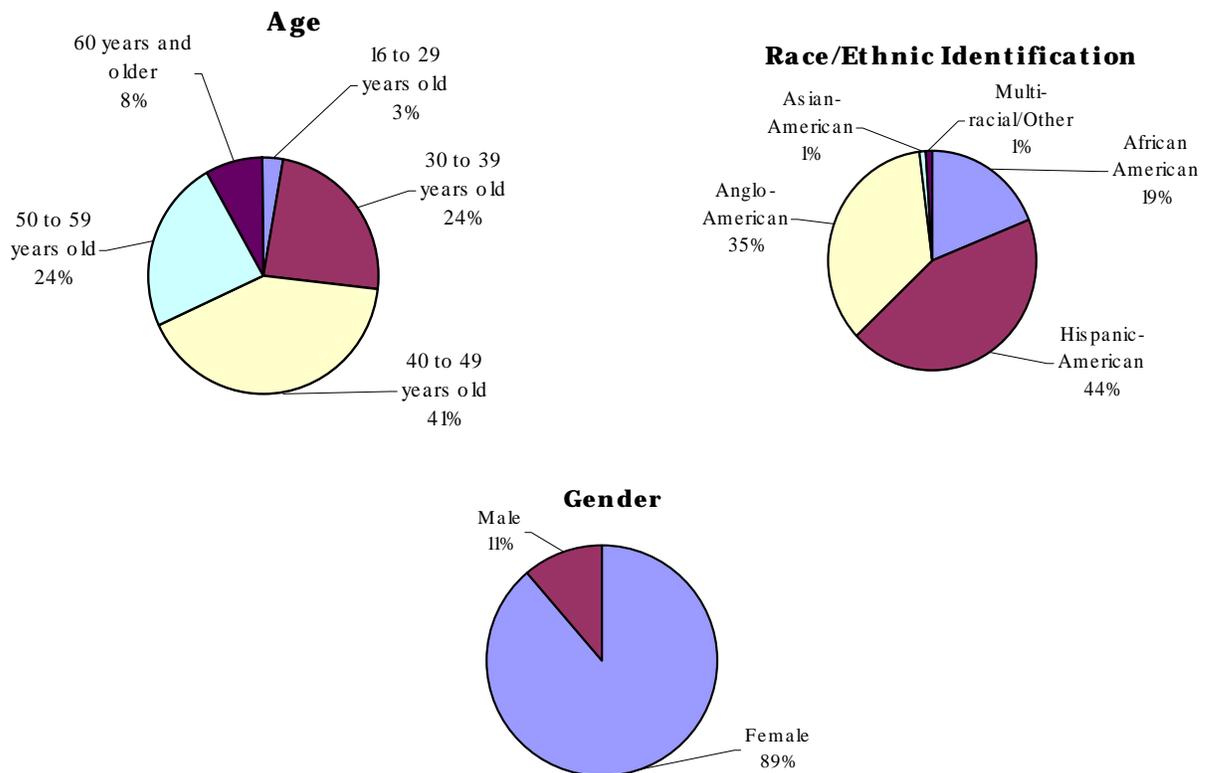


Survey of Organizational Excellence. State agencies are encouraged to participate in the Survey of Organizational Excellence in the instructions for preparing and submitting Agency Strategic Plans. The survey provides information about the employees' perceptions of the effectiveness of the agency, and the employees' satisfaction with the agency. OIEC contracts with and the survey is conducted by the Organizational Excellence Group, University of Texas School of Social Work.

In the instructions for preparing and submitting Agency Strategic Plans, agencies are requested to include a synopsis of the most recent Organizational Excellence survey results in an appendix of the agency's Strategic Plan, and to explain how the results will be used in formulating human resource development goals and strategies to achieve those goals.

At the beginning of calendar year 2008, OIEC employees were asked to participate in the Survey of Organizational Excellence. Out of 152 employees who were invited to take the survey, 124 responded. As a general rule, response rates higher than 50 percent suggest soundness. At 82 percent, OIEC's response rate is considered high. It is pleasing to know that 92 percent of OIEC employees see themselves working for the agency in two years, and OIEC believes that is a good indicator of how well the organization is doing at retaining its employees. Also encouraging is that compared to employees in organizations of similar size or mission, OIEC has slightly more favorable results. The 2008 survey serves as a benchmark for future survey result comparisons, since it is the first survey of its kind in which OIEC has participated.

Figure 1: Participants' Profiles by Age, Race/Ethnicity, and Gender



Survey Dimensions and Constructs

The Survey framework consists of survey items, dimensions, and constructs. Each level of the framework provides insight into the workings of an organization.

Items. At the most basic level there are survey items that provide specific feedback. For each item, employees are asked to indicate how strongly they agree or disagree that the item describes the organization. Possible responses include: (1) strongly disagree; (2) disagree; (3) feel neutral; (4) agree; (5) strongly agree; and (not scored) don't know/not applicable. Any survey item with an average (mean) score above the neutral midpoint of "3.0" suggests that employees perceive the issue more positively than negatively. Scores of "4.0" or higher indicate areas of substantial strength for the organization. Conversely, scores below "3.0" are viewed more negatively by employees. Items that receive below a "2.0" should be a significant source of concern for the organization and should receive immediate attention.

Dimensions. The framework, at its highest level, consists of five workplace dimensions. These five dimensions capture the total work environment. Each dimension consists of several survey constructs. The dimension score also ranges from 100 to 500 and is an average of the construct scores belonging to the dimension.

Constructs. The survey constructs are designed to broadly profile organizational strengths and areas of concern so that interventions may be targeted appropriately. Survey constructs are developed from a group of related survey items. The construct score is calculated by averaging the related item scores together and multiplying that result by 100. Scores for the constructs range from a low of 100 to a high of 500. An item may belong to one or several constructs; however, not every item is associated with a construct.

Table 2: Survey Dimensions and Constructs

Dimension I Work Group	Dimension II Accommodations	Dimension III Organizational Features	Dimension IV Information	Dimension V Personal
<ul style="list-style-type: none"> • Supervisor Effectiveness • Fairness • Team Effectiveness • Diversity 	<ul style="list-style-type: none"> • Fair Pay • Physical Environment • Benefits • Employment Development 	<ul style="list-style-type: none"> • Change Oriented • Goal Oriented • Holographic • Strategic • Quality 	<ul style="list-style-type: none"> • Internal • Availability • External 	<ul style="list-style-type: none"> • Job Satisfaction • Time and Stress • Burnout • Empowerment



Dimension I

Work Group. This dimension relates to employees' activities within their immediate work vicinity. They include factors that concern how employees interact with peers, Supervisors and all of the persons involved in day-to-day work activity. This is the immediate work environment of the employee.

Constructs

Supervisor Effectiveness: Provides insight into the nature of supervisory relationships in the organization, including the quality of communication, leadership, and fairness that employees perceive exist between Supervisors and themselves.

Fairness: Measures the extent to which employees believe that equal and fair opportunity exists for all members of the organization.

Team Effectiveness: Captures employees' perceptions of the effectiveness of their work group and the extent to which the organizational environment supports appropriate teamwork among employees.

Diversity: Addresses the extent to which employees feel that individual differences, including ethnicity, age and lifestyle, may result in alienation and/or missed opportunities for learning or advancement.

Dimension II

Accommodations. This dimension looks at the physical work setting and the factors associated with compensation, work technology and tools. It is the "total benefit package" provided to employees by the organization.

Constructs

Fair Pay: Is an evaluation from the viewpoint of employees of the competitiveness of the total compensation package. It addresses how well the package "holds up" when employees compare it to similar jobs in their own communities.

Physical Environment: Adequacy of the physical environment captures employees' perceptions of the work setting and the degree to which employees believe that a safe and pleasant working environment exists.

Benefits: Provides an indication of the role that the employment benefit package plays in attracting and retaining employees.



Employment Development: Captures perceptions of the priority given to the career and personal development of employees by the organization.

Dimension III

Organizational Features. This dimension addresses the organization's interface with external influences. It is an internal evaluation of the organization's ability to assess changes in the environment and make needed adjustments. Also included are assessments of the quality of relations the organization shares with the public. In essence, this dimension captures the "corporate" culture.

Constructs

Change Oriented: Secures employees' perceptions of the organization's capability and readiness to change based on new information and ideas.

Goal Oriented: Addresses the organization's ability to include all its members in focusing resources towards goal accomplishment.

Holographic: Refers to the degree to which all actions of the organization "hang together" and are understood by all. It concerns employees' perceptions of the consistency of decision-making and activity within the organization.

Strategic: The strategic orientation secures employees' thinking about how the organization responds to external influence, including those which play a role in defining the mission, services and products provided by the organization.

Quality: Focuses upon the degree to which quality principles, such as customer service and continuous improvement, are a part of the organizational culture.

Dimension IV

Information. This dimension refers to how consistent and structured communication flow is within the organization and to outside groups. It examines the degree to which communication is directed towards work concerns. How focused and effective it is, as well as, how accessible information is to employees.

Constructs

Internal: Internal Communication captures the nature of communication exchanges within the organization. It addresses the extent to which employees view information exchanges as open and productive.

Availability: Availability of Information provides insight into whether employees know where to get needed information and whether they have the ability to access it in a timely manner.



External: External Communication looks at how information flows in and out of the organization. It focuses upon the ability of the organization to synthesize and apply external information to work performed by the organization.

Dimension V

Personal: This dimension reports on how much internalization of stress is occurring and the extent to which debilitating social and psychological conditions appear to be developing at the level of the individual employee. It addresses the important interface between employees' home and work lives, and how this relationship may impact job performance and organizational efficiency.

Constructs

Job Satisfaction: Addresses employees' satisfaction with their overall work situation. Weighed heavily in this construct are issues concerning employees' evaluation of the availability of time and resources needed to perform jobs effectively.

Time and Stress: Time and Stress management looks at how realistic job demands are given time and resource constraints, and also captures employees' feelings about their ability to balance home and work demands (note: The higher the score the lower the level of stress).

Burnout: Burnout is a feeling of extreme mental exhaustion that can negatively impact employees' physical health and job performance, leading to lost resources and opportunities in the organization (note: the higher the score the lower the level of burnout).

Empowerment: Measures the degree to which employees feel that they have some control over their jobs and the outcome of their efforts.

Results

In the chart on the next page, “Constructs” have been color coded to highlight the organization’s areas of strengths and areas of concern. The five highest scoring constructs are blue, the five lowest scoring constructs are red, and the remaining ten constructs are yellow. Each construct is displayed with its corresponding score. Highest scoring constructs are areas of strength for this agency while the lowest scoring constructs are areas of concern. Scores above 300 suggest that employees perceive the issue more positively than negatively, and scores of 400 or higher indicate areas of substantial strength. Conversely, scores below 300 are viewed more negatively by employees, and scores below 200 should be a significant source of concern for the agency and should receive immediate attention. Fortunately, OIEC did not receive any scores below 200.



Constructs

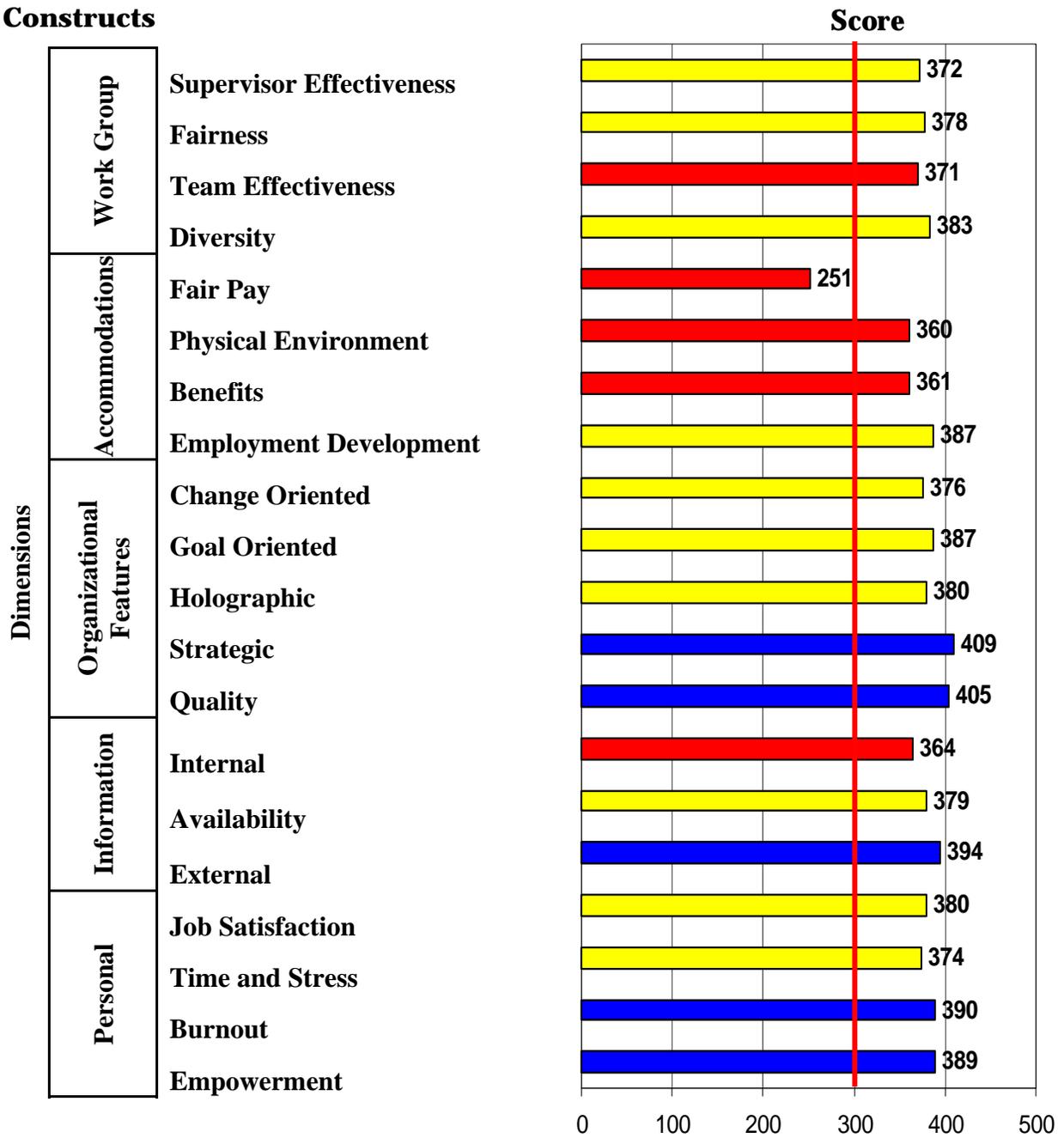


Table 3: Construct Summary

Highest Scoring Constructs: Areas of Strength		Lowest Scoring Constructs: Areas of Concern	
Score	Construct	Score	Construct
409	Strategic	251	Fair Pay
405	Quality	360	Physical Environment
394	External	361	Benefits
390	Burnout	364	Internal
389	Empowerment	371	Team Effectiveness

Strengths. According to the survey, OIEC employees perceive the agency:

- is able to relate its mission and goals to environmental changes and demands;
- delivers quality service to its clients;
- is strong in its use of tools and processes for external communication;
- has a relatively low level of perceived “burnout,” which can negatively influence an organization’s performance; and
- permits employees to have some control over their jobs and the outcome of their efforts.

Weaknesses. Some areas the agency will strive to improve based on survey results which suggest a need for improvement include:

- Fair Pay;
- Physical Environment;
- Benefits;
- Internal Communication; and
- Team Effectiveness.

Employee satisfaction is one of OIEC’s primary concerns. Eighty-two percent of OIEC staff participated in the Survey of Organizational Excellence, which is considered a high response rate. High response rates mean that employees have an investment in the agency, want to see the agency improve, and generally have a sense of responsibility to the agency.

OIEC carefully reviewed the results of the survey, paying special attention to lower scoring constructs. OIEC does not have control over some of the aspects relating to lower scoring constructs, such as Fair Pay, Benefits, and Physical Environment. In terms of pay and benefits, a state agency must adhere to the State Job Classification and Salary Schedule in the General Appropriations Act and the Legislature approves State employee benefit packages. Additionally, OIEC has little control over its employees’ physical environment due to the agency’s administrative attachment whereby TDI provides OIEC all facilities. However, OIEC identified and focused on issues the agency does have control over, in an effort to improve the agency.

- Fair Pay – OIEC recommended additional career ladder opportunities for Ombudsman positions, which was approved for the FY 2010-2011 General Appropriations Act. Three levels were added. *See Attachment 27* for the Proposed Changes to the State Classification Plan. OIEC also awards one-time merits when appropriate and if funds are available to deserving staff that go above and beyond their regular duties.



- Physical Environment – Because OIEC is administratively attached to TDI, OIEC does not have the authority to provide larger workspaces or a field office in a different neighborhood. However, OIEC has been able to take small actions to improve an employee’s physical environment. OIEC was able to purchase ergonomic chairs to enhance the comfort and safety of staff as well as new computer monitors.
- Internal Communication – OIEC prioritizes two-way communication efforts and was disappointed that communication was rated as a weaker construct. Information sharing can be difficult due to the fact that OIEC staff is located in 23 field offices and one central office throughout the State. The State’s management-to-staff ratio of 1 to 11 does not permit the agency to house a Supervisor in each field office. Therefore, OIEC has improved the communication flow by placing an Ombudsman Lead in each field office to serve as a liaison for the Supervisor’s and staff in the respective field office.

OIEC staff meets regularly for training sessions, staff meetings, project management meetings, and sends updates and other important information to staff through email and the intranet. OIEC management has met with staff to explain the results of the Survey of Organizational Excellence. The results are posted on the agency’s website for OIEC staff and customers to review at <http://www.oiec.state.tx.us/resources/publications.html>.

A Business Plan was created in FY 2008 to inform staff of the activities of the agency. Staff can review activities of all OIEC program areas. The plan also provides an operational road map for achieving agency goals, which is consistent with its enabling statute, mission, strategic planning goals, and strategies.

OIEC has added information to its website, such as performance measure reports, legislative reports, agency budget, and other information to keep all employees and the public informed about the agency located at <http://www.oiec.state.tx.us/resources/publications.html>.

- Team Effectiveness – It is imperative that staff is able to work together as a team and cooperate with each other. OIEC management emphasizes communication and encourages teamwork.

OIEC has implemented team effectiveness training to ensure effective and efficient service to injured employees and other system participants.

OIEC will continue to strive to make OIEC a great place to work, and as our philosophy states, “OIEC is committed to protect the rights of the injured employees of Texas. We will provide the highest level of professional, efficient, and effective customer service; and maintain a work environment that values a diverse workforce, ethical management practices, teamwork, respect, and dignity.” See Attachment 21 for the Survey of Organizational Excellence Executive Summary.

Leadership Evaluation. OIEC values input from its employees regarding its leadership, specifically Supervisors, Directors, and the Deputy Public Counsel. In March 2009, OIEC designed and implemented a survey that was sent to all OIEC staff in order for them to evaluate their Supervisors, Directors, and the Deputy Public Counsel. The assessment allowed employees to document the effectiveness of the agency leadership anonymously. The assessment reflects



the diverse opinions and needs of various employees including the Supervisors and Directors themselves.

The survey consisted of 20 questions using a five-point Likert Scale where:

- Strongly Disagree = 1
- Somewhat Disagree = 2
- Undecided = 3
- Somewhat Agree = 4
- Strongly Agree = 5

OIEC employees also were given one other Likert Scale question to rate their job environment where:

- Much More Negative than Positive = 1
- More Negative than Positive = 2
- Neutral = 3
- More Positive than Negative = 4
- Much More Positive than Negative = 5

In addition, three open-ended questions were included to receive feedback for the strengths and weaknesses of OIEC and its leadership.

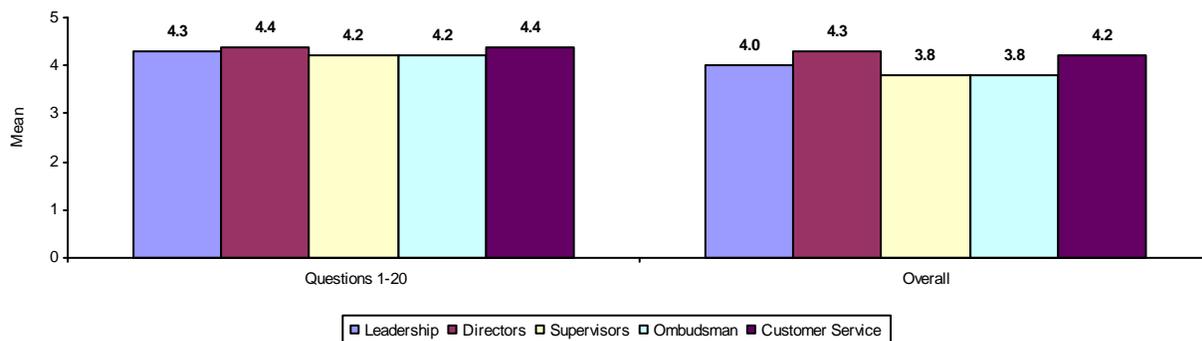
It is hard to determine the exact response rate for the survey since employees were allowed to submit surveys not only for their immediate Supervisors but also for the latter’s Supervisor as well. A total of 181 surveys were completed on the nine immediate Supervisors, three Directors, and the Deputy Public Counsel.

Aggregated Supervisor/Director Survey

Overall, the employees’ appraisal for their Supervisors and Directors was positive, with more than 84.6 percent reporting overall satisfaction (scoring 4 “Somewhat Agrees” & 5 “Strongly Agrees” on the 1-5 Likert Scale).

The Supervisors and Directors’ mean score for questions 1-20 was 4.3; and the mean for the overall feeling regarding work environment was 4.0. Figure 2 demonstrates the scores for all leadership as compared by Supervisors and Directors, as well as by Programs.

Figure 2: Supervisors and Directors Mean Scores by Rank and by Program



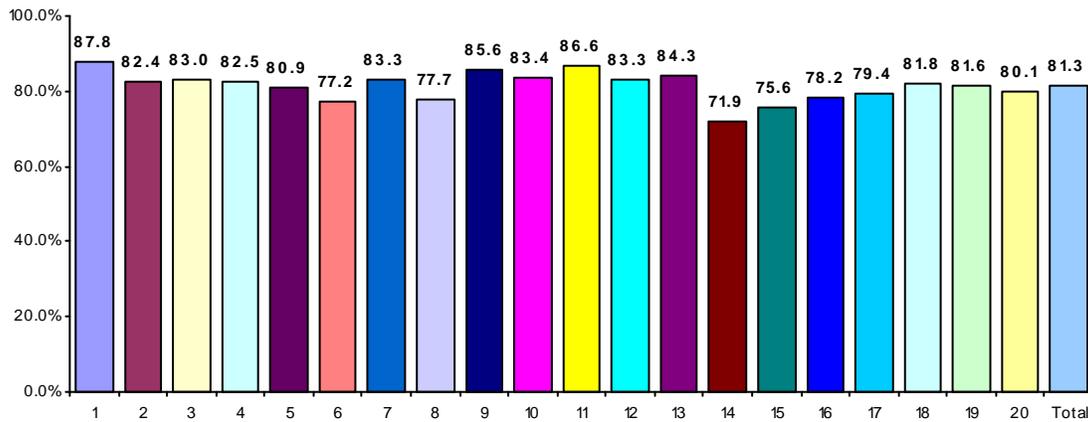
Note: Leadership includes Supervisors, Directors, and Deputy Public Counsel. Directors also include Deputy Public Counsel.



Disaggregated Supervisor/Director Survey

OIEC employees provided a majority of strong and modest appraisals about their overall and specific domains, the strongest being 87.8 percent of the responses falling in the Somewhat Agrees and Strongly Agrees that the Supervisor clearly communicates the goals and expectations of the Program. The most critical appraisals were of 71.9 percent of the responses falling in the Somewhat Agrees and Strongly Agrees that the Supervisor bases the selection of staff for positions on their ability to be effective in the performance of duties required for the position. Figure 3 shows the percentages of the responses for Somewhat Agrees and Strongly Agrees to questions 1-20.

Figure 3: Percentages of Responses that Somewhat Agree or Strongly Agree



Answers to the open ended survey questions were summarized and categorized into different themes that became apparent throughout the 181 surveys. Looking specifically at “Supervision and Leadership,” the following themes were identified. Employees felt that their Supervisors and Directors:

- provide support and direction and are good listeners.
- are competent and knowledgeable in all aspects of the agency, are accessible to employees, and have good communication skills.
- show fairness to all employees across all levels and programs at OIEC.
- give recognition to employees when it is merited.
- are very respectful of staff.
- are very effective working with their teams and with others.
- provide appropriate training to all employees.

Ombudsman Program: Customer Satisfaction Survey. OIEC contracted with the University of North Texas Survey Research Center (SRC) to conduct a customer satisfaction survey pursuant to Texas Government Code §2114. The survey was designed to measure the satisfaction of injured employees who have had a dispute with their workers’ compensation claims or were assisted by an Ombudsman. The objectives of the survey were to measure injured employees’ opinions of the:

- fairness of the workers’ compensation dispute process;

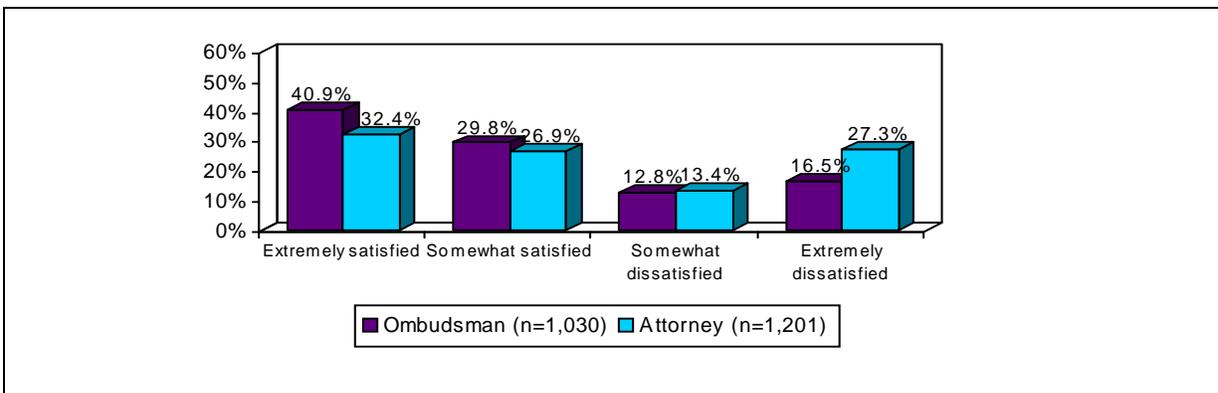


- assistance they may have received from an Ombudsman compared to the assistance they may have received from an attorney during DWC’s administrative dispute resolution process.

The survey serves as a follow-up survey whereby the results were compared to a previous benchmark survey conducted in 1997 by the Research and Oversight Council on Workers’ Compensation (ROC), which is now a part of the Texas Department of Insurance’s Workers’ Compensation Research and Evaluation Group.

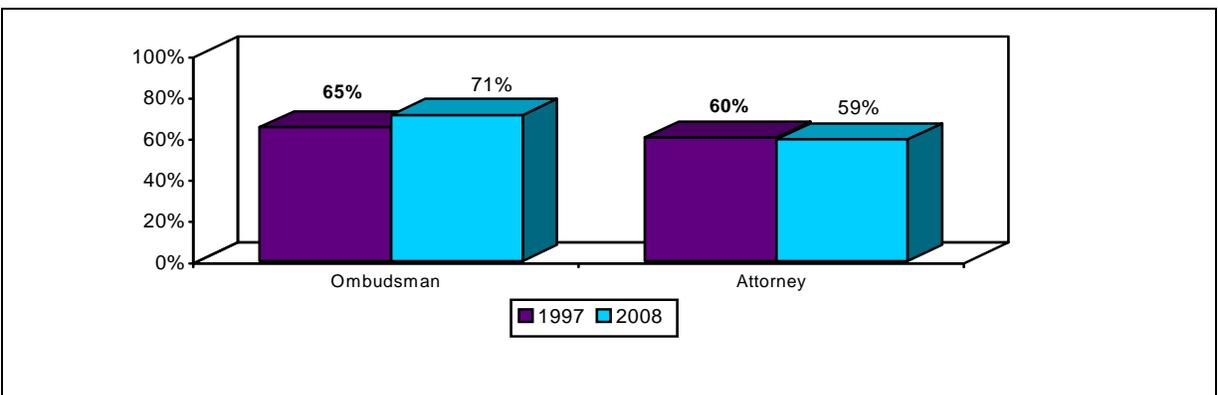
Respondents were asked how satisfied they were with their Ombudsman or attorney, overall. As shown in Figure 4, a greater percentage of injured employees that received Ombudsman assistance (70.7 percent) were either extremely satisfied or somewhat satisfied, as compared to respondents with attorney representation (59.3 percent).

Figure 4: Overall Satisfaction with Ombudsman / Attorney – 2008



OIEC takes pride in the customer service provided to the injured employees of Texas and continues its efforts to improve its services. One of the indications that OIEC is improving its customer service is represented in Figure 5. Since 1997 the level of satisfaction of injured employees regarding the Ombudsman Program has increased six percent, and OIEC expects this trend to continue.

Figure 5: Overall Satisfaction with Ombudsman/Attorney – 1997 v. 2008



The full report includes OIEC’s Compact with Texans, applicable customer-related performance measures, methodology, findings, and a 1997 and 2008 comparison and can be found on OIEC’s website at <http://www.oiec.state.tx.us/resources/publications.html> and Attachment 20.

OIEC’s Customer Satisfaction Survey. At the beginning of 2009, OIEC enlarged the scope of the agency’s Customer Satisfaction Survey based on workers’ compensation system participant feedback. Originally the survey was available to all customers through the agency’s website, but additional information was needed from a larger number of customers. OIEC updated its Customer Satisfaction Survey to include questions about internet usage, purpose of visit to OIEC, and quality of the service and information provided.

The survey, available in both English and Spanish and other languages upon request, is provided to customers who visit the field offices. It is also available on the OIEC website. Customers who have completed the survey have helped OIEC gather critical information that will help plan agency initiatives and evaluate the services it provides. OIEC looks forward to continuing to receive the results because such feedback is imperative to business process improvements to enhance the effectiveness of the agency’s programs for the injured employees of Texas.

As of July 6, 2009, 429 workers’ compensation system participants have responded to the survey. These respondents include 94.5 percent injured employees, 2.2 percent insurance carriers, and 3.3 percent other participants, such as health care providers. An excerpt of the results of the survey through July 6, 2009 is included in Table 3 below. See Attachment 20 for the full survey.

Table 4: OIEC’s Customer Satisfaction Survey Results – Excerpt					
Quality of Service	Excellent	Good	Fair	Poor	N/A
Staff is courteous & helpful	87.0%	12.7%	0.2%	0.0%	0.0%
Staff is easily accessible	76.9%	21.7%	1.0%	0.5%	0.0%
Staff is knowledgeable	86.6%	13.2%	0.2%	0.0%	0.0%
Staff is responsive to concerns	84.2%	15.1%	0.5%	0.2%	0.0%
Staff provides references to other helpful resources	79.5%	17.1%	1.0%	0.0%	2.4%
Staff provided service in a timely manner	83.1%	14.7%	2.0%	0.2%	0.0%
Quality of Information	Excellent	Good	Fair	Poor	N/A
Information provided is accurate	83.0%	15.8%	0.7%	0.0%	0.5%
Information provided is helpful	84.2%	14.1%	1.2%	0.0%	0.5%
Information provided is well-organized and easy to understand	82.4%	15.9%	1.2%	0.2%	0.2%
Web Page	Excellent	Good	Fair	Poor	N/A
Website is user-friendly	23.4%	14.3%	4.8%	1.3%	56.3%
Information is current	27.9%	14.2%	2.6%	1.3%	54.1%
Links to other websites are helpful	21.9%	13.4%	3.6%	0.9%	60.3%
Overall Rating	Excellent	Good	Fair	Poor	N/A
How would you rate OIEC, overall?	81.9%	17.4%	0.5%	0.0%	0.3%



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?

The agency's enabling law continues to reflect OIEC's mission, objectives, and approach to performing agency functions. The agency's enabling statute is found in Chapter 404 of the Texas Labor Code. This statute set out the duties of OIEC, which are to represent the interests of the injured employees in the Texas Workers' Compensation System.

Below are OIEC's legislative recommendations to improve OIEC's operations from the 80th and 81st Texas Legislatures, which were adopted.

1) OIEC Access to Medical Records. (HB 888, 80th Texas Legislature, 2007, Effective September 1, 2007) OIEC requested statutory authority and the Legislature approved to access an injured employee's medical records at no cost to the injured employee. This access restores authority that previously existed before passage of HB 7 and enables Ombudsmen to fully assist an injured employee in indemnity and medical dispute resolution processes.

2) Ombudsman Program and the Injured Employees' Rights and Responsibilities. (HB 673, 81st Texas Legislature, 2009, Effective September 1, 2009) OIEC recommended and the Legislature approved amending its enabling statute to:

- *Clarify an injured employee's right to seek assistance with a dispute before SOAH.* An Ombudsman's assistance with a medical dispute is particularly helpful to injured employees due to an attorney's inability to be paid for services rendered when representing an injured employee for a medical dispute. HB 724, 80th Texas Legislature, 2007, changed the venue for some medical disputes to the State Office of Administrative Hearings (SOAH) for injured employees based on the amount in controversy. As such, OIEC recommended adding the authority to provide assistance at SOAH to the agency's enabling statute to provide clarity.
- *Hold Ombudsmen and injured employee communications confidential to protect the agency's staff from information revealed by the injured employee.* OIEC's Ombudsmen assist and educate injured employees as they pursue their dispute throughout DWC's administrative dispute resolution system. Ombudsmen are not licensed attorneys and do not have attorney-client privilege. Because Ombudsmen are not attorneys, courts view them as potential witnesses. Employees need to have open communications with an injured employee so that Ombudsmen can provide accurate assistance and education to the customer. OIEC recommended that Ombudsmen and injured employee communication should be held confidential, much like an attorney-client privilege. Holding communications between Ombudsmen and injured employees confidential protects OIEC and the State of Texas from having to defend unnecessary accusations from parties who call an Ombudsman as a witness, and protects the rights of injured employees as well.



- *Change the statutory authority to allow OIEC to adopt the Notice of Injured Employees' Rights and Responsibilities in the Workers' Compensation System.* OIEC is responsible for publishing a list of injured employees' rights and responsibilities in the workers' compensation system. Labor Code §404.109 currently provides that the notice should be adopted and distributed by both the Insurance and Workers' Compensation Commissioners. This unusual statutory construction may have lead to technical problems regarding administrative rulemaking. OIEC believes the notice of injured employees' rights and responsibilities should be a document that is easily amended so that it can reflect the latest legislative and regulatory rule changes. OIEC recommended and the Legislature approved the recommendation to give OIEC's Public Counsel the authority to adopt this notice pursuant to the existing rulemaking authority of Labor Code §404.006.
- *Refuse service to threatening or abusive injured employees or injured employees pursuing a criminal act.* OIEC is proud to assist, educate, and advocate on behalf of all the injured employees of Texas. There are however, the few occasions where an injured employee threatens or is abusive to OIEC's employees. On other occasions, there are a few injured employees that may try to fraudulently obtain benefits to which they may not be entitled. OIEC does not wish to be associated with such behavior. OIEC requested and the Legislature approved OIEC's authority to deny agency services in limited circumstances, such as in cases where a customer is abusive, threatens agency staff, or pursues a criminal act.
- *Limit OIEC from being able to access the regulator's attorney-work product to protect the integrity of the agency and DWC's administrative dispute resolution processes.* OIEC has broad access to TDI's files, which otherwise may be held confidential. Such access provides OIEC the ability to monitor field staff, conduct research initiatives, and effectively provide customer service. However, OIEC is not the regulator of the workers' compensation system and understands that it is a system participant that represents the interests of one party, namely injured employees. OIEC recommended that it should not have access to TDI's attorney work-product to ensure the integrity of OIEC's services and to produce a more balanced workers' compensation system. Taking away this privilege ensures that OIEC's Ombudsmen may assist an injured employee at an administrative hearing without having unfair access to information that would not otherwise be obtained through the discovery process. OIEC believes this change was critical to ensuring the integrity of DWC's administrative dispute resolution system and OIEC's services.

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 to you ensure against duplication with other related agencies?

OIEC assists, educates, and advocates on behalf of the injured employees of Texas. TDI's, DWC regulates the workers' compensation system whereas OIEC performs no regulatory functions. OIEC and DWC participate jointly in work groups and communicate frequently on areas of common interest to ensure that injured employees have a "one-stop-shop" experience when seeking assistance in the workers' compensation system.



The Ombudsman Program provides free assistance to unrepresented injured employees before and during DWC's informal and formal administrative dispute resolution proceedings. Ombudsmen can also help to resolve issues without a formal proceeding, thereby saving costs in the workers' compensation system and helping to reach more timely resolution of issues that arise. No other state or federal agency in Texas assists injured employees who are not represented by an attorney in administrative dispute proceedings before DWC. Assisting injured employees through the Ombudsman Program ensures that the injured employee involved in a workers' compensation dispute but not represented by an attorney will receive fair treatment during DWC's administrative dispute resolution process. OIEC believes the function(s) of the Ombudsman Program are appropriately located at OIEC. As a separate agency OIEC is able to provide assistance that focuses on injured employee needs. OIEC believes fulfilling its mission is unfettered as a separate and distinct agency from the regulator.

The Customer Service Program provides general and claim-specific education, information and assistance; refers injured employees to other appropriate agencies for additional assistance; assists with complaints; and identifies and attempts to resolve disputes and denials of benefits through early intervention efforts. DWC provides customer service regarding the workers' compensation system to all system participants, including injured employees represented by attorneys. DWC also provides regulatory education and typically refers unrepresented injured employees to OIEC for assistance should a dispute arise or a form need to be completed. OIEC staff refers all regulatory questions to TDI or DWC.

Legal Services provides advocacy for injured employees and serves as a legal resource for all OIEC team members. Advocating for injured employees in rulemaking and other public forums helps to ensure a level playing field in the workers' compensation system. No other state or federal agency in Texas provides advocacy to injured employees as a class. OIEC believes the Legal Services division is the appropriate place within the agency and within the State to house the functions of the Regional Staff Attorney's, because staff are able to work as a team, collaborate on the aspects of injured employee disputes, and identify how best to advise and provide training to Ombudsmen in the dispute resolution system.

OIEC is administratively attached to TDI; however, the **Administration and Operations Division** performs day-to-day operational functions not performed by TDI or other state or federal agencies. The Administration and Operations Division is separated into two sections:

- **The Operations Section** provides functions that are required by each and every state agency. Each state agency includes a reporting function. However, OIEC believes that maintaining the function within OIEC provides a better reflection of the agency to external customers and the agency is more accountable for the reported information. Communications and the administration of OIEC's website serve as an effective resource for internal and external customers. Only OIEC is situated to know the detail and type of information relayed on the agency's website. Further, if there was not a liaison to TDI with regard to human resources, financial, facilities, computer technology, and office supply needs, these functions would most likely not be provided to OIEC and it would prevent OIEC from fulfilling its statutory mandate.



- **The Quality Assurance Section** ensures effective and efficient policies and procedures are followed. The program also works closely with the Internal Auditor; however, the functions remain separate. The Internal Auditor identifies issues that require corrective action through internal audits. The Quality Assurance Program assists in solving the issue and monitors the implementation of the solution. Additionally, the Quality Assurance Program develops and administers training to agency staff with regard to administrative procedures and agency requirements and conducts research and evaluation of programs, and data analysis.

The Internal Audit Section provides functions required by the Texas Internal Audit Act, Texas Government Code, Title 10, Chapter 2102. The agency would not be in compliance with the Texas Internal Audit Act if these functions were not performed. Other state agencies either contract for the internal audit function or employ their own internal audit function; however, no duplication exists because all agencies that meet certain criteria are required to perform these functions. OIEC previously contracted for this service; however, OIEC believes that it is more beneficial and cost-effective to employ the internal audit function as opposed to contract out for the services.

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

The Office of Injured Employee Counsel (OIEC) identified significant variation among states with regard to states' assistance provided to injured employees. OIEC works closely with the International Association of Industrial Accident Boards and Commissions (IAIABC) in its project to gather information regarding functions performed by various workers' compensation agencies. Information is available on the IAIABC website at www.iaabc.org.

In July 2008, the IAIABC and the Workers Compensation Research Institute (WCRI) conducted a survey that was built on many years of valuable work by the United States Department of Labor (USDOL). The USDOL had pioneered the use of standard tables to promote uniformity in responses regarding worker's compensation regulations and benefit levels. These new tables were populated from completed surveys sent to the 50 states and the District of Columbia. Each jurisdiction was given the option of completing the tables provided or completing the updated survey.

As a member of IAIABC, OIEC received a copy of the publication containing these tables. The Workers' Compensation Laws, 2nd Edition, was published on June 2009. See Attachment 7 for the full report. OIEC used "Table 15: Advocate and Attorney Fee Provisions Under Workers' Compensation Statutes as of July 1, 2008" of the report to properly identify states that used Public Advocates or Ombudsmen in resolving disputes in the workers' compensation system. Seventeen states were identified (Arkansas, Delaware, Florida, Kansas, Louisiana, Maine, Montana, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oregon, South Carolina, Texas, and Washington). Of these states, only six (Florida, Maine, Nevada, New Hampshire, North Dakota, and Texas) provided public advocacy services exclusively to injured employees.



During the months of July and August 2008, OIEC undertook a survey of selected states in order to conduct a qualitative comparative study of the duties and responsibilities of state agencies having responsibilities associated with workers' compensation. The purpose of the survey was to benchmark OIEC's activities against other states. The survey was sent to 14 states and had a 78.6 percent response rate. *See Attachment 22 for the Survey of Other States.*

In summary, even though some of these programs report having Ombudsmen to assist injured employees, the nature of advocacy services provided differs across the states. In many cases, the Ombudsmen are agency personnel that informally contact involved parties to clarify information and resolve issues. The authority to go beyond informal attempts at resolution is not provided to the Ombudsmen in these states. Generally, the Ombudsman functions are performed within the same agency that regulates the workers' compensation system but within separate divisions.

Only a limited number of states have statutory authority to assist injured employees in formal dispute proceedings. Most states answer questions for injured employees and provide consultation prior to formal disputes. Many offices provide informal mediation or problem-resolution assistance by contacting involved parties, clarifying rules, and reaching agreements prior to any formal dispute proceeding. In general, other states have less authority to assist injured employees than OIEC.

In addition to Texas, Maine and Nevada are the only two states that reported having the directive to assist injured employees in administrative hearings. The Nevada Attorney for Injured Workers (NAIW) is a free-standing agency that has the autonomy required for its attorneys to appropriately represent their clients. In Maine, the Worker Advocate Program is part of the Maine Workers' Compensation Board, which is also a regulatory agency. The general mission of the Maine Worker Advocate Program is to serve the employees and employers of the state fairly and expeditiously by ensuring compliance with the workers' compensation laws.

Of the six states that provided public advocacy services exclusively to injured employees, Texas is the only state that has an agency that provides assistance to injured employees with Ombudsmen at no cost to the injured employee, has the authority to assist injured employees in formal administrative hearings, is a free-standing agency that is not part of a larger workers' compensation agency, and represents injured employees as a class. Other states view Texas as a leader in "Best Practices" when assisting injured employees. In fact, New York State is working with OIEC's Deputy Public Counsel in an effort to create a state agency that assists and advocates on behalf of injured employees in the New York Workers' Compensation System.

The Division of Federal Employees' Compensation (DFEC) is located under the Office of Workers' Compensation Programs (OWCP), Employment Standards Administration (ESA) of the USDOL. OWCP administers disability compensation programs that provide benefits for certain workers or dependants who experience work-related injuries or illnesses. Under the Federal Employees' Compensation Act, DFEC provides workers' compensation to Federal and Postal employees around the world for employment-related injuries and occupational diseases. DFEC adjudicates new claims for benefits and manages ongoing cases; pays medical expenses and compensation benefits to injured employees and survivors; and helps injured employees return to work when they are medically able to do so. Disputes in claims under the Federal Employees' Compensation Act are resolved administratively.



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

1) As a relatively new agency, OIEC faces the challenge of familiarizing employers and injured employees with the availability of agency services. According to a 2006 survey of employer participation in the Texas Workers' Compensation System conducted by TDI's, Workers' Compensation Research Group, 65 percent of Texas employers said they had no knowledge of the reforms made in the 2005 House Bill 7 reforms, which include the establishment of OIEC. In addition, some individuals confuse OIEC's responsibilities with the regulatory functions of DWC.

2) OIEC must be sensitive to the possible perception on the part of attorneys that OIEC may take some of their business. While some injured employees may choose to use OIEC's services rather than an attorney, OIEC often assists injured employees who have been unable to find an attorney. OIEC also makes referrals to the State Bar when an injured employee requires formal representation such as in district court where OIEC's Ombudsmen are statutorily prohibited from providing assistance to injured employees.

3) OIEC believes that a Supervisor in each field office would create a more efficient and effective working environment as well as enhance productivity and communication. However, due to the State's management to employee ratio requirement (11 employees to one Supervisor), limited space, and resources available to hire a Supervisor in each field office, this is not possible. Therefore, OIEC designated an Ombudsman Lead in each office to provide better communication, monitoring, and support resources to all field staff.

4) OIEC is unable to maintain a Customer Service Representative at each field office throughout the State due to limited space and facilities available to house Customer Service Representatives in each field office. The Ombudsman Assistant is required to handle the Customer Service Representative's duties at the field office that does not have a Customer Service Representative (i.e., Abilene Field Office).

5) The ability to obtain dispute data pertaining to OIEC functions impairs the ability to identify and report measures or information related to OIEC functions. OIEC is administratively attached to TDI and uses DWC's workers' compensation data system (COMPASS). Data regarding DWC's administrative dispute resolution process within COMPASS does not include information pertaining to functions solely performed by OIEC, such as disputed issues resolved by OIEC prior to holding an administrative proceeding. Therefore data must be extracted from a "log" of notes in the Dispute Resolution Information System (DRIS) using special codes to identify the activity. However, the "log" code cannot easily be correlated to the dispute identification number. "Log" codes are based on the DWC claim identification number.

6) HB 724, which passed in the 80th Legislative Session and was implemented in FY 2008, was not funded in the FY 2008-2009 General Appropriations Act. The bill provides that medical necessity disputes with a cost lower than \$3,000 and fee disputes with a cost lower than \$2,000 are sent to a DWC Contested Case Hearing, and disputes above these amounts are sent to SOAH. This unfunded mandate has affected the ability of OIEC to hire additional staff to assist injured employees' in the medical dispute resolution process. During the 81st Legislative session, three



additional FTEs and \$128,072 for each year of the biennium was requested for FY 2010-2011; however, the rider was not approved.

7) A Medical Consultant position would be an asset to the agency. The position could provide assistance to Ombudsmen and other OIEC staff regarding medical dispute resolution, medical necessity, medical research, and other related issues, which would aid in assisting injured employees through the medical dispute resolution process, in indemnity hearings, and in medical dispute hearings at the State Office of Administrative Hearings (SOAH).

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).

1) The Supreme Court's 2007 ruling in *Entergy Gulf States Inc. v. John Summers* concerned a contract employee injured in a 2001 accident at an Entergy plant in Bridge City. *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433 (Tex. 2009). The court held that the employee could not collect damages for alleged negligence because he was covered by a workers' compensation policy purchased by Entergy. This decision extended the exclusive remedy provision of Labor Code §406.054 to a premises owner contrary to prior law.

Although the Supreme Court's decision in *Entergy Gulf States, Inc. v. Summers* will significantly reduce the amount of benefits recovered by some injured employees for their work-related injuries, it should not significantly impact the OIEC's key functions. By extending the exclusive remedy provisions of the workers' compensation law to premises owners in certain circumstances, the *Entergy* decision expands workers' compensation coverage somewhat while restricting the number of injured employees who will be able to pursue third-party negligence claims against premises owners. While this expansion of workers' compensation coverage could to some degree increase the number of workers' compensation claims, such an increase is unlikely to be large. In most of the cases similar to *Entergy*, the injured employee already pursues both a workers' compensation claim and a third-party negligence claim, just as the injured employee did in the *Entergy* case. The real impact of *Entergy* is that it protects another entity from a negligence claim, but it does not create another workers' compensation claim.

In addition, while an injured employee who does not have a third-party claim may be less likely to be able to obtain attorney representation and therefore more likely to need OIEC assistance, any increase in the number of additional injured employees needing OIEC assistance as a result of *Entergy* will likely be limited. The number of workers' compensation cases with associated third-party claims against premises owners prior to *Entergy* was a relatively small portion of the total number of cases in the workers' compensation system. In a number of these cases, the attorney chose to represent the injured employee only in the third-party claim and not in the workers' compensation claim.

HB 1657, relating to workers' compensation insurance coverage regarding certain contractors by Representative Helen Giddings was filed in the 81st Texas Legislature, Regular Session, 2009. If the bill had passed, it would have changed the Labor Code to clarify that plant owners are not immune from lawsuits merely because they buy workers' compensation coverage for their contracted employees.



2) Texas is the only state where workers' compensation insurance coverage is not mandatory. According to the 2008 study conducted by TDI's Workers' Compensation Research and Evaluation Group of employer participation in the workers' compensation system, approximately 67 percent of Texas employers carry workers' compensation insurance. This is the highest percentage of employers carrying workers' compensation coverage since the first study was conducted in 1993.

The 2008 study also found that 75 percent of Texas employees are employed by Texas employers that carry workers' compensation insurance, which is the lowest percentage of covered employees in the last fifteen years.¹ Figures 6 and 7 show the percentage of Non-subscribers in Texas and the percentage of employees that are employed by Non-subscribers within the last 15 years.

Figure 6: Percentage of Texas Employers That Are Non-subscribers, 1993-2008

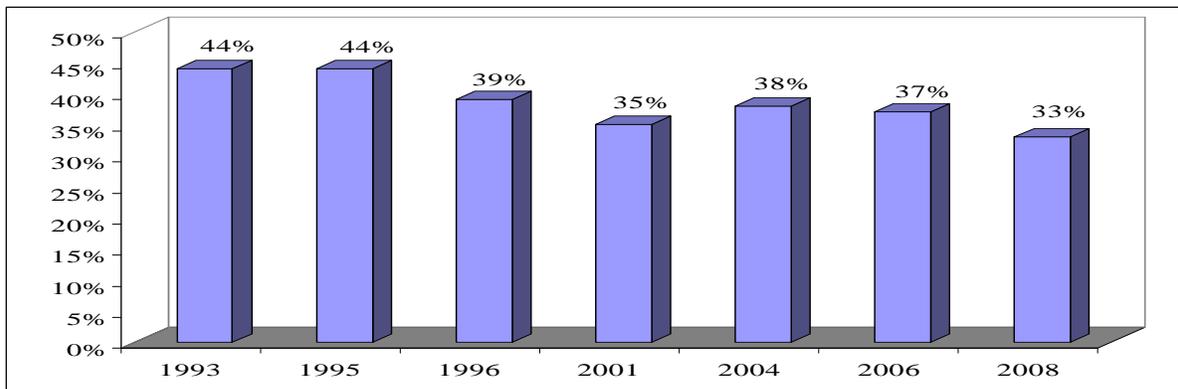
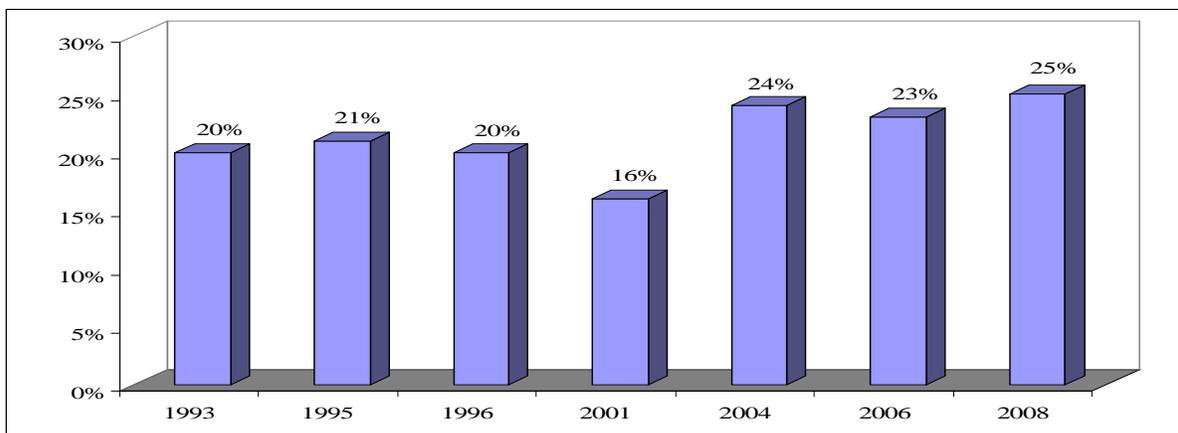


Figure 7: Percentage of Texas Employees That Are Employed by Non-subscribers, 1993-2008



Source: *Survey of Employer Participation in the Texas Workers' Compensation System*, 1993 and 1995 estimates from the Texas Workers' Compensation Research Center and the Public Policy Research Institute (PPRI) at Texas A&M University; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004-2008 estimates from the Texas Department of Insurance Workers' Compensation Research and Evaluation Group and PPRI.

¹ Source: *Employer Participation in the Texas Workers' Compensation System: 2008 Estimates*. Texas Department of Insurance Workers' Compensation Research and Evaluation Group; September, 2008.



Many bills have been filed over the years to mandate workers' compensation insurance coverage; however, no bills have passed due to Texas' strong business climate. If workers' compensation insurance coverage becomes mandatory in Texas, it would have a significant impact on the agency. Workers' compensation claims and disputes would increase substantially; therefore, it would be necessary to increase the number of FTEs and budget appropriations to the agency in order to provide the same level of services the agency currently provides.

3) It is unclear how the workers' compensation system in Texas will be impacted by the Health Insurance Reform, which will support small businesses by allowing them to purchase plans through an insurance exchange and by providing tax credits to help them provide benefits. The Health Insurance Reform is considered to be a federal reform and potentially a federally underwritten insurance offering. Currently workers' compensation is largely a state-by-state matter, and Texas is the only state where workers' compensation coverage is not mandatory.

4) H.R. 635 of the 111th United States Congress was introduced on January 22, 2009 by Representative Joe Baca from California. The bill is to establish the National Commission on States Workers' Compensation Laws. This bill will require the Commission to review the findings and recommendations of the previous National Commission on State Workman's Compensation Laws; and to study and evaluate state workers' compensation laws to determine their adequacy and whether additional remedies should be available to ensure the payment of benefits and medical care. H.R. 635 has seven additional cosponsors, was referred to the House Committee on Education and Labor. OIEC will continue to monitor and track this bill.

I. What are your agency's biggest opportunities for improvement in the future?

1) OIEC has undergone two major changes since its inception as a result of HB 7, 79th Texas Legislature, Regular Session, 2005. These include the establishment of Customer Service Representatives in most field offices to conduct research and help injured employees even before they may become involved in a dispute (i.e., early intervention), and the augmentation of the Ombudsman Program to perform case development functions. Because these are new functions performed in many cases by newly hired staff, OIEC must continue to monitor these positions and establish policies and procedures to ensure consistent quality service at all of OIEC's field offices.

2) OIEC has moved to a single point of contact model where an injured employee interacts with one Ombudsman per claim to the extent resources allow. The docketing process is a key obstacle to ensuring that the same Ombudsman stays with the injured employee throughout the injured employee's claim. While it will be an ongoing challenge to perfect these new processes, OIEC looks forward to continuing to work with DWC to refine this process.

3) The standardization of processes and information used in the 23 field offices and the satellite offices for dispute proceedings in Texas is a challenge for staff. It is imperative that every staff member whose functions are similar (i.e., Ombudsmen, Customer Service Representatives, etc.)



follow standard processes and training protocol so that information disseminated to injured employees or other system participants is accurate and consistent. OIEC continues to standardize materials to ensure effective customer service. The Quality Assurance section has also been added as a result of an audit recommendation and is diligently working to achieve success in this project.

4) OIEC is committed to continue its efforts to improve and expand its offerings to non-English speakers in the State. OIEC staff is located in 23 field offices throughout the State to assist injured employees. OIEC's Central Office is located in Austin. Ninety-six percent of these offices have OIEC staff that can provide assistance in Spanish. In addition, more than half of the Ombudsmen speak Spanish.

5) OIEC provides interpreter services for non-English speakers through a State employee or a private provider. These services are available for injured employees in various stages of DWC's administrative dispute resolution system. However, when an Ombudsman provides interpreter services to an injured employee during an administrative hearing (i.e., Benefit Review Conference, Contested Case Hearing, or a State Office of Administrative Hearings' proceeding), the injured employee may not be afforded the full assistance that is required from an Ombudsman. While translating the events during a hearing, an Ombudsman may, in an effort to save time, translate only a part of the proceeding, and not word-for-word translation. By providing interpreter services by someone other than the Ombudsman assisting the injured employee at proceedings, the injured employee is afforded an opportunity to hear the entire conversation and discuss the issues with the Ombudsman in order to determine the appropriate way to proceed. OIEC has been working with DWC to encourage objective, third-party interpreters who are certified in their service. OIEC believes this will more freely allow Ombudsmen to dedicate resources to fulfilling the agency's mandate.

6) HB 673 passed by the 81st Texas Legislature, Regular Session, 2009 changes the statutory authority to adopt OIEC's "Notice of Injured Employees' Rights and Responsibilities in the Workers' Compensation System" from the Commissioners of Insurance and Workers' Compensation to the Public Counsel to allow for flexibility in the notice. Effective September 1, 2009, OIEC is responsible for publishing a list of injured employees' rights and responsibilities in the workers' compensation system. The statute currently provides that the notice should be adopted and distributed by both the Insurance and Workers' Compensation Commissioners. This unusual statutory construction may have lead to technical problems regarding administrative rulemaking. OIEC believes the notice of injured employees' rights and responsibilities should be a document that is easily amended so that it can reflect the latest legislative and regulatory rule changes. OIEC recommended providing the Public Counsel of OIEC the authority to adopt this notice through an OIEC-initiated rulemaking initiative and it was granted.

7) A Policy Development Program was initiated in an effort to better communicate and receive ideas from all employees. Recognizing the value and ideas of each employee, this program was designed to serve as a channel of communication for "great ideas" or solutions to issues employees are facing.



While participation in this program is optional, all OIEC employees are encouraged to submit their ideas on how to improve OIEC, OIEC's policies or procedures, or work environment. OIEC's executive management team review the ideas or recommendations submitted monthly. Confidentiality of the employee who submits the policy recommendations is provided to encourage all OIEC employees to participate in providing suggestions to improve the agency.

8) According to a 2006 survey of employer participation in the Texas workers' compensation system conducted by TDI's Workers' Compensation Research Group, 65 percent of Texas employers said they had no knowledge of the reforms made in the 2005 HB 7 reforms, which include the establishment of the OIEC.

OIEC participated in 36 presentations, workshops, seminars, speaking engagements, and other forums in FY 2008 where OIEC staff speaks to workers' compensation system stakeholders regarding OIEC, its role, and its services. OIEC anticipates that the number of presentations will increase in FY 2009.

OIEC is currently maximizing outreach efforts to ensure Texans are aware of the public service OIEC provides. OIEC's increased outreach initiatives include:

- a) Comprehensive education and resource materials for injured employees, employers, and health care providers;
- b) A public service announcement, both in English and Spanish, that increases the public's awareness about OIEC and its efforts to help injured employees return to work;
- c) A dynamic and user-friendly website relaying the latest workers' compensation developments that impact injured employees, which is also available for OIEC's Spanish-speaking customers and will soon be available in Chinese, Vietnamese, Korean, Russian, and a variety of other languages; and
- d) An aggressive Customer Service initiative whereby injured employees (upon reporting a work-related injury) are contacted by OIEC in order to educate the customers about their rights and responsibilities in the workers' compensation system and OIEC's services. In addition, families of employees who sustain work-related fatalities are contacted to inform them of death and burial benefits to which they may be entitled. The local legislative representatives are also contacted to advise the representative of a potentially work-related fatality in the community.



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.

Office of Injured Employee Counsel Exhibit 2: Key Performance Measures – FY 2008			
Key Performance Measures	FY 2008 Target	FY 2008 Actual Performance	FY 2008 % of Annual Target*
<i>Outcome Measures</i>			
Outcome Measure 1.1 oc 3 Percentage of Workers' Compensation Rules Changed for the Benefit of the Injured Employee as a Result of OIEC Participation	50.00%	58.33%	116.67%
Outcome Measure 3.1 oc 1 Percentage of proceedings Held before the Division of Workers' Compensation in which the Injured Employee was assisted by an Ombudsman	45.00%	40.09%	89.08%
Outcome Measure 3.1 oc 2 Percentage of Issues Raised at Contested Case Hearings (CCH) where the Injured Employee Prevailed When Assisted by an Ombudsman	40.00%	41.77%	104.43%
Outcome Measure 3.1 oc 3 Percentage of Issues Raised on Appeal where the Injured Employee Prevailed When Assisted by an Ombudsman	40.00%	31.59%	78.98%
<i>Output Measures</i>			
Output Measure 1.1.1 op 1 Number of Rules Analyzed by OIEC (informal and formal)	22	24	109.08%
Output Measure 1.1.1 op 2 Number of Rulemaking Processes (informal and formal) in Which OIEC Participated	17	17	100.00%
Output Measure 3.1.1 op 2 Number of Benefit Review Conferences (BRC) with Ombudsman assistance	8,000	5,013	62.66%
Output Measure 3.1.1 op 4 Number of Contested Case Hearings (CCH) with Ombudsman assistance	2,700	2,025	75.00%
Output Measure 3.1.1 op 5 Number of Injured Employees Prepared for an Appeal by an Ombudsman	875	552	63.09%
* Results highlighted in blue indicate target was met within a variance of 5 percent, results highlighted in green indicate performance was not met but performance was desirable, and results highlighted in red indicate performance was not met and performance was undesirable.			

Note: For the FY 2010-2011 biennium, OIEC's goal sequence will change from previous years. Goal 1 will change from Advocate to Assist, and Goal 3 will change from Assist to Advocate. Goal 2 (Educate) will not change; however, the two strategies (Educate and Refer) in Goal 2 in FY 2008-2009 will be consolidated into one strategy for the FY 2010-2011 biennium.



Table 5 provides key performance measures and their respective targets included in OIEC's FY 2010-2011 appropriations bill pattern. See Attachment 23 for a Crosswalk identifying the FY 2008-2009 performance measures compared to FY 2010-2011.

Table 5: FY 2010 – FY 2011 Key Performance Measures and Targets	
Key Performance Measures	FY 2010 – FY 2011 Target
Outcome Measures	
Outcome Measure 1.1 oc 2 Percentage of Texas Department of Insurance administrative dispute resolution proceedings in which an Ombudsman assisted an unrepresented injured employee	41.00%
Outcome Measure 1.1 oc 3 Percentage of issues raised at Contested Case Hearings (CCH) where the injured employee prevailed when assisted by an Ombudsman	43.00%
Outcome Measure 1.1 oc 4 Percentage of issues raised on appeal where the injured employee prevailed when assisted by an Ombudsman	32.00%
Outcome Measure 2.1 oc 1 Percentage of injured employees reached about their rights and responsibilities in the workers compensation system	96.00%
Outcome Measure 3.1 oc 3 Percentage of adopted workers' compensation rules changed for the benefit of injured employees as a result of the Office of Injured Employee Counsel participation	78.00%
Output Measures	
Output Measure 1.1.1 op 2 Number of Benefit Review Conferences with Ombudsman assistance	5,100
Output Measure 1.1.1 op 4 Number of Contested Case Hearings with Ombudsman assistance	2,100
Output Measure 1.1.1 op 5 Number of injured employees prepared for an appeal by an Ombudsman	550
Output Measure 2.1.1 op 1 Number of injured employees reached about their rights and responsibilities	212,000
Output Measure 3.1.1 op 1 Number of adopted workers' compensation rules analyzed by the Office of Injured Employee Counsel	9
Output Measure 3.1.1 op 2 Number of adopted workers' compensation rules in which the Office of Injured Employee Counsel participated	8
Efficiency Measure	
Efficiency Measure 2.1.1 ef Average number of days from the date of injury to the date an injured employee is sent their rights and responsibilities packet about the workers' compensation system	28



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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).

Office of Injured Employee Counsel

June 2005	<p>The 79th Texas Legislature, Regular Session, 2005 passed House Bill (HB) 7. HB 7 abolished the Texas Workers' Compensation Commission (TWCC) and established DWC as a division within TDI. HB 7 also created the Office of Injured Employee Counsel (OIEC), and preserved and moved TWCC's Ombudsman Program to OIEC. <i>See</i> HB 7 §7.0031 (requiring Ombudsmen to be transferred to OIEC no later than March 1, 2006). OIEC was created to:</p> <ol style="list-style-type: none">1) provide assistance to workers' compensation claimants;2) advocate on behalf of injured employees as a class regarding rulemaking by the DWC commissioner and commissioner of insurance relating to workers' compensation;3) assist injured employees with contacting appropriate licensing boards for complaints against a health care provider; and4) assist injured employees with referral to local, state, and federal financial assistance, rehabilitation, and work placement programs, as well as other social services that the office considers appropriate. <p>LABOR CODE §404.101.</p>
December 2005	<p>Governor Rick Perry appointed Norman Darwin on December 8, 2005 as OIEC's first Public Counsel.</p>
February 2006	<p>The Ombudsman Program transferred from DWC to OIEC, which included 91 FTE's.</p> <p>The General Counsel is hired.</p>
March 2006	<p>OIEC is operational.</p> <p>The Director of Legal Services is hired.</p>



- April 2006 The OIEC toll-free number for injured employees was established 1-866-393-6432 (EZE-OIEC)
- The OIEC website was launched.
- June 2006 OIEC adopted the following rules:
- §276.12 Procedures for Private Meetings with Unrepresented Injured Employees Prior to a Workers' Compensation Proceeding (Adopted as amended)
 - §276.11 Access to Injured Employee Medical Documentation (Repealed)
 - §276.10 Ombudsman Training Program and Continuing Education (Repealed old and Adopted new)
- August 2006 OIEC adopted its first rules regarding the Ombudsman Education and Training Program and Private Meetings with Unrepresented Injured Employees, which became effective August 23, 2006.
- September 2006 OIEC filed its first amicus curiae (friend of the court) brief with the Texas Supreme Court in Opposition to a Petition for Review with the Texas Supreme Court in *Lockheed Martin Corp. v. Eunice Alexander*, Case No. 06-0299. The brief addressed the correct interpretation of Labor Code §409.021(c).
- November 2006 OIEC adopted the following rules:
- §276.1 Definitions (Adopted New),
 - §276.2 The Mission of the Office of Injured Employee Counsel (Adopted New),
 - §276.3 Rulemaking Petition (Adopted New), and
 - §276.5 Employer's Notification of Ombudsman Program to Employees (Adopted New).
- March 2007 Governor Rick Perry reappointed Norman Darwin on March 9, 2007 as OIEC's Public Counsel.
- September 2007 HB 1 became effective. The 80th Texas Legislature, 2007 provided additional resources to fulfill the agency's mandate to assist, educate, and advocate on behalf of the injured employees of Texas. The Legislature transferred 25 FTEs to OIEC's Ombudsman Program from DWC to resolve disputes between injured employees and workers' compensation carriers prior to a proceeding conducted by DWC effective September 1, 2007. The transfer of these FTEs provided OIEC's Ombudsman Program the ability to conduct case development functions as well as assign a single point of contact for each injured employee.



September 2007-cont. The 80th Texas Legislature, 2007 provided funding for 36 FTEs to allow OIEC to directly respond to injured employee telephone calls and proactively contact injured employees to educate injured employees about their rights and responsibilities in the workers' compensation system as well as OIEC's various services after an injury is reported to DWC. This appropriation allowed OIEC to provide injured employees a one-stop-shop and early intervention services.

HB 888, passed by the 80th Texas Legislature, 2007 became effective. This bill gives OIEC statutory authority to access an injured employee's medical records at no cost to the injured employee. This access restores authority that previously existed before the passage of HB 7, which established OIEC. HB 888 enables Ombudsmen to fully assist an injured employee in indemnity and medical dispute resolution processes.

October 2007 OIEC's Customer Service Department became operational and staffing process was initiated (including the building of Customer Service's Management Team).

January 2008 OIEC reorganized to reflect the agency's changing face and to increase efficiencies in fulfilling its mandate.

1) A Reporting Analyst position was created to ensure the agency keeps abreast of the many reporting requirements.

2) The General Counsel and Employee Relations positions were eliminated to provide funding for the seventh Regional Staff Attorney, which allowed for the Legal Services Division to be fully staffed providing one Regional Staff Attorney to support each Ombudsman Program team. The General Counsel functions were combined with the Deputy Public Counsel position and the Employee Relations functions were absorbed by the Director of Legal Services.

February 2008 OIEC filed a second amicus curiae brief in opposition to specific portions of the petition for review, with the Texas Supreme Court in *Bison Building Material, Ltd. V. Lloyd Aldridge*, Case No. 06-1084. This brief addressed the requirements for post-injury waivers in non-subscriber cases.

April 2008 OIEC changed the name of the Division of Injured Employee Services to the Ombudsman Program to more closely reflect OIEC's enabling statute.

June 2008 OIEC adopted the following rule:

- §276.11 Access to Injured Employee Medical Documentation (Adopted New)



- August 2008 Training sessions were completed for Ombudsman Associates who were transferred from DWC. Ombudsman Associates that graduated from the Ombudsman Training Program were released to conduct hearings, and received their Type 03 workers' compensation adjuster's license.
- October 2008 OIEC adopted the following rules:
- §276.2 The Mission of the Office of Injured Employee Counsel (Adopted as amended)
 - §276.10 Ombudsman Training Program and Continuing Education (Adopted as amended)
- June 2008 OIEC's first Public Service Announcement is shown on public television (PBS) in English and Spanish. The statewide announcement was produced as an outreach effort to broadcast OIEC's services to the injured employees of Texas. It will be aired now through August 31, 2010.
- December 2008 OIEC filed its third amicus curiae brief with the Texas Supreme Court in the case of *Weeks v. Fireman's Fund Ins. Co.*, No. 08-1084 addressing the requirement that an injured employee must be at maximum medical improvement before an impairment rating can be assigned.
- February 2009 Governor Rick Perry reappointed Norman Darwin on February 3, 2009 as OIEC's Public Counsel.
- OIEC filed its fourth amicus curiae brief with the Texas Supreme Court in the case of *State Office of Risk Management v. Lawton*, No. 08-0363 addressing waiver under §409.021(c) of the Labor Code and emphasizing that the Court of Appeal's adoption of the Appeals Panel's analysis of this issue strikes an appropriate balance and gives the intended meaning to both §409.021(c) of the Labor Code and §124.3 of the Texas Administrative Code.
- OIEC reclassified all Ombudsman Assistants' job classification from Administrative Assistant II and III to Legal Secretary II and III in order to consolidate all Ombudsman Program employees into the Legal job classification category pending State Auditor's Office acceptance of OIEC's new classification proposal.
- March 2009 OIEC presented oral argument before the Texas Supreme Court on the case in which it had filed the amicus curiae brief in February 2009, *State Office of Risk Management v. Lawton*, No. 08-0363.
- June 2009 The Quality Assurance Section was created within the Administration and Operations Division.



July 2009

OIEC filed its fifth amicus curiae brief with the Texas Supreme Court in the case of *Leordeanu v. American Protection Ins. Co.*, No. 09-0330 addressing the issue of whether a pharmaceutical sales representative was in the course and scope of her employment at the time she was involved in a motor vehicle accident.

September 2009

SB 1 becomes effective. The 81st Texas Legislature, Regular Session, 2009, approved one additional FTE and funding to serve as OIEC's Internal Auditor. The Legislature also approved an additional \$300,000 each year in the biennium to be used to enhance OIEC's outreach efforts.

HB 673 becomes effective (passed by the 81st Texas Legislature, Regular Session, 2009). HB 673 changes OIEC's enabling statute and:

- clarifies an injured employee's right to seek assistance with a dispute before SOAH,
- holds Ombudsmen and injured employee communications confidential to protect the agency's staff from information revealed by the injured employee,
- changes the statutory authority to adopt OIEC's notice to injured employees' rights and responsibilities from the Commissioners of Insurance and Workers' Compensation to the Public Counsel to allow for flexibility in the notice,
- allows OIEC to refuse service to threatening or abusive injured employees or injured employees pursuing a criminal act, and
- limits the agency from being able to access the regulator's attorney-work product in enforcement cases to protect the integrity of OIEC and DWC's dispute resolution processes.



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IV. Policymaking Structure

A. Policymaking Board Members.

Office of Injured Employee Counsel Exhibit 3: Policymaking Body			
Member Name	Term/Appointment Dates/Appointed by (e.g., Governor, Lt. Governor, Speaker)	Qualification (e.g., public member, industry representative)	City
Norman W. Darwin	Policymaking decisions are made and day-to-day operations are overseen by a Public Counsel, appointed by the Governor, and confirmed by the Senate for a two year term that expires on February 1 st of each odd-numbered year. The Public Counsel performs the role of the Executive Director of OIEC. Mr. Darwin was appointed on December 8, 2005 as OIEC's first Public Counsel, confirmed by the Legislature March 7, 2007, and reappointed on February 3, 2009.	Labor Code §404.052. To be eligible to serve as public counsel, a person must: 1) be a resident of Texas; 2) be licensed to practice law in this state; 3) have demonstrated a strong commitment to and involvement in efforts to safeguard the rights of the working public; 4) have management experience; 5) possess knowledge and experience with the workers' compensation system; and 6) have experience with legislative procedures and administrative law.	Weatherford, Texas

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

Not Applicable.

C. How is the chair selected?

Not Applicable.

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

Not Applicable.



E. In general, how often does your policymaking board meet? How many times did it meet in FY 2008? In FY 2009?

Not Applicable.

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

The Public Counsel receives all the required training to perform duties required as an Executive Director of a state agency. The Public Counsel has completed all of OIEC's and the State-mandated training. Mr. Darwin has also completed Continuing Legal Education (CLE), as required by the State Bar, and the Governor's Executive Development Program (optional training).

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.

OIEC's Employee Manual contains the employment policies at OIEC. Other policies and procedures provide clear direction to agency staff regarding required protocols and responsible staff.

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

The Public Counsel regularly receives information from OIEC that includes the Strategic and Business Plans, as well as Performance Measures. The Public Counsel also receives regular updates from the Deputy Public Counsel regarding staffing, budget, agency performance, legislative updates, complaints or stakeholder concerns, etc.

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 operation of your agency?

The Public Counsel receives input from the public through OIEC's In-Box as well as through the Quarterly Review that offers and invites information from the public. The Public Counsel also receives information from staff members as they are relayed to the Deputy Public Counsel, which in turn will relay information to the Public Counsel.



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

Not Applicable. However, the chart below identifies OIEC's committee's, which are used to carry out its mission.

Office of Injured Employee Counsel			
Exhibit 4: Subcommittees and Advisory Committees			
Name of Subcommittee or Advisory Committee	Size / Composition / How are members appointed?	Purpose / Duties	Legal Basis for Committee
Policy Development Committee	Three members (Director of Ombudsman Program, Director of Legal Services, and Deputy Public Counsel)	Develops policies for agency programs and operations with input from staff	Labor Code §404.102
Ethics Committee	Seven members (Employees from the Ombudsman Program, the Customer Service Program, Legal Services, and the Administration and Operations Division)	Gives employees the opportunity to raise questions or dilemmas that might create conflict between moral duty and obligation	Labor Code §404.102
Training Committee	Six members (Employees from the Ombudsman Program, the Customer Service Program, Legal Services, and the Administration and Operations Division)	Develops training plan for OIEC, identifies topics, gathers and maintains core training links	Labor Code §404.102



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V. Funding

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

OIEC is funded by General Revenue – Dedicated (Fund 36) through the maintenance tax that is paid by insurance carriers writing workers' compensation policies in Texas. The tax is statutorily capped at two percent of gross annual workers' compensation premiums. The tax also funds the administrative and regulatory functions of DWC.

The Commissioner of Insurance sets maintenance tax rates each year in order to generate sufficient revenues to fund the difference between projected revenues from non-maintenance tax sources and projected Fund 36 expenditures. This mechanism ensures that enough funding is generated to cover the appropriations passed by the Legislature, and it is designed to be self leveling, as discussed below.

At the end of each fiscal year, Fund 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 Fund is usually at its lowest balance. In years when the maintenance taxes produce more revenue than is spent from Fund 36, the unspent funds remain by statute in the Fund and the maintenance tax rates are set to recover a lower level of revenue the following year. In other words, the statute governing the operation of Fund 36 contemplates that revenue collection be a self-correcting mechanism, which collects only the revenue needed for 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.

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

Unexpended Balance Authority. Unexpended balance authority is helpful for OIEC to fulfill its mission by providing management the flexibility to use unexpended funds to produce additional outreach initiatives, conduct workers' compensation research to be included in the agency's biennial legislative report, administer additional training to staff, or other initiatives that allow OIEC to assist, educate, and advocate on behalf of the injured employees of Texas.

The flexibility gained by the agency having unexpended balance authority is particularly helpful because approximately 91 percent of OIEC's budget is dedicated towards salaries and wages. The Legislature approved unexpended balance authority for the FY 2008-2009 and FY 2010-2011 bienniums.



C. Show your agency's expenditures by strategy.

Office of Injured Employee Counsel Exhibit 5: Expenditures by Strategy – FY 2008 (Actual)	
Goal/Strategy	Total Amount
A. Goal: ADVOCATE FOR INJURED EMPLOYEES Advocate for Injured Employees in Rulemaking and Other Public Forums. A.1.1. Strategy: PARTICIPATE IN RULEMAKING Participate in Rulemaking & Provide Information, Research & Testimony.	\$662,934.51
B. Goal: EDUCATION AND REFERRAL Increase Injured Employee Education and Provide Referrals. B.1.1. Strategy: RIGHTS AND RESPONSIBILITIES Contact and Assist Injured Employees and Educate System Participants. B.1.2. Strategy: REFERRALS Refer Injured Employees to Programs, Services, and Licensing Boards.	\$1,634,696.38 \$549,059.92
C. Goal: OMBUDSMAN PROGRAM Assist Injured Employees through the Ombudsman Program. C.1.1. Strategy: OMBUDSMAN PROGRAM Prepare and Assist Injured Employees in BRCs, CCHs, and Appeals.	\$4,223,435.29
GRAND TOTAL:	\$7,070,126.10

Note: figures pulled from GFAS "Budget Status Report by Prac and Org" from 9/1/07 through 5/31/2009.

D. Show your agency's objects of expense for each category of expense listed for your agency in the General Appropriations Act FY 2009-2010.

Office of Injured Employee Counsel Exhibit 6: Objects of Expense by Program Function – FY 2009			
Object-of-Expense	Assist (Ombudsman Program)	Education and Referral (Customer Services)	Advocate (Legal Services)
Salaries and Wages	\$3,727,326	\$2,407,264	\$580,180
Other Personnel Costs	\$139,508	\$97,592	\$15,160
Professional Fees and Services	\$2,576	\$1,873	\$58,256
Consumable Supplies	\$0	\$0	\$0
Utilities	\$42,988	\$33,927	\$5,215
Travel	\$110,800	\$48,500	\$7,600
Rent/building	\$0	\$0	\$0
Rent/machine and other	\$0	\$0	\$0
Other Operating	\$192,331	\$132,227	\$27,264
Capital Expenditures	\$0	\$0	\$0
TOTAL:	\$4,215,529	\$2,721,383	\$693,675

Note: Figures pulled from FY 2010-2011 LAR



Office of Injured Employee Counsel			
Exhibit 6: Objects of Expense by Program Function – FY 2010			
Object-of-Expense	Assist (Ombudsman Program)	Education and Referral (Customer Services)	Advocate (Legal Services)
Salaries and Wages	\$3,789,810	\$2,460,510	\$533,250
Other Personnel Costs	\$137,435	\$88,351	\$19,634
Professional Fees and Services	\$2,635	\$1,694	\$58,376
Consumable Supplies	\$0	\$0	\$0
Utilities	\$45,433	\$29,207	\$7,490
Travel	\$116,888	\$44,468	\$5,544
Rent/building	\$0	\$0	\$0
Rent/machine and other	\$0	\$0	\$0
Other Operating	\$173,096	\$145,126	\$110,919
Capital Expenditures	\$0	\$0	\$0
TOTAL:	\$4,265,297	\$2,769,356	\$735,213

Note: Figures pulled from FY 2010-2011 LAR

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.

Office of Injured Employee Counsel	
Exhibit 7: Sources of Revenue – FY 2008 (Actual)	
Source	Amount
General Revenue – Dedicated (Fund 36)	\$7,070,126.10
TOTAL	\$7,070,126.10

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

OIEC does not receive federal funds. Exhibit 8 is not applicable.

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

Though authorized to collect fees for the agency's legislative report, OIEC provides the document to the Legislature and workers' compensation system participants free of charge. See Labor Code §404.106. Exhibit 9 is not applicable.



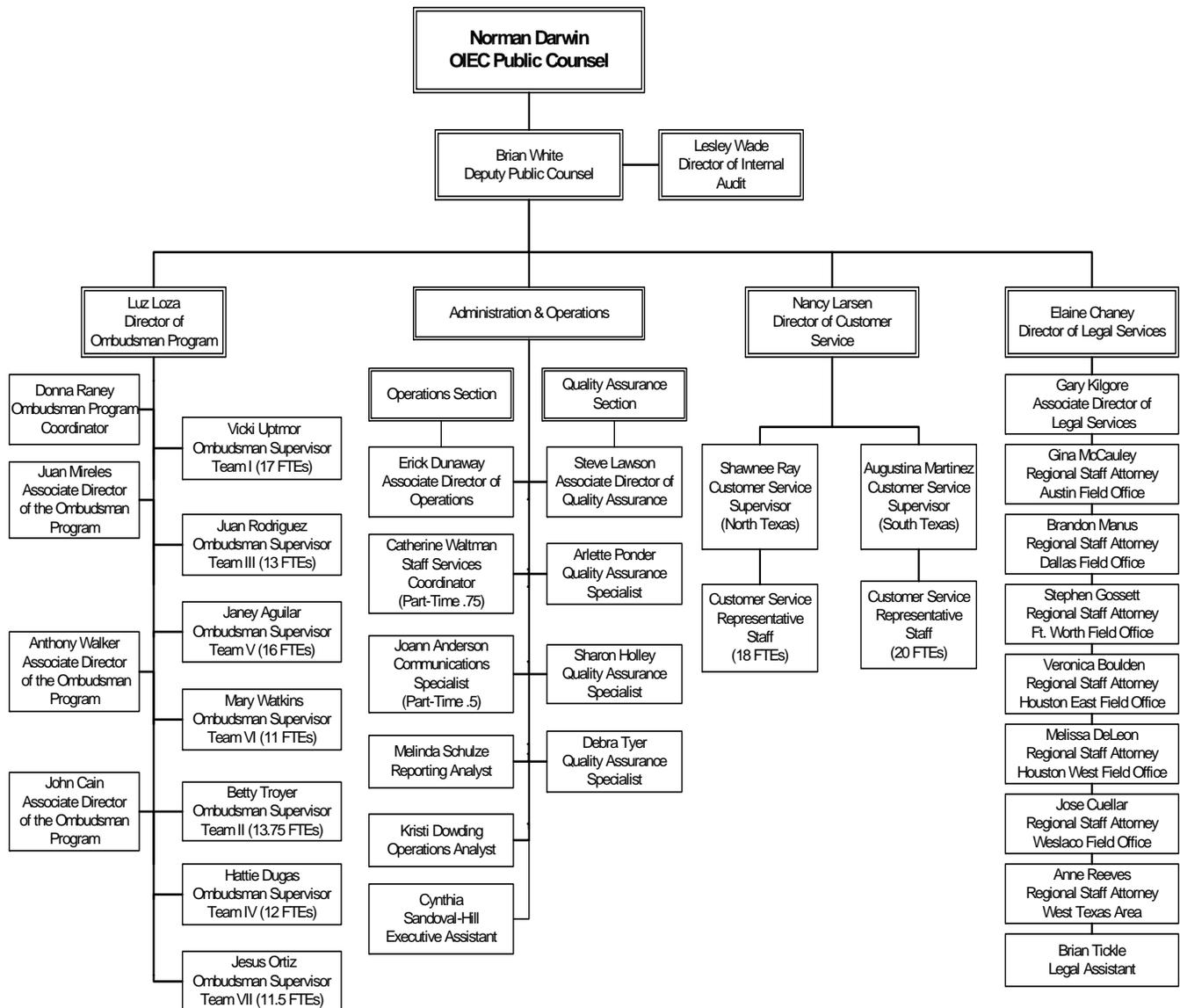
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VI. Organization

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

Below is a current Organizational chart as of August 20, 2009.

Office of Injured Employee Counsel



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

Office of Injured Employee Counsel Exhibit 10: FTEs by Location – FY 2008			
Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs, FY 2008	Number of Actual FTEs as of August 31, 2008
Central Office	7551 Metro Center Drive, Ste. 100 Austin, TX 78744	17.5	17.5
Abilene	1290 S. Willis, Ste. 102 Abilene, TX 79605	3	3
Amarillo	7112 IH 40 W Bldg. D Amarillo, TX 79106	3	3
Austin (North)	4616 W. Howard Lane, Ste. 130 Austin, TX 78728	5	5
Beaumont	6430 Concord Rd. Beaumont, TX 77708	3	3
Bryan / College Station	4001 E. 29 th St., Ste 185 Bryan, TX 77802	2.5	2.5
Corpus Christi	5155 Flynn Pkwy. Ste 218 Corpus Christi, TX 78401	5	4
Dallas	1515 W. Mockingbird, Suite 100 Dallas, TX 75235	15.75	13.75
Denton	625 Dallas Dr., Ste. 475 Denton, TX 76205	6	6
El Paso	401 Franklin Ave. Ste 330 El Paso, TX 79901	7	7
Fort Worth	6900 Anderson Blvd., Ste. 200 Fort Worth, TX 76120	19	18
Houston East	5425 Polk St., Ste. 230 Houston, TX 77023	13	10
Houston West	507 N. Sam Houston Pkwy E., Ste 600 Houston, TX 77060	14	12
Laredo	5420 Springfield Ave. Laredo, TX 78041	3	3
Lubbock	22 Briercroft Office Park, Ste. A Lubbock, TX 79412	5	5
Lufkin	310 Harmony Hill Dr., Ste. 100 Lufkin, TX 75901	2.5	2.5
Midland /Odessa	4500 West Illinois Ave., Ste 315 Midland, TX 79703	3	1
Missouri City	2440 Texas Parkway, Ste. 240 Missouri City, TX 77489	6	5
San Angelo	622 S. Oakes, Ste. M San Angelo, TX 76903	3	1
San Antonio	9514 Console Dr., Ste. 200 San Antonio, TX 78229	14	12
Tyler	3800 Paluxy Drive, Ste. 570 Tyler, TX 75703	6	6
Victoria	3001 N. Cameron Rd. Victoria, TX 77901	4	4
Waco	801 Austin Ave., Ste. 840 Waco, TX 76701	3	3
Weslaco	1108 Pike Blvd. Weslaco, TX 78596	7	6
Wichita Falls	909 8 th St., Ste. 112 Wichita Falls, TX 76301	2	2
TOTAL		172.25	155.25



Table 6 identifies FTEs by location as of August 20, 2009. This information corresponds with the current agency Organizational Chart on page 46.

Table 6: FTEs by Location – FY 2009			
Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs, August 20, 2009	Number of Actual FTEs as of August 20, 2009
Central Office	7551 Metro Center Drive, Ste. 100 Austin, TX 78744	17.25	17.25
Abilene	1290 S. Willis, Ste. 102 Abilene, TX 79605	3	3
Amarillo	7112 IH 40 W Bldg. D Amarillo, TX 79106	3	2
Austin (North)	4616 W. Howard Lane, Ste. 130 Austin, TX 78728	5	5
Beaumont	6430 Concord Rd. Beaumont, TX 77708	4	4
Bryan / College Station	4001 E. 29 th St., Ste 185 Bryan, TX 77802	3	2
Corpus Christi	5155 Flynn Pkwy. Ste 218 Corpus Christi, TX 78401	3	3
Dallas	1515 W. Mockingbird, Suite 100 Dallas, TX 75235	15.75	12.75
Denton	625 Dallas Dr., Ste. 475 Denton, TX 76205	6	5
El Paso	401 Franklin Ave. Ste 330 El Paso, TX 79901	7	7
Fort Worth	6900 Anderson Blvd., Ste. 200 Fort Worth, TX 76120	18	17
Houston East	5425 Polk St., Ste. 230 Houston, TX 77023	10	9
Houston West	507 N. Sam Houston Pkwy E., Ste 600 Houston, TX 77060	11	11
Laredo	5420 Springfield Ave. Laredo, TX 78041	3	3
Lubbock	22 Briercroft Office Park, Ste. A Lubbock, TX 79412	5	5
Lufkin	310 Harmony Hill Dr., Ste. 100 Lufkin, TX 75901	2.5	2.5
Midland /Odessa	4500 West Illinois Ave., Ste 315 Midland, TX 79703	4	3
Missouri City	2440 Texas Parkway, Ste. 240 Missouri City, TX 77489	6	5
San Angelo	622 S. Oakes, Ste. M San Angelo, TX 76903	4	4
San Antonio	9514 Console Dr., Ste. 200 San Antonio, TX 78229	14	14
Tyler	3800 Paluxy Drive, Ste. 570 Tyler, TX 75703	7	6
Victoria	3001 N. Cameron Rd. Victoria, TX 77901	4	4
Waco	801 Austin Ave., Ste. 840 Waco, TX 76701	6	6
Weslaco	1108 Pike Blvd. Weslaco, TX 78596	8	8
Wichita Falls *	909 8 th St., Ste. 112 Wichita Falls, TX 76301	0	0
TOTAL		169.5	158.5

*The Wichita Falls Field Office was changed by DWC to a Satellite office in FY 2009.



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

FY 2008 – 183

FY 2009 – 183

FY 2010 – 184

FY 2011 – 184

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

OIEC contracted with Garza & Gonzales for the internal audit function in FY 2008; however, OIEC believed that it would be more beneficial and cost-effective to employ the internal audit function as opposed to contract out for the service in the following years.

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

Office of Injured Employee Counsel Exhibit 11: List of Program FTEs and Expenditures – FY 2008		
Program	FTEs as of August 31, 2008	Actual Expenditures
Legal Services	9	\$662,928.53
Customer Service	33	\$2,182,146.03
Ombudsman Program	118.25	\$4,223,417.95
Administration and Operations	12	Actual expenditures are included in other divisions. However, it is estimated that A&O expenditures are approximately \$693,613.
TOTAL	172.25	\$7,068,492.51



VII. Guide to Agency Programs

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

Name of Program or Function	Ombudsman Program
Location / Division	Ombudsman Program
Contact Name	Luz Loza, Director
Actual Expenditures, FY 2008	\$4,223,417.95
Number of FTEs as of August 31, 2008	118.25 FTEs

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

The objective of the Ombudsman Program is to assist unrepresented injured employees in resolving disputes as soon as possible and to ensure that all unrepresented injured employees have access to assistance in obtaining the benefits to which they are entitled. When a Benefit Review Conference is scheduled and an injured employee is not represented by an attorney, a notification is routed from DWC to OIEC. OIEC then contacts the injured employee and offers assistance in the dispute resolution process.

An Ombudsman Assistant contacts the injured employee, explains the dispute resolution process, and schedules an appointment with the injured employee to meet with an Ombudsman and prepare for the Benefit Review Conference. The injured employee is informed that Ombudsman assistance is free of charge, and that the injured employee has the right at any time to obtain an attorney or to decline the assistance of an Ombudsman. An overwhelming majority of injured employees who do not retain an attorney accept the assistance of an Ombudsman. In fact, approximately 16,000 letters are sent annually to confirm that an injured employee has accepted assistance and is set for a preparation appointment. Less than 100 letters are sent annually confirming that an injured employee has declined Ombudsman assistance.

At the preparation appointment, the Ombudsman becomes familiar with the disputed issues in the injured employee's claim and educates the injured employee regarding documentation needed to support the injured employee's position. The Ombudsman also explains the expectations at a Benefit Review Conference. The Ombudsman works closely with the injured employee to develop the case, which may include writing letters to health care providers, letters of clarification, requesting medical records, obtaining witness statements and any other communication with other parties in the workers' compensation system. If legal issues arise in a case and the Ombudsman needs additional research or legal assistance, the Ombudsman contacts his or her assigned Regional Staff Attorney for assistance. At the Benefit Review Conference,



the Ombudsman assists the injured employee in presenting the case to the DWC Benefit Review Officer. At the conclusion of the Benefit Review Conference, the case is either resolved, reset on request, or is scheduled for a Contested Case Hearing. A DWC Hearing Officer presides over a Contested Case Hearing and issues a decision and order resolving the issues.

Subsequent preparation appointments occur between the Benefit Review Conference and the Contested Case Hearing so that the Ombudsman can prepare the injured employee for the Contested Case Hearing and ensure all documents are properly obtained and exchanged. The Ombudsman may enlist additional research or legal assistance from the Regional Staff Attorney to help prepare opening and closing arguments, direct and cross-examination of witnesses, organization and presentation of evidence, and discuss legal strategy. After the conclusion of the Contested Case Hearing and depending on the outcome of the decision, either party can appeal the decision to DWC's Appeals Panel. The Ombudsman also assists an injured employee with preparing an appeal or a response to an appeal, and getting the document filed timely.

All administrative remedies are exhausted after the outcome of the Appeals Panel is entered by DWC. As such, either party may file in district court to have the disputed issues further evaluated. OIEC has no statutory authority to assist an injured employee in district court. Consequently, an injured employee must either retain legal counsel or pursue the claim *pro se* at district court. Based on telephone calls received and issues raised to OIEC staff, it appears that there are a limited number of attorneys who will represent injured employees in workers' compensation cases in district court. OIEC directs injured employees to the State Bar of Texas' Attorney Referral Service, local attorney referral programs, and legal aid programs to help injured employees find a lawyer to represent them in district court.

It is important to note that an injured employee without representation can win every issue throughout the administrative workers' compensation process only to lose on a default judgment in district court solely due to a lack of representation. For this reason, OIEC believes it is important for the injured employee to have representation at district court. For the past two legislative sessions, OIEC has recommended that an attorney be appointed to represent injured employees at district court; however, the bill has died in Calendars each session.

1.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.

OIEC's Business Plan for 2008-2009 sets out specific objectives that can be tracked and used to indicate the Ombudsman Program's performance. Selected measures in the business plan include:

- Establish an Appeal Procedure by April 2008 (Completed)
- Incorporate early intervention/case management practices into DWC's administrative dispute resolution system by July 2008 (Completed)
- Undergo an audit of the Ombudsman Program by July 2009 (Completed).



Table 7 identifies performance measures that best convey the effectiveness and efficiency of the Ombudsman Program. Targets for FY 2008 were set based on limited data available to the new agency at the time. OIEC became operational in March 2006. Targets have been adjusted for FY 2010-2011 to better reflect desired performance.

Table 7: FY 2008 Performance Measures – Ombudsman Program			
Performance Measures	FY 2008 Target	FY 2008 Actual Performance	FY 2008 % of Annual Target*
<i>Outcome Measures</i>			
<i>Outcome Measure 3.1 oc 1</i> Percentage of proceedings Held before the Division of Workers' Compensation in which the Injured Employee was assisted by an Ombudsman	45.00%	40.09%	89.08%
<i>Outcome Measure 3.1 oc 2</i> Percentage of Issues Raised at Contested Case Hearings (CCH) where the Injured Employee Prevailed When Assisted by an Ombudsman	40.00%	41.77%	104.43%
<i>Outcome Measure 3.1 oc 3</i> Percentage of Issues Raised on Appeal where the Injured Employee Prevailed When Assisted by an Ombudsman	40.00%	41.77%	104.43%
<i>Outcome Measure 3.1 oc 4</i> Average Indemnity Cost Avoided per Injured Employee Assisted by an Ombudsman	\$500.00	\$2,215	443.05%
<i>Output Measures</i>			
<i>Output Measure 3.1.1 op 1</i> Number of Injured Employees Prepared for a Benefit Review Conference (BRC) by an Ombudsman	10,500	5,241	49.91%
<i>Output Measure 3.1.1 op 2</i> Number of Benefit Review Conferences (BRC) with Ombudsman assistance	8,000	5,013	62.66%
<i>Output Measure 3.1.1 op 3</i> Number of Injured Employees Prepared for a Contested Case Hearing (CCH) by an Ombudsman	4,750	1,717	36.15%
<i>Output Measure 3.1.1 op 4</i> Number of Contested Case Hearings (CCH) with Ombudsman assistance	2,700	2,025	75.00%
<i>Output Measure 3.1.1 op 5</i> Number of Injured Employees Prepared for an Appeal by an Ombudsman	875	552	63.09%
<i>Efficiency Measures</i>			
<i>Efficiency Measure 3.1.1 ef 1</i> Average Time from the Date a BRC is Scheduled to the Date of First Injured Employee Contact with an Ombudsman	20	17.97	89.85%
<i>Efficiency Measure 3.1.1 ef 2</i> Average Time from the Date a CCH is Scheduled to First Injured Employee Contact with an Ombudsman	20	14.91	74.55%
* Results highlighted in blue indicate target was met within a variance of 5 percent, results highlighted in green indicate performance was not met but performance was desirable, and results highlighted in red indicate performance was not met and performance was undesirable.			



OIEC contracted with the University of North Texas Survey Research Center to conduct a Customer Satisfaction Survey pursuant to Texas Government Code §2114. The survey was designed to measure the satisfaction of injured employees who have had a dispute with their workers' compensation claims or were assisted by an Ombudsman. The results reported in May 2008 indicate that:

- Fifty-four percent of injured employees received assistance from an Ombudsman.
- Eighty-one percent of injured employees who received assistance from an Ombudsman heard about the program through someone from DWC, followed by 48.5 percent who learned of it through brochures or a letter received about their claim. (More than one answer could be chosen)
- The top reason for choosing assistance by an Ombudsman was difficulty in getting medical treatment or the weekly check (69.8 percent). The second most common reason was that the Ombudsman Program is free of charge (67.8 percent).
- Ninety-one percent of injured employees indicated that their Ombudsman went over their case before the dispute hearing. Fifty-seven percent reported they met with or spoke on the telephone to their Ombudsman four or more times about their case. Less than half (47.4 percent) reported spending one or more hours meeting or talking with their Ombudsman about their case. Approximately, two-thirds (67.6 percent) indicated they had enough time with their Ombudsman before the hearing. A majority of injured employees reported that their Ombudsman seemed to understand their case (80.6 percent) and workers' compensation law (91.8 percent).
- Sixty-six percent of injured employees with Ombudsman assistance reported feeling adequately prepared for their dispute hearing.
- Seventy-one percent were either extremely satisfied (40.9 percent) or somewhat satisfied (29.8 percent) with their Ombudsman.

The Ombudsman and Customer Service Programs have shown dispute resolution success through early intervention and case development. For the quarter ending May 31, 2009, Benefit Review Conferences were reduced by 17.3 percent from the quarter of July 2008 through September 2008 due largely to early intervention and case development efforts.

Table 8: Early Intervention and Case Development Impact		
Quarter	Number of Benefit Review Conferences with Ombudsman Assistance	Percent Change
July 1, 2008 through September 30, 2008	1,355	---
March 1, 2009 through May 31, 2009	1,120	-17.3%

Meanwhile, the number of disputes resolved prior to proceedings per month has more than doubled since July 2008. Funds are saved through early intervention and case development initiatives and OIEC believes that fewer proceedings results in lower overall cost to the workers' compensation system. Tables 8 and 9 reflect these efforts.



Table 9: Number of Disputed Issues Resolved per Month	
July 2008	122
August 2008	149
September 2008	159
October 2008	185
November 2008	134
December 2008	172
January 2009	221
February 2009	297
March 2009	440
April 2009	296
May 2009	258
June 2009	244
July 2009	340

Source: DWC's Compdata as of 8-14-2009.

1.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.

In September 1990, the Texas Workers' Compensation Commission (TWCC) Commissioners defined the Ombudsman role as the agency's source of general public information to all parties; there was only one TWCC Ombudsman at the time. The Ombudsman was described as "...a person who helps individuals understand how the system works." Initially, there was a concern by TWCC because of the criticism that the Ombudsman could not practice law without a license. The issue of "assistance versus representation" was carefully defined by the agency at that time.

In January 1991, when the new Texas Workers' Compensation Act took effect, Senator Bob Glasgow served as the Chairman of the initial Legislative Oversight Committee on Workers' Compensation. Senator Glasgow responded by letter to the State Auditor in November 1991, stating "...the statute clearly delineates the role of the Ombudsman as that of an advocate for the injured worker."



In December 1991, the TWCC Commissioners requested that the Ombudsman Program become an outreach program with the priority placed on helping the unrepresented injured employee. Routine information questions were to be handled by support staff.

In 1993, the TWCC Commissioners directed a change in the type of assistance provided. Under that policy directive, the role of the Ombudsman in the TWCC local offices was shifted away from general information issues and directly into providing assistances at Benefit Review Conferences and Contested Case Hearings. Other TWCC employees began to provide general information assistance.

OIEC was formally established on March 1, 2006 as a result of the passage of HB 7, 79th Texas Legislature, Regular Session, 2005. HB 7 abolished TWCC and established DWC as a division within the Texas Department of Insurance (TDI). HB 7 also transferred TWCC's Ombudsman Program to OIEC.

For the FY 2008-2009 biennium, OIEC was appropriated additional funds of approximately \$1.9 million and 25 FTEs for the purpose of enhancing the Ombudsman Program. The 25 FTEs were transferred from TDI in September 2007 as Ombudsman Associates (Ombudsmen in training). The additional Ombudsmen allowed OIEC to become involved earlier in the dispute resolution process and to advocate the injured employee's position to the opposing party at that time. Ombudsman Associates who are hired without workers' compensation experience train for a year, while Ombudsman Associates hired with workers' compensation experience train for a minimum of 20 weeks up to a year before they are statutorily qualified to serve as an Ombudsman. TEX. LAB. CODE §404.152.

Prior to September 1, 2007, Ombudsmen assisted injured employees after a proceeding had been set. The workload of the Ombudsman Program has increased because the Ombudsmen now are responsible for fully developing an injured employee's case (Case Development). Case development begins once a dispute is identified. The Ombudsman Program receives dispute referrals from OIEC's Customer Service Program. When an OIEC Customer Service Representative determines that a dispute exists between the injured employee and the insurance carrier, the injured employee is referred to an assigned Ombudsman, if the Customer Service Representative cannot resolve the dispute within seven business days. The assigned Ombudsman remains with the injured employee for all disputes that are not resolved by the Customer Service Representative throughout the life of the workers' compensation claim. The Ombudsman assists in preparing the injured employee for administrative dispute resolution proceedings and advocates for them at the proceedings if disputes are not resolved during case development.

Case Development duties include: Ombudsmen contacting insurance carriers and health care providers in attempts to resolve disputes; gathering information from health care providers and employers; preparing indexes (trial notebooks); and making referrals to DARS, Texas Workforce Commission (TWC), and other agencies and social services.

Ombudsmen also educate the injured employee about workers' compensation claims and the dispute resolution system. The Ombudsman Program continues its outreach program by providing monthly presentations on a variety of topics from OIEC's services to Supplemental



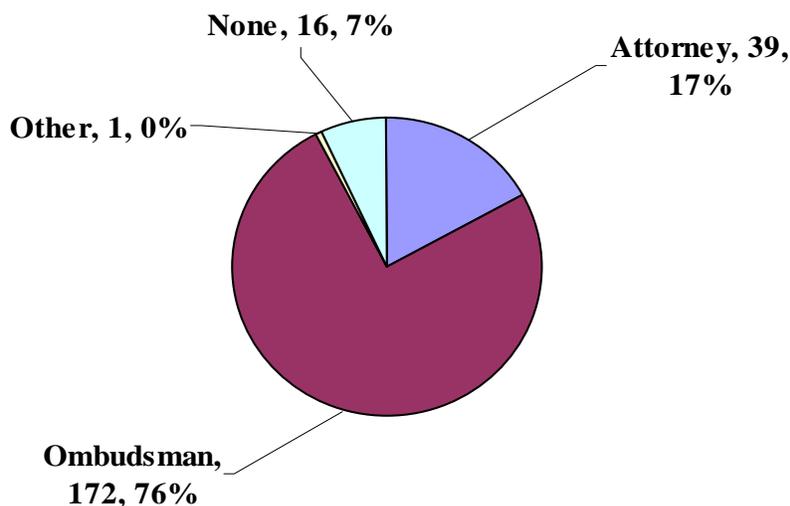
Income Benefits. Ombudsmen work closely with their assigned Regional Staff Attorney individually and within their respective Ombudsman team. The Regional Staff Attorneys continue to provide information and training for the Ombudsman Program. The training given by the Regional Staff Attorneys also provide adjuster credit hours, which is a requirement for the Ombudsman to maintain their Type 03 workers' compensation adjuster's licenses.

The 80th Texas Legislature, 2007 reintroduced the administrative medical dispute resolution process. Effective September 1, 2007, HB 724 provides that medical disputes may be appealed by requesting a Contested Case Hearing. A preauthorization or concurrent medical necessity dispute, which is a dispute that involves a review of an adverse determination of network or non-network health care is reviewed by an Independent Review Organization. An Independent Review Organization decision may be appealed by requesting a Contested Case Hearing. Ombudsmen may assist injured employees in these types of medical disputes. Approximately 76 percent of all injured employees seek assistance from an Ombudsman in medical dispute resolution proceedings.

Figure 8 indicates the type of representation provided to injured employees at medical Contested Case Hearings on appeals of the Independent Review Organization's decision regarding a preauthorization or concurrent medical necessity dispute.

Figure 8:

**Medical Dispute Resolution
Injured Employee Representation at Contested Case Hearings
September 1, 2008 through June 30, 2009**



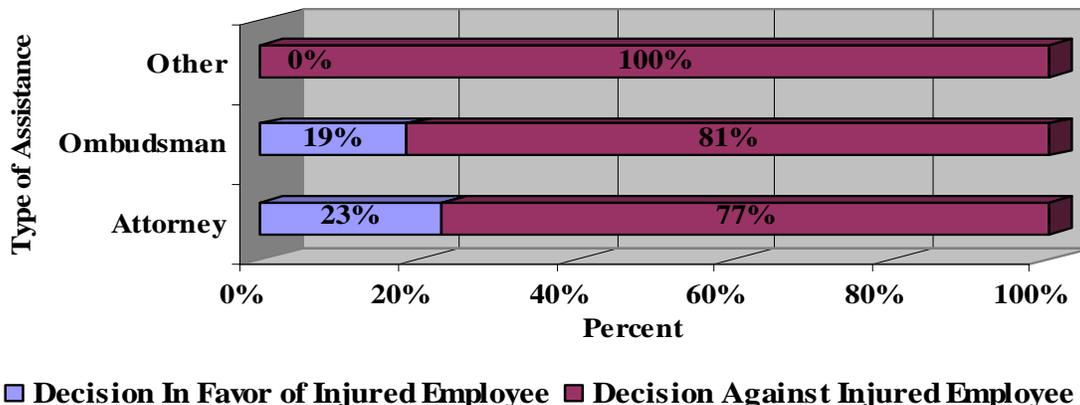
Source: The Division of Workers' Compensation, Hearing Division, 2009 Open Records Request #ORR-93904



Figure 9 indicates the win/loss ratio identified by the type of assistance provided to injured employees in medical Contested Case Hearings on appeals of the Independent Review Organization’s decision regarding a preauthorization or concurrent medical necessity dispute.

Figure 9:

**Medical Dispute Resolution
WIN/LOSS Ratio by Type of Assistance
September 1, 2007 through June 30, 2009**



Source: The Division of Workers’ Compensation, Hearing Division, 2009 Open Records Request #ORR-93904

1.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 Ombudsman Program affects injured employees and beneficiaries, regarding the workers’ compensation benefits to which they may be entitled. The only requirements to receive Ombudsman assistance are that the injured employee or beneficiary is not represented by an attorney, and the employer has workers’ compensation insurance at the time of their injury.

Table 10 identifies the number of claims required to be reported to DWC in FY 2009, which include claims with one or more days of lost time. Claims that only involve medical benefits or less than one day of lost time are not required to be reported to DWC and are not included in the statistics below.

Table 10: Number of Workers’ Compensation Claims FY 2009 (September 1, 2008 through July 31, 2009)	
Claims required to be reported	80,276
Claims required to be reported with Ombudsman Assistance	402



**Figure10:
Average Age of Injured Employee
Assisted by Ombudsman
in FY 2009**

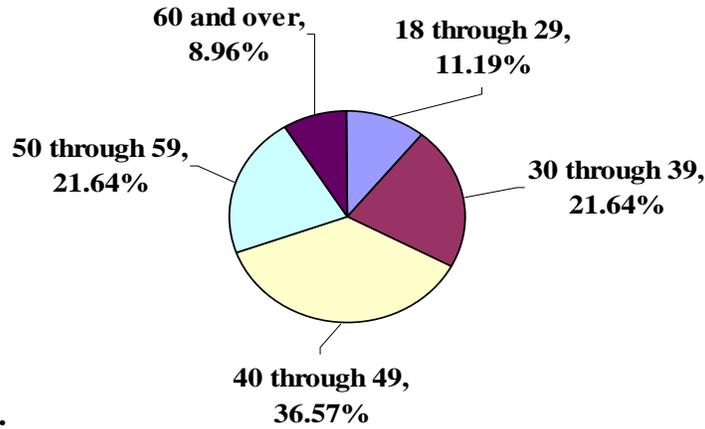
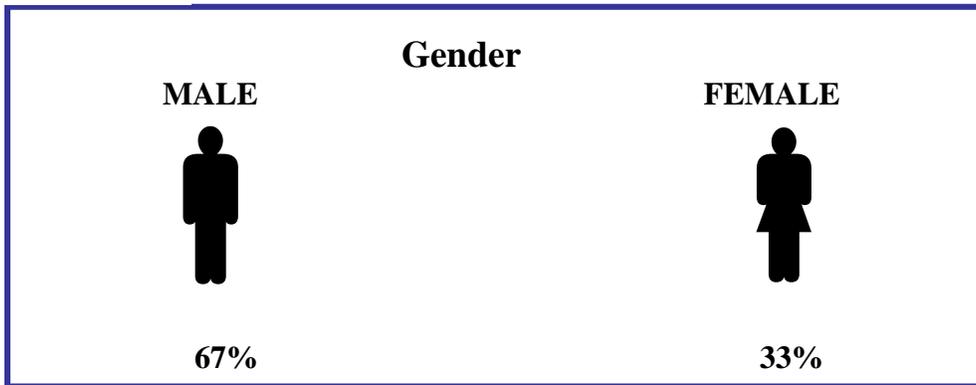


Figure11:



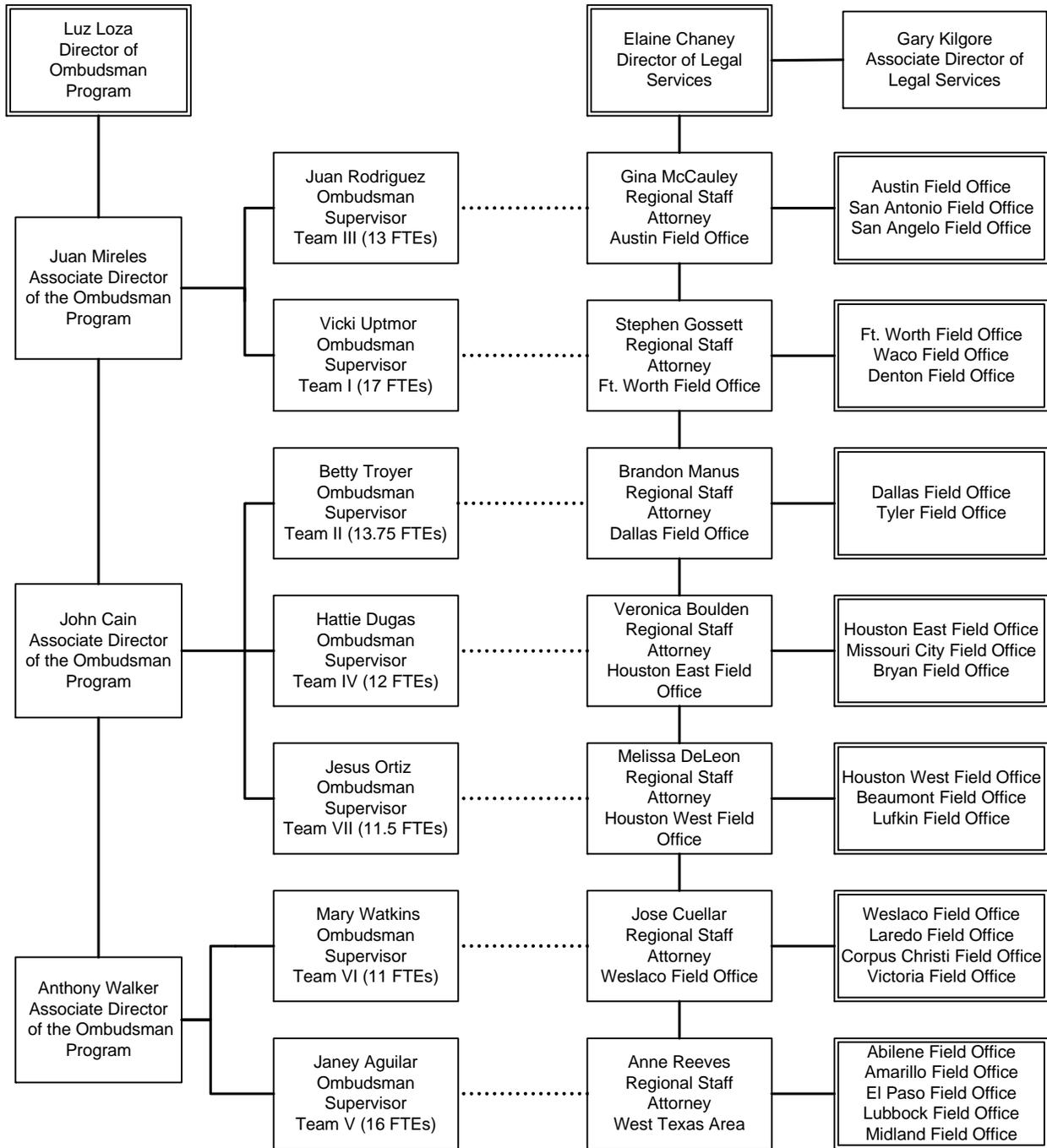
1.F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

OIEC maintains a detailed Ombudsman Manual that describes the processes and procedures followed by Ombudsmen. The Ombudsman Program provides services in 23 field offices and three satellite offices (Uvalde, Mt. Pleasant, and Wichita Falls). When assistance is requested by an injured employee who may be involved in the dispute resolution process, the employee is referred to the Ombudsman Program. Some injured employees' cases are not accepted by private attorneys, and OIEC offers assistance to these employees. Ombudsmen work to resolve the dispute informally, if possible. If informal resolution is not possible, the Ombudsmen help injured employees prepare the necessary documentation and information to proceed with a formal dispute. In addition, OIEC makes referrals to the Texas State Bar and local bar referral programs or legal aid programs when the case is more appropriate for an attorney to handle; for example, it is recommended that employees hire formal representation in district court.

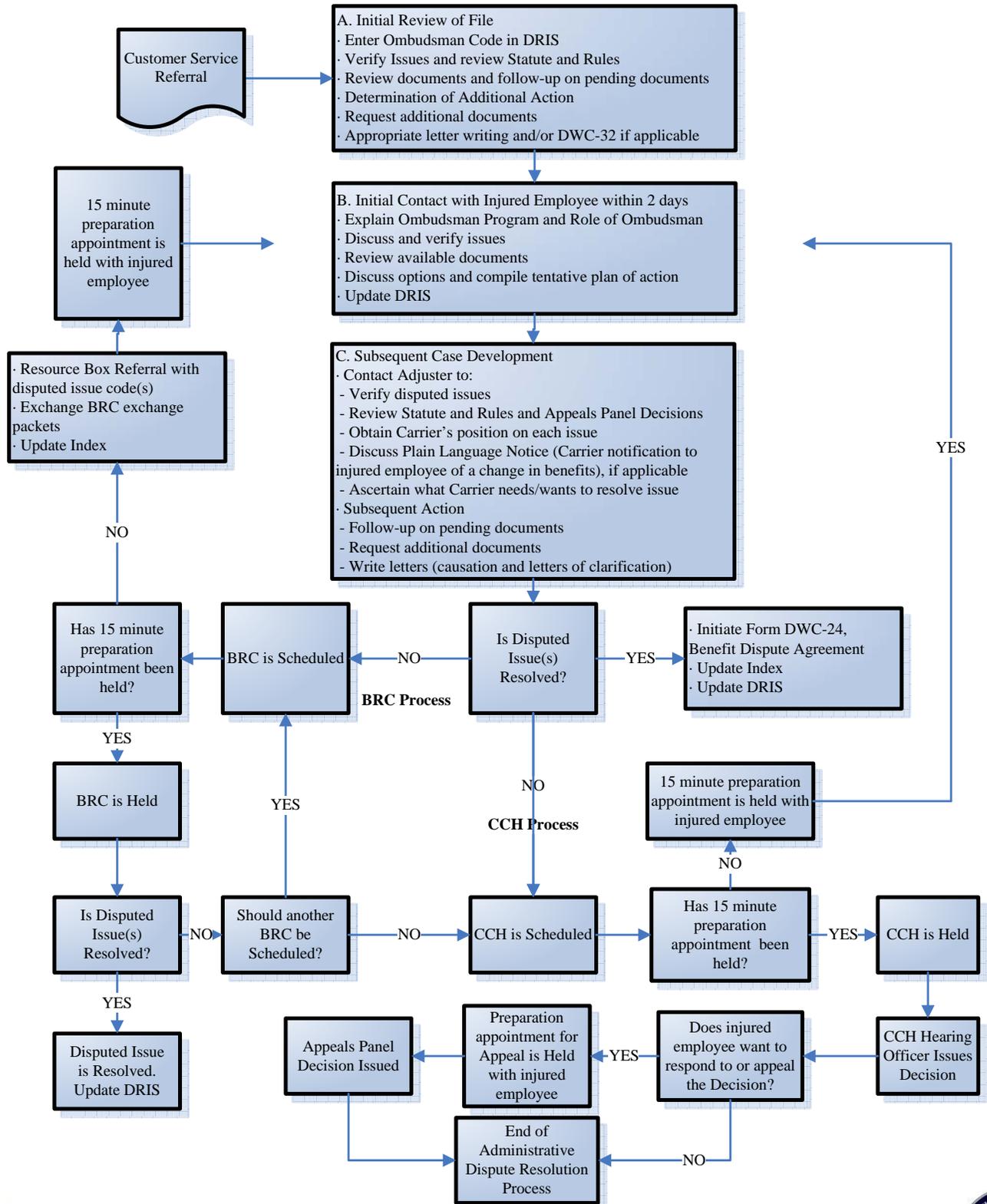


OIEC employs seven Regional Staff Attorneys who are assigned to assist Ombudsman teams across the State. Below is a chart identifying Regional Staff Attorney and Ombudsman team assignments. Additional information can be found in Section VII.3 - Legal Services.

Regional Staff Attorney and Ombudsman Team Assignments



Ombudsman Program Process Flowchart



1.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 Ombudsman Program is funded through State appropriations from General Revenue – Dedicated (Fund 36) in the amount of \$4,223,435.29 (FY 2008). OIEC receives no federal funds.

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

Within OIEC, early intervention services provided to an injured employee may begin within the Customer Services Program where general information is provided. The transition from the Customer Service Program to the Ombudsman Program (when a disputed issue is identified and is not resolved within seven business days) is an important one and is when case development begins. In order to ensure a one-stop service experience, the two Programs must work closely together.

Attorneys provide similar services to injured employees. An injured employee may request to be assisted by an Ombudsman at no cost to the injured employee or pay for attorney representation. Attorney fees are capped at 25 percent of the injured employee's income benefits. Because medical benefits are not paid directly to injured employees, they sometimes have difficulty in obtaining an attorney to represent them in a medical-only claim.

According to the Ombudsman Program Customer Satisfaction Survey, previously mentioned, respondents who contacted attorneys who were unwilling to take their case were asked the reason the attorneys were unwilling to take their case. Results of the responses included the following:

- Fifty-six percent of injured employees who contacted attorneys who were unwilling to take their case were told there was no financial incentive to take the case.
- Forty-two percent of injured employees indicated the attorney was not familiar with workers' compensation.
- Thirty-eight percent of injured employees reported that the attorney did not feel that their case was strong.
- Thirty-six percent of injured employees indicated that the attorney was not accepting new cases at that time.
- Thirty percent of injured employees were not given a reason by the attorney they had contacted.
- Twenty-eight percent of injured employees gave another reason why the attorney was not willing to take their case. The majority of these injured employees indicated the attorney was not accepting workers' compensation cases. Other comments were about system issues, the case was too old, or other specific issues having to do with the case.



The full report on the Ombudsman Program: Customer Satisfaction Survey can be found on OIEC's website at <http://www.oiec.state.tx.us/resources/publications.html> and in Attachment 20 of this report.

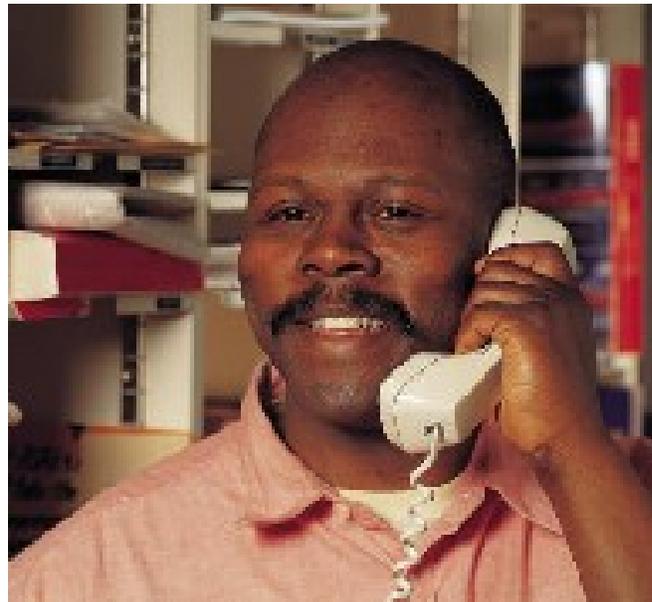
1.I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

At OIEC, only the Ombudsman Program can assist injured employees at proceedings. Externally, any person can assist an injured employee at proceedings. To avoid duplication an Ombudsman is not allowed to attend any proceedings when an injured employee has any other person to assist him/her at the proceeding. The injured employee may refuse assistance verbally or by signing the form OMB-09 – Ombudsman Waiver Request.

1.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.

OIEC refers injured employees to local, regional, and federal units of government for financial assistance, rehabilitation, and work placement programs, as well as other social services that the office considers appropriate. Some of those agencies include:

- The Department of Assistive and Rehabilitative Services (DARS). DARS assists injured employees with rehabilitation services in order to return the injured employee to work as soon as possible;
- The Texas Workforce Commission (TWC). TWC assists injured employees with preparing for and finding employment;
- The Health and Human Services Commission (HHSC) and other social service agencies, such as the Department of Aging and Disability Services (DADS). These agencies assist injured employees in obtaining financial assistance and other social service assistance;
- 2-1-1 services, which provide food, shelter, rent assistance, utility bill assistance, counseling, child care, after-school programs, senior services, disaster relief and other programs in the injured employee's locality; and
- Community-based organizations, including county hospitals, local churches or religious groups, food banks, area relief missions, the Salvation Army, and women's shelters, etc.



1.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.

Not Applicable.

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

There are no specific recommended statutory changes other than those discussed in other areas of this report. See Section IX - Policy Issues on page 119 for recommended statutory changes.

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

OIEC has attempted to provide enough information for a preliminary understanding of this program; however, staff is available to provide additional information as needed.

1.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.

1.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 practice.

Not Applicable

Exhibit 12: Not Applicable.



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

Name of Program or Function	Customer Service Program
Location / Division	Customer Service Division
Contact Name	Nancy Larsen, Director
Actual Expenditures, FY 2008	\$2,182,146.03
Number of FTEs as of August 31, 2008	33

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

The Customer Service Program serves as the first point of contact with injured employees. The objective of the program is to help injured employees and beneficiaries navigate through the workers' compensation system by providing education and referring customers to various resources. Working with an injured employee early in the process helps reduce the number of formal disputes and proceedings as well as assists in the prompt receipt of appropriate medical treatment to facilitate the employee's early and sustainable return to work.

As a result of the 80th Texas Legislature, 2007, OIEC employs Customer Service Representatives who are proficient in using the workers' compensation data systems and are trained in the workers' compensation laws, rules, and procedures. OIEC Customer Service Representatives utilize their training to educate injured employees and beneficiaries in person or by telephone to understand and pursue their workers' compensation claim by providing:

- General information;
- Answers to general and workers' compensation claim-specific questions;
- Explanation of written information and brochures;
- Assistance in completing and filing claim forms; and
- Help in identifying, addressing, and resolving disputes and denials of benefits through early intervention.

Generally, the Customer Service Representatives determine whether the injured employee is represented by an attorney so that claim-specific questions can be referred to the attorney. Customer Service Representatives also determine if an injured employee has workers' compensation coverage within or outside of a network, and whether a dispute over services or a denial of benefits has occurred. If a denial or dispute of benefits is identified, the Customer Service Representatives have seven business days to gather information and attempt to resolve the dispute through early intervention efforts. The early intervention process involves contacting



all parties involved, such as health care providers and adjusters, and gathering relevant documentation to obtain a thorough understanding of all positions before attempting resolution.

Unresolved disputes are referred to the Ombudsman Program. Additionally, the Customer Service Representatives immediately refer issues regarding medical fee disputes to the Ombudsman Program.

Customer Service Representatives refer injured employees to other state agencies as appropriate. Some of those agencies include:

- The Department of Assistive and Rehabilitative Services (DARS). DARS assists injured employees with rehabilitation services in order to return the injured employee to work as soon as possible.
- The Texas Workforce Commission (TWC). TWC assists injured employees with preparing for and finding employment.
- The Health and Human Services Commission (HHSC) and other social service agencies, such as the Department of Aging and Disability Services (DADS). These agencies assist injured employees in obtaining financial assistance and other social service assistance.
- The Texas Department of Insurance (TDI). TDI assists injured employees who have identified alleged administrative violations of the Labor Code with system complaints.
- Licensing boards, such as the Texas Medical Board. These agencies assist injured employees with alleged violations against health care providers.
- 2-1-1 services, which provide food, shelter, rent assistance, utility bill assistance, counseling, child care, after-school programs, senior services, disaster relief and other programs in the injured employee's locality.
- Community-based organizations, including county hospitals, local churches or religious groups, food banks, area relief missions, the Salvation Army, and women's shelters, etc.



REFERRAL AGENCIES

Employment and Compensation Services

Equal Employment Opportunity Commission (EEOC) 1-800-669-4000
Federal Workers' Compensation – U.S. Dept. of Labor 1-800-347-3756

Social Security Administration 1-800-772-1213

Texas Department of Insurance-Consumer Complaints 1-800-252-3439
Texas Workforce Commission (TWC) 1-800-832-9243

Housing/Rent/Utilities and Food/Clothing Services

2-1-1 Texas Information & Referral Dial 2-1-1

Texas Department of Housing/Community Affairs
or
Texas Department of Human Services 1-877-724-5676

Legal Services

Equal Employment Opportunity Commission (EEOC) 1-800-669-4000
Office of the Attorney General 1-800-252-8011

State Bar of Texas 1-800-204-2222

Complaints

About Doctors:

Texas Board of Medical Examiners 1-800-201-9353

About other workers' compensation system participants:

Texas Department of Insurance, Division of Workers'
Compensation 1-512-804-4000

Rehabilitation, Training, and Education Services

Department of Assistive & Rehabilitative Services (DARS) 1-800-628-5115

Texas Center for the Advancement of Literacy and Learning
(T Call Literacy Hotline) 1-800-441-7323

U.S. Department of Labor, Employment & Training Admin 1-800-357-2099 ext. 81



2.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.

OIEC is proud of the excellent quality of customer service it provides. Feedback from customers is important and helpful to OIEC to identify areas that need improvement. Table 11 includes responses from OIEC’s 2009 Customer Satisfaction Survey provided by injured employees and other customers that contact OIEC. *See Attachment 20 for the Survey.*

Table 11: OIEC’s Customer Satisfaction Survey Results – Excerpt					
Quality of Service	Excellent	Good	Fair	Poor	N/A
Staff is courteous & helpful	87.0%	12.7%	0.2%	0.0%	0.0%
Staff is easily accessible	76.9%	21.7%	1.0%	0.5%	0.0%
Staff is knowledgeable	86.6%	13.2%	0.2%	0.0%	0.0%
Staff is responsive to concerns	84.2%	15.1%	0.5%	0.2%	0.0%
Staff provides references to other helpful resources	79.5%	17.1%	1.0%	0.0%	2.4%
Staff provided service in a timely manner	83.1%	14.7%	2.0%	0.2%	0.0%

Source: Customer Satisfaction Survey results as of July 6, 2009.

The survey also included open-ended questions that required comments from injured employees and other customers. The responses included:

- “Excellent and super service.”
- “Very kind and knowledgeable.”
- “She accepts and applies her knowledge. Not only is it her job but makes the client feel important.”
- “Thank you very much.”
- “I have found the staff to be most helpful especially in situations that’s totally foreign to me. Thank goodness for them.”
- “I really appreciate all of the help given to me today and whenever I call or visit your office.”
- “I am very satisfied with your help. I am glad there is a place that provides the injured person information. Help in resolving areas where workers’ compensation adjusters dispute medical care.”
- “They are all polite and always very helpful.”
- “Explains easily what is needed.”



Table 12 includes performance measures that best convey the effectiveness and efficiency of the Customer Service Program. Targets for FY 2008 were set based on limited data available to the new agency at the time. OIEC became operational in March 2006. Targets have been adjusted for FY 2010-2011 to better reflect desired performance.

Table 12: FY 2008 Performance Measures – Customer Service Program			
Key and Non-Key Performance Measures	FY 2008 Target	FY 2008 Actual Performance	FY 2008 % of Annual Target*
<i>Outcome Measure</i>			
<i>Outcome Measure 2.1 oc 1</i> Percentage of Injured Employees Educated Regarding their Rights & Responsibilities.	75.00%	95.91%	127.89%
<i>Output Measures</i>			
<i>Output Measure 2.1.1 op 1</i> Number of Injured Employees Educated Regarding their Rights and Responsibilities	125,000	211,173	168.94%
<i>Output Measure 2.1.1 op 2</i> Number Injured Employees Assisted by Telephone	212,000	188,403	88.87%
<i>Output Measure 2.1.1 op 3</i> Number of Injured Employees Assisted at Field Office Locations	27,250	8,725	32.02%
<i>Output Measure 2.1.2 op 1</i> Number of injured employees referred to Department of Assistive and Rehabilitative Services (DARS)	350	778	222.29%
<i>Output Measure 2.1.2 op 2</i> Number of injured employees referred to the Texas Workforce Commission or Other Programs	200	1,085	542.50%
<i>Efficiency Measure</i>			
<i>Efficiency Measure 2.1.1 ef 1</i> Average Time from Date of Injury to the Date an Injured Employee is Sent Their Rights and Responsibilities	35	24.81	70.89%
* Results highlighted in green indicate performance was not met but performance was desirable, and results highlighted in red indicate performance was not met and performance was undesirable.			

2.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.

The Customer Service functions have evolved considerably since the creation of OIEC as a result of additional funding appropriated to the agency by the 80th Texas Legislature, 2007. OIEC was once funded only to serve unrepresented injured employees who had an administrative dispute proceeding scheduled. OIEC is now required to provide information and education to any unrepresented injured employee who seeks assistance through the workers' compensation claims process (not just in proceedings). The current organizational structure provides for a clear separation of Customer Service from the Ombudsman Program.



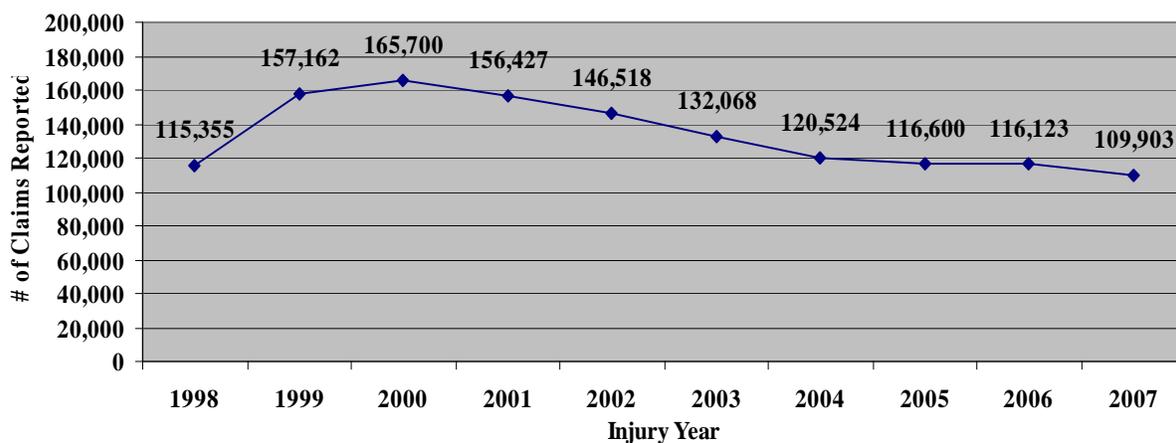
The planning, hiring, and training of personnel for this program occurred through fiscal year 2008. The initial contacts to inform OIEC's customers of OIEC programs and services began in June 2008. Initial contacts are also made to provide information and assistance to potential beneficiaries in fatality claims.

Customer Service's training program has been revised to include additional training on dispute identification and resolution. Beginning in September 2008, Customer Service Representatives began entering the relevant claim and dispute information, including a list of forwarded documents, into the index (an electronic standardized trial notebook) that is used by the Ombudsmen during the dispute resolution process. Customer Service Representatives also enter data into DWC's Dispute Resolution Information System (DRIS) to record and track injured employee contacts, dispute identification, dispute resolution when made prior to a dispute resolution proceeding, the appointment of an Ombudsman, and other events that occur in the injured employee's claim.

2.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.

Any injured employee (represented or unrepresented) who seeks assistance regarding the workers' compensation system may receive services from this program. The overwhelming majority of customers are those injured employees who have made or anticipate making a claim for workers' compensation benefits. Figure 12 demonstrates the number of workers' compensation claims required to be reported to DWC between 1998 and 2007.

Figure 12: Number of Workers' Compensation Claims Reported to the Division of Workers' Compensation, Injury Years 1998-2007



Source: Research and Evaluation Group, Division of Workers' Compensation, Texas Department of Insurance, 2008. Presentation for the Texas Self-Insurance Association, Texas Workers' Compensation System Trends



The Customer Service Program may provide customer assistance to all persons and entities in the workers' compensation system. However, information pertaining to a specific claim is only provided to parties to the specific claim (i.e., unrepresented injured employee, injured employee's health care provider, injured employee's assigned adjuster, etc.).

2.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.

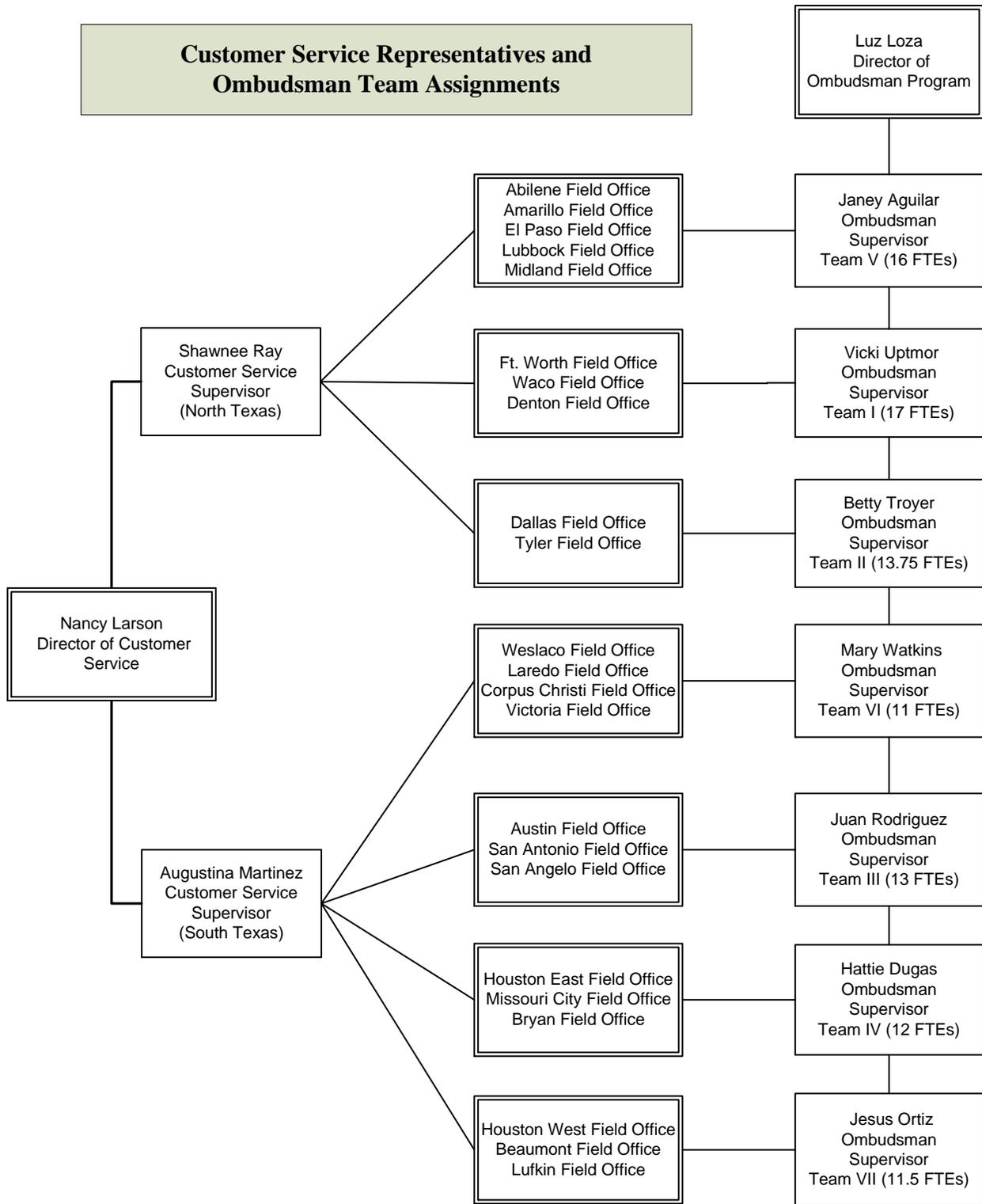
OIEC maintains a Customer Service Representative Handbook that lists the responsibilities and duties of Customer Service Representatives. The handbook provides information regarding customer service approaches and values. It also includes information about the workers' compensation process.

Customer Service Representatives meet with injured employees or their beneficiaries in person or by telephone. Information regarding an injured employee is maintained in DWC's electronic systems (TXCOMP and COMPASS). The Customer Service Representative determines if the employee is represented by an attorney and if the employee works for an employer covered by workers' compensation insurance. Customer Service Representatives may also provide any or all of the following services:

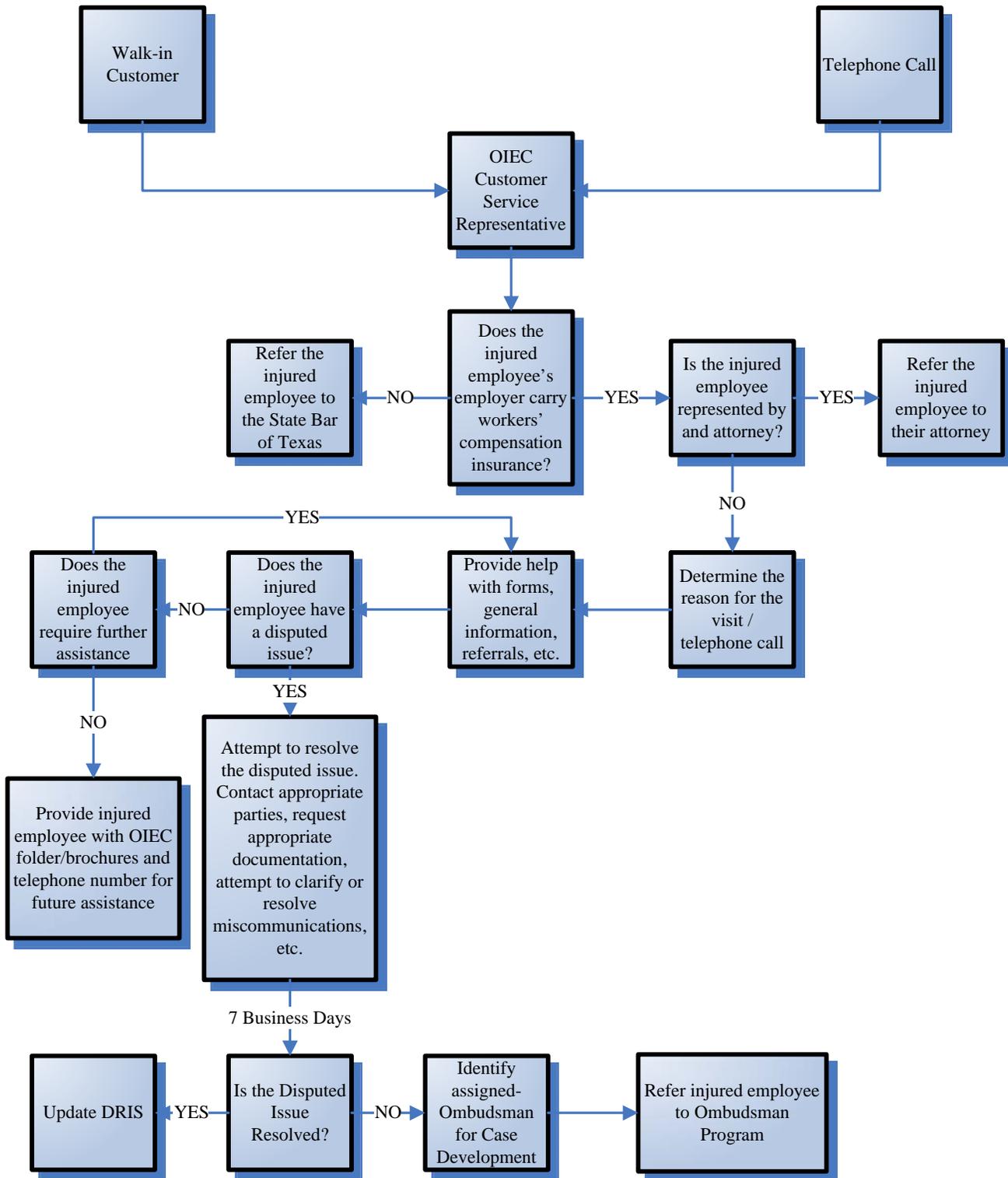
- Showing a customer how to enter a claim in the electronic system;
- Reviewing existing claims for completeness;
- Contacting DWC if necessary to obtain information;
- Working with claims adjusters to determine the status of a claim;
- Working with health care providers to obtain or clarify necessary information;
- Referring customers to services available through other agencies;
- Identifying disputed issues;
- Attempting to resolve disputed issues (early intervention) within seven business days by contacting appropriate system participants;
- Helping injured employees obtain required documents if an administrative proceeding appears necessary; and
- Referring disputed issues and the injured employee to the appropriate Ombudsman.



The chart below identifies the Customer Service and Ombudsman team assignments. Both Programs work in close coordination to ensure injured employees' receive a seamless transition.



Customer Service Process Flowchart



2.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 Customer Service Program is funded through State appropriations from General Revenue – Dedicated (Fund 36) in the amount of \$2,183,756.30 (FY 2008). OIEC receives no federal funds.

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

The Customer Service Program works closely with the OIEC’s Ombudsman Program to ensure a smooth transition for those customers who schedule a Benefit Review Conference and seek the assistance of an Ombudsman. Additionally, Customer Service Representatives identify disputes and attempt to resolve the dispute through early intervention. If the Customer Service Representative is unsuccessful, the dispute is referred to an Ombudsman.

While no other agency provides the same services to injured employees, coordination with other service agencies such as DARS or DWC may be necessary at times. DWC and DARS may answer similar questions regarding the Texas Workers’ Compensation System, rehabilitation, and return-to-work. DWC’s main function is to regulate the Texas Workers’ Compensation System whereas OIEC’s function is to advocate for injured employees to ensure their rights are protected.

DWC may also provide assistance to injured employees; however, the function of DWC is regulatory in nature. Further, DWC’s Customer Assistants provide regulatory information to all workers’ compensation system participants, not just injured employees. Specifically, DWC’s Customer Assistants provide information to injured employees represented by an attorney, whereas OIEC’s services are focused on the unrepresented injured employee.

2.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.

OIEC and DWC work closely together to ensure functions are not duplicated. Meetings are held with staff from both agencies when procedural issues are in question. Both agencies agree on the final decision.

The Ombudsman Program and the Customer Service Program also work closely together, and may back-up or provide assistance in some of the functions; however, there is no duplication or conflict.



2.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.

OIEC refers injured employees to local, regional, and federal units of government for financial assistance, rehabilitation, and work placement programs, as well as other social services that the office considers appropriate. Some of those agencies include:

- The Department of Assistive and Rehabilitative Services (DARS). DARS assists injured employees with rehabilitation services in order to return the injured employee to work as soon as possible.
- The Texas Workforce Commission (TWC). TWC assists injured employees with preparing for and finding employment;
- The Health and Human Services Commission (HHSC) and other social service agencies, such as the Department of Aging and Disability Services (DADS). These agencies assist injured employees in obtaining financial assistance and other social service assistance;
- 2-1-1 services, which provide food, shelter, rent assistance, utility bill assistance, counseling, child care, after-school programs, senior services, disaster relief and other programs in the injured employee's locality; and
- Community-based organizations, including county hospitals, local churches or religious groups, food banks, area relief missions, the Salvation Army, and women's shelters, etc.

2.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.

Not Applicable.

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

There are no specific recommended statutory changes other than those discussed in other areas of this report. *See* Section IX - Policy Issues on page 119 for recommended statutory changes.

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

OIEC has attempted to provide enough information for a preliminary understanding of this program; however, staff is available to provide additional information as needed.



2.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.

2.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 practice.

Exhibit 12: Not Applicable.



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

Name of Program or Function	Legal Services
Location / Division	Legal Services
Contact Name	Elaine Chaney, Director
Actual Expenditures, FY 2008	\$662,928.53
Number of FTEs as of August 31, 2008	9 FTEs

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

The primary objective of the Legal Services Division is to provide consistent and accurate legal advice and counsel to OIEC staff at all levels of the agency. Legal Services counsels the agency on all matters, including, personnel, open records, contracts, and policymaking. The services provided by the Legal Services Division include:

- Preparing Ombudsmen to assist injured employees in informal and formal dispute resolution proceedings and appeals at TDI's DWC;
- Assisting OIEC staff in fulfilling the agency's mission to assist, educate, and advocate on behalf of the injured employees of Texas;
- Advising the agency on applicable State and federal employment laws;
- Providing legal counsel on the agency's open records process;
- Developing, reviewing, and revising OIEC policies and procedures;
- Interpreting statutes, rules, and case law;
- Reviewing agency documents for legal accuracy;
- Preparing comment to the rules proposed by TDI and DWC; and
- Advocating for injured employees as a class in court proceedings including filing amicus curiae briefs with the Texas Supreme Court.

OIEC employs seven Regional Staff Attorneys, who are assigned to regional teams across the State. The Attorneys' duties include:

- Answering substantive legal questions;
- Conducting research on both legal and medical issues;
- Developing model discovery;
- Drafting letters to request opinions from health care providers on causation, extent of injury, and medical necessity issues;



- Developing case strategy;
- Evaluating existing evidence and advising on additional evidence that needs to be presented to establish entitlement to indemnity and medical benefits; and
- Assisting with the preparation for informal and formal proceedings and appeals.

Legal Services has an extensive role in providing training on legal issues in workers' compensation to OIEC staff. At least three times each year, the Regional Staff Attorneys observe the Ombudsmen on their team in a preparation appointment, a Benefit Review Conference, or a Contested Case Hearing. The Regional Staff Attorneys travel as necessary to perform this function. The observations serve three purposes. They permit the Regional Staff Attorneys to evaluate the effectiveness of the assistance that they provide, they provide constructive feedback to the Ombudsmen, and they identify training issues.

Legal Services develops and delivers Practical Skills Training three times each year for the Ombudsmen. This training focuses on current issues in workers' compensation and is designed to provide useful, practical information and solutions for the Ombudsmen. The overriding goal of the training is to refine the skills of the Ombudsmen to enhance their ability to provide effective assistance to injured employees at all stages of the administrative dispute resolution process, including the case development stage, where effort is made to resolve issues before a dispute resolution proceeding is scheduled. With the addition of a Customer Service Program and more Ombudsmen, OIEC has committed to helping injured employees resolve issues

relating to their receipt of benefits as soon as possible by serving as an advocate for the employee at or near the time of the insurance carrier's denial. The Practical Skills Training helps to further this commitment by providing information and strategies that can be immediately employed to make a persuasive showing to the carrier that the disputed income and medical benefits are owed and should be provided to the injured employee.



Legal Services is involved in developing and delivering training on issues for the Ombudsman monthly teleconferences and the bi-weekly Customer Service teleconferences. Legal Services also plays a significant role on the agency's Training Committee. The Director of Legal Services is the Chair of that Committee and one of the Regional Staff Attorneys is a member. The Training Committee has focused its efforts on increasing the effectiveness of the training that is available for new employees of OIEC. To that end, the Committee developed a Core Training Links section of the agency's intranet site that provides

ready access to critical baseline information about workers' compensation that every OIEC field office employee must know or be able to easily locate in order to educate the injured employees



of Texas about the workers' compensation system and their rights and responsibilities in that system. An added benefit of the Core Training Links is that they provide a valuable resource for existing employees to find the answers to questions and to check the accuracy of the information they are providing. In order to build on the Core Training Links, the Training Committee determined that the agency needed a workers' compensation reference manual, which is going to be called the Practical Resource Guide, and that will provide more detailed information about topics of particular importance in workers' compensation. The Training Committee developed a format for organizing and presenting the information and determined the topics that need to be included. The topics were then assigned to members of the Training Committee and the Regional Staff Attorneys. Drafts of the individual topics have been submitted and the Director of Legal Services, the Associate Director of Legal Services, and the agency's Communications Specialist are in the process of reviewing and editing the individual sections and finalizing the Practical Resource Guide.

Legal Services serves the agency's advocacy role by analyzing and providing rule comment to the rules proposed by TDI and DWC. Every informal and formal proposal issued by TDI or DWC is analyzed to determine the potential impact of the proposed rules on injured employees. Comment is provided to ensure that the rules do not adversely affect injured employees. OIEC's rule comments are largely drafted by the Director of Legal Services and the Associate Director of Legal Services; however, the Regional Staff Attorneys play an important role in analyzing the rules and providing input on the revisions OIEC will recommend to protect the interests of injured employees.

Legal Services also advances the advocacy role of OIEC by pursuing matters before the courts on issues of importance to injured employees as a class. OIEC has filed five *amicus curiae* briefs with the Texas Supreme Court on issues dealing with carrier waiver of the right to contest compensability, an injured employee's post-injury waiver of the right to compensation, maximum medical improvement and impairment rating, and course and scope of employment in a travel case. OIEC also had the opportunity to present oral argument before the Texas Supreme Court on an issue of carrier waiver of the right to contest compensability and, more specifically, the interplay of the carrier waiver provision and the DWC rule establishing that carrier waiver does not apply to extent-of-injury issues.

Legal Services counsels the agency regarding the Public Information Act (open records); human resource issues, such as hiring and disciplinary practices, contracts, policymaking, and other issues affecting the daily operations of the agency. Legal Services develops, reviews, and revises OIEC policies and procedures and is also charged with reviewing agency documents and reports for legal accuracy and the agency's response to complaints regarding OIEC employees and agency policies.



3.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.

Table 13: FY 2008 Performance Measures – Legal Services			
Performance Measures	FY 2008 Target	FY 2008 Actual Performance	FY 2008 % of Annual Target*
<i>Outcome Measures</i>			
Outcome Measure 1.1 oc 1 Percentage of Workers' Compensation Formal or Informal Rules Analyzed by OIEC	100.00%	100.00%	100.00%
Outcome Measure 1.1 oc 2 Percentage of Workers' Compensation Formal or Informal Rulemaking Processes in which OIEC Participated	85.00%	70.83%	83.33%
Outcome Measure 1.1 oc 3 Percentage of Workers' Compensation Rules Changed for the Benefit of the Injured Employee as a Result of OIEC Participation	50.00%	58.33%	116.67%
<i>Output Measures</i>			
Output Measure 1.1.1 op 1 Number of Rules Analyzed by OIEC (informal and formal)	22	24	109.08%
Output Measure 1.1.1 op 2 Number of Rulemaking Processes (informal and formal) in Which OIEC Participated	17	17	100.00%
FY 2010-2011 Output Measure 1.1.1 op 6 Number of Assists a Regional Staff Attorney Provides to an Ombudsman **	N/A	820	N/A
<p><i>* Results highlighted in blue indicate target was met within a variance of 5 percent, results highlighted in green indicate performance was not met but performance was desirable, and results highlighted in red indicate performance was not met and performance was undesirable.</i></p> <p><i>** Output Measure 1.1.1 op 6 Number of Assists a Regional Staff Attorney Provides to an Ombudsman will become a measure in FY 2010-2011. The target for this measure in FY 2009, FY 2010, and FY 2011 is 1,680. FY 2008 actual performance is based on a partial year and does not reflect Legal Services complete number of assists.</i></p>			

Legal Services did not meet its FY 2008 Target with respect to Outcome Measure 1.1 oc 2 the “Percentage of Workers’ Compensation Formal or Informal Rulemaking Processes in which OIEC Participated” as shown in Table 13. The only rulemaking processes in which OIEC did not participate are those where the analysis of the proposed rule revealed there were no issues that required comment on behalf of the injured employees of Texas.



3.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.

The staff attorney position was created in HB 7, with the creation of OIEC. Section 404.103(b) of the Texas Labor Code states “[t]he public counsel shall assign staff attorneys, as the public counsel considers appropriate, to supervise the work of the ombudsman program and advise ombudsmen in providing assistance to injured employees and preparing for informal and formal hearings.” The process of integrating the Regional Staff Attorneys into the Ombudsman Program has evolved over time. Initially, the Regional Staff Attorneys were available to answer questions when they were contacted by the Ombudsmen. The Regional Staff Attorneys also traveled to the field offices where they were assigned and not principally located in order to develop a relationship with the Ombudsmen on their team so that the Ombudsmen would be comfortable requesting assistance from the Regional Staff Attorneys. When the Regional Staff Attorney program was just beginning, resources were directed toward developing standard letters, motions, pleadings, and discovery, so that the Ombudsmen would have a starting point when they needed to prepare such documents and so that OIEC could ensure consistency in the documents prepared from location to location. In addition, the first Regional Staff Attorneys devoted considerable resources toward developing and delivering the practical skills training. The Ombudsman Program already had a comprehensive training program concerning the substance of workers’ compensation; therefore, the focus of the practical skills training was in refining the skills of the Ombudsmen in case development and case presentation.

As Legal Services became fully staffed, with one Regional Staff Attorney for each Ombudsman Team, the procedure for how the Regional Staff Attorneys provide legal assistance to the OIEC team was revised. The decision was made to have the Regional Staff Attorneys observe the



Ombudsmen in preparation appointments, Benefit Review Conferences, or Contested Case Hearings. In the observations, the Regional Staff Attorneys are afforded an opportunity to see whether the Ombudsman understood and was able to incorporate the Regional Staff Attorney’s suggestions into the presentation. In addition, the Regional Staff Attorneys use the observation to identify any training issues and to provide constructive feedback to the Ombudsman about the strengths and weaknesses of the assistance provided to the injured employee. The Regional Staff Attorneys write a report about each observation, which is sent to the Ombudsman Supervisor, the Associate Director of the Ombudsman Program, and the Director of Legal Services.

The Regional Staff Attorneys also have a quarterly meeting with the Ombudsman Supervisor and the Associate Director of the Ombudsman Program assigned to their team where the observation reports and any training issues are discussed. A report of the quarterly meetings is prepared by



the Regional Staff Attorney and sent to the Deputy Public Counsel, the Director of the Ombudsman Program, and the Director of Legal Services. The decision to have the Regional Staff Attorneys observe the Ombudsmen in preparation appointments and proceedings to provide feedback, and to identify training issues is designed to satisfy the statutory requirement that the Regional Staff Attorneys “supervise the work of the ombudsman program.” (TEX. LAB. CODE §404.103). The supervision of the Ombudsmen, in terms of completion of their performance evaluation, approving leave requests, and making recommendations on necessary disciplinary action continues to be made by the Ombudsman Supervisor. In other words, the guidelines of how the Regional Staff Attorneys provide legal assistance to the OIEC Team are designed to strike an appropriate balance between the statutory language and the belief that the Regional Staff Attorneys would be most effective in providing legal advice and counsel if they were not involved in day-to-day supervisory decisions.

3.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.

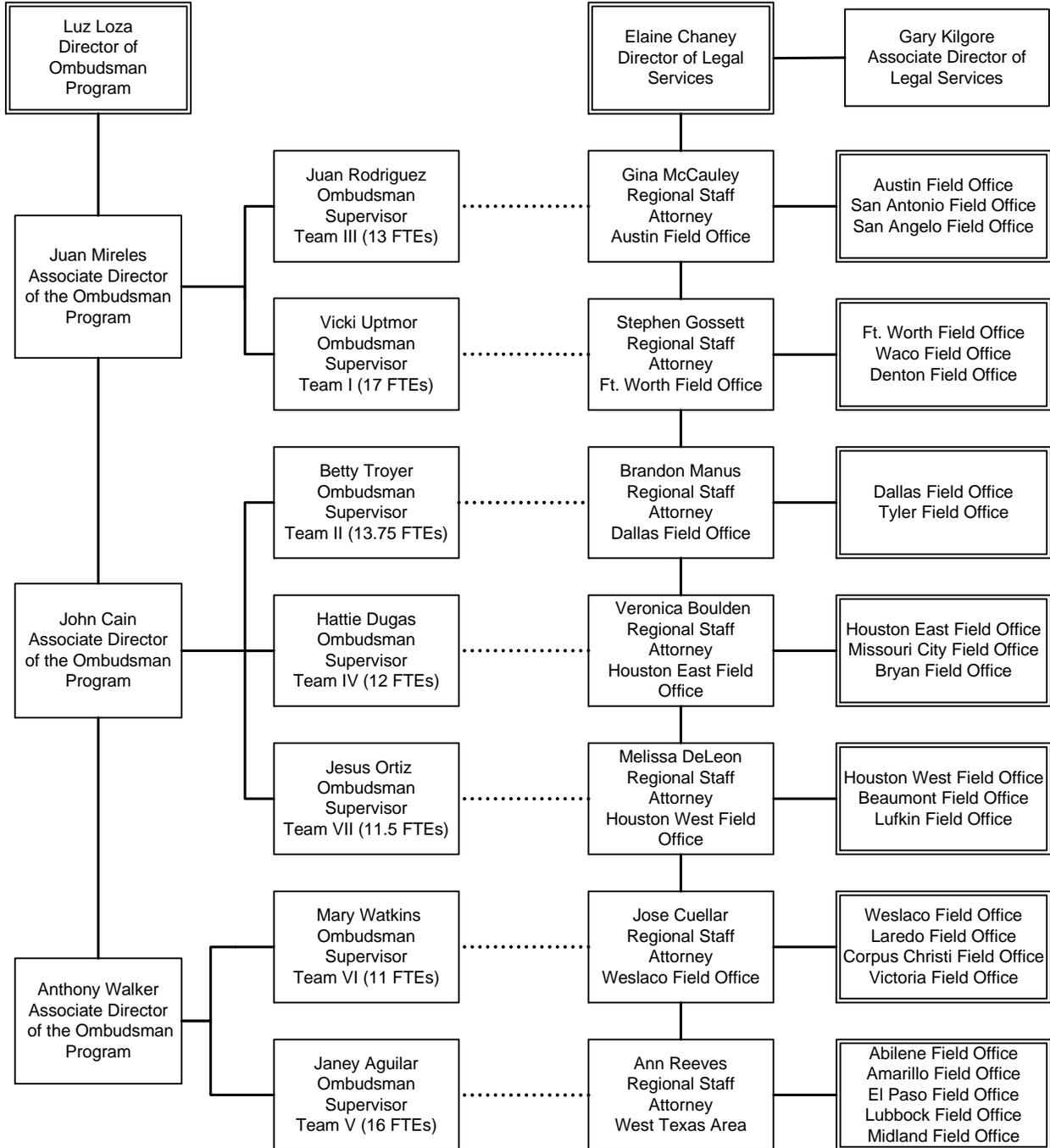
Legal Services impacts injured employees as a class through its filing of *amicus curiae* briefs, by filing written comments to rules proposed by TDI and DWC, and by participating in work groups addressing issues in workers’ compensation. Legal Services more specifically affects injured employees receiving services from OIEC by supporting the Ombudsman and Customer Service Programs in early intervention, case development, and preparation for informal and formal dispute proceedings. All injured employees eligible to receive services from OIEC, as described elsewhere in this report, are potentially affected by this program. There are no additional eligibility requirements to receive the services of this program.

3.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.

OIEC employs seven Regional Staff Attorneys across the State whose legal expertise are intended to bolster the ability of Ombudsmen and Customer Service Representatives to do their jobs. Each Regional Staff Attorney is assigned to an Ombudsman Team and that Regional Staff Attorney assists both the Ombudsmen and the Customer Service Representatives assigned to those offices. An important part of the integration of the Regional Staff Attorneys into the Ombudsman and Customer Service Programs is dependent on the development of long-term relationships between the Regional Staff Attorneys and other OIEC team members. It was believed that once the Regional Staff Attorney and the members of his or her team were comfortable with each other, the Ombudsmen and the Customer Service Representatives would more readily seek the assistance of their Regional Staff Attorney.



Regional Staff Attorney and Ombudsman Team Assignments



3.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 Legal Services is funded through State appropriations from General Revenue – Dedicated (Fund 36) in the amount of \$662,934.51 (FY 2008). OIEC receives no federal funds.

3.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.

3.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.

3.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.

3.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.

Not Applicable.



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

Amend Labor Code §404.105 for the limited purpose of permitting OIEC to assist an unrepresented injured employee in drafting a *pro se* original petition for judicial review or an answer and, if necessary, an indigency affidavit. This statutory change would allow an injured employee to preserve his or her judicial review rights, in those instances where he or she has difficulty finding legal representation. Permitting OIEC to assist an unrepresented injured employee in filing an answer would seem particularly appropriate because the injured employee would have prevailed at the administrative level. If an insurance carrier is able to defeat the administrative decision on mere procedural grounds, it would undermine the integrity of the administrative process. See also Section IX - Policy Issues of this report on page 119.

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

OIEC has attempted to provide enough information for a preliminary understanding of this program; however, staff is available to provide additional information as needed.

3.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.

3.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 practice.

Not Applicable

Exhibit 12: Not Applicable.



Note: As of June 2009, OIEC restructured the Administration and Operations Division. The Division was divided into two sections: the Operations Section, and the Quality Assurance Section. A description of the current functions of each section is described below.

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

Name of Program or Function	Operations Section
Location / Division	Administration and Operations
Contact Name	Brian White, Deputy Public Counsel
Actual Expenditures, FY 2008	Actual expenditures are included in other divisions. However, it is estimated that A&O expenditures are approximately \$693,613.
Number of FTEs as of August 31, 2008	12 FTEs
Number of FTEs as of August 20, 2009	6.25 FTEs

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

The Operations Section’s primary objective is to provide efficient and effective technical program support to the agency. Functions within this program include: Budget Planning and Management; Administrative Services; Agency Reporting Requirements; Communications and Outreach Initiatives; Staff Services; Information Technology Services; and General Counsel and other administrative functions. These functions support OIEC in carrying out the agency’s mission and fulfilling its statutory mandates.

Budget Planning and Management. The Operations Section tracks and monitors all aspects of the agency's nearly \$8 million budget. It prepares the agency's annual budget and allocates appropriated funds. Throughout the fiscal year, it continually manages the utilization of agency funds including: monitoring, tracking and controlling the agency’s salaries, travel, professional fees, and operating expenditures. The Operations Section’s staff also compiles complex reports and provides detailed budget information to executive management. Expenditures and payroll are approved utilizing the State accounting and payroll systems USAS/USPS. As OIEC is administratively attached to TDI, TDI assists in filing all financial reports and records on OIEC’s behalf.

Administrative Services. The Operations Section’s administrative services functions include Human Resources and Purchasing.



Human Resources. OIEC's most important resource is its staff, and therefore, it is of the utmost importance that all facets of Human Resources be handled effectively and efficiently. Human Resource functions include:

- Hiring process. Operation's staff develops and maintains functional job descriptions; places open job postings on the OIEC intranet, OIEC internet, and Work-In-Texas; tracks all positions within the agency; provides supervisors with the tools and support needed throughout the hiring process; coordinates with TDI-DWC Human Resources as needed;
- Personnel actions. Operation's staff processes all paperwork and notifications related to personnel actions which include new hires, promotions, transfers, merit raises and resignations;
- Employee benefits assistance. Operation's staff provides support to OIEC employees (with the assistance of TDI) in administering employee insurance benefit programs, disability and retirement programs, and in conducting exit interviews. Operation's staff also works with the Texas Workforce Commission regarding former employee benefits;
- Sick Leave Pool and Employee Assistance Program assistance. Operations' staff ensures that OIEC employees have access to and understand that these programs are available when needed;
- Agency Employee File Maintenance. Operations' staff ensures that required documents are filed and maintained in the employees' personnel files; and
- Public Information Act (a.k.a Open Records). Operations' staff coordinates the agency's open records requests, and the Deputy Public Counsel serves as the agency's Public Information Officer.

Purchasing. The majority of the OIEC's purchasing functions are handled through TDI's Purchasing Department as part of OIEC's administrative attachment to TDI. However, OIEC makes a determination about what items should be purchased, completes the purchase requisitions, and submits them to TDI for processing. OIEC initiates, establishes, and monitors all agency contracts.

Agency Reporting Requirements. As a state agency, OIEC reports information and statistics to other state agencies about its operation. The Operations Section's staff is responsible for or provides support in completing and submitting the following standard agency reporting requirements:

- Strategic planning and reporting;
- Performance measure monitoring, and reporting;
- Biennial Operating Budget;
- Risk management reporting and claims coordination through SORM;
- Legislative Appropriations Request;
- Legislative Report; and
- Property Inventory and Management (SPA Report).

Communications and Outreach Initiatives. As a young agency, OIEC must still publicize its services to customers so they are aware of the ways that OIEC can assist them. There are many



ways in which the Operations' staff directly impacts the agency's communications and outreach initiatives.

OIEC's Internal and External Websites. Operations' staff develops and maintains the agency's internal and external websites.

- The internal website provides OIEC's staff with the most current information, policies and procedures, directives, training modules, OIEC forms and letters, as well as other materials essential in performing their day-to-day duties.
- The external website provides customers with information about OIEC's services, the workers' compensation system, publications and materials, and other helpful resources. When possible, this information is provided in both English and Spanish and in some cases Chinese, Vietnamese and other languages.

Publications and Educational Materials. OIEC's outreach efforts have resulted in the development of a printed education and advocacy information packet to be provided to an employee when they sustain a work-related injury or need to file a workers' compensation claim. Operations' staff was responsible for developing all aspects of these materials including content, design, coordinating printing services, and mail-out distribution to the field offices and other agencies.

Public Service Announcement. Operations' staff was responsible for overseeing and coordinating the statewide public service announcement which was produced as an outreach effort to broadcast OIEC's services to the injured employees of Texas. This increased outreach contributes to fulfilling OIEC's mission to assist, educate, and advocate on behalf of the injured employees of Texas. The announcement, produced in both English and Spanish, may be viewed on public television stations at various times, and it is also available on OIEC's website.

Quarterly Review. OIEC publishes a newsletter on a quarterly basis, which educates and informs its customers about agency initiatives, program successes, and workers' compensation topics. Operations' staff is responsible for designing the newsletter; identifying topics, writing and coordinating articles, and compiling the information into the newsletter. OIEC prints and distributes the newsletter in hardcopy and electronically.

Training. Operations' staff is involved in the development or assisting in the development of online training for OIEC staff. This involvement is through the development of documents and reports, conducting training on administrative procedures and computer applications (such as DRIS), and participating in the agency's Training Committee.



Conferences. As part of its commitment to staff development, OIEC holds Leadership Conferences for supervisors and management as well as OIEC's Annual Conference for all



agency staff. Operations' staff is primarily responsible for planning and executing these conferences, including contracts for hotel facilities, audio/visual equipment, leading planning meetings, developing agendas, coordinating speakers and handouts, and handling any issues during the conferences.

Performance Measures. Operations' staff also tracks and compiles data used in performance measures pertaining to Public Outreach presentations and rulemaking.

Staff Services and Information Technology Services. OIEC is co-located with DWC in 23 field offices throughout the State, and the agency's Central Office. Operations' staff works with TDI's Staff Services and Information Technology Services Departments to ensure that OIEC has sufficient information space, technology equipment, and resources needed to operate.

Computer System Modifications. Operations' staff works with TDI business analysts and programmers to request modifications to the TDI computer claims systems (COMPASS and DRIS). Although TDI owns the systems, the agencies share the use of these systems. When appropriate, additions or revisions are requested to provide additional information associated with performance measures or office operations. Operations' staff prepares paperwork, works with the programmers, tests, and distributes instructions for these modifications.

Information Technology Services. Operations' staff coordinates with TDI staff regarding telecom, computer and network equipment, software, and other information technology resources.

Facilities Services. Operations' staff coordinates with TDI staff regarding facilities services including:

- Office space;
- Modular and conventional furniture; which includes developing floor plans, assisting with office reconfigurations and relocations; and
- Office supply needs.

General Counsel and Other Administrative Functions. Operations' staff also performs the following essential agency functions.

Rulemaking Process. In order to effectively advocate for injured employees and administer the agency, it is critical that OIEC promulgate agency rules pursuant to the Labor Code.

Agency Complaint Process. Operations' staff administers the agency complaint process regarding OIEC's policies, procedures, or personnel, which involves identifying, logging, coordinating, tracking, and reporting these complaints.

Disaster Recovery Plan. Operations' staff developed and maintains the agency's Disaster Recovery Plan which documents the strategies, personnel, procedures, and resources that the OIEC Disaster Recovery Team will use to respond to any short- or long-term interruption to its essential business functions. In addition, in the event that an OIEC field office is affected by a



disaster or business interruption, OIEC will follow TDI's decisions regarding the closure of offices in accordance with the Memorandum of Understanding between TDI and OIEC dated February 1, 2007. *See Attachment 25 for the Memorandum.*

Records Retention Schedule. Operations' staff sends all required documents to the State Depository as authorized under V.T.C.A., Government Code 441.01 et seq., (referred to as the State Depository Law) and is administered by the Texas State Library and Archives.

OIEC's Public Email Address. OIEC maintains a public email address (OIECInbox@oiec.state.tx.us) that can be used by customers to contact the agency by email. Operations' staff monitors the incoming messages and distributes them to appropriate staff for action.

Agency Business Plan. OIEC has implemented an internal business-planning process that details the agency's most critical objectives, the date by which the objectives must be met, and the parties responsible for completing them. Operations' staff is responsible for coordinating, updating, and maintaining the document on a monthly basis.

Compliance Violations. Although OIEC is not the agency charged with regulating the workers' compensation system, it does assist customers in referring complaints about a participant in the workers' compensation system to the appropriate agency. Operations' staff is responsible for coordinating with appropriate staff, logging, tracking, and monitoring violation referrals.

4.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.

OIEC was created as part of HB 7 passed during the 79th Legislative Session. The agency was officially established March 1, 2006. Since the beginning, the Operations Section's main goal has been to develop an infrastructure that enables the agency to operate in the most effective and efficient manner. As a new agency, many of these functions were created and developed from the ground up. OIEC has worked closely with TDI to better define both agencies' roles in these areas. As a support function for the agency, there are no performance measures or statistics which measure the Operations Section's effectiveness and efficiency in particular. However, it is believed that no program area would be operational without the agency's Administrative and Operations Division. There have been some recent audit findings that support that the section has been successful in certain functions:

Post Payment Audit. This audit was conducted in November 2007 by the Texas Comptroller of Public Accounts and evaluated OIEC's payroll, purchasing, and travel transactions. The audit outcomes indicated that the sample reviewed had over a 99 percent compliance rating. No errors were identified in the purchasing transactions reviewed and through recommendations made in the report OIEC was able to improve its payroll processes.

State Office of Risk Management (SORM) Audit. This audit was conducted in April 2009 and reviewed several risk management related processes. There was only one recommendation as a



result of this audit and that was to develop an employee driver's safety policy. Operations' staff developed the policy and is in the implementation process.

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.

Organizationally, the Operations Section has undergone a number of changes since the agency's creation in March 2006. The size of the agency has nearly doubled in three years, which increased the scope and responsibility of the Operations Section. Although OIEC is administratively attached to TDI, it was quickly apparent that there were still many critical administrative functions that could only be handled by OIEC staff. As such, several Operations Section positions have been added including the Staff Services Coordinator, Reporting Analyst, and Operations Analyst.

Position responsibilities have also changed through this growth period. The Associate Director position of the Operations Section was recently changed to reflect the increasing size and scope of that position within the section. The Communications Specialist began mainly as a training function, but the need for larger outreach efforts led to the change of focus to publications, website, and communications functions.

In April 2009, the State Auditor's Office conducted a classification compliance audit of State employees classified in the Program Specialist job series to determine if the positions are properly classified. The results of the audit indicated that two of the seven OIEC Program Specialist's in the Operations Section were misclassified. OIEC reclassified the two positions to a Staff Services Officer V and an Administrative Assistant IV. The full report #09-706 released July 13, 2009 can be found on the State Auditor's Office website at <http://www.sao.state.tx.us>.

4.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 Operations Section's staff provides service and support to all agency employees and program areas within OIEC. The responsibility of this section is to ensure that the staff has the necessary tools to fulfill the agency's mission and meet all statutory reporting requirements.

Operations' staff primarily serves internal customers of the agency, but there are some external interactions with other state agencies, and the public.

Affected persons or entities include:

- OIEC staff: 172.25 FTEs as of August 31, 2008;
- State agencies: TDI and DWC, State Office of Risk Management, Texas Workforce Commission, DARS, and Comptroller's Office; and
- Injured employees and workers' compensation system participants (employers' health care providers, insurance carriers).



4.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 Operations Section is directly supervised by the Deputy Public Counsel. OIEC staff is cross-trained in many different areas of responsibility to efficiently administer the functions of this Section and to effectively utilize the administrative attachment to TDI.

4.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 Operations Section is funded through State appropriations from General Revenue – Dedicated (Fund 36). The Operations Section’s funds are divided into OIEC’s three strategies: Assist (Ombudsman Program), Educate (Customer Service), and Advocate (Legal Services). However, it is estimated that the Operations Section’s expenditures are approximately \$420,711 in FY 2008. OIEC receives no federal funds.

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

All state agencies operate similar administrative and operational services to manage their organizations. However, OIEC's Operations’ staff consists of subject matter experts on their particular functions, the agency’s mission, and knowledge of the specific agency operations.

OIEC is administratively attached to TDI. TDI provides facilities, automation and computer equipment, services and support, and accounting and budget support. The two agencies perform similar but separate administrative functions.

Also, OIEC and DARS have some overlapping responsibilities with regard to injured employees and the emphasis to have them return to work when appropriate. As such, the agencies coordinate their efforts to ensure that customers receive the appropriate information from each agency and that efforts are not duplicative.

4.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.

DWC – OIEC: As OIEC is a state agency administratively attached to TDI, the agency’s entered into a Memorandum of Understanding (MOU), the purpose of which was to outline the



roles and responsibilities of DWC and OIEC in the functioning of the 23 field offices throughout Texas. OIEC has worked closely with TDI to better define both agencies' roles in these areas.

The MOU sets forth the procedures utilized by OIEC and DWC staff located in field offices, and includes the following functions:

- 1) Customer Service,
- 2) Workload and Staffing,
- 3) Facilities and Field Office Hours,
- 4) Interagency Assistance,
- 5) Interagency Communication,
- 6) Access to Confidential Information, and
- 7) Conduct of Employees.

See Attachment 25 for The Memorandum of Understanding between the Texas Department of Insurance, Division of Workers' Compensation and the Office of Injured Employee Counsel.

TDI provides 1) administrative assistance and services to OIEC, including budget planning and purchasing; 2) personnel services; and 3) computer equipment and support. Administration and Operations provides technical and administrative support to the agency, which is necessary for the agency to fulfill its statutory mandates. *See Attachment 24 for a detailed description of The Roles and Responsibilities for Administrative Assistance and Services for TDI and OIEC.*

DARS – DWC – OIEC: It is important for OIEC to refer cases to DARS when appropriate so that injured employees can access all appropriate rehabilitative services in a timely manner. The two agencies must share information regarding the number of referrals made and the outcome of those referrals. With this in mind, the agencies are in process of entering into a Memorandum of Agreement (MOA) that defines their respective responsibilities.

The purpose of the MOA is to establish the process, requirements, and format necessary to measure and track return-to-work outcomes for all injured employees who are income benefit recipients or applicants, and who also apply for or receive DARS' services in order to implement the requirements of Labor Code §413.025.

The data DARS will provide will enable DWC and OIEC to generate reports showing the return to work outcomes of all income benefit recipients or applicants who have applied for, have received or are receiving DARS services. These reports will assist DWC, OIEC, and DARS in their mutual efforts to facilitate appropriate return-to-work of eligible injured employees. The referral source will be provided so that DWC and OIEC will be able to distinguish the particular agency.

4.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.



4.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.**

Health and Human Services Commission (HHS) Printing Contract. OIEC and HHS entered into an interagency cooperation contract for all printing services. The actual FY 2008 expenditures for this contract were \$294,548.18, which included all outreach materials, quarterly newsletters, mandatory reports, and conference materials.

Employee Assistance Program. OIEC entered into a contract with Alliance Work Partners for the employee benefit of external guidance and counseling for employees and families as needed. The contract also allows for training on various topics at a pre-determined rate.

MindLeaders. OIEC entered into a contract with MindLeaders to provide its staff with online training about customer service, handling difficult people, leadership skills, and other related topics. The actual expenditure for FY 2008 was \$27,750.00. OIEC staff experienced many technical problems with the online training which made it difficult and sometimes impossible to complete the courses. As such, the contract was not renewed for FY 2009.

Annual OIEC Conference. OIEC entered into a contract with Marriott Austin South Hotel for the meeting room and audio/visual supplies for the Annual OIEC Conference in 2008. The actual expenditures for FY 2008 were \$6,466.00. The hotel rooms and other travel costs were paid through the travel voucher process.

The 2009 OIEC Conference was held in San Antonio at the Drury Plaza Hotel San Antonio Riverwalk in June. OIEC entered into a contract with the Hotel for the meeting rooms and audio/visual equipment. The actual expenditures for the Conference totaled \$2,776.22. The hotel rooms and other travel costs were paid through the travel voucher process. The 2010 Conference is also planned to be held at the Drury Plaza Hotel San Antonio Riverwalk in June 2010.

University of North Texas. OIEC contracted with the University of North Texas Survey Research Center (SRC) to conduct 2008 Customer Satisfaction Survey pursuant to Government Code §2114. The survey was designed to measure the satisfaction of injured employees who have had a dispute with their workers' compensation claims or were assisted by an Ombudsman. The actual expenditure for FY 2008 was \$66,500.00. See Attachment 20 for the full survey.

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

There are no specific recommended statutory changes other than those discussed in other areas of this report. See Section IX - Policy Issues on page 119 for recommended statutory changes.



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

OIEC has attempted to provide enough information for a preliminary understanding of this program; however, staff is available to provide additional information as needed.

4.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:

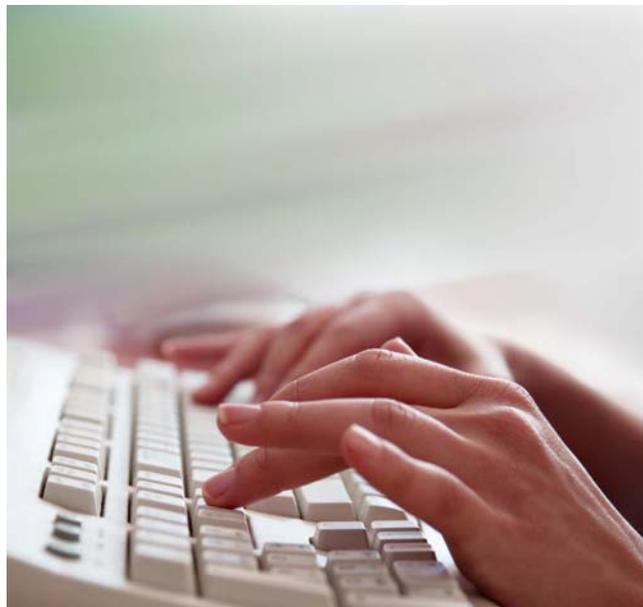
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public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

Not Applicable.

4.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 practice.

Not Applicable.

Exhibit 12: Not Applicable.



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

Name of Program or Function	Quality Assurance Program
Location / Division	Administration and Operations
Contact Name	Brian White, Deputy Public Counsel / Stephen Lawson, Associate Director
Estimated Expenditures, FY 2008	\$0 Quality Assurance is a new section within OIEC effective June 2009.
Number of FTEs as of August 31, 2008	0
Number of FTEs as of August 20, 2009	4

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

The objective of the Quality Assurance Program is to achieve continual improvement of the service delivery process through review and evaluation of operational, programmatic, and functional areas of the agency. This includes documentation quality reviews of agency program areas to ensure policies and procedures are being followed by agency staff and that consistent and accurate information is being provided to our customers. This also involves the development of training specifically tailored to address exceptions identified through performance reviews and internal audits of agency program areas. The Quality Assurance Program also administers surveys, and conducts research.

It is important to note that the development of a comprehensive Quality Assurance Program is a new undertaking for OIEC.

5.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.

Not applicable at the time of this report because Quality Assurance is a new section within OIEC effective June 2009.



5.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.

In June 2009, the Quality Assurance Section was created within the Administration and Operations Division. Quality Assurance staff consists of staff with an expertise in training, research and evaluation, and strong knowledge of the Ombudsman and Customer Service Programs.

5.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 functions and services provided by the Quality Assurance Section primarily serve OIEC staff; however, the improvements achieved in service delivery affect all system stakeholders, especially the injured employees of Texas.

5.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 Quality Assurance Program is directly supervised by the Deputy Public Counsel. The Quality Assurance Program has four individuals assigned to carry out the program objectives. The Associate Director of Quality Assurance serves as a team lead for the section. The Section includes an Ombudsman and a Customer Service Representative assigned to assist in the performance of quality reviews and training development for the Ombudsman Program and the Customer Service Program. Quality Assurance carries out performance reviews of agency program areas both by desk reviews and on-site review procedures for the quality of programmatic documentation.

Quality Assurance has assigned a liaison to each agency program area to keep them apprised of quality initiatives and to make it easier for everyone to provide input and share ideas on training and procedure development. The liaisons facilitate communication between the Quality Assurance Section and other program areas because most program area staff is located in 23 field offices throughout the State.



5.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 Operations Section is funded through State appropriations from General Revenue – Dedicated (Fund 36). The Quality Assurance Section’s funds are divided into OIEC’s three strategies: Assist (Ombudsman Program), Educate (Customer Service), and Advocate (Legal Services). OIEC receives no federal funds.

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

OIEC’s Director of Internal Auditor performs some functions that work in concert with the Quality Assurance Program. However, Quality Assurance’s work product consists of independent deliverables.

The Internal Audit Program identifies issues that require corrective action through internal audits, and the Quality Assurance Program assists in solving the issues and monitors the implementation of the solution that may be a product of the internal audit. Additionally, the Quality Assurance Program develops and administers surveys, and training to agency staff with regard to administrative procedures and agency requirements.

The Quality Assurance Program has no functions that overlap or duplicate those of another state or federal agency.



5.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.

The Quality Assurance Program strives to maintain open lines of communications with other program areas and state agencies to ensure proper coordination of activities. The Quality Assurance Program has designated liaisons to all other OIEC program areas to ensure effective communication, coordination, and efficiency amongst all program areas.



5.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.

5.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.

Not Applicable.

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

There are no specific recommended statutory changes other than those discussed in other areas of this report. *See* Section IX - Policy Issues on page 119 for recommended statutory changes.

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

OIEC has attempted to provide enough information for a preliminary understanding of this program; however, staff is available to provide additional information as needed.

5.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.

5.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 practice.

Exhibit 12: Not Applicable.



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

Name of Program or Function	Internal Audit
Location / Division	Central Office, Internal Audit
Contact Name	Lesley Wade, CPA Internal Audit Director
Actual Expenditures, FY 2008	\$0 Actual expenditures are included in other divisions. However, it is estimated that Internal Audit Division expenditures will be approximately \$31,534 in FY 2009.
Number of FTEs as of August 31, 2008	0
Number of FTEs as of August 20, 2009	1

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

OIEC established the Internal Audit function in accordance with the requirements of the Texas Internal Auditing Act, Government Code, Chapter 2102.

The Texas Internal Auditing Act requires that internal auditors assist agency administrators and governing boards by furnishing independent analyses, appraisals, and recommendations about the adequacy and effectiveness of a state agency's systems of internal control policies and procedures and the quality of performance in carrying out assigned responsibilities. Internal auditing is defined as an independent, objective assurance, and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

Audits are performed in accordance with the Standards for the Professional Practice of Internal Auditing, the Code of Ethics contained in the Professional Practices Framework as promulgated by the Institute of Internal Auditors, and generally accepted government auditing standards. This is required by Texas Internal Auditing Act §2102.011.

The Texas Internal Auditing Act specifies the duties of the internal auditor as follows:

1. The internal auditor shall:
 - a) report directly to the state agency's governing board or the administrator of the state agency if the state agency does not have a governing board;
 - b) develop an annual audit plan;
 - c) conduct audits as specified in the audit plan and document deviations;



- d) prepare audit reports;
 - e) conduct quality assurance reviews in accordance with professional standards as provided by §2102.011 and periodically take part in a comprehensive external peer review; and
 - f) conduct economy and efficiency audits and program results audits as directed by the state agency's governing board or the administrator of the state agency if the state agency does not have a governing board.
2. The program of internal auditing conducted by a state agency must provide for the auditor to:
 - a) have access to the administrator; and
 - b) be free of all operational and management responsibilities that would impair the auditor's ability to review independently all aspects of the state agency's operation.

In accordance with Texas Internal Auditing Act §2102.012 (Annual Risk Assessment Report):

1. A state agency described by §2102.004(b) shall conduct each year a formal risk assessment consisting of an executive management review of agency functions, activities, and processes.
2. The risk assessment must:
 - a) evaluate the probability of occurrence and the likely effect of financial, managerial, and compliance risks and of risks related to the use of information technology; and
 - b) rank risks according to the probability of occurrence and likely effect of the risks evaluated.
3. The state agency shall submit the written risk assessment to the State Auditor in the form and at the time prescribed by the State Auditor.

6.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.

During FY 2009 the Internal Auditor performed the following tasks, as specified in the requirements of the Texas Internal Auditing Act.

- Project # 2009-001 Risk Assessment FY 2009
- Project # 2009-002 Audit Charter
- Project # 2009-003 Audit Plan FY 2009
- Project # 2009-004 Annual Report of Internal Auditor 2008
- Project # 2009-005 Agency Complaint Process Review

The Agency Complaint Process Review was an audit of the agency's compliance with its policies and procedures for processing complaints about OIEC. The project included determinations of whether the policies and procedures in effect were adequate to reflect management's needs and requirements. The project resulted in several significant findings and recommendations. The recommendations were fully implemented by management. The findings in this audit resulted in the following actions by management:

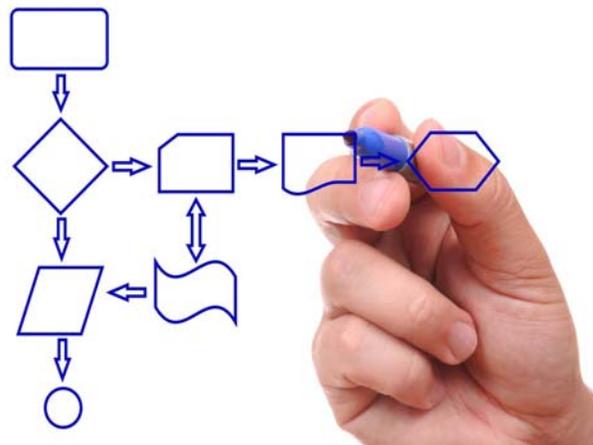


1. The complaint files have been relocated to a more secure area with custodial responsibility placed in one person.
2. The duties for processing complaints have been assigned to a single employee (with an assigned backup), along with oversight provided by the Deputy Public Counsel.
3. Management has revised OIEC Complaint Procedure ADMIN 08-03 to include modifications of the Complaint Tracking Spreadsheet which includes data fields to capture when certain steps are performed and by whom, and interim deadlines for the completion of certain process steps have been identified more clearly as suggested guidelines.
4. The Complaint Tracking Spreadsheet has also been modified to calculate elapsed days since the complaint was received, and when 25 business days have elapsed from the date of receipt, the Deputy Public Counsel is notified so that corrective action can be taken and a timelier response issued.
5. The procedures for logging incoming complaints and for filing acknowledgements and responses (both electronically and in paper form) have been more clearly detailed in OIEC Complaint Procedure ADMIN 08-03.

- Project # 2009-006 Agency Ombudsman Program Review

The agency Ombudsman Program Review was an audit of the agency's compliance with its policies and procedures for the Ombudsman Program. The audit included determinations of whether the policies and procedures in effect were adequate to reflect management's needs and requirements. The findings in this audit resulted in the following actions by management.

1. The Working Folder Checklist was revised and a directive concerning the required use of this form was issued. Additionally the use of the Working Folder Checklist was discussed with staff and supervisors in several staff meetings and teleconferences.
2. The use of the Ombudsman Assistance Request Form OMB-02 (as well as a recently developed Ombudsman Waiver Request Form OMB-09) has been stressed to staff in training meetings and teleconferences.
3. The use of the Change of Ombudsman Form OMB-05 and DRIS entry code "OMB" in the agency's database used to track performance measures has been stressed for all staff members and a directive for its use was issued.
4. The agency issued a directive requiring all Ombudsman to assist injured employees in preparing the "Employee's Claim for Compensation for a Work-Related Injury or Disease" (DWC Form 041). This action also requires an entry in the DRIS system, and filing the form on behalf of the injured employee.
5. A Quality Assurance Program was established and staffed within the Administration and Operations Division of the agency. This Program will assist in monitoring of agency staff to ensure all policies are being followed and also develop training specifically tailored to address exceptions from this and future audits.



- Project # 2009-007 Payroll/Human Resources Area Follow-Up Review

This was an audit of the agency's compliance with its policies and procedures for the Payroll and Human Resources functions of OIEC. The audit included determinations of whether the policies and procedures in effect were adequate to reflect management's needs and requirements. The findings in this audit resulted in management's directive to staff regarding the use of personnel Form ER-08 "AWOL (Flex/Compressed) Employee Request Form". OIEC staff is required to submit Form ER-08 Effective August 31, 2009. This will provide management with work schedule information for all staff members.

- Project # 2009-008 Post Payment Audit Follow-Up Review (In Process)

This audit is in process as of September 4, 2009.

6.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.

OIEC contracted with Garza & Gonzales for the internal audit function in FY 2008; however, OIEC believed that it would be more beneficial and cost-effective to employ the internal audit function as opposed to contract out for the service in the following years.

OIEC management places the consistent operation of all OIEC Field Offices as a high priority and it is believed that onsite internal audits provide for a more efficient business process.

In FY 2009, OIEC hired one full-time employee to perform the audit activities required by the Texas Internal Auditing Act.

6.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 Internal Audit function primarily affects OIEC staff; however, the improvements achieved as a result of internal audits affect all system stakeholders, especially the injured employees of Texas.

Qualifications of an internal auditor as specified in the Texas Internal Auditing Act are as follows:

An internal auditor must:

1. be a certified public accountant or a certified internal auditor; and
2. have at least three years of auditing experience.



OIEC's Director of Internal Audit, Lesley Wade, is a Certified Public Accountant with over 15 years of auditing experience.

6.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.

In accomplishing the required auditing activities, the agency's Central Office as well as the field office locations are subject to these auditing activities and as such are selected for performing actual auditing procedures. The recently concluded Audit Project # 2009-006 – Agency Ombudsman Program Review included visits to four of the agency's field office locations. These offices were chosen as a sample representative of the staffing patterns at the agency's 23 field office locations.

6.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).

OIEC is funded by General Revenue – Dedicated (Fund 36). Internal Audit funds are divided into OIEC's three strategies: Assist (Ombudsman Program), Educate (Customer Service), and Advocate (Legal Services).

Senate Bill 1, 81st Texas Legislature, Regular Session, 2009 appropriated \$68,800 and one additional full time employee for this function beginning in FY 2010. OIEC receives no federal funds.

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

OIEC is also subject to audits of its human rights (personnel) policies and procedures by the Texas Workforce Commission's (TWC), Civil Rights Division. The agency's first audit by TWC's Civil Rights Division is scheduled for June 8, 2010.

Additionally, OIEC is subject to On-Site Safety Consultations conducted by the State Office of Risk Management (SORM). To date SORM has conducted two On-Site Consultations and issued their reports dated November 27, 2007 and April 2, 2009. OIEC has submitted responses to the reports along with action plans to address the recommendations contained in the reports.

The recently created Quality Assurance Section shares several objectives with the internal audit function. The principal differences that distinguish the two areas are that the Quality Assurance Section focuses on training, research, and evaluations of the agency's operations, and the internal audit function focuses on independent, objective audits of OIEC. These audits are based on



auditing standards issued by the U. S. Government Accountability Office, the Institute of Internal Auditors, and the requirements of the Texas Internal Auditing Act, Texas Government Code, Chapter 2102.

As stated in the Texas Internal Auditing Act, the purpose of internal auditing is to assist agency administrators and governing boards by furnishing independent analyses, appraisals, and recommendations about the adequacy and effectiveness of an agency's systems of internal control policies and procedures and the quality of performance in carrying out assigned responsibilities. Internal auditing is defined as an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

6.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.

The State Auditor's Office is provided a copy of OIEC's Annual Report of Internal Audit Activities. This report contains details of all the agency's prior audit report findings and recommendations (both internal and external) as well as the status of corrective actions taken in regard to the findings.

The report also contains the audit plan for the upcoming fiscal year which includes a listing of the audit projects to be undertaken.

The State Auditor's Office exercises its own judgment in preparing a statewide risk assessment and development of their annual audit plan. In most instances its activities are not duplicative of the activities of agency internal audit activities.

In April, 2009, the State Auditor's Office conducted a classification compliance audit of State employees classified in the Program Specialist job series to determine if the positions are properly classified. The State Auditor's Office's State Classification Team reviewed 1,129 program specialist positions and other positions performing similar work at 51 agencies and determined that 926 (82.0 percent) of these positions should remain in their current job classification.

The results of the audit indicated that two of the seven OIEC Program Specialist's were misclassified. OIEC reclassified the two positions to a Staff Services Officer V and an Administrative Assistant IV. The full report #09-706 released July 13, 2009 can be found on the State Auditor's Office website at <http://www.sao.state.tx.us>.



6.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 Internal Auditor is a participating member of the State Agency Internal Audit Forum (SAIAF). SAIAF is a standing Internal Audit subcommittee of the State Agency Coordinating Committee (SACC). The primary mission of the SACC is to examine administrative and management practices, to review problems or issues which have an impact across agency lines, and to encourage and foster management practices, which are beneficial and cost-effective for all state agencies.

The mission of SAIAF is to promote the effective and efficient use of state agency internal audit resources toward accountability, productivity, and enhancement of management control over operations.

OIEC's internal auditor also participates in the SAIAF peer review process. The peer review process is an external quality assurance program in which state agencies voluntarily provide and receive "peer reviews" on a reciprocal basis at no charge. The purpose of a SAIAF peer review is to evaluate and express an opinion on the Internal Audit function's compliance with The Institute of Internal Auditors (IIA) *Code of Ethics* and *International Standards for the Professional Practice of Internal Auditing*, the United States Government Accountability Office (GAO) *Government Auditing Standards*, and the Texas Internal Auditing Act (*Texas Government Code*, Chapter 2102).

6.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.

During FY 2008 a total of \$11,686.00 was expended for contracted internal audit activities with Garza/Gonzalez & Associates, Certified Public Accountants.

The internal audit function of the agency has been staffed internally beginning in FY 2009. For FY 2010 and future periods the agency does not plan to engage in any contracts for auditing services.

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

There are no specific recommended statutory changes other than those discussed in other areas of this report. See Section IX - Policy Issues on page 119 for recommended statutory changes.



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

OIEC has attempted to provide enough information for a preliminary understanding of this program; however, staff is available to provide additional information as needed.

6.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.

6.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 practice.

Not Applicable.

Exhibit 12: Not Applicable.



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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 2005 - 2009, or earlier significant Attorney General opinions, that affect your agency's operations.

Office of Injured Employee Counsel Exhibit 13: Statutes / Attorney General Opinions	
Statutes	
Citation / Title	Authority / Impact on Agency
Chapter 404 / Texas Labor Code	<p>§404.002. ESTABLISHMENT OF OFFICE; ADMINISTRATIVE ATTACHMENT TO TEXAS DEPARTMENT OF WORKERS' COMPENSATION. (a) The office of injured employee counsel is established to represent the interests of workers' compensation claimants in this state.</p> <p>(b) The office is administratively attached to the department but is independent of direction by the commissioner, the commissioner of insurance, and the department.</p> <p>(c) The department shall provide the staff and facilities necessary to enable the office to perform the duties of the office under this subtitle, including:</p> <ol style="list-style-type: none"> (1) administrative assistance and services to the office, including budget planning and purchasing; (2) personnel services; and (3) computer equipment and support. <p>(d) The public counsel may enter into interagency contracts and other agreements with the commissioner of workers' compensation and the commissioner of insurance as necessary to implement this chapter.</p> <p>§404.004. PUBLIC INTEREST INFORMATION. (a) The office shall prepare information of public interest describing the functions of the office.</p> <p>(b) The office shall make the information available to the public and appropriate state agencies.</p> <p>§404.005. ACCESS TO PROGRAMS AND FACILITIES. (a) The office shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the office's programs.</p> <p>(b) The office shall comply with federal and state laws for program and facility accessibility.</p>



§404.006. RULEMAKING. (a) The public counsel shall adopt rules as necessary to implement this chapter.

(b) Rulemaking under this section is subject to Chapter 2001, Government Code.

§404.101. GENERAL DUTIES. (a) The office shall, as provided by this subtitle:

- (1) provide assistance to workers' compensation claimants;
- (2) advocate on behalf of injured employees as a class regarding rulemaking by the commissioner and commissioner of insurance relating to workers' compensation;
- (3) assist injured employees with contacting appropriate licensing boards for complaints against a health care provider; and
- (4) assist injured employees with referral to local, state, and federal financial assistance, rehabilitation, and work placement programs, as well as other social services that the office considers appropriate.

(b) The office:

- (1) may assess the impact of workers' compensation laws, rules, procedures, and forms on injured employees in this state; and
- (2) shall, as provided by this subtitle:
 - (A) monitor the performance and operation of the workers' compensation system, with a focus on the system's effect on the return to work of injured employees;
 - (B) assist injured employees, through the ombudsman program, with the resolution of complaints pending at the division or department;
 - (C) assist injured employees, through the ombudsman program, in the division's administrative dispute resolution system; and
 - (D) advocate in the office's own name positions determined by the public counsel to be most advantageous to a substantial number of injured employees.

(c) The office may not appear or intervene, as a party or otherwise, before the commissioner, commissioner of insurance, division, or department on behalf of an individual injured employee, except through the ombudsman program.

§404.102. GENERAL POWERS AND DUTIES OF PUBLIC COUNSEL. The public counsel shall administer and enforce this chapter, including preparing and submitting to the legislature a budget for the office and approving expenditures for professional services, travel, per diem, and other actual and necessary expenses incurred in administering the office.

§404.103. OPERATION OF OMBUDSMAN PROGRAM. (a) The office shall operate the ombudsman program under Subchapter D.

(b) The public counsel shall assign staff attorneys, as the public counsel considers appropriate, to supervise the work of the ombudsman



program and advise ombudsmen in providing assistance to claimants and preparing for informal and formal hearings.

- (c) The office shall coordinate services provided by the ombudsman program with services provided by the Department of Assistive and Rehabilitative Services.

§404.104. AUTHORITY TO APPEAR OR INTERVENE. The public counsel:

- (1) may appear or intervene, as a party or otherwise, as a matter of right before the commissioner, commissioner of insurance, division, or department on behalf of injured employees as a class in matters involving rules, agency policies, and forms affecting the workers' compensation system that the commissioner or the commissioner of insurance adopts or approves;
- (2) may intervene as a matter of right or otherwise appear in a judicial proceeding involving or arising from an action taken by an administrative agency in a proceeding in which the public counsel previously appeared under the authority granted by this chapter;
- (3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of injured employees as a class in any proceeding in which the public counsel determines that the interests of injured employees as a class are in need of representation, except that the public counsel may not intervene in an enforcement or *parens patriae* proceeding brought by the attorney general; and
- (4) may appear or intervene before the commissioner, commissioner of insurance, division, or department, as a party or otherwise, on behalf of injured employees as a class in a matter involving rates, rules, agency policies, or forms affecting injured employees as a class in any proceeding in which the public counsel determines that injured employees are in need of representation.

§404.105. AUTHORITY TO ASSIST INDIVIDUAL INJURED EMPLOYEES IN ADMINISTRATIVE PROCEDURES. The office, through the ombudsman program, may appear before the commissioner or division on behalf of an individual injured employee during an administrative dispute resolution process. This chapter may not be construed as requiring or allowing legal representation for an individual injured employee by an office attorney or ombudsman in any proceeding.

§404.106. LEGISLATIVE REPORT. (a) The office shall report to the governor, lieutenant governor, speaker of the House of Representatives, and the chairs of the legislative committees with appropriate jurisdiction not later than December 1 of each even-numbered year. The report must include:

- (1) a description of the activities of the office;
- (2) identification of any problems in the workers' compensation system



from the perspective of injured employees as a class, as considered by the public counsel, with recommendations for regulatory and legislative action; and

- (3) an analysis of the ability of the workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers.
- (b) The office shall coordinate with the workers' compensation research and evaluation group to obtain needed information and data to make the evaluations required for the report.
- (c) The office shall publish and disseminate the legislative report to interested persons, and may charge a fee for the publication as necessary to achieve optimal dissemination.

§404.108. LEGISLATIVE RECOMMENDATIONS. The public counsel may recommend proposed legislation to the legislature that the public counsel determines would positively affect the interests of injured employees as a class.

§404.109. INJURED EMPLOYEE RIGHTS; NOTICE. The public counsel shall submit to the division and the department for adoption by the commissioners a notice of injured employee rights and responsibilities to be distributed as provided by commissioner and commissioner of insurance rules.

§404.151. OMBUDSMAN PROGRAM. (a) The office shall maintain an ombudsman program as provided by this subchapter to assist injured employees and persons claiming death benefits in obtaining benefits under this subtitle.

- (b) An ombudsman shall:
 - (1) meet with or otherwise provide information to injured employees;
 - (2) investigate complaints;
 - (3) communicate with employers, insurance carriers, and health care providers on behalf of injured employees;
 - (4) assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system; and
 - (5) meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any informal or formal hearing.

§404.152. DESIGNATION AS OMBUDSMAN; ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION REQUIREMENTS. (a) At least one specially qualified employee in each division office shall be an ombudsman designated by the office of injured employee counsel, who shall perform the duties under this subchapter as the person's primary responsibility.

- (b) To be eligible for designation as an ombudsman, a person must:
 - (1) demonstrate satisfactory knowledge of the requirements of:



	<p>(A) this subtitle and the provisions of Subtitle C that relate to claims management;</p> <p>(B) other laws relating to workers' compensation; and</p> <p>(C) rules adopted under this subtitle and the laws described under Subdivision (1)(B);</p> <p>(2) have demonstrated experience in handling and resolving problems for the general public;</p> <p>(3) possess strong interpersonal skills; and</p> <p>(4) have at least one year of demonstrated experience in the field of workers' compensation.</p> <p>(c) The public counsel shall by rule adopt training guidelines and continuing education requirements for ombudsmen. Training provided under this subsection must:</p> <p>(1) include education regarding this subtitle, rules adopted under this subtitle, and decisions of the appeals panel, with emphasis on benefits and the dispute resolution process;</p> <p>(2) require an ombudsman undergoing training to be observed and monitored by an experienced ombudsman during daily activities conducted under this subchapter; and</p> <p>(3) incorporate the requirements of Section 404.103(b).</p> <p>§404.154. PUBLIC INFORMATION. The office shall widely disseminate information about the ombudsman program.</p>
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Attorney General Opinions	
Attorney General Opinion No.	Impact on Agency
Texas Government Code §661.002(c) Sick Leave Pool Policy	OIEC adopted the details related to the agency's sick leave pool, including the procedures, as an internal policy as recommended by the Attorney General. A proposed rule is in process.
OR2009-00372	The request for information received by OIEC was held confidential and was not released.
OR2009-05994	The request for information received by OIEC was held confidential and was not released.



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).

Office of Injured Employee Counsel Exhibit 14: 80 th Legislative Session Chart		
Legislation Enacted – 80 th Legislative Session		
Bill Number	Author	Summary of Key Provisions
HB 886	Representative Giddings	HB 886 provides the small employer with the option of submitting a plan to the division for preauthorization. If the division approves the plan, the employer would feel more comfortable with going ahead with the modifications, knowing that if the employer adheres to the plan, the employer will be financially compensated. This bill allows employers to make modifications with the assurance that those modifications will be paid under the program. Effective 5-17-2007.
HB 888	Representative Giddings	This bill requires a health care provider to provide, upon written request of an Ombudsman, medical records of the injured employee at no cost to the ombudsman. The workers' compensation carrier is liable for the cost. The fee for the records is reimbursed to the health care provider by the carrier. This bill also prohibits the carrier from deducting the cost of medical records from any benefit to which the employee is entitled. Effective 6-15-2007.
HB 1003	Representative Giddings	HB 1003 requires an independent review organization that uses doctors to perform reviews of health care services in workers' compensation cases to use only doctors licensed to practice in Texas. The bill also changes a reference to repealed legislation to reflect current law. Effective 9-1-2007.
HB 1006	Representative Giddings	HB 1006 requires doctors performing utilization review, retrospective review, and peer review to be licensed in Texas. This bill also makes nonsubstantive corrections in citation to refer to the newly re-codified utilization review statute. Effective 9-1-2007.
SB 1169	Senator Janek	SB 1169 authorizes insurance carriers to recoup funds paid as a result of a designated doctor's opinion that is subsequently overturned. Effective 9-1-2007.
NOTE: OIEC recommended that proper due process be given to all injured employees and that all injured employees have the procedural right to be considered a “party” or “requestor” in the medical dispute resolution process, specifically, when it comes to the continuation of their medical care through DWC’s concurrent review process. This recommendation was addressed by DWC by rule during the 80 th Legislative Session; therefore, no legislation was required.		



Legislation Not Passed – 80th Legislative Session

Bill Number	Author	Summary of Key Provisions / Status
HB 471	Representative Solomons	<p>This bill requires a health care provider to provide, upon written request of an Ombudsman, medical records of the injured employee at no cost to the ombudsman. The workers' compensation carrier is liable for the cost. The fee for the records is reimbursed to the health care provider by the carrier. This bill also prohibits the carrier from deducting the cost of medical records from any benefit to which the employee is entitled.</p> <p>Referred to Business & Industry, and left pending in committee. Representative Giddings, filed a companion bill, HB 888, which passed.</p>
HB 1301	Representative Zedler	<p>OIEC recommended legislative action to authorize Texas courts to appoint an attorney ad litem to either represent an injured employee or refer the case to another attorney to provide competent representation at the district court if the final administrative decision was in favor of the injured employee. However, OIEC also recommends that the district judge be required to conduct a hearing to determine that the injured employee has sought representation in good faith and has been unsuccessful in obtaining representation. In cases where the injured employee does prevail at district court, Texas Labor Code §408.221(c) provides for attorney's fees to be paid by the insurance carrier. If the injured employee does not prevail in district court with the representation of a court appointed attorney ad litem, OIEC recommends a provision be added in Chapter 408 of the Texas Labor Code to provide that the injured employee's attorney's fees should be paid from the Subsequent Injury Fund. OIEC also recommends that the attorney ad litem may be paid for services rendered on the claim, such as allowing for reimbursement for time spent referring the case to an attorney competent in the field of workers' compensation should the ad litem decline to represent the injured employee. However, OIEC recommends that a statutory provision be included to prohibit more than one attorney from being paid at any given time to represent the injured employee in district court in order to safeguard the Subsequent Injury Fund.</p> <p>Referred to Business & Industry but did not move forward. Senator Lucio filed a companion bill, SB 287, which also did not pass.</p>
HB 1664	Representative Zedler	<p>OIEC recommended that in those cases where the injured employee disagrees with the opinion of the designated doctor and either the treating doctor or a referral doctor has not conducted an examination to assess MMI and IR, prior to the issuance of a designated doctor's report on those issues, the statute be amended to require the insurance</p>



		<p>carrier to pay the cost of an examination by the treating doctor, if the treating doctor is qualified and willing to conduct the examination, or a referral doctor in those instances where the treating doctor is either unable or unwilling to conduct an MMI/IR examination.</p> <p>Referred to State Affairs but did not move forward.</p> <p>Senator Van de Putte filed a companion bill, SB 1387, which also did not pass.</p>
HB 3724	Representative Ekins	<p>HB 3724 would entitle an insurance carrier that pays a decision pursuant to a designated doctor's opinion which is later determined to be incorrect to receive reimbursement for any overpayments made pursuant to the designated doctor's opinion paid from the subsequent injury fund.</p> <p>Sent to Calendars; however, did not move forward.</p> <p>Senator Janek filed a companion bill, which passed.</p>
SB 287	Senator Lucio	<p>OIEC recommended legislative action to authorize Texas courts to appoint an attorney ad litem to either represent an injured employee or refer the case to another attorney to provide competent representation at the district court if the final administrative decision was in favor of the injured employee. However, OIEC also recommends that the district judge be required to conduct a hearing to determine that the injured employee has sought representation in good faith and has been unsuccessful in obtaining representation. In cases where the injured employee does prevail at district court, Texas Labor Code §408.221(c) provides for attorney's fees to be paid by the insurance carrier. If the injured employee does not prevail in district court with the representation of a court appointed attorney ad litem, OIEC recommends a provision be added in Chapter 408 of the Texas Labor Code to provide that the injured employee's attorney's fees should be paid from the Subsequent Injury Fund. OIEC also recommends that the attorney ad litem may be paid for services rendered on the claim, such as allowing for reimbursement for time spent referring the case to an attorney competent in the field of workers' compensation should the ad litem decline to represent the injured employee. However, OIEC recommends that a statutory provision be included to prohibit more than one attorney from being paid at any given time to represent the injured employee in district court in order to safeguard the Subsequent Injury Fund.</p> <p>Committee report sent to Calendars; however, did not move forward. Representative Zedler filed a companion bill, HB 1301, which also did not pass.</p>
SB 1387	Senator Van de Putte	<p>OIEC recommended that in those cases where the injured employee disagrees with the opinion of the designated doctor and either the treating doctor or a referral doctor has not conducted an examination to assess MMI and IR, prior to the issuance of a designated doctor's report on those issues, the statute be amended to require the insurance</p>



		<p>carrier to pay the cost of an examination by the treating doctor, if the treating doctor is qualified and willing to conduct the examination, or a referral doctor in those instances where the treating doctor is either unable or unwilling to conduct an MMI/IR examination.</p> <p>Referred to State Affairs but did not move forward.</p> <p>Representative Zeddler filed a companion bill, HB 1664, which also did not pass.</p>
SB 1767	Senator Watson	<p>HB 1006 requires doctors performing utilization review, retrospective review, and peer review to be licensed in Texas. This bill also makes non-substantive corrections in citation to refer to the newly re-codified utilization review statute.</p> <p>Referred to State Affairs and did not move forward.</p> <p>Representative Giddings filed a companion bill, HB 1003, which passed.</p>
SB 1768	Senator Watson	<p>This bill requires a health care provider to provide, upon written request of an Ombudsman, medical records of the injured employee at no cost to the ombudsman. The workers' compensation carrier is liable for the cost. The fee for the records is reimbursed to the health care provider by the carrier. This bill also prohibits the carrier from deducting the cost of medical records from any benefit to which the employee is entitled.</p> <p>Referred to State Affairs and did not move forward.</p> <p>Representative Giddings, Solomons, and Leibowitz filed a companion bill, HB 888, which passed.</p>

Office of Injured Employee Counsel Exhibit 14: 81 st Legislative Session Chart		
Legislation Enacted – 81 st Legislative Session		
Bill Number	Author	Summary of Key Provisions
HB 673	Representative Solomons	<p>HB 673 provides the following:</p> <ul style="list-style-type: none"> • Prohibits total payments under this section from exceeding 104 weeks regardless of the number of surviving eligible parents. • Provides that failure to file a claim in the time required bars the claim unless good cause exists for the failure to file a claim under this section. • Redefines "eligible parent." Deletes existing text requiring receipt of burial benefits to satisfy the definition of "eligible parent." <p>Effective date: September 1, 2009.</p>
HB 1058	Representative Solomons	<p>Relating to the receipt of death benefits in the Texas Workers' Compensation System.</p> <ul style="list-style-type: none"> • Clarifies an injured employee's right to seek assistance with a dispute before SOAH; • Holds Ombudsman and injured employee



		<p>communications confidential to protect the confidentiality of information revealed by the injured employee;</p> <ul style="list-style-type: none"> • Changes the statutory authority to adopt OIEC’s notice to injured employees’ rights and responsibilities in the workers’ compensation system from the Commissioner of Insurance and the Commissioner of Workers’ Compensation to the Public Counsel to allow for easier modification of the notice when the statute or rules change; • Gives OIEC the right to refuse service to threatening or abusive injured employees or injured employees pursuing a criminal act; and • Limits the agency from being able to access the regulator’s attorney-work product to protect the integrity of the agency and the dispute resolution process. <p>Effective date: September 1, 2009.</p>
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Legislation Not Passed – 81st Legislative Session

Bill Number	Author	Summary of Key Provisions / Status
HB 698	Representative Zerwas	OIEC recommends that in cases where the injured employee disagrees with the opinion of the designated doctor and either the treating doctor or a referral doctor has not conducted an examination to assess maximum medical improvement (MMI) and impairment rating (IR) prior to the issuance of a designated doctor’s report on those issues, that the statute be amended to require the insurance carrier to pay the cost of an examination by the treating doctor, if the treating doctor is qualified and willing to conduct the examination, or a referral doctor, in those instances where the treating doctor is either unable or unwilling to conduct an MMI/IR examination. Left pending in committee. Senator Van de Putte filed a companion bill, SB 378.
HB 699	Representative Zerwas	OIEC recommended that Texas courts should appoint an attorney ad litem to either represent an injured employee or refer the case to another attorney to provide competent representation at district court if the final administrative decision was in favor of the injured employee. If the injured employee does not prevail in district court with the representation of a court appointed attorney ad litem, OIEC recommended a provision be added to provide that the injured employee’s attorney’s fees should be paid from the Subsequent Injury Fund. Left pending in committee. Senator Lucio filed a companion bill, SB 394.
HB 2198	Representative Solomons	The bill provides that political subdivisions be required to provide the same notice to employees that certified networks are required to provide to their employees. Left pending in committee. Senator Watson filed a companion bill, SB 1924.



HB 2815	Representative Giddings	HB 2815 specifies a venue to resolve disputes regarding the issue of whether a carrier or an employer properly provided required health care information to an employee. Placed on General State Calendar but did not move forward.
HB 3821	Representative Leibowitz	This bill establishes another 60-day waiver period for insurance carriers to make the determination of whether to contest compensability (i.e., whether the injury was work-related) or relatedness of an additional injury or diagnosis. If the carrier fails to challenge the compensability within 60 days of the date it received written notice of the additional injury or diagnosis, the additional injury or diagnosis would become compensable as a matter of law. Referred to Business & Industry but did not move forward.
HB 3822	Representative Leibowitz	This bill pertains to specific treatment or service approved in the preauthorization process. The bill provides that an insurance carrier waives the right to raise a future challenge alleging that an injury sustained by an injured employee is not compensable or that health care provided to an injured employee was not related to a compensable injury if: 1) the insurance carrier does not include the compensability of the injury or that the health care provided to the injured employee was not related to a compensable injury as a basis for an initial denial of a request for preauthorization or the denial of reconsideration of coverage; and 2) the requested treatment or service is ultimately determined through a medical dispute resolution proceeding to be health care reasonably required. Referred to Business & Industry but did not move forward.
HB 3823	Representative Leibowitz	OIEC recommended that the 90-day provision requiring a claimant to dispute a determination of maximum medical improvement with a concurrent impairment rating within 90 days be repealed, and the statute changed to enable an injured employee the full 104-week period for their condition to stabilize. Referred to Business & Industry but did not move forward.
SB 378	Senator Van de Putte	OIEC recommended that in cases where the injured employee disagrees with the opinion of the designated doctor and either the treating doctor or a referral doctor has not conducted an examination to assess maximum medical improvement (MMI) and impairment rating (IR) prior to the issuance of a designated doctor's report on those issues, that the statute be amended to require the insurance carrier to pay the cost of an examination by the treating doctor, if the treating doctor is qualified and willing to conduct the examination, or a referral doctor, in those instances where the treating doctor is either unable or unwilling to conduct an MMI/IR examination. Reported engrossed and considered in calendars; however, did not move forward. Representative Zerwas filed a companion bill, HB 698.



SB 394	Senator Lucio	OIEC recommended that Texas courts should appoint an attorney ad litem to either represent an injured employee or refer the case to another attorney to provide competent representation at district court if the final administrative decision was in favor of the injured employee. If the injured employee does not prevail in district court with the representation of a court appointed attorney ad litem, OIEC recommended a provision be added to provide that the injured employee's attorney's fees should be paid from the Subsequent Injury Fund. Reported engrossed and sent to calendars; however, did not move forward. Representative Zerwas filed a companion bill, HB 699.
6SB 442	Senator Lucio	HB 1058 clarifies the definition of eligible parent by removing the reference to burial benefits. The standard for a filing extension is also changed from "compelling reason" to "good cause." Committee report printed and distributed; however, did not move forward. Representative Solomons filed a companion bill, HB 1058, which passed.
SB 1696	Senator Ogden	SB 1696 requires DWC to require an injured employee to submit to a single medical examination to define the compensable injury on request by the insurance carrier or the injured employee. This bill also requires the insurance carrier to notify a health care provider regarding the compensability of an employee's injury, and requires the insurance carrier to follow certain guidelines in providing compensation to the injured employee, or in contesting the employee's injury. Left pending in State Affairs Committee.
SB 1924	Senator Watson	The bill provides that political subdivisions be required to provide the same notice to employees that certified networks are required to provide to their employees. Referred to State Affairs but did not move forward. Representative Solomons filed a companion bill, HB 2198, which also did not pass.
SB 1925	Senator Watson	HB 673 provides the following: <ul style="list-style-type: none"> • Prohibits total payments under this section from exceeding 104 weeks regardless of the number of surviving eligible parents. • Provides that failure to file a claim in the time required bars the claim unless good cause exists for the failure to file a claim under this section. • Redefines "eligible parent." Deletes existing text relating to a person who receives burial benefits. Referred to State Affairs but did not move forward. Representative Solomons filed a companion bill, HB 673, which passed.



IX. Policy Issues

1A. Brief Description of Issue

Issue: An insurance carrier is afforded an opportunity to obtain an additional maximum medical improvement examination and impairment rating should the designated doctor's examination be the injured employee's first medical improvement examination and impairment rating certification under the workers' compensation system while the injured employee is not afforded a similar opportunity to obtain a second opinion.

Pursuant to changes to Labor Code §§408.0041 and 408.004 as a result of HB 7, the role of the designated doctor in the workers' compensation system was expanded, and the role of the required medical examination doctor (RME) was purportedly limited to disputes regarding appropriateness of medical care. Labor Code §408.0041(f) reintroduces the RME doctor into the process on all of the issues that the designated doctor addresses:

- Impairment caused by the compensable injury;
- Attainment of maximum medical improvement;
- Extent of the compensable injury;
- Whether disability is the direct result of the work-related injury;
- The ability of the employee to return to work; and
- Similar issues.

However, this statutory provision only allows the insurance carrier the opportunity to request an RME. An injured employee is not afforded a similar opportunity in the workers' compensation system. The relevant portion of Labor Code §408.0041(f) provides:

If an insurance carrier is not satisfied with the opinion rendered by a designated doctor under this section, the carrier may request the commissioner to order an employee to attend an examination by a doctor selected by the insurance carrier.

1B. Discussion

There are instances where the designated doctor makes the first certification of maximum medical improvement and impairment rating. When that occurs and the injured employee disagrees with the designated doctor's opinion, the insurance carrier in practice does not pay for an examination by the treating doctor to address the issues of maximum medical improvement and impairment rating. Thus, the injured employee does not have a realistic opportunity to obtain another medical opinion on the issues of maximum medical improvement and impairment rating because of the inability to pay for the examination. By only permitting the insurance carrier to have meaningful access to another doctor's opinion to dispute a designated doctor's opinion, the current version of Labor Code §408.0041 has made it significantly more difficult for the injured employee to challenge the opinion of the designated doctor while giving the insurance carrier access to evidence to challenge the designated doctor's opinion.



The Texas Supreme Court requires the workers' compensation system to be a just alternative to the Courts system. As a result, parties within the workers' compensation system should receive similar opportunities to provide evidence for a dispute to be adjudicated. However, in accordance with Labor Code §408.0041(f), an insurance carrier may obtain an RME to serve as additional evidence to dispute the designated doctor's findings while an injured employee is not afforded the same opportunity. Further, injured employees that received their first maximum medical improvement and impairment rating from the designated doctor often return to their treating doctor to have an maximum medical improvement and impairment rating examination performed. Such examinations are often denied by the insurance carrier because the treatment is considered "not medically necessary." OIEC agrees that maximum medical improvement and impairment rating examinations are not medically necessary; in fact, OIEC believes that they are never "medically necessary" because they are evaluations and not medical treatment or services.

OIEC asserts and TDI agrees that there is no prohibition in current law that would prevent an injured employee seeking an opinion from the treating doctor on any issue in which the designated doctor opines. But as a practical matter, injured employees were generally unable to obtain an opinion on the issues of maximum medical improvement and impairment rating because the carrier often refused to pay for specialized examinations required to provide clarification. In the 80th and 81st Texas Legislature, Regular Sessions, 2007 and 2009, respectively, OIEC recommended that injured employees should be afforded the same opportunities as an insurance carrier to obtain additional medical evidence. OIEC recommended that injured employees should only be able to obtain this second opinion on the issues of maximum medical improvement and impairment rating because of problems outlined above. OIEC believed by recommending that injured employees should have access to their treating doctor or referral doctor in only those cases where injured employees had difficulty obtaining an alternate opinion, OIEC was containing cost by limiting the carrier's obligation to pay for additional examinations.

The Texas Association of Business, Texas Mutual Insurance Company, Texas Medical Association, and other system participants did not object to OIEC's legislative recommendation. Further, during the 81st Texas Legislature, Regular Session, 2009, DWC indicated that injured employees who received an initial opinion from the designated doctor on any §408.004(f) issue should be able to see their treating doctor. As a result, SB 378 was substituted in Senate State Affairs Committee to reflect DWC's interpretation of the Labor Code. Many workers' compensation stakeholders, however, had issues with the substituted version of SB 378, and the bill subsequently died in Calendars.



1C. Possible Solutions and Impact

In order to level the playing field, OIEC recommends that in those cases where the injured employee disagrees with the opinion of the designated doctor and either the treating doctor or a referral doctor has not conducted an examination to assess maximum medical improvement and impairment rating prior to the issuance of a designated doctor's report on those issues, that the statute be amended to require the insurance carrier to pay the cost of an examination by the treating doctor, if the treating doctor is qualified and willing to conduct the examination, or a referral doctor, in those instances where the treating doctor is either unable or unwilling to conduct a maximum medical improvement and impairment rating examination. The current version of Labor Code §408.0041 has made it significantly more difficult for the injured employee to obtain any evidence to challenge the opinion of the designated doctor regarding maximum medical improvement and impairment rating while creating a mechanism for the insurance carrier to access the evidence it needs to challenge the designated doctor's opinion. As a result, the designated doctor's opinion is effectively the opinion that resolves the maximum medical improvement and impairment rating issue when the injured employee is challenging the designated doctor's opinion. However, the insurance carrier has a good chance of overcoming the designated doctor's opinion by producing the preponderance of medical evidence contrary to that report pursuant to the mechanism that is provided only to the insurance carrier in Labor Code §408.0041(f).

In the alternative, OIEC suggests that Labor Code §408.0041(f) be repealed so that the insurance carriers will no longer be permitted to obtain an RME to dispute the designated doctor findings. The argument can be made that by creating the designated doctor process, it was envisioned that the designated doctor's opinion would be used to resolve the issues of maximum medical improvement and impairment rating. If neither the injured employee nor the insurance carrier is able to obtain a contrary medical opinion resulting from an examination of the injured employee, the designated doctor's opinion would almost certainly be the opinion that would be used to resolve issues of maximum medical improvement and impairment rating.

A copy of the proposed bill follows.



Bill Number: _____

Date: _____

Author: _____

A BILL TO BE ENTITLED

AN ACT

relating to an injured employee's ability to obtain a physical examination to determine maximum medical improvement and an impairment rating by the injured employee's treating doctor or a referral doctor in the workers' compensation system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 5, Labor Code, Chapter 408 is amended by amending Section 408.0041(f) to read as follows:

Sec. 408.0041. Designated Doctor Examination.

(f). If the insurance carrier is not satisfied with the opinion rendered by a designated doctor under this section, the insurance carrier may request the commission to order an employee to attend an examination by a doctor selected by the insurance carrier. If the designated doctor's opinion is the injured employee's first evaluation of maximum medical improvement or impairment rating and the injured employee is not satisfied with the opinion rendered by the designated doctor, the injured employee may request a maximum medical improvement or impairment rating examination either from the treating doctor or from a doctor to whom the injured employee is referred by the treating doctor, and such an examination shall be paid by the insurance carrier. The Division ~~commission~~ shall allow the insurance carrier and the injured employee reasonable time to obtain and present the opinion of the doctor selected under this subsection before the Division ~~commission~~ makes a decision on the merits of the issue in question.

SECTION 2. This Act takes effect September 1, 2011.



2A. Brief Description of Issue

Issue: An injured employee who prevails throughout the administrative dispute resolution system may ultimately lose in district court due to lack of attorney representation.

After a party has exhausted its administrative remedies, the case may proceed to judicial review in district court. Insurance carriers are typically represented by legal counsel at judicial review. However, injured employees may have difficulty obtaining counsel to represent them at this stage of the process. It is often difficult for injured employees to find legal representation either because they do not have funds to pay an attorney or because they simply cannot find an attorney qualified and willing to take their case. This is particularly evident should the injured employee not have an attorney at the administrative level and chooses to utilize the services of the Ombudsman Program. Labor Code §§ 404.101 and 404.105 prohibit any OIEC employee from representing injured employees, and the Ombudsman Program does not have jurisdiction in district court to assist injured employees. Further, the three large legal aid programs in Texas do not take workers' compensation cases.



OIEC believes and recommended that for only those injured employees who prevailed throughout DWC's administrative dispute resolution process, the injured employee should be appointed an attorney who is paid by the Subsequent Injury Fund or the insurance carrier in the alternative. Current law provides that the carrier has to pay attorney fees in district court if the injured employee prevails. This provision has proven inadequate to ensure injured employees access to legal representation in judicial review proceedings. By providing payment regardless of outcome, OIEC believes such access would be assured.

2B. Discussion

Through the Ombudsman Program and injured employees seeking assistance beyond the workers' compensation administrative process, the issue of injured employees' ability to pursue their claim at district court has been brought to OIEC's attention. Many injured employees contact OIEC seeking assistance at the judicial review level. This is beyond the administrative jurisdiction of the Ombudsman Program, and OIEC recommends contacting the Texas Bar Attorney Referral Service and local legal aid clinics for attorney representation. Unfortunately, after following such guidance, many injured employees contact OIEC explaining that the attorneys referred from the Texas Bar Attorney Referral Service will not represent them in district court despite Texas Labor Code §408.221(c) that provides for reasonable attorney fees to be paid for by the insurance carrier should the injured employee prevail. In addition, the three largest legal aid clinics in Texas do not take workers' compensation cases.



Since its establishment, OIEC has worked with Texas' three largest legal aid clinics, the Texas Bar, and the Texas Equal Justice Center to attempt to rectify the lack of attorney representation at the judicial review level. However, OIEC believes legislative action may be needed to provide a permanent solution. Perhaps the Texas Legislature may consider extending Texas' court appointment system to injured employees who prevailed at the workers' compensation administrative level.

Below is an article written by Allen Cooper of the Texas Equal Justice Center:

Injustice Added to Injury: Judicial Review in the Texas Workers' Compensation System:

Judicial Review is Out of Reach for Most Injured Workers

When the Texas Workers' Compensation System was reformed in 1989, a basic goal of the reform was to make the system simple enough so that injured workers could represent themselves in the workers compensation process without needing legal counsel. The belief was that more money should go to aid injured workers and less to the attorneys who represent them. Attorney incentives were reduced and injured workers were guaranteed lifetime medical benefits. An ombudsman program was created to assist injured workers in representing themselves in the administrative appeals process, whereas insurance carriers continue to hire legal counsel to represent them.² This assistance program was strengthened in 2005 when the Texas Legislature created the Office of Injured Employee Counsel to direct the ombudsman program and represent the interests of injured employees as a class.³

But whatever parity that exists between injured employees and insurance carriers at the administrative level is wiped out when insurance carriers exercise their right to have unfavorable administrative decisions reviewed by a State district court in a process known as judicial review. Insurance carriers are always represented by legal counsel at judicial review, usually by highly qualified law firms that specialize in workers compensation administrative law, because they have funds to pay lawyers. But the Office of Injured Employee Counsel is prohibited by statute from aiding injured employees facing judicial review, and frequently it is impossible for injured workers to find legal representation, either because they do not have funds to pay an attorney, or because they simply cannot find an attorney qualified and willing to take their cases.⁴

Instead of serving as a check on the administrative process, judicial review often allows an insurance carrier to win what it lost in the administrative process by the simple fact that it can find and hire an attorney to represent it while the injured worker usually cannot. When injured workers can't find legal representation they

² Tex. Lab. Code § 401.001.

³ Tex. Lab. Code § 404.001.

⁴ Tex. Lab. Code § 404.105



often lose the right to lifetime medical treatment for a workplace injury through an uncontested ruling. Also, the State of Texas is required to reimburse carriers hundreds of thousands of dollars a year for services provided in cases that are overruled in uncontested hearings.

Under the dispute resolution process of the Texas Workers' Compensation System, an employee or carrier wishing to dispute a benefit decision must first bring the dispute to a series of administrative review bodies. If the party is not satisfied with the decision at the final administrative level, called the Appeals Panel, they may seek judicial review of administrative decisions by filing suit against the other party in state district court.⁵

In 2004 twice as many judicial review cases were brought by insurance carriers as were brought by injured employees.⁶ This is not surprising because injured employees usually do not have funds available to hire an attorney because once they are injured, they are typically unemployed and subsisting on a benefit payment equal to 70 percent of their usual weekly pay. Also, since few attorneys represent injured workers in workers compensation cases, it is difficult to find an attorney competent to take this sort of case.

In 2001 the Texas legislature acted to remedy this problem of injured worker representation by requiring insurance carriers to pay the reasonable legal fees of injured workers who prevail at the level of judicial review when they are sued by insurance carriers.⁷

Unfortunately, injured workers still are frequently unable to find legal representation despite this economic incentive, probably because of the short time they have to find an attorney, and because so few attorneys represent injured workers in workers compensation cases.

An injured employee who is sued by an insurance carrier receives notice that they have been sued, and has 30 days within which to find an attorney and to file an answer to the suit with the court. They have all of the difficulties listed above with finding legal counsel. As a consequence injured employees often do not respond to the suit, and the carrier takes a default or summary judgment in their favor.⁸ Even though the worker is not able to or does not choose to contest the suit, the court is obligated to issue a ruling in favor of the carrier.

Often this holding has no immediate impact on the worker, since in many cases salary replacement benefits will have already been paid and medical treatment will already have been received. But the injured worker will lose his right to

⁵ Tex. Lab. Code § 410.002 et seq.

⁶ Data taken from Texas Workers' Compensation System Data Report, June 30, 2005.

⁷ Tex. Lab. Code § 408.221.

⁸ (No good data exists on the frequency of default and summary judgments since the State of Texas has no relevant reporting requirements.)



lifetime medical treatment for the workplace injury, so if a problem arises in the future, the worker will have to pay for treatment him or herself.

Judicial Review is Costly to the State of Texas

A summary judgment holding can be very expensive to the State of Texas. The State of Texas is required to reimburse insurance carriers for benefits previously paid, whenever the order to pay benefits is overturned in judicial review on a judgment on the merits.⁹ Since 2000 the State of Texas has paid more than \$2.6 million to insurance carriers in response to motions for summary judgment in judicial review cases. In most of these cases the injured employers were unrepresented by legal counsel and the insurance carriers won a judgment on the merits even though the case was uncontested.

The number of cases and amounts paid to insurance carriers are increasing at a rapid rate. In the first 11 months of 2006 insurance carriers were reimbursed more than \$750,000 in 20 cases, more than double the number and amount for all of 2005.

Table 14: Payments to Insurance Carriers in Judicial Review Cases¹⁰

Year	Total Paid	Number	Highest Single Case
2000	\$152,688.08	7	\$99,271.34
2001	\$225,235.45	13	\$44,337.00
2002	\$268,846.31	8	\$142,571.77
2003	\$625,372.78	10	\$429,054.23
2004	\$263,093.58	18	\$39,861.93
2005	\$333,308.96	10	\$106,118.30
2006	\$751,760.29	20	\$174,532.54
Total	\$2,620,305.00	86	

An additional inequality is caused by the difficulty of injured workers who lose an administrative appeal to hire legal counsel to represent them in judicial review. Current law only requires that carriers pay reasonable legal costs for injured workers who prevail at the highest administrative level and in judicial review. This means that an injured employee who loses at the administrative level has no practical way to contest that finding, since they usually do not have funds to pay attorney’s fees. This undermines the point of judicial review, which is to provide a judicial check on the administrative process which is equally available to all parties.

⁹ Tex. Lab. Code § 410.209.

¹⁰Texas Department of Insurance, Division of Workers’ Compensation, Open Records Request #56703, “Request concerning a report of reimbursements paid to insurance carriers from subsequent injury fund.”



Policy Recommendations

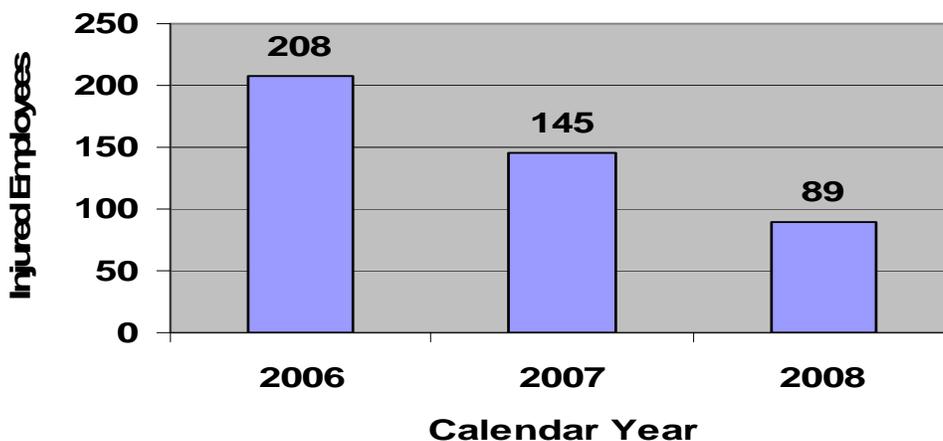
The judicial review process as it currently operates is unfair to injured workers and costly to the State of Texas. Reforms are needed to restore fairness to the judicial review process.

- 1) Legislation should be passed limiting insurance carrier reimbursements from the Subsequent Injury Fund to judicial review cases where the injured employee is represented by counsel and the lawsuit is contested. Carriers should not be reimbursed pursuant to motions for summary judgment.
- 2) Public defenders should be provided to injured employees who are sued by insurance carriers, as recommended by the Office of Injured Employee Counsel and as proposed by Texas Senate Bill 287.
- 3) The State Bar of Texas and all Bar Associations operating legal referral services should redouble their efforts to identify attorneys willing to represent injured workers in judicial review cases.
- 4) To assure equal access to legal representation, legislation should be passed requiring insurance carriers to pay reasonable legal fees of attorneys representing injured workers who prevail in judicial review, regardless of whether the employee won or lost in the administrative process.

Source: Cooper, Allen. "Injustice Added to Injury: Judicial Review in the Texas Workers Compensation System." Equal Justice Center. 2006.

Figure 13 identifies the number of injured employees that would benefit from receiving a court-appointed attorney.

Figure 13: Number of District Court Cases Where the Injured Employee is Plaintiff

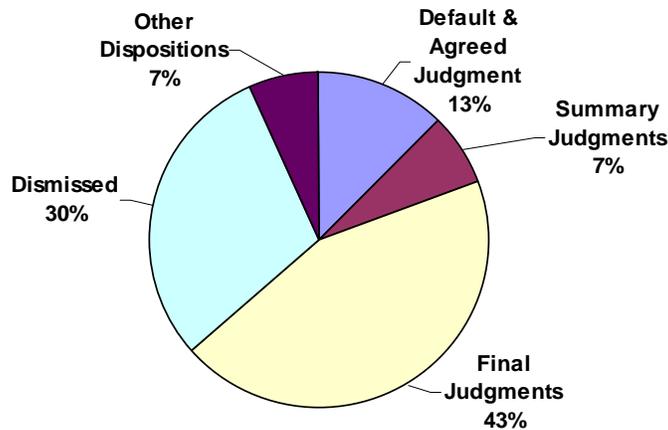


Source: Texas Department of Insurance, Division of Workers' Compensation, Information Management Services, 2008.



Figure 14 details the disposition of cases in district court. Many injured employees that prevailed at the administrative level ultimately lose in district court due to a summary or default judgment because they cannot find or afford an attorney to represent them.

**Figure 14: Distribution of Workers' Compensation Civil Activity
September 1, 2006 to August 31, 2007**



Source: Office of Court Administration (OCA); <http://www.courts.state.tx.us/pubs/AR2007/dc/14-dc-cv-activity-by-county-fy07.xls>

Based on the analysis provided by TDI, it is estimated that carriers will initiate approximately 140 judicial appeals involving injured employees annually and carriers prevail in 50 percent of these cases. It is estimated that the average attorney fees are \$19,000 per case. The analysis is based on a court appointed attorney representing the claimant in 75 percent of the cases, resulting in an estimated annual cost to the Subsequent Injury Fund for attorney fees of \$1,007,000 annually.

TDI indicates that currently approximately 27 carrier-initiated appeals annually do not have a claimant attorney involved, and therefore resolve in favor of the carrier through a no evidence summary judgment. These cases result in the subsequent injury fund reimbursing carriers approximately \$1,000,000 annually for carrier overpayment of benefits. TDI assumes that this bill will result in an attorney being appointed to represent the claimant in 75 percent of the cases. Attorney representation will reduce the number of no evidence summary judgments and consequently reduce the subsequent injury fund reimbursements made for overpayment of benefits. It is anticipated that the claimant with attorney representation will prevail in about half of these cases, resulting in \$370,000 not being reimbursed to the carriers. Among the cases that resolve in favor of the carrier, TDI estimates that 75 percent would settle. Because the Subsequent Injury Fund does not reimburse carriers for overpayment of benefits in judicial appeals that resolve in favor of the claimant or that settle, an additional \$277,500 annually would not be reimbursed by the fund, resulting in a net savings to the fund of approximately \$647,500.



2C. Possible Solutions and Impact

Injured employees give up their Constitutional right to sue their employer for work-related injuries. As such, OIEC recommends legislative action to authorize Texas courts to appoint an attorney ad litem to either represent an injured employee or refer the case to another attorney to provide competent representation at the district court if the final administrative decision was in favor of the injured employee. However, OIEC also recommends that the district judge be required to conduct a hearing to determine that the injured employee has sought representation in good faith and has been unsuccessful in obtaining representation. In cases where the injured employee does prevail at district court, Labor Code §408.221(c) provides for attorney's fees to be paid by the insurance carrier. If the injured employee does not prevail in district court with the representation of a court-appointed attorney ad litem, OIEC recommends a provision be added in Chapter 408 of the Labor Code to provide that the injured employee's attorney's fees should be paid from the Subsequent Injury Fund. OIEC also recommends that the attorney ad litem may be paid for services rendered on the claim, such as allowing for reimbursement for time spent referring the case to an attorney competent in the field of workers' compensation should the ad litem decline to represent the injured employee. In the alternative, attorney fees should be paid by the insurance carrier who appealed the case into district court.

A copy of the OIEC's recommended bill language follows:



Bill Number: _____
Author: _____

Date: _____

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of an attorney for a workers' compensation claimant in certain judicial review proceedings initiated by a workers' compensation insurance carrier.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter G, Chapter 410, Labor Code, is amended by adding Section 410.309 to read as follows:

Sec. 410.309. APPOINTMENT OF ATTORNEY FOR CLAIMANT IN PROCEEDING INITIATED BY INSURANCE CARRIER. (a) In a trial initiated by an insurance carrier under this subchapter, at the request of the claimant the court shall appoint an attorney to represent the claimant before the court. The court may hold a pre-trial hearing to determine whether the claimant made a good faith effort to obtain representation by an attorney prior to the appointment of an attorney.

(b) The insurance carrier is liable for the attorney's reasonable and necessary fees in accordance with Section 408.221(c) on any issue on which the claimant prevails.

(c) The subsequent injury fund is liable for the attorney's reasonable and necessary fees in accordance with Section 408.221(c-1) on any issue on which the insurance carrier prevails.

SECTION 2. Section 408.221, Labor Code, is amended by amending Subsections (b) and (i) and adding Subsection (c-1) to read as follows:

(b) Except as otherwise provided, an attorney's fee under this section is based on the attorney's time and expenses according to written evidence presented to the division or court. Except as provided by Subsection (c) or (c-1) or Section 408.147(c), the attorney's fee shall be paid from the claimant's recovery.

(c-1) In a judicial review proceeding initiated by an insurance carrier under Subchapter G, Chapter 410, in which the court has appointed an attorney for the claimant under Section 410.309, the



subsequent injury fund is liable for the attorney's reasonable and necessary fees as provided by Subsection (d) on any issue on which the insurance carrier prevails. If the insurance carrier appeals multiple issues and the insurance carrier prevails on some, but not all, of the issues appealed, the court shall apportion and award fees to the claimant's court-appointed attorney from the subsequent injury fund only for issues on which the insurance carrier prevails. In making that apportionment, the court shall consider the factors prescribed by Subsection (d). An award of attorney's fees under this subsection is not subject to commissioner rules adopted under Subsection (f).

(i) Except as provided by Subsection (c) or (c-1) or Section 408.147(c), an attorney's fee may not exceed 25 percent of the claimant's recovery.

SECTION 3. Section 403.006(b), Labor Code, is amended to read as follows:

(b) The subsequent injury fund is liable for:

(1) the payment of compensation as provided by Section 408.162;

(2) reimbursement of insurance carrier claims of overpayment of benefits made under an interlocutory order or decision of the commissioner as provided by this subtitle, consistent with the priorities established by rule by the commissioner; ~~and~~

(3) reimbursement of insurance carrier claims as provided by Sections 408.042 and 413.0141, consistent with the priorities established by rule by the commissioner; and

(4) the payment of court-appointed attorney's fees as provided by Section 408.221(c-1).

SECTION 4. The change in law made by this Act applies only to a judicial review proceeding initiated under Subchapter G, Chapter 410, Labor Code, on or after the effective date of this Act. A proceeding initiated before that date is governed by the law in effect on the date the proceeding was initiated, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2011.



3A. Brief Description of Issue

Issue: Political subdivisions are exempt from all regulation in the workers' compensation system, including notice requirements that are necessary to protect injured employee's rights.

OIEC is concerned that injured employees employed by political subdivisions do not receive adequate notice that their health care is going to be provided by a network. OIEC believes it is essential to alleviate any due process concerns by mandating that political subdivisions give the same notice certified networks are required to give to their employees.

3B. Discussion

OIEC's goal is to advocate on behalf of all injured employees in Texas, regardless of an employer's participation in the workers' compensation system or whether the employer is a government entity or political subdivision. Injured employees forfeit their constitutional right to sue their employers once their employers purchase workers' compensation insurance. There are due process concerns where injured employees are subject to a workers' compensation network and no notice is provided to them of the existence of the network and of the requirement that they can only obtain medical treatment from health care providers who are in the network.

Chapter 504 of the Labor Code provides an expansive carveout for political subdivisions that exempts them from regulation. Injured employees have sought OIEC assistance where the injured employee worked for a particular city, sustained a work-related injury, and sought the services of their primary health provider. Unfortunately, the health care provider was not part of the city's network. As a result, the injured employee was billed for services because the employee did not receive notice that he or she was subject to network requirements, including an approved list of health care providers to choose from to receive necessary medical treatment or services. OIEC believes this example demonstrates the need for all Texans who sustain a work-related injury to receive notice and information on how to obtain the medical benefits to which they are entitled under the Statute.

3C. Possible Solutions and Impact

Political subdivisions should be required to give notice to their employees, just as every other employer who contracts with a workers' compensation network is required to provide to its employees. The following bill requires political subdivisions to give employees necessary information, including:

- A written description of the terms and conditions for obtaining health care in the political subdivision's network;
- The description in English, Spanish, or any other language common to the employee;



- The network's toll-free telephone;
- An explanation of how the employee can obtain a treating doctor, referral doctor, or be treated for an emergency; and
- A description of how an employee may file a complaint.

DWC's dispute resolution system is the appropriate venue to adjudicate a dispute on whether an injured employee received proper notice of a political subdivision's network. DWC already has a system in place where notice disputes may be adjudicated with a fact finder alleviating due process concerns.

A copy of OIEC's proposed bill follows:



Bill Number: _____
Author: _____

Date: _____

A BILL TO BE ENTITLED

AN ACT

relating to a political subdivisions' and health care networks' requirements in the workers' compensation system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 5, Labor Code, Chapter 504 is amended by amending Section 504.018(b) to read as follows:

Sec. 504.018(b). Notice to Division and Employees; Effect Common-Law or Statutory Liability.

(b). A political subdivision shall notify its employees of the method by which the employees will receive benefits and the effective date of the coverage. A political subdivision shall also provide its employees with a notice that meets the network requirements set forth in Insurance Code §1305.103 and §1305.451. The issue of whether and when an employee of a political subdivision received proper notice may be resolved in the division's dispute resolution process. Employees of a political subdivision are conclusively considered to have accepted the compensation provisions instead of common-law or statutory liability or cause of action, if any, for injuries received in the course of employment or death resulting from injuries received in the course of employment.



4A. Brief Description of Issue

Issue: Once an insurance carrier receives written notice of an injury or diagnosis, it has 60 days to make the decision of whether to challenge the compensability of that injury or diagnosis. However, there is no waiver period for insurance carriers to make the determination of whether to contest compensability or relatedness of a late-manifesting injury or diagnosis.

4B. Discussion

Under the existing statutory and rule provisions there is uncertainty about the consequences of an insurance carrier's failure to timely contest compensability. Labor Code §409.021(c) clearly provides that a carrier that does not dispute compensability within 60 days of receipt of written notice waives its right to contest compensability. However, Rule 124.3(e) states that waiver does not apply to disputes of extent of injury. The heart of the controversy is whether the diagnosis or condition at issue became compensable by virtue of waiver or whether it presents a true extent-of-injury issue. The Appeals Panel of TDI's DWC resolved this issue by determining that when a carrier waives its right to contest compensability the nature of the injury that becomes compensable by operation of law is defined by the information that the carrier could have reasonably discovered in its investigation prior to the expiration of the 60-day waiver period. In *State Office of Risk Management v. Lawton*, the Waco Court of Appeals adopted the Appeals Panel's analysis. SORM appealed this determination to the Texas Supreme Court, the petition for review was granted, and the case is currently pending. OIEC filed an *amicus curiae* brief in that case, arguing that the Court of Appeals decision should be upheld. OIEC also participated in the oral argument before the Supreme Court. OIEC believes that the analysis of the Appeals Panel and the Waco Court of Appeals gives meaning to both §409.021(c) and Rule 124.3(e) and, as such, should not be disturbed if the statute and rule remain unchanged. However, OIEC also believes that the better course of action would be to create a new 60-day waiver period each time an insurance carrier receives written notice of an alleged compensable additional diagnosis or condition.

By creating a waiver period for evolving injuries and diagnoses that mirrors the waiver period of Labor Code §409.021(c), new subsection (f) would strike an appropriate balance between providing the carrier sufficient time to conduct an investigation to determine whether or not to challenge compensability or relatedness and to establish a shared understanding among workers' compensation system participants as to the nature and extent of the compensable injury.

An amendment to Labor Code §409.021 would create certainty that is currently lacking among system participants about which injuries or diagnoses are included in the compensable injury. The existence of that certainty would help to minimize the "hassle factor" for health care providers by reducing the instances where a provider has treated an injury or diagnosis for an extended period only to find that as the symptoms evolve, approval of a proposed treatment or service is denied.



4C. Possible Solutions and Impact

OIEC recommends an amendment of Labor Code §409.021 to create a waiver period for injuries and diagnoses manifested after the expiration of the initial 60-day waiver period in Labor Code §409.021(c). If new subsection (f) is added to Labor Code §409.021, it will establish another 60-day waiver period for insurance carriers to make the determination of whether to contest compensability or relatedness of the late-manifesting injury or diagnosis. Once the insurance carrier receives written notice of an additional injury or diagnosis, it would have 60 days to make the decision of whether to challenge the compensability of that injury or diagnosis. If the carrier failed to act within 60 days of the date it received written notice of the additional injury or diagnosis, the additional injury or diagnosis would become compensable as a matter of law.

A copy of the proposed bill follows:



Bill Number: _____
Author: _____

Date: _____

A BILL TO BE ENTITLED

AN ACT

relating to an insurance carrier's pursuit of a compensability or relatedness issues in the workers' compensation system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Sec. 409.021. INITIATION OF BENEFITS; INSURANCE CARRIER'S REFUSAL; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall initiate compensation under this subtitle promptly. Not later than the 15th day after the date on which an insurance carrier receives written notice of an injury, the insurance carrier shall:

- (1) begin the payment of benefits as required by this subtitle; or
- (2) notify the division and the employee in writing of its refusal to pay and advise

the employee of:

- (A) the right to request a Benefit Review Conference; and
- (B) the means to obtain additional information from the division.

(a-1) An insurance carrier that fails to comply with Subsection (a) does not waive the carrier's right to contest the compensability of the injury as provided by Subsection (c) but commits an administrative violation subject to Subsection (e).

(a-2) An insurance carrier is not required to comply with Subsection (a) if the insurance carrier has accepted the claim as a compensable injury and income or death benefits have not yet accrued but will be paid by the insurance carrier when the benefits accrue and are due.



(b) An insurance carrier shall notify the division in writing of the initiation of income or death benefit payments in the manner prescribed by commissioner rules.

(c) If an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. The initiation of payments by an insurance carrier does not affect the right of the insurance carrier to continue to investigate or deny the compensability of an injury during the 60-day period.

(d) An insurance carrier may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier.

(e) An insurance carrier commits a violation if the insurance carrier does not initiate payments or file a notice of refusal as required by this section. A violation under this subsection shall be assessed at \$500 if the carrier initiates compensation or files a notice of refusal within five working days of the date required by Subsection (a), \$1,500 if the carrier initiates compensation or files a notice of refusal more than five and less than 16 working days of the date required by Subsection (a), \$2,500 if the carrier initiates compensation or files a notice of refusal more than 15 and less than 31 working days of the date required by Subsection (a), or \$5,000 if the carrier initiates compensation or files a notice of refusal more than 30 days after the date required by Subsection (a). The administrative penalties are not cumulative.

(f) After the expiration of the 60-day period identified in subsection (c) of this section, if the insurance carrier receives written notice of an new manifestation of the original injury, an additional injury, or an additional diagnosis and does not contest the compensability of such injury or diagnosis on or before the 60th day after the date on which it received notice thereof, the insurance carrier waives its right to contest compensability of the additional injury or diagnosis.



Nothing in this section shall be construed to limit an insurance carrier's ability to reopen the issue of compensability based on newly discovered evidence under subsection (d) of this section.

~~Text of subsec. (f) as added by Acts 2003, 78th Leg., ch. 939, Sec. 1~~

~~(f) For purposes of this section, "written notice" to a certified self insurer occurs only on written notice to the qualified claims servicing contractor designated by the certified self insurer under Section 407.061(e).~~

~~Text of subsec. (g) (f) as added by Acts 2003, 78th Leg., ch. 1100, Sec. 1~~

~~(g) (f) For purposes of this section:~~

~~(1) a certified self-insurer receives notice on the date the qualified claims servicing contractor designated by the certified self-insurer under Section 407.061(c) receives notice; and~~

~~(2) a political subdivision that self-insures under Section 504.011, either individually or through an interlocal agreement with other political subdivisions, receives notice on the date the intergovernmental risk pool or other entity responsible for administering the claim for the political subdivision receives notice.~~

~~(h) (j) Each insurance carrier shall establish a single point of contact in the carrier's office for an injured employee for whom the carrier receives a notice of injury.~~

SECTION 5. This Act takes effect September 1, 2011.



5A. Brief Description of Issue

Issue: The insurance carrier is not liable for the cost of the treatment or services provided for an injury or diagnosis that was not part of the compensable injury even though the treatment or services were preauthorized.

5B. Discussion

Currently, an insurance carrier can pursue a compensability or relatedness issue after the preauthorization process is concluded. In the event that the determination is made that the treatment or service was provided for an injury or diagnosis that was not part of the compensable injury, the insurance carrier is not liable for the cost of the treatment even though it was preauthorized. However, if the insurance carrier was required to either pursue its compensability or relatedness issue at the same time and in the same proceeding that addresses the medical necessity issue or waive the right to pursue that issue for the proposed treatment or service, the medical necessity order would no longer be subject to such a collateral attack. An amendment to Labor Code §413.014 would reduce many complications for health care providers in the workers' compensation system and would likely encourage providers to return to the system.

The passage of an amendment to Labor Code §413.014 would also have the benefit of adding efficiency to the dispute resolution system at DWC. The same hearing officers preside over both compensability/relatedness disputes and medical necessity disputes. As a result, the passage of



the amendment to Labor Code §413.014 would result in only one hearing being held to resolve both issues rather than two separate hearings.

An amendment to Labor Code §413.031 would have the effect of ensuring that the Independent Review Organization's decision continues to address only the issue of whether a proposed treatment or health care service is reasonably required within the meaning of the workers' compensation statute, rather than permitting the Independent Review Organization to give an opinion on compensability or relatedness. Because an examination of the injured employee is not part of the Independent Review Organization process, the compensability or relatedness opinion from an Independent Review Organization would be of limited value. In addition, if the Independent Review Organization were permitted to address

compensability or relatedness issues, it could create a conflict with the opinion of a designated doctor that was appointed to address the issue of compensability or relatedness. Under Labor Code §413.031(m) "the decision of an Independent Review Organization under Subsection (d) is

binding during the pendency of a dispute.” Similarly, Labor Code §408.0041(e) provides that “[t]he report of the designated doctor has presumptive weight unless the preponderance of the evidence is to the contrary” and subsection (f) states that the “insurance carrier shall pay benefits based on the opinion of the designated doctor during the pendency of any dispute.” In the event the Independent Review Organization and the designated doctor issue conflicting opinions on the issue of compensability or relatedness, the insurance carrier would be faced with conflicting decisions, both of which are binding during the pendency of the dispute. By specifying that the Independent Review Organization decision cannot address the issue of compensability or relatedness, the potential for conflict between the opinion of the Independent Review Organization and designated doctor would be avoided.

5C. Possible Solutions and Impact

OIEC recommends that Labor Code §413.014 be amended by adding a new subsection (f). The new subsection (f) would establish that an insurance carrier that does not raise a compensability or relatedness issue in either its initial denial or the denial of reconsideration of a requested treatment or service waives its right to raise a compensability or relatedness challenge to that specific treatment or service, if the treatment or service is ultimately preauthorized in the medical dispute resolution process. The amendment further provides that if the insurance carrier raises compensability or relatedness in its preauthorization denials, the compensability or relatedness issue shall be resolved in the same hearing as the medical necessity issue at DWC.

This amendment would give a preauthorization decision in workers’ compensation the same meaning that it has in group health. A health care provider could provide the preauthorized treatment or service with a certainty of payment that does not always accompany a preauthorization decision in workers’ compensation currently.

A copy of the proposed bill follows.



Bill Number: _____

Date: _____

Author: _____

A BILL TO BE ENTITLED

AN ACT

relating to preauthorization of medical treatment in the workers' compensation system and medical dispute resolution by independent review organizations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 413.014, Labor Code, is amended to read as follows:

Sec. 413.014. PREAUTHORIZATION REQUIREMENTS; CONCURRENT REVIEW AND CERTIFICATION OF HEALTH CARE. (a) In this section, "investigational or experimental service or device" means a health care treatment, service, or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care.

(b) The commissioner by rule shall specify which health care treatments and services require express preauthorization or concurrent review by the insurance carrier. Treatments and services for a medical emergency do not require express preauthorization.

(c) The commissioner's rules adopted under this section must provide that preauthorization and concurrent review are required at a minimum for:

(1) spinal surgery, as provided by Section 408.026;

(2) work-hardening or work-conditioning services provided by a health care facility that is not credentialed by an organization recognized by commissioner rules;



- (3) inpatient hospitalization, including any procedure and length of stay;
- (4) physical and occupational therapy;
- (5) outpatient or ambulatory surgical services, as defined by commissioner rule;

and

- (6) any investigational or experimental services or devices.

(d) The insurance carrier is not liable for those specified treatments and services requiring preauthorization unless preauthorization is sought by the claimant or health care provider and either obtained from the insurance carrier or ordered by the commissioner.

(e) If a specified health care treatment or service is preauthorized as provided by this section, that treatment or service is not subject to retrospective review of the medical necessity of the treatment or service.

(f) If an insurance carrier does not include compensability or relatedness as a basis for either its initial denial of the preauthorization request or in the denial of reconsideration and the requested treatment or service is ultimately preauthorized as health care reasonably required in medical dispute resolution, the insurance carrier waives the right to raise a future challenge to compensability or relatedness concerning the specific treatment or service at issue and approved in the preauthorization process. Nothing in this section should be construed as limiting an insurance carrier's ability to raise a compensability or relatedness challenge concerning income benefits or medical benefits not included in the preauthorization request. If the insurance carrier raises a compensability or relatedness issue in its denials of preauthorization, that issue shall be considered and resolved in the same hearing that addresses the issue of whether the requested treatment or service is health care reasonably required under the statute.



(g)(f) The division may not prohibit an insurance carrier and a health care provider from voluntarily discussing health care treatment and treatment plans and pharmaceutical services, either prospectively or concurrently, and may not prohibit an insurance carrier from certifying or agreeing to pay for health care consistent with those agreements. The insurance carrier is liable for health care treatment and treatment plans and pharmaceutical services that are voluntarily preauthorized and may not dispute the certified or agreed-on preauthorized health care treatment and treatment plans and pharmaceutical services at a later date.

SECTION 2. Section 413.031, Labor Code, is amended to read as follows:

Sec. 413.031. MEDICAL DISPUTE RESOLUTION.

(a) – (c) No Change.

(d) A review of the medical necessity of a health care service requiring preauthorization under Section 413.014 or commissioner rules under that section or Section 413.011(g) shall be conducted by an independent review organization under Chapter 4202, Insurance Code, in the same manner as reviews of utilization review decisions by health maintenance organizations. The independent review organization's decision is limited to whether or not the proposed treatment or service is health care reasonably required. The independent review organization shall not consider or address issues of compensability or relatedness. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization.

(e) - (n) No Change.

SECTION 3. This Act takes effect September 1, 2011.



6A. Brief Description of Issue

Issue: Unless various criteria are met, a claimant may not dispute a determination of maximum medical improvement with a concurrent impairment rating after 90 days.

6B. Discussion

Currently Labor Code §401.011(30) provides that “Maximum Medical Improvement” means the earlier of:

- (A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;
- (B) the expiration of 104 weeks from the date on which income benefits begin to accrue; or
- (C) the date determined as provided by Section 408.104 [spinal surgery after the expiration of 104 weeks].

The Supreme Court in the case of *Texas Workers’ Compensation Commission v. Garcia* considered an equal protection challenge to the statutory limitation of 104 weeks for a claimant to receive temporary income benefits. *Texas Workers’ Compensation Commission v. Garcia*, 893 S.W.2d 504, Tex. S. Ct. (1995). At that time, the Texas Workers’ Compensation Commission (TWCC) had not adopted a 90-day provision and neither was it part of the statute. The *Garcia* court stated:

“First, it is not apparent that the Act’s definition of “maximum medical improvement” creates any classification, as it merely establishes what is, in essence, a two-year cap on temporary income benefits for *all* claimants. Second, even if it could be viewed as creating a cognizable class, it is not irrational. The Legislature could have concluded that some absolute limit on temporary income benefits-*which constitute a major benefit under the Act*, -was a necessary component of an efficient compensation system. Two years is not an arbitrary place to draw the line, as there was medical testimony at trial that most workers will actually reach maximum medical recovery within that time period.” (Emphasis added).

The Supreme Court has also stated that the “open courts” provision is “premised upon the rationale that the Legislature has no power to make a remedy by due course of law contingent upon an impossible condition... The Legislature is not entitled to restrict or abrogate a common-law cause of action *without a reasonable basis and without providing an adequate substitute.*” *Moreno v. Sterling Drug, Inc.*, 787 S.W.2d 348, (Tex. 1990). (Emphasis added).



In the case of *Fulton v. Associated Indem. Corp.*, the court considered a challenge to the 90-day rule that had been enacted by TWCC. *Fulton v. Associated Indem. Corp.*, 46 S.W.3d 364 (Tex. App. - Austin 2001, pet. denied). The challenge asserted that the requirement that a claimant must dispute a determination of maximum medical improvement with a concurrent impairment rating within 90 days was beyond the Commission’s rule making authority. The court stated:

“The supreme court noted that temporary income benefits are “a major benefit” under the Act, and restricting those benefits to a two-year period was only justified by medical testimony that most workers’ condition stabilize within that time frame. Under this rationale, a rule that cuts off temporary income benefits before the workers’ condition has had two years to stabilize might be deemed arbitrary and might call into question the adequacy of the entire statutory quid pro quo approved in *Garcia*.”

In the 78th Texas Legislature, 2003, Labor Code §408.123(e) was amended to state that an employee’s first certification of maximum medical improvement and impairment rating would be final if not disputed “prior to the 91st day after the date written notification is provided to the employee and the carrier by verifiable means.” TEX. LAB. CODE §408.123(e). The statute did provide for the claimant to dispute maximum medical improvement and impairment rating after the 90th day if there was a “significant error” by the certifying doctor, there was a “mistaken diagnosis or a previously undiagnosed condition,” or “improper or inadequate treatment of the injury.”

Garcia clearly states that there is two-year cap on temporary income benefits for all injured employees. The *Garcia* and *Fulton* courts both recognized that having 104 weeks for the injury to stabilize is a major benefit to the injured employee. In essence, the *Fulton* court asserts that if the 104-week period were procedurally shortened, it would call into question the constitutionality of the Texas Workers’ Compensation Act.

6C. Possible Solutions and Impact

It is proposed that the 90-day provision be repealed. There is no discernable justification for the 90-day provision other than to deprive the injured employee the full 104-week period for their condition to stabilize. As the Supreme Court has stated, expert medical evidence was presented at the original *Garcia* trial finding that most injuries would stabilize within two years and that the opportunity to have that stabilization period was a major benefit considered in the quid pro quo determination of the constitutionality of the statute. A serious constitutional issue is presented by denying the injured employee an opportunity to receive a reasonable substitute for the loss of his constitutional right to seek redress for his injuries.

A copy of the proposed bill follows.



Bill Number: _____

Date: _____

Author: _____

A BILL TO BE ENTITLED

AN ACT

relating to certification of maximum medical improvement and evaluation of impairment in the workers' compensation system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 408.123, Labor Code, is amended to read as follows:

Sec. 408.123. CERTIFICATION OF MAXIMUM MEDICAL IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING. (a) After an employee has been certified by a doctor as having reached maximum medical improvement, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating using the impairment rating guidelines described by Section 408.124. If the certification and evaluation are performed by a doctor other than the employee's treating doctor, the certification and evaluation shall be submitted to the treating doctor, and the treating doctor shall indicate agreement or disagreement with the certification and evaluation.

(b) A certifying doctor shall issue a written report certifying that maximum medical improvement has been reached, stating the employee's impairment rating, and providing any other information required by the commissioner to:

- (1) the division;
- (2) the employee; and
- (3) the insurance carrier.



(c) The commissioner shall 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 the treating doctor, written notice shall be given to the employee that the employee may dispute the certification of maximum medical improvement and assigned impairment rating. The notice to the employee must state how to dispute the certification of maximum medical improvement and impairment rating.

(d) If an employee is not certified as having reached maximum medical improvement before the expiration of 102 weeks after the date income benefits begin to accrue, the division shall notify the treating doctor of the requirements of this subchapter.

~~(e) Except as otherwise provided by this section, an employee's first valid certification of maximum medical improvement and first valid assignment of an impairment rating is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means.~~

~~(f) An employee's first certification of maximum medical improvement or assignment of an impairment rating may be disputed after the period described by Subsection (e) if:~~

~~(1) compelling medical evidence exists of:~~

~~(A) a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the impairment rating;~~

~~(B) a clearly mistaken diagnosis or a previously undiagnosed medical condition; or~~

~~(C) improper or inadequate treatment of the injury before the date of the certification or assignment that would render the certification or assignment invalid; or~~

~~(2) other compelling circumstances exist as prescribed by commissioner rule.~~



~~(g) If an employee has not been certified as having reached maximum medical improvement before the expiration of 104 weeks after the date income benefits begin to accrue or the expiration date of any extension of benefits under Section 408.104, the impairment rating assigned after the expiration of either of those periods is final if the impairment rating is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. A certification or assignment may be disputed after the 90th day only as provided by Subsection (f).~~

~~(h) If an employee's disputed certification of maximum medical improvement or assignment of impairment rating is finally modified, overturned, or withdrawn, the first certification or assignment made after the date of the modification, overturning, or withdrawal becomes final if the certification or assignment is not disputed before the 91st day after the date notification of the certification or assignment is provided to the employee and the carrier by verifiable means. A certification or assignment may be disputed after the 90th day only as provided by Subsection (f).~~

SECTION 2. This Act takes effect September 1, 2011.



7A. Brief Description of Issue

Issue: Parties to medical dispute resolution cannot verify that the Independent Review Organization has a Texas license, and the current process for seeking clarification of an Independent Review Organization decision is ineffective.

7B. Discussion

HB 1003 and 1006, 80th Texas Legislature, 2007, provided clarification that all workers' compensation health care providers shall have a Texas license. This directive includes the doctors used by Independent Review Organizations to perform review of whether proposed health care treatment or services are reasonably required. However, Insurance Code §4204.009 currently provides that the identity of the doctors used by Independent Review Organizations to perform a review of health care is confidential. Therefore, the parties to medical dispute resolution cannot independently verify that the Independent Review Organizations are complying with the legislative mandate.

In HB 724, 80th Texas Legislature, 2007, the Legislature also reintroduced an administrative medical dispute resolution process. As a part of this process, the qualifications of health care providers becomes essential information in resolving the dispute because the administrative judges who preside over medical dispute resolution hearings are required to make credibility determinations in deciding which health care provider's opinion to credit. A health care provider's identity and qualifications relative to the qualifications of the other health care providers providing an opinion are critical to that process.

As per Texas Administrative Code §133.308(t)(1)(B)(iv), DWC created a process for seeking clarification of the Independent Review Organization decision. The rule provides that the Independent Review Organization shall not reconsider its decision and shall not issue a new decision in response to a request for clarification. In most instances where clarification is sought, the Independent Review Organization is either being asked to consider information that was not provided by the carrier or to consider other evidence-based medicine and to determine the effect of that information on the decision. However, if that information would result in a determination that the initial decision is incorrect, the Independent Review Organization is prohibited from changing the decision. As a result, the process is ineffective.

7C. Possible Solutions and Impact

OIEC recommends that Insurance Code §4202.009 be repealed and that a process for seeking clarification of the Independent Review Organization decision be created.

A copy of the proposed bill follows:



Bill Number: _____
Author: _____

Date: _____

A BILL TO BE ENTITLED

AN ACT

relating to the decisions of independent review organizations in workers' compensation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 4202.009 of the Insurance Code is repealed.

~~Sec. 4202.009. CONFIDENTIAL INFORMATION. Information that reveals the identity of a physician or other individual health care provider who makes a review determination for an independent review organization is confidential.~~

SECTION 2: Section 413.031(m), of the Labor Code is amended as follows:

(m) The decision of the independent review organization under Subsection (d) is binding during the pendency of a dispute. Prior to a Contested Case Hearing, a party may submit a request for a letter of clarification by the independent review organization. A copy of the request for a letter of clarification shall be sent to all parties involved in a dispute. A request for clarification may ask the independent review organization to reconsider its decision or issue a new decision. Upon receiving such a request for clarification, the independent review organization shall reconsider the issue in dispute and issue a new decision.

SECTION 3. This Act takes effect September 1, 2011.



8A. Brief Description of Issue

Issue: The medical dispute resolution process was designed to ensure injured employees receive necessary medical care. However, it is ineffective and the standard that injured employees must satisfy to establish entitlement to medical benefits is unreasonably high. Moreover, the adopted treatment guidelines are replacing health care provider's judgment regarding necessary medical care.

8B. Discussion

Since the beginning of the Texas Workers' Compensation System, it has been a stated purpose that injured employees were to surrender their rights of seeking redress for injuries incurred while working on the job for the adequate substitute of receiving reasonable and necessary medical care and indemnity benefits without the necessity of proving fault by the employer. The current Texas statute contemplates the same concept. *See* Labor Code §408.021. HB 724, 80th Texas Legislature, 2007, established a new medical dispute resolution process for workers' compensation, which became effective September 1, 2007. DWC passed rules and began holding Contested Case Hearings to resolve medical benefit issues including medical fees and prospective and retrospective medical necessity disputes. Prospective medical necessity disputes account for more than 90 percent of all medical disputes requiring Ombudsman assistance. There are several challenges that currently exist in the prospective medical necessity dispute resolution process for injured employees and OIEC.

Labor Code §401.011(22-a) states, in part, that health care reasonably required includes generally accepted standards of medical practice recognized in the health community only if evidence-based medicine is not available. However, DWC has made by rule the Official Disability Guidelines (ODG) as the evidence-based medicine authority. Few health care providers have access to this specific guideline and not enough weight is given to the standards of the health care community. As a result, injured employees are unable to obtain necessary and standard medical treatment and services.

Although DWC has stated that ODG is only a guideline, in practice DWC is not approving treatment that falls outside ODG or even treatment within ODG where a doctor does no testing on behalf of the injured employee. Such a policy is contrary to the requirements of Texas Labor Code §408.021 that "an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed." Further, Labor Code §401.011(22-a) requires only that such care be "clinically appropriate" and "effective," consistent with "evidence-based medicine," or "generally accepted standards of medical practice." This violates the well established law of statutory construction that the words in the statute are to be given their plain meaning in order to effectuate the legislative intent.

Global conclusory statements that recommended treatment does not conform to the requirements of evidence-based medicine fails to communicate how such treatment is not reasonable and necessary medical care and it is susceptible to an arbitrary and discriminatory interpretation. If it



is subject to being interpreted in different ways, the statute could be determined to be fatally ambiguous.

Pursuant to 28 TAC §137.100, DWC has sought to establish a requirement that medical treatment be “in accordance with the ODG” as a rigid standard for medical care even when the ODG does not address the treatment in question or deals with it in such a vague and ambiguous manner that the standard does not state in clear and unequivocal terms what is required to establish medical necessity. The ODG and evidence-based medicine has never been intended to be used in such a manner. To do so renders the rule unconstitutionally void for vagueness and ambiguity.

During the reporting period between September 1, 2007 and June 30, 2009, there were 228 medical contested case hearings. Of that total the decision was in favor of the claimant 43 times (18.9%) and for the carrier 185 times (81.1%). These numbers confirm that the statutes and rule are being interpreted in such a way as to deprive injured employees of reasonable and necessary medical care.

In the January 13, 1996 edition of the British Medical Journal an attempt is made to clarify what evidence-based medicine is and what it is not. It is stated:

“The practice of evidence-based medicine means integrating individual clinical expertise with the best available external clinical evidence from systematic research. By individual clinical expertise we mean the proficiency and judgment that individual clinicians acquire through clinical experience and clinical practice.

Good doctors use both individual clinical expertise and the best available external evidence, and neither alone is enough. Without clinical expertise, practice risks becoming tyrannized by evidence, for even excellent external evidence may be inapplicable to or inappropriate for an individual patient.

Evidence-based medicine is not “cookbook” medicine. Because it requires a bottom up approach that integrates the best external evidence with individual clinical expertise and patients’ choice, it cannot result in slavish, cookbook approaches to individual patient care. External clinical evidence can inform, but can never replace, individual clinical expertise, and it is this expertise that decides whether the external evidence applies to the individual patient at all and, if so, how it should be integrated into a clinical decision.”

One potential solution to ensure injured employees receive necessary medical treatment when a diagnosis is not addressed in the ODG is to eliminate the phrase, “if that evidence is not available” in Labor Code §401.011(22-a)(b). Striking this language would ensure that a health care provider’s clinical judgment is not replaced by strict adherence to ODG protocols before medical treatment can be provided.

Another issue hindering necessary medical treatment for injured employees is DWC’s Rule 134.600(o)(4), which provides that a request for preauthorization for the same health care shall only be resubmitted when the requestor provides documentation to support a substantial change in the employee’s medical condition. However, more often than not injured employees are denied requested treatment not based on their medical condition but based on the lack of



documentation. For example, according to ODG surgeries require x-rays showing instability. The instability is present, but the documentation is not presented in the form of x-rays. The result is that the injured employee cannot request the surgery and the proposing doctor may not bill the injured employee because the injury is compensable. The elimination of this portion of Rule 134.600 would allow injured employees to seek preauthorization for treatment or services that are reasonable and necessary but were denied based on an administrative error or a lack of documentation provided by the health care provider proposing such treatment of services.

A third issue with the medical dispute resolution process is that injured employees often state Independent Review Organizations are not getting the documentation submitted with the original LHL-009 request form.

Independent Review Organization decisions are solely based on a review of documents. No examination is required to determine whether the specific treatment is necessary for the injured employee. DWC's Rule 133.308(m) requires the Independent Review Organization to request additional information from either party or from other health care providers whose records are relevant for review. Unfortunately, it has been OIEC's experience that the Independent Review Organization fails to do so. OIEC believes this may be solved by stronger enforcement efforts of Rule 133.308(m). Another potential solution is to require and enforce insurance carriers to forward *all* documents attached to the required LHL009 form, not simply those that the insurance carrier or utilization review agent feel is relevant. OIEC notes that documents that the insurance carrier or utilization review agent believes are relevant are likely to be different than the documents that an injured employee believes are relevant. In the alternative, another potential solution is to require the requestor to submit the LHL009 form directly to TDI instead of filing it with the insurance carrier or utilization review agent.

Instead of determining whether the Independent Review Organization decision is correct based on the information that the Independent Review Organization had to review, a medical necessity dispute ought to be focused on making a determination of whether the proposed healthcare is necessary and appropriate based on a full review of all evidence. Health care providers are largely uneducated about ODG and the new medical dispute resolution process and/or unwilling to treat injured employees due to the new changes. Health care providers are becoming increasingly frustrated with the preauthorization process, resulting in withdrawals from caring for workers' compensation patients or declining participation in the dispute resolution process. As a result, OIEC is contacting workers' compensation health care providers statewide to conduct outreach, educating providers on OIEC's services, and medical dispute resolution.

OIEC has become more involved in the medical dispute resolution process by seeking request for assisting injured employees in requesting reconsideration in the preauthorization process. The Ombudsman assisting the injured employee is now more familiar with the dispute prior to a hearing. OIEC now requires the Ombudsman to contact the Regional Staff Attorney for all medical disputes in hopes to increase the chances of an injured employee to prevail in the medical dispute resolution process and be provided necessary and reasonable medical treatment and services. The Regional Staff Attorneys have increased research efforts in obtaining evidence-based medicine and assisting the Ombudsman in providing documentation on behalf of injured employees. Briefings directed to the Public Counsel on each proceeding prior to the hearing and enhanced monitoring of the Ombudsman pursuing a medical dispute are a few



initiatives OIEC has implemented to increase the agency's effectiveness in the medical dispute system.

A final problem OIEC has encountered in medical disputes is that injured employees are not aware that they are subject to a network until the date of the hearing. At that point, the time has often passed for them to timely pursue preauthorization in the network. In addition, injured employees are not receiving information about how to pursue dispute resolution in the network.

This problem is exacerbated by the requirement that a substantial change of condition be established before preauthorization for the same treatment or service can be resubmitted. This problem could easily be addressed if TDI were required to identify whether the claim was a network claim or a non-network claim when it makes the Independent Review Organization assignment.

8C. Possible Solutions and Impact

OIEC has offered multiple solutions to the medical dispute resolution issues, which are imbedded in the discussion above. These proposed solutions are changes within the current medical dispute resolution framework as offered by HB 724, 80th Texas Legislature, 2007 and include:

- Eliminating the phrase “if that evidence is not available” in Labor Code §401.011(22-a)(b), which would ensure injured employees receive necessary medical treatment when that diagnosis is unavailable in the ODG;
- Eliminating DWC Rule 134.600(o)(4), which would allow injured employees to seek preauthorization for treatment or services that are reasonable and necessary but were denied based on an administrative error or a lack of documentation provided by the health care provider proposing such treatment of services.
- Requiring and enforcing insurance carriers to forward *all* documents attached to the required LHL009 form, not simply those that the insurance carrier or utilization review agent feel are relevant.
- Requiring TDI to identify if a claim is a network claim when the Independent Review Organization is made.

There may also be other solutions that may provide for more independent judicial decisions, but such suggestions are beyond the framework of HB 7 and HB 724. One idea is to move all workers' compensation contested case hearings (both indemnity and medical disputes) to the State Office of Administrative Hearings (SOAH). Prior to HB 7, medical disputes were adjudicated at SOAH, and OIEC believes by having an independent adjudication process from the regulatory and policy-making body alleviates due process concerns the agency has on behalf of injured employees. Requiring all Hearing Officers to serve as employees of SOAH and to hold contested case hearings within TDI's field offices is believed by OIEC to provide the greatest judicial independence for injured employees while still offering the convenience of holding proceedings in the 23 field offices and the three satellite offices.



9A. Brief Description of Issue

Issue: The changing demographics of the population in Texas provide for more injured employees who are Spanish-speakers who need translation assistance during a DWC proceeding.

9B. Discussion

Labor Code § 404.005 requires OIEC to maintain a written access plan that describes how non-English speakers can access the agency's services. As a result, OIEC has posted many positions with Spanish speaking preferred or required to meet the need of the agency's changing customer base, which mirrors Texas' change in demographics. Approximately 48 percent of OIEC staff are Spanish-speakers; approximately 54 percent of the Ombudsmen speak Spanish; and approximately 96 percent of all OIEC Field Offices have Spanish-speakers. The agency has developed a website and educational information that is available in Spanish, Vietnamese, Russian, Chinese, Korean, and many other languages. However, next to English, documents are mostly requested in Spanish.

While OIEC staff is pleased to assist an injured employee in a proceeding, Ombudsmen find it challenging to balance translation duties with their statutory mandate to advocate on behalf of the injured employee. Specifically, Ombudsmen have reported difficulty in trying to educate the injured employee, advocate in a proceeding, and attempt to resolve the disputed issues while also serving as a language translator for DWC staff, the insurance carrier representative, and the injured employee.

9C. Possible Solutions and Impact

OIEC believes that DWC should provide translation services at all proceedings. Whether at a Benefit Review Conference, Contested Case Hearing, or a Medical Contested Case Hearing, OIEC believes injured employees and other system participants would benefit from a certified translator either employed or contracted by the regulator. There would be costs associated with this potential solution; however, OIEC believes that its staff could be more effective in a proceeding should the DWC absorb this duty in each field office and workers' compensation system participants would benefit from a professional and objective translation during a proceeding.



10A. Brief Description of Issue

Issue: OIEC is statutorily required to serve as an advocate on behalf of injured employees as a class; however, this may conflict with the statutory restriction against attempting to influence the passage or defeat of legislation pursuant to Texas Government Code § 556.006.

10B. Discussion

OIEC provides testimony concerning bills that impact injured employees as a class before the Texas Legislature. In doing so, OIEC typically marks “Neutral” on the Legislature’s witness cards in an effort to comply with Texas Government Code §556.006, which prohibits a state agency from using appropriated money to attempt to influence the passage or defeat of legislative measures. Section 556.006 does not, however, prohibit a state employee from using state resources to provide public information or to provide information responsive to a request. The type of information OIEC provides is educational and typically advocates for the interests of injured employees. OIEC staff serving as a resource witness often finds it difficult to balance between advocating on behalf of injured employees on a particular bill and remaining “neutral” as a resource witness. OIEC believes that the agency’s statutory mission to advocate on behalf of injured employees as a class may be in conflict with Government Code §556.006. OIEC notes that other agencies, such as the Office of Public Insurance Counsel, that have similar statutory mandates to advocate on behalf of a particular class also struggle with the balance between advocacy and the Government Code’s prohibition on influencing legislation.



10C. Possible Solutions and Impact

A potential solution to this issue is to provide OIEC the authority to advocate on behalf of injured employees and by providing the agency a statutory exemption from Section 556.006 of the Government Code. OIEC recommends having the statute changed whereby OIEC staff serving as a resource witness can remain consistent with their statutory mandate to advocate by marking “For” or “Against” particular pending legislation. This enables members of a legislative committee to better understand the type of educational information (which may be advocacy in nature) the agency provides in a legislative committee hearing and prevents possible confusion that the testimony is neutral in nature, such as the type of testimony the regulator would offer.



11A. Brief Description of Issue

Issue: Effective September 1, 2009, HB 4545 provides a party 45 days (amending the current timeframe of 40 days) to file an appeal of an administrative decision in district court. However, Chapter 2001 of the Government Code provides 30 days to file a case in district court after exhausting all administrative remedies.

11B. Discussion

In 2008, the Austin Court of Appeals in *Hartford Ins. Co. v. Crain* held that parties had 40 days, not 30 days, to appeal an administrative medical disputes decision into district court. *Hartford Ins. Co. v. Crain*, 246 S.W.3d 374 (Tex. App.—Austin, Feb. 08, 2008, no petition). The Court of Appeals held that the 40 day judicial review deadline for challenging an Appeals Panel decision expressly stated in Labor Code §410.252 trumps the 30 day judicial review deadline set out by the Administrative Procedures Act, Chapter 2001, Government Code. The general principle of law is that the specific provision trumps the general provision.

In order to ensure injured employees' rights are protected, OIEC advises injured employees to file all medical dispute decisions in district court within 30 days of receipt of the administrative decision. This precaution is being taken until the statute clarifies the timeframe to appeal a medical dispute decision into district court.

11C. Possible Solutions and Impact

OIEC recommends that Chapter 413 of the Labor Code be amended to give a party the same timeframe to appeal an administrative medical dispute decision as an indemnity dispute decision. Specifically, a party should be provided 45 days to appeal a medical dispute decision into district court. This change would benefit all workers' compensation system participants by establishing a clear timeframe to file an appeal in district court, regardless of the workers' compensation benefits at issue (e.g. income or medical benefits).



12A. Brief Description of Issue

Issue: OIEC does not have the ability to meet all of its data and technology needs.

12B. Discussion

OIEC is administratively attached to TDI and relies on TDI for all of its data and technology needs. COMPASS and TXCOMP (TDI/DWC's workers' compensation-related databases) are specifically designed for the use of DWC staff, the regulators of the Texas Workers' Compensation System. OIEC only has authorization to enter data into the portion of the database where notes (logs) on each injured employee's claim are located (DRCD).

The term "dispute" does not have the same meaning for OIEC as it did for DWC. DWC defines disputes as containing multiple issues. However, OIEC defines a dispute as one disputed issue. Current computer technology in which OIEC is allowed access does not provide for data extraction of each disputed issue resolved by OIEC. As a result, the only way to obtain a percentage is by coding disputed issues in DRCD. Data may have a larger error rate when calculating performance measures in this way. The confidence level in capturing the performance measure will be indicated in the "data limitations" portion of the revised methodology.

Additionally, OIEC is statutorily mandated to represent the interests and provide services to unrepresented injured employees. DWC disputes include issues initiated by all parties of a workers' compensation claim (i.e., insurance carriers, health care providers, attorney-represented injured employees, etc.). New programs will need to be developed using the current technology and databases, unless a new system that meets OIEC's need is developed.

12C. Possible Solutions and Impact

Developing a new database system specifically designed for OIEC would provide external customers with greater access to workers' compensation data with a stronger confidence level in its accuracy. There may be cost associated with this effort; however, OIEC believes such an initiative would provide efficiencies in the agency's business processes and better enable the agency to monitor the workers' compensation system with a focus on return-to-work.



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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.

Office of Injured Employee Counsel Exhibit 15: Contacts			
INTEREST GROUPS (groups affected by agency actions or that represent others served by or affected by agency actions)			
Group or Association Name/ Contact Person	Address	Telephone	E-mail Address
Texas Mutual Insurance Co./ Jo Betsy Norton, Vice President, Public Affairs	6210 E. Hwy 290 Austin, TX 78723	512-224-3803	jnorton@texasmutual.com
The Political Subdivision Workers' Compensation Alliance/ Pam Beachley	10535 Boyer Blvd, Suite 100 Austin, TX 78758	866-997-7922	General Email: info@pswca.org
Texas Group Insurance Association/ Pam Beachley	906 Rio Grande St. Austin, TX 78701	512-477-9398	pam@beachleylaw.com
Baker Botts, L.L.P./ Tristan "Tris" Casteneda, Jr., Legislative and Government Relations	1500 San Jacinto Ctr. 98 San Jacinto Blvd. Austin, TX 78701	512-322-2564	tris.casteneda@bakerbotts.com
Insurance Council of Texas/ Steve Nichols	2801 South IH 35 Austin, TX 78741	512-326-7618	snichols@insurancecouncil.org
Corvel Corporation/ Karen Atkins, District Manager	15303 Dallas Pky., Suite 300 Addison, TX 75001	972-239-1391 ext. 3216	karen_atkins@corvel.com
Fiserv/ Perry Lewis, VP Government Affairs	1483 North Juliet Rd. Mt. Juliet, TN 37122	615-288-4163	perry.lewis@fiserv.com
Gallagher Bassett Services, Inc./ Diana Johnson, Workers' Compensation Compliance Supervisor	16414 San Pedro Ave., Suite 400 San Antonio, TX 78232	210-403-9682	diana_johnson@gbtpa.com
Physicians Cooperative of TX/ Creg Parks, Chief Executive Officer	500 Canyon Ridge, Suite L250 PMB 106 Austin, TX 78753	866-311-6233	creg.parks@pctexas.org
The Austin Diagnostic Clinic/ Richard D. Tallman, M.D., Chief Medical Officer	12221 Mopac Expressway N. Austin, TX 78758	512-901-4423	rtallman@adclinic.com



INTEREST GROUPS

(groups affected by agency actions or that represent others served by or affected by agency actions)

Group or Association Name/ Contact Person	Address	Telephone	E-mail Address
Southwest Orthopaedic Group/ Stephen M. Norwood, M.D.	3003 Bee Cave Rd., Suite 201 Austin, TX 78746	512-451-1969	Website: www.sworthogroup.com
KSF Orthopaedic Center, P.A./ Michael A. Berkowitz, Administrator	17270 Red Oak Dr., Houston, TX 77090	281-440-6960	mab@ksfortho.com
Third Party Solutions/ Kimberly Diehl, Director of Compliance	P. O. Box 17124 Memphis, TN 38187	901-206-6163	kdiehl@tpsr.com
IW Pharmacy/ R. Scott Wiedeback, Sales Director	P. O. Box 338 Methuen, MA 01844	888-321-7945	swiedeback@IWPharmacy.com
Texas Lobby Solutions/ Richard W. Evans	305 W. 13 th Street Austin, TX 78701	512-422-3705	richard@txlobbysolutions.com
Saxon Public Affairs/ Lucinda Dean Saxon	208 West 14 th Street, Suite 204 Austin, TX 78701	512-784-4587	lucinda_saxon@swbell.net
Burns, Anderson, Jury & Brenner L.L.P./ Joe R. Anderson	P.O. Box 26300 Austin, TX 78755	512-338-5322	janderson@bajb.com
Legal Aide of North West Texas/ Christina Bass	17 S. Chadbourne San Angelo, TX 76903	325-653-6982	Not Available
Miller and Bicklein/ Royce Bicklein	4800 East 42 nd St., Suite 300 Odessa, TX 79762	432-362-4878	royce@millerbicklein.com
Gardere/Wynn/ David T. Weber	600 Congress Ave., Suite 3000 Austin, TX 78701	512-542-7000	dweber@gardere.com
Ace American Insurance Company/ Stuart Colburn	Box 23 4425 Mopac Bldg. 111 Austin, TX 78735	512-394-1442	wcbilling@downsstanford.com
Capital City Insurance Agency/ Bobby Stokes	Box 35 8030 North Mopac Expy. Austin, TX 78759	512-343-0280	bstokes@fol.com
Downs Stanford PC/ Stuart Colburn	Box 17 2001 Bryan, Suite 400 Dallas, TX 75201	214-748-7900	wcbilling@downsstanford.com



INTEREST GROUPS

(groups affected by agency actions or that represent others served by or affected by agency actions)

Group or Association Name/ Contact Person	Address	Telephone	E-mail Address
Flahive Ogden and Latson/ Bobby Stokes Roy Leatherberry	P. O. Box 13367 Austin, TX 78711	512-435-2249 512-435-2179	bstokes@fol.com
Stone Loughlin and Swanson LLP/ Jane Stone	Box 06 6836 Austin Center Blvd., Suite 280 Austin, TX 78731	512-343-1300	jstone@slsaustin.com
Texas Alliance of Nonsubscribers/ Richard Evans	208 W. 14 th Street, #204 Austin, TX 78701	512-422-3705	richard@txlobbysolutions.com
Texas Orthopedic Administrators Society (T-Bones)/ Michael Berkowitz	17270 Red Oak Dr., Houston, TX 77090	281-440-6960	mab@ksfortho.com
Texas Rio Grande Legal Aid/ Carmen Rodriguez	1331 Texas Ave. El Paso, TX 79901	915-585-5100 800-369-2792	crodriguez@tria.org
Texas Rio Grande Legal Aid/	308 East Harrison Avenue Harlingen, TX 78550	956-423-3111	Not Available
Texas Rio Grande Legal Aid/ Paula Garza	1702 Convent Ave. Laredo, TX 78040	956-718-4608	pgarza@tria.org
Travelers Companies, Inc./ Bill Weldon	Box 05 385 Washington St. St. Paul, MN 55102	512-328-7055	wweldon@travelers.com
Work Loss Data Institute/ Lucinda Saxon	169 Saxony Road, Suite 101 Encinitas, CA 92024	512-784-4587	lucinda_saxon@swbell.net
Workers' Compensation Pharmacy/ Tris Castaneda	98 San Jacinto, Suite 1500 Austin, TX 78701	512-322-2564	tris.castaneda@bakerbotts.com
Service Lloyd's Insurance Company of America/ Rosanna Bladuell	6907 N. Capitol of TX Hwy. Austin, TX 78755	512-637-3824	Not Available
Hartford Financial Services Group/ Joe Anderson	Box 27 690 Asylum Avenue Hartford, CT 06105	512-343-8310	janderson@bajb.com
Hispanic Bar Assoc. of Austin/ Jana Ortega	P. O. Box 12692 Austin, TX 78711	512-469-9900	Not Available
Hispanic Chamber of Commerce of Corpus Christi/ Robert Vela	615 North Upper Broadway Corpus Christi, TX 78401	361-887-7408	rvela@cchispanicchamber.org



INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS
(that serve as an information clearinghouse or regularly interact with your agency)

Group or Association Name/ Contact Person	Address	Telephone	E-mail Address
Texas AFL-CIO/ Rick Levy	1204 San Antonio Austin, TX 78701	512-477-6195	rick@texasaflcio.org
Texas Assoc. of Business/ Cathy Stoebner DeWitt, Governmental Affairs Mgr.	1209 Nueces Austin, TX 78701	512-637-7704	cdewitt@txbiz.org
The Political Subdivision Workers' Compensation Alliance/ Pam Beachley	10535 Boyer Blvd, Suite 100 Austin, TX 78758	866-997-7922	General Email: info@pswca.org
Texas Group Insurance Association/ Pam Beachley	906 Rio Grande St. Austin, TX 78701	512-477-9398	pam@beachlelaw.com
American Insurance Association/ Ron Cobb Nick Huestis	500 West 13 th Street Austin, TX 78701	512-791-3022	roncobb@austin.rr.com nhuestis@bajb.com
Texas Trial Lawyers Assoc./ James W. Fields, J.D., Sr. Director of Public Affairs	P. O. Box 788 Austin, TX 78767	512-476-3852	jfields@tla.com
Texas Orthopedic Association/ Steve Norwood, MD Donna Parker	401 W. 15 th Street, Suite 820 Austin, TX 78701	512-451-1969 512-370-1505	norwood@austin.rr.com donna@toa.org
Texas Medical Association/ Donald "Rocky" Wilcox	401 West 15 th Street Austin, TX 78701	512-370-1335	rocky.wilcox@texmed.com.org
Texas Hospital Association/ Charles Bailey	1108 Lavaca St. Austin, TX 78701	512-465-1000	Not Available
Texas Occupational Therapy Association/ Mary Hennigan	1106 Clayton Lane, #516W Austin, TX 78723	512-454-8682	mary@tota.org
National Council on Compensation Insurance (NCCI)/ Lori Lovgren Amy Royce	901 Peninsula Corporate Circle Boca Raton, FL 33487	561-893-3337 561-893-1066	lori_lovgren@ncci.com amy_royce@ncci.com
Property Casualty Insurers Association of America (PCI)/ Joe Woods	701 Brazos Street, Suite 500 Austin, TX 78701	512-334-6638	joe.woods@pciaa.net
Property Casualty Insurers Association of America (PCI)/ David Anderson	2600 South River Road Des Plains, IL 60018	847-297-7800	Not Available



Southern Association of Workers' Compensation Administrators/ Gary Davis	P. O. Box 910373 Lexington, KY 40591	859-219-0194	gary.davis@sawca.com
Workers' Compensation Research Institute (WCRI)/ Rick Victor	955 Massachusetts Avenue Cambridge, MA 02139	617-661-9274	rvictor@wcrinet.org
Texas Chiropractic Association/ Patte Kent Jeff Cunningham Greg Nelson	1122 Colorado, Suite 307 Austin, TX 78701	512-477-9292	pkent@chirotxas.org jeff@jeffcunningham.org Not Available for Greg Nelson
Work Comp Central/ Bill Kidd	1320 Flynn Rd., #403 Camarillo, CA 93012	805-484-0333	www.workcompcentral.com
Texas Public Employees Association/ Andy Homer, Director of Government Relations	512 East Eleventh Street, Suite 100 Austin, TX 78701	512-476-2691	ahomer@tpea.org
Texas Certified Self-Insured Guaranty Assoc./ Judy Roach Clay Pope	1115 San Jacinto Blvd., Suite 275 Austin, TX 78701	512-322-0514 512-480-0820	judyroach@austin.rr.com pope@austin.rr.com

LIAISONS AT OTHER STATE AGENCIES

(with which your agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)

Agency Name / Relationship / Contact Person	Address	Telephone	E-mail Address
Legislative Budget Board/ Christy Havel, Agency Analyst	1501 N. Congress Ave., 5 th Floor P.O. Box 12666 Austin, TX 78711	512-463-1200	christy.havel@lbb.state.tx.us
Office of the Governor/ Cassie Brown, Deputy Director, Legislative Division	P. O. Box 12428 Austin, TX 78711	512-463-1797	cbrown@governor.state.tx.us
Texas Department of Insurance, Department of Workers' Compensation/ Rod Bordelon, Commissioner	7551 Metro Center Dr. Austin, TX 78744	512-804-4400	rod.bordelon@tdi.state.tx.us
Office of the Attorney General/ Melissa Juarez	PO Box 12548 Austin, TX 78711	512-463-2100	melissa.juarez@oag.state.tx.us
Texas Workforce Commission/ Larry Jones, Director of Workforce Development	101 E. 5 th St., Rm. 504B-T Austin, TX 78778	512-936-0697	larry.jones@twc.state.tx.us



LIAISONS AT OTHER STATE AGENCIES

(with which your agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)

Agency Name / Relationship / Contact Person	Address	Telephone	E-mail Address
Texas Workforce Development/ Alamo Region/ Chakib Chehadi, Executive Director	115 East Travis, Suite 220 San Antonio, TX 78205	210-272-3260	chakib.chehadi@twc.state.tx.us
Texas Workforce Development/ Brazos Valley Region/ Mr. Tom Wilkinson, Executive Director	3991 East 29th Street Bryan, TX 77805-4128	979-595-2800	twilkinson@bvcog.org
Texas Workforce Development / Cameron County Region/ Gaylen Lange, Interim Executive Director	245 East Levee Street Brownsville, TX 78520	956-548-6700	glange@acamwksinc.org
Texas Workforce Development/ Capital Area/ Alan D. Miller, Executive Director	6505 Airport Blvd., Suite 101E Austin, TX 78752	512-597-7101	alan.Miller@twc.state.tx.us
Texas Workforce Development/ Central Texas Region / Susan Kamas, Executive Director	200 N. Main Street Belton, TX 76513	254-939-3771	susank@workforcelink.com
Texas Workforce Development/ Coastal Bend Region/ Mary Ann Rojas, President/CEO	520 N. Staples Street Corpus Christi, TX 78403	367-885-3016	maryann.rojas@coastalworksource.com
Texas Workforce Development/ Concho Valley Region/ Johnny Griffin, Executive Director	36 East Twohig San Angelo, TX 76903	325-655-2005	johnny.griffin@twc.state.tx.us
Texas Workforce Development/ Dallas County Region/ Larie Bouillion Larrea, President	1201 Main Street, Suite 2700 Dallas, TX 75202	241-290-1000	wbdpres@sbcglobal.net
Texas Workforce Development/ Deep East Texas Region/ Charlene Meadows, Executive Director	539 S. Chestnut Street, Suite 300 Lufkin, TX 75901	936-639-8898	charlene.meadows@twc.state.tx.us
Texas Workforce Development/ West Central Region/ Mary Ross, Executive Director	400 Oak Street Abilene TX 79602	325-795-4301	mary.ross@workforcesystem.org



LIAISONS AT OTHER STATE AGENCIES

(with which your agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)

Agency Name / Relationship / Contact Person	Address	Telephone	E-mail Address
Texas Workforce Development/ East Texas Region/ Wendell Holcombe, Director	3800 Stone Road Kilgore, TX 75662	903-984-8641	wendell.holcombe@etcog.org
Texas Workforce Development/ Golden Crescent Region/ Henry Guajardo, Executive Director	120 S. Main, Suite 501 Victoria, TX 77901	361-576-5872	henry.guajardo@twc.state.tx.us
Texas Workforce Development/ Gulf Coast Region/ Rodney Bradshaw, Director, Human Resources	3555 Timmons Lane, Suite 120 Houston, Tx 77027	713-627-3200	rbradshaw@h-gac.com
Texas Workforce Commission/ Heart of Texas Region/ Anthony C. Billings, Executive Director	801 Washington Ave., Suite 700 Waco, TX 76701	254-296-5300	abilings@hotworkforce.com
Texas Workforce Development/ Lower Rio Grande Valley Region/ Bonnie Gonzalez, Chief Executive Officer	3101 W. Business 83 McAllen, TX 78501	956-928-500 Ext. 3736	bonnie@wfsolutions.org
Texas Workforce Development/ Middle Rio Grande Region/ Rick McNeil, Executive Director	2210 Milan Street Uvalde, TX 75501	830-591-0141	ricky.mcneil@twc.state.tx.us
Texas Workforce Development/ North Central Region/ David K. Setzer, Executive Director	P.O. Box 5888 Arlington, TX 76005	817-695-9187	dsetzer@dfwjobs.com
Texas Workforce Development/ North East Region/ Kay O'Dell, Executive Director	911 North Bishop, Suite A100 Wake Village, TX 75501	903-794-9490	kay.odell@twc.state.tx.us
Texas Workforce Development/ North Texas Region/ Mona Williams Statser, Executive Director	901 Indiana, Suite 180 Wichita Falls, TX 76301	940-767-1432	mona.statser@twc.state.tx.us
Texas Workforce Development/ Panhandle Region/ Tom Dressler, Director	415 W. 8 th Avenue Amarillo, TX 79105	806-373-3268	tdressler@theprpc.org
Texas Workforce Development/ Permian Basin Region/ Willie Taylor, Executive Director	P.O. Box 61947 Midland, TX 79711	432-563-5239	willie.taylor@twc.state.tx.us



LIAISONS AT OTHER STATE AGENCIES

(with which your agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)

Agency Name / Relationship / Contact Person	Address	Telephone	E-mail Address
Texas Workforce Development/ Rural Capital Region/ James R. Satterwhite, Executive Director	2701 Gattis School Rd., Bldg. B., Suite 101 Round Rock, TX 78664	512-244-7966	james.satterwhite@ruralcapital.net
Texas Workforce Development/ South East Texas Region/ Marilyn Smith, Executive Director	2901 Turtle Creek Drive, Suite 300 Port Arthur, TX 77642	409-719-4750	marilyn.smith@setworks.org
Texas Workforce Development/ South Plains Region/ Martin Aguirre, Chief Executive Officer	1301 Broadway, Suite 201 Lubbock, TX 79401	806-744-1987	martin.aguirre@spworkforce.org
Texas Workforce Development/ South Texas Region/ Regelio Trevino, Executive Director	1710 E. Hillside Laredo, TX 78041	956-722-3973	regelio.trevino@twc.state.tx.us
Texas Workforce Development/ Tarrant County Region/ Judy McDonald, Executive Director	1320 S. University Dr., Suite 600 Fort Worth, TX 76107	817-413-4400	judy.mcdonald@twc.state.tx.us
Texas Workforce Development/ Texoma County Region/ Janie Bates, Executive Director	5904 Texoma Parkway Sherman, Tx 75090	903-957-7408	janie.bates@twc.state.tx.us
Texas Workforce Development/ Upper Rio Grande Region/ Lorenzo Reyes, Chief Executive Officer	221 N. Kansas, Suite 100 El Paso, TX 79901	915-772-2022 Ext. 204	lorenzo.reyes@urgwdb.org
Texas Workforce Development/ West Central Region/ Mary Ross, Executive Director	400 Oak Street Abilene, TX 79602	325-795-4301	mary.ross@workforcesystem.org
Texas Comptroller of Public Accounts/ Raette Smith Hearne, Agency Administration	P. O. Box 13528 Austin, TX 78711	512-475-0541	raette.hearne@cpa.state.tx.us
Texas State Library and Archives Commission/ Coby Condrey, Coordinator, Texas State Publications	P. O. Box 12927 Austin, TX 78711	512-463-5434	ccondrey@tsl.state.tx.us
Texas Department of Assistive and Rehabilitative Services/ Mike Brevell, LPC, CRC	4900 North Lamar Blvd. Austin, TX 78751	512-424-4062	mike.brevell@dars.state.tx.us



LIAISONS AT OTHER STATE AGENCIES

(with which your agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)

Agency Name / Relationship / Contact Person	Address	Telephone	E-mail Address
State Bar of Texas	1414 Colorado St. Austin, TX 78701	512-427-1463	Not Available
State Office of Administrative Hearings (SOAH)/ Natalie Howard	300 W. 15 th Street, #502 Austin, TX 78701	512-475-4993	natalie.howard@soah.state.tx.us
Texas Medical Board	333 Guadalupe, Tower 3, Suite 610 Austin, TX 78701	512-305-7010	verificic@tmb.state.tx.us
University of Texas System/ Javier Garza Barbara Craig	201 West 7 th Street Austin, TX 78701	512-499-4655 512-499-4657	jgarza@utsystem.edu bcraig@utsystem.edu
State Office of Risk Management/ Jennifer Hinojosa, Deputy Financial Officer	300 W. 15 th St, 6 th Floor P. O. Box 13777 Austin, TX 78711-3777	512-936-1493	jennifer.hinojosa@sorm.state.tx.us
Small State Agency Task Force/ Mark W. Majek, Chair	333 Guadalupe, Suite 3-460 Austin, TX 78701-3942	512-305-6801	mark.majek@bon.state.tx.us
Office of Public Insurance Counsel/ Deea Beck, Public Counsel	333 Guadalupe, Suite 3-120 Austin, TX 78701-3942	512-322-4143	dbeck@opic.state.tx.us
State Agency Coordinating Committee (SACC)/ Raette Hearne	P. O. Box 13528 Austin, TX 78711	512-475-0541	raette.hearne@cpa.state.tx.us
Mid-Size Agency Coordinating Council/ Brian White	7551 Metro Center Dr., Suite 100, MS-50, Austin, TX 78744	512-804-4186	brian.white@oiec.state.tx.us
15/20 Group/ Mark Humowiecki Colin Fritz	111 Livingston St., Rm 2300-B Brooklyn, NY 11201 369 Franklin St. Buffalo, NY 14202	718-802-6668 716-510-4893	Not Available
Senate Committee on Health and Human Services/ Shannon D. Ghangurde, Committee Director	Sam Houston Bldg., Rm. 420 P. O. Box 12068 Austin, TX 78711	512-463-0360	shannon.ghangurde@senate.state.tx.us



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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 practice.

Office of Injured Employee Counsel			
Exhibit 16: Complaints Against the Agency – Fiscal Years 2007 and 2008			
	FY 2007	FY 2008	FY 2009
Number of complaints received	3	10	37
Number of complaints resolved	3	10	33**
Number of complaints dropped / found to be without merit	N/A	N/A	N/A
Number of complaints pending from prior years	0	0	0
Average time period for resolution of a complaint	27 days*	46 days*	14 days***
<p>* OIEC believes FY 2007 and FY 2008 average time period for complaint resolution included the several complaints, which were contingent on outcomes from DWC's dispute resolution process. FY 2009 complaints resolution data does not take into consideration dispute resolution delays as a result of an Internal Audit recommendation.</p> <p>** As of August 12, 2009, OIEC received 37 complaints. Currently, the agency has resolved or is in the process of resolving the 37 complaints. In 33 out of 37 complaints, the investigation has been concluded and the complaint is resolved.</p> <p>*** As of August 12, 2009, the average time for resolution of a complaint is 14 days.</p>			



B. Fill in the following chart detailing your agency's Historically Underutilized Business (HUB) purchases.

Office of Injured Employee Counsel Exhibit 17: Purchases from HUBs				
FY 2006				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	\$0	\$0	0.00%	11.9%
Building Construction	\$0	\$0	0.00%	26.1%
Special Trade	\$150	\$0	0.00%	57.2%
Professional Services	\$0	\$0	0.00%	20.0%
Other Services	\$4,742	\$65	1.37%	33.0%
Commodities	\$9,301	\$3,356	36.00%	12.6%
TOTAL	\$14,193	\$3,421	24.10%	
FY 2007				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	\$0	\$0	0.00%	11.9%
Building Construction	\$0	\$0	0.00%	26.1%
Special Trade	\$171	\$0	0.00%	57.2%
Professional Services	\$0	\$0	0.00%	20.0%
Other Services	\$36,876	\$0	0.00%	33.0%
Commodities	\$33,954	\$19,641	57.80%	12.6%
TOTAL	\$71,001	\$19,641	27.60%	
FY 2008				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	\$0	\$0	0.00%	11.9%
Building Construction	\$0	\$0	0.00%	26.1%
Special Trade	\$0	\$0	0.00%	57.2%
Professional Services	\$0	\$0	0.00%	20.0%
Other Services	\$24,832	\$161	0.65%	33.0%
Commodities	\$80,273	\$57,092	71.10%	12.6%
TOTAL	\$105,106	\$57,253	54.40%	



C. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy? (Texas Government Code, Sec. 2161.003; TAC Title 34, Part 1, rule 20.15b)

OIEC is administratively attached to TDI and has, therefore, adopted TDI's HUB policy. TDI addresses performance shortfalls related to the HUB policy by continually reviewing the agency's HUB participation. TDI makes a good faith effort to identify and utilize HUB vendors within all procurement processes. In addition, TDI hosts and participates in HUB forums across the state and educates HUBs on how to effectively do business with TDI and the state. OIEC's Deputy Public Counsel communicates frequently with TDI's HUB Coordinator to ensure compliance with policies and statutory requirements.

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? (Texas Government Code, Sec. 2161.252; TAC Title 34, Part 1, rule 20.14)

Yes. See Attachment 26 for the Receivership Guidelines for the HUB Subcontracting Plan.

E. For agencies with biennial appropriations exceeding \$10 million, answer the following HUB questions.

	Response / Agency Contact
1. Do you have a HUB coordinator? (Texas Government Code, Sec. 2161.062; TAC Title 34, Part 1, rule 20.26).	OIEC is administratively attached to TDI. Therefore, TDI's and OIEC's HUB coordinator is: Regina Durden (512) 475-1782
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? (Texas Government Code, Sec. 2161.066; TAC Title 34, Part 1, rule 20.27).	Each year TDI sponsors HUB forums allowing minority and women-owned businesses to meet agency staff and learn about TDI's and OIEC's procurement opportunities.
3. Has your agency developed a mentor-protégé 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? (Texas Government Code, Sec. 2161.065; TAC Title 34, Part 1, rule 20.28).	TDI and OIEC have developed a mentor-protégé 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.



F. Fill in the chart below detailing your agency's Equal Employment Opportunity (EEO) statistics.¹¹

Office of Injured Employee Counsel							
Exhibit 18: Equal Employment Opportunity Statistics							
FY 2006							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	3	0.0%	6.6%	66.7%	14.2%	66.7%	37.3%
Professional	69	17.4%	8.3%	36.2%	13.4%	78.3%	53.2%
Technical	0	0.0%	12.4%	0.0%	20.2%	0.0%	53.8%
Administrative Support	0	0.0%	11.2%	0.0%	24.1%	0.0%	64.7%
Service Maintenance	28	10.7%	13.8%	57.1%	40.7%	100.0%	39.0%
Skilled Craft	0	0.0%	6.0%	0.0%	37.5%	0.0%	4.8%
FY 2007							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	3	0.0%	9.0%	66.7%	23.7%	66.7%	38.8%
Professional	68	16.2%	11.7%	38.2%	19.9%	79.4%	54.5%
Technical	0	0.0%	17.0%	0.0%	27.0%	0.0%	55.6%
Administrative Support	0	0.0%	13.2%	0.0%	31.9%	0.0%	66.2%
Service Maintenance	31	6.5%	12.8%	64.5%	44.8%	96.8%	39.7%
Skilled Craft	0	0.0%	5.1%	0.0%	46.9%	0.0%	5.1%
Office of Injured Employee Counsel							
Exhibit 18: Equal Employment Opportunity Statistics – continued							
FY 2008							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	14	7.1%	9.0%	50.0%	23.7%	71.4%	38.8%
Professional	92	17.4%	11.7%	37.0%	19.9%	88.0%	54.5%
Technical	0	0.0%	17.0%	0.0%	27.0%	0.0%	55.6%
Administrative Support	26	19.2%	13.2%	46.2%	31.9%	96.2%	66.2%
Service Maintenance	29	3.5%	12.8%	72.4%	44.8%	93.1%	39.7%
Skilled Craft	0	0.0%	5.1%	0.0%	46.9%	0.0%	5.1%

¹¹ The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals are no longer reported as separate groups.



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

Section I of OIEC's Employee Manual contains the agency's equal employment opportunity policy. The policy states:

"The Office of Injured Employee Counsel (OIEC) provides equal employment opportunity in accordance with the law. We, therefore, prohibit any unlawful discrimination against applicants or employees because of race, color, creed, religion, sex, age, national origin, disability, veteran status, or genetic information. Employment decisions, such as recruitment, evaluations, selection, appointment, training, promotion, termination, as well as decisions affecting compensation, terms, conditions and privileges of employment, are made on the basis of nondiscriminatory factors such as merit, experience, education, demonstrated performance competency, and bona fide occupational qualifications. OIEC also is committed to recruiting, hiring and employee retention practices that promote a labor force which is reasonably representative of the Texas civilian workforce. Also, in accordance with applicable laws, OIEC prohibits any harassment or offensive conduct related to any person's race, color, creed, religion, sex, age, national origin, disability, veteran status, or genetic information". See OIEC Employee Manual, Section I, page 1.

All OIEC employees are responsible for helping to maintain a workplace free of unlawful discrimination or harassment in accordance with this policy and to actively support OIEC's commitment to these principles. OIEC will not tolerate unlawful discrimination or harassment against our employees or applicants for employment. Employees who violate this policy or any of OIEC's anti-harassment, anti-discrimination, and anti-retaliation policies are subject to disciplinary action up to and including termination of employment.

Any employee experiencing a work-related problem who perceives it to be a result of unlawful discrimination or harassment may go directly to anyone in management to report a complaint without fear of retaliation. Employees are encouraged to use the chain of command within their division to resolve complaints. However, if this approach is not appropriate for the situation or the result is not satisfactory the employee should contact the Director of Legal Services. All complaints of discrimination or harassment will be looked into as confidentially as possible.

OIEC encourages employees to report illegal conduct and will not retaliate against any employee who reports illegal conduct in accordance with applicable federal and state law. An employee who believes he or she is a victim of retaliation should immediately report such conduct to OIEC management or the Director of Legal Services.

OIEC frequently relies on the independent legal consultation of the agency's Attorney, Melissa Juarez, from the Office of the Attorney General. An objective and independent counsel is helpful should the agency experience a performance shortfall related to the policy.



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XII. Agency Comments

Provide any additional information needed to gain a preliminary understanding of your agency.

OIEC has attempted to provide enough information for a preliminary understanding of the agency; however, staff is available to provide additional information as needed.

THE OIEC TEAM

