

# **Self-Evaluation Report**



**State Office of Risk Management**

**August 2005**

# TABLE OF CONTENTS

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I.	Agency Contact Information.....	1
II.	Key Functions and Performance.....	1
III.	History and Major Events.....	10
IV.	Polycymaking Structure.....	13
V.	Funding.....	16
VI.	Organization.....	18
VII.	Guide to Agency Programs.....	19
	<i>1. Workers' Compensation</i> .....	19
	<i>2. Risk Management</i> .....	26
VIII.	Statutory Authority and Recent Legislation.....	32
IX.	Policy Issues.....	33
X.	Other Contacts.....	41
XI.	Additional Information.....	43
	Complaint Data.....	43
	HUB Data.....	43
	EEO Data.....	45
XII.	Agency Comments.....	47

## State Office of Risk Management Self-Evaluation Report

### I. Agency Contact Information

State Office of Risk Management Exhibit 1: Agency Contacts				
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### II. Key Functions and Performance

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

The State Office of Risk Management (Office) is charged by Texas Labor Code §412.011 to administer insurance services obtained by state agencies, including the government employees workers' compensation insurance program and the state risk management programs.

The Office's mission is to provide active leadership to enable State of Texas agencies to protect their employees, the general public, and the state's physical and financial assets by reducing and controlling risk in the most efficient and cost-effective manner.

The Office's statutory objectives and key functions are to:

- administer the workers' compensation insurance program for state employees established under Chapter 501, Texas Labor Code;
- operate as a full-service risk manager and insurance manager for state agencies;
- maintain and review records of property, casualty, or liability insurance coverages purchased by or for state agencies;
- administer the program for the purchase of surety bonds for state officers and employees;
- administer guidelines adopted by the Board for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses;
- review, verify, monitor, and approve risk management programs adopted by state agencies;
- assist state agencies that have not implemented an effective risk management program to implement a comprehensive program that meets the guidelines established by the Board; and
- provide risk management services for employees of community supervision and corrections departments established under Chapter 76, Government Code, as if the employees were employees of a state agency.

**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?**

The Office does believe its key functions continue to serve clear and ongoing objectives.

With respect to the workers' compensation insurance program for state employees established under Chapter 501, the State self-insures for the purposes of workers' compensation. Without designating a party to administer claims for injured state employees, injured workers would not have wage replacement or medical care for work-related injuries, nor would the State have protection and defense against possible fraudulent claims. Since the State funds the costs of workers' compensation and risk management through risk pooling, individual agencies are protected from catastrophic losses which could exceed individual financial resources, providing for a stable and self-sustainable program.

Because the Office is required to operate as a full-service risk manager and insurance manager for state agencies, it is able to reduce the risks of injury through accident and loss prevention programs. The guidelines adopted by the Board for a comprehensive risk management program and the assistance of the Office in implementing such programs, in conjunction with on-site visits and consultations, has a direct impact on losses. Similarly, the insurance purchasing program, supported by the Office's maintenance and review of records of property, casualty, or liability insurance coverages purchased by or for state agencies, helps reduce costs and ensure proper financial protection against loss. In the absence of such programs the risks to workers and state assets could increase, with an attendant rise in costs to the state.

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

The best indicators of overall effectiveness and efficiency with respect to the Office's mission of reducing and controlling risks in the most efficient and cost-effective manner are the reductions in the costs of workers' compensation claims, the reduction in the number injuries and the injury frequency rate, and the premium savings on insurance purchases.

In the Office's workers' compensation program, for the first time in seven years the cost of providing workers' compensation benefits for injured state employees went down in FY 2004 and was the first significant reduction in over a decade. The total required to provide indemnity and medical benefits was \$14 million dollars less than in FY 2003, and \$22 million less than the liability projected by the Office's actuarial consultant. The rapid decrease in expenditures is the result of a number of factors, including improved claims processing by the Office, improved safety practices on the part of client agencies, and greater accountability on the part of agencies for losses. These improvements have directly translated into savings for state agencies and the State as a whole. The total assessments to state agencies for payment of claims costs for FY 2005 is \$19.4 million less than FY 2003, and \$21.7 million less than FY 2004. In addition, the Office returned to client agencies approximately \$15.6 million in unexpended funds from the FY 2004 assessments. The Office is currently on target to see reductions in FY 2005 expenditures, as well.

In the Office's risk management program, on average more than 1,000 fewer injuries have occurred annually for each of the previous two years than for the rest of the past decade, with IFR continuing its declining trend since the inception of the Office.

Finally, the Insurance Purchasing Program has continued to expand, and the Office has implemented four lines of sponsored insurance to date, available to all covered state agencies: Directors' and Officers' with Employment Practices Liability, Special Events General Liability, Automobile, and Volunteer policies. Savings as a result of centralizing these state insurance purchases have exceeded half a million dollars thus far, and savings are expected to continue to grow as new lines are implemented.

**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 Office's enabling legislation does correctly reflect the agency's mission, objectives, and approach. Each Biennial Report has included recommendations for statutory change.

In the Office's first Biennial Report, in 1999 to the 76<sup>th</sup> Legislature, the Office recommended the amendment or repeal of §412.012(c) of the Texas Labor Code, the initial Cost Allocation Program established by HB 2133, 75<sup>th</sup> Legislature. That provision represented the first iteration of the agency's risk-reward plan which was determined to be unworkable after the Office had proposed administrative rules and received significant negative comment from affected state agencies, including statutory conflicts identified which could not be reconciled by rule. The Office recommended it be allowed to conduct a study in cooperation with the Legislative Budget Board, the Governor's Office, and the Research and Oversight Council on Workers' Compensation to gather the information necessary to prepare appropriate proposed legislation for consideration in the FY 2002-03 biennium (which ultimately resulted in detailed recommendations and adoption of the program by the 77<sup>th</sup> Legislature, discussed below). The Office also first recommended the Insurance Purchasing Program in this initial Biennial Report, which was subsequently refined by the Office and also adopted by the 77<sup>th</sup> Legislature.

Other legislative recommendations included clarifying biennial reporting language regarding responsible party for reporting (i.e., the Executive Director, rather than the Board) and scope of administrative expenses (at the time limited to workers' compensation strategy, but it was assumed by the Office the legislature intended to receive information at the agency level), eliminating the requirement for providing a list of all workers' compensation recipients in the Biennial Report, and making the option to use annual and sick leave in lieu of indemnity benefits consistent among all state employees. Each of these recommendations were implemented in House Bill 2509, 76<sup>th</sup> Legislature.

In the Office's 2001 Biennial Report to the 77<sup>th</sup> Legislature the Office recommended the Cost Allocation Program discussed in Section III, herein, which was passed in House Bills 2600 and 2976 and was subsequently implemented by the Office. A contingent recommendation regarding interagency contract authority for funding the program was adopted in conjunction with this recommendation. The Office's recommendation for the Insurance Purchasing Program, allowing the Office to provide full-service risk and insurance management services for state agencies, was also proposed in that Biennial Report and passed in House Bill 1203. Another significant recommendation from that report adopted by the Legislature was the "Date of Service" rider (Rider No. 3 in the Office's appropriation in the current GAA), which changed the structure of payments from the date on which the medical or related service was performed to the date when the bill was received by the Office. This rider eliminated the need for three separate open appropriation years spanning two distinct biennial claim fund appropriations and the need for sending payment for services performed outside the three open appropriation year period to the Comptroller's Office for processing as a miscellaneous claim (often literally requiring an act of the Legislature for ultimate payment).

Recommendations made by the Office but not implemented by the Legislature included a Gateway Physician program (a loss control program designed to make initial treatment more available and pro-active), a Vocational Rehabilitation Re-employment Services Program (to allow the Office to become more active in Return to Work initiatives), and strengthening of the Office's Fraud Detection Program.

In the Office's 2003 Biennial Report to the 78<sup>th</sup> Legislature the Office recommended clarifying that SORM was authorized to provide risk management services to Community Supervision and Corrections Departments under Chapter 412 of the Texas Labor Code in light of the Office's duty to provide workers' compensation coverage pursuant to Chapter 501. This recommendation was subsequently implemented by House 1230. Two recommendations were made with respect to statutory changes after court decisions in *Downs v. Continental Casualty Cos.* and *Fulton v. Associated Indemnity Corporation*. The *Downs* case dealt with carrier waiver of the right to dispute a claim (specifically that failure to pay or dispute a claim within seven days resulted in such a waiver, despite other statutory language granting 60 days) and the *Fulton* case with a time limit for disputing a finding of Maximum Medical Improvement (MMI) (specifically respecting the court's determination that the Texas Workers' Compensation Commission lacked statutory authority to designate such a time limit). The Legislature clarified that failure to dispute a claim within seven days was cause for sanctions but did not constitute waiver, and provided statutory language authorizing the designation of a time limit for MMI disputes.

The Office also recommended the Legislature consider utilizing SORM for expanded Business Continuity Planning (such plans being then limited to information resources functions only, not to other core agency functions) in the wake of 9/11 and Tropical Storm Allison. This recommendation was not implemented with respect to SORM as other efforts were already underway under the auspices of Homeland Security. Another recommendation dealt with a potential ambiguity respecting attorney fees in third party lawsuits in which an employee or beneficiary representative collects fees from both a settlement and the lien filed by the Office. This was largely a theoretical issue for consideration by the Legislature, and was not pursued.

In the Office's 2005 Biennial Report to the 79<sup>th</sup> Legislature, SORM recommended consideration of two issues, both involving clarification of the scope of Chapters 412 and 501 of the Texas Labor Code, respecting participation in the Insurance Purchasing Program and the Cost Allocation Program. These matters were not directly addressed by the 79<sup>th</sup> Legislature in the scope of the sweeping workers' compensation reforms implemented in House Bill 7, and are included in more detail in the Policy Matters, Section IX, herein.

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

The Office provides coverage and risk management services for all state agencies subject to Chapters 412 and 501 of the Texas Labor Code with the exception of the Texas A&M System (A&M), the University of Texas System (UT), and the Texas Department of Transportation (TxDOT). These entities operate separate workers' compensation and risk management programs pursuant to Texas Labor Code Chapters 502, 503, and 505, respectively. (Texas Tech University is partially exempted and operates its own risk management program, but workers' compensation services are statutorily provided by the Office pursuant to Texas Labor Code 501.022.)

The Employees Retirement System (ERS) and Teacher Retirement System (TRS) have authority pursuant to recent legislation (HB 2425, 78<sup>th</sup> Legislature; SB 1691, 79<sup>th</sup> Legislature) to obtain the services provided by the Office through other means, but currently both are participating in the Office's programs with separate cost

reimbursement methodologies from other participating agencies. (See Attachment 20, Attorney General Opinion No. GA-0075, issued May 22, 2003.)

Since the employees covered by the programs of A&M, UT and TxDOT and the Office are distinct and these entities have statutory provisions applicable specifically to them in the Labor Code, there is not currently an overlap or duplication. Although the Legislature has considered bringing A&M, UT, and TxDOT within the scope of responsibility of the Office, it has been consistently determined that the programs operated by those entities are well-developed and successful, and that the efficiencies and savings achieved by those long-standing programs could be temporarily endangered by transition and consolidation with the Office's program.

With respect to ERS and TRS, in the absence of specific statutory authority similar to the Texas Labor Code chapters applicable to A&M, UT, and TxDOT, a withdrawal from the Office's program would create overlap and duplication (and possibly significant unfunded liabilities) unless all existing claims for personnel of these agencies were transferred along with responsibilities associated with risk management and workers' compensation coverage.

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

States' approaches to state employee workers' compensation coverage vary substantially, but the majority of states' workers' compensation programs are administered either by a central personnel, employee benefits or administrative agency, or by a separate entity that administers the workers' compensation program exclusively. The Office has not been able to obtain detailed comparative studies of states' approaches to state employee coverage in particular, but from a review of available resources it appears most states have established similar self-insurance programs for the coverage of state employees. In some states (Kansas, Illinois, Minnesota, South Dakota, for example) these programs are operated as part of the overall health insurance and retirement programs within larger state entities dealing with administration and personnel matters. The involvement of the programs varies as well, with some state employee workers' compensation divisions (Tennessee, Iowa, and Kentucky, for example) essentially acting as intermediaries and liaisons, facilitating the outsourcing of claims to Third Party Administrators (TPAs) and contracting for medical services via health care networks.

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

One key obstacle consists of challenges to the Office's statutory authority. The Office is authorized and required to report non-compliance with relevant law to the Legislature, but is not given specific enforcement authority. Thus, the Office cannot compel compliance by a constituent agency in the event of the failure to report information or data, or failure to comply with statutory directives or the Office's administrative rules, or challenge to the Office's determinations based upon those directives and rules. Non-compliance by any agency or group of agencies has the significant potential to endanger the financial viability of the risk pool and prevent the Office from fulfilling its statutory mandates.

A second key obstacle, which the Office does certainly understand is not unique to it alone, deals with resources available for fulfilling those statutory mandates. That resource is skilled staff. At SORM, turnover of staff has a significant monetary impact. Since the State of Texas self-insures for the purposes of workers' compensation, it is the Office's responsibility to ensure that claims are paid consistent with the Legislature's intent. Achieving that mission requires consistent monitoring and effective control of costs. Experienced and knowledgeable claims staff are the Office's and the State's front line defense against excessive costs. During the FY 2004-05 biennium the Texas Department of Insurance conducted a study for the Senate Select Interim Committee on Workers' Compensation, finding that medical costs at the State Office of Risk Management

were higher than for the UT, A&M and TxDOT systems during a three-year study period. Notably, that study overlapped a cumulative turnover of 108 percent in claims adjusting staff from FY 1998 – 2000.

Ironically, the Office's emphasis on staff development and expertise has made those same staff members more desirable in the private market. As a result, the Office is greatly concerned with the re-emergence of turnover as a significant issue. Each of the Office's adjusters is currently responsible for oversight of approximately \$1.4 million in claims expenditures each year - yet we can only compensate those adjusters an average of about \$33,000.00 at current funding levels. While the Office does not have salary figures for staff at UT, A&M, and TxDOT, documentation provided to the Legislature during the interim by those programs indicated that staff with those programs are paid significantly better than the Office's personnel and those programs have far less significant turnover problems.

These facts are not lost on the Office's front-line staff. A recent Survey of Organizational Excellence confirms that the Office, while scoring very high in all aspects of employee satisfaction, ranks very low in pay. (See Attachment 15.) Adjusters who leave the Office for the private sector do so for an average 22 percent increase in salary, and in the first quarter of FY 2005 alone the Office lost six experienced claims staff, representing 15 percent of the claims adjusting staff. Without steps to staunch that loss, the Office cannot continue its success in reducing workers' compensation costs, and a return to escalating costs patterns common to the industry is possible.

Importantly, the Texas Workers' Compensation Commission, which has traditionally assisted the Office in identifying and correcting deficiencies rather than levying punitive penalties for compliance issues, has recently issued considerable monetary fines against the Office for past errors - errors which have not been generally shown to be either willful or intentional and fines for which the Office was not appropriated funds for payment. While it is not the position of the Office that such fines are a wholly inappropriate mechanism for ensuring that insurance carriers comply with the mandates of law, particularly in situations of recalcitrance or deceit, when errors are largely caused by factors like turnover or unintentional errors, which the Office is already struggling to control, such fines actually serve to reduce the very resources needed to prevent those same compliance issues from occurring, creating a cycle of diminishing effectiveness. This may have highly detrimental effects if such a policy is continued by the Texas Department of Insurance's Workers' Compensation Division. House Bill 7, 79<sup>th</sup> Legislature, makes compliance issues strict liability offenses, and unintentional errors can result in fines of up to \$25,000 per day. Because the human element virtually guarantees at least some unintentional errors will occur, such fines may have an incredibly damaging impact on the Office in particular.

**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).**

Because the workers' compensation system is adversarial by design, there are at any given time, a number of legal disputes which may affect the administration of workers' compensation claims by the Office. These matters are generally driven by changes in law, or changes in the interpretation of law by the courts and by the agency that is designated to oversee the workers' compensation system and resolve disputes.

With regard to legislation, House Bill 7, 79<sup>th</sup> Legislature, Regular Session, introduces substantial changes to the structural make-up of the workers' compensation oversight and administration function, including abolishing the Texas Workers' Compensation Commission and transferring most of its responsibilities to the Workers' Compensation Division of the Texas Department of Insurance. A summary detail of the provisions of House Bill 7 prepared by the Office is included as Attachment 21 to this document. Also included is Attachment 22, the Office's Fiscal Note submission prepared for the Legislative Budget Board identifying

specific potential impacts of this legislation on the Office and Attachment 23, 79<sup>th</sup> Legislature Bill Matrix, Regular Session, tracking bills affecting SORM and its client agencies.

At present, the Office has two pending legal matters bearing mention here:

*SORM v. Herrera and TML.* This matter involves the application of Texas Labor Code §501.001(c), relating to the coverage by SORM of peace officers who are exercising certain authority while outside their jurisdiction. In this case a peace officer for the City of Friona was killed on duty while engaged in a vehicle chase in a neighboring county. The insurer for the City of Friona denied coverage and the claim was submitted to the Office. The Office agreed to initiate benefits pending determination of whether §501.001(c) applied. The Texas Workers' Compensation Commission determined the Office was liable, but did not answer the underlying statutory coverage and compensability issues sought to be clarified by SORM and TML. The decision was certified for district court judicial review, but attorneys for the beneficiaries sought and obtained a dismissal on the basis that the court did not have subject matter jurisdiction. This issue and the underlying coverage and compensability questions are now pending review with the appellate court in Amarillo. The determinations in this matter will instruct on the proper consideration and handling of these special cases.

*SORM v. Conley.* A petition for review by the Texas Supreme Court has been authorized by the Solicitor General in this contribution/recoupment case. In this matter a claimant with multiple workers' compensation claims secured multiple impairment ratings, for which the law provides indemnity benefits in the form of Impairment Income Benefits, or IIBs. However, the timing of the ratings led to the Office's payment of IIBs on the subsequent injury prior to the preceding injury. The Texas Workers' Compensation Commission determined the SORM was entitled to contribution (a mechanism by which a carrier takes "credit" for existing impairment), but determined SORM could not actually recoup the overpayment because the contribution was not being taken from an "earlier" compensable injury. Thus the Office was ordered to pay the claimant twice for the same physical impairment. This holding ran counter to the Commission's position that any claimant should receive the benefits he or she is entitled to under the law--no more or no less – and the Office appealed the determination on equitable remedy grounds to safeguard against potential future fraud and abuse. The trial and appellate courts (with dissent) ruled against SORM given the silence of the Workers' Compensation Act on this direct issue. The determination in this matter will identify whether such statutory deficiencies should be addressed.

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

The reforms of the workers' compensation law, and systems enacted by the Legislature in House Bill 7 represent a sea change in how claims will be adjusted and managed and have the potential for large savings if they result in better return to work outcomes for injured workers. One of the most significant opportunities for the Office currently being pursued as a result of House Bill 7 relates to the establishment of Workers' Compensation Health Care Networks. Studies have shown that the single largest cost driver in Texas has been overutilization of healthcare in the workers' compensation system. With the implementation of mandatory networks the opportunity to control overutilization through effective, well-regulated networks may produce significant cost savings and efficiencies.

Efforts by the Texas Department of Insurance to develop rules associated with the contracting and use of such networks are already underway, and the Office itself is in the process of developing specifications for the procurement of network services under this authority. Additional information regarding these networks is provided in the summary of House Bill 7, Attachment 21, and projected savings are outlined in the Office's prepared Fiscal Note, Attachment 22.

The increased use of existing technology represents a significant opportunity for improvement of the Office's claims handling and risk management programs. Improving automation for the processing of bills and documents has been a long-standing emphasis for the Office which has a well developed and mature claim management system (CMS) that was developed for the program while it was a division of the Office of the Attorney General. Experienced adjusters who join the agency with experience using other Carriers' systems often comment on the power and ease of use of our CMS. In addition the Office was able to implement document imaging shortly after its creation to begin the conversion to a "paperless office" and the Office currently images claim documents as they are received, making those documents instantaneously available to adjusters online. These are important tools to modern adjusting practice and have made a large contribution to the Office's success and transition toward a paperless environment.

The next step in this evolution is the seamless integration of images and data to eliminate redundant keystrokes and ensure that adjusters have the exact piece of information they need at the precise moment that it is needed. The Office has also sought numerous efficiencies in automation, both internally and through its medical cost containment vendors. External interfaces will offer opportunities for combating fraud and ensure timely actions are taken by adjusters. For example, one common type of fraud is "working and drawing" (in which an injured worker may be earning unreported wages while receiving disability benefits). SORM is proposing an automated interface with the Texas Workforce Commission and the Child Support New Hire Database which would allow automated identification of injured workers who obtained new employment while being paid disability benefits and would simultaneously promote effective payment of court ordered child support through withholding of benefits as required by law.

Many other technological solutions are currently in the process of evaluation, design and implementation, including initiating the use of bar coding to provide automated data entry in the Office's systems; redesigning and integrating the claims management system; and developing a comprehensive Risk Management Information System (RMIS) to simplify reporting, data analysis, and content management. The RMIS uses a web-based platform and open-source architecture and is intended to assist client agencies in actively and effectively managing their individual risk management programs. The RMIS will collect state loss information, assist agencies in identifying and analyzing exposures, and recommend mitigating strategies to reduce losses. The RMIS will also create a unique risk management plan for each agency and provide the agencies with continuous feedback on program effectiveness by tracking agency performance over time and ranking agency exposures and losses against statewide standards.

Because of the nature of the Office's work, technological solutions alone will not solve all of the daily challenges, and as noted above, the Office must rely heavily on highly skilled and experience staff. Staff development initiatives have shown that adequate training has a direct impact on improved claims handling, and maintaining a qualified and educated staff will have a significant effect on the bottom line. The ultimate key will be promoting staff retention by paying a market-based salary for key staff, but until such time as the Office can develop resources to increase salaries it must continue develop and provide effective programs to train and license new adjusters.

Further, the Office is currently evaluating the feasibility of an adjuster bill review process, whereby the adjuster assigned to the claim approves final payment recommendations made by the Office's cost containment vendor. This is a common practice in the industry but is not implemented at SORM as a result of recommendations made early in the Office's existence to address the problem of excessive caseloads and the resulting adjuster responsibilities. With caseloads declining due to refined policies and updated procedures, the possibility of reintroducing bill approval responsibilities to adjusting staff may improve the Office's ability to identify anomalous activity and detect fraud.

Finally, as discussed in more detail in Section XII, Policy Matters, an analysis and possible change in the historical funding methodology of the Office may also represent a significant opportunity for improvement, allowing the Office to operate like a business and take full advantage of opportunities to manage claims in a cost-effective manner. Historically the Office has been forced to make unfavorable business decisions because of the lack of flexibility in its funding, especially paying more for medical services than it should because it could not spend a smaller amount to take advantage of contractual discounts available through its PPO network. In numerous discussions and presentations to the Legislature and others, this has been described and become generally known as the “left pocket/right pocket” dilemma. Flexibility could be attained without the need for additional funding simply by unifying the funding source and eliminating the distinction between administrative funds spent to reduce claims expenditures versus actual claims expenditures. The net effect of this transfer of funding source is consistent with reducing total costs. When agencies were made responsible for 25 percent of cash basis costs in the system, injury frequency rate and occurrence of claims experienced a rapid and sustained reduction, leveling off as agencies adjusted to the expense. After introducing the Cost Allocation Program in FY 2002, a similar reduction was experienced. The Legislature’s vision of making the true costs of injuring workers’ more evident to agency-employers has been shown to be very effective in reducing injuries and ultimate costs. At present, much of the work of the Office is funded through General Revenue, and the cost and attendant liability of the function is not fully recognized.

**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.**

<b>State Office of Risk Management</b>			
<b>Exhibit 2: Key Performance Measures — Fiscal Year 2004</b>			
<b>Key Performance Measures</b>	<b>FY 2004 Target</b>	<b>FY 2004 Actual Performance</b>	<b>FY 2004 % of Annual Target</b>
Incident Rate of Injuries and Illnesses Per 100 Covered Full-time State Employees	4.90%	4.13%*	84.27%
Cost of Workers’ Compensation Per Covered State Employee	440	358*	81.31%
Number of Written Risk Management Program Reviews Conducted	32	32	100.00%
Number of On-site Consultations Conducted	250	250	100.00%
Number of Medical Bills Processed	198,000	209,132	105.62%
Number of Indemnity Bills Paid	69,000	56,877	82.43%
Average Cost to Administer a Claim	335	383**	114.33%

\* This data includes updated information from that reported via ABEST in October of 2004. The current calculated FY 2004 IFR is 4.13 percent rather than the 3.99 percent. The Office noted in the explanation

when the performance measures were submitted that "[t]he calculated IFR may rise slightly as additional claims for injuries occurring in FY 2004 are filed and FTE data for the fourth quarter is issued but will still be a significant decrease over the previous biennium and the target amount." The difference is due to accepted claims with dates of injury in 2004 currently at 7,024 as opposed to 6,959 as of October 1, 2004, and to actual average FTEs for FY 2004 of 170,114 rather than the estimated 174,541 FTEs used for the performance measure calculations. The increase in the cost per covered employee from the \$349 submitted to the currently calculated \$358 is due entirely to the update for actual FTEs.

\*\* The Office notes that cost per claim administered was higher than the target amount due to the substantial decrease in the number of claims administered from the previous year. The actual performance for this measure is expected to continue to increase for FY 2005. Lower case load as a result of workers' compensation and risk management initiatives is a major factor in the decrease of the outcome measure of average cost per covered employee due to the decrease in claim costs but is also responsible for the increase in this measure since the dividend (number of claims) is lower, while the divisor (administrative expenses for the program) has stayed at roughly the same level. From an overall standpoint, the outcome measure of average cost per covered employee may be a better indicator of the efficiency of the program since the calculation of average cost per covered employee includes both the relatively static administrative costs and variable (reduced) claim costs, while the average cost to administer a claim takes only administrative costs into account.

### 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).**

1991 The Comptroller's Office publishes its Texas Performance Review report entitled "Breaking the Mold: New Ways to Govern Texas." The report recommends the Risk Management Division of the Texas Workers' Compensation Commission study the feasibility of an insurance pool funded by state agencies from their budgets, including possible pool administrators and state agency incentives and back-to-work incentives for state employees, for consideration by the 73<sup>rd</sup> Legislature.

1994 The Comptroller's Office publishes its Texas Performance Review report entitled "Gaining Ground: Progress and Reform in Texas State Government." The report proposes the Legislature add funding for workers' compensation claims to each agency's budget, accompanied by cost-containment incentives and clearly-stated guidelines to increase accountability. Specifically recommended is merging the risk management function of the Texas Workers' Compensation Commission with the Attorney General's Workers' Compensation Division to streamline services.

1995 The House Business and Industry (B&I) Committee concludes an interim study of the method by which the State provides workers' compensation insurance coverage to its employees. The

recommendations of the B&I Committee and the Legislative Oversight Committee on Workers' Compensation make recommendations regarding the state's workers' compensation program. HB 1589, 74<sup>th</sup> Legislature, proposes the establishment of the State Office of Risk Management. The bill includes A&M, UT, and TxDOT and includes an allocation methodology. The bill passes out of the House but dies in committee in the Senate.

Agencies are required beginning in the FY 1996-97 biennium to reimburse the Workers' Compensation Division of the Attorney General's Office for 25 percent of their cash basis claims costs. This requirement is unfunded. The appropriation for workers' compensation claim payments is reduced from 100 percent of expected cash basis costs to 75 percent. (House Bill 1, 74<sup>th</sup> Legislature, Art. 9, Sec. 75. *See also* Rider No. 3 in the bill pattern for workers' compensation payments.)

- 1997 HB 2133, 75<sup>th</sup> Legislature, creates the State Office of Risk Management effective September 1, 1997, merging the responsibilities of the Risk Management Division of the Texas Workers' Compensation Commission under Chapter 412, Texas Labor Code, with the duties of the Workers' Compensation Division of the Attorney General's Office under Chapter 501, Texas Labor Code. The Office remains administratively attached to the OAG but is a separate and independent agency. The bill exempts A&M, UT, and TxDOT from SORM authority. The Legislature creates an allocation program to encourage state agency safety and risk management efforts by requiring that a subset of agencies (16 total) pay an increased portion of their workers' compensation costs. However, several provisions of the initial allocation program conflict with provisions of the General Appropriations Act and agencies express significant reservations, and the proposed allocation program does not operate. Funding reverts to the FY 1996 structure and the Office is appropriated 75 percent of claims costs with each covered state agency required to reimburse the remaining 25 percent out of its budget.
- 1999 HB 2509, 76<sup>th</sup> Legislature, deletes the flawed portion of cost-allocation program for financing state employee workers' compensation benefits and requires SORM to propose a feasible program to the 77<sup>th</sup> Legislature and makes other changes recommended by the Office in its first Biennial Report. The bill also allows state employees to elect to use sick and annual leave prior to receiving workers' compensation indemnity benefits. HB 2706 expands coverage under Chapter 501 to persons who are injured while performing volunteer services for the State in a disaster or during scheduled emergency response training. SB 525 further extends coverage under Chapter 501 to a member of the state military forces who is engaged in authorized training or duty.
- 2001 HB 2600 and HB 2976, 77<sup>th</sup> Legislature, establish a cost-allocation program based on a "risk-reward" model proposed by SORM, in which agencies are responsible for 100 percent of their costs through a risk-pool concept funded by an annual assessment for each agency. In contrast to the earlier FY 1996 change, this program is a funded change. The "risk-reward" element for agencies relates to the increase or decrease in an agency's assessment in relation to its baseline appropriation. SORM begins the "reallocation" process in conjunction with the Comptroller and LBB whereby the General Revenue appropriated to the Office is reappropriated to participating agencies as part of each of those agencies' baselines. If an agency's assessment increases because of poor performance, the agency must find new funding in its budget or ask for a special appropriation. If an agency's performance improves—lower injuries/lower claims costs—the agency could use the available savings elsewhere.

HB1203 establishes the Insurance Purchasing Program, requiring agencies covered under Chapter 412 to purchase insurance coverage under any line of insurance other than health or life insurance through the Office and for the Office to develop an implementation schedule for the purchase of insurance. The Board is required to phase in, by line of insurance, the requirement that a state agency

purchase coverage only through SORM. The bill prohibits a state agency from purchasing property, casualty, or liability insurance coverage without Board approval.

The relevant bills result in total decreases to the 2002-03 biennial claim payment General Revenue appropriation to the Office by approximately \$3.425M, and result in total increases to the Risk Management strategy for implementation of the new Legislative initiatives of \$791,000 for FY 2002 and \$768,000 for FY 2003. Even after the \$3.425M reduction, approximately \$10M of the original biennial GR claim payment appropriation is returned to the Treasury.

2002 The Office phases in the Directors' and Officers' with Employment Practices Liability insurance line as part of the Insurance Purchasing Program authorized by HB 1203, 77<sup>th</sup> Legislature. Interest in the new allocation program increases after distribution of assessments for FY 2002 to state agencies. Some agencies raise concerns regarding the adopted assessments model and ask SORM to adjust its calculation formula. SORM holds a series of taskforce meetings with interested agencies and after official additional public comment the SORM Board modifies the rules using a "synthesis model." The new rules synthesize and incorporate agency suggestions and the Board adopts revised FY 2003 assessments.

2003 The Office phases in the Special Event General Liability insurance line as part of the Insurance Purchasing Program authorized by HB 1203, 77<sup>th</sup> Legislature. The Employee's Retirement System and Teacher Retirement System object to being subject to the allocation program established by the Legislature. The Office requests an Attorney General determination and Opinion No. GA-0075 is issued on May 22, 2003, finding ERS and TRS may reimburse costs outside the allocation program pursuant to Texas Labor Code §506.002. In the interim, HB 2425, 78<sup>th</sup> Legislature, is amended on the floor of the Senate to exempt ERS from Chapter 412 of the Labor Code.

HB 1230 requires the Office to provide risk management services for employees of community supervision and corrections departments established under Chapter 76, Government Code, as if the employees were employees of a state agency. HB 2166 requires the Office to provide workers' compensation coverage for non-state-employed Texas Task Force 1 members when activated by the governor's office or during team training activities. In addition, the Office's Board members are reduced from six to five in the statewide effort to establish odd-numbers of Board members.

In February, 2003 the Office, along with most agencies, is required to reduce General Revenue expenditures for FY 2003 by 7 percent, or approximately \$351,000. A subsequent 12.5 percent reduction in actual GR 2002-03 expenditures for the 2004-05 biennium results in an additional \$1.26M reduction for the biennium, or an annual average reduction of \$630,000. House Bill 1 appropriates \$2.6M for FY 2005 in IAC authority for medical bill cost containment. While the Risk Management program has historically been funded by IAC, this is the first non-GR authority appropriation for administration of the Workers' Compensation program. (Although the IAC authority is for the full amount of requested authority for medical bill cost containment, \$531,000 in GR appropriated in FY 2004 is mandated by rider to be used through UB authority to reduce the actual amount collected by IAC for the purposes of transition in order to limit the IAC collections to only the amount necessary to cover the shortfall in GR funding.)

2004 The Office phases in the Statewide Automobile Program and Volunteer insurance lines as part of the Insurance Purchasing Program authorized by HB 1203, 77<sup>th</sup> Legislature.

An interim study is conducted by the Texas Department of Insurance comparing the state's self-insurance programs administered by SORM, A&M, UT and TxDOT. The study reveals the Office's

costs are similar to private sector expenditures, but higher than the programs administered by the other self-insured state systems. Causative factors after analysis of TDI’s data are identified by the Office to include substantial differences in health care network utilization, staff turnover and salaries, and weaknesses in the Office’s cost containment program. The Office implements modifications to claims procedures and organization, implements a study of health care network feasibility, and establishes new FY 2005 contracts for medical cost containment services.

2005 HB 7, 79<sup>th</sup> Legislature, abolishes TWCC and establishes authority for workers’ compensation health care networks (summary attached). HB 1428 passes providing injury leave with 100 percent salary and related benefits for certain state peace officers injured in the course of performance of duty. The bill is amended to clarify that such salary is not received simultaneously with workers’ compensation indemnity benefits.

SB 310 reverses the established burden of proof in occupational disease claims for certain emergency first-responders, creating a rebuttable presumption of relatedness for certain illness. SB 1691 secures TRS a similar exemption from the application Texas Labor Code Chapter 412 as was provided to ERS during the 78<sup>th</sup> Legislative session.

The Office complies with a requested 10 percent reduction in its requested GR for the 2006-07 biennium, but requests annual IAC funding of \$2.185M for medical cost containment over the approximate \$315,000 in GR available within the 90 percent baseline. The LBB recommends an additional annual GR reduction of \$719,000 coupled with a recommended increase in IAC funding of \$280,000, resulting in an annual net reduction of \$439,000. Approximately half of the GR reduction is ultimately restored to ensure continued operation of the Office, but Senate Bill 1 results in annual reductions from the baseline request of \$500,000 less in GR, an increase of \$281,000 in IAC authority, and a net funding decrease of \$219,000.

#### IV. Policymaking Structure

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

<b>State Office of Risk Management Exhibit 3: Policymaking Body</b>			
<b>Member Name</b>	<b>Term/ Appointment Dates/ Appointed by ___ (e.g., Governor, Lt. Governor, Speaker)</b>	<b>Qualification (e.g., public member, industry representative)</b>	<b>City</b>
Ernest C. Garcia, J.D., Chair**	Appointed by Governor for term to expire February 1, 2009	Insurance/Attorney	Austin
Ron J. Walenta, Vice-Chair**	Appointed by	Risk Management/	Dallas

	Governor for term to expire February 1, 2011	Consultant	
Martha A. Rider*	Appointed by Governor for term to expire February 1, 2007	Risk Management/ County Risk Manager	Houston
Dr. Ronald D. Beals*	Appointed by Governor for term to expire February 1, 2007	Occupational Medicine/Physician	Tyler
Kenneth N. Mitchell**	Appointed by Governor for term to expire February 1, 2009	Insurance/Agent	El Paso

\*Appointed in 1997. \*\* Appointed in 2005.

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

Rulemaking authority to implement Chapters 412 and 501 of the Texas Labor Code is vested with the Board of Directors of the State Office of Risk Management (Board), including adopting rules relating to reporting requirements for a state agency. The Board reports to each Legislature on the methods to reduce the exposure of state agencies to the risks of property and liability losses, including workers' compensation losses; the operation, financing, and management of those risks; and the handling of claims brought against the State. The Board is also responsible oversight of the agency and for hiring the Executive Director of the Office.

**C. How is the chair selected?**

The Chair is designated by the Governor.

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

Members of the Board must have demonstrated experience in the fields of insurance and insurance regulation, workers' compensation, and risk management administration. Our current Board represents the fields of law, occupational medicine, public and private risk management and insurance.

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

**2004? in FY 2005?**

Generally, the Board is scheduled to meet at least quarterly. The Board may meet more frequently when matters requiring Board approval are subject to time constraints or Board members indicate a desire to address matters with staff requiring full Board action. The Board met a total of six times in each of FYs 2004 and 2005.

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

Texas Labor Code §412.022 establishes the training program for Board members, including information on:

- the enabling legislation that created the board;
- the program operated by the board;
- the role and functions of the board;
- the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- the current budget for the board;
- the results of the most recent formal audit of the board;
- the requirements of the open meetings law, Chapter 551, Government Code; the public information law, Chapter 552, Government Code; and the administrative procedure law, Chapter 2001, Government Code;
- the requirements of the conflict of interest laws and other laws relating to public officials; and
- any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

The Office does not currently have policies that describe the respective roles of the policymaking body and agency staff in running the agency. The duties of the Executive Director and the Board are generally delineated by the Labor Code.

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

Board members are kept advised of significant matters via email correspondence from Office staff, as well as provided formal written and verbal updates by staff at each scheduled Board meeting. In particular, updates on finance and budget, claims costs, insurance purchasing program activities, staff turnover, legislative matters, and workers' compensation/risk management program developments are routinely discussed either as separate agenda items or as part of the Executive Director's formal report to the Board during scheduled Board meetings.

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

Each scheduled Board meeting provides a posted agenda item for public comment. All proposed administrative rules are posted for comment and testimony at Board meetings pursuant to Texas Labor Code §412.041(k). The Office has also organized both formal and informal workgroups of interested parties and stakeholders to suggest modifications to agency rules and policies. The Board also receives public input through personal contacts and written correspondence addressed to the Executive Director and/or to the Board.

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

The Board does not currently utilize subcommittees or advisory committees to carry out its duties.

## V. Funding

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

The Office is funded with a combination of General Revenue and Interagency Contracts (IAC). The Risk Management program and Workers' Compensation Claim Payments are funded by IAC through annual assessments to state agencies pursuant to Chapter 412, Texas Labor Code. The assessments, similar to annual premiums, are determined by formula based on historic FTE, payroll, claims, and claims cost data. Beginning in FY 2005, a portion of the Pay Workers' Compensation strategy is also funded by IAC through the assessments. This funding will be primarily used for medical cost containment services and other costs directly related to reducing claim payments.

The remaining administrative expenditures for the Pay Workers' Compensation strategy, other than the limited IAC funding, are funded by a direct General Revenue appropriation.

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

The primary rider affecting the Office's budget is Section 6.34 in Article IX of the 2004-05 General Appropriations Act. For the 2006-07 biennium the same rider, with some changes, is Article IX, Section 6.30, entitled "Payments to the State Office of Risk Management (SORM)." This rider requires the payment of the annual assessment. Although the method of finance is IAC, this is not a voluntary program.

Another rider impacting the agency's budget is the current Rider Number 3 in the current GAA (Number 4 for the upcoming biennium). This rider allows unexpended balance authority within the biennium for the Pay Workers' Compensation strategy to be used to lower the amount of the annual assessments related to medical cost containment charged to agencies in the second year of the biennium.

**C. Show your agency's expenditures by strategy.**

<b>State Office of Risk Management Exhibit 5: Expenditures by Strategy — Fiscal Year 2004 (Actual)</b>	
<b>Goal/Strategy</b>	<b>Amount</b>
Goal 1.1/Risk Management Program	1,892,363.82
Goal 2.1/Pay Workers' Compensation	4,640,024.10
<b>SUBTOTAL:</b>	<b>6,532,387.92</b>
Goal 1.1/Workers' Compensation Payments (separate appropriation)	55,872,266.11
<b>GRAND TOTAL:</b>	<b>62,404,654.03</b>

**D. Show your agency's objects of expense for each category of expense listed for your agency in the General Appropriations Act FY 2005-2006.**

<b>Object-of-Expense</b>	<b>Workers' Compensation</b>	<b>Risk Management</b>
Salaries and Wages	2,711,875.00	1,394,980.31
Other Personnel Costs	316,788.50	181,932.31
Professional Fees and Services	1,181,744.91	3,211.40
Consumable Supplies	29,435.75	15,740.63
Utilities	5,242.60	1,810.26
Travel	79,008.43	44,704.29
Rent – Building	6,348.00	324.00
Rent – Machine and Other	13,104.47	5,495.23
Other Operating Expense	296,476.44	211,123.19
Capital Expenditures	0.00	33,042.20
<b>Subtotal</b>	<b>4,640,024.10</b>	<b>1,892,363.82</b>
Operating Costs (Workers' Compensation Claim Payments)	55,872,266.11	0.00
<b>Total</b>	<b>60,512,290.21</b>	<b>1,892,363.82</b>

**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.**

<b>State Office of Risk Management Exhibit 7: Sources of Revenue — Fiscal Year 2004 (Actual)</b>	
<b>Source</b>	<b>Amount</b>
General Revenue (includes \$531K mandated for UB into FY 2005)	5,332,623.00
Interagency Contracts (administrative appropriation only)	2,109,254.00
<b>SUBTOTAL</b>	<b>7,441,877.00</b>
Interagency Contracts (includes approximately \$6.5M carried forward from FY 2003, also includes \$7.8M carried forward into FY 2005)	62,462,421.86
Appropriated Receipts	1,221,393.70
<b>TOTAL</b>	<b>71,125,692.56</b>

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

The Office does not receive funds from federal programs.

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

The Office does not collect fees.

## **VI. Organization**

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

Included as Attachment 13.

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

The Office does not operate field or regional offices.

**C. What are your agency's FTE caps for fiscal years 2004 - 2007?**

The Office's FTE cap is 124 for FYs 2004 through 2007.

**D. How many temporary or contract employees did your agency have as of August 31, 2004?**

None.

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

State Office of Risk Management Exhibit 11: List of Program FTEs and Expenditures — Fiscal Year 2004		
Program	FTEs as of August 31, 2004	Actual Expenditures
Workers' Compensation	83.0	Administration: \$4,640,024.10 Claim Payments: \$55,872,266.11
Risk Management	34.5	\$1,892,363.82
<b>TOTAL</b>	117.5	\$62,404,654.03

## VII. Guide to Agency Programs

### 1. Workers' Compensation Program

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

<b>Name of Program or Function</b>	Worker's Compensation Administration
<b>Location/Division</b>	Austin
<b>Contact Name</b>	Terry Myers, Director of Claims Operations Stuart B. Cargile, Director of Fund Accounting Gail McAtee, Director of Agency Administration Stephen Vollbrecht, General Counsel
<b>Actual Expenditures, FY 2004</b>	Administration: \$4,640,024.10 Claim Payments: \$55,872,266.11
<b>Number of FTEs as of August 31, 2004</b>	83 (82.5 full time and 0.5 part time)

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

There are two main aspects of the Workers' Compensation Program, the Workers' Compensation Administration strategy and the Workers' Compensation Claim Payments strategy.

The Workers' Compensation Administration strategy is a broad based program encompassing a number of functional areas. This program centers on the Office's Division of Claims Operations, which is supported by the Office's Divisions of Agency Administration, Accounting, and General Counsel.

The objective of the Claims Operations Division is to deliver medical and indemnity benefits to State employees who suffer a compensable injury in the course and scope of their employment. Staff of the division perform investigations to determine compensability, authorize payment for medical services/treatments that are medically necessary and related to a compensable injury, and order payment of indemnity (wage replacement) benefits in accordance with the Texas Workers' Compensation Act as and when they accrue. The division currently includes five adjusting teams: three "lost-time" units assigned responsibility for specific agencies covered under the Office's program and two units assigned cases primarily involving medical matters. The Division also has a Medical Cost Containment Oversight Unit, which is responsible for the oversight of the Office's cost containment vendor(s) and performs quality assurance functions on internal operations.

Agency Administration assists Claims Operations through document processing functions, including mailroom activities and digital imaging of documents for the Office's electronic claims files. Accounting provides support for the preparation and mailing of state warrants to claimants, providers or other parties who are due benefits under the Act. General Counsel is utilized by Claims Operations to investigate fraudulent claims, pursue subrogation, and represent the Office at administrative dispute resolution proceedings.

Actual workers' compensation claim payments for indemnity and medical services are funded by a separate appropriation titled Workers' Compensation Payments. This appropriation is commonly referred to as the claim fund. With the exception of recovered funds such as subrogations, this appropriation has been funded since FY 2002 entirely by annual assessments to state agencies for annual workers' compensation coverage, similar to premiums. This funding structure is discussed in detail in subsection G of this section.

**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.**

As discussed above, the best and most direct individual evidence of the effectiveness and efficiency of the workers' compensation program is the significant overall reductions in indemnity and medical benefit expenditures from the Claim Fund. Indemnity costs were reduced by over \$4M in FY 2004 from FY 2003, largely as a result of risk management initiatives and increased scrutiny of claims. Medical expenditures were reduced by over \$10M during that same period. To further illustrate these reductions in the context of the medical cost containment, the Office was actually billed approximately \$129M in FY 2004 for medical treatments and services. That amount was reduced to just over \$32M in actual payment liability for the year through the ongoing cost-containment efforts of the Office. (In FY 2003 the Office was billed over \$111M, and paid less than \$43M.) In addition, concerted and cooperative internal efforts have resulted in increased identification of potential fraud and significant third-party recoveries and restitutions.

Further, the Office credits the reduction in the number of active open claims with ongoing medical and indemnity benefits being paid to both the evolution of the Claims Operations Division (discussed in more detail in Section D, below) and to the efforts of the Risk Management Division. The actual performance of the outcome measure of average cost per covered state employee is a direct indicator of the recent effectiveness and efficiency of this program.

**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 response to changing legal requirements, high claims loads and increasing turnover pressures, the Claims Operations Division has continued to evolve. These are not statutorily mandated changes, but rather internal improvements to organization and process which were designed to better fulfill original intent.

The division's emphasis on succession planning has developed basic claims administration skills in all available staff to help cushion the losses of experienced staff to the private sector. The division established a Customer Service Call Center in May of 2003 to enhance customer service, which simultaneously functions as an on-the-job training ground for in-house, entry-level claims adjusters and reorganized in early FY 2004 as a Medical Only Unit, by replacing administrative/clerical positions with licensed claims adjusters.

Short term results of these efforts have shown improved claims handling and reduced workloads for adjusters, allowed for closer scrutiny of claims and a higher closure ratio, and contributed significantly in reducing medical and indemnity claims costs.

At the beginning of the last biennium, each of the Office's lost time adjusters handled an average of 284 lost time claims, while medical only adjusters handled an average of 508 medical only claims. The Office has been successful in closing inactive claims with open reserves that previously incurred costs but received only minimal scrutiny from adjusters. Currently each lost time adjuster handles an average of 125 lost time claims and administrative adjusters handle an average of 175 medical only claims. This achievement represents the first time in the Office's existence that adjusters have handled workloads at or below the industry standard of 125 - 150 lost time claims and 300 - 350 medical only claims.

To address high medical costs the agency formed the Medical Management Review Team in August 2002, consisting of a registered nurse, a licensed vocational nurse, and skilled adjusters with a high level of medical knowledge. By uniting experienced adjusters with trained nurses, SORM has increased the monitoring of claims with significant medical activity, including auditing for provider fraud, over-utilization of medical treatment, and medical treatment not related to the injury.

The incorporation of the Medical Cost Containment Oversight Unit into the Claims Operations Division has provided better support for the claims unit, improved review of the processing of claim-related medical bills, and a streamlined method for auditing and administering the agency's medical cost containment contracts.

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

All employees covered under Chapter 501 of the Texas Labor Code who suffer a compensable injury in the course and scope of their employment are affected by this program. Compensability (eligibility for benefits) is determined by application of the Workers' Compensation Act and Rules.

In FY 2004 there were over 8,100 individual claims filed with the Office for workers' compensation benefits. The Office adjusts claims for agencies with high risk employees (Texas Department of Criminal Justice, Texas Youth Commission, Health and Human Services Commission, and the Department of Public Safety)

which make up 41 percent of the workforce covered by the state employees workers' compensation program but account for 71 percent of the claims filed.

**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 Claims Operations division is divided into five claims units, a Customer Service Phone Center, and a Medical Cost Containment Unit. Three of the claims units are assigned claims based on volume of clients from different agencies. The first two units are assigned the high-risk agencies which make up the majority of SORM's claim base: Team 1 handles TDCJ and TYC, while Team 2 handles HHSC; a third unit, handles DPS and all other agencies. Upon receipt of the file, Claims Operations performs the initial investigation of each reported injury claim and determines compensability. Claims Operations follows all claims until their conclusion to ensure that each injured state worker receives the health care, medical, and income benefits reasonably due, as and when accrued, according to the nature of the injury and periods of disability as appropriate.

A fourth claims unit, the Medical Management Team, was formed in August 2002 and is staffed with senior adjusters and nurses. This team identifies problematic claims where all indemnity benefits have been paid but which still experience extensive ongoing medical treatment. The team reviews the claims to determine the appropriateness of the ongoing treatment and takes action to defend the State's position through the use of peer reviews, independent medical examinations, and case management as necessary.

Claims Operations has instituted a customer service call center staffed by claims assistants, who are adjuster trainees proficient in SORM's claims management system and can provide claims information assistance to SORM customers. This function was solidified within the Medical Only claims unit, charged with adjusting routine medical only claims.

The lost time team supervisors assign all claims to the appropriate unit. If a claim is a routine medical only claim, it is assigned to the Medical Only Team; if it is a lost time claim or a claim involving more complex issues (whether or not there is lost time), it is assigned to a lost time adjuster on a lost time team. Once a claim progresses to the point that it requires increased scrutiny (and the only existing indemnity entitlement is Supplemental Income Benefits), the claim is reassigned to the Medical Management Team. In the event a medical only claimant begins losing time from work, medical expenses exceed \$5,000.00, or there are disputed issues in the claim requiring a dispute resolution proceeding, the Medical Only Supervisor transfers the claim to the Lost Time Team Supervisor responsible for the claim.

The Medical Cost Containment Oversight Unit provides the operations necessary for the Claims Operations division to process workers' compensation medical claims administrative oversight of the agency's medical cost containment services vendor. The unit consists of three sections: Medical Provider Assistance reviews and monitors the payments of all medical bills received by the agency, Case Management Review, with a registered nurse as coordinator, researches, reviews, and examines claims information and medical reports for corrective action and/or proper medical treatment plans; and Medical Bill Audit monitors the medical cost containment vendor's performance and identifies potential medical provider fraud and abuse, researches those allegations, and refers to SORM investigators as necessary.

The Office maintains specific written procedures for document processing, investigation of claims, procedures for specific benefit types, claim reviews, dispute resolution, information requests, quality assurance/compliance, and payment/accounting.

**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).**

Through FY 2004 the funding of this program, with the exception of the claim fund, was entirely by direct General Revenue appropriation. The majority of the administrative appropriation currently continues to be funded by GR. The Office does not receive federal grants or pass-through monies.

The claim fund, and as of FY 2005 a portion of the cost of medical cost containment within the administrative appropriation, is funded through annual assessments to state agencies. The portion of the total to be collected and charged to each agency is determined by a three year rolling average of FTEs, payroll, number of claims, and cash basis claim costs. The formula specifies that 12.5 percent of the total to be collected is based on FTEs, with each agency paying a portion of the 12.5 percent equal to its proportion of the sum of all members' FTEs. Payroll also accounts for 12.5 percent of the total collected, based on each agency's percentage of the sum of all payroll amounts. Cash basis claim costs accounts for 60 percent in the same manner with the number of claims being responsible for the remaining 15 percent. The number of claims is modified based upon each individual agency's injury frequency rate, or IFR.

Prior to the determination of each member's proportionate share of the 15 percent, agencies with an average IFR of less than 3.5 percent have their claims decreased by 5 percent, and those with an average IFR of more than 7.5 percent have their claims increased by 5 percent. This has the effect of charging agencies with infrequent injuries a lower per-claim cost and charging agencies with a high frequency of injuries a higher amount per claim. This provides an additional incentive to reduce injuries and also requires those entities responsible for costs to pay a higher share.

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

As discussed in Section II.E, the Office provides coverage and risk management services for all state agencies subject to Chapters 412 and 501 of the Texas Labor Code with the exception of the Texas A&M System (A&M), the University of Texas System (UT), and the Texas Department of Transportation (TxDOT). These entities operate separate workers' compensation and risk management programs pursuant to Texas Labor Code Chapters 502, 503, and 505, respectively. (Texas Tech University is partially exempted and operates its own risk management program, but workers' compensation services are statutorily provided by the Office pursuant to Texas Labor Code 501.022.)

There are situations in which certain non-state employees are eligible for compensation by the Office, and such employees and situations are designated by Chapter 501 of the Labor Code. Those individuals may have coverage through other parties, but such coverage may be preempted by the operation of Chapter 501. This issue is discussed below in the Policy Issues Section.

**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.**

Because the authority and responsibility of the Office is statutorily mandated, the Office generally avoids duplication and conflict by determining coverage pursuant to Chapter 501, Texas Labor Code. However, in the unique cases of ERS and TRS, which do not currently operate such programs but have the authority to obtain services outside of Chapter 501, provision of Chapter 501 services is specified by interagency contract.

**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 Office does not operate its workers' compensation program in conjunction with local, regional, or federal units of government, but does routinely cooperate with its client agencies in the investigation and administration of claims.

**K. If this program or function is contracted out, provide a description of how you ensure accountability for funding and performance.**

The bulk of the medical cost containment services are contracted out by the Office. Currently, the Office administers two medical cost containment services contracts, one for the audit and repricing of medical bills by CorVel Corporation, and one for preauthorization and the audit and repricing of pharmacy bills by Forté, Incorporated.

The contracts contain specific performance measures for which the vendors are held accountable, and the functions performed by the vendors are monitored by the Medical Cost Containment Oversight Unit of the Claims Operations Division, and by the Office of the General Counsel. Billing requirements for the vendors is detailed in the contracts and all submissions for payment are verified, audited, and reconciled by the Fund Accounting Division.

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

A disproportionate share of indemnity expenses is currently incurred through the payment of Supplemental Income Benefits, or SIBs. SIBs are significant in that they are quarterly benefits, each entitlement period equaling three months of payments. There are a number of serious issues with regard to SIBs which have been sought to be addressed by both the Legislature and the Commission over the years, with varying success. One of the most significant issues relates to the issue of waiver.

Currently, if a denial of entitlement to SIBs is delayed, or a technical error made in completing a form indicating carrier determination, the Commission may rule that a carrier has "waived" the right to dispute and entitlement for a full quarter of benefits is determined and ordered. That full-quarter aspect is problematic in its own right, with determinations that compliance with the statutory standards by an injured worker for even a minimal portion of the qualifying period (as little as a single day) can ensure entitlement for the entirety of the three-month period. House Bill 7 makes some changes to the SIBs structure, but it is currently unknown whether these matters will be rectified in the administrative rules or rulings of the Workers' Compensation Division.

The issue of unjust enrichment due to the application of technical deficiencies in the Act also introduces difficulties. The *Conley* case discussed in Section II.H. is such an example, or the questionable interpretation by the Commission of reimbursement provisions in the medical billing rules requiring that both the payment and a carrier's request for reimbursement of an overpayment be submitted within the same 45 day period from receipt. In the same way that carriers should not be allowed to gain financially by not paying a claimant an entitlement or a provider for a service where there is an entitlement to payment in accordance with the Act, a provider or claimant should not be permitted to retain money paid in error or that such parties were not otherwise entitled to. This is particularly important to the Office in operating as a responsible steward of State funds, and in enforcing the repayment of debts to the State. Related to this matter is the issue of the Subsequent Injury Fund, or SIF. The SIF is a fund operated by the Commission which, among other duties, reimburses overpayments made as a result of erroneous orders and determinations of the Commission. While the courts have ruled that reimbursement pursuant to statutory mandates is not discretionary, in practice the SIF often denies valid requests and there currently is no process for appealing these determinations.

One of the major administrative costs for the State Office of Risk Management is mandatory travel related to attending Benefit Review Conferences. Because these conferences are informal attempts to reach mediated agreements regarding disputes, when the parties do not agree to a resolution these conferences often become formalities for proceeding to the Contested Case Hearing level. Oftentimes the positions of the parties are based on statutory provisions which are not negotiable with respect to the Office. The Office does not have the authority to make determinations on what has been oft-deemed by the Commission in such conferences to be "nuisance value." The physical presence of the parties is often unnecessary and results in significant waste of state resources in matters which must ultimately proceed to a formal hearing. House Bill 7 limits the number of BRCs available in an effort to reduce such waste. However, while authorizing parties to appear telephonically, the bill requires the specific approval of the injured worker for granting such a request. It would be more appropriate to permit the Workers' Compensation Division to authorize telephonic appearances on the request of any party, independent of approval by other participants.

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

The Workers' Compensation Program is half of the State Office of Risk Management equation, and deals with events after an injury occurs. (The other half of the equation is the Risk Management Program discussed below, which deals with preventing injuries before they occur.) The Workers' Compensation Program by necessity must rely heavily upon skilled and knowledgeable personnel, both within the State Office of Risk Management and at the agency-employers.

When the Office receives notice that a state employee has been injured, a SORM adjuster immediately contacts the injured employee, the employee's physician, and the employing agency. Each covered agency is required to designate a "claims coordinator" as the primary point of contact between the Office's adjuster and the agency. It is the claims coordinator who is responsible for receiving notices of injury from employees and for submitting the required injury reports and notices to SORM and collecting statements from witnesses.

An adjuster calls the claims coordinator soon after receiving the injury report to verify that all the information on the report is correct, and early contact by the adjuster helps establish the facts of the on-the-job injury in complicated cases and aids in prompt medical treatment and payment of benefits that may be due. Early personal contact may also help to determine the possibility of third-party liability.

The adjuster will also call the claims coordinator periodically to obtain additional information or to verify that the employee has returned to work. It is important that the claims coordinator immediately notify SORM

when the employee has lost time or returns to work. Timely notification ensures that benefits are correctly paid to the employee.

Because of the importance of timely information in providing benefits and making proper determinations under the Act and Rules, the Office provides routine training and detailed information to claims coordinators and employer-agency staff. The Office's website includes substantial documentation for use by agency claims coordinators, including an in-depth Claims Coordinator Handbook. This handbook is available at [http://www.sorm.state.tx.us/Claims\\_Coordinator\\_Handbook/handbook.php](http://www.sorm.state.tx.us/Claims_Coordinator_Handbook/handbook.php).

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

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

The Office does not operate regulatory programs related to the licensing, registration, certification or permitting of any persons, businesses, or other entities.

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

Not applicable to the Office.

**2. Risk Management Program**

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

<b>Name of Program or Function</b>	Risk Management
<b>Location/Division</b>	Austin
<b>Contact Name</b>	Mike Hay, Director of Risk Management
<b>Actual Expenditures, FY 2004</b>	\$1,892,363.82
<b>Number of FTEs as of August 31, 2004</b>	34.5

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

The Risk Assessment and Loss Prevention Division (RALP) of the Office provides active leadership to enable

State of Texas client agencies to protect their employees, the general public, and the state's physical and financial assets. The objective of the program is to assist client agencies in identifying exposures that could result in losses. The Office maintains active guidelines and employs risk management specialists who recommend mitigating strategies to agencies and track agency resolution efforts over time. These services are provided to client agencies through comprehensive individual agency risk management program reviews (RMPRs) and on-sight consultations (OSCs).

This division is also responsible for the Insurance Purchasing Program instituted by House Bill 1203, 77<sup>th</sup> Legislature, requiring agencies covered under Chapter 412 to purchase insurance coverage under any line of insurance other than health or life insurance through the Office and for the Office to develop an implementation schedule for the purchase of insurance.

**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.**

In FY 2004, the division conducted 32 Risk Management Program Reviews and 250 On-Site Consultations, including ergonomic workstation assessments. During this period of time, there were 80 after-visit surveys mailed, and 60 of these were completed and returned to the Office. Out of the surveys returned, 100 percent answered that they felt the observations, recommendations and estimated completion dates were indeed beneficial. Seventy-two percent of the respondents strongly agreed and 28 percent agreed that the RALP risk management visits and recommendations were valuable and were helpful in minimizing and controlling losses.

In FY 2004, 327 Action Items were closed, and 261 items remained open. Seventy-five of these were closed in FY05. Additionally, the cash-basis cost of risk for client agencies decreased by 2 percent (\$2.6 million) from FY 2003 to FY 2004.

**State Office of Risk Management  
Client Agencies Cost of Risk for FY03 & FY04  
As of 8/31/04**

Cash Basis	FY03	FY04	Incr/(Decr)	% Incr/Decr
State Agency Risk Management Programs	\$ 27,262,588	\$ 33,029,737	\$ 5,767,149	21%
Workers' Compensation Claims Paid (Net of Subrogation)	69,012,558	54,650,872	(14,361,686)	-21%
Cost Containment	1,279,956	1,146,711	(133,246)	-10%
Settlements and Judgments	3,512,080	5,653,484	2,141,404	61%
Bonds, Insurance & Deductibles	11,732,279	15,417,895	3,685,616	31%
Actuarial Services	12,000	4,500	(7,500)	-63%
Court Costs & Attorney Fees	1,901,062	1,866,369	(34,693)	-2%
Statewide Risk Management & Claims Administration (AY)	6,086,276	6,458,034	371,758	6%
Lost, Damaged and Destroyed Property (Net Book Value)	539,687	504,585	(35,102)	-7%
<b>Total Cash Basis</b>	<b>\$ 121,338,486</b>	<b>\$ 118,732,186</b>	<b>\$ (2,606,299)</b>	<b>-2%</b>
<b>Accrued Costs (Workers' Compensation)</b>				
Reserve for Future Claims Payment	\$ 63,259,241	\$ 50,992,367	\$ (12,266,874)	-19%
IBNR	67,860,000	84,966,000	17,106,000	25%
<b>Total Accrued Costs</b>	<b>\$ 131,119,241</b>	<b>\$ 135,958,367</b>	<b>\$ 4,839,126</b>	<b>4%</b>
<b>TOTAL COST OF RISK</b>	<b>\$ 252,457,727</b>	<b>\$ 254,690,553</b>	<b>\$ 2,232,827</b>	<b>1%</b>

Perhaps the best and most direct individual evidence of the effectiveness and efficiency of the Risk Management Program is how many injuries have been prevented. Injury frequency rate has declined to its lowest level in the history of the program.

The Insurance Purchasing Program implemented four lines of sponsored insurance to date, available to all covered state agencies: Directors' and Officers' with Employment Practices Liability, Special Events General

Liability, Automobile, and Volunteer policies. Measurable savings as a result of centralizing these state insurance purchases have exceeded half a million dollars thus far, and savings are expected to continue to grow as new lines are implemented. Additional savings have almost certainly been realized from the consultation services provided to client agencies regarding other policies outside the sponsored lines but the Office is not currently able to fully quantify these savings.

**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.**

Over time, statutory measures target for RMPRs and OSCs have changed. For example, in FY 2000 and 2001, the targets for SORM output measures were 50 RMPRs and 50 OSCs. These measures were modified to 55 RMPRs and 125 OSCs for FY 2002-03 and 32 RMPRs and 250 OSCs in FY 2004-05. The change in measure targets reflects the initial early emphasis on client agencies developing a risk management plan with the assistance of the SORM (as required by statute). This represents a transition from conducting initial RMPRs to help in the development of plans to maintaining plans and addressing ongoing loss issues (as typically addressed in the OSCs).

In addition to the changes in RMPR and OSC performance measures, the RALP division has diversified risk management services offered to client agencies in response to agency requests for assistance. Since 9/11, RALP has provided resources to client agencies in responding to emergencies and developing Business Continuity Plans. The SORM Website contains an abundance of emergency response protocol data along with the essential steps required to develop a viable business continuity plan. In addition to the website, risk management specialists provide onsite assistance to agencies in order to prepare for and respond to emergencies.

**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.**

In FY 2005, the RALP section provided risk management and/or insurance services to 121 non-higher education agencies, 29 institutions of higher education and 120 County Supervision and Correction Departments (CSCDs). Applicability of the Office's risk management and insurance services is defined by Chapter 412 of the Texas Labor Code.

The Office has provided in Attachment 24 a list of all active agency contacts from its Agency Contact Database.

**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 Risk Assessment and Loss Prevention Division has developed and continues to maintain the Risk Management for Texas State Agency Guidelines (RMTSA). These guidelines provide client agencies with

the fundamental requirements of an effective risk management program and are used to assess client agency performance in achieving an adequate program. These guidelines are comprehensive, and available at [http://www.sorm.state.tx.us/RMTSA\\_Guidelines/volumes.php](http://www.sorm.state.tx.us/RMTSA_Guidelines/volumes.php).

The Office maintains written administrative rules regarding its risk management program, including the Insurance Purchasing Program, at 28 TAC 252, included herein in Attachment 9. (Agency contacts are also available at the Office website at [http://www.sorm.state.tx.us/Risk\\_Management/RMlist/RMlist.htm](http://www.sorm.state.tx.us/Risk_Management/RMlist/RMlist.htm).) The Office also maintains specific written procedures for risk management and safety and insurance purchase program document processing.

**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 Risk Assessment and Loss Prevention Division is funded by interagency contracts with client agencies pursuant to Chapter 412, Texas Labor Code. Beginning in FY 2002 this program is funded in the same manner and using the same factors as the assessments for workers' compensation coverage. That methodology is described at length in Section VII.1.G., above.

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

As discussed elsewhere herein, the University of Texas System, Texas A&M System, Texas Department of Transportation and Texas Tech System are exempt from risk management services provided by SORM. Additionally, the Employee Retirement System and Teacher Retirement System have been exempted from Chapter 412 of the Texas Labor Code, but may receive services from the Office.

**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.**

Because the authority and responsibility of the Office is statutorily mandated, the Office avoids duplication and conflict by determining applicability pursuant to Chapter 412, Texas Labor Code. With respect to client agencies, the Office's role is to assist and support, rather than supplant, client agencies' risk management efforts. Risk management services are secured through interagency contracts, including elections by ERS and TRS to participate in the Office's program.

**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.**

There is not currently a direct relationship or coordination with other state, local or federal agencies/entities for the RALP program.

**K. If this program or function is contracted out, provide a description of how you ensure accountability for funding and performance.**

None of the risk assessment and loss prevention services provided by SORM are currently contracted out. However, the Insurance Purchasing Program facilitates the use of private providers of insurance services through the procurement process and negotiations with vendors to obtain favorable terms and conditions beneficial to state entities participating in the program. The Office does not contract with vendors, but rather “sponsors” policies through the procurement process and approves lines of insurance for purchase by state agencies. Performance of private carriers is monitored by the Office’s Insurance Specialist in conjunction with agency purchasers of the sponsored lines.

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

Currently §612.002(b), Government Code, provides that any agency purchasing insurance to cover the liabilities arising from the Texas Tort Claims Act must be reviewed by the Attorney General as to liability and the State Board of Insurance (now the Texas Department of Insurance) as to form. This provision existed prior to the implementation of the Insurance Purchasing Program administered by the Office, which now reviews both form and substance. It is recommended §612.002(b) be repealed to eliminate this duplication of efforts.

Another statutory change recommended is a correction to §412.053(b), Texas Labor Code, relating to the annual agency reports to the Office. House Bill 1203, 77<sup>th</sup> Legislature, amended §412.053(b) and required agencies to report all information required by §412.053 “not later than the 60<sup>th</sup> day before the last day of each fiscal year.” Because agencies do not have complete data prior to the close of the fiscal year, the Office either receives incomplete reports, or does not receive the reports within the statutory timeline. To allow the Office to receive accurate reports which are also timely, the Office recommends amending §412.053(b) to require agency reporting “not later than the 60<sup>th</sup> day after the last day of each fiscal year.”

Texas Labor Code §412.011(b) provides the Office is responsible for administering guidelines adopted by the Board for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses. Texas Labor Code §412.011(e) provides that a state agency subject to Chapter 501 may not purchase property, casualty, or liability insurance coverage without the approval of the Board. Pursuant to §412.031, the Office has authority to promulgate rules to implement Chapters 412 and 501, including rules relating to reporting requirements for a state agency. However, the Office is without authority to directly ensure the compliance of covered agencies with these mandates. Instead, pursuant to Texas Labor Code §412.032(b)(2), the Office identifies state agencies that have not complied with the risk management guidelines and reporting requirements of Chapter 412, and provides information on this non-compliance in its biennial report to the Legislature.

While the Office has experienced some significant, but isolated, reluctance from certain agencies in complying with statutory mandates or in implementing SORM’s recommendations, most agencies do comply. In reporting non-compliance to the Legislature the leadership has successfully informally resolved some non-compliance issues, but has frequently questioned Office staff regarding its lack of enforcement authority. The matter of enforcement authority is, however, problematic. The Office understands, as a state agency, that fines or other monetary penalties levied against one state agency by another may create significant difficulties which may actually serve to exacerbate underlying problems, particularly if it is caused or otherwise impaired

by a lack of adequate resources for compliance. Initial discussion of possible indirect solutions short of specific enforcement authority are discussed in Section IX.

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

On December 13, 1989, the Texas Workers' Compensation Act, Vernon's Annotated Civil Statutes, Article 8308 was signed into law. This law is generally referred to in the industry as the "New Law," and in addition to providing the framework for reform of the workers' compensation system in Texas, §7.21 of the Act made provision for "risk management for certain state agencies." The Act has now been codified in the Texas Labor Code, Title 5, Subtitle A, Chapter 412.

Risk management is the process of protecting an organization from financial harm by identifying, analyzing, financing, and controlling risk at the lowest possible cost. Effective risk management is a progression of actions that are taken with the purpose of minimizing losses or injuries within the organization.

This risk management function was provided by the Texas Workers' Compensation Commission prior to the creation of the State Office of Risk Management, and the scope of risk management activities specifically available to state agencies has expanded substantially since 1989. The Executive Director of the Office serves as the State's official Risk Manager, and the Office is now responsible for: operating as a full-service risk manager and insurance manager for state agencies; maintaining and reviewing records of property, casualty, or liability insurance coverages purchased by or for a state agency; administering the program for the purchase of surety bonds for state officers and employees; administering guidelines adopted by the Board for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses; reviewing, verifying, monitoring, and approving risk management programs adopted by state agencies; and assisting state agencies that have not implemented an effective risk management program to implement a comprehensive program that meets the guidelines established by the Board.

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

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

The Office does not operate regulatory programs related to the licensing, registration, certification or permitting of any persons, businesses, or other entities.

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

Not applicable to the Office.

### 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 2001 - 2005, or earlier significant Attorney General opinions, that affect your agency's operations.**

<b>State Office of Risk Management Exhibit 13: Statutes/Attorney General Opinions</b>	
<b>Statutes</b>	
<b>Citation/Title</b>	<b>Authority/Impact on Agency (e.g., "provides authority to license and regulate nursing home administrators")</b>
Chapter 412, Texas Labor Code	SORM's enabling legislation. Provides authority to administer insurance services obtained by state agencies, including the government employees workers' compensation insurance program and the state risk management programs.
Chapter 501, Texas Labor Code	Delineates workers' compensation coverage and administration matters individual to SORM.
<b>Attorney General Opinions</b>	
<b>Attorney General Opinion No.</b>	<b>Impact on Agency</b>
GA-0075, issued May 22, 2003	Advises SORM obtains reimbursement for actual expenditures from ERS and TRS, rather than levies an assessment based on the allocation formula established by Chapter 412, Texas Labor Code.

**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).**

A 79<sup>th</sup> Legislature Bill Matrix, Regular Session, is included as Attachment 23.

## IX. Policy Issues

### 1. Statutory Clarification/Consolidation

#### A. Brief Description of Issue #1

Should Chapters 412 and 501, Texas Labor Code, be clarified and/or consolidated?

#### B. Discussion of Issue #1

Implementation of the Insurance Purchasing Program authorized by H.B. 1203, 77<sup>th</sup> Legislature, has met with reluctance by some client agencies to fully comply with mandates therein.

Chapter 412 provides that agencies subject to Chapter 501 of the Texas Labor Code may not purchase property, casualty, or liability insurance coverage without the approval of the Board of the State Office of Risk Management. During the 79<sup>th</sup> Legislative session, an opinion letter from the Legislative Counsel from 2001 created some confusion about the Legislature's intent with regard to the participation of higher education in the insurance purchasing program. That opinion held that the Legislature did not intend to include institutions of higher education in the scope of Chapter 412 and the opinion was recently forwarded to the Office as justification for noncompliance when a higher education institution purchased an unauthorized policy after the purchase was denied by the Office. After reviewing the Legislative record and visiting with the leadership, it was ultimately, if informally, confirmed that there was not specified intent to exempt all higher education institutions. However, it is not the statute itself which makes this clear and the matter continues to present the possibility of a potential misunderstanding.

Chapter 412 exempts state agencies "that had medical malpractice insurance coverage, workers' compensation insurance coverage, or other self-insurance coverage with associated risk management programs before January 1, 1989." Historically, this has been understood to refer to A&M, UT, and TxDOT given the specific Labor Code chapters (502, 503, and 505, respectively) associated with those self-insurance programs. It is also understood from review of legislative history and statutory provisions that Texas Tech University is included in this exemption (it is noted, however, that Texas Tech is specifically made subject to Chapter 501, creating a circular logic problem). The general nature of the exemption has led to some confusion regarding which agencies the Legislature continues to intend to exempt from the provisions of Chapter 412, and is further complicated by qualified exemptions from the chapter secured by agencies in other statutes (e.g., ERS and TRS, discussed above).

Further, because the Office was created through the merger of divisions of two larger entities, the Office inherited provisions contained in two separate chapters of the Labor Code. On the whole, the interaction between the two chapters is efficient, but some problems have been associated with operating a cohesive program given the retained language of the prior statutory chapters. For example, the definition of "state agency" differs between Chapter 412 and Chapter 501. Chapter 412 defines a state agency as "a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that has five or more employees, was created by the constitution or a statute of this state, and has authority not limited to a specific geographical portion of the state." Chapter 501 defines a state agency as "a

department, board, commission, or institution of this state.” This has led to questions regarding the access and responsibilities of certain entities covered under Chapter 501 with respect to Chapter 412 services. (Courts of Appeals, for example, for which the geographic portion provision creates concern about the scope of SORM services available.)

Because the Office’s responsibilities in administering the program and the fact that the agency’s authority extends only to reporting noncompliance to the Legislature, clarification of the scope of Chapters 412 and 501 may be warranted to avoid future confusion, to specify access and responsibilities of the Office’s client agencies, and to clearly delineate the reporting requirements of the Office respecting non-complying agencies.

### **C. Possible Solutions and Impact of Issue #1**

Option One: Merge Chapters 412 and 501 into a single Labor Code chapter at Chapter 501, and clearly delineate entities subject to the provisions of the chapter through consistent definition of “state agency” and clear specific exemptions, as appropriate.

Option Two: Maintain separate chapters but clearly delineate entities subject to the provisions of the chapter through the same definition of “state agency” in each chapter, and provide clear specific exemptions in Chapters 412 and 501, as appropriate.

\* The Office also notes the existence of numerous duplicate section designations in Chapter 412 of the Labor Code. This is the result of the simultaneous passage of House Bills 2600 and 2976, 77<sup>th</sup> Legislature, which contained similar, but not identical, provisions. At a minimum, it is recommended the Legislature consider eliminating the duplicative provisions of Chapter 412.

One potential issue with these options which must be borne in mind relates to the current expansion of coverage for “non-state” employees in Chapter 501 of the Labor Code. It has been determined through Legislative actions that it would be the policy of the state to provide coverage for certain non-state individuals. Thus, §501.001(a) expands the definition of employee to include not only a person who is in the service of the state pursuant to an election, appointment, or express oral or written contract of hire, but also a person who is:

- paid from state funds but whose duties require that the person work and frequently receive supervision in a political subdivision of the state;
- a peace officer employed by a political subdivision, while the peace officer is exercising authority granted under Article 12, or 14.03(d) or (g), Code of Criminal Procedure;
- a member of the state military forces, as defined by Section 431.001, Government Code, who is engaged in authorized training or duty; or
- a Texas Task Force 1 member, as defined by Section 88.301, Education Code, who is activated by the governor's division of emergency management or is injured during any training session sponsored or sanctioned by Texas Task Force 1.

Since these are not state agencies in which statutory risk management initiatives may be undertaken by the Office, with the exception of the Adjutant General’s Office, SORM has no direct impact on loss and injury prevention initiatives. An effective program must seek to prevent losses (proactive), in addition to providing for benefits for injuries which could not be avoided (reactive). Further, while the Adjutant General actually participates in the Cost Allocation Program and the Governor’s Office is designated to reimburse (annually) for costs incurred through liability for Texas Task Force 1 members, the liability for the costs of other non-state employees is borne by the risk pool, financed by agencies through assessments in the Cost Allocation

Program. Thus, it is important to recognize these special cases as unique situations specified in statute as policy considerations which do not generally fit within the generally anticipated clear lines of the scope of the Office. As a corollary to implementing any changes to the structure of Chapters 412 and 501, it therefore important to consider these unique situations and their continued necessity, and, as necessary, to clearly delineate responsibilities and applications of relevant provisions.

## 2. Assessments Program

### A. Brief Description of Issue #2

Should all covered agencies under Chapter 501 be treated equally with respect to assessments in the cost allocation program?

### B. Discussion of Issue #2

Implementation of the Cost Allocation (or Risk/Reward Program) authorized by H.B. 2600 and 2976, 77<sup>th</sup> Legislature, has also met with reluctance by some client agencies to fully comply with mandates therein.

The drastic change in funding structure has led to isolated but significant reluctance of some agencies to fully participate in the program. The previous funding structure was a partial reimbursement funding method, with direct appropriations to the Office for claims payments and a requirement for a 25 percent reimbursement by client agencies. When H.B. 2600 and 2976 were passed by the 77<sup>th</sup> Legislature, appropriations for claims was reallocated to client agencies as part of the agencies' baseline budget for the payment of an "assessment" similar to an insurance premium to the Office, but a prior provision related to reimbursement of non-treasury funds in Chapter 506 was not modified (Texas Labor Code, §506.022). As discussed above in the History and Major Events section, the Office requested an Attorney General opinion, which concluded that the retention of the reimbursement provision operated to exempt those agencies from the Cost Allocation Program. In the interim, ERS was statutorily exempted from mandatory participation in Chapter 412 of the Labor Code pursuant to a Senate Finance Committee substitute to H.B. 2425, 78<sup>th</sup> Legislature. This was followed by a similar exemption for TRS in the 79<sup>th</sup> Legislative session.

The Office has attempted to fully comply with the OAG interpretation that the Legislature intended the Office to operate under two distinct funding structures and with recent specific legislation exempting ERS and TRS from mandatory participation under Chapter 412, but additional review by the Legislature of these issues may now be appropriate. Both the Legislative Oversight Committee on Workers' Compensation in its Biennial Report to the 74th Legislature and the House Business and Industry Committee in its Interim Report to the 74th Legislature recommended establishing an "equitable funding mechanism" for the payment of workers' compensation costs in Texas, leading both to the establishment of the State Office of Risk Management and the realization of the statewide insurance pooling concept in the cost allocation program.

### C. Possible Solutions and Impact of Issue #2

Option One: Delete Texas Labor Code 506.022 and remove exemptions in other law discharging agencies covered by Chapter 501 from compliance with the cost allocation funding mechanism and other requirements established by the Legislature in Chapter 412.

Option Two: Specifically exempt from Chapter 501 all agencies exempted from Chapter 412, if the chapters are not consolidated as discussed in Issue #1, or discharge SORM from the duty to provide services under Chapter 501 to agencies exempted from Chapter 412.

Option Three: Remove exemptions in other law and incorporate those exemptions in the Labor Code, along with specific provisions for appropriate funding methodologies to be applied by the Office, if it is determined certain agencies should be exempted from the risk pool.

The danger associated with agencies being carved out or opting out of the program is directly linked to the ultimate viability and success of the state's overall program. The insurance concept, by its very nature, is a form of risk pooling; that is, a system to make large financial losses more affordable by pooling the risks of many entities and transferring them to another organization in return for a premium. Agencies are protected from individual catastrophic losses and costs are less subject to drastic fluctuations.

The viability of such a pool depends largely on the risks – i.e., the chances of loss – in the pool participants. Viable pools have a mixture of good (low) and bad (high) risks. Removing good risks from a pool, particularly a closed pool like that established for state agencies in Texas, can ultimately have dire consequences, and there is a concept in insurance describing this process. A 'death spiral' occurs when good risks leave such a program, which then causes the remaining pool to consist of disproportionately bad risks. That event causes the cost of participation for the remaining individuals in the pool to increase, leading to other good risks seeking to leave the program until the program can no longer support itself.

A reimbursement scheme is a different concept from the concept of insurance. If it is the intention of the Legislature to operate two separate methodologies, however, this intent should be clarified and clearly delineated in Chapter 412 and in Section 506.022.

### **3. Funding Methodology**

#### **A. Brief Description of Issue #3**

Should the funding methodology for the State Office of Risk Management be changed to harmonize funding with the cost allocation formula and interagency contract funding methodology established by the Legislature?

#### **B. Discussion of Issue #3**

Chapter 412 currently requires the Office be administered through money appropriated by the Legislature and through interagency contracts for the risk management program and the allocation program for the financing of state workers' compensation benefits. See §§412.012 and 412.0122. The financing of workers' compensation benefits is a completely separate appropriation with no ability to transfer funding between the appropriations. These provisions remain from the prior funding methodology wherein the Legislature allocated General Revenue to the Office for administrative functions as well as 75 percent of claims costs.

The main weakness of the current funding structure is the lack of flexibility in operations and in trying to

reduce the expenditures for workers' compensation claim costs. This is what has been described as the "left pocket/right pocket" dilemma. In the first year of its existence the Office was in a position where it could literally not afford any additional savings from PPO networks offered by its cost containment vendor. While the cost of the savings to the claim fund was 23 percent of that savings, it was paid from the Office's administrative appropriation. Subsequently, the method of finance was changed for the costs of medical cost containment, but the separate and limited appropriation structure was not. For FY 2006, for example, the Office does not have the ability to accept more than \$2.4M in cost containment services, even if these services would result in claim cost savings of 150 to 500 percent of the additional cost.

Another of the current funding structure's weaknesses is its basis in undocumented history, which must be related each session and is not easily understood. During the last session, the Office reported possible savings to the bill in General Revenue of \$6.8M in the biennium through discontinuation of General Revenue appropriations to the Office and the provision for all funding through IAC funds collected through assessments to agencies for the workers' compensation and risk management programs. Such an arrangement would simplify the appropriations process even if the separate appropriation structure remained, as there would then be one consistent method of finance collected in an identical manner for all of the agency's programs. Notably, because of the significant reductions in claim costs due to the assessment program and improved adjustment practices, the additional \$3.4M annual costs would have only been a partial offset to the \$15.6M excess amount of the initial FY 2004 cumulative assessments. Even when coupled with the \$2.4M increase for medical cost containment, agencies would still have paid assessments less than the appropriated baseline at the beginning of the current biennium.

A third weakness in the current structure is the limited ability to carry forward excess funding collected through the annual assessments, or "premiums" from the perspective of client agencies. Unlike other state programs like UT or Texas A&M, the Office does not operate with a reserve, but rather on a cash basis. As a result there is a significant potential for volatility in the total amount collected annually. Under the current structure, even though payments for workers' compensation have continued to decline and are expected to continue to do so next fiscal year, cash basis assessments for FY 2006 will increase approximately 3.25 percent because of the fluctuations in credits applied. For claim costs the Office does have a limited ability to carry forward a maximum of 10 percent of the year's expected costs into the next fiscal year to offset that year's total cash collections; however, as total claim costs have substantially decreased the dollar amount associated with that ability has also substantially decreased. For example, the maximum carry-forward ability from FY 2004 was almost \$7.9M, but has decreased for the current fiscal year to \$5.8M, and will further decrease to \$5.4M in FY 2006. The result is that this appropriation has a smaller margin of error at the same time it actually needs a larger margin of error. As flexibility decreases as a result of the decrease in total expected payments, the possibility increases that unexpected costs due to system changes or a catastrophic event will push costs above the available funding.

While the Office does have unexpended balance authority for the funds collected for medical cost containment within the biennium, there is none between biennia and there is no UB authority for the funds collected for the Risk Management program. One of the most significant, if not the most, positive incentives for agencies to work to control losses is the ability to retain the funding if their costs for claim coverage and risk management services are lowered through those efforts.

### **C. Possible Solutions and Impact of Issue #3**

A considered solution is a unified appropriation funded entirely by annual assessments to members of the risk pool to fund both the Risk Management and the Workers' Compensation programs, including claim

payments. The Office would have the flexibility to utilize the collected funds to maximize total savings to the combined appropriation through appropriate resources and programs to maximize savings.

This could be further supported by the removal or increase of the percentage cap on carry forward ability in order to further decrease the annual fluctuations in cash basis assessments. An alternative option is the use of a stated maximum amount of “excess” allowable funding, e.g. \$25M, and a minimum percentage of the expected payments collected in cash each year, e.g. 90 or 95 percent, to smooth out the peaks and dips from one fiscal year to another. When the total excess exceeds the maximum amount established, the Office would return the excess amount to pool members in the same proportion as their assessment for the fiscal year of the transaction. These returns would be one time additional appropriations, not subject to increasing the agencies’ appropriated baselines. (It is anticipated this would be necessary since negative expenditures would decrease the baseline appropriations but would not be a sustainable decrease in expenditures.)

Under such a funding structure the Office would be able to timely respond to changes in either the system or to additional options for further reducing claim costs. Client agencies would experience both more stability in annual costs and an increased incentive for improved performance as all funding would either be used for the required purposes, remain in the pool as total costs for all aspects of the Office’s programs decrease, or would be returned.

#### **4. Administrative Fines**

##### **A. Brief Description of Issue #4**

Should the State Office of Risk Management be exempt from fines for unintentional non-compliance?

##### **B. Discussion of Issue #4**

As discussed in the conclusion to Section II.G, regarding key obstacles impairing the Office’s ability to achieve its objectives, the Texas Workers’ Compensation Commission has only recently issued considerable monetary fines against the Office for certain errors. Errors made by the Office’s cost containment vendors are specifically subject to contractual indemnification by those vendors, but the Office is not appropriated funds for payment of fines levied for unintentional mistakes made by Office staff in performance of their duties. The Office agrees that monetary fines are often an appropriate mechanism for ensuring that insurance carriers comply with the mandates of law, particularly when the refusal to comply with such mandates may be motivated by the potential for profit and the likelihood of significant harm to injured workers, providers or other system participants.

Importantly, House Bill 7, 79<sup>th</sup> Legislature, will now make compliance issues strict liability offenses, and unintentional errors can result in fines of up to \$25,000 per day. Imposition of such fines may serve to reduce the agency’s scarce resources currently dedicated to prevent compliance errors from occurring, creating a cycle of diminishing effectiveness.

##### **C. Possible Solutions and Impact of Issue #4**

Option One: Amend §501.002(a)(9) to exempt the Office from application of monetary administrative penalties, to include Chapters 412-417, “other than Section 415.021.” The Office remains subject to all other administrative sanctions.

Option Two: Provide a specific appropriation for the payment of monetary administrative penalties assessed by other state agencies.

## 5. Confidentiality of Claim File Information

### A. Brief Description of Issue #5

Should the workers' compensation records of the State Office of Risk Management be made specifically confidential in the Texas Labor Code?

### B. Discussion of Issue #5

As a state agency, the State Office of Risk Management is subject to the Public Information Act. It is the position of the Office that the disclosure of claim file information to parties who are not entitled to the private data and medical information contained in those files is a violation of confidentiality. Texas Labor Code §402.091 relates to the failure to maintain confidentiality, and provides that a person commits an offense if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under this subchapter to a person not authorized to receive the information directly from the Commission (soon to be the Division of Workers' Compensation). However, the potential for confusion exists in that the Workers' Compensation Act makes no specific provision that as a state agency the Office is prohibited from disclosing such information, as it does with the existing Commission in Texas Labor Code, §402.083.

Thus, the absence of a specific prohibition presents the possibility that such information could be disclosed. During the 79<sup>th</sup> regular Legislative session, Representative Solomons' House Bill 7 added the State Office of Risk Management to the existing Labor Code provision specifically identifying information in or derived from a claim file as confidential and specifying that such information could not be disclosed except as provided by the Act. In the merging of the provisions of the proposed House Bill 7 and Senator Staples' proposed Senate Bill 5 to create the compromise bill, however, this provision was not included.

### C. Possible Solutions and Impact of Issue #5

Amend Texas Labor Code §404.083 to specifically include the State Office of Risk Management. This amendment will not impact the provision of information which may be otherwise disclosed pursuant to the provisions of the Workers' Compensation Act.

## 6. Indemnification Provisions

### A. Brief Description of Issue #6

Should the indemnification provisions of Chapter 104, Civil Practices and Remedies Code, be modified?

## **B. Discussion of Issue #6**

As part of the Office's Insurance Purchasing Program, a number of client agencies have expressed ongoing concern regarding the current level of indemnification provided to public servants under the provisions of Chapter 104, Civil Practices and Remedies Code. That chapter currently limits indemnification of such individuals to \$100,000.

This issue has been raised due to the interplay of deductibles/retentions in commercial insurance purchases. Premium savings from increased deductibles vary depending on the risk of the entity and the type of insurance policy, but can be substantial. It has been proposed that significant premium savings may be obtained through the use of higher deductibles in certain policies, but that putting public servants at personal financial risk would have a chilling affect on the willingness of citizens to provide public services.

For example, in a situation in which a \$500,000 judgment is rendered against a public servant under an employment practices claim with a \$250,000 retention, the carrier would pay the first \$250,000 of the judgment, and the individual would be responsible for the remainder. The State will indemnify the individual on \$100,000 under the CPRC, leaving that individual with liability and responsibility for paying \$150,000 from his or her own pocket. Thus, many state agencies and institutions maintain very low deductibles, at a higher premium cost, out of fear for the personal liability of its board members for performing their duties to the entity.

## **C. Possible Solutions and Impact of Issue #6**

Option One: Link indemnification to deductible/retention amounts specified in certain public servant insurance policies to create a flexible indemnification scale respecting certain contracts of insurance. Amend Chapter 104.003(c) to read:

§ 104.003. LIMITS ON AMOUNT OF RECOVERABLE DAMAGES.

- (a) Except as provided by Subsection (c) or (d) or a specific appropriation, state liability for indemnification under this chapter may not exceed:
  - (1) \$100,000 to a single person indemnified and, if more than one person is indemnified, \$300,000 for a single occurrence in the case of personal injury, death, or deprivation of a right, privilege, or immunity; and
  - (2) \$10,000 for each single occurrence of damage to property.
- (b) Except as provided in Subsection (d), the state is not liable under this chapter to the extent that damages are recoverable under and are in excess of the deductible limits of:
  - (1) a contract of insurance; or
  - (2) a plan of self-insurance authorized by statute.
- (c) The limits on state liability provided by Subsection (a) do not apply if the state liability is based on Section 104.002(b).
- (d) Subject to Subsection (b), if a claim for which a public servant is personally liable is covered under a contract of insurance approved by the State Office of Risk Management under Chapter 412, Texas Labor Code, the limit on state liability for a single person indemnified under this Chapter may exceed the amount specified in Subsection (a)(1) up to the deductible or retention limit of the contract of insurance. This subsection does not apply to a plan of self-insurance authorized by statute.

~~(d)~~(e) For the purposes of this section, a claim arises out of a single occurrence, if the claim arises from a common nucleus of operative facts, regardless of the number of claimants or the number of separate acts or omissions.

Option Two: Increase the individual indemnification caps in §104.001 to \$250,000 individual, and \$500,000 per occurrence.

**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.**

<b>State Office of Risk Management Exhibit 15: Contacts</b>			
<b>INTEREST GROUPS</b> (groups affected by agency actions or that represent others served by or affected by agency actions)			
<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone</b>	<b>E-mail Address</b>
Risk Management User Group (coordinated by SORM), Mike Hay (Director of Risk Management, SORM)	N/A	512-936-1571	mike.hay@sorm.state.tx.us
State Agency Coordinating Council (SACC), Morris Arnold, Chair (Human Resources Subcommittee)	N/A	512-206-4505	morris.arnold@mhmr.state.tx.us
Mid-Sized Agency Coordinating Council (MACC), Linda Duncan, Chair	N/A	512-463-8575	linda.duncan@soah.state.tx.us
Small State Agency Task Force (SSATF), Mickey Jacobs, Chair	N/A	512-463-3190	mjacobs@tcc.state.tx.us
<b>INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS</b> (that serve as an information clearinghouse or regularly interact with your agency)			
<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone</b>	<b>E-mail Address</b>

Public Risk Management Association (Texas PRIMA), Gary Urban, President (Risk Manager, City of Waco)	P. O. Box 2570 Waco, TX 76702-2570	254-750-5732	garyu@ci.waco.tx.us
<b>LIAISONS AT OTHER STATE AGENCIES</b> (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)			
<b>Agency Name/Relationship/ Contact Person</b>	<b>Address</b>	<b>Telephone</b>	<b>E-mail Address</b>
Governor's Office of Budget, Planning and Policy, Governor's Advisor, Jennifer Ahrens	1100 San Jacinto Austin, Texas 78701	512-463-1778	jennifer.ahrens@governor.state.tx.us
Legislative Budget Board, Budget and Performance Analyst, Sam Miller	1501 North Congress, 5 <sup>th</sup> Floor Austin, Texas 78701	512-463-1009	sam.miller@lbb.state.tx.us
Comptroller's Office, Accounting Control Officer, Laurie Lutz	111 East 17th Street Austin, Texas 78774	512- 475-4751	laurie.lutz@cpa.state.tx.us
State Auditor's Office, Agency Analyst, Dorothy Turner	1501 N. Congress Avenue Austin, TX 78701	512-936-9500	dturner@sao.state.tx.us
Office of the Attorney General, Tort Litigation Division Chief, Nellie Herrera	300 W. 15 <sup>th</sup> St. Austin, TX 78701	512-475-1892	nellie.herrera@oag.state.tx.us
Texas Workers' Compensation Commission, Executive Director, Bob Shipe	7551 Metro Center Drive Austin, TX, 78744-1609	512-804-4000	bob.shipe@twcc.state.tx.us
Texas Department of Insurance, Team Leader/Workers' Compensation Research and Evaluation Group, Amy Lee	333 Guadalupe Austin, TX 78701	512-322-3461	amy.lee@tdi.state.tx.us
State agencies subject to Chapters 412 and/or 501, all agency claims coordinators, risk managers and other contacts	(Voluminous. Detailed contact listings from SORM's Agency Contact Database provided on CD, Attachment 24)		

## XI. Additional Information

A. Fill in the following chart detailing information on complaints regarding your agency. Do not include complaints received against people or entities you regulate. The chart headings may be changed if needed to better reflect your agency's practices.

State Office of Risk Management Exhibit 16: Complaints Against the Agency — Fiscal Years 2003 and 2004		
	FY 2003	FY 2004
Number of complaints received	7	14
Number of complaints resolved	7	8
Number of complaints dropped/found to be without merit	0	6*
Number of complaints pending from prior years	0	0
Average time period for resolution of a complaint	8 days	11 days

\* Many of the complaints received by the Office are related to a claimant's dissatisfaction with the handling or outcome of their workers' compensation claim. Since the Office is statutorily required to comply with the Texas Workers' Compensation Act and the Texas Workers' Compensation Commission's related rules and regulations in administering claims, those provisions dictate the proper processes for resolution of disputes.

B. Fill in the following chart detailing your agency's Historically Underutilized Business (HUB) purchases.

State Office of Risk Management Exhibit 17: Purchases from HUBs				
FISCAL YEAR 2002				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	\$0	\$0	0%	11.9%
Building Construction	\$0	\$0	0%	26.1%
Special Trade	\$0	\$0	0%	57.2%
Professional Services	\$0	\$0	0%	20.0%
Other Services	\$1,283,084	\$1,222,533	95.2%	33.0%
Commodities	\$166,652	\$76,318	45.7%	12.6%
<b>TOTAL</b>	<b>\$1,449,736</b>	<b>\$1,298,852</b>	<b>89.5%</b>	
FISCAL YEAR 2003				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal

<b>Heavy Construction</b>	\$0	\$0	0%	11.9%
<b>Building Construction</b>	\$0	\$0	0%	26.1%
<b>Special Trade</b>	\$0	\$0	0%	57.2%
<b>Professional Services</b>	\$4,500	\$0	0%	20.0%
<b>Other Services</b>	\$1,450,663	\$1,031,999	94.3%	33.0%
<b>Commodities</b>	\$146,351	\$73,843	71.7%	12.6%
<b>TOTAL</b>	\$1,281,784	\$1,105,843	92.7%	

**FISCAL YEAR 2004**

<b>Category</b>	<b>Total \$ Spent</b>	<b>Total HUB \$ Spent</b>	<b>Percent</b>	<b>Statewide Goal</b>
<b>Heavy Construction</b>	\$0	\$0	0%	11.9%
<b>Building Construction</b>	\$0	\$0	0%	26.1%
<b>Special Trade</b>	\$0	\$0	0%	57.2%
<b>Professional Services</b>	\$22,300	\$0	0%	20.0%
<b>Other Services</b>	\$1,113,133	\$1,031,999	92.7%	33.0%
<b>Commodities</b>	\$146,351	\$73,843	50.4%	12.6%
<b>TOTAL</b>	\$1,281,784	\$1,105,843	86.2%	

**C. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy?**

The Office has adopted the Texas Building and Procurement Commission’s model HUB rules. The State Office of Risk Management is administratively attached to the Office of the Attorney General and adheres to the OAG’s HUB policies, including working directly with the OAG to address any potential program shortfalls affecting SORM.

**D. For agencies with contracts valued at \$100,000 or more: Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available for contracts of \$100,000 or more? (Tex. Government Code, Sec. 2161.252; TAC 111.14)**

The State Office of Risk Management, in conjunction with the Office of the Attorney General, complies with all HUB requirements.

**E. For agencies with biennial appropriations exceeding \$10 million, answer the following HUB questions.**

	<b>Response / Agency Contact</b>

<p>1. Do you have a HUB coordinator? (Tex. Government Code, Sec. 2161.062; TAC 111.126)</p>	<p>Yes. The Office utilizes the OAG’s HUB Coordinator, though our administrative attachment.</p>
<p>2. Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Tex. Government Code, Sec. 2161.066; TAC 111.127)</p>	<p>Yes. The Office of the Attorney General’s Purchasing Division provides this service for the Office.</p>
<p>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? (Tex. Government Code, Sec. 2161.065; TAC 111.128)</p>	<p>Yes. The Office of the Attorney General’s Purchasing Division provides this service for the Office.</p>

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

State Office of Risk Management							
Exhibit 18: Equal Employment Opportunity Statistics							
FISCAL YEAR 2002							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	1	0%	7%	0%	11%	0%	31%
Professional	55	7%	9%	15%	10%	47%	47%
Technical	2	0%	14%	0%	18%	50%	39%
Protective Services	0	0%	18%	0%	21%	0%	21%
Para-Professionals	27	15%	18%	26%	31%	89%	56%
Administrative Support	34	7%	19%	11%	27%	26%	80%
Skilled Craft	0	0%	10%	0%	28%	0%	10%
Service/Maintenance	0	0%	18%	0%	44%	0%	26%
FISCAL YEAR 2003							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor	Agency	Civilian Labor	Agency	Civilian Labor

			Force %		Force %		Force %
Officials/Administration	1	0%	7%	0%	11%	0%	31%
Professional	62	6%	9%	15%	10%	50%	47%
Technical	3	0%	14%	0%	18%	67%	39%
Protective Services	0	0%	18%	0%	21%	0%	21%
Para-Professionals	24	17%	18%	29%	31%	83%	56%
Administrative Support	29	21%	19%	34%	27%	83%	80%
Skilled Craft	0	0%	10%	0%	28%	0%	10%
Service/Maintenance	0	0%	18%	0%	44%	0%	26%
<b>FISCAL YEAR 2004</b>							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	1	0%	7%	0%	11%	0%	31%
Professional	58	7%	9%	14%	10%	52%	47%
Technical	4	0%	14%	0%	18%	75%	39%
Protective Services	0	0%	18%	0%	21%	0%	21%
Para-Professionals	26	23%	18%	31%	31%	62%	56%
Administrative Support	29	7%	19%	34%	27%	86%	80%
Skilled Craft	0	0%	10%	0%	28%	0%	10%
Service/Maintenance	0	0%	18%	0%	44%	0%	26%

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

Yes. The State Office of Risk Management, in conjunction with the Office of the Attorney General, complies with all equal employment opportunity requirements.

**XII. Agency Comments**

Workers' compensation laws are based upon the theory that the financial burden of on-the-job injuries should be shifted from the worker to the employing business, and ultimately to the consuming public, as a cost of

doing business. These laws are intended to protect and benefit the employee by providing speedy, simple, effective, and inexpensive relief, without regard to the fault of the employer, the employee, or third parties.

Prior to the enactment of such laws, injured workers often were denied compensation for work-related injuries, usually based on the theory that employee's "assumed the risk" of a job by accepting employment. In those cases where employees were granted relief by the courts, it was usually only after a lengthy and expensive legal process.

In 1913, the Legislature passed Texas' first workers' compensation law, but it did not apply to state employees. It was not until 1973 that a workers' compensation statute was passed that was applicable to most state employees (Texas Civil Statutes, Article 8309g, now recodified as Chapter 501 of the Texas Labor Code). Under today's Labor Code, the state is self-insuring with respect to a state employee's compensable work-related injury.

In 1995 when the Legislative Oversight Committee on Workers' Compensation and the House Business and Industry Committee released reports to the 74th Legislature surveying the State's risk management and workers' compensation programs, both reports concluded that changes in the organization and management of the state risks and claims payments would reduce injuries, improve loss control and claims handling, and enhance the quality and effectiveness of those programs. Both committees emphasized the need for state agencies to be responsible and accountable for risk management and claims cost, and envisioned an equitable funding mechanism for payment of workers' compensation claim costs.

The principles set forth by the legislative committees found expression in the creation of the State Office of Risk Management as a state agency effective September 1, 1997, by authority of House Bill 2133 enacted by the 75th Legislature. This bill was authored by State Representative Kenneth "Kim" Brimer and State Senator Bill Ratliff and sponsored by State Representative Mike Jackson. In an unusual and innovative approach the Legislature created SORM as an independent agency but administratively attached it to the Office of the Attorney General. This structure permitted the new agency to have the focus of a dedicated agency but with the cost savings generally associated with an agency consolidation. The new agency was directed to administer the workers' compensation program for state employees and the risk management program for state agencies, and the staff and resources to carry out these functions were drawn from existing programs with those same duties formerly administered by the Attorney General and the Texas Workers' Compensation Commission, respectively.

In the early years following SORM's creation the agency struggled with the problems that are common to young organizations and some that were unique to its creation. The agency initially continued to operate under the policies and procedures inherited from the divisions which had been merged to comprise the new agency. While this approach ensured continuity, it did not allow for immediate enhancement of the quality and effectiveness of the risk management and claims processing programs through coordinated, cohesive efforts. It took several years, and the addition of key staff to "bridge the gap" between the disparate divisions, to forge a true cooperative agency environment capable of producing the kind of results the Legislature envisioned. More importantly, as we have discussed elsewhere in the SER, the initial legislative plan for making agencies accountable for injuries and funding losses proved unworkable and could not be implemented until appropriate corrections were recommended and finally passed by the 77th Legislature.

As a result, the Office has made its most significant strides in meeting the goals of its enabling legislation in the last two biennia as it continued to work to clarify its role and processes through recommendations for changes to the Legislature and through changes to its internal philosophy and organization.

Workers' compensation costs are being drastically reduced as the result of improved claims processing by the Office, improved safety practices on the part of client agencies, and greater accountability on the part of agencies for losses. Injury frequency rates have been dropping since the Office's inception, and unnecessary insurance purchases by state agencies subject to Chapter 412 have been eliminated while beneficial insurance purchases are being evaluated to provide appropriate coverage with significant premium savings.

In 2005 our Governor appointed three new members to our Board of Directors who bring their expertise and experience in law, risk management and insurance to bear on the mission of the agency. It is through the support of its Board, and the leadership and dedication of the staff of the agency, that SORM rises to the challenges set forth in the Legislature's goals.

The Office continues to face challenges including high turnover and the cost of attracting and retaining experienced, qualified staff; the reluctance of a small number of constituent agencies to fully participate in the statutory programs; drastically rising medical costs; and the continual changes to, and the underlying complexity of, the workers' compensation law and rules. However, with the awareness of these challenges and the assistance of your staff, we are confident that the State Office of Risk Management will emerge an even better agency through the Sunset Review Process.

Respectfully,

Jonathan D. Bow, J.D.  
Executive Director

## ATTACHMENTS

The following supplemental data and documents are included with the hard copy of the Self-Evaluation Report:

### Attachments Relating to Key Functions, Powers, and Duties

1. A copy of the agency's enabling statute.
2. A copy of each annual report published by the agency from FY 2000 - 2004.
3. A copy of each internal or external newsletter published by the agency from FY 2003 - 2004.
4. A list of publications and brochures describing the agency.
5. A list of studies that the agency is required to do by legislation or riders.
6. A list of legislative or interagency studies relating to the agency that are being performed during the current interim.
7. A list of studies from other states, the federal government, or national groups/associations that relate to or affect the agency or agencies with similar duties or functions.

### Attachments Relating to Policymaking Structure

8. Biographical information of all policymaking body members.
9. A copy of the agency's most recent rules.

### Attachments Relating to Funding

10. A copy of the agency's Legislative Appropriations Request for FY 2006-2007.
11. A copy of each annual financial report from FY 2002 - 2004.
12. A copy of each operating budget from FY 2003 - 2005.

### Attachments Relating to Organization

13. An organizational chart, as requested by Section VI.A.

**Attachments Relating to Agency Performance Evaluation**

14. A copy of each quarterly performance report completed by the agency in FY 2002 - 2004.
15. A copy of any recent studies on the agency or any of its functions conducted by outside management consultants or academic institutions.
16. A copy of the agency's current internal audit plan.
17. A list of internal audit reports from FY 2001 - 2005 completed by or in progress at the agency.
18. A list of State Auditor reports from FY 2001 - 2005 that relate to the agency or any of its functions.
19. A copy of any customer service surveys conducted by or for your agency in FY 2004.

**Other Attachments as Referenced Herein**

20. Attorney General Opinion No. GA-0075, issued May 22, 2003.
21. Summary of provisions of HB 7, 79<sup>th</sup> Legislature.
22. Fiscal Notes submission prepared for HB 7, 79<sup>th</sup> Legislature.
23. SORM 79<sup>th</sup> Legislature Bill Matrix, Regular Session.
24. State Agency Contact Database listings (CD).