

SUNSET ADVISORY COMMISSION

STAFF REPORT WITH FINAL RESULTS

State Office of Risk Management

2018–2019
86TH LEGISLATURE

SUNSET ADVISORY COMMISSION

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STATE OFFICE OF RISK MANAGEMENT

SUNSET STAFF REPORT WITH FINAL RESULTS

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HOW TO READ SUNSET REPORTS

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and actions into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

FIRST VERSION: The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

SECOND VERSION: The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

***THIRD VERSION:* The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.**

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FINAL RESULTS

FINAL RESULTS

Senate Bill 612

Summary

The Legislature created the State Office of Risk Management (SORM) in 1997 to protect the state's employees as well as its physical and financial assets by reducing and controlling risk. Serving a large and diverse group of 265 state entities is a difficult job that SORM has generally performed well, and Senate Bill 612 continues the agency for 12 years. Additionally, the bill requires SORM to regularly review and update risk management guidelines for state entities. The Sunset Commission also adopted several management actions to ensure SORM takes a more proactive approach to address several operational problems, some of them long-standing, to maximize its limited resources to better serve and reduce costs.

The following material summarizes results of the Sunset review of SORM, including management actions directed to the agency that do not require legislative action.

ISSUE 1 — *Contracting Processes*

Recommendation 1.1, Adopted — Direct SORM to develop detailed contract management policies and procedures. (Management action – nonstatutory)

Recommendation 1.2, Adopted — Direct SORM to include detailed, actionable performance measures in contracts. (Management action – nonstatutory)

Recommendation 1.3, Adopted — Direct SORM to monitor its contracts more regularly and more closely to ensure proper performance. (Management action – nonstatutory)

Recommendation 1.4, Adopted — Direct SORM to develop and require regular training for staff involved in the contracting process to effectively monitor contracts. (Management action – nonstatutory)

Recommendation 1.5, Adopted — Direct SORM to include detailed enforcement measures in contracts and apply enforcement tools consistently across contractors. (Management action – nonstatutory)

Recommendation 1.6, Adopted — Direct SORM to maximize opportunities to use the office of the attorney general's contract procurement and management expertise. (Management action – nonstatutory)

ISSUE 2 — *Workers' Compensation*

Recommendation 2.1, Adopted — Direct SORM to evaluate and adjust its workers' compensation healthcare network contract to obtain best value for the state, including providing adequate coverage for injured state employees. (Management action – nonstatutory)

Recommendation 2.2, Adopted — Direct SORM to evaluate the agency's medical bill quality assurance strategy and make any needed improvements to maximize cost savings. (Management action – nonstatutory)

Recommendation 2.3, Modified — Direct SORM to include additional information in its cost containment reports to better demonstrate the agency’s performance, including the impact of telemedicine as a cost containment measure and information on healthcare network utilization by provider type. (Management action – nonstatutory)

Recommendation 2.4, Adopted — Direct SORM to provide additional information and resources regarding return-to-work programs. (Management action – nonstatutory)

Recommendation 2.5, Modified — Direct SORM to collect and report lost-time outcomes and return-to-work information as currently required by statute, and do not authorize the agency to consider requesting the Legislature to remove the reporting requirement. (Management action – nonstatutory)

ISSUE 3 — *Risk Management*

Recommendation 3.1, Adopted — Require SORM to regularly review and update risk management guidelines for state entities.

Recommendation 3.2, Adopted — Direct SORM to use existing data to determine state entity risk levels and needs, and to prioritize resources and requirements by risk. (Management action – nonstatutory)

Recommendation 3.3, Adopted — Direct SORM to develop and use a standard assessment tool to focus on key areas of risk during site visits. (Management action – nonstatutory)

Recommendation 3.4, Adopted — Direct SORM to regularly solicit and use customer input to better tailor risk management services and resources. (Management action – nonstatutory)

Recommendation 3.5, Adopted — Direct SORM to develop objective tools to help state entities determine whether to transfer risk through purchasing insurance. (Management action – nonstatutory)

Recommendation 3.6, Adopted — Direct SORM to provide state entities with easy-to-use materials and templates for continuity planning. (Management action – nonstatutory)

ISSUE 4 — *Continue*

Recommendation 4.1, Adopted — Continue the State Office of Risk Management for 12 years.

Recommendation 4.2, Modified — Update the standard across-the-board requirement related to board member training, including a requirement for each board member to attest to both receiving and reviewing the training manual annually.

Recommendation 4.3, Adopted — Direct SORM to strengthen oversight by updating its board regularly on identified problems and improvements. (Management action – nonstatutory)

NEW RECOMMENDATIONS ADDED BY THE SUNSET COMMISSION

Workers’ compensation healthcare network provider directory, Adopted — Direct SORM to include the accuracy of the healthcare network provider directory as a performance measure in the healthcare network contract, and to regularly evaluate the accuracy of the provider directory as part of the agency’s enhanced contract monitoring. (Management action – nonstatutory)

Workers' compensation healthcare network study, Adopted — Direct SORM to study the feasibility of contracting with a second healthcare network to expand coverage to areas of the state not covered in the agency's primary healthcare network and include this information in the agency's report to the 87th Legislature. (Management action – nonstatutory)

State entity reports, Adopted — Require state entities to submit their annual reports to SORM not later than the 60th day after the last day of each fiscal year, instead of not later than the 60th day before the last day of each fiscal year as currently required by statute.

Provisions Added by the Legislature

No provisions were added by the Legislature.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations on SORM, as enacted in Senate Bill 612, will not have a fiscal impact to the state and can be achieved with existing agency resources. Several of the Sunset Commission's management actions are designed to improve internal operations and efficiency at the agency in ways that would have minimal impact on resources. Strengthening and improving SORM's cost containment efforts could result in some savings to SORM and the state, but the potential savings cannot be estimated until the agency implements these new strategies.

———— **SUNSET COMMISSION DECISIONS**
JANUARY 2019

SUNSET COMMISSION DECISIONS

Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the State Office of Risk Management, as well as modifications and new recommendations raised during the public hearing.

The Legislature created the State Office of Risk Management (SORM) in 1997 to protect the state's employees as well as its physical and financial assets by reducing and controlling risk. As the risk manager and insurance provider for the state, SORM has the important task of helping state entities plan for and manage situations they hope never arise, including injuries or illnesses to state employees.

Serving a large and diverse group of 265 state entities is a difficult job that SORM has generally performed well, and the Sunset Commission recommends continuing the agency for 12 years. However, SORM needs to take a more proactive approach to address several operational problems, some of them long-standing, to maximize its limited resources to better serve and reduce costs. In particular, SORM needs to fully implement needed improvements to its contracting processes. The agency's largest contracts, for workers' compensation cost containment services, lack the performance and enforcement measures needed to ensure contractors perform adequately. SORM also needs to better tailor its services to best meet its customers' needs. The commission further recommends improvements to the agency's healthcare network contract and reporting, particularly related to cost containment strategies.

ISSUE 1

SORM's Contracting Processes Do Not Fully Align With Best Practices.

Recommendation 1.1, Adopted — Direct SORM to develop detailed contract management policies and procedures. (Management action – nonstatutory)

Recommendation 1.2, Adopted — Direct SORM to include detailed, actionable performance measures in contracts. (Management action – nonstatutory)

Recommendation 1.3, Adopted — Direct SORM to monitor its contracts more regularly and more closely to ensure proper performance. (Management action – nonstatutory)

Recommendation 1.4, Adopted — Direct SORM to develop and require regular training for staff involved in the contracting process to effectively monitor contracts. (Management action – nonstatutory)

Recommendation 1.5, Adopted — Direct SORM to include detailed enforcement measures in contracts and apply enforcement tools consistently across contractors. (Management action – nonstatutory)

Recommendation 1.6, Adopted — Direct SORM to maximize opportunities to use OAG's contract procurement and management expertise. (Management action – nonstatutory)

ISSUE 2

SORM Does Not Effectively Manage Cost Containment Efforts to Maximize Workers' Compensation Savings to the State.

Recommendation 2.1, Adopted — Direct SORM to evaluate and adjust its workers' compensation healthcare network contract to obtain best value for the state, including providing adequate coverage for injured state employees. (Management action – nonstatutory)

Recommendation 2.2, Adopted — Direct SORM to evaluate the agency's medical bill quality assurance strategy and make any needed improvements to maximize cost savings. (Management action – nonstatutory)

Recommendation 2.3, Adopted as Modified — Direct SORM to include additional information in its cost containment reports to better demonstrate the agency's performance, including the impact of telemedicine as a cost containment measure and information on healthcare network utilization by provider type. (Management action – nonstatutory)

Recommendation 2.4, Adopted — Direct SORM to provide additional information and resources regarding return-to-work programs. (Management action – nonstatutory)

Recommendation 2.5, Adopted as Modified — Direct SORM to collect and report lost-time outcomes and return-to-work information as currently required by statute, and do not authorize the agency to consider requesting the Legislature to remove the reporting requirement. (Management action – nonstatutory)

ISSUE 3

SORM Could More Effectively Help State Entities Plan for and Mitigate Risk.

Recommendation 3.1, Adopted — Require SORM to regularly review and update risk management guidelines for state entities.

Recommendation 3.2, Adopted — Direct SORM to use existing data to determine state entity risk levels and needs, and to prioritize resources and requirements by risk. (Management action – nonstatutory)

Recommendation 3.3, Adopted — Direct SORM to develop and use a standard assessment tool to focus on key areas of risk during site visits. (Management action – nonstatutory)

Recommendation 3.4, Adopted — Direct SORM to regularly solicit and use customer input to better tailor risk management services and resources. (Management action – nonstatutory)

Recommendation 3.5, Adopted — Direct SORM to develop objective tools to help state entities determine whether to transfer risk through purchasing insurance. (Management action – nonstatutory)

Recommendation 3.6, Adopted — Direct SORM to provide state entities with easy-to-use materials and templates for continuity planning. (Management action – nonstatutory)

ISSUE 4

Texas Has a Continuing Need for the State Office of Risk Management.

Recommendation 4.1, Adopted — Continue the State Office of Risk Management for 12 years.

Recommendation 4.2, Adopted as Modified — Update the standard across-the-board requirement related to board member training, including a requirement for each Risk Management Board member to attest to both receiving and reviewing the training manual annually.

Recommendation 4.3, Adopted — Direct SORM to strengthen oversight by updating its board regularly on identified problems and improvements. (Management action – nonstatutory)

ADOPTED NEW RECOMMENDATIONS

Workers' Compensation Healthcare Network

Direct SORM to include the accuracy of the healthcare network provider directory as a performance measure in the healthcare network contract, and to regularly evaluate the accuracy of the provider directory as part of the agency's enhanced contract monitoring. (Management action – nonstatutory)

Direct SORM to study the feasibility of contracting with a second healthcare network to expand coverage to areas of the state not covered in the agency's primary healthcare network and include this information in the agency's report to the 87th Legislature. (Management action – nonstatutory)

State Entity Reports

Require state entities to submit their annual reports to SORM not later than the 60th day after the last day of each fiscal year, instead of not later than the 60th day before the last day of each fiscal year as currently required by statute.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would not have a fiscal impact to the state and could be achieved with existing agency resources. Several of the Sunset Commission's recommendations are designed to improve internal operations and efficiency at the agency in ways that would have minimal impact on resources. Strengthening and improving SORM's cost containment efforts could result in some savings to SORM and the state, but the potential savings cannot be estimated until the agency implements these new strategies.

**SUMMARY OF SUNSET
STAFF RECOMMENDATIONS**

SUMMARY

The Legislature created the State Office of Risk Management (SORM) in 1997 to protect the state's employees as well as its physical and financial assets by reducing and controlling risk. As the risk manager and insurance provider for the state, SORM has the important task of helping state entities plan for and manage situations they hope never arise, including injuries or illnesses to state employees. SORM administers the state's workers' compensation insurance program; provides other lines of insurance, such as automobile and property insurance; and assists with the development of state entities' risk management programs and continuity of operations plans. The 265 state entities participating in SORM's programs pay assessments to fund the agency, with each entity's amount based on factors such as the entity's size, injury frequency rate, and past claims costs.

Serving such a large and diverse group of state entities is a difficult job that SORM has generally performed well. However, SORM needs to take a more proactive approach to address several operational problems, some of them long-standing, to maximize its limited resources to better serve and reduce costs. For example, SORM needs to fully implement needed improvements to its contracting processes to ensure the state gets what it pays for. Auditors recently identified contracting problems SORM is working to address, but Sunset staff found additional areas where SORM's contracting processes do not fully align with best practices. The agency's largest contracts, for workers' compensation cost containment services, lack performance measures specifying the work vendors must provide, and SORM's monitoring and enforcement efforts are minimal, making it difficult for the agency to ensure contractors perform adequately. SORM also misses out on opportunities to better coordinate with the office of the attorney general (OAG), with which SORM is administratively attached, to receive additional contracting support and expertise. SORM plans to re-procure these cost containment contracts in fiscal year 2019, a pivotal opportunity for the agency to get its contracting practices in order and demonstrate meaningful improvement. Additionally, SORM's risk management services are not targeted to agencies with the highest risk. Proactively using available data to determine the risk levels of the entities SORM supports would allow the agency to prioritize its limited resources on the highest risk entities and maximize its efforts.

SORM also needs to better tailor its services to best meet its customers' needs. The agency does not regularly assess customer needs to determine key areas where its support is most needed. For example, during the Sunset review, SORM customers reported a need for more training and useful resources on workers' compensation claims and risk management. However, SORM has not updated its state risk management guidelines since 2005, and these guidelines

SORM generally performs well, but needs to take a more proactive approach to address several operational problems.

are lengthy and difficult to use. State entities also report SORM's continuity planning template and resources are complex and confusing, focusing more on federal recommendations than state entities' continuity planning needs. SORM also lacks objective, easy-to-use tools to help state entities determine whether they should purchase additional insurance, such as automobile or property insurance. Finally, Sunset staff found SORM does not provide sufficient return-to-work resources to help entities get injured employees back on the job quickly, which would save the state money and benefit the injured worker and their employer. The following material summarizes Sunset staff's recommendations on the State Office of Risk Management.

Issues and Recommendations

Issue 1

SORM's Contracting Processes Do Not Fully Align With Best Practices.

SORM spends more than \$4.5 million in contracts each fiscal year, but the agency's contracting processes do not fully align with best practices. Sunset staff found the agency lacks sufficient contract management policies, procedures, and training; poorly defines contract terms; lacks a fully implemented contract monitoring process; and has weak enforcement tools. While SORM is currently implementing recommendations to improve deficiencies in its contracting processes identified in a recent State Auditor's Office report, it needs to fully address these concerns before re-procuring its largest medical cost containment contracts in fiscal year 2019. Additionally, the agency receives some contracting support from the OAG, but misses opportunities to maximize the potential benefits of the office's contracting expertise.

Key Recommendations

- Direct SORM to develop detailed contract management policies and procedures.
- Direct SORM to include detailed, actionable performance measures in contracts, and to monitor contracts more regularly and more closely to ensure proper performance.
- Direct SORM to maximize opportunities to use OAG's contract procurement and management expertise.

Issue 2

SORM Does Not Effectively Manage Cost Containment Efforts to Maximize Workers' Compensation Savings to the State.

As part of SORM's administration of workers' compensation for state entities, the agency uses several cost containment strategies designed to reduce overall costs. While these efforts have reduced some costs, SORM could better manage these programs to maximize savings. For example, the agency's medical bill auditor provides inconsistent and inaccurate services that require the agency to use additional resources to perform duplicate bill reviews. The agency reports annually on its cost containment efforts, but does not include data needed to measure the agency's actual performance. Finally, SORM has not provided needed information and training to customers on developing successful return-to-work programs.

Key Recommendations

- Direct SORM to evaluate and adjust its workers' compensation healthcare network contract to obtain best value for the state, including providing adequate coverage for injured state employees.
- Direct SORM to evaluate the agency's medical bill quality assurance strategy and make any needed improvements to maximize cost savings.
- Direct SORM to provide additional information and resources regarding return-to-work programs, including collecting and reporting lost-time outcomes and return-to-work information as currently required by statute.

Issue 3

SORM Could More Effectively Help State Entities Plan for and Mitigate Risks.

SORM's mission is to provide leadership for state entities on risk management, but the agency does not provide the tools state entities need most to effectively mitigate their risk. SORM's risk management guidelines are outdated and difficult to use as is its continuity of operations planning template. SORM also does not regularly seek out or use customer input to tailor its risk management services and resources to meet customer needs and does not target its services to the state entities with the highest risk.

Key Recommendations

- Require SORM to regularly review and update risk management guidelines for state entities.
- Direct SORM to use existing data to determine state entity risk levels and needs, and to prioritize resources and requirements by risk.
- Direct SORM to regularly solicit and use customer input to better tailor risk management services and resources.

Issue 4

Texas Has a Continuing Need for the State Office of Risk Management.

Texas benefits from self-insuring for workers' compensation, and consolidating and coordinating risk management efforts among state entities. SORM generally carries out its key functions effectively, though the agency is sometimes slow to address identified problems. Sunset staff concluded that SORM serves an important role in state government and little benefit would result from organizational change.

Key Recommendations

- Continue the State Office of Risk Management for 12 years.
- Direct SORM to strengthen oversight by updating its board regularly on identified problems and improvements.

Fiscal Implication Summary

Overall, the recommendations in this report would not have a fiscal impact to the state and can be achieved with existing agency resources. Several of the recommendations are designed to improve internal operations and efficiency at the agency in ways that would have minimal impact on resources. Strengthening and improving SORM's cost containment efforts, as recommended in Issue 2, could result in some savings to SORM and the state, but the potential savings cannot be estimated until the agency implements these new strategies.

AGENCY AT A GLANCE

NOVEMBER 2018

AGENCY AT A GLANCE

The Legislature established the State Office of Risk Management (SORM) in 1997 to protect the state's employees and physical and financial assets by reducing and controlling risk in the most efficient and cost-effective manner. To accomplish its mission, the agency

- administers the workers' compensation program for state entities;
- assists state entities in developing risk management programs;
- coordinates insurance purchases for participating state entities; and
- assists state entities in developing and implementing continuity of operations plans.

Key Facts

- **Governance.** The five-member Risk Management Board oversees the agency.¹ The governor appoints the members, who must have demonstrated experience in insurance and insurance regulation, workers' compensation, and risk management administration. Board members serve staggered, six-year terms.
- **Funding.** SORM does not directly receive general revenue funds. Instead, each state entity participating in SORM's programs pays an allocated amount via interagency contract. SORM provides services to 265 state entities. SORM received over \$48 million from agency assessments in fiscal year 2017. The textbox, *SORM Assessment Factors*, details the criteria SORM uses to calculate each entity's assessment.²

SORM is administratively attached to the office of the attorney general, which provides contracting, accounting, information technology, and human resources support for SORM. In fiscal year 2017, SORM paid \$765,340 for these services.

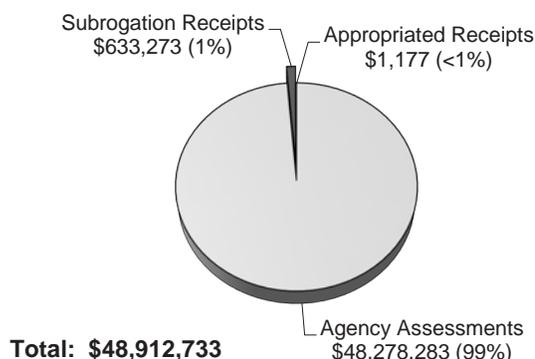
The pie chart, *State Office of Risk Management Sources of Revenue*, details the agency's sources of funding for fiscal year 2017.³ The chart on the following page, *Top Five Entities Paying Into SORM*, shows the largest assessments paid to SORM in fiscal year 2017. These five entities paid a combined 66 percent of SORM's total budget, with the remaining 260 state entities paying 34 percent.

SORM Assessment Factors

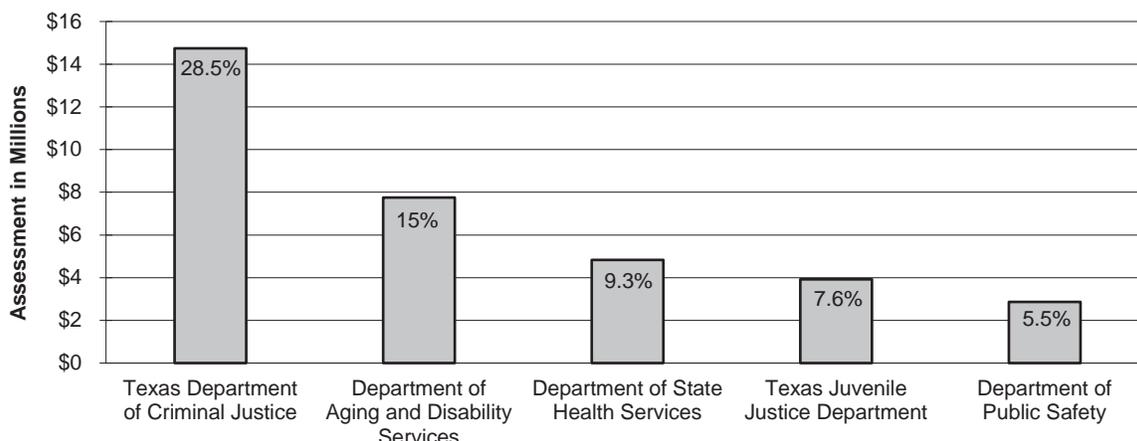
An entity's total assessment is based on the following factors:

- Payroll as a percentage of all participating entities' payroll
- Full-time employees (FTEs) as a percentage of all participating entities' FTEs
- The total number of accepted workers' compensation claims as multiplied by the entity's injury frequency rate
- Claim costs as a percentage of all claims payments made on behalf of participating entities
- Any other factors determined by SORM's board

State Office of Risk Management Sources of Revenue – FY 2017



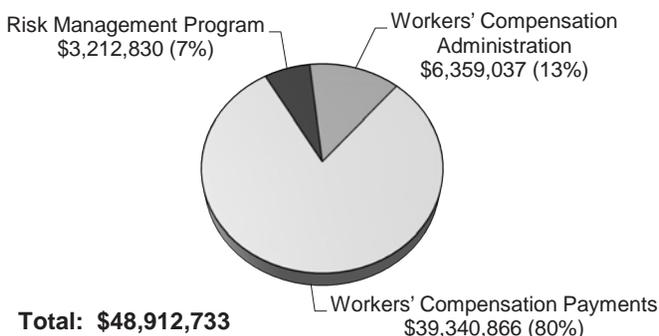
Top Five Entities Paying Into SORM – FY 2017



Note: Percentages shown indicate each entity's payment as a percentage of SORM's total assessments.

The pie chart, *State Office of Risk Management Expenditures*, details the agency's expenditures in fiscal year 2017. SORM's largest expenditure was for workers' compensation claims payments. Appendix A describes the agency's use of historically underutilized businesses in purchasing goods and services for fiscal years 2015–2017.

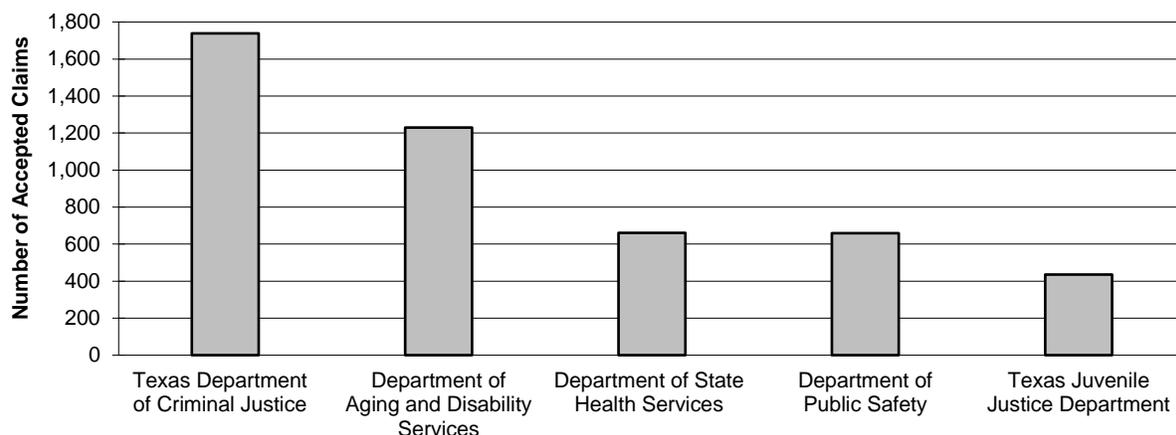
State Office of Risk Management Expenditures – FY 2017



- **Staffing.** In fiscal year 2017, SORM employed 107 staff based in Austin, with the largest number of employees in the workers' compensation division. Appendix B compares the agency's workforce composition to the percentage of minorities in the statewide civilian workforce for the past three fiscal years.
- **Workers' compensation.** SORM administers workers' compensation claims for about 192,000 employees of 265 state entities, including executive branch agencies, courts, higher education institutions, and community supervision and corrections departments. State law exempts the Texas Department of Transportation and the University of Texas and Texas A&M University Systems from participating; each operates their own workers' compensation program.⁴ SORM's workers' compensation coverage also extends to certain non-state employees, including civilian first responders activated by the Texas Division of Emergency Management. Injured state employees and other covered individuals may file claims for work-related injuries.

SORM determines whether an injury resulted from the individual's employment and should therefore be paid. In fiscal year 2017, SORM received about 7,600 new workers' compensation claims, accepted over 6,400 claims, and paid over \$39 million in medical costs and benefits to claimants. The chart on the following page, *State Entities With Most Workers' Compensation Claims*, shows the five entities with the highest number of accepted workers' compensation claims in fiscal year 2017.

State Entities With Most Workers' Compensation Claims – FY 2017



- **Risk management.** SORM assists state entities in establishing and maintaining risk management programs designed to identify and control workplace risks to protect state employees, state assets, and the public. Risk managers conduct on-site consultations and risk management program reviews to evaluate and determine the effectiveness of state agencies' health and safety programs, which may help reduce work injuries leading to workers' compensation claims. Additionally, SORM provides a clearinghouse of risk management information and resources including relevant contacts, protocols, and forms. In fiscal year 2017, SORM completed over 220 risk management consultations with various state entities.

- **Insurance.** SORM assists state entities and certain higher education institutions with insurance purchases, advising customers on insurance needs and helping identify appropriate coverage. State entities may not purchase property, casualty, or liability insurance coverage without SORM's approval. SORM harnesses the state's buying power to find insurance policies that meet entities' needs while keeping costs as low as possible. The textbox, *SORM's Sponsored Lines of Insurance*, details the insurance coverage SORM provides. State entities may also request SORM approval to purchase insurance from outside carriers. In fiscal year 2017, SORM provided 141 insurance policies for state entities and received and approved 87 applications to purchase insurance from another provider.

SORM's Sponsored Lines of Insurance

- **Automobile.** Liability and physical damage coverage for owned, non-owned, and hired vehicles.
- **Property.** Protection against damage and loss to buildings and personal property.
- **Builder's Risk.** Protection against natural or man-made property damage to facilities during construction or renovation.
- **Directors' and Officers' Liability.** Protection for financial loss from a claim alleging a wrongful act, error, or omission in the executive or management level of an agency.
- **Volunteers.** Personal and automobile liability and accident medical expense coverage for volunteers.

- **Continuity of operations planning.** SORM helps entities develop and implement plans for continuity of operations to ensure state entities are prepared to continue key functions in the event of a disruption or emergency. Continuity planning requires entities to identify critical functions and the personnel, facilities, and other resources necessary to continue critical functions in the event of a disruption. SORM has developed policies and best practices to help entities effectively plan for continuity of operations and assists with training, testing, and evaluating continuity plans for over 100 state entities.

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¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 412.021, Texas Labor Code.

² 28 T.A.C. Section 251.507.

³ SORM collected an additional \$2 million in assessments from state entities in fiscal year 2017 to pay for SORM employee benefits, bringing the agency's total budget to about \$51 million.

⁴ Section 501.024, Texas Labor Code.

ISSUES

ISSUE 1

SORM's Contracting Processes Do Not Fully Align With Best Practices.

Background

The State Office of Risk Management (SORM) administers and manages a variety of contracts to meet SORM's mission to provide workers' compensation and risk management services to state entities. In fiscal year 2017, SORM managed 43 contracts totaling just over \$4.7 million. SORM's largest contracts are for medical cost containment services to reduce workers' compensation expenditures, with five contracts totaling about \$3.6 million. Other, smaller contracts include insurance support for state entities, technology and software purchases, and contracts supporting SORM's internal operations.

SORM is administratively attached to the office of the attorney general (OAG), which provides procurement support. The textbox, *SORM and OAG Contracting Roles*, provides more detail on each agency's responsibilities for SORM contracting. SORM's legal services team has primary responsibility for SORM's contracting functions, with program staff responsible for day-to-day coordination and communication with vendors.

In June 2018, the State Auditor's Office (SAO) released a report describing significant weaknesses in SORM's contracting processes from 2014, including inadequate contract planning, procurement, and formation.¹ The textbox, *Key SAO Findings*, summarizes the problems SAO identified in three of SORM's medical cost containment contracts. SORM has implemented some needed changes and improvements, including hiring a dedicated contract administrator and reviewing and updating some of its contract procurement, management, and monitoring processes. SORM plans to re-procure the agency's largest medical cost containment contracts in fiscal year 2019; ensuring SORM fully implements the SAO recommendations is essential for the state to receive the best value and get what it pays for.

SORM and OAG Contracting Roles

SORM

- Identifies contracting needs
- Develops statements of work
- Evaluates proposals
- Negotiates and finalizes contracts
- Manages contracts
- Proposes contract amendments or renewals

OAG

- Determines procurement methods and timelines
- Drafts and posts solicitation documents based on SORM's statements of work
- Screens proposals for completeness and eligibility
- Coordinates proposal evaluations
- Maintains contract administration files

Key SAO Findings

- SORM used one request for proposal to solicit multiple contracts for medical cost containment services.
- SORM's solicitation lacked specific information on performance expectations, quality requirements, and deliverables.
- Some of the contracts lacked detailed information on the services to be provided, performance measures, remedies, and potential for loss of funding.

Findings

SORM's contracting processes do not fully align with best practices, contributing to inconsistency in managing its contracts and other operational inefficiencies.

When evaluating an agency's contracting operations, Sunset uses the general framework established in the *State of Texas Procurement and Contract Management Guide*, as well as documented standards and best practices compiled by Sunset staff. SORM and OAG have made some initial improvements to SORM's contracting operations, such as creating a risk assessment tool, updating the exemplar contract SORM uses for procurements, and developing a vendor performance log. However, SORM has not fully adjusted its policies and procedures or had the opportunity to implement these new tools and procedures through a procurement process. To ensure SORM fully implements needed changes and improvements prior to the next procurement, the following issues should be addressed.

- **Insufficient contract management policies and procedures.** Agencies need uniform contracting policies and procedures to ensure effective contract management, including the designation of a contract manager with primary responsibility for administering all aspects of the contract. The contract manager should then work with program staff to monitor the contractor. SORM's existing policies and procedures for managing contracts are inadequate, consisting of a list of contract management functions without clear explanation of which staff is responsible for each task and how contract management functions should be performed. While OAG provides policies and procedures for contract procurement and management, these policies are not tailored to SORM's management of its own contracts. SORM also lacks clear roles for contract managers and program staff interacting with vendors on a day-to-day basis and overseeing billing. Without clear guidance and roles on contract management, SORM may not be able to effectively administer contracts to ensure vendors perform as required by contract.
- **Poorly defined contract terms.** Agencies should include performance measures in contracts to allow agency staff to monitor the contract and hold the contractor accountable for performing as promised. SORM's medical cost containment contracts generally lack performance measures and deliverables, making it difficult for staff to identify and address potential performance issues.² For example, SORM's contract for medical bill audit services does not specify the expected level and detail of review or maximum acceptable error rate. See Issue 2 for more information on SORM's workers' compensation contracts.
- **Inadequate contract monitoring.** Agencies should carefully monitor contractor performance and communicate with contractors to resolve problems and ensure successful outcomes for contracted services. Lengthy contract terms require especially close monitoring to ensure an agency gets

SORM has made some contracting improvements, but has not fully implemented them yet.

SORM's cost containment contracts lack performance measures.

what it pays for. Most of SORM's large contracts have five-year terms, but the agency does not generally evaluate contractors during the life of the contract or fully upon closeout. SORM has not fully implemented a formal mechanism for monitoring contracts and communicating problems between contract managers, program staff, and contractors. SORM recently developed a contract monitoring log to track monthly performance and any problems, and began using this tool in fiscal year 2019. Previously, the agency addressed problems informally on an ad hoc basis, and was unable to provide Sunset staff with detailed information on performance monitoring and problem resolution. SORM has also created a risk assessment tool to guide procurements and plans to use it to identify contracts that require enhanced monitoring and oversight; however, SORM still needs to develop a way to focus its monitoring activities on the highest risk contracts. In fiscal year 2018, SORM began completing statutorily required vendor performance reports upon contract closeout, but these reports do not include specific details on each vendor's successes and shortcomings or lessons learned to apply in the next procurement.³

- **Lack of contract monitoring training.** Agency staff involved in contract management and monitoring should receive standard contract training. SORM's contract administrator has completed the comptroller's Certified Texas Contract Manager training, which provides comprehensive knowledge about contracting roles and responsibilities. However, SORM program staff lack contract monitoring training, which can make enforcement of contract deliverables difficult. SORM lacks needed training on defining how the contract manager and program staff monitor contracts, rate vendor performance, assess risk, and escalate problems to central management, particularly as the agency introduces new monitoring processes. Requiring additional training for SORM staff would help ensure contracts are managed effectively, vendors perform satisfactorily, and any vendor issues are documented and reported.
- **Weak and missing enforcement tools.** Agencies should have a range of sanctions or remedies available to use if contractors are noncompliant with contract terms. SORM's current cost containment contracts have ineffective and vaguely defined enforcement tools, and the agency's lack of monitoring makes it difficult to apply them. Other contracts lack many standard remedies altogether. As a result, SORM must rely on manual checks to catch individual errors for certain vendors rather than consistently using remedies to address recurring problems and incentivize improved performance. For the vendor SORM uses to process medical bills, SORM must perform a manual review to determine whether the vendor met the payment deadlines required in the contract and if the agency is entitled to performance discounts depending on the length of delays. For example, if the vendor processes bills one to two days late, SORM pays only 80 percent of the contract fee, and if the vendor is three to five days behind schedule, SORM pays only 50 percent of the fee.

SORM does not evaluate contractors during the life of the contract or fully upon closeout.

SORM's cost containment contracts have ineffective and vaguely defined enforcement tools.

SORM's contracts allow the agency to transfer the contract to a backup vendor in the event of unsatisfactory performance, but SORM has not used this authority since 2005, choosing instead to use it as a stick to try to encourage good performance. SORM's contracts also lack common remedies the agency could use to address poor performance, such as set liquidated damages or corrective action plans. The lack of clear contractor performance requirements and poorly defined or nonexistent enforcement options can leave SORM without sufficient recourse when contractors do not perform adequately.

SORM misses opportunities to better coordinate with the attorney general's office to improve its procurement and contracting functions.

SORM does not maximize OAG's contracting expertise.

The attorney general's office plays a key role in SORM's procurement and purchasing processes, as specified in the interagency contract between the two agencies for administrative support. As specified in the interagency contract, OAG supports SORM throughout the procurement process, but the contract does not specifically address support for SORM's contract management functions, although SORM relies on OAG's contracting credentials to execute its contracts.

Beyond the terms of the interagency contract, SORM does not maximize OAG's contracting expertise, missing opportunities to improve its contracting functions. SORM does not regularly coordinate with OAG to develop well-defined solicitations or contracts with clear deliverables, performance expectations, and enforcement measures. SORM also does not consult with OAG beyond the procurement, through the term of the contract. However, SORM could benefit from having OAG review contract renewals and amendments to provide its expertise and an extra check to ensure any changes or renewals are justified and in the best interest of SORM and the state. The two agencies coordinate well on other support areas. For example, SORM and OAG meet quarterly to discuss information technology issues.

Recommendations

Management Action

1.1 Direct SORM to develop detailed contract management policies and procedures.

This recommendation would direct SORM to enhance its existing list of contract management responsibilities by creating thorough policies and procedures, which should set out detailed staff roles and responsibilities for each contract management function. SORM should use OAG's contract management guide and the comptroller's *State of Texas Procurement and Contract Management Guide* as references in developing its own policies and procedures. SORM should develop contract management policies and procedures by September 1, 2019, when the new cost containment contracts take effect. This recommendation would ensure SORM manages its contracts effectively and all staff involved in contracting coordinate to provide an overall picture of contract performance.

1.2 Direct SORM to include detailed, actionable performance measures in contracts.

This recommendation would direct SORM to include specific information on deliverables and performance measures in agency contracts to ensure the agency is able to effectively monitor contractor performance and take enforcement action when necessary. SORM should include performance measures in contracts beginning with the cost containment contracts the agency will procure in fiscal year 2019, and in all contracts going forward. This recommendation will help the state get what it pays for by clearly outlining performance expectations for contractors.

1.3 Direct SORM to monitor its contracts more regularly and more closely to ensure proper performance.

Under this recommendation, SORM would improve its contract monitoring practices to identify any performance issues during the term of the contract, which would be addressed timely through the contract enforcement processes detailed in Recommendation 1.5. SORM should implement the newly drafted monthly performance log by training staff on how to use the log and ensuring the agency's new contract administrator reviews it regularly to identify and address performance issues.

As part of this recommendation, SORM should also complete more detailed evaluations of contractors during the contract term and at contract closeout to compare actual performance with performance measures and objectives. SORM should continue to meet statutory requirements to submit vendor performance reports to the comptroller, but this recommendation would also direct the agency to complete more detailed evaluations for internal use, including documenting any lessons learned. SORM should use these evaluations to develop future procurements by better defining needs, statements of work, deliverables, performance measures, and enforcement tools, and to guide future vendor selection. Agency staff should regularly report contract performance monitoring information and any contractor performance issues to the board. SORM should also report contract renewal information to the board and the board could consider requiring its approval before renewing large contracts above a certain dollar amount. SORM should implement enhanced contract monitoring by September 1, 2019.

1.4 Direct SORM to develop and require regular training for staff involved in the contracting process to effectively monitor contracts.

This recommendation would direct SORM to identify or develop training for program staff that perform contract monitoring functions and require this training at regular intervals. SORM could work with OAG to determine whether OAG contract training would meet SORM staff needs. This training could include, but should not be limited to, information related to monitoring performance, collecting and sharing performance data with central management, and identifying and reporting compliance issues. SORM should develop and implement the new training by September 1, 2019. Improved contract training would allow SORM staff to more effectively monitor contracts and identify potential problems.

1.5 Direct SORM to include detailed enforcement measures in contracts and apply enforcement tools consistently across contractors.

This recommendation would direct SORM to include clearly defined enforcement measures in its contracts, such as specified liquidated damages, corrective action plans, and performance discounts. Using the enhanced contract monitoring discussed in Recommendation 1.3, SORM should apply enforcement measures when contractors do not meet performance objectives. To ensure SORM uses enforcement measures consistently, the agency could develop a matrix specifying when the agency will apply various enforcement tools. SORM's contract administrator, program staff working with

contractors, and accounting staff should coordinate to ensure enforcement measures are applied when needed. SORM should begin including enforcement tools in new contracts and using them, when needed, by September 1, 2019.

1.6 Direct SORM to maximize opportunities to use OAG’s contract procurement and management expertise.

Under this recommendation, SORM would work more closely with OAG throughout the contracting cycle, from early in the procurement planning phase through closeout. SORM and OAG should meet to determine how to best work together on contract procurement and management, including whether their interagency contract should be modified to include support for SORM’s contracting functions and clearly define what that support would include. At a minimum, SORM should inform OAG of any significant problems with contractors meriting enforcement action, and notify OAG at least 30 days before renewing, terminating, or closing out a contract. This recommendation would allow SORM to maximize the benefits of its administrative attachment with OAG and to use OAG’s contracting expertise as it works to improve its own contracting processes. This recommendation would not modify the section of the interagency contract specifying that OAG’s actions on behalf of SORM are solely the actions of SORM, not OAG.

Fiscal Implication

These recommendations are designed to improve the efficiency of the contract management, monitoring, and enforcement processes at SORM, but would not have a fiscal impact to the state because the agency can implement these recommendations using existing staff and other resources. SORM staff can also use OAG’s existing procurement and contract operations division for support, including to develop policies and procedures, monitoring tools, and enforcement measures. Improving SORM contracts should result in better value for the state and the 265 entities SORM serves.

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¹ State Auditor’s Office, *Financial Processes at the State Office of Risk Management*, accessed October 10, 2018, <http://www.sao.texas.gov/reports/main/18-032.pdf>.

² Ibid., 2–3.

³ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 2155.089, Texas Government Code.

ISSUE 2

SORM Does Not Effectively Manage Cost Containment Efforts to Maximize Workers' Compensation Savings to the State.

Background

The State Office of Risk Management (SORM) administers the self-insured workers' compensation program for about 192,000 total employees of 265 state entities.¹ SORM acts as the state's workers' compensation insurance carrier, assisting both injured state employees and their state employers by managing all aspects of a workers' compensation claim. SORM determines whether an injury is compensable, or directly related to a claimant's employment, and if so, facilitates medical treatment. SORM pays both medical and income benefits as appropriate, with the state covering all medical costs related to a compensable injury and paying income benefits for a set time period if the employee misses work due to the injury.² SORM denies any claims for injuries it determines are not compensable. Claimants may appeal denials or any other SORM decisions on their claims. Appendix C provides a flow chart with more detail on the workers' compensation process.

SORM is one of several state entities with important roles in the workers' compensation system. Most notably, the Texas Department of Insurance Division of Workers' Compensation (TDI-DWC) oversees the entire workers' compensation system in Texas to make sure insurance carriers, medical providers, and employers follow all applicable laws and regulations.³ The textbox, *State Agency Roles in Workers' Compensation*, details the roles of the key agencies that administer workers' compensation in Texas.⁴

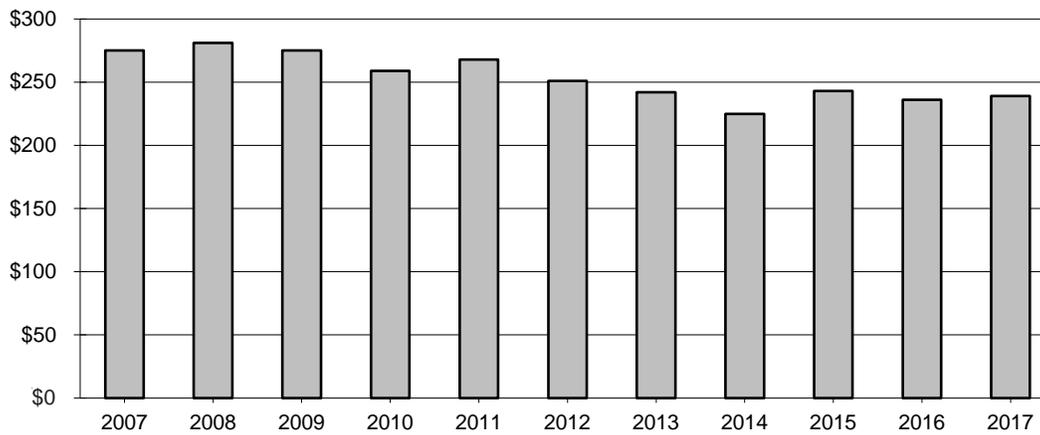
The Legislature overhauled the workers' compensation system in 2005, creating TDI-DWC, authorizing use of certified healthcare networks, and creating fee guidelines for medical and pharmacy services.⁵ The 2005 reform generally reduced workers' compensation costs throughout the state.⁶

SORM tracks the success of its workers' compensation program by calculating the cost of workers' compensation per \$100 of state payroll and per covered state employee. This information shows the program's overall trends and demonstrates how workers' compensation costs for state employees have decreased over time as shown in the graphs on the following page, *Cost Per Covered Employee* and *Cost Per \$100 State Payroll*.

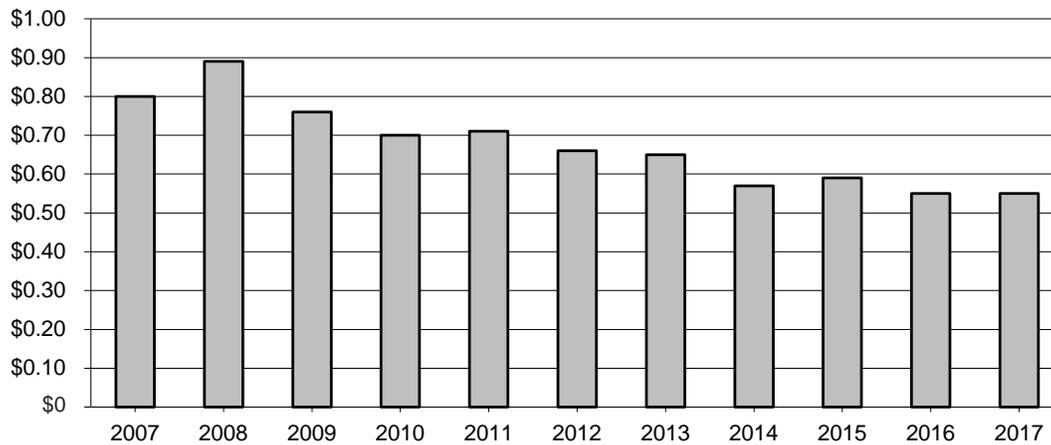
State Agency Roles in Workers' Compensation

- **SORM** — Administers the self-insured workers' compensation program on behalf of certain state entities
- **TDI-DWC** — Regulates the workers' compensation system in Texas by setting fee guidelines, monitoring compliance, taking enforcement action, and adjudicating informal claims disputes
- **Office of Injured Employee Counsel** — Ombudsmen assist injured employees not represented by an attorney in filing claims and navigating the dispute process
- **State Office of Administrative Hearings** — Adjudicates disputes between the state and parties to a claim appealed beyond TDI-DWC's jurisdiction
- **District and appellate courts** — Resolve questions of law on appeal by claimant or insurance carrier

Cost Per Covered Employee — FYs 2007–2017



Cost Per \$100 State Payroll — FYs 2007–2017



TDI-DWC audits SORM and all other insurance carriers for timeliness of benefit payments, medical bill processing, data submission, and responses to healthcare provider billing requests. In TDI-DWC’s most recent audit, SORM ranked in the highest performance tier.⁷

While SORM’s legal and claims staff administer workers’ compensation claims, the agency also uses in-house and outsourced cost containment functions designed to lower costs. The textbox, *SORM’s Cost Containment Efforts*, details some of the agency’s initiatives to reduce costs.

SORM’s Cost Containment Efforts

Contracted services

- **Medical services preauthorization** — Requires pre-approval before allowing certain medical procedures
- **Healthcare network** — Provides access to medical providers familiar with workers’ compensation, with a set reimbursement amount determined by the network
- **Pharmacy benefits management** — Provides lower-cost prescription drug services
- **Medical bill audits** — Review medical bills and reduce to amount authorized in TDI-DWC fee schedule

In-house initiative

- **Return-to-work program** — Encourages employers to facilitate quick returns to work for injured employees, which benefits employees and saves money for the state; the state typically must pay income benefits to cover lost time for employees who have not returned to work

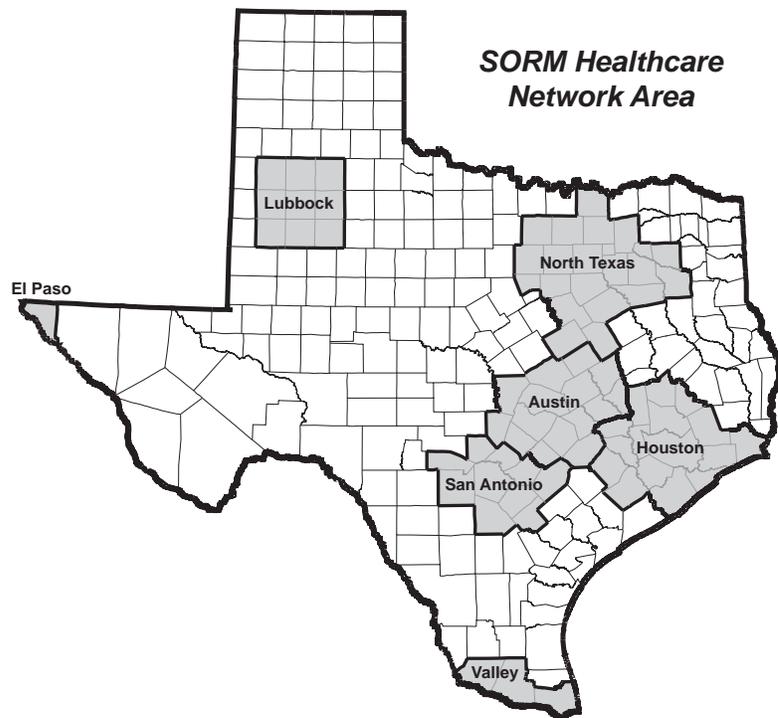
Findings

SORM does not effectively manage its cost containment services to maximize savings.

SORM's use of cost containment vendors helps the agency reduce overall state workers' compensation costs, but SORM does not make the most of these services to maximize savings to the state and better serve injured state employees. SORM plans to procure new contracts for cost containment services in fiscal year 2019 and while SORM needs to improve its contracting capabilities as discussed in Issue 1, this creates an opportunity to seek more effective services to increase workers' compensation savings.

SORM needs to improve its cost containment contracts.

- SORM's healthcare network covers only about 60 percent of state employees, reducing potential savings.** SORM contracts with a healthcare network that primarily serves the state's major metropolitan areas, limiting the potential benefits of network savings. Much like a health maintenance organization, injured state employees must use physicians and services in the network to avoid the higher costs of going outside of the network. SORM staff estimate 50 to 60 percent of injured state employees live within the network area, with about 60 percent of fiscal year 2017 accepted claims in the network area. The map, *SORM Healthcare Network Area*, illustrates that the network extends through major metropolitan and suburban areas, but leaves a significant portion of the state uncovered, including several cities with populations greater than 100,000, such as Abilene, Amarillo, Laredo, and San Angelo. At the end of fiscal year 2018, TDI approved the healthcare network's expansion into the Lubbock area effective November 1, 2018, which should result in more covered claimants and therefore cost savings.



TDI-DWC annually assesses all workers' compensation networks in Texas and in fiscal years 2017 and 2018, found SORM's network performs worse than other networks for access to care, though it has lower than average medical and pharmacy costs.⁸ During the review, Sunset staff received feedback about the network's poor coverage, which makes it difficult for injured employees to access care and minimizes savings. In fiscal year 2017, 39 percent of claims were out-of-network, but medical

costs for these claims were about the same as costs for the remaining 61 percent of network claims. Of note, several state entities with the highest incidence of workers' compensation claims, such as the Texas Department of Criminal Justice, Department of Aging and Disability Services, and Texas Juvenile Justice Department, have facilities in locations outside of the network as highlighted in the textbox, *State Facilities Outside SORM's Healthcare Network*.

SORM pays for medical bill auditing twice.

State Facilities Outside SORM's Healthcare Network

- 52 percent of Texas Department of Criminal Justice facilities
- 35 percent of state supported living centers
- 24 percent of Texas Juvenile Justice Department facilities

- **SORM's medical bill auditor provides inconsistent and inaccurate services, requiring the agency to use additional resources to perform the same functions.** SORM's contracted medical bill auditor uses an automated system to re-price bills, but does not perform detailed, manual reviews to maximize savings — instead, SORM staff manually review the same bills, essentially paying for the same auditing twice.

Medical Bill Auditing

- Although TDI-DWC sets specific fee limits for workers' compensation treatment, providers often bill above the maximum allowable rate
- SORM's contractor processes medical bills electronically, using an algorithm to reduce the billed amounts to maximums set in TDI-DWC fee guidelines
- SORM's contractor does not manually check for billing errors missed by the algorithm
- Fee guidelines are complex and tie to specific claim elements, such as type of injury, body part injured, and medical provider or service, so automatic re-pricing does not catch all billing errors

The textbox, *Medical Bill Auditing*, provides more detail on the re-pricing SORM's contractor provides. In fiscal year 2017, SORM paid about \$486,000 for contracted medical bill auditing. SORM staff manually review most bills already processed by the contractor to identify missed opportunities to further reduce costs. SORM staff began tracking contractor errors in September 2018, and found 22–26 percent of medical bills processed by the contractor contained errors, with overpayments for two weeks totaling \$4,739. As discussed in Issue 1, SORM lacks meaningful performance and enforcement measures to hold the contractor responsible for poor performance. While SORM's additional layer of review results in greater savings by catching these errors, it is inefficient for SORM to outsource a function the agency also performs itself.

SORM's cost containment report lacks sufficient data to provide meaningful context for measuring the agency's performance.

SORM's legislatively mandated cost containment report provides useful information on the agency's current efforts in accordance with legislative requirements, but lacks meaningful context, and provides an incomplete assessment of the agency's true performance. The Legislature requires SORM to submit an annual report detailing the effectiveness of cost containment efforts undertaken during the fiscal year and proposing additional ways to reduce workers' compensation costs in the future.⁹ SORM's cost containment

report includes basic information on the agency's cost containment initiatives and some data on cost savings achieved for the fiscal year, with limited comparisons to previous fiscal years. However, SORM's publication lacks some information needed to help the Legislature and other readers understand and assess the actual savings from the agency's efforts, as detailed in the textbox, *Limitations of SORM's Cost Containment Report*. Without comprehensive information, SORM cannot clearly demonstrate the true value of the agency's cost containment efforts and does not allow the Legislature to easily understand the agency's performance and hold SORM accountable.

Limitations of SORM's Cost Containment Report

- Limited trend information on changes in cost containment results over several fiscal years
- No summary of total amount saved from all cost containment initiatives
- Medical cost savings do not reflect actual amount saved due to SORM's efforts, but rather difference in amount billed and amount allowed under state guidelines
- Insufficient context for cost containment results, such as number of prescriptions resulting in savings from pharmacy benefits management

SORM does not provide adequate resources to customers about successful return-to-work programs.

SORM does not provide sufficient return-to-work information for state entities, missing out on opportunities to help lower costs by getting injured employees back on the job as soon as medically possible. Statute requires state entities to develop return-to-work programs.¹⁰ These programs should identify specific responsibilities for entities' claims coordinators, supervisors, and injured employees to expedite return to work as soon as feasible after a work-related injury or illness.¹¹ Unlike other cost containment services, SORM handles its return-to-work initiatives entirely in-house. SORM offers basic, limited return-to-work information on its website, but does not provide detailed templates, training, or other practical tools for state entities. Other workers' compensation insurance carriers offer more robust tools to help employers get injured employees back to work, as described in the textbox, *Examples of Return-to-Work Resources*.

Examples of Return-to-Work Resources

- **Louisiana Office of Risk Management** — Detailed guidelines, templates, specific responsibilities for state entities and injured employees, and forms for tracking and reporting return-to-work data
- **Montana Workers' Compensation Management Bureau** — Sample work plans, medical status forms, information on communicating with employees and doctors, forms for tracking employee status, and easy reference information for injured employees
- **Texas Mutual Insurance Company** — Toolkits for large and small employers with sample forms and detailed instructions
- **University of Texas Policy Office** — Guidelines and detailed information tailored to supervisors and employees

SORM does not track return-to-work and lost-time data as directed by the Legislature to help improve the state's workers' compensation system.

In 2007, based on a Sunset recommendation, the Legislature required SORM to track and biennially report lost-time and return-to-work information.¹² The agency has not implemented this requirement in part due to database limitations it has not addressed, as discussed in Issue 4. Without tracking information on return-to-work and lost-time outcomes across state entities, SORM cannot accurately assess program successes and target assistance to state entities that

need help returning injured employees to the workforce. SORM reports lost-time information on each claim directly to TDI-DWC, but does not require reporting from state entities or otherwise compile and report statewide data on lost time and return to work. Without this data, SORM and the state do not have the information needed regarding successful and unsuccessful return-to-work outcomes to improve the workers' compensation system.

Recommendations

Management Action

2.1 Direct SORM to evaluate and adjust its workers' compensation healthcare network contract to obtain best value for the state, including providing adequate coverage for injured state employees.

For its upcoming procurement of the workers' compensation healthcare network in fiscal year 2019, SORM should carefully evaluate its current healthcare network contract for successes and areas for improvement. SORM should consider ways to increase network coverage and access to care for covered employees in all or most areas of the state, such as including specific service area requirements in the solicitation and evaluating proposals based on the proposed service area. SORM should also evaluate healthcare network needs and opportunities using resources such as input from state entities SORM serves, work groups, customer service surveys, and TDI-DWC's annual report card for healthcare networks. SORM should complete this evaluation by March 1, 2019, to inform the new procurement, which will take place early in the fiscal year. The new contract should include specific language and performance measures to ensure SORM can hold the healthcare network accountable for satisfying agency and injured employee needs. This recommendation would maximize cost savings and help the agency provide improved coverage for employees throughout the state.

2.2 Direct SORM to evaluate the agency's medical bill quality assurance strategy and make any needed improvements to maximize cost savings.

This recommendation would direct SORM to evaluate its current medical bill audit strategy, including a full review of the agency's current contract with a re-pricing vendor, and consider whether the agency could better contain medical costs using a different strategy. SORM should research cost containment efforts by other states, other insurance carriers, and industry best practices to determine whether re-pricing provides maximum savings. SORM should complete its evaluation by March 1, 2019, before the upcoming procurement of cost containment contracts that will take place early in the fiscal year. SORM should use this information to guide the procurement and ensure the request for proposals includes detailed information about the agency's specific medical bill audit needs.

SORM should evaluate proposals based on the proven efficacy and savings of each vendor, among other criteria. SORM should include language and specific performance measures in the new medical bill audit contract requiring the selected vendor to conduct detailed reviews of medical bills to maximize savings and reduce or eliminate the need for SORM to double check work. This recommendation would help SORM ensure its significant investment in cost containment services achieves optimum savings and helps reduce staff time needed to check the contractor's work.

2.3 Direct SORM to include additional information in its cost containment reports to better demonstrate the agency's performance.

This recommendation would direct SORM to include information in the agency's annual cost containment reports to provide context and detail on SORM's savings. For example, SORM could report on

- long-term trends in cost containment savings for at least five fiscal years;
- actual savings to SORM from medical bill audits;
- number of claims or services resulting in savings, to provide context for SORM's cost containment results; and
- summaries of total cost savings from all cost containment efforts.

This information would allow the Legislature to better assess the success of SORM's cost containment efforts and help identify areas where improvement is needed. SORM should gather and include this additional data beginning in the agency's fiscal year 2019 cost containment report to the Legislature.

2.4 Direct SORM to provide additional information and resources regarding return-to-work programs.

SORM should develop more detailed and user-friendly information and resources, such as forms and templates, for state entities and injured employees to improve return-to-work efforts. These resources could include forms, templates, guidelines, information on communicating with doctors, and responsibilities for the state entity and the injured employee. SORM could consider creating information targeted specifically toward large and small entities, which may have different return-to-work considerations. SORM could use other state agencies' and workers' compensation insurance carriers' return-to-work resources as examples when creating its own information. SORM could also consider including these return-to-work resources as part of the agency's claims coordinator training offered to state entities. SORM should provide these new resources by September 1, 2019. This recommendation would help state entities develop more meaningful return-to-work programs and could ultimately reduce workers' compensation costs by helping injured employees get back to work more quickly.

2.5 Direct SORM to collect and report lost-time outcomes and return-to-work information as currently required by statute.

Under this recommendation, SORM should improve its lost-time and return-to-work data collection and reporting. For example, SORM could identify trends by

- generating lost-time and return-to-work information from a sample of employers with high injury frequency rates monthly or quarterly;
- using sample claimant files across all entities; and
- surveying employers about injured employee lost-time and return-to-work information.

To meet its legislative mandate, SORM should require state entities to provide more detailed lost-time and return-to-work data in their annual reports, which would allow SORM to assess and report more comprehensive information, including comparisons across state entities. SORM should also explore ways to improve its claims database to collect lost-time outcomes and return-to-work data, including any associated costs. To address these costs, SORM should first look for ways to fund some of the database

improvements within its existing budget, but should also consider requesting additional funding for technology upgrades through the appropriations process. If SORM is unable to report information as required by state law, it should report this in its biennial report to the Legislature and could consider requesting that the Legislature remove the reporting requirement. This recommendation would help SORM fulfill a legislative mandate, find opportunities to improve lost-time outcomes, and identify entities with model return-to-work programs or programs needing improvement.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the state. Strengthening and improving SORM's cost containment efforts could result in some savings to SORM and the state, but these potential savings cannot be estimated until after SORM implements new cost containment strategies. Collecting and reporting lost-time outcomes and return-to-work information would likely have a fiscal impact, which cannot be estimated until SORM identifies the costs as directed in Recommendation 2.5.

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¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Under Sections 412.052 and 501.024, Texas Labor Code, Texas Department of Transportation and the University of Texas and Texas A&M Systems are exempt from participating in SORM's workers' compensation program and handle their own workers' compensation.

² Sections 412.011(b)(7) and 406.031, Texas Labor Code.

³ Section 402.001, Texas Labor Code.

⁴ Sections 412.011, 402.001, 404.002, 402.073(b), and 410.251, Texas Labor Code; Section 2003.021(c), Texas Government Code.

⁵ Chapter 265 (H.B. 7), Acts of the 79th Texas Legislature, Regular Session, 2005.

⁶ Texas Department of Insurance Division of Workers' Compensation, *Biennial Report to the 85th Texas Legislature*, accessed September 30, 2018, <https://www.tdi.texas.gov/reports/dwc/documents/2016dwcbiennlrpt.pdf>.

⁷ Texas Department of Insurance Division of Workers' Compensation, *Performance Based Oversight (PBO) System Results*, accessed September 22, 2018, <https://www.tdi.texas.gov/wc/pbo/pboresults.html>.

⁸ Texas Department of Insurance Workers' Compensation Research and Evaluation Group, *2017 Workers' Compensation Network Report Card Results*, accessed September 29, 2018, <https://www.tdi.texas.gov/reports/wcreg/documents/2017netrc.pdf>.

⁹ Rider 7, page I-83, Article I (S.B. 1), Acts of the 85th Legislature, Regular Session, 2017 (the General Appropriations Act).

¹⁰ Section 412.051(a)(1), Texas Labor Code.

¹¹ "Return to Work Program," State Office of Risk Management, accessed October 3, 2018, <https://www.sorm.state.tx.us/claims-coordinator-overview/return-to-work-program>.

¹² Sections 412.0126 and 412.032, Texas Labor Code; Sunset Advisory Commission, *State Office of Risk Management Sunset Staff Report September 2006*, accessed October 9, 2018, <https://www.sunset.texas.gov/public/uploads/files/reports/Office%20of%20Risk%20Management%20Staff%20Report%202007%2080%20Leg.pdf>.

ISSUE 3

SORM Could More Effectively Help State Entities Plan for and Mitigate Risk.

Background

The State Office of Risk Management (SORM) provides a range of risk management products and services for state agencies, institutions of higher education, and other state entities, to assist them in implementing programs designed to help control, reduce, and finance their risk. SORM’s risk management program has three main objectives: identifying and planning for potential risks, transferring risk through insurance, and ensuring continuity of operations in case of disruptions or emergencies. While SORM serves 265 state entities, several others are statutorily exempted from participating in SORM’s risk management and insurance programs, including the Texas Department of Transportation and the University of Texas, Texas A&M, and Texas State University Systems.¹

- **Risk management.** SORM provides risk management guidelines, training, one-on-one consultations, and site visits to help participating state entities identify, plan for, and mitigate risks. SORM employs five risk managers to assist customers, and state entities typically designate a risk management officer to coordinate their risk management efforts with SORM’s help. The textbox, *SORM Site Visits*, provides more detail on SORM’s inspections.
- **Insurance.** SORM offers five sponsored lines of insurance most commonly requested by state entities, as listed in the table, *SORM Insurance*, along with the number of participating entities that have purchased each type of insurance.

Sponsored lines of insurance include policies that SORM has crafted specifically to meet the needs of state entities. Leveraging the state’s buying power to provide insurance coverage helps state entities protect against potential losses. State entities may submit a request for SORM’s approval to purchase insurance from another provider, either for the same types of policies already negotiated by SORM or for various types of non-sponsored insurance, such as fine arts insurance coverage for museum items or inland marine protection for mobile equipment. In fiscal year 2017, 24 state entities applied for — and SORM approved — 87 purchases of insurance from an outside provider.

SORM Site Visits

- **Risk Management Program Review.** Formal, comprehensive assessment of an entity’s risk management program, completed at least once every five years. SORM staff inspect the facilities, review the risk management plan, and prepare formal reports with findings and recommendations for improvement. In fiscal year 2017, SORM completed 29 reviews.
- **On-Site Consultation.** Informal, targeted visit focused on a specific facility or need. May be requested by entity or scheduled proactively by SORM. SORM staff prepare informal reports with findings and recommendations for improvement. In fiscal year 2017, SORM completed 229 consultations.

SORM Insurance – FY 2017

Insurance Type	Number of Participating State Entities
Automobile	53
Directors’ and Officers’ Liability	35
Property	41
Volunteer	11
Builder’s Risk	1

- **Continuity of operations planning.** Statute requires state entities to develop a continuity of operations plan (COOP) to ensure critical government functions continue operating in the event of a disruption or emergency.² SORM developed continuity planning guidelines for state entities, including a requirement to annually update and submit continuity plans to SORM for review.³ SORM provides several resources, including policy guidance, templates, requirements, and best practices to help entities draft and update their plans. SORM evaluates entities' plans based on the Texas Continuity Planning Crosswalk — a comprehensive guide to COOP requirements based on industry best practices, federal guidance, and additional state agency requirements. SORM staff evaluate COOPs to ensure plans are complete and address each entity's specific functions, and recommend ways to improve the plan in an official letter to the entity's leadership.

Findings

SORM's risk management services and tools are not targeted to its state entity customers with the highest risk.

SORM has limited resources to serve a broad range of state entities with many different functions and needs, but does not target assistance to the highest-risk customers. SORM collects data on the 265 entities the agency serves through administering the workers' compensation claims process and the annual risk management reports each state agency must submit to SORM, which include information on risk management activities and insurance. However, SORM does not use this data to prioritize high-risk customers. For example, the agency does not generally prioritize site visits by risk level or demonstrated need, although SORM has the information needed to do so. SORM could use entities' injury frequency rates to identify entities with above average on-the-job injuries and focus attention on these entities. A state entity may request a consultation visit from SORM to help with a specific issue, but in most cases, SORM plans its visits by location or simply rotates through agencies without any prioritization. SORM recently began analyzing data on causes of claims and claims costs, which the agency plans to use to identify high-risk entities for future site visits.

SORM does not use available data to prioritize high-risk customers.

Additionally, SORM cannot consistently address the highest areas of risk because the agency lacks a standard template or rubric to guide risk managers during site visits. Though SORM has underwriting guidelines from an insurance rating agency, they are broad, targeted to the purchase of insurance, and not necessarily specific to the needs of state entities. The review found SORM staff were generally not aware of or using these standards. Not having or using consistent evaluation standards applicable to state entities is less efficient for SORM staff and makes it difficult for state entities to understand and prioritize key risk areas.

SORM does not regularly use customer input to tailor risk management services and resources.

SORM does not regularly receive feedback from state entities on key risk management needs, making it difficult for the agency to best serve customers.

Without customer input, SORM cannot know what assistance or training customers need and tailor agency resources to these topics. The agency also cannot evaluate whether its risk management recommendations are effective and useful. For example, SORM imposes a uniform requirement for all state entities to update and submit continuity plans annually. Some entities have less likelihood of a disruption or little to no critical functions for which continuity planning is most needed. For these customers, the requirement to annually update the plan is unnecessarily burdensome. The agency has taken steps to encourage input from customers, such as creating a customer service survey published on the SORM website and launching work groups for insurance and continuity planning. However, these efforts are new and how SORM will use customer input to improve services and offer other opportunities for feedback has not been determined.

SORM does not provide all of the risk management tools entities need to most effectively mitigate risk.

SORM's risk management resources are outdated and difficult to use, providing limited benefit to state entities. For example, SORM's risk management guidelines, originally developed in 1998, are extremely lengthy, difficult to search, and have not been formally updated since 2005. Similarly, some state entities report SORM's resources on continuity planning are difficult to use, with an unwieldy spreadsheet template containing multiple sheets and cross-references on granular topics not relevant to all entities. Finally, SORM's website generally contains minimal resources for state entities on risk management, insurance, and continuity planning. For example, SORM provides limited guidance on whether an entity truly needs insurance and whether purchasing a policy is prudent based on the entity's actual risk level. SORM plans to launch an online training portal in fiscal year 2019, which could be used to provide additional training and resources for state entities.

SORM's requirement to annually update continuity plans is unnecessarily burdensome.

Recommendations

Change in Statute

3.1 Require SORM to regularly review and update risk management guidelines for state entities.

This recommendation would require SORM to regularly evaluate and update the statutorily required state risk management guidelines to be consistent with up-to-date industry best practices and current law. SORM should review the guidelines at least biennially and update them at least every five years. As part of this recommendation, SORM would solicit feedback from state entities on how to make the guidelines more user-friendly and any topics on which state entities need assistance. SORM should review the existing guidelines and make updates by September 1, 2020. This recommendation would ensure state entities have up-to-date, easy-to-use information on risk management.

Management Action

3.2 Direct SORM to use existing data to determine state entity risk levels and needs, and to prioritize resources and requirements by risk.

This recommendation would direct SORM to use its existing data to most effectively target the agency's limited resources. SORM should review state entities' injury frequency rates and past compliance with risk management recommendations to determine which customers have the highest risk level and use this information to target site visits, modify continuity plan update requirements, and help determine whether entities truly need insurance. The agency should complete this analysis and begin targeting its resources by September 1, 2019, and should continue to evaluate entity data and its own efforts on an ongoing basis. This recommendation would help ensure SORM uses its limited resources most effectively.

3.3 Direct SORM to develop and use a standard assessment tool to focus on key areas of risk during site visits.

This recommendation would require SORM to clearly identify common risks associated with state entities and use this information to develop a comprehensive assessment tool for SORM risk managers to use during site visits. This tool would provide a baseline for site visits, but SORM staff should be flexible in approaching each entity's unique risk management needs. SORM could also develop additional guidelines for unique types of facilities, such as prisons and state hospitals, which often have a higher rate of on-the-job injuries than traditional office buildings. SORM could use industry standards or guidelines to aid in developing its own risk assessment tool and should ensure agency staff are trained to use the tool and adapt it to meet the specific needs of state entities. SORM should also make any assessment tools available to state entities to evaluate their own risk management programs in between SORM visits. SORM should develop and implement the risk assessment tool by September 1, 2019.

3.4 Direct SORM to regularly solicit and use customer input to better tailor risk management services and resources.

Under this recommendation, SORM would regularly seek feedback from state entity customers and use this input to better tailor services to their needs. SORM should obtain and use feedback from the agency's existing insurance and continuity planning work groups, and consider creating additional work groups to get input on a broader range of risk management needs. SORM should also use its recently launched customer service survey to determine key needs. The agency should use all of this information to target its assistance and modify risk management requirements to the specific needs of entity customers. For example, SORM could use customer input when updating risk management guidelines, training opportunities, and continuity planning requirements. SORM should evaluate existing customer feedback opportunities, integrate customer input into agency decision-making processes, and begin tailoring risk management services and requirements based on customer input by September 1, 2019. This recommendation would help SORM better coordinate with customers to meet state entities' needs.

3.5 Direct SORM to develop objective tools to help state entities determine whether to transfer risk through purchasing insurance.

Under this recommendation, SORM would create user-friendly tools for sponsored lines of insurance that state entities could use to assess their own insurance needs. For example, SORM could develop a list of factors that suggest whether a state entity may need insurance depending on the entity's level of risk. SORM could use industry resources such as insurance calculators as a guide for developing its own tools to help entities understand insurance needs. SORM should use these same factors in advising

entities on whether to purchase insurance. In its role as the insurance manager of state agencies, SORM should also consider providing tools to help entities decide whether to purchase non-sponsored lines of insurance for unique needs such as fine arts or cybersecurity protection. SORM would continue to provide customers with professional expertise and advice on insurance offerings, and these enhanced tools would provide additional information to guide state entities' insurance decisions. SORM should create and publish this insurance information by September 1, 2019.

3.6 Direct SORM to provide state entities with easy-to-use materials and templates for continuity planning.

This recommendation would direct SORM to enhance continuity planning materials for state entities to ensure information is relevant, easy to use, and digestible for entities that may not be experts in this complex area. As discussed in Recommendations 3.2 and 3.4, SORM should use feedback from state entities participating in the existing continuity planning work group and survey state entities to guide improvements to the agency's continuity planning resources. SORM should provide updated materials by September 1, 2019. Providing user-friendly continuity planning information would help state entities better plan for providing critical functions after a potential disruption or emergency.

Fiscal Implication

These recommendations are designed to improve SORM's overall efficiency and enhance resources for state entities, but would not result in a fiscal impact to the state. The agency already employs risk management staff who could update existing information and resources available to state entities, and identify new resources as part of the agency's ongoing development. Prioritizing risk management resources would help SORM be more strategic and efficient. SORM could provide updated information and other new tools available to customers using the agency's existing website and outreach tools.

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¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 412.011(j) and 412.052, Texas Labor Code.

² Section 412.054, Texas Labor Code.

³ Department of Public Safety, Department of Information Resources, and State Office of Risk Management, *Texas State Agency Continuity Planning Policy Guidance Letter*, accessed October 10, 2018, [https://www.sorm.state.tx.us/wp-content/uploads/2017/06/Texas%20State%20Agency%20Continuity%20Planning%20Policy%20Guidance%20Letter%20\(10-24-2013\).pdf](https://www.sorm.state.tx.us/wp-content/uploads/2017/06/Texas%20State%20Agency%20Continuity%20Planning%20Policy%20Guidance%20Letter%20(10-24-2013).pdf).

ISSUE 4

Texas Has a Continuing Need for the State Office of Risk Management.

Background

Recognizing the need for a single state agency to provide consolidated workers' compensation and risk management functions for other state agencies, the Legislature created the State Office of Risk Management (SORM) in 1997.¹ Today, SORM's mission is to assist state agencies, institutions of higher education, and other state entities in protecting their employees and the state's physical and financial assets. To accomplish its mission, SORM administers the state's workers' compensation program, provides risk management information and assistance, offers voluntary insurance coverage, and assists with development of continuity of operations plans for state entities.²

In fiscal year 2017, SORM had 107 employees and a budget of almost \$49 million, 80 percent of which paid for workers' compensation claims. All of SORM's funding comes from assessments paid by the state entities required to participate in SORM's programs. SORM calculates each entity's assessment based on payroll, number of employees, number of claims and claims costs, and injury frequency rate.³ In fiscal year 2017, SORM received more than \$48.2 million through interagency contracts with 265 participating entities.

Findings

Texas benefits from self-insuring for workers' compensation, and consolidating and coordinating risk management efforts among state entities.

- **Workers' compensation coverage.** Generally, employers in Texas are not required to have workers' compensation insurance, but failing to provide this coverage creates substantial legal risk. To mitigate this risk for state agencies, institutions of higher education, and other state entities, SORM administers the state's self-insured workers' compensation program.⁴ Administering workers' compensation through one state agency is more efficient than each state entity operating or purchasing coverage for its own workers' compensation program. Additionally, pooling risk allows SORM to balance risks among all state entities, helps predict and stabilize costs, and has resulted in cost savings to the state.

Since SORM began administering the workers' compensation program, the agency has increased efficiency and identified trends allowing SORM to better predict workers' compensation claims costs. As a result, total workers' compensation costs have remained largely stable over the last 10 fiscal years, and the cost per covered employee has generally declined over the same period.

SORM has increased efficiencies in the workers' compensation program.

SORM's risk management efforts have contributed to a safer environment for state workers.

- **Risk management.** SORM serves as a centralized risk manager for the state, identifying, analyzing, and controlling risks to help lower costs of workers' compensation and other types of insurance. SORM assists state entities in identifying and planning for risks through on-site consultations and formal risk management program reviews. SORM's risk management efforts have contributed to a safer environment for state workers. The incident rate of injuries and illnesses for covered state employees dropped from 3.75 percent in fiscal year 2012 to 3.39 percent in fiscal year 2017. SORM uses the state's buying power to obtain lower-cost insurance policies for the state, offering voluntary insurance coverage for property, automobiles, directors' and officers' liability, builder's risk, and volunteers. An increasing number of state entities have purchased insurance through SORM, and in fiscal year 2017, SORM provided 141 insurance policies for state entities. SORM also helps agencies create statutorily required continuity of operation plans to quickly restore critical functions in the event of a disruption. While larger state entities could create their own risk management departments, a centralized approach allows SORM to provide expertise to all participating entities and share best practices developed by participants.

No beneficial alternatives for consolidation or transfer of SORM's functions exist.

Most states require all employers, including the state, to carry workers' compensation insurance, and all states provide workers' compensation coverage for state employees and risk management coordination for the state. States structure these functions differently, with some states housing workers' compensation and risk management functions in stand-alone risk management agencies or within the insurance, administrative services, personnel, or treasury departments. Like Texas, 21 other states' risk management agencies administer workers' compensation for state employees, and while employers may choose to purchase workers' compensation insurance through a commercial carrier or operate a self-insured program, many choose to self-insure like Texas, including California, Florida, New York, and Tennessee.

Sunset staff evaluated organizational alternatives for providing workers' compensation and risk management services for state entities, but determined no substantial benefit would result from any such change. Generally, SORM carries out its key functions effectively, and Sunset staff did not identify problems significant enough to warrant restructuring the agency. Additionally, SORM's administrative attachment to the attorney general's office provides efficiencies that allow SORM to operate on a leaner budget than it would independently, and Issue 1 discusses ways in which SORM could further maximize this benefit.

The Texas Department of Insurance Division of Workers' Compensation (TDI-DWC) regulates Texas' workers' compensation system, including monitoring compliance of all parties, taking enforcement action, and ensuring implementation of pertinent statutes and regulations. While TDI-DWC has

extensive knowledge of workers' compensation in Texas, consolidating the two agencies would result in a significant conflict of interest as TDI-DWC oversees workers' compensation insurance carriers in Texas, including SORM, and should not carry out the functions it regulates.

SORM has not taken a sufficiently proactive approach to resolving identified problems.

As part of a Sunset review, staff look at previous audit findings to determine if and how the agency has addressed them. Sunset staff found SORM has been slow to address identified problems, particularly those that could be improved through better technology.⁵ For example, a recent internal audit report found problems with SORM's process for calculating state entities' assessment rates and made several recommendations to improve accuracy through the elimination of manual processes and the implementation of better technology. SORM rejected several of the recommendations intended to improve accuracy and transparency and attributed many of these problems to the agency's lagging technology, including its case management system for workers' compensation claims.⁶ However, SORM has not sought additional funding for an improved database in any of the agency's last three legislative appropriations requests.⁷

Additionally, as discussed in Issue 1, the State Auditor's Office identified serious problems with SORM's 2014 medical cost containment contracts.⁸ While SORM agreed with the recommendations and has taken steps to address the problems, it has not yet fully implemented improvements critical to ensuring it gets the best value for the state when it re-procures its largest medical cost containment contracts this fiscal year.⁹ Without taking full responsibility for problems and proactively pursuing technological and other solutions, the agency's identified problems will continue or worsen, reducing SORM's efficiency and usefulness.

The agency's statute does not reflect standard language typically applied across-the-board during Sunset reviews.

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed reflecting "good government" standards designed to ensure open, responsive, and effective government. One such standard in SORM's statute relates to board member training. The agency's statute contains standard language requiring board members to receive training and information necessary for them to properly discharge their duties. While SORM provides training material to its board members, statute does not require SORM to create a training manual for all board members or specify that the training must include a discussion of the scope of and limitations on the board's rulemaking authority.

Without taking full responsibility for problems and proactively pursuing solutions, SORM's problems will continue or worsen.

Board members should be trained on their rulemaking authority.

One of SORM’s statutory reporting requirements continues to be useful.

SORM’s outdated injury status report is no longer needed.

The Sunset Act establishes a process for the Sunset Commission to consider whether reporting requirements of agencies under review need to be continued or abolished.¹⁰ The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend beyond the scope of the agency under review. Reporting requirements with deadlines or expiration dates are not included, nor are routine notifications or notices, posting requirements, or federally mandated reports. Reports required by rider in the General Appropriations Act are typically omitted under the presumption that the appropriations committees have vetted these requirements each biennium.

SORM has two statutory reporting requirements, as shown in the chart, *SORM Reporting Requirements*. Sunset staff found SORM’s biennial report to the Legislature and the governor on agency activities is useful and should be continued. Statute also requires SORM to provide TDI-DWC with reports on injury status changes, but this requirement came from the Texas Workers’ Compensation Act before the Legislature overhauled the statute in 1989.¹¹ SORM has not provided a report on injury status for more than 10 years, but instead provides all required injury information to TDI-DWC via the electronic system all workers’ compensation carriers must use to submit claims data.¹² The outdated statutory reporting requirement specific to SORM should be removed.

SORM Reporting Requirements

Report	Legal Authority	Description	Recipient	Sunset Evaluation
1. Biennial Report	Sections 412.032 and 412.042, Texas Labor Code	Report on agency activities, workers’ compensation claims, and funding	Governor, Lieutenant Governor, Speaker of the House, Legislative Budget Board	Continue
2. Report of Termination or Continuation of Injuries	Section 501.046, Texas Labor Code	Report on injury status changes	TDI-DWC	Abolish

The agency should continue to implement state cybersecurity requirements and industry best practices.

The 85th Legislature tasked Sunset with assessing cybersecurity practices for agencies under review.¹³ To assess cybersecurity, staff focused on identifying whether the agency complied with state requirements and industry best practices. Sunset staff did not perform technical assessments or testing due to lack of technical expertise, but worked closely with the Department of Information Resources to gather a thorough understanding of the agency’s technical infrastructure. Sunset staff found no issues relating to the agency’s cybersecurity practices that require action by the Sunset Commission or the Legislature, and communicated the results of this assessment directly to the agency.

Recommendations

Change in Statute

4.1 Continue the State Office of Risk Management for 12 years.

This recommendation would continue SORM as an independent agency for 12 years, until 2031. As part of this recommendation, the agency's statutory biennial reporting requirement would also continue because it serves a useful purpose to evaluate SORM's activities. The outdated statutory requirement for SORM to provide injury status update reports to TDI-DWC would be abolished. SORM now provides this information automatically through an electronic database, as required of all workers' compensation carriers.

4.2 Update the standard across-the-board requirement related to board member training.

This recommendation would require the agency to develop an updated training manual that each board member attests to receiving annually, and require existing board member training to include information about the scope of and limitations on the board's rulemaking authority. The training should provide clarity that the Legislature sets policy, and agency boards and commissions have rulemaking authority necessary to implement legislative policy.

Management Action

4.3 Direct SORM to strengthen oversight by updating its board regularly on identified problems and improvements.

This recommendation would direct the agency to report regularly to its board on areas for improvement and resulting recommendations identified in audit reports and any other assessments, as well as the status of the agency's implementation of the recommendations or other possible solutions.

Where appropriate, the agency should consider seeking exceptional item funding to enhance efficiency, particularly because assessments from the state entities SORM supports would fund such improvements, which means increasing SORM's cost effectiveness could ultimately lower the total assessments state entities pay. For example, if SORM sought funding to upgrade its workers' compensation claims database, the agency may be able to increase cost savings by better identifying trends and implementing initiatives to contain costs, offsetting the initial investment in a new system. By focusing on enhancing processes, increasing efficiency, and responding strategically and proactively to existing problems, SORM would make the best use of state dollars.

Fiscal Implication

These recommendations would not have a direct fiscal impact to the state. Based on fiscal year 2018 assessments, continuing SORM would require approximately \$51.5 million in assessments from state entities to cover the cost of the agency's current operations.

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- ¹ Chapter 1098 (H.B. 2133), Acts of the 75th Texas Legislature, Regular Session, 1997.
 - ² Some entities, including the Texas Department of Transportation and the University of Texas and Texas A&M University Systems, are exempt from participating in SORM's programs; all citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 412.052 and 501.024, Texas Labor Code.
 - ³ 28 T.A.C. Section 251.507.
 - ⁴ Section 501.021, Texas Labor Code.
 - ⁵ State Office of Risk Management Internal Audit Services, *Internal Audit of Interagency Assessment Process and Controls* (Austin: State Office of Risk Management, 2018).
 - ⁶ *Ibid.*, 21–28.
 - ⁷ State Office of Risk Management, *Legislative Appropriations Request for Fiscal Years 2020 and 2021*, accessed October 5, 2018, <https://www.sorm.state.tx.us/wp-content/uploads/2018/08/LAR2020-21Revised.pdf>; State Office of Risk Management, *Legislative Appropriations Request for Fiscal Years 2018 and 2019*, accessed October 5, 2018, <https://www.sorm.state.tx.us/wp-content/uploads/2017/06/479LARFY1819Submission.pdf>; State Office of Risk Management, *Legislative Appropriations Request for Fiscal Years 2016 and 2017*, accessed October 5, 2018, <https://www.sorm.state.tx.us/wp-content/uploads/2017/06/A479%20LAR%202016-17.pdf>.
 - ⁸ State Auditor's Office, *Financial Processes at the State Office of Risk Management*, accessed October 11, 2018, <http://www.sao.texas.gov/reports/main/18-032.pdf>.
 - ⁹ *Ibid.*
 - ¹⁰ Section 325.012(a)(4), Texas Government Code.
 - ¹¹ Chapter 1 (S.B. 1), Acts of the 71st Texas Legislature, 2nd Called Session, 1989.
 - ¹² Section 409.005, Texas Labor Code; 28 T.A.C. Chapter 124.
 - ¹³ Section 325.011(14), Texas Government Code.

APPENDICES

APPENDIX A

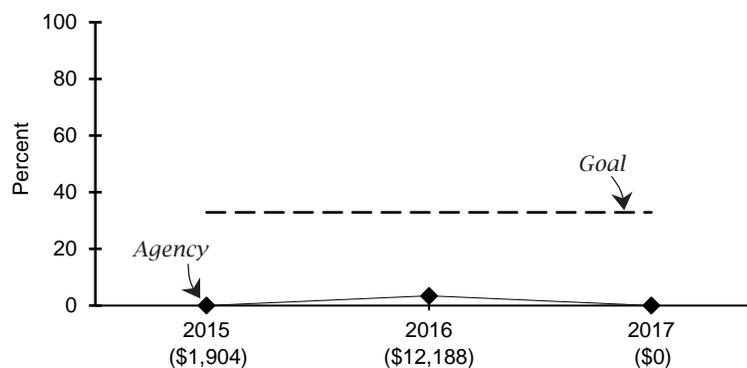
Historically Underutilized Businesses Statistics 2015 to 2017

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.¹

The following material shows trend information for the State Office of Risk Management's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2015 to 2017. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The agency's HUB spending exceeded the statewide HUB purchasing goals for commodities and other services in the last three fiscal years, and for professional services in 2015 and 2017. The agency fell short of the HUB goal in the special trade category. The agency did not have any spending in the heavy construction or building construction categories. The agency is administratively attached to the office of the attorney general, which coordinates the agency's compliance with all HUB requirements, including providing HUB policies, appointing a HUB coordinator, creating a HUB forum, and developing a mentor-protégé program.

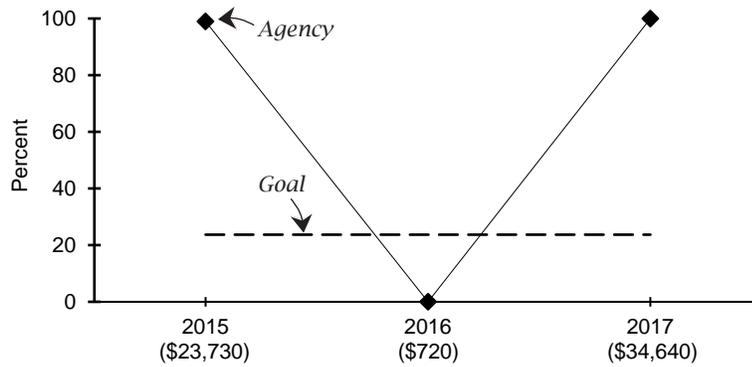
Special Trade



The agency fell below the statewide goal in special trade each of the last three fiscal years, but had limited to no spending in this category.

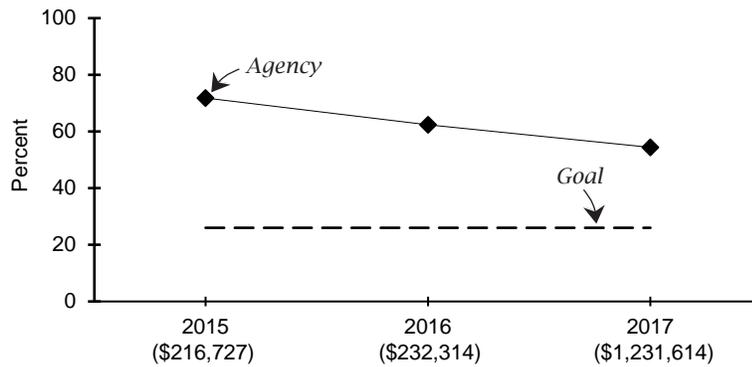
Appendix A

Professional Services



The agency far exceeded the statewide goal for spending in professional services in fiscal years 2015 and 2017, but fell below the goal in fiscal year 2016, when the agency had minimal spending in this category.

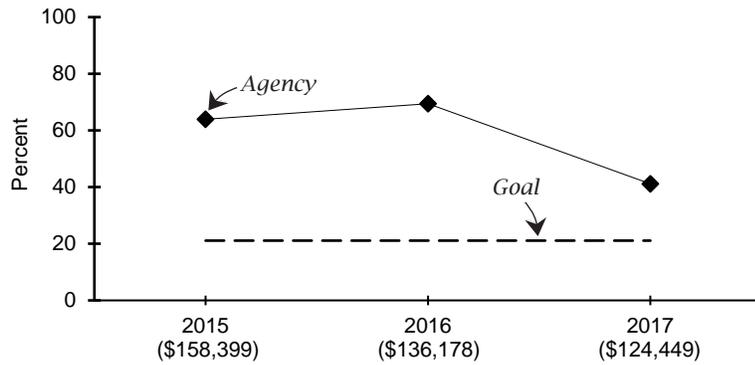
Other Services



The agency exceeded the statewide goal for spending in other services in fiscal years 2015 to 2017.

Appendix A

Commodities



The agency exceeded the statewide goal for commodities in each of the last three fiscal years.

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¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

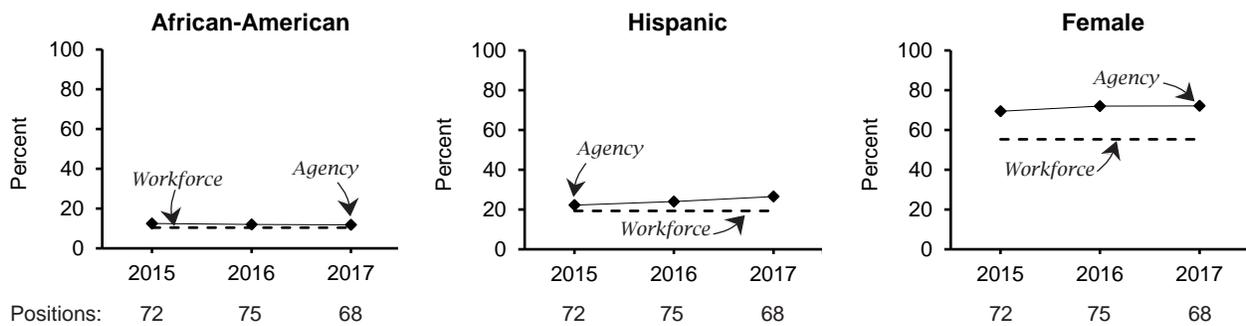
² Chapter 2161, Texas Government Code.

APPENDIX B

Equal Employment Opportunity Statistics 2015 to 2017

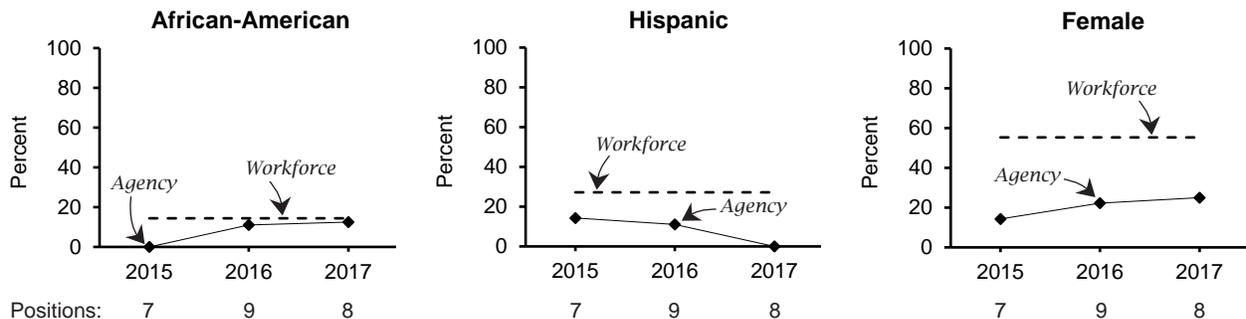
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the State Office of Risk Management.¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.³ These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2015 to 2017. The agency exceeded state civilian workforce averages for females in most categories, but fell below the averages for African-Americans and Hispanics in several categories. The administration category had too few employees to conduct a meaningful comparison to the overall civilian workforce.

Professional



The agency exceeded the civilian workforce percentages for African-Americans, Hispanics, and females in the last three fiscal years in its largest job category.

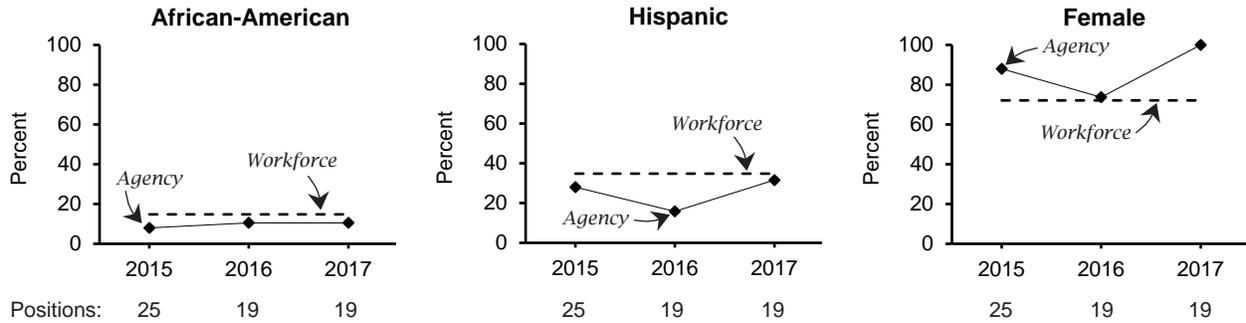
Technical



The agency fell below the civilian workforce percentages for African-Americans, Hispanics, and females in the last three fiscal years. However, the agency has few employees in this category.

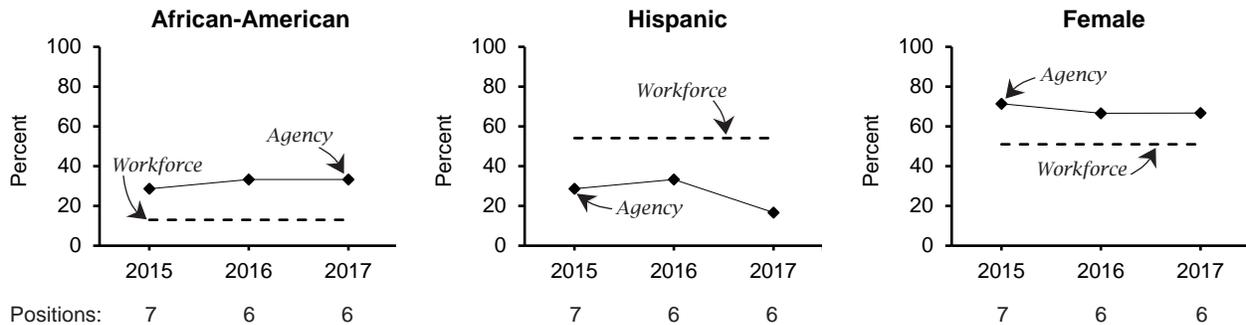
Appendix B

Administrative Support



The agency exceeded the civilian workforce percentage for females in the last three fiscal years but fell below the percentages for African-Americans and Hispanics.

Service/Maintenance



The agency exceeded the workforce percentages for African-Americans and females in the last three fiscal years but fell below the percentages for Hispanic employees. However, the agency has few employees in this category.

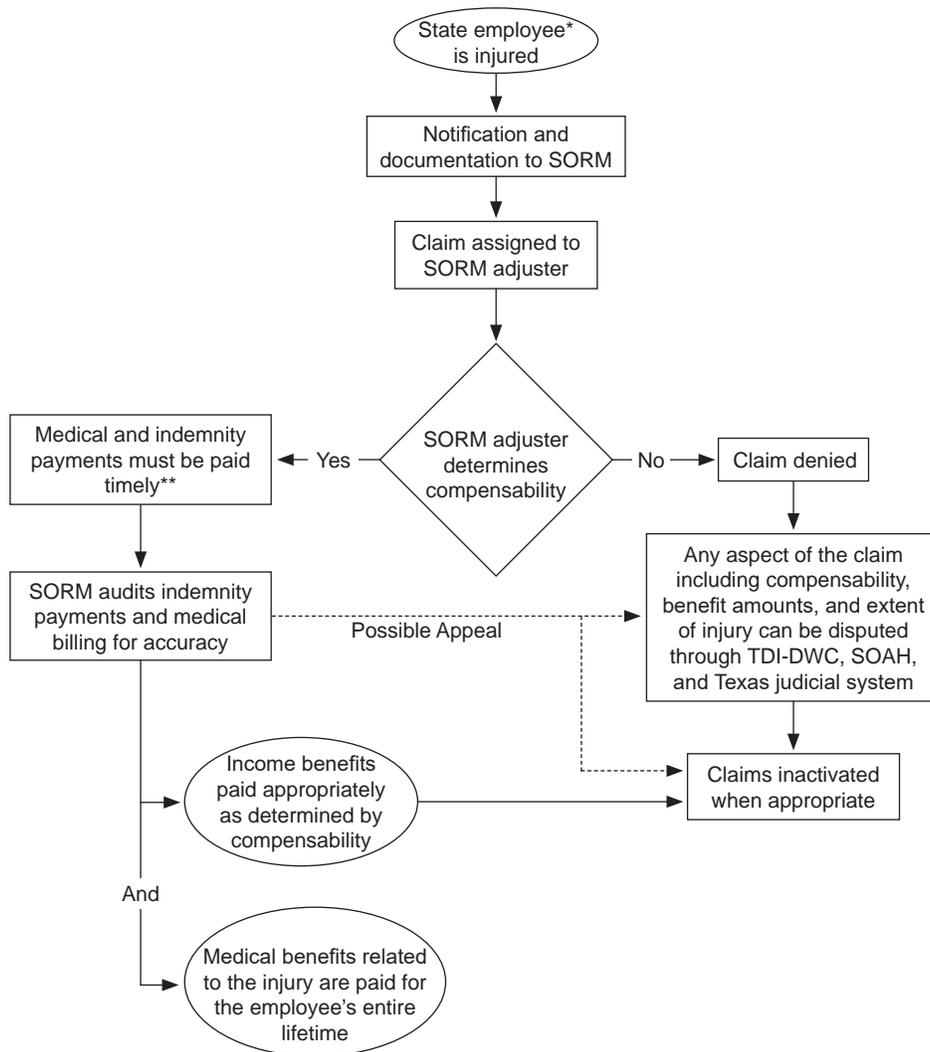
¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

² Section 21.501, Texas Labor Code.

³ Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

APPENDIX C

SORM Workers' Compensation Process



* Also includes certain first responders who are part of Texas Task Force 1 as well as members of an intrastate fire mutual aid system team or a regional incident management team who are injured during a Texas Division of Emergency Management activation or sponsored training.

** If SORM discovers any third-party contribution to the employee's injury, SORM can pursue subrogation.

APPENDIX D

Staff Review Activities

During the review of the State Office of Risk Management (SORM), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended board meetings; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to SORM:

- Shadowed SORM claims adjusters
- Attended a continuity council work group meeting
- Observed workers' compensation claim hearings conducted by the Texas Department of Insurance Division of Workers' Compensation
- Interviewed state entities receiving support from SORM
- Conducted a stakeholder survey to gather feedback on the agency's performance and evaluated the responses
- Researched private workers' compensation insurance carriers providing services similar to SORM

Sunset Staff Review of the *State Office of Risk Management*

————— *Report Prepared By* —————

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