

# **Sunset Advisory Commission**



## **Texas Workers' Compensation Commission**

Staff Report  
April 2004

**TEXAS WORKERS' COMPENSATION COMMISSION**

**SUNSET STAFF REPORT  
APRIL 2004**

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# SUMMARY

## *Texas Workers' Compensation Commission*

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The Sunset review of the Workers' Compensation Commission (TWCC) began amidst growing criticism of the workers' compensation system in Texas. Concerns with the overall system include the high cost of workers' compensation insurance coverage, rising medical costs and utilization, limited access to quality medical care, and poor return to work outcomes for injured workers. Criticism has also focused on the performance of the Workers' Compensation Commission as the administrator of key parts of the system, including oversight of the benefit delivery system, ensuring fair and reasonable reimbursement for health-care providers, and resolving disputes in the system.

The State has an interest in ensuring the workers' compensation system appropriately treats injured workers because of the original compact between employers and employees. The law prohibits employees from suing a covered employer for compensation for a work-related injury in exchange for statutorily-guaranteed medical care and wage replacement. The Workers' Compensation Act places TWCC as the overseer and arbiter to ensure the system works effectively for employers and injured workers. The State also has an interest in promoting worker health and safety to help employers prevent accidents, minimizing the overall cost of workers' compensation benefits. The importance of the benefits provided through workers' compensation insurance to both employers and employees make it imperative that the system to work well. Employees benefit by receiving wage replacement and appropriate and timely medical treatment that allows them to return to work quickly and resume active, productive roles in the workforce. Employers benefit from limited liability and cost certainty for treatment of workplace injuries. As workers' compensation costs continue to rise, the state's businesses are at a competitive disadvantage and may leave the state or be forced to opt-out of the system.

In reviewing TWCC, the Sunset review focused on evaluating the effectiveness of the agency in managing its role within the current system, including its ability to strategically position itself to address the larger, critical issues impacting the system. The review identified several areas needing improvement. Most important, TWCC has missed key opportunities to establish and demonstrate strategic direction related to its role in the administration of the state's workers' compensation system. These opportunities include improving the stakeholder participation process, addressing rising medical costs in the system, improving the agency's return to work initiatives, and streamlining the dispute resolution and compliance functions. Also, the agency has operationally organized to match the administrative and legal framework of the workers' compensation system. This approach is partly due to constraints in law but mostly by choice. This essentially precludes a strategic look across all its efforts to assess system performance. As a result, the agency only reacts to significant system issues



*TWCC has missed key opportunities to demonstrate strategic direction for the State's workers' compensation system.*

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after directed by the Legislature to do so. In addition, the agency lacks a comprehensive process to determine its strategic direction and measure its progress toward meeting goals and objectives. The key problems identified by Sunset staff include the following.

- A staff-driven policy and rulemaking process that does not provide opportunity for the necessary input from stakeholders.
- Lack of focus and resources dedicated to improving return to work outcomes in the agency's policies and operations.
- A cumbersome, lengthy, and costly dispute resolution process.
- Slow implementation of legislative directives to manage medical costs and overutilization.
- A narrow and fragmented compliance approach that does not evaluate overall performance by system participants and does not provide incentives to improve.

The recommendations in this report are designed to address the problems identified within TWCC's mission and scope to administer the current system. Many of the problems, however, are the result of larger system issues that complicate the situation. The Sunset review identified several system barriers and disincentives that, while not individually impacting agency operations, have the cumulative effect of making management of certain aspects of the system very difficult. As a result, the Sunset Commission directed staff to include a discussion of systemwide issues in an addendum to its staff report. Appendix A, *Potential Changes to Improve the Workers' Compensation System*, includes a more detailed discussion of these issues. The following are some of the key points identified.

- Limited connection between an employer's actual health and safety and return to work experience and the cost of their workers' compensation insurance.
- Lack of available information for employers about the performance of carriers and health care providers in returning injured workers to employment.
- A process that focuses on retrospective review of decisions providing a disincentive for carriers, treating doctors, and injured workers to pro-actively communicate and establish the nature of the compensable injury and its related medical diagnosis.
- No treatment planning framework or model for doctors and carriers to facilitate cooperative agreements on the course and scope of medical treatment, including a lack of treatment guidelines to provide a basis for what constitutes medically necessary treatment.

The Appendix includes a summary and brief discussion of each system issue. Sunset staff makes no recommendations on any of the issues at this point. Staff determined that they were outside the scope of issues staff should address in its report to the Sunset Commission. They generally go beyond the scope of assessing TWCC's operations, and most involve larger policy decisions more appropriate for the Sunset Commission or other legislative committees doing interim studies on the workers' compensation system to consider. Ultimately, of course, the Legislature can determine how broadly it wishes to use legislation resulting from the Sunset review process to change the current workers' compensation system.

Significant action on the issues presented in the Appendix may necessitate a reexamination of the organizational location of TWCC functions and/or the governance of TWCC. Issue 10 of the report includes a discussion of other organizational options. With respect to governance, the Appendix also includes potential options for alternative TWCC governing structures. However, if the Legislature makes significant changes to the system, most of the recommendations included in this report related to TWCC will still have value, and may become more important as the agency

implements the systemwide changes. As an example, the agency will need strong governance with a strategic vision and organizational flexibility to implement, manage, and evaluate the performance of the new system. Most important, the agency will need a well-functioning stakeholder participation process to effectively implement the changes.

A summary follows of the Sunset staff recommendations on the Workers' Compensation Commission.

## **Issues/Recommendations**

### **Issue 1**

#### ***The Texas Workers' Compensation Commission Lacks Strategic Direction.***

##### **Key Recommendations**

- Add explicit language to TWCC's enabling statute detailing the agency's purpose, mission, and goals.
- Require TWCC to analyze its effectiveness in meeting statutory goals, identify organizational and operational changes to address deficiencies, and make recommendations to the Legislature on needed statutory changes.
- Create the Workers' Compensation Research Council administratively attached to TWCC.
- Remove statutory requirements designating specific Commission divisions.

### **Issue 2**

#### ***Lack of Effective Return to Work Initiatives Result in Higher Costs to Employers and Poor Outcomes for Injured Workers.***

##### **Key Recommendations**

- Specify that part of TWCC's statutory mission is to promote and help ensure the safe and timely return of injured employees to productive roles in the workforce.
- Require TWCC, in partnership with system stakeholders, to evaluate and improve the benefit delivery system to promote the safe and timely return of injured employees to work.
- Require the agency to provide employers with information and best practices on methods to enhance return to work communication and services.
- Require TWCC to provide injured workers with information on the benefits of early return to work, and making informed medical decisions.
- TWCC should partner with the Texas Workforce Commission and the State's workers' compensation research agency to obtain return to work outcome information.
- TWCC should adopt return to work guidelines and clarify their use for system stakeholders.

### Issue 3

#### ***The Agency Does Not Adequately Use Stakeholder Input in Its Rulemaking and Policymaking Processes.***

##### **Key Recommendations**

- Require TWCC to modify its approach to rulemaking to provide for structured public input while developing rules.
- Direct the agency to develop a method for strategic preparation of an annual rulemaking docket, to be made available online.
- The agency should ensure that the Commission has public input available for decisionmaking.

### Issue 4

#### ***TWCC's Process for Resolving Workers' Compensation Benefit Disputes Is Cumbersome, and Discourages Early Resolution.***

##### **Key Recommendations**

- Require the parties involved in an income benefit dispute to try to resolve the dispute themselves before filing a dispute at TWCC.
- Require all Benefit Review Officers to meet SOAH's basic training requirements for state employees administering mediation processes, and prohibit recommendations on the unresolved issues in Benefit Review Conferences.
- Prohibit TWCC from conducting more than two BRCs for each dispute before proceeding to a Contested Case Hearing.
- Restructure the Appeals Panel as a single, three-member appeal tribunal, and require it to issue decisions only on reversed or remanded cases.

### Issue 5

#### ***TWCC's Medical Dispute Resolution Process Lacks the Transparency and Oversight Necessary to Ensure Fair and Timely Resolution.***

##### **Key Recommendations**

- Require every IRO decision to include specific elements to ensure the validity and fairness of the decision.
- Require TWCC and TDI to develop a Memorandum of Understanding to improve the regulation and oversight of Independent Review Organizations in the workers' compensation system.
- Require the nonprevailing party to pay the cost of the SOAH appeal.
- TWCC should set a monetary threshold for medical disputes that can be appealed to SOAH.

## **Issue 6**

### ***The Supplemental Income Benefit Program Creates Unnecessary Disputes and Does Not Effectively Return Permanently Disabled Workers Back to Employment.***

#### **Key Recommendations**

- Require TWCC to improve access to return to the workforce programs for SIB recipients.
- Set compliance standards for SIB recipients' work search requirements, which would replace the current standards for good faith effort.

## **Issue 7**

### ***TWCC's Regulatory Approach Is Inefficient and Does Not Emphasize or Reward Overall Performance.***

#### **Key Recommendations**

- Require TWCC to provide incentives for overall compliance and emphasize performance-based oversight linked to regulatory outcomes.
- Require the agency to establish rules that govern the filing of a complaint against a regulated entity, and to make this information available on its Web site.
- The agency should prioritize complaint investigations based on risk.

## **Issue 8**

### ***TWCC Does Not Adequately Inform Injured Workers About the Workers' Compensation System.***

#### **Key Recommendations**

- Require TWCC to centralize the majority of its customer assistance functions into call centers.
- TWCC should improve its Web site to be more customer friendly.
- The agency should review and revise all its forms, standard letters, and brochures to ensure the use of plain language.

## **Issue 9**

### ***The Medical Advisory Committee Is Not an Effective Resource for the Agency.***

#### **Key Recommendations**

- Abolish the Medical Advisory Committee.
- Authorize the Medical Advisor to appoint ad hoc medical workgroups.

## Issue 10

### ***Texas Has a Continuing Need for the Texas Workers' Compensation Commission.***

#### **Key Recommendation**

- Continue the Texas Workers' Compensation Commission for 12 years.

## **Fiscal Implication Summary**

This report contains several recommendations that will have a fiscal impact to the State. They are discussed below, followed by a 5-year summary chart.

- **Issue 4** – Requiring Benefit Review Officers to complete mediation training will have a one-time cost of approximately \$33,000. This cost is offset by reducing the number of Appeals Panel Judges from nine to three, resulting in an estimated savings of \$368,000 each fiscal year. Limiting the number of benefit review conferences will result in additional annual savings of about \$113,000.
- **Issue 5** – Requiring the nonprevailing party in a medical dispute to pay for an appeal to the State Office of Administrative Hearings will result in a savings of about \$999,000 each fiscal year.
- **Issue 6** – Reducing the number of supplemental income benefit disputes will result in an annual savings of approximately \$112,000.
- **Issue 8** – Centralizing call center operations will allow a reduction in customer service staff of five supervisors, with an annual savings of about \$200,000. Creating the call centers will have a one-time implementation cost of approximately \$400,000.

The net savings may allow TWCC to lower its maintenance tax on insurers in the future. However, this report could not predict such a change and assumes savings will continue through the five-year period.

<b><i>Fiscal Year</i></b>	<b><i>Cost to the General Revenue Fund</i></b>	<b><i>Savings to the General Revenue Fund</i></b>	<b><i>Net Effect to the General Revenue Fund</i></b>	<b><i>Change in Number of FTEs From FY 2005</i></b>
2006	\$433,000	\$1,792,000	\$1,359,000	-11
2007	\$0	\$1,792,000	\$1,792,000	-11
2008	\$0	\$1,792,000	\$1,792,000	-11
2009	\$0	\$1,792,000	\$1,792,000	-11
2010	\$0	\$1,792,000	\$1,792,000	-11

# ISSUES

## *The Texas Workers' Compensation Commission Lacks Strategic Direction.*

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### **Summary**

#### **Key Recommendations**

- Add explicit language to TWCC's enabling statute detailing the agency's purpose, mission, and goals.
- Require TWCC to analyze its effectiveness in meeting statutory goals, identify organizational and operational changes to address deficiencies, and make recommendations to the Legislature on needed statutory changes.
- Create the Workers' Compensation Research Council administratively attached to TWCC.
- Remove statutory requirements designating specific Commission divisions.

#### **Key Findings**

- The statute does not give clear strategic direction about TWCC's management objectives related to the State's workers' compensation system.
- Without clear strategic direction, the agency has been reactive to key issues that impact the ability of the workers' compensation system to operate effectively.
- The agency's organizational structure is not responsive to the workers' compensation system's administrative and management needs.
- TWCC and the workers' compensation research function have not worked well together.

#### **Conclusion**

TWCC has missed key opportunities to demonstrate strategic direction related to its role in the administration of the State's workers' compensation system. These opportunities include improving the stakeholder participation process, addressing rising medical costs in the system, improving the agency's return to work programs, and improving the dispute resolution and compliance functions. Also, the agency has operationally organized to match the administrative and legal framework of the workers' compensation system, precluding a strategic look across all activities. As a result, the agency only reacts to significant system issues after directed by the Legislature to do so. In addition, the agency lacks a comprehensive process to determine its strategic direction and measure its progress toward meeting goals and objectives. The structure of the research function has exacerbated these issues through its disconnection from TWCC's policymaking process and its adversarial relationship with the agency.

The recommendations included in this issue would provide a framework for TWCC to have clear strategic direction and better evaluate its effectiveness in administering the workers' compensation system with the assistance of the independent research function. The agency will have organizational flexibility to better deal with system changes, and have a more effective way to communicate necessary statutory changes, again with the assistance of the research function, to the Legislature.

## Support

### **The Labor Code requires TWCC to administer various components of the State's workers' compensation system.**

- The Workers' Compensation Act, codified as Title 5 of the Labor Code, provides for no-fault income-replacement benefits and medical care for workers injured on the job. The statute creates the Workers' Compensation Commission to administer key parts of the system including ensuring the timely, appropriate, and cost-effective delivery of benefits to injured workers; overseeing and regulating system participants to ensure compliance with statutes and rules; and providing training and informational services to help system participants understand and operate within the system.
- The Labor Code includes 14 separate chapters that set up the legal framework for the administration of workers' compensation benefits in Texas. Chapter 402 provides the statutory authority for the Workers' Compensation Commission and includes the general administrative provisions for the operation of the governing board and agency staff. The actual duties and responsibilities of the agency are found in other related chapters of the Code that specifically require either a division or function at TWCC, or give the agency an explicit duty related to administration of the system. These statutory responsibilities include:
  - administration of workers' health and safety programs,
  - administration and oversight of the benefit delivery system,
  - ensuring appropriate health care for injured employees with fair and reasonable reimbursement for health-care providers,
  - resolving disputes in the system,
  - ensuring compliance with the statute and rules, and
  - certifying and regulating self-insurers.

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*The Labor Code includes 14 separate chapters that set up the legal framework for TWCC's administration of the workers' compensation system.*

The statute also includes numerous other administrative and legal requirements that do not require TWCC's direct interaction but where the agency has a role given its general compliance monitoring functions. The table, *Workers' Compensation Statutory Provisions*, provides more detail about significant chapters of the Labor Code related to workers' compensation.

- Chapter 404 of the Labor Code includes provisions related to workers' compensation research. During the 74th Legislative Session in 1995, the Legislature merged the Workers' Compensation Research Center and the Legislative Oversight Committee into the Research and Oversight Council on Workers' Compensation (ROC). A nine-member Board governed ROC and functioned as an advisory body to TWCC to conduct professional studies and research related to the workers' compensation system. Like TWCC, a maintenance tax on insurers funded ROC. In 2003, House Bill 28 (78th Legislature, third called session) transferred the workers' compensation research function to the Department of Insurance, after the Governor vetoed funding for

ROC in the current General Appropriations Act. HB 28 requires the Sunset Commission to make recommendations about the advisability of creating a separate entity to study workers' compensation issues.

<b>Workers' Compensation Statutory Provisions</b>	
<b>Labor Code Chapter</b>	<b>Provisions</b>
401 General Provisions	<ul style="list-style-type: none"> <li>Includes statutory definitions and the TWCC Sunset date.</li> </ul>
402 Texas Workers' Compensation Commission (TWCC)	<ul style="list-style-type: none"> <li>Includes Commission member qualifications and duties, agency organization, powers and duties; of Executive Director and staff; and general administrative provisions, including the Sunset ATBs.</li> </ul>
403 TWCC Financing	<ul style="list-style-type: none"> <li>Provides for TWCC funding via a maintenance tax on policies.</li> <li>Authority for Subsequent Injury Fund.</li> </ul>
404 Workers' Compensation Research	<ul style="list-style-type: none"> <li>Provides for funding of research via a maintenance tax on policies.</li> <li>Requires the Department of Insurance to conduct professional studies and research related to workers' compensation issues.</li> </ul>
406 Workers' Compensation Insurance Coverage	<ul style="list-style-type: none"> <li>General provisions related to coverage election, coverage requirements, and specifies exemptions for certain types of employees.</li> </ul>
407 Self-Insurance Regulation	<ul style="list-style-type: none"> <li>Requires a division at TWCC to regulate self-insurance with a director appointed by the agency's Executive Director.</li> <li>Specifies conditions for TWCC to award certificates of authority to self-insure and specifies the general financial and operational standards.</li> </ul>
407A Group Self-Insurance Coverage	<ul style="list-style-type: none"> <li>Allows an association or business trust engaged in a similar type of business to establish a workers' compensation self-insurance group, subject to TDI approval, to pool liabilities for workers' compensation benefits.</li> </ul>
408 Workers' Compensation Benefits	<ul style="list-style-type: none"> <li>Defines types of income benefits, including calculation methods.</li> <li>Defines medical benefits including required medical exams and payment requirements for services.</li> <li>Specifies process for selection of doctors and requires TWCC to maintain an approved doctor list.</li> <li>Requires TWCC to support the Health Care Network Advisory Committee studying regional medical networks.</li> <li>Provides for TWCC regulation of attorney's fees related to workers' compensation matters.</li> </ul>
409 Compensation Procedures	<ul style="list-style-type: none"> <li>Specifies procedures for injury reports, claims, records, and benefit payments.</li> <li>Provides for ombudsman program at TWCC to assist injured workers.</li> </ul>
410 Adjudication of Disputes	<ul style="list-style-type: none"> <li>Specifies the process and duties of the TWCC hearings division related to benefit review conferences, arbitration, contested case hearings, appeals panel review, and judicial review.</li> </ul>
411 Workers' Health and Safety	<ul style="list-style-type: none"> <li>Specifies the duties of the division at TWCC that coordinates and enforces state laws and rules relating to workers' health and safety issues.</li> </ul>

<b>Workers' Compensation Statutory Provisions (continued)</b>	
<b>Labor Code Chapter</b>	<b>Provisions</b>
413 Medical Review	<ul style="list-style-type: none"> <li>• Requires TWCC to maintain a division to monitor health-care providers, insurance carriers, and claimants who receive medical services, including medical policies and fee guidelines.</li> <li>• Provides for a Medical Advisory Committee to assist TWCC.</li> <li>• Specifies the process for medical dispute resolution.</li> <li>• Requires TWCC to employ a Medical Advisor to monitor quality of care with the assistance of the Medical Quality Review Panel.</li> </ul>
414 Division of Compliance & Practices	<ul style="list-style-type: none"> <li>• Specifies the duties of the division at TWCC that monitors compliance with rules and laws related to workers' compensation.</li> </ul>
415 Administrative Violations	<ul style="list-style-type: none"> <li>• Defines prohibited acts by system participants and specifies the process for assessment of administrative penalties by TWCC.</li> </ul>

**The Labor Code is very specific about how TWCC must organize and administer workers' compensation.**

- The Labor Code explicitly requires the agency to maintain a division of workers' health and safety, a division of medical review, a division of compliance and practices, and a division of hearings. The Executive Director, with the approval of the Commission, may establish other divisions and allocate functions among the divisions. In addition, the Code requires TWCC to maintain a separate division to regulate self-insurance with a director appointed by the agency's Executive Director. The Labor Code also requires the agency to employ or contract with a medical advisor who must be a doctor. As the statute does not specify the organizational location of the Medical Advisor function, the agency has administratively attached the Medical Advisor position to the Executive Director with staff support from the Medical Review Division.
- The agency also has organized its nine primary program divisions to closely track the administrative structure of the Labor Code related to workers' compensation. The Deputy Director of Legal and Compliance manages the Legal Services, Self-Insurance Regulation, Compliance and Practices, and Workers' Health and Safety divisions. The Regional Operations, Customer Services, Hearings, Training and Education, and Medical Review divisions are under the Deputy Director of Operations. The remaining support divisions are under the Deputy Director of Finance and Administration.

  
*The Labor Code does not give TWCC clear strategic direction.*

**The statute does not give clear strategic direction about TWCC's management objectives related to the state's workers' compensation system.**

- The Labor Code does not include typical provisions detailing the mission, general duties, and responsibilities of the agency. As such, the agency has little strategic direction about how to manage its role related to the workers' compensation system. The Labor Code provides the statutory authority for the agency but only includes general administrative

provisions for the operation of the governing board and agency staff. Other related chapters of the statute specifically require either a division or function at TWCC or give the agency an explicit duty related to administration of some component of the system. As such, the agency has little strategic direction and its organizational structure is defined by the legal components of the workers' compensation system.

- The agency cannot directly tie its stated mission to any explicit statutory direction. The agency has defined its mission to encourage and assist in the provision of safe workplaces, implement a regulatory framework in which employees affected by work-related injuries and illnesses receive timely and appropriate benefits, and assist in timely returning injured workers to productive roles in the workforce. While this mission is generally appropriate, the lack of a clear statutory mission and goals undermines the rulemaking authority when system participants continually challenge the agency's statutory authority. In addition, short-lived system crises can tempt the agency to modify its strategic focus without legislative direction or approval.
- The statute does not set up a comprehensive framework for the agency to effectively evaluate system trends and determine strategic direction to deal with those trends, including communicating needed statutory changes to the legislature. The agency currently collects and analyzes a limited set of data in its *System Data Report*. While useful, the report focuses on claim-specific data primarily related to the outputs of the TWCC administrative system. The agency does not have a similar mechanism to comprehensively report on system outcomes. The agency's Commission does not have a formal process to set strategic direction for agency staff, other than the standard approval of documents related to the legislative appropriations process.

The statute does require the agency to consider and recommend changes to the Workers' Compensation Act before each legislative session. Historically, the agency has forwarded a list of issues to the ROC for consideration and ROC offers commentary in its biennial report. For the most part, these recommendations are not strategic in nature and propose incremental changes addressing administrative issues related to individual TWCC programs, or seek to address adverse court decisions.
- The performance measures for the agency included in its strategic plan focus primarily on agency outputs rather than outcomes that support system improvements. As an example, one of the agency's key objectives is to ensure appropriate health care for injured employees. The associated outcome measure is average medical cost per workers' compensation case. While cost per claim is one important factor in evaluating the appropriateness of medical care for injured employees, it does not take into account equally important factors such as access to care and quality of care. Other measures focus on cost savings from the medical billing process, timely benefit payments by insurance carriers, and timely creation of records by TWCC.

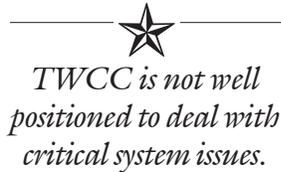


*TWCC cannot directly tie its mission to explicit statutory direction.*

**An Effective Strategic Management Process**

1. Collect and Analyze Data
2. Set Strategic Direction
3. Organizational Flexibility to Implement Strategic Direction
4. Effective Performance Measurement System
5. Evaluate and Report on Outcomes
6. Identify Improvements for Next Cycle (Legislative Changes)

**Without clear strategic direction, the agency has been reactive rather than proactive to key issues that impact the ability of the workers' compensation system to operate effectively.**



- The agency does not strategically position itself to deal with critical issues in the system since TWCC structures its management and organization to only meet the administrative and legal requirements of the workers' compensation system. As a result, the agency is reactive to system needs and usually addresses these needs only after explicit legislative direction. Adding to the problem, agency staff and the governing board members have not developed an effective mechanism to share information about the agency's policymaking decisions. The agency's rulemaking process isolates the Commissioners from stakeholder input on proposed decisions and the agency does not have an effective means of creating rules through discussions with affected parties and interested individuals. As a result, system stakeholders see the agency's policymaking as staff-driven without the Commissioners receiving the information they need to make effective decisions. More discussion on this interaction can be found in Issue 3.
- The agency has not been proactive in dealing with significant issues negatively impacting the workers' compensation system. Most significant are rising medical costs over the last several years. Beginning in 1995, ROC began to identify that medical costs were becoming an issue in the system. Texas has the highest average medical cost per claim of the states the ROC studied; and either the highest or second highest utilization rates for surgery, injections, physical medicine, office visits, and diagnostic testing. In addition, Texas injured workers have noticeably longer treatment durations compared to workers in other states. In spite of these trends, TWCC never articulated strategies or organizational changes to the Legislature to address the problem. As a result, the Legislature passed HB 2600 in 2001, that included several new strategies to manage medical costs and overutilization.

As an example, one of the major components of HB 2600 was to make several reforms addressing the lack of medical expertise at the agency. Even with continued criticism of the agency's management of medical costs and the quality of its medical reviews, the agency did not ask the Legislature for authority and resources to deal with the problems. As a result, the bill transferred the review of certain medical decisions from the agency to Independent Review Organizations (IROs), and required TWCC to adopt Medicare-based reimbursement methodologies rather than setting fee guidelines on its own. HB 2600 also abolished the 1996 treatment guidelines developed by the agency. The statute authorizes the agency to adopt new treatment guidelines, but they must be nationally recognized and scientifically based.

HB 2600 also provided statutory authority for the full-time Medical Advisor at TWCC. The statute clarified the Medical Advisor's primary objective as controlling excessive use of health-care services by monitoring the quality of the doctors on the Approved Doctor List and sanctioning doctors not in compliance with agency requirements. The

Medical Advisor initially did not have any dedicated staff but was assisted by staff drawn from the Medical Review and Legal divisions at the agency. This biennium, the Medical Advisor has been able to hire six nurses to assist with case review. The agency did not request the resources through the legislative appropriations process, but Texas Mutual Insurance Company provided funds through a grant to the agency. The limited resources available to the Medical Advisor have contributed to very slow implementation of the sanctioning process. Since 2001, the agency has completed reviews of 65 doctors with 20 denied admission to the Approved Doctor List and 13 receiving alternative sanctions.

- The lack of strategic focus manifests itself most significantly in a lack of focus and resources dedicated to improving return to work outcomes in the agency's policies and operations. Despite the return to work focus of the agency's mission statement and enhanced requirements in HB 2600, the agency has dedicated few resources to return to work efforts. More discussion of this issue can be found in Issue 2.
- The agency focuses on compliance with individual statutory requirements and does not take a more global look at compliance by system participants. TWCC's regulatory efforts are not effectively changing the behavior of system participants as the number of reported violations has continued to generally increase. Focusing on a performance-based compliance approach would provide a more comprehensive view of the system participants that are creating problems in the system, and provide regulatory incentives to improve overall compliance beyond minimum standards. More information about moving the agency to a performance-based compliance approach can be found in Issue 7.
- The agency has continually implemented incremental changes to the dispute resolution process without evaluating the overall outcomes of the process. The Legislature has continued to add steps to the dispute resolution process to address problems identified by system participants. While these changes may be appropriate in the context of the problem, the agency as the administrator of the process has failed to articulate how all of the changes are working together. The result is a cumbersome, time-consuming, and expensive process. More discussion of these problems can be found in Issues 4 and 5. In addition, the agency has missed opportunities to consolidate customer service efforts to increase the quality of and access to information about the State's workers' compensation system. Better information on the front-end should reduce disputes. More discussion of this issue can be found in Issue 8.

**Most other state agencies with similar functions have clearly articulated statutory duties and responsibilities.**

- The Texas Workforce Commission has a section in its enabling statute that clearly delineates the agency's purpose as the state agency established to operate an integrated workforce development system in this state. The statute then details the specific goals of the agency in

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*TWCC has  
dedicated few  
resources to return to  
work efforts.*

terms of meeting the needs of the businesses and workers of the state for the development of a highly skilled and productive workforce. The agency then has the organizational flexibility to manage its programs to meet those goals.



*The statute  
unnecessarily limits  
TWCC's  
organizational  
flexibility.*

- The Insurance Code requires the Department of Insurance to file an annual report that includes a description of the Commissioner's activities; a description of the condition of companies doing business in this state, including a separate premium and loss report; and other information that communicates the activities of the Department. TDI must also make a biennial report to the Legislature on any changes needed in the laws relating to regulation of the insurance industry.

**The agency's organizational structure is not responsive to the workers' compensation system's administrative and management needs.**

- The statute unnecessarily limits the agency's organizational flexibility to deal with the changing administrative requirements of the workers' compensation system. Explicitly requiring the agency to maintain separate divisions for workers' health and safety, medical review, compliance and practices, and hearings limits the ability of the agency to reorganize to deal with changing system management requirements. As an example, the agency should consider merging its return to work programs with its workers' health and safety functions since their objectives are complementary and the health and safety program currently provides the most contact with employers. Similarly, the agency has identified situations where the explicit statutory organizational structure has been used against them in legal proceedings. The agency is currently involved in a court case where a health-care provider is challenging the proposed sanctions based on allegations that the compliance function discovered the violations rather than the medical review function.
- The agency is still working to formalize the role and authority of the Medical Advisor. HB 2600 requires the agency to take a more active role in the management and oversight of the workers' compensation medical system. The bill formally created the Medical Advisor position in statute to focus more of the agency's medical management activities on quality of care issues. In spite of these mandates, the agency has not fully integrated the Medical Advisor's role into the agency's operations, and has not clearly developed the interaction between the Medical Advisor and Medical Review Division. Although the agency has not formally defined the input of the Medical Advisor in the agency's policy and rulemaking process, in practice the Medical Advisor has become increasingly involved in the development of medical policies such as treatment guidelines. In addition, the agency has not established a stable funding source to provide support staff for the Medical Advisor's duties.

**TWCC and the workers' compensation research function have not worked well together.**

- The State clearly needs an entity to collect and analyze data related to the workers' compensation system to help guide system decisions. In 1987, the Joint Select Committee on Workers' Compensation Insurance found the available data inadequate for legislative policymaking. Since then, the State has maintained an organization to ensure that objective information on workers' compensation would be available to policyholders and to keep legislators generally informed on system issues.
- The independent nature of the research function has limited effective interaction with TWCC. Both entities need to work together since the research function provides an independent perspective and TWCC maintains the system data and has the operational expertise. The perception of having a separate oversight entity to review and comment on TWCC's operations, however, inevitably leads to resentment and a deteriorating working relationship. As a result, the entities have not worked in partnership to solve system problems. As an example, ROC has indicated difficulty in getting appropriate data from TWCC and has been critical of TWCC proposals in its *Biennial Report*.
- The current organizational structure of the research function perpetuates historical problems and further disconnects key strategic management elements from TWCC. Having the research function located in a separate agency now puts the Department of Insurance in a position to be critical of TWCC's operations, even though the agencies must work together on many issues related to workers' compensation insurance. In addition, the transferred functions at TDI are missing some elements of ROC responsibilities, such as reviewing recommendations for legislation relating to the Workers' Compensation Act and producing a biennial report identifying problems in the system. The Legislature eliminated these requirements to reduce the friction between the ROC and TWCC but they are key components for TWCC's strategic management process. The table, *Comparison of ROC and TDI Research Functions*, provides more information on the two approaches.



*The State clearly needs to collect and analyze data related to the workers' compensation system.*

**Comparison of ROC and TDI Research Functions**

	<b>ROC</b>	<b>TDI</b>
<b>Structure</b>	<ul style="list-style-type: none"> <li>● Independent agency with a Board of Directors composed of three Senators appointed by the Lieutenant Governor; three House members appointed by the Speaker; two TWCC Commissioners, one wage earner and one employer; and the Commissioner of Insurance.</li> <li>● Executive Director responsible for administration, including preparation of legislative appropriation requests and an annual research agenda.</li> <li>● Thirteen FTEs in FY 2003.</li> </ul>	<ul style="list-style-type: none"> <li>● Research group located in workers' compensation division of Department of Insurance.</li> <li>● Three FTEs in FY 2004.</li> </ul>
<b>Funding</b>	<ul style="list-style-type: none"> <li>● Annual maintenance tax collected on all workers' compensation insurance premiums.</li> <li>● Total appropriation of \$979,290 in FY 2003 (vetoed).</li> </ul>	<ul style="list-style-type: none"> <li>● Retained same funding structure.</li> <li>● May use grant funds to carry out charge.</li> </ul>
<b>Duties</b>	<ul style="list-style-type: none"> <li>● Conduct professional studies and research to identify, collect, maintain, and analyze key information to assess effectiveness of the system.</li> <li>● Receive reports from TWCC on implementation and outcome of return to work initiatives.</li> <li>● Monitor the Texas Mutual Insurance Company's insurer of last resort program.</li> <li>● Hold regular public hearings.</li> <li>● Review recommendations for legislation relating to the Workers' Compensation Act.</li> <li>● Produce a biennial report identifying system problems with recommendations for action based on research or testimony.</li> </ul>	<ul style="list-style-type: none"> <li>● Conduct professional studies and research relating to the cost, quality, and operational effectiveness of the workers' compensation research system.</li> </ul>

# Recommendation

## Change in Statute

### **1.1 Add explicit language to TWCC's enabling statute detailing the agency's purpose, mission, and goals.**

This recommendation would specify TWCC as the state agency established to oversee the provision of workers' compensation benefits in Texas. The statute would also include the following goals.

- Promote safe and healthy workplaces through appropriate incentives, education, and other actions.
- Ensure the system encourages the safe and timely return of injured employees to productive roles in the workplace.
- Ensure the system provides both income and medical benefits that are appropriate in a manner that is timely and cost-effective.
- Ensure the system provides timely, appropriate, and high-quality medical care supporting restoration of the worker's physical condition and earning capacity.
- Minimize the likelihood of disputes and resolve them promptly and fairly when identified.
- Promote compliance with the Act and rules through performance-based incentives.
- Promptly detect and appropriately address acts or practices of noncompliance with the Act and rules.
- Effectively educate and clearly inform all system participants of their rights and responsibilities and how to appropriately interact in the system.
- Take maximum advantage of technological advances to provide the highest levels of service possible to system participants and to promote communication among system participants.

With strategic statutory guidance in place, the recommendation would clarify that the agency may adopt any rules necessary and appropriate to implement its powers and duties under the Workers' Compensation Act.

### **1.2 Require TWCC to analyze its effectiveness in meeting the statutory goals, identify organizational and operational changes to address deficiencies, and make recommendations to the Legislature on needed statutory changes.**

This recommendation will ensure that TWCC, through its strategic planning process, implements a strategic management approach that would require it to evaluate the agency against set statutory standards, and then make modifications to its organizational structure and programs to address shortfalls in the performance of the system. The statute would require TWCC to work closely with the workers' compensation research function to obtain the necessary data and analysis to assist with the performance evaluation. Issues the agency identifies that require statutory resolution would be communicated to the Legislature before each regular session.

### **1.3 Create the Texas Workers' Compensation Research Council, administratively attached to TWCC, reporting directly to the Commission.**

This recommendation would restructure the research function as follows.

- Transfer the current research function from TDI to the Texas Workers' Compensation Research Council, administratively attached to TWCC.
- Specify that the Council reports directly to the Commission itself.
- Create a five-member Board to provide direction for the Council, composed of one TWCC Commissioner representing employers, one TWCC Commissioner representing employees, the Commissioner of Insurance (or designee), and two public members.

The Council would work closely with the Commission, in an independent, supporting role, to conduct professional studies and research related to the effectiveness of the workers' compensation system. The Council would have no role of oversight related to TWCC's operations. Statute would require the Council to work closely with the Commission to develop its research agenda. The Council would prepare a biennial report to the Legislature, identifying system problems and recommendations on legislative changes needed to address those problems.

The Commission would determine its appropriate representatives on the Council. The Insurance Commissioner would serve as an ex-officio, voting member. The Governor would appoint the public members, subject to similar conflict of interest provisions as the TWCC Commissioners related to regulated entities.

The Council's Board would develop a budget for the Council and hire employees to conduct its work. TWCC would include the Council's budget as an item in its request for legislative appropriations, and the Legislature would separately appropriate money to the Council within the appropriations to TWCC. Based on legislative action, TWCC would set the maintenance tax to offset the cost at the same time it sets the tax to cover its appropriation. TWCC would provide administrative support such as information technology, office space, payroll processing, and human resources.

### **1.4 Remove the statutory requirements designating specific Commission divisions.**

This recommendation would remove all statutory references to TWCC divisions in the Labor Code, allowing the agency flexibility to organize as necessary to deal with changing system oversight requirements. The Executive Director would still need the approval of the Commission to allocate functions among the divisions.

## **Management Action**

### **1.5 TWCC should identify and implement opportunities to better integrate the Medical Advisor into agency operations.**

This recommendation would require the agency to make better use of the expertise and input of the Medical Advisor across all agency operations. Historically, the Medical Advisor has not been formally involved in all agency policy and rule development related to medical issues in the workers' compensation system. As the Medical Advisor becomes better integrated into agency operations, TWCC needs to ensure a stable funding source to support the activities of the position and clearly communicate the role of the Medical Advisor to system participants.

## **Impact**

These recommendations will provide a framework for TWCC to have clear strategic direction and better evaluate its effectiveness in administering the workers' compensation system, with the assistance of the independent research function. The agency will have organizational flexibility to better deal with system changes, and a more effective way to communicate necessary statutory changes, again with the assistance of the research function, to the Legislature.

## **Fiscal Implication**

This recommendation will not have a direct fiscal impact to the State. If the Legislature continues the current resources allocated to the workers' compensation research function, using the existing organizational structure, the function's annual budget at TDI of about \$830,000 from the General Revenue Fund would continue to be required for its operation. The statute would require TWCC to annually adjust the maintenance tax to offset the appropriation. Removing the statutory organizational requirements could allow the agency to realize savings through reorganization. Without specific proposals, Sunset staff cannot estimate the savings for this report.



### *Lack of Effective Return to Work Initiatives Result in Higher Costs to Employers and Poor Outcomes for Injured Workers.*

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## Summary

### Key Recommendations

- Specify that part of TWCC's statutory mission is to promote and help ensure the safe and timely return of injured employees to productive roles in the workforce.
- Require TWCC, in partnership with system stakeholders, to evaluate and improve the benefit delivery system to promote the safe and timely return of injured employees to work.
- Require the agency to provide employers with information and best practices on methods to enhance return to work communication and services.
- Require TWCC to provide injured workers with information on the benefits of early return to work, and making informed medical decisions.
- TWCC should partner with the Texas Workforce Commission and the State's workers' compensation research agency to obtain return to work outcome information.
- TWCC should adopt return to work guidelines and clarify their use for system stakeholders.

### Key Findings

- Poor return to work outcomes increase workers' compensation costs to employers, and cause hardship for injured workers.
- TWCC has not historically considered return to work a central component of its mission, general duties, or responsibilities, and has not fully implemented key pieces of its return to work statutory authority.
- TWCC does not provide employers and workers with the information needed to make informed decisions about early return to work issues.
- TWCC struggles to fully support a cooperative medical management system that encourages the safe and timely return of injured employees to work.

### Conclusion

Focusing on early return to work reduces direct workers' compensation costs for employers, and supports better medical outcomes for injured workers. The Sunset review focused on how effectively TWCC emphasizes and manages return to work in the Texas workers' compensation system. Sunset found that the agency lacks a clear statutory return to work goal and has minimally promoted return to work. The recommendations seek to provide a strategic statutory framework for TWCC's return to work efforts, allowing the agency to aggressively implement an organizational, administrative, and regulatory framework that provides the appropriate incentives for system stakeholders to work together to support early return to work outcomes.

## Support

**The Legislature has recognized the need to promote an injured worker's early return to employment, and has granted TWCC the authority to oversee and implement an early return to work system.**

- The Legislature has recognized that employers and injured workers both benefit from a workers' compensation system that effectively returns injured workers back to employment in a safe and timely manner. Returning injured workers to employment also helps the State avoid potential social services costs associated with long-term unemployment and disability. In 1989, "return to work" was one of the 14 policy areas that the Joint Select Committee on Workers' Compensation Insurance recommended that the reformed system should address. The textbox, *Benefits of Early Return to Work*, details the benefits for both employers and injured workers.

### **Benefits of Early Return to Work**

#### *To Injured Workers:*

- shortens recovery time;
- reduced financial, social, and psychological strains associated with being injured and out of work; and
- better medical outcomes with less impairment.

#### *To Employers:*

- reduced direct workers' compensation costs, especially for employers with high deductibles;
- may reduce loss ratios and experience modifiers to help control premium costs;
- avoid lost productivity;
- reduce indirect human resource costs associated with hiring and training new employees.

*Source: Texas Workers' Compensation Commission, and Research and Planning Consultants, L.P.*

- The Legislature has granted TWCC authority to address specific return to work issues, in addition to improving the cost and quality of medical care. Since 1999, the Legislature has provided significant statutory direction to TWCC to improve poor return to work outcomes that were highlighted through research done by the Research and Oversight Council on Workers' Compensation (ROC). Some of TWCC's statutory return to work requirements include:
  - collecting and reporting return to work outcome data;
  - providing employers with information on implementing a return to work program;
  - encouraging employers and doctors to discuss modified employment options for injured workers;
  - authority to adopt return to work guidelines for medical providers; and
  - reviewing medical care that exceeds average or expected return to work time frames.
- TWCC has taken some steps to promote return to work among system stakeholders. The agency has implemented rules and created a form to facilitate communication between doctors, employers, and insurance



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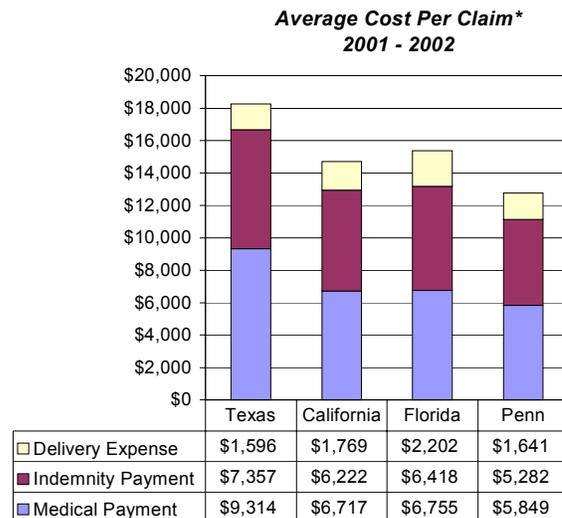
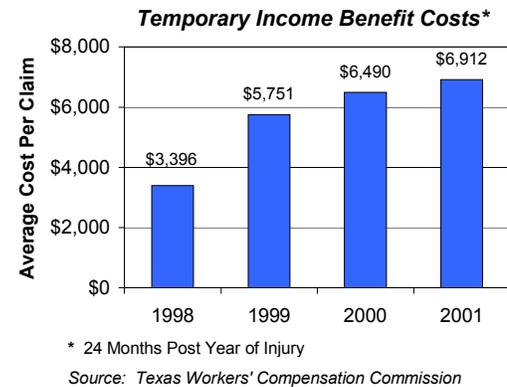
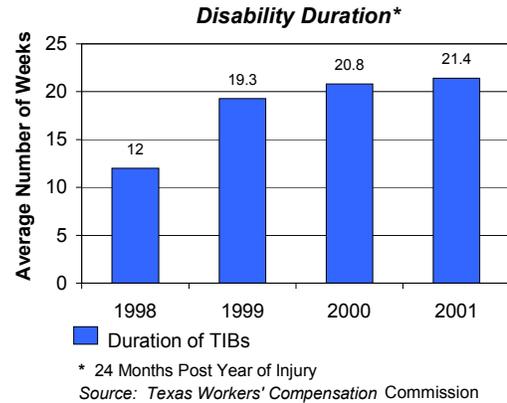


*The Legislature has provided significant direction to TWCC to improve poor return to work outcomes.*

carriers on the medical and return to work status of injured workers. Doctors are provided information on their role in return to work as part of the training necessary to be on the Approved Doctor List. In addition, the agency employs a person to coordinate all TWCC return to work educational initiatives for employers, including dissemination of an agency-developed handbook and conducting educational seminars.

**Poor return to work outcomes increase workers' compensation costs to employers, and cause hardship for injured workers.**

- Texas has experienced annual double digit growth in the cost of workers' compensation claims since 2000, fueled, at least in part, by poor return to work outcomes.<sup>1</sup> Research shows that 25 percent of injured workers in Texas do not return to work.<sup>2</sup> In addition, the average amount of time injured workers receive temporary income benefits has steadily increased to about 21 weeks, as shown in the chart, *Disability Duration*.<sup>3</sup> The amount of time an injured worker receives temporary income benefits, often called disability duration, is used to gauge lost time from work.
- More workers not returning to work, and longer durations of workers receiving temporary income benefits both contribute to higher indemnity costs, and more expensive medical treatment through higher utilization. These higher costs are passed on to Texas employers directly through increased costs against high deductible plans and ultimately through higher workers' compensation premiums. The chart, *Temporary Income Benefit Costs*, shows the average indemnity payment per claim rising significantly over the past four years.
- Income benefits do not last indefinitely, which heightens the importance of injured workers being encouraged to receive the medical care necessary to return to work as quickly and safely as possible, to avoid future financial and medical hardship. The longer employees are off work, the less likely they are to return to productive employment. Research indicates that injured workers off duty for 12 weeks have a 50 percent chance of ever returning to work.<sup>4</sup>
- When compared to other states, Texas' workers' compensation system produces poorer return to work outcomes, higher medical and income benefit costs, and workers that are less satisfied with the medical treatment they received.<sup>5</sup> The chart, *Average Cost Per Claim*, provides further comparative information for claims with more than seven days lost time.



\* Claims arising in October 2000 - September 2001, evaluated as of March 2002.  
Source: Workers' Compensation Research Institute, *CompScope Benchmarks*, 2004.

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*The agency's return to work responsibilities are scattered throughout the Labor Code.*

**TWCC has not historically considered return to work a central component of its mission, general duties, or responsibilities.**

- While return to work is an implicit goal of workers' compensation, the Labor Code does not provide the agency, or the system in general, with an explicit statutory goal of efficiently returning injured workers back to employment. Instead, the agency's return to work responsibilities and corresponding authority are scattered throughout the Labor Code. As a result, the agency has not developed a strategic vision or articulated a comprehensive approach to effectively implement its existing return to work authority.
- TWCC has not made return to work a high priority. The agency has not articulated budgetary or staffing needs related to return to work through the strategic planning or appropriations request process, resulting in consistent lack of resources for required return to work initiatives. For example, the agency did not request any funding or staffing positions in its building block appropriations request in 2003, despite the significant amount of legislation and heightened emphasis that the Legislature had placed on the goal of return to work during the previous two legislative sessions. As a result, TWCC has only one staff person dedicated to coordinate all return to work activities and provide return to work educational outreach services to employers.
- The lack of strategic vision and planning, and communication with the Legislature, has resulted in a strategic plan, budget pattern, performance measures, and an organizational structure that all lack a focus or significant resources directed at achieving the goal of return to work.

**TWCC has not fully implemented key pieces of its return to work statutory authority.**

- TWCC has not implemented a claim-driven data collection system to track return to work outcomes. The lack of meaningful return to work data, other than data on the duration of temporary income benefit payments, has been identified by ROC as an issue since the late 1990s. The agency has proposed to address the issue as part of its Business Process Improvement project but the effort is scheduled for one of the last phases of the project, after the agency completes migration off of its old computer system. As a result, the Legislature will have a limited ability to examine return to work outcomes for several years given the targeted implementation date and the amount of time it will take to actually collect and analyze the data.

In the interim, the agency has not fully pursued data collection opportunities to help obtain high level data on system outcomes that support return to work. For example, the agency has not established a partnership with the Texas Workforce Commission to cross reference workers' compensation data against employment data to determine how many workers are returning to work, and at what wage level.

- TWCC has not implemented an evaluation method to assess outcomes of carriers' return to work coordination services, as required by HB 2600. While the legislation delayed rulemaking until January 1, 2004,

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*TWCC has not made return to work a high priority.*

the agency has yet to formally propose or adopt any related rules. However, the agency recently started the process of developing guidelines and rules for consideration by its Commission in the next four months.

- Since 1997, the agency has discussed adopting return to work guidelines as authorized by the Labor Code, but has yet to formally adopt any. During this period, ROC and the Medical Advisory Committee have identified a number of viable guidelines for consideration with no formal action by the agency.

Return to work guidelines provide an objective standard for expected disability duration or data on typical return to work timeframes. Without return to work guidelines, the agency cannot fully assess a medical provider's treatment outcomes and hold them accountable for providing high quality medical care that supports return to work. In addition, the agency cannot provide feedback to doctors on how their treatment practices compare to other providers or provide information to improve practice patterns.

**TWCC does not provide employers and workers with the information needed to make informed decisions about effective return to work.**

- The agency does not provide employers with the information needed to effectively assist injured workers to receive high quality health care to aid in a safe return to work; and appropriately reduce costs related to workplace injuries. While employers are a primary beneficiary of the system, TWCC has committed only one employee to provide outreach and education to employers on implementing effective return to work programs. Though limited in availability, employers express satisfaction with the educational seminars they attend. With limited resources dedicated to the effort, the agency has not expanded its outreach function to effectively reach small and medium size employers who do not have the human resources capacity to implement return to work programs or attend educational seminars.
- TWCC has missed opportunities to inform employers of two key system changes made by the Legislature in 2001 to facilitate better return to work outcomes. In 2003, a ROC study found that only 35 percent of employers were aware they could request newly mandated return to work coordination services from their insurance carrier, and only 34 percent were aware they were required to disclose the availability of modified light duty for returning workers upon request. As a result, only 18 percent of employers used these valuable services. While the agency lacks formal authority to adopt rules governing how carriers must notify employers, as a service to employers and employees, the agency could improve promotion of recent legislative changes designed to benefit the system.
- The agency does not provide information to employers on improving interaction with the medical community to facilitate communication that improves safe and timely return to work outcomes. Sunset staff identified several public, self-insured employers that have set up effective relationships with the medical community, resulting in effective return to work programs that provide high quality health care and reduce



*Although authorized to do so, TWCC has yet to adopt return to work guidelines.*



*Only 35 percent of employers were aware they could request return to work services from insurance carriers.*

benefit costs. TWCC has missed opportunities to identify and highlight the practices of these employers to inform other employers about issues such as:

- *appropriately* assisting injured workers to identify doctors from the agency's Approved Doctor List with good return to work outcomes;
- assessing doctors that provide high quality care and effective occupational medicine treatment practices, which lead to returning employees to productive work; and
- fostering effective working relationships with local doctors to improve return to work communication.

During the review, some employers expressed dissatisfaction to Sunset staff about the level of TWCC information available to legally assist employees in the search for a treating doctors, and the lack of information on the obligations of carriers to effectively manage costs and medical care.

- TWCC does not use interactions with injured workers to educate them on the benefits of early return to work, including how to make an informed choice of initial treating doctor. TWCC letters and brochures inform injured workers of their legal rights, responsibilities, entitlement to benefits, and how to file disputes under workers' compensation, but do not explicitly address return to work issues. Without this information, injured workers may not understand that returning to work complements their medical recovery.

★  
*Injured workers are  
not educated on the  
benefits of return to  
work.*

The agency does not provide information on how to choose a treating doctor from the Approved Doctor List or the responsibilities of the treating doctor. As a result, injured workers cannot fully exercise their right to choose their initial treating doctor or actively seek treatment from a high quality medical provider to help them return to work. Treating doctors act as the primary gatekeeper in the workers' compensation system and evaluate and manage an injured worker's return to work status, as shown in the textbox, *Treating Doctor Responsibilities*.

<b><i>Treating Doctor Responsibilities</i></b>
<ul style="list-style-type: none"><li>● Provide direct medical care.</li><li>● Control all medical care by making referrals to other health-care providers.</li><li>● Determine when an employee can return to work, and under what conditions.</li><li>● Determine when an injured worker has reached Maximum Medical Improvement to stop temporary income benefits.</li><li>● Determine level of disability impairment, thus determining eligibility for other types of income benefits.</li></ul>

**TWCC struggles to fully support a cooperative medical management system that encourages the safe and timely return of injured employees to work.**

- The Labor Code clearly intends for injured workers to receive medical care that helps in their ability to return to work, in addition to recovering from their injury. However, the agency lacks a strategic focus to effectively integrate its medical care and return to work regulatory

policies and duties as contemplated by the statute. The agency has continued to incrementally implement medical policy changes without a strategic evaluation of their cumulative impact on return to work outcomes.

As a result, TWCC struggles to support an ideal administrative and regulatory framework for the workers' compensation medical system that would encourage up-front communication, proactive medical treatment planning, and cooperative medical decisionmaking to ensure system participants appropriately manage medical care to achieve an injured worker's safe and timely return to employment.

- The Sunset review found that TWCC's current medical model for workers' compensation actually includes several barriers and disincentives that, while not individually impacting return to work, have the cumulative effect of making medical management for return to work outcomes more difficult. For example, TWCC has not implemented:
  - a procedure for an injured worker to effectively designate and communicate their initial choice of treating doctor to other system participants;
  - a process to allow carriers, treating doctors, and injured workers to proactively communicate and establish the nature of the compensable injury and its related medical diagnosis;
  - a treatment planning framework or model for doctors and carriers to facilitate cooperative agreements on the course and scope of medical treatment; or
  - treatment guidelines, as authorized by the Labor Code, to provide a basis for what constitutes medically necessary treatment.

The agency has recognized some of these problems. TWCC has taken steps, during the Sunset review, to evaluate treatment guidelines and other options for improving the medical management of injured workers.

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*The agency has not assessed how its medical policy changes affect return to work outcomes.*

## Recommendation

### Change in Statute

#### **2.1 Specify that part of TWCC's statutory mission is to promote and help ensure the safe and timely return of injured employees to productive roles in the workforce.**

The Legislature should clearly articulate an explicit return to work goal in the agency's statute. TWCC should subsequently refocus and update its strategic plan to include the new return to work goal and propose corresponding performance measures to the Legislature. The agency should then consider organizational, policy, and rule changes needed to support return to work efforts. TWCC should also evaluate the most efficient methods for augmenting its employer outreach services. At a minimum, the agency should consider cost effective approaches, under existing statutory duties and authority, to provide integrated workplace safety and return to work consultations, technical assistance, and training opportunities to small and medium sized employers.

**2.2 Require TWCC, in partnership with system stakeholders, to evaluate and improve the benefit delivery system to promote the safe and timely return of injured employees to work.**

TWCC should use the enhanced stakeholder process recommended in Issue 3 to review and take all actions within the agency's authority to modify administrative rules, agency policies, and practices to ensure they support the return to work goal. The review should also evaluate statutory barriers and make recommendations to the Legislature for any needed changes. The Commission should report these recommendations no later than December 2006.

At a minimum, the review should evaluate needed changes to develop or enhance effective up-front communication and medical treatment planning between injured workers, employers, carriers, and doctors. This effort would promote high quality medical care that would help injured workers heal in appropriate time frames and return to work.

**2.3 Require the agency to provide employers with information and best practices on methods to enhance return to work communication and services.**

TWCC should augment existing return to work program information provided to employers to include methods for appropriately assisting injured workers to identify doctors from the agency's Approved Doctor List, and assessing doctors that provide high quality care and effective occupational medicine treatment practices that lead to returning employees to productive work. The information provided to employers should also help foster effective working relationships with local doctors and insurance carriers to improve return to work communication, and access to return to work coordination services provided by insurance carriers. Additionally, the agency should make available research and best practice information on return to work programs for Texas employers.

**2.4 Require TWCC to provide injured workers with information on the benefits of early return to work, and making informed medical decisions.**

TWCC should include plain language information in its letters, brochures, and other materials for public dissemination informing injured workers of the benefits of early return to work, how to access medical services appropriately, identify and designate a treating doctor, and information on the role and responsibility of their treating doctor. This recommendation would expand the existing content of information that TWCC is statutorily required to make available to employees. In addition, the agency should include information to assist injured workers with questions about return to work issues and accessing high quality medical care as part of the customer service requirements in Issue 8 of this report.

## **Management Action**

**2.5 TWCC should partner with the Texas Workforce Commission and the State's workers' compensation research function to obtain return to work outcome information.**

The agency should formalize an agreement with the Texas Workforce Commission (TWC) to match employment data from TWC against workers' compensation claims data to determine return to work outcomes. TWCC should continue this partnership until it has a formal system functioning, as a result of the Business Process Improvement project, and sufficient collected data to regularly report return to work outcomes to the Legislature. The agency should consider gathering outcome data from claims dating back to at least 2001, when the Legislature formally required TWCC to

collect this information. TWCC should coordinate these data collection efforts with whichever state agency performs the workers' compensation research function.

## **2.6 TWCC should adopt return to work guidelines and clarify their appropriate use for system stakeholders.**

The agency should formally adopt return to work guidelines that meet the requirements of the Labor Code. At a minimum, the agency should use the guidelines to monitor treating doctors' performance and provide information back to them on where their treatment practices compare to the average treatment practices in the system. TWCC should clarify the appropriate use of the guidelines by system participants for medical decisionmaking.

### **Impact**

These recommendations should work together to provide a strategic statutory framework for the return to work efforts of TWCC. With this strategic direction, the agency can work to implement an organizational, administrative, and regulatory framework that provides the appropriate incentives for system stakeholders to work together to support early return to work outcomes.

The State has recognized that both employers and employees benefit from a workers' compensation system that provides high quality medical care which assists in the safe and timely return of injured workers to productive employment. Implementing return to work guidelines and collecting outcome data would provide the system participants with clear standards from which to make decisions, and allow the agency to have the information needed to hold system participants accountable for contributing to the safe and timely return of injured workers to employment.

These recommendations would help ensure employers receive the information needed to effectively assist injured workers to receive high quality health care to aid in a safe return to work. Additionally, improved return to work outcomes would lead to reduced employer costs associated with workplace injuries.

Finally, injured workers would be better able to make more informed medical decisions and receive high quality medical care focused on helping them return to productive employment safely, and within a reasonable amount of time. This should then reduce the financial, social, and psychological strains associated with being injured and out of work.

### **Fiscal Implication**

These recommendations would have a fiscal impact to the State. Any increased budgetary needs would be dependent on the agency's reassessment of how best to implement its existing return to work authority, such as its outreach and education programs for employers. A corresponding adjustment to the insurance premium maintenance tax would offset any budgetary changes. Updating current outreach information to injured workers would have a minimal fiscal impact to redesign agency letters and brochures. The agency would use existing policy development staff to evaluate and update the benefit delivery system to support effective return to work communication.

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<sup>1</sup> Workers' Compensation Research Institute, *CompScope™ Benchmarks: Multistate Comparisons 4th Edition* (Cambridge, Mass., 2004), p. 199, 201.

<sup>2</sup> Workers' Compensation Research Institute, *Outcomes for Injured Workers in California, Massachusetts, Pennsylvania, and Texas* (Cambridge, Mass., 2003), p. 53.

<sup>3</sup> Texas Workers' Compensation Commission, *System Data Report* (Austin, Texas, 2003), p. 11.

<sup>4</sup> Research & Planning Consultants, L.P., *Recommendations for Improvements in Safety and Return-to-Work Programs for State of Texas Research and Oversight Council on Workers' Compensation* (Austin, Texas, 2001), p. 64.

<sup>5</sup> Workers' Compensation Research Institute, *Outcomes for Injured Workers in California, Massachusetts, Pennsylvania, and Texas* (Cambridge, Mass., 2003).

### *The Agency Does Not Adequately Use Stakeholder Input in Its Rulemaking and Policymaking Processes.*

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#### **Summary**

##### **Key Recommendations**

- Require TWCC to modify its approach to rulemaking to provide for structured public input while developing rules.
- Direct the agency to develop a method for strategic preparation of an annual rulemaking docket, to be made available online.
- The agency should ensure that the Commission has public input available for decisionmaking.

##### **Key Findings**

- TWCC solicits stakeholder input on rules and policies through formal and informal processes.
- The agency's stakeholder participation process for rule development is ineffective.
- The public and other stakeholders do not have meaningful opportunities to comment on agency rules during public meetings and hearings.

##### **Conclusion**

TWCC's ability to effectively solicit system stakeholder input is critical given the broad impact and technical complexity of the agency's proposed actions. Also, modifications to the agency's policies and rules can create significant implementation costs and potential compliance issues. The Sunset review evaluated how well TWCC uses stakeholder input throughout its policymaking process. The review found the agency's stakeholder participation process is not well-integrated into the agency's overall policy development process and involves stakeholders late in the process. When the agency holds meetings, discussions are neither effective nor productive, rarely leading to a consensus. The recommended changes will enable the agency to make better use of the input offered by system stakeholders, and should decrease the number of clarifying advisories released after rule adoption.

## Support

### **TWCC solicits stakeholder input on rules and policies through formal and informal processes.**

- TWCC undertakes a substantial amount of rule review, revision, and development each year. Since 2001, the agency has been involved in more than 60 rulemaking processes. Many of these rulemakings involve complex and significant issues such as revising the fee guideline methodologies for health-care provider reimbursements and implementing a new approved doctor list to regulate providers who can treat in the workers' compensation system. System stakeholder input is critical given the broad impact and technical complexity of TWCC's proposed actions. Many rules deal with complicated issues involving benefit calculations, medical treatment protocols, payment methodologies, and multiple transactions between system participants. Also, modifications to the agency's policies and rules can create significant implementation costs and potential compliance issues for insurance carriers, health-care providers, and other system participants.
- The agency's primary stakeholder interaction during the rule development process occurs with an informal group that is a holdover from the legislative development of House Bill 2600 (77th Session, 2001). In response to legislative interest, TWCC retained this concept as the agency implemented the provisions of HB 2600. The stakeholder group usually involves 15 to 25 members, and the agency supplements the core group with additional members representing more specific interests as needed. The group is identified, convened, and managed by the agency's governmental relations staff. The textbox, *TWCC Stakeholder Workgroup Representation*, details the core membership.
- The agency's rulemaking process may last from six to 18 months depending on the complexity of the rule being developed. Based primarily on legislative directives, intra-agency workgroups develop rule proposals within each program area that are forwarded to the agency's General Counsel and executive management for review and approval. The

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*Stakeholder input is critical given the broad impact and technical complexity of TWCC's proposed rules.*

#### **TWCC Stakeholder**

##### **Workgroup Representation**

The TWCC stakeholder group typically includes representatives of some or all of the following.

- Alliance of American Insurers
- Texas Self-Insurance Association
- American Insurance Association
- Texas Chiropractic Association
- Texas Association of School Boards
- Insurance Council of Texas
- Liberty Mutual Insurance Company
- Physical Therapists
- State Office of Risk Management
- Texas Association of Business
- Texas AFL-CIO
- Texas Medical Association
- Texas Mutual Insurance Company
- Texas Osteopathic Association
- Workers' Compensation Research Group
- Texas Department of Insurance
- Hartford Property and Casualty
- Legislative Staff
- Claimants' Attorneys

informal stakeholder group may be involved at any point in this process, but is typically involved in the final stages of rule development. Once rules are developed, agency staff presents the rules to the TWCC Commissioners. After the agency publishes a rule for public comment in the *Texas Register*, it schedules a rule hearing for proposed rules, as authorized but not required by the Administrative Procedures Act. The agency typically schedules these hearings the day before the Commission meets, to facilitate attendance by Commissioners. At the hearing, the Executive Director and General Counsel receive formal testimony, or commenters can submit written testimony.

**The agency's stakeholder participation process for rule development is ineffective.**

- The current stakeholder involvement process used by the agency is not well-integrated into the agency's overall policy development process. The current interaction with system participants is more the result of direct legislative scrutiny during the implementation of HB 2600 than a carefully thought-out process to solicit input from affected parties. As a result, interaction with the stakeholder group is still managed within the agency as a function of governmental relations rather than as a resource for the program areas.
- The agency does not regularly make information available on future rulemaking priorities and the associated timelines for rule development. An effective process for communicating future rulemaking actions ensures stakeholders have adequate notice and can plan their participation and response. In comparison, many agencies maintain rulemaking dockets on their Web sites and include strategic discussion of future rulemaking at meetings of their governing boards. These working dockets and discussions typically focus on implementing recent legislative mandates or addressing operational problems identified by program staff or system stakeholders.
- Stakeholders have expressed frustration at receiving rules late in the development process, with short timeframes for responding to proposals. Requesting input late in the process gives the appearance that the agency has already determined a course of action without accounting for the input of stakeholders. System participants indicate the process serves primarily to notify the stakeholder group of pending agency action, rather than to solicit meaningful feedback.
- When TWCC does meet with stakeholders, it does not effectively share a proposed course of action, to facilitate meaningful discussion with the system participants in attendance. Frequently, the agency is guarded about its position on the concepts under consideration, or does not want to limit the scope of stakeholder discussion, and will distribute only a brief agenda or some general information about the issues to be addressed at a meeting. The agency has indicated it very rarely provides stakeholders with draft rule language to solicit informed responses or feedback. In addition, stakeholder attendees are rarely forthcoming with viable alternatives or constructive criticism of agency proposals. Stakeholder meeting attendees are often representatives who may not



*TWCC's process to solicit input from affected parties is not well-integrated with policy development.*



*The agency rarely provides stakeholders with draft rule language to solicit informed feedback.*

have the technical knowledge to immediately respond to detailed questions put forth by the agency on how a certain change might affect business processes, forcing attendees to withhold comment until they can get further information from the appropriate staff. As a result of these factors, parties at the stakeholder meetings rarely reach any consensus.

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*Many of TWCC's rules have had implementation problems, requiring "advisories" to make them workable.*

- The ineffectiveness of the current stakeholder input process is demonstrated by the many implementation difficulties that occur once rules are adopted. As discussed previously, staff from TWCC program areas do not have meaningful interaction with stakeholders to work out implementation issues before rules are proposed. During complicated rule development at other agencies, staff often use targeted discussions with technical groups before drafting a rule. TWCC has one technical users group, formed of agency staff, carriers, and health-care providers, to address implementation issues surrounding the medical fee guidelines that went into effect in August 2003, however, the agency did not form this group until after adopting the guidelines. Also, the use of technical groups has not been widespread at the agency, and the existing users group is limited to providing input on issues regarding the medical fee guidelines.

<b>TWCC Actions Related to Approved Doctor List Implementation 2003</b>	
<b>Feb 20</b>	— TWCC adopts rules relating to Approved Doctor List.
<b>February</b>	— TWCC's BPI Division deploys online function allowing providers to start filling out the applications and fulfilling registration requirements of the new ADL.
<b>Mar 12</b>	— Advisory requires doctors to apply for ADL and obtain TWCC authorization or temporary exception to practice in workers' compensation system after August 31, 2003.
<b>May 15</b>	— TWCC amends rules relating to ADL.
<b>June</b>	— BPI Division deploys online automation function, allowing some providers who completed online training and application to receive certification the same day.
<b>July 25</b>	— Advisory permits non-ADL doctors to refer injured workers to colleagues on ADL.
<b>Aug 19</b>	— Advisory details reimbursement exceptions for emergency and immediate post-injury medical care provided by non-ADL doctors. Advisory creates access exception for non-ADL doctors treating workers unable to locate an appropriate ADL provider to serve as treating doctor.
<b>Aug 28</b>	— Advisory requires doctor to be on ADL on the date preauthorized health care is provided, not just on preauthorization date.
<b>Sept 1</b>	— New ADL requirements take effect.
<b>Oct 3</b>	— Advisory establishes a new form for non-ADL doctors to request case-by-case exceptions from TWCC for treatment of certain patients.
<b>Nov 7</b>	— Advisory provides that doctors providing health care only to patients injured before January 1, 1991 (old law cases) do not have to meet ADL requirements.

Many of TWCC's rules have implementation problems, such as required technical changes or additional costs expended by stakeholders to comply with new requirements, that were not addressed during the stakeholder input process. As a result, once a rule is adopted, the agency is often forced to clarify its intent and address implementation issues by releasing advisories.

For example, the agency released multiple advisories after adopting its rules on the Approved Doctor List (ADL). TWCC released several advisories as the new ADL requirements evolved throughout the year. The timeline, *TWCC Actions Related to Approved Doctor List Implementation*, details the more than 10 clarifying actions taken by the agency on the ADL in 2003. Many of these actions dealt with exceptions needed to address situations where injured workers had their care interrupted as doctors worked through unanticipated ADL implementation issues. Early and

effective involvement of stakeholders, including health-care providers, health-care facilities, insurers, workers, and employers, might have solved many of the implementation problems before TWCC adopted the rules. Similar cases where the agency has been forced to release numerous advisories soon after adopting rules have occurred with rules on pharmacy issues, medical dispute resolution, and medical fee guidelines.

**The public and other stakeholders do not have meaningful opportunities to comment on agency rules during public meetings and hearings.**

- The agency's public rule hearings are perfunctory and lack any meaningful discussion between agency program staff and commenters. The agency has indicated it schedules public hearings for proposed rules because staff expect negatively impacted parties to always request a hearing under the Administrative Procedures Act, to delay the process. The agency's Executive Director and General Counsel receive the testimony at the rule hearings, rarely questioning presenters or asking them to elaborate on their position. The agency provides no opportunity for interaction with program area staff who developed the rules. Most system participants submit their comments in writing because of the pro forma nature of the public hearings. Of the five hearings conducted between March 2002 and April 2003, the average length of a hearing was 12 minutes. Issues addressed in these hearings included the Hazardous Employer Program, the Subsequent Injury Fund, medical dispute resolution, reimbursement for pharmacy services, and medical preauthorization.
- Even though the agency frequently schedules rule hearings the afternoon before TWCC board meetings, Commission members rarely attend. Rule hearings were held on 13 dates between 2001 and 2003. One Commissioner attended a hearing in 2001, two attended one hearing in 2002, and one Commissioner attended a hearing in 2003. Commission members are provided with transcripts of the hearings, but members of the public are rarely able to address their concerns about agency rulemaking projects directly to the Commission.
- The Commission conducts its governing board meetings with little or no public testimony on proposed rules. Commissioners rarely call for public comment on each agenda item, and do not open the floor for comment on proposed motions. The Commission provides for a public forum period at the end of each meeting, but the agenda prohibits comment on any previous agenda item or ongoing rulemaking proposals. These factors, along with the lack of meaningful comment during the rulemaking process, effectively insulate the Commissioners from dealing with public input. Stakeholders indicate their most effective means of communicating concerns over proposed rules is through personal contact with individual Commissioners.

**Other state agencies have developed more effective processes for soliciting stakeholder input during policy development.**

- Other agencies regularly publish information on future rulemakings and associated timelines, and otherwise strategically allow stakeholders



*In 2002-2003, five major public rule hearings lasted an average of 12 minutes.*



*The Commissioners are insulated from dealing with public input.*

to engage on an issue early in the rulemaking process. The Public Utility Commission (PUC) has an easily accessible “Rules and Laws” section of its Web site, which leads a user to an index of active rulemaking projects listed by project number and title. Each project includes a brief description of the project, the team leader’s name and contact information, timelines, and any related documents. Its Web site’s “Recent Rule Changes” section includes the rule number, description of changes, and effective date of recent changes to PUC rules.

- At each Board meeting, the Higher Education Coordinating Board includes a strategic discussion of priority rulemaking projects and how they will support the agency’s mission. This discussion leads to the development of an approved workplan of policy issues and supporting rules for the following year, which is updated at each Board meeting.
- The Railroad Commission offers draft rule proposals for informal comment on its Web site. These rules are working drafts that have not been finalized and have not been submitted to the *Texas Register* for publication for public comment. Comments received during the informal process help the agency’s program staff deal proactively with potentially contentious issues.
- Negotiated rulemaking is another method some agencies have adopted to solicit stakeholder input earlier in the policy development process. TWCC’s rulemaking process currently reflects the basic Administrative Procedures Act requirements: the agency writes a rule for proposal, solicits public comment, then adopts the rule, as originally proposed or revised based on comments. By contrast, negotiated rulemaking involves a consensus-building process between the rulemaking agency and affected entities. The textbox, *Negotiated Rulemaking*, details the primary features of this process.<sup>1</sup>
- PUC uses a modified version of negotiated rulemaking in its rule development process. Typically, PUC staff develop a draft rule and then begin a consensus-building process with stakeholders. Notice of the draft rule is posted in the *Texas Register* and the draft is posted on PUC’s Web site. The notice includes deadlines for comments (parties generally have 20-30 days to provide comment) and the public

  
*Other agencies use extensive rule development processes to build consensus with stakeholders.*

**Negotiated Rulemaking**

- Proposed rules are developed by a committee of representatives of all interests to be affected by the rule, including the rulemaking agency, regulated entities, and public interest groups.
- Committee meetings are public and assisted by a neutral facilitator to encourage consensus.
- The resulting consensus is drafted into a rule the agency then uses for initiating the conventional rulemaking procedure.
- If consensus is not reached on all issues, the agency may still use the information gathered to draft a proposed rule.
- Benefits of the process include reduced litigation, greater public awareness and involvement, higher compliance rates, earlier implementation, greater information sharing and cooperation among parties, and improved accuracy in rules involving complex subjects.

meeting date. Public meetings on draft rules usually include considerable discussion between PUC staff and stakeholders regarding proposed language and the range of alternatives. These meetings also provide a forum where stakeholders can engage in discussion among themselves regarding differences of opinion. With this full development of issues and arguments, PUC staff can draft a rule by consensus, identifying critical priorities. Resolution of certain issues during the drafting process generally minimizes the number of comments received during the publication and adoption phases of rulemaking.

## Recommendation

### Change in Statute

#### **3.1 Require TWCC to modify its approach to rulemaking to provide for structured public input while developing rules.**

This recommendation would require the agency to develop a more open and strategic process for use in the development of rules. The new rulemaking process would include:

- the development, periodic review, and update of a public rulemaking docket that establishes priorities for the coming year;
- public notice of the availability of informal draft rules that include the subject and scope of the rule; any known issues for consideration during rule development, including potential changes to agency forms, data collection requirements, and fiscal implications; and a list of interests likely to be impacted by the rule;
- designation of a facilitator to coordinate discussion, negotiation, and mediation among system participants to attempt to reach consensus during stakeholder group meetings on significant rulemaking projects;
- development of a revised draft rule by program area staff with recommendations to the Commission that include a discussion of relevant issues raised during stakeholder meetings that could not be resolved in the rule as drafted; and
- publication of the proposed rule using the standard process defined in the Administrative Procedures Act.

### Management Action

#### **3.2 Direct the agency to develop a method for strategic preparation of an annual rulemaking docket, to be made available online.**

As a first step, TWCC should periodically conduct a strategic examination of issues (brought to agency attention through legislation, public comment, rulemaking petitions, and staff suggestions) that have the potential to be the subject of rulemaking in the coming year. Having identified focus areas for policy and rulemaking action, agency staff should then compile and submit a docket of proposed future rulemaking projects to the Commission for approval. The adopted docket would be easily accessible on the agency's Web site. The agency, once it decides on the rulemaking focus for the year, would designate staff members to act as leaders for each rulemaking project. Team leader names and contact information, along with timelines for development of each rulemaking project, would be linked to the rulemaking docket on the agency's Web site.

### **3.3 The agency should ensure that the Commission has public input available for decisionmaking.**

This recommendation would direct TWCC to develop a revised process to ensure that the Commission has a full array of input available for its decisionmaking. This should include a public hearing process that allows interested parties to present input directly to the Commission during rulemaking hearings. An improved process would allow the Commission the opportunity to engage stakeholders in discussions clarifying or further developing their positions on proposed rules. Factors that should be evaluated include: the effectiveness of the public hearing process for proposed rules, as a tool for both agency staff and Commission members; and the appropriate level of detail presented by staff in Commission governing board meetings about stakeholder concerns expressed during the rulemaking process.

#### **Impact**

The recommended changes would enable the agency to make better use of the input offered by system stakeholders, who are in a position to identify potential implementation difficulties before a rule is adopted. With the modified rulemaking process, the agency would also have the opportunity, depending on the significance and complexity of the rule, to consider whether to have targeted discussions with each stakeholder group, making an effort to identify and resolve potential challenges to a rule before it is adopted. Presenting draft rules to stakeholders should allow for more informal input and more substantive change, and should decrease the frequency of costly lawsuits after the adoption of more contentious rules. Including a draft of a revised TWCC form, if necessary, in the presentation of the draft rule will allow stakeholders to examine the expected requirements and then provide comments on how the form should be changed to ease implementation. This should decrease the number of advisories required after rule adoption.

#### **Fiscal Implication**

These recommendations will have no significant fiscal impact to the State. Increased stakeholder input would have an administrative impact on the agency, but the majority of these costs will be offset by redirecting resources from the current ineffective rule development process to a more effective process. More proactive involvement of stakeholders in the rulemaking process could result in administrative savings if fewer resources are needed to establish clarifications and participate in subsequent court interventions, but these savings could not be estimated for this report.

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<sup>1</sup> Texas Comptroller of Public Accounts, *Texas Performance Review: Disturbing the Peace*. Chapter 4, General Government Issues. "GG 5: Increase the Use of Negotiated Rulemaking." 1996. Online. Available: <http://www.window.state.tx.us/tp/tp4/c4.gg/c405.html>. Accessed: March 2, 2004.

### *TWCC's Process for Resolving Workers' Compensation Benefit Disputes Is Cumbersome, and Discourages Early Resolution.*

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## Summary

### Key Recommendations

- Require the parties involved in an income benefit dispute to try to resolve the dispute themselves before filing a dispute at TWCC.
- Require all Benefit Review Officers to meet SOAH's basic training requirements for state employees administering mediation processes, and prohibit recommendations on the unresolved issues in Benefit Review Conferences.
- Prohibit TWCC from conducting more than two BRCs for each dispute before proceeding to a Contested Case Hearing.
- Restructure the Appeals Panel as a single, three-member appeal tribunal, and require it to issue decisions only on reversed or remanded cases.

### Key Findings

- Allowing system participants to file disputes with TWCC without first trying to resolve disputes themselves unnecessarily increases the number of disputes in the process.
- TWCC's informal Benefit Review Conferences do not offer true mediation of disputes.
- TWCC has not established incentives and requirements to encourage more timely, appropriate, and efficient resolution.
- The Appeals Panel review is redundant and offers limited guidance to system participants.

### Conclusion

The Texas Workers' Compensation Commission (TWCC) attempts to resolve income benefit disputes through several informal and formal steps. Sunset staff evaluated the dispute resolution process and found that the agency does not fully encourage efficient, appropriate, or timely resolution. Specifically, TWCC does not ensure that participants have tried to resolve disputes themselves, and allows for several informal conferences conducted by staff without the standard mediation training necessary for appropriate and timely resolution.

Requiring participants to first attempt resolution themselves before filing a dispute with TWCC, limiting the number of informal conferences, and requiring additional mediation training for Benefit Review Officers, would streamline the process to provide faster and more effective resolution of disputes. These changes would allow TWCC to focus on more difficult disputes rather than inserting the State as a third party in disputes that could and should be resolved by the disputing parties. Additionally, restructuring the Appeals Panel and instituting a precedent manual would help ensure more consistent decisions at each stage of the dispute resolution process, and provide more guidance to system participants on the interpretation and application of workers' compensation laws and rules.

## Support

### **TWCC's Income Benefit Dispute Resolution process includes several informal and formal steps.**

- In the workers' compensation system, income benefits replace a portion of wages lost due to a work-related injury or illness. The chart, *Income Benefits*, gives a brief explanation of the different types of income benefits available to injured workers. The Agency Information section of this report provides a more detailed explanation of these benefits.
- Although the majority of workers' compensation claims are processed and paid without any problems, disputes can and do arise regarding income benefits. Of the 145,487 reported claims in 2003, about 6 percent resulted in a dispute regarding income benefits. The reformation of the Texas workers' compensation system in 1989 attempted to create an administrative dispute resolution process to resolve disputes at TWCC and avoid extensive and costly litigation.

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*In FY 2003, about 6 percent of workers' compensation claims resulted in a dispute about income benefits.*

<b>Income Benefits</b>	
Temporary Income Benefits (TIBs)	• Available if work-related injury or illness causes a loss of some or all of wages for more than seven days.
Impairment Income Benefits (IIBs)	• Available if the worker has a permanent impairment from a work-related injury or illness.
Supplemental Income Benefits (SIBs)	• Available if the worker has an impairment rating of 15 percent or greater, remains unemployed or underemployed as a result of impairment from the compensable injury, and makes a "good faith effort" to find work.
Lifetime Income Benefits (LIBs)	• Available if the worker has a work-related injury or illness that results in specific catastrophic injuries (e.g. loss of sight in both eyes, loss of use of both feet, certain burns).
Death Benefits (DBs)	• Replaces a portion of lost family income for the eligible family members of workers killed on the job.

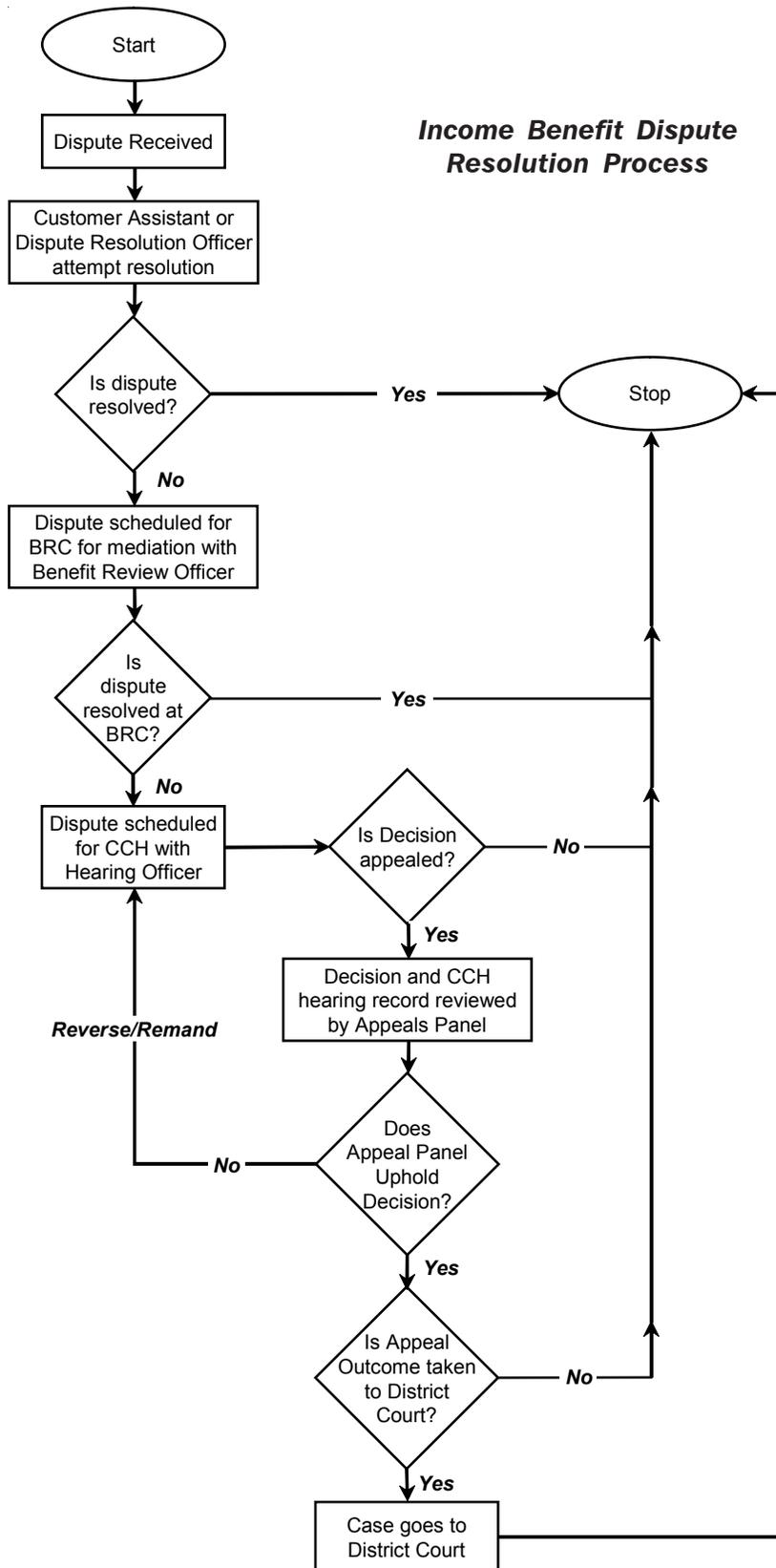
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*The Income Benefit Dispute Resolution (IBDR) process resolves disputes about the amount, duration, and liability for income benefits.*

The Income Benefit Dispute Resolution (IBDR) process attempts to resolve these disputes between injured workers, employers, and insurance carriers regarding the amount, duration, and liability for income benefits. These disputes typically involve deciding whether the worker was injured on the job, the extent of the injury, and the amount of replacement wages due to the worker for time lost due to the injury.

- The lengthy and complex IBDR process is shown in the flowchart on the next page, *Income Benefit Dispute Resolution Process*, and the textbox, *Significant Steps in the Income Benefit Dispute Resolution Process*, briefly describes the principal steps in the process. Each step before the Appeals Panel review occurs in TWCC's 24 field offices located throughout the state. The nine Appeals Panel judges work in the agency's central office in Austin.

**Income Benefit Dispute Resolution Process**



**Significant Steps in the Income Benefit Dispute Resolution Process**

<b>INFORMAL STEPS</b>	
Customer Service Assistants	Work with participants to resolve problems over the phone before an official dispute is filed.
Dispute Resolution Officers (DROs)	Work with the disputing parties to try to resolve the filed dispute over the phone. The DRO has approximately 10 days to reach a resolution. If the DRO fails to resolve the dispute, a Benefit Review Conference (BRC) is scheduled.
Benefit Review Conference (BRC)	Informal proceeding conducted in the agency's field office designed to mediate and resolve disputes. Each person discusses his or her side of the dispute. An agency employee, called a Benefit Review Officer (BRO), attempts to help the parties reach a mutually satisfactory resolution to their disputed issues. TWCC conducts approximately 19,000 BRCs each year. If the dispute is not resolved, parties may request a Contested Case Hearing. If this occurs, the BRO files a report detailing the unresolved issues, reflects each party's position on every issue, and provides recommendations on each disputed issue.
<b>FORMAL STEPS</b>	
Contested Case Hearing (CCH)	A CCH is similar to a hearing in a court of law. An agency employee, called a Hearing Officer (HO), presides at the hearing. HOs are agency attorneys functioning as administrative law judges. Each party presents its side of the dispute and may question witnesses and introduce evidence to support its case. The HOs examine the evidence and testimony and issue a decision on the dispute. TWCC conducts approximately 7,200 CCHs each year. Dissatisfied parties may request an Appeals Panel review of the decision.
Appeals Panel	A pool of nine agency attorneys acting as administrative law judges are assigned in panels of three to review the HO's decision and the record from the CCH. One attorney acts as the author judge and writes the actual decision while two other attorneys review the decision. The Appeals Panel may either uphold the HO's decision, overturn the decision and issue its own decision, or order a second CCH to be held on the dispute. The Appeals Panel judges issue about 3,300 decisions each year.
Judicial Review	If either party is dissatisfied with the Appeals Panel decision, the decision may be appealed to the district or county court of law.

**Allowing system participants to file disputes with TWCC without first trying to resolve disputes themselves unnecessarily increases the number of disputes in the process.**

- As part of an employer's workers' compensation insurance coverage, insurance carriers pay income benefits directly to the employer's injured workers. When an income benefit dispute arises, nothing requires the parties to make a meaningful effort to resolve the dispute themselves before seeking assistance from the State. Instead, participants file a dispute at TWCC and go through the IBDR process.

Although the form to request a Benefit Review Conference (BRC) requires the parties to "certify" that a good faith effort has been made to resolve the issues in dispute, TWCC does not provide any guidance or definition as to what constitutes a good faith effort.<sup>1</sup> TWCC also does not investigate or determine whether this effort has been made. Other than this pro forma certification, the parties are not required to try to resolve the dispute between themselves and carriers do not have to use their own internal dispute resolution process.

- TWCC receives thousands of disputes each year and must use staff time and resources to process each dispute. Of the 60,000 disputes filed in FY 2003, TWCC determined 45,000 were valid. TWCC attempts to resolve all valid disputes through informal and formal processes.
- TWCC resolves the majority of disputes, 56 percent, prior to holding a BRC. TWCC staff work with the disputing parties to try to resolve the dispute informally over the phone before scheduling a BRC.

**TWCC's informal Benefit Review Conferences do not offer true mediation of disputes.**

- The Legislature has encouraged state agencies to use alternative dispute resolution (ADR) procedures and has given the State Office of Administrative Hearings (SOAH) broad authority to issue model guidelines for the use of ADR by state agencies.<sup>2</sup> ADR includes mediation - a confidential informal dispute resolution process in which an impartial person, the mediator, facilitates communication between or among the parties to promote reconciliation, settlement, or understanding among them.
- Although TWCC Benefit Review Officers act as mediators in conferences, they are not adequately trained and do not meet state mediation standards. According to SOAH, state employees administering mediation processes should complete basic training standards that include a minimum of 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization.<sup>3</sup> However, TWCC only requires the Benefit Review Officers to have three years experience in public relations work in the field of insurance adjusting, including workers' compensation claims; experience in the workers' compensation field; or experience as an attorney.<sup>4</sup> The Benefit Review Officers receive initial training on TWCC's internal mediation processes and procedures, and a one or two hour mediation training session each year at TWCC's training conference.
- The Benefit Review Officers also do not operate according to the Texas Alternative Dispute Resolution Act or SOAH guidelines. The guidelines define mediation as a forum in which an impartial mediator facilitates communication between parties to promote reconciliation, settlement, or understanding. The participants have the ultimate control over the outcome. The mediator may not impose his own judgment on the issues for that of the parties and cannot enter any orders in a pending case related to the mediation.

However, at TWCC, if the parties do not reach resolution at the BRC, the statute requires the Benefit Review Officer to issue a report identifying the unresolved issues and make recommendations as to which party should prevail on each disputed issue. This report is forwarded to the disputing parties as well as to the Hearing Officer before the Contested Case Hearing (CCH).<sup>5</sup> Making recommendations changes the nature of the Benefit Review Officer. By making these

  
*TWCC Benefit  
 Review Officers act as  
 mediators, but do not  
 meet state mediation  
 standards.*

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*Benefit Review  
Officers are placed in  
the position of acting  
more like judges than  
mediators.*

recommendations, the Benefit Review Officer's role changes from that of a mediator to that of a judge.

- Sunset staff observed several BRCs as part of the agency's review. Although the Benefit Review Officers conducted the conferences according to TWCC guidelines and procedures, the conferences did not function like true mediation sessions. The sessions were much more formal and conducted through the use of an agency-developed script. The Benefit Review Officers did not encourage interaction between the parties to help them come to their own resolution. The parties explained their positions to the Benefit Review Officer instead of talking to one another. The parties did not work together to reach a solution, rather the Benefit Review Officer would usually only caucus independently with each party and then explain to the other party the positions and what, if anything each of the parties were willing to do.

**TWCC has not established incentives and requirements to encourage more timely, appropriate, and efficient resolution.**

- TWCC does not limit the number of BRCs conducted to resolve disputes. Although the number of disputes has been decreasing, the number of BRCs with multiple sessions held has steadily increased since fiscal year 1998. In fiscal year 2003, 68 percent of concluded BRCs had more than one conference scheduled and 30 percent had more than one conference actually held. For each BRC concluded, TWCC conducts an average of 1.41 sessions. Of those disputes with more than one BRC held, 42 percent went on to a CCH. Some staff indicate that the general practice is to allow three BRCs prior to scheduling a CCH, but this practice is not required by statute or rule.

Without a set limit on the number of BRCs, parties have little incentive to be prepared or willing to quickly resolve a dispute. Also, the parties may use the BRC process primarily to see what information the other party has or observe their reasoning behind the action. Meanwhile, the State pays for the cost of each BRC, regardless of minimal efforts by the parties to resolve the dispute.

- TWCC does not fully enforce requirements for participants to attend scheduled proceedings, and does not encourage participants to be adequately prepared for the proceedings. TWCC has statutory authority to administratively sanction participants that fail to attend a scheduled BRC without good cause. However, the agency has been lax in using these provisions. In fiscal year 2003, the hearings division made only three referrals to the compliance and practices division for failure to attend a BRC. The agency issued one warning letter, but did not assess any penalties. According to TWCC, participants who fail to attend are almost always injured workers who may have already experienced an adverse result from failing to attend.

TWCC also reschedules BRCs when participants do not have the information necessary to resolve the disputes at the proceeding. However, TWCC does not provide participants with a list of basic information needed such as medical reports and payroll vouchers, to help resolve the dispute at the BRC. As a result, participants come to

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*TWCC often  
conducts multiple  
BRCs to resolve  
individual disputes.*

the BRC unprepared and have to reschedule. Sunset staff observed several BRCs that TWCC had to reschedule to give participants, usually the injured worker, more time to gather additional information from their doctors.

Rescheduling these hearings limits the agency's ability to timely schedule and hold the BRCs and CCHs within the required timeframes. In fiscal year 2003, TWCC scheduled about 8 percent of the BRCs and 25 percent of the CCHs outside the required timeframes. Continually rescheduling hearings increases the total number of conferences and hearings, therefore tying up the Benefit Review Officers' time. TWCC must typically schedule up to eight BRCs for each Benefit Review Officer per day. This workload limits the amount of time the Benefit Review Officers are able to devote to actually mediating the disputes at each BRC.<sup>6</sup>

- TWCC's contested case hearing process is also inefficient for both the agency and the disputing parties. Unlike some other entities that conduct dispute resolution processes, TWCC has not taken advantage of conducting contested case hearings by telephone rather than in-person. Currently, about 30 Hearing Officers located in TWCC's field offices conduct the majority of CCHs in-person. Conducting these in-person hearings is unnecessary, time consuming, and costly. TWCC requires participants to appear in-person to present testimony, question witnesses and offer evidence to support their side. Most workers' compensation insurance carriers retain or employ costly legal counsel to represent them in these proceedings across the state. In many cases, TWCC could handle the hearings by telephone.

**The Appeals Panel review is redundant and offers limited guidance to system participants.**

- The Appeals Panel review offers little additional due process for system participants. When either party appeals the CCH decision, the parties submit their positions in writing, but cannot submit new evidence as the appeal is a substantial evidence review of the Hearing Officer's decision from the CCH. An Appeals Panel consisting of three of the nine agency attorneys acting as administrative law judges reviews the decision to determine whether it is legally sound. The Appeals Panel follows the principle that the Hearing Officer's decision will be affirmed unless the Hearing Officer improperly applied the law to the facts or the decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.<sup>7</sup> The Appeals Panel may either uphold the Hearing Officer's decision, overturn the decision and issue its own, or remand the case for a second CCH.
- The Appeals Panel review and resulting decision rarely change the outcome of the dispute, but add about 43 days to the dispute resolution process. Although the Appeals Panels issue about 3,300 decisions each year, approximately 93 percent simply affirm the Hearing Officer's decision from the CCH. If a decision is not issued within 30 days, the Hearing Officer's decision becomes final without an Appeals Panel Decision. This happens in about 5 percent of the cases. The Appeals

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*TWCC has not taken advantage of conducting hearings by telephone rather than in-person.*

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*About 93 percent of the Appeals Panel decisions simply affirm the Hearing Officer's decision.*

Panels reverse the Hearing Officers' decision and render a new decision in only about 1 percent of the cases.

- The Appeals Panel decisions do not provide adequate or consistent guidance to system participants. Appeals Panels have issued conflicting decisions that differ on the interpretation and application of the workers' compensation law and rules.<sup>8</sup> In addition, because the decisions are not considered precedent, the Appeals Panel judges have little guidance to ensure consistency when reviewing the Hearing Officers' decisions and issuing their own decisions.
- The agency does designate certain Appeals Panel cases and the resulting decisions as "significant" to offer some guidance to system participants on how to consistently interpret and apply the workers' compensation law and agency rules. To be significant, a case must address a significant issue as defined in the textbox, *Criteria for Significant Issues*. The nine Appeals Panel judges meet together to decide the significant cases.

  
*Appeals Panels have issued conflicting decisions, leading to confusion about the application of the law.*

According to TWCC procedures, once a case is designated as significant, all decisions on the same issue are required to follow the guidance established. However, the judges have issued significant decisions that conflict with prior decisions. These decisions typically conflict as a result of the most recent case involving a new issue or nuance that was not contemplated in the earlier decisions. As a result, the lack of clear guidance can lead to confusion about the application of the law and result in more disputes as parties use either position from significant issues to argue their side of a dispute.

- TWCC posts the Appeals Panel decisions, including all significant decisions, on the agency's Web site. However, the way in which the agency posts them is not useful or effective. The agency does not organize the decisions by subject matter or have a subject matter index. Instead, the decisions are posted by year according to the case number. If someone is looking to see how the Appeals Panel applied a specific section of the law or a particular rule, they can search the decisions by subject area, but the search engine is not user friendly. An interested party can also search the significant decisions, but must search by year for all other decisions.

Conflicting significant decisions are removed from the significant decision list, but remain on the Appeals Panel decision lists posted on the agency's Web site. By not removing these decisions system participants do not have clear guidance on the application of the law and can use any of the decisions to support their position.

**Criteria for Significant Issues**

TWCC considers an issue as significant if:

- it has not been previously decided by an Appeals Panel decision;
- it is inconsistent with a previous Appeals Panel decision; or
- the factual circumstances are so unique that it will significantly enhance the understanding of the legal principle at issue.

- The Appeals Panels spend more time affirming decisions than on ensuring consistency or establishing precedent. The majority of the Appeals Panel workload involves writing decisions that simply affirm the Hearing Officer's decisions. The Appeals Panel judges write a decision on almost every case, even if it simply affirms the Hearing Officer's original decision. In fiscal year 2003, the nine Appeals Panel judges issued 3,140 written decisions. However, of those, 2,928 simply affirmed the Hearing Officer's decision. Therefore, the judges actually wrote only 212 new decisions. The judges spend approximately five hours writing each decision.

  
*Appeals Panels do not  
spend much time  
ensuring consistency  
or setting precedent.*

**Other agencies have dispute resolution processes with requirements that ensure more timely and consistent resolution.**

- The Texas Workforce Commission (TWC) has a similar, but much more streamlined process for resolving unemployment insurance disputes. Initial decisions on whether to award unemployment benefits to a claimant are appealable through two levels within TWC. First, claim determinations are appealable to the administrative law judges, who hold telephone hearings and issue decisions based upon evidence introduced at the hearings. Second, these decisions are appealable to the three Commissioners who review the decisions to ensure that they are based on applicable law and precedent.

TWC also uses a precedent manual to promote consistency of decisions at both levels of appeal. The Commissioners occasionally vote to adopt a decision in a particular appeal as a precedent decision. The relevant facts and holding of that decision are published in the Appeals Policy and Precedent Manual. This manual contains the precedent decisions the Commission has adopted over several years and is divided into subject chapters. The manual also lists many published decisions from state and federal courts that govern the administration of the unemployment compensation appeals process.

- The Medicare appeals process has several requirements in place to ensure faster resolution. Medicare uses five different types of dispute resolution processes to resolve appeals. These processes include telephone and in-person reviews and fair hearings, formal hearings by administrative law judges, appeals board review, and federal court review. Appeals must meet specific requirements to be eligible for resolution for each dispute resolution process. One of these requirements is submitting specific information with the appeal. The Medicare dispute resolution process also identifies appeals that can appropriately be resolved over the telephone.<sup>9</sup>

## Recommendation

### Change in Statute

#### **4.1 Require the parties involved in an income benefit dispute to try to resolve the dispute themselves before filing a dispute at TWCC.**

This recommendation would require injured workers, employers, and workers' compensation insurance carriers to first try to resolve income benefit disputes between themselves before filing a dispute at TWCC. The agency would be authorized to adopt rules to ensure documentation of the initial attempt to resolve the dispute, including telephone calls or written correspondence. Requiring the disputing parties to first try to resolve a dispute themselves would reduce the number of disputes handled by TWCC. This would allow the agency to focus its efforts on more difficult disputes rather than inserting the State as a third party in a situation that could and should be resolved informally between the disputing parties.

#### **4.2 Require all Benefit Review Officers to meet SOAH's basic training requirements for state employees administering mediation processes, and prohibit recommendations on the unresolved issues in Benefit Review Conferences.**

Under this recommendation, all Benefit Review Officers would be required to complete basic training standards that include completing a minimum of 40 classroom hours of training in dispute resolution techniques, in a course conducted by an alternative dispute resolution system or other dispute resolution organization. Prohibiting the Benefit Review Officers from making recommendations on the unresolved issues in the BRCs will clarify their role as a mediator rather than that of a judge.

#### **4.3 Prohibit TWCC from conducting more than two BRCs for each dispute before proceeding to a Contested Case Hearing.**

This recommendation would limit the number of Benefit Review Conferences (BRCs) that could be conducted for each dispute. If a dispute is not resolved at the first or second BRC, the parties could resolve the dispute themselves or proceed to a Contested Case Hearing. Limiting the number of BRCs would encourage participants to be more prepared and possibly more willing to resolve disputes informally at a BRC.

#### **4.4 Require TWCC to provide participants with a list of information that participants may need at a BRC and CCH.**

This recommendation would require TWCC to determine what information is most useful to have to help resolve disputes at both BRCs and CCHs. The list may include information such as medical reports, medical information, or wage records. Publishing this list would provide participants in the dispute resolution process guidance on the type of information they should have available at a BRC or CCH. Informing participants ahead of time would encourage them to come prepared so that the dispute can be more easily resolved rather than being rescheduled due to a lack of information.

#### **4.5 Require TWCC to create a precedent manual for workers' compensation disputes.**

Creating a precedent manual would result in better and more consistent decisions at each level of the dispute resolution process. The Appeals Panel judges would vote to adopt a decision in a particular case as a precedent decision. These decisions would be published in the manual divided by subject areas, and available on the agency's Web site.

Establishing a precedent manual would provide a reference to precedent-establishing decisions of the Appeals Panel for all participants in the workers' compensation system. TWCC would train its employees on the manual and ensure that decisions at each stage of the dispute resolution process are made based on it. TWCC should use the precedent manual, established by the Texas Workforce Commission for appealed unemployment insurance cases, as a model in developing its precedent manual.

**4.6 Restructure the Appeals Panel as a single, three-member appeal tribunal, and require it to issue decisions only on reversed or remanded cases within 45 days.**

This recommendation would replace TWCC's pool of nine administrative law judges with a single, three-person Appeals Panel. The Appeals Panel would review all of the appealed CCH decisions, and issue written decisions only for those that the Appeals Panel decides to reverse or remand. The Appeals Panel would continue to review the appealed CCH decisions to ensure the decisions are legally sound, but would also ensure that the decisions are consistent with the newly-established precedent manual. The Appeals Panel would continue to receive support from the agency's Program Attorneys. In case of an extended absence of an Appeals Panel Judge, the agency could designate a Program Attorney to act as an administrative law judge on the Appeals Panel. Due to the shift in the workload, the Appeals Panel would be required to issue their decisions no later than the 45th day, instead of the 30th day, after the day on which the written response to the request for appeal is filed.

### **Management Action**

**4.7 TWCC should conduct more contested case hearings by telephone.**

This recommendation would direct TWCC to take advantage of conducting contested case hearings by telephone rather than in-person, to improve the efficiency of these hearings. Conducting contested case hearings by telephone should reduce both the amount of time it takes and the cost involved to resolve income benefit disputes.

### **Impact**

These recommendations would encourage earlier resolution of disputes by requiring parties to try to resolve their disputes among themselves before entering TWCC's dispute resolution system. However, for disputes that cannot be resolved without a third party, these recommendations would streamline TWCC's dispute resolution system. Benefit Review Conferences would be used as true mediation sessions, with the parties better prepared to resolve their dispute. Reducing the number of BRCs would help resolve disputes more quickly and decrease the need for both insurance companies and injured workers to retain or employ counsel to represent them in these conferences. Restructuring the Appeals Panel and instituting a precedent manual would ensure more consistent decisions at each stage of the dispute resolution process. The same three judges would review and render decisions on the appealed CCH decisions, providing system participants with a more consistent interpretation and application of workers' compensation laws and rules.

### **Fiscal Implication**

These recommendations will have a positive fiscal impact of \$448,000 in fiscal year 2006 and \$481,000 in the following fiscal years. Requiring the agency's Benefit Review Officers to complete 40 hours of mediation training will have an initial cost of approximately \$33,000. However, this cost will be offset by reducing the number of Appeals Panel Judges from nine to three which will result in an

estimated savings of \$368,000 each fiscal year. In addition, the recommendation to limit the number of BRCs to two sessions will eliminate 1,620 BRCs each year and result in additional savings of about \$113,000 each fiscal year.

Encouraging parties to resolve their disputes among themselves and reducing the number of BRCs would reduce the cost of the dispute resolution process for participants as well, although these savings could not be estimated for this report.

<b>Fiscal Year</b>	<b>Cost to the General Revenue Fund</b>	<b>Savings to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2005</b>
2006	\$33,000	\$481,000	-6
2007	\$0	\$481,000	-6
2008	\$0	\$481,000	-6
2009	\$0	\$481,000	-6
2010	\$0	\$481,000	-6

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<sup>1</sup> Texas Workers' Compensation Commission, *Request For A Benefit Review Conference*, TWCC-45 (Austin, Texas, October 1993).

<sup>2</sup> Introduction to Guidelines for the Use of Alternative Dispute Resolution by Texas State Agencies. [www.soah.state.tx.us/adr/ModelGuide/Final %20Draft%20Guidelines.htm](http://www.soah.state.tx.us/adr/ModelGuide/Final%20Draft%20Guidelines.htm).

<sup>3</sup> Civil Practice and Remedies Code, sec. 154.052.

<sup>4</sup> Texas Workers' Compensation Commission, Performance Planning and Development (Non-Supervisory), HR20N Non-Supervisory PPDS (10/02).

<sup>5</sup> Texas Workers' Compensation Commission, *The Bulletin*, (November 1, 1994), pp. XI 12 and 17.

<sup>6</sup> Texas Workers' Compensation Commission, Self-Evaluation Report, submitted to the Sunset Advisory Commission (August 2003), p.96.

<sup>7</sup> Texas Workers' Compensation Commission, "Standard of Review - Legal Principles," Appeals Panel Training Materials.

<sup>8</sup> Texas Workers' Compensation Commission Appeal No. 032868-s.

<sup>9</sup> TrailBlazer Health Enterprises, LLC, Centers for Medicare & Medicaid Services, *TWCC Medicare Training - Part B*, pp. 147-165.

## *TWCC's Medical Dispute Resolution Process Lacks the Transparency and Oversight Necessary to Ensure Fair and Timely Resolution.*

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### **Summary**

#### **Key Recommendations**

- Require every IRO decision to include specific elements to ensure the validity and fairness of the decision.
- Require TWCC and TDI to develop a Memorandum of Understanding to improve the regulation and oversight of Independent Review Organizations in the workers' compensation system.
- Require the nonprevailing party to pay the cost of the SOAH appeal.
- TWCC should set a monetary threshold for medical disputes that can be appealed to SOAH.

#### **Key Findings**

- The Independent Review Organization review process lacks the transparency needed to ensure the validity and fairness of its decisions.
- TWCC and TDI have not developed an effective regulatory framework to oversee IROs.
- The Medical Dispute Resolution process fails to discourage unnecessary appeals to SOAH that add significant costs and delay resolution.

#### **Conclusion**

The medical dispute resolution process at the Texas Workers' Compensation Commission (TWCC) handles disputes primarily between health-care providers and insurance carriers over payment for health care that has been recommended or provided to injured workers. Although TWCC used to handle the majority of these disputes, the Legislature restructured the process in 2001 to ensure medical professionals resolved the disputes in the same manner as disputes in health maintenance organizations.

Sunset staff evaluated the recently implemented changes to the medical dispute resolution process and determined that improvements need to be made to ensure fair and timely resolution of medical disputes in the system, without jeopardizing due process of law. Vague requirements and lax oversight of the Independent Review Organizations (IROs) do not provide the necessary assurance to system participants that the IRO decisions are valid. Without this assurance, parties are more likely to appeal the IRO decisions, especially considering TWCC must pay for the appeal to the State Office of Administrative Hearings (SOAH), not the disputing parties.

Requiring IRO decisions to include specific elements such as findings and conclusions to support the decisions, would provide the transparency necessary to ensure the validity of the decisions. These elements would also assist SOAH in evaluating the decisions when they are appealed. However, limiting unnecessary and costly SOAH hearings is also important. Allowing TWCC to monetarily limit appeals to SOAH, and requiring the nonprevailing party to pay for these appeals, would reduce the number of unnecessary appeals to SOAH.

## Support

**The Medical Dispute Resolution process helps resolve disputes regarding health care delivered to injured workers in the workers' compensation system.**

- The Medical Dispute Resolution (MDR) process handles three types of medical disputes – prospective medical necessity disputes, retrospective medical necessity disputes, and medical fee disputes. The textbox, *Types of Medical Disputes*, briefly describes each type of dispute and the parties involved. The MDR process handles disputes predominantly between health-care providers and insurance carriers over payment for health care that has been recommended or provided. However, injured workers may also file disputes.<sup>1</sup>

<b>Types of Medical Disputes</b>		
<b>Dispute Type</b>	<b>Description</b>	<b>Parties Involved</b>
Prospective Medical Necessity Disputes (Preauthorization)	Disputes involving the reasonableness or necessity of health care that requires preauthorization on concurrent review before the care is provided. Currently 14 health-care services require preauthorization. <sup>2</sup> Independent review organizations (IROs) review and resolve these disputes.	A health-care provider or injured worker denied authorization by an insurance carrier for specific health-care services requested.  The insurance carrier pays for the IRO review.
Retrospective Medical Necessity Disputes	Disputes involving the reasonableness or necessity of health care that has already been provided. Independent review organizations review and resolve these disputes.	A health-care provider or injured worker denied reimbursement from the insurance carrier for health-care services already rendered.  The requestor initially pays the IRO fee, but ultimately the nonprevailing party pays for it. However, insurance carriers always pay for the IRO review for injured workers.
Medical Fee Disputes	Disputes over the amount of payment for health care rendered to an injured employee and determined to be medically necessary and appropriate treatment of that employee's compensable injury. The Commission reviews and resolves these disputes.	A health-care provider or injured worker disputing the amount of payment or reimbursement of medical expenses by an insurance carrier.  A health-care provider denying a refund request by an insurance carrier.

- TWCC assigns all prospective and retrospective medical necessity disputes to one of seven IROs for resolution. The textbox, *History of IROs in Workers' Compensation*, provides some background on this process. An IRO is an external panel made up of medical professionals and certified by the Texas Department of Insurance (TDI). The medical professionals must be on TWCC's Approved Doctor List to review and resolve disputes. The IROs charge a fee of \$650 for a decision rendered by a doctor of medicine or osteopathy; and \$460 for a decision rendered

by other health-care providers, such as chiropractors and podiatrists. The prospective and retrospective dispute resolution process is shown in the flowchart, *Preauthorization and Retrospective Medical Disputes*.

- Statutorily, reviewing the medical necessity of health care services in workers' compensation must be conducted by an IRO in the same manner as utilization review decisions for health maintenance organizations. Consequently, the Legislature applied the IRO review process to workers' compensation to ensure that medical professionals, rather than TWCC staff, make the initial decision when resolving medical necessity disputes.

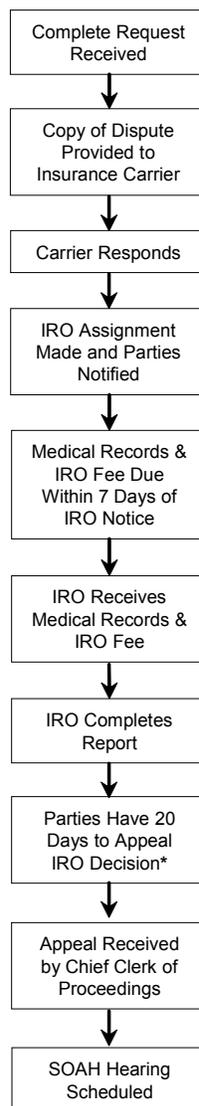
However, in a health maintenance organization, IRO decisions are considered final and can only be appealed through the court system. In the workers' compensation system, IRO decisions can be appealed to SOAH. The SOAH hearings are "de novo" and do not give presumptive weight to IRO decisions. Instead, administrative law judges conduct the SOAH hearings and issue decisions based on their legal interpretation.

- TWCC's Medical Dispute Resolution Officers attempt to resolve medical fee disputes. They review the disputes, obtain any additional information and issue decisions that resolve the fees in dispute. TWCC can charge \$42 an hour for this type of review but typically does so only when a health-care provider or carrier is noncompliant and has wrongly denied payment. This medical fee dispute resolution process is shown in the flowchart, *Medical Fee Disputes*.

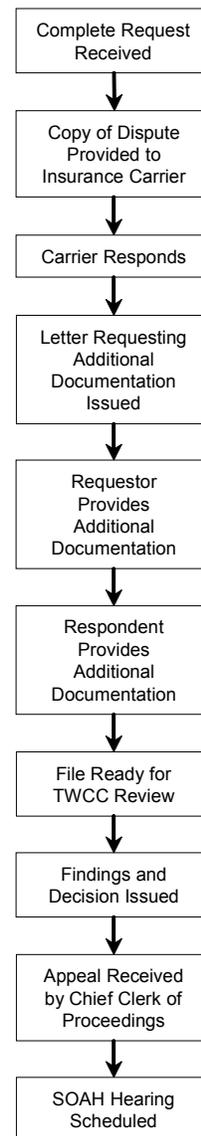
**History of IROs in  
Workers' Compensation**

The workers' compensation IRO process became effective on January 1, 2002. The 77th Legislature enacted the process to give workers and health-care providers an independent review by medical professionals if told their treatment is not "medically necessary." Previously, TWCC staff performed these reviews. The law requires the IRO process to be conducted in the same manner as the review of denials by health maintenance organizations. IROs perform reviews for both the workers' compensation system and health maintenance organizations.

**Preauthorization and Retrospective  
Medical Disputes**

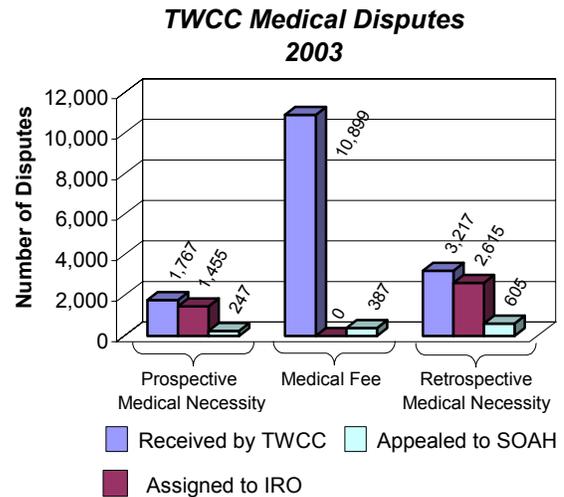


**Medical Fee Disputes**



\* If requesting preauthorization for spinal surgery, parties have 10 days to appeal the IRO decision. These appeals do not go to SOAH. Instead, a contested case hearing at TWCC is scheduled.

- Parties dissatisfied with the decision of the IRO or TWCC, can appeal to the State Office of Administrative Hearings (SOAH). Before a SOAH hearing, the Commission conducts an Informal Resolution Conference to attempt to resolve the dispute. A party that exhausts the administrative process and is not satisfied at the conclusion of the SOAH hearing can seek judicial review of the SOAH decision. The chart, *TWCC Medical Disputes*, shows the disposition of the medical disputes concluded in fiscal year 2003.



**The Independent Review Organization review process lacks the transparency needed to ensure the validity and fairness of its decisions.**

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*Participants do not know what factors IROs use to decide whether care is necessary.*

- Participants do not know what criteria, standards, or information the IROs use to decide whether the medical care in question is medically necessary. IROs are required to use specific procedures in making decisions on workers' compensation disputes. These procedures include using screening criteria established with input from appropriate health-care providers and approved by physicians, and review procedures to determine medical necessity and appropriateness of health care. IROs must provide a summary description of these procedures to TDI to be certified. TDI ensures that the IRO has developed these procedures, but neither TDI nor any other entity ensures that the IROs actually use these procedures and criteria when making their decisions. Under the current process, IROs may deny the medical necessity of certain services based on one set of criteria while the provider's decision to deliver medical services was based on a different set of criteria.
- IROs are not required to indicate what medical records and documents their reviewers use to make decisions. IROs receive documentation directly from the parties in dispute. This documentation includes medical records of the injured employee relevant to the review, documents used by the insurance carrier in making the decision being reviewed by the IRO, and any other supporting documentation submitted by the carrier. IROs may also request additional relevant information from either party or from other providers whose records are relevant to the dispute.

While the official IRO decision includes a statement that all relevant medical records, documentation, and submitted information used to make an adverse determination was reviewed, neither TWCC nor TDI oversees this process. The records and documentation are not listed, so participants have no way of knowing what documentation and information was submitted and used to make the decision.

- IRO decisions provide the conclusion reached, but do not include a detailed analysis or justification for the decision. A review of several IRO decisions showed that the IRO decision is typically very brief, with little definitive explanation of the rationale behind the decision. Many decisions did not include the clinical basis for the decision, and none that were reviewed included the source of the screening criteria that were used.

According to SOAH, the IRO decision is a summary decision made from a document review, and does not contain detailed findings and conclusions that would allow SOAH to legally conduct a substantial evidence review of the IRO decision. Consequently, SOAH does not give the IRO decision presumptive weight to meet the demands of due process. Instead, the party appealing the adverse IRO decision has the burden of proving, by a preponderance of evidence at the hearing, why it should prevail.

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*IRO decisions do not contain enough information to allow SOAH to give them presumptive weight.*

**TWCC and TDI have not developed an effective regulatory framework to oversee IROs.**

- Oversight of IROs is split between the Texas Department of Insurance (TDI) and TWCC. TDI certifies and regulates IROs based on statutory requirements, while TWCC statute and rules govern the procedures IROs use to handle workers’ compensation appeals. The Insurance Code authorizes but does not require TDI and TWCC to adopt a memorandum of understanding to regulate IROs.<sup>3</sup> In 2002, the agencies adopted one that attempts to delineate each agency’s area of responsibility over IROs and establish a framework for regulatory cooperation.<sup>4</sup>
- Although TWCC has adopted rules to try to ensure the quality and timeliness of IRO decisions, the agency does not have the authority necessary to enforce these rules. TWCC rules require IRO decisions to be valid, based on relevant criteria, and made by qualified medical professionals. The textbox, *IRO Decisions*, describes these requirements in more detail. Although TWCC can review the IRO decisions to see if they meet these requirements, the agency does not have the authority or ability to sanction or penalize IROs that do not meet them. TDI has the necessary authority, but does not enforce the Workers’ Compensation Act or TWCC rules.

TWCC also has difficulty in getting decisions from IROs in a timely manner, but cannot effectively enforce the timeframes. In fiscal year 2003, about 41 percent of IRO decisions were not made within the required timeframes. In addition, when TWCC finds mistakes in IRO decisions, the IROs do not always amend and re-issue their decisions within the required seven days. Although TWCC requires these timeframes by rule, neither TWCC nor TDI enforces these rules.

<p><b><i>IRO Decisions</i></b></p> <p>TWCC rules require an IRO decision to include:</p> <ul style="list-style-type: none"> <li>• the specific reasons, including the clinical basis for the decision;</li> <li>• a description and the source of the screening criteria that were used;</li> <li>• a description of the qualifications of the reviewing physician or provider; and</li> <li>• a certification by the IRO that the reviewing provider has certified that no known conflicts of interest exist between that provider and any of the treating providers, or insurance carrier or other providers who reviewed the case for decision before referral to the IRO.</li> </ul>
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*TWCC must pay for appeals to SOAH even though the agency is not a party in most disputes.*

- The regulatory framework does not assess the overall performance and effectiveness of IROs. TDI's oversight focuses on whether the IROs meet the requirements for certification. These requirements include financial stability, organizational structure, staff qualifications, and procedures for reviewing disputes and making decisions. TWCC focuses its oversight on the individual IRO decisions to see whether each one has the required elements and was issued in a timely manner. TWCC does not look across the decisions issued by the same IRO to assess whether the IRO is operating effectively in the system. Without a comprehensive look at the IROs, neither TWCC nor TDI can assess the overall performance of each IRO to identify which IROs issue timely and valid decisions that are rarely overturned by SOAH and which IROs do not. Without this information, neither agency is able to effectively identify regulatory problem areas.

**The Medical Dispute Resolution process fails to discourage unnecessary appeals to SOAH that add significant costs and delay resolution.**

- Any participant who receives an adverse decision from an IRO can appeal to the State Office of Administrative Hearings at no cost. TWCC must pay for all SOAH hearings, even though TWCC is not a party in the majority of these proceedings. The cost of these hearings has totaled more than the capped amounts appropriated to SOAH for TWCC hearings. In addition to the \$530,599 charged for TWCC's allowable hours, SOAH billed TWCC an additional \$211,436 in fiscal year 2002 and \$332,183 in fiscal year 2003 for excess workload resulting from these appeals. TWCC paid these additional costs with money the agency had to cut from other program budgets.
- Since neither the statute nor agency rules limit the disputes that may be appealed to SOAH, the dispute process often costs more than the actual amount in dispute. TWCC and SOAH both report that many times the amount in dispute is less than the cost of the dispute, especially considering that many disputes first go through the costly IRO review process before appeal to SOAH. A TWCC review of disputes concluded by SOAH in fiscal year 2002 and 2003 showed that about 12 percent of the disputes involved amounts less than \$250, and in at least 10 disputes the amount in dispute was less than \$50. TWCC must pay \$90 per hour for SOAH to prepare for and conduct hearings on every dispute regardless of the amount in dispute.
- Free and unlimited appeals to SOAH allow system participants to increase the due process costs for adversaries if the IRO decision is adverse to their positions. At a SOAH hearing, presumptive weight is not given to the IRO decision, and the IRO reviewer is confidential and does not appear. Therefore, the party that received a favorable IRO decision must prove the basis for the decision by providing expert witnesses and admissible evidence to sustain the decision. Doing so is often costly and time consuming. The party may also have to defend against any new evidence that the unsuccessful party did not submit previously, but that is permissible because the SOAH hearing is a "de novo" proceeding.

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*Resolving disputes at SOAH often costs more than the actual amount in dispute.*

- Appealing to SOAH can significantly delay resolution. In fiscal year 2003, on average, resolving disputes through an appeal to SOAH took an additional 104 days for preauthorization disputes, 120 days for medical fee disputes, and 141 days for medical necessity disputes.

**Similar dispute resolution systems limit the type and number of appeals to ensure appropriate and timely resolution.**

- The Medicare dispute resolution process has requirements in place to limit the number of disputes at each level of the process and ensure faster resolution. Medicare uses a five-step dispute resolution process to help resolve disputes. The steps in this process include telephone and in-person reviews, fair hearings, formal hearings by administrative law judges, appeals board review, and federal court review.

Appeals must meet specific requirements to be eligible for resolution at each step of the dispute resolution process. One of these requirements is the amount in dispute. To request a fair hearing, the amount in dispute must be at least \$100. If a party is dissatisfied with the decision from the fair hearing, they may request a hearing by an Administrative Law Judge, but the amount in controversy must be at least \$500. To file an appeal with Federal Court Review, the amount in dispute must be at least \$1,000.

- As discussed previously, in health maintenance organizations, IRO decisions are final. Individuals wishing to appeal an IRO decision do not have an additional level of administrative appeal. IRO decisions can only be appealed through the court system.

  
*Appeals to SOAH  
significantly delay  
resolution of disputes.*

## Recommendation

### Change in Statute

#### **5.1 Require every IRO decision to include specific elements to ensure the validity and fairness of the decision.**

Require every IRO decision to include the following elements.

- A listing of all the medical records and other documents reviewed.
- A description and the source of the screening criteria or clinical basis used in making the decision.
- An analysis and explanation for the decision, including findings and conclusions to support the decision.
- A description of the qualifications of the reviewing physician or provider.
- Certification by the IRO that the reviewing provider has certified that no known conflicts of interest exist between that provider and any of the treating providers, or insurance carrier providers who reviewed the case for decision before referral to the IRO.

This recommendation would improve the transparency of the IRO decision process by requiring IRO decisions to include certain elements. These additional elements would provide system participants with the information necessary to determine whether the IRO had enough justification

for the decision. Improving the validity of IRO decisions would discourage unnecessary appeals to SOAH and help TWCC ensure more timely resolution of medical disputes. However, if an IRO decision is appealed, this additional information would also help SOAH in weighing the evidence both for and against the decision. Finally, TWCC could use this additional information to better oversee and evaluate IROs in the process, and to help identify medical issues in the workers' compensation system that may need additional evaluation or clarification.

### **5.2 Require TWCC and TDI to develop a Memorandum of Understanding to improve the regulation and oversight of Independent Review Organizations in the workers' compensation system.**

The MOU should:

- clearly delineate which agency is responsible for monitoring IROs and enforcing compliance with the Workers' Compensation Act, TWCC rules, and other laws relating to workers' compensation; and
- require TWCC and TDI to develop a system to track the overall performance and compliance of the IROs.

Currently, regulation and oversight of IROs in the workers' compensation system is split between TDI and TWCC. TWCC can adopt rules to oversee IROs, but does not have the authority necessary to enforce these rules. Although TWCC and TDI have adopted a Memorandum of Understanding (MOU) to provide a cooperative regulatory framework for the IROs, this MOU is not required and does not clearly specify the duties necessary to ensure effective regulation or oversight of the IROs. This recommendation would require TWCC and TDI to develop a new MOU to clearly delineate the responsibilities of each agency. This delineation will ensure that IROs are held accountable to the Workers' Compensation Act as well as TWCC rules. The MOU should also require TWCC and TDI to assess the overall performance and compliance of each IRO.

### **5.3 Require the nonprevailing party to pay the cost of the SOAH appeal.**

This recommendation would require the nonprevailing party to pay for the SOAH hearing in an appealed workers' compensation medical dispute. Although TWCC is not typically a party in these disputes, the agency has greater authority over the disputing parties and would therefore be the appropriate entity to recover the cost of the hearing from the nonprevailing party. TWCC would adopt rules for this purpose. However, in accordance with the current statute, this recommendation would not require an injured worker to pay for an appeal to SOAH.<sup>5</sup> Insurance carriers would continue to pay the IRO costs for injured workers.

### **5.4 TWCC should set a monetary threshold for medical disputes that can be appealed to SOAH.**

This recommendation would require TWCC, in consultation with SOAH, to analyze the dollar amount of the medical disputes appealed to SOAH to determine whether a SOAH appeal typically costs more than the actual amount in dispute. Based on its analysis, TWCC would determine and adopt rules to set the monetary threshold at which disputes would be eligible for a SOAH appeal. Disputes involving amounts more than the threshold would continue to be appealed to SOAH. Disputes involving amounts less than the threshold would not be eligible for an appeal to SOAH and the IRO or TWCC decision would be final. However, this recommendation would not prevent any party from seeking judicial review. A party who exhausts its administrative remedies through TWCC, an IRO, or SOAH, and who is aggrieved by the final decision, may seek judicial review of the decision.

## Impact

These recommendations would make necessary improvements to the medical dispute resolution process to help provide more credible, timely, and fair resolution. Requiring IROs to provide an analysis and explanation for their decisions, including identifying the medical records reviewed, will provide the transparency necessary to better ensure the validity of IRO decisions, and assist SOAH when an IRO decision is appealed. Monetarily limiting the disputes eligible for an appeal to SOAH, as well as requiring the nonprevailing party to pay for these appeals, would help ensure more timely resolution of medical disputes by discouraging unnecessary appeals. Finally, requiring a new memorandum of understanding between TWCC and the Texas Department of Insurance would improve the oversight and accountability of IROs in the workers' compensation medical dispute resolution system.

## Fiscal Implication

Improvements to the Medical Dispute Resolution process would reduce the number of disputes as well as the time it takes to resolve these disputes, resulting in significant cost savings to all participants, including TWCC.

SOAH receives general revenue funding to handle 5,896 hours of case work for TWCC which costs about \$531,000 each fiscal year. According to SOAH, about 99 percent of these cases relate to medical dispute resolution. Requiring the nonprevailing party in a medical dispute, rather than TWCC, to pay for an appeal to SOAH will result in a savings of about \$525,000 each fiscal year.

SOAH also directly bills TWCC \$90 for each hour of work over the base amount. According to TWCC and SOAH, these overcharges result from the workload from the medical dispute resolution cases appealed to SOAH. Allowing TWCC to collect these charges from the nonprevailing parties would result in an estimated savings to TWCC of about \$474,000 each fiscal year.

<b><i>Fiscal Year</i></b>	<b><i>Savings to the General Revenue Fund</i></b>
2006	\$999,000
2007	\$999,000
2008	\$999,000
2009	\$999,000
2010	\$999,000

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<sup>1</sup> Texas Workers' Compensation Commission, Self-Evaluation Report, submitted to the Sunset Advisory Commission (August 2003) p. 99.

<sup>2</sup> Services that require preauthorization include (1) inpatient hospital admissions; (2) outpatient surgical or ambulatory surgical services; (3) spinal surgery; (4) psychological testing and psychotherapy; (5) external and implantable bone growth stimulators; (6) chemonucleolysis; (7) myelograms, discograms, or surface electromyograms; (8) repeat individual diagnostic study; (9) work hardening and/or work conditioning programs; (10) rehabilitation programs; (11) durable medical equipment in excess of \$500 per item and all trancutaneous electrical nerve stimulators; (12) nursing home, convalescent, residential, and home health care services and treatments; (13) chemical dependency or weight loss programs; and (14) any investigational or experimental service or device.

<sup>3</sup> Texas Insurance Code, ch. 21.

<sup>4</sup> *Memorandum of Understanding Between the Texas Department of Insurance and the Texas Workers' Compensation Commission*, effective June 1, 2002.

<sup>5</sup> Texas Labor Code, ch. 413.

### *The Supplemental Income Benefit Program Creates Unnecessary Disputes and Does Not Effectively Return Permanently Disabled Workers Back to Employment.*

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#### **Summary**

##### **Key Recommendations**

- Require TWCC to improve access to return to the workforce programs for SIB recipients.
- Set compliance standards for SIB recipients' work search requirements, which would replace the current standards for good faith effort.

##### **Key Findings**

- Injured workers receiving SIBs do not receive the help needed to return to the workforce.
- Supplemental Income Benefit work search requirements are ambiguous, creating unnecessary disputes.

##### **Conclusion**

TWCC regulates the provision of supplemental income benefits (SIBs) to permanently partially disabled injured workers. SIB recipients, due to the severity of their injuries, often require extensive support and training to successfully return to the workforce. The Sunset review evaluated how successfully TWCC's oversight of SIBs gets injured workers back into the workforce. The review found that the agency minimally assists injured workers on SIBs and as a result, most SIB recipients do not receive the services they need to successfully return to the workforce. If SIB recipients leave the workers' compensation system unemployed, they must turn to other means of support. In addition, the criteria used by TWCC to evaluate SIB recipients' efforts are ambiguous, resulting in costly and unnecessary disputes. The recommended changes will enable the agency to improve the assistance injured workers need to return to the workforce. Disputes should also decrease, by replacing the ambiguous criteria for evaluating an injured worker's return to work efforts with clear guidelines for SIB recipients to follow.

## Support

### State law makes supplemental income benefits (SIBs) available to workers with a permanent partial disability.

- In the continuum of workers' compensation benefits, injured workers receive SIBs to provide partial income replacement when substantially injured on the job with a permanent impairment that limits the worker from obtaining employment. The benefit is designed to provide compensation for the permanently partially disabled worker until he or she is able to find new employment, or until they reach the statutory limit of 401 weeks of benefits from the date of injury. See the textbox, *Explanation of Supplemental Income Benefits*, for more detail. State law requires TWCC to assess the need for a referral to the Department of Assistive and Rehabilitative Services (formally the Texas Rehabilitation Commission) when the injury is reported to the agency and the injured worker is eligible for SIBs.
- The statute requires SIB recipients to make a good faith effort to obtain employment commensurate with their ability to work. SIB recipients often cannot return to their previous job due to the severity of their injury. Often recipients have also been unemployed for more than two years, while receiving temporary income benefits. To begin receiving SIBs after other benefits have ended, an injured worker must initially apply to TWCC. If the injured worker's doctor has determined he or she is able to work, the injured worker must demonstrate a good faith effort to look for a job or show participation in a full time vocational rehabilitation program. After the initial quarter of SIBs, injured workers must apply to their insurance carrier each quarter for SIBs.
- SIBs make up less than 1 percent of all claims that TWCC processes since most injured workers do not meet the statutory 15 percent impairment threshold to receive SIBs. Also, the initiation of SIBs usually does not occur until two or more years after the date of injury, while injured workers receive temporary income benefits. The chart, *Number of Claims by Injury Year*, shows how SIBs compare with other available income benefits.

  
*SIBs - Supplemental Income Benefits that provide partial income replacement for injured workers with a permanent impairment that limits them from obtaining employment.*

#### **Explanation of Supplemental Income Benefits**

- Injured employees are eligible to receive SIBs if they have an impairment rating of 15 percent or greater, have not accepted a lump sum payment of their Impairment Income Benefits, have remained unemployed or underemployed as a result of the compensable injury, and have made a good faith effort to find work.
- SIBs provide an injured worker supplemental income benefits after all other income benefits end, until they have returned to work, or until they reach the statutory limit of 401 weeks from the date of injury.
- SIBs are paid monthly at 80 percent of the difference between 80 percent of the worker's average weekly wage and the weekly wage after injury.
- TWCC makes the initial quarterly determination of entitlement for SIBs and the carrier makes the determination for all subsequent quarters. An injured worker must prove a good faith effort to find work each quarter.

<b>Number of Claims by Injury Year*</b>				
	<b>1998</b>	<b>1997</b>	<b>1996</b>	<b>1995</b>
<b>Temporary Income Benefits</b>				
Number of Claims	83,397	81,413	83,752	86,817
Percent of Total Claims	66%	66%	66%	67%
<b>Impairment Income Benefits</b>				
Number of Claims	41,659	41,357	41,948	41,676
Percent of Total Claims	33%	33%	33%	32%
<b>Supplemental Income Benefits</b>				
Number of Claims	1,014	884	999	1053
Percent of Total Claims	<1%	<1%	<1%	<1%
<b>Number of Total Claims<sup>‡</sup></b>	<b>126,070</b>	<b>123,654</b>	<b>126,699</b>	<b>129,546</b>
* Data from 1998 or before must be used to capture all possible SIB claims. Injured workers that have a date of injury after 1998 may still be receiving Temporary Income Benefits or Impairment Income Benefits.				
‡ Total Claims includes injured workers that have received more than one type of income benefits.				
Source: Texas Workers' Compensation Commission				

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*As a result of a workplace injury, SIB recipients may not be able to return to their old job or occupation and often need help finding a new job with different skill sets.*

**Vocational rehabilitation, job training, and employment services are important to returning permanently disabled workers to gainful employment.**

- As a result of a workplace injury, claimants may not be able to return to their old job or occupation. In addition to their medical care, injured workers often need help finding a new job with different skill sets. This assistance includes vocational rehabilitation services, job training, or help finding another occupation through a job search.
- The Department of Assistive and Rehabilitative Services (DARS) provides vocational rehabilitation services to injured workers with disabilities that prevent them from performing their jobs. If a worker qualifies, DARS focuses on assessing the client, developing strategies for return to the workforce, providing or procuring training, and assisting with job placement. The textbox, *Department of Assistive and Rehabilitative Services*, provides more detail.
- The Texas Workforce Commission (TWC) is another resource available to anyone looking for employment in Texas. TWC services vary in intensity depending on a person's level of eligibility. TWC maintains a Web site with job postings and local workforce centers have resources available including computers, individual job search assistance, and more extensive training and counseling services.
- Insurance carriers can use private vocational rehabilitation providers, registered with TWCC, to provide job training for injured workers. According to a 1998 Research and Oversight Council on Workers' Compensation (ROC) survey, only 5.6 percent of the SIB recipients surveyed went to a private provider paid for by their insurance carrier.<sup>1</sup>

**Department of Assistive and Rehabilitative Services**

**Vocational Rehabilitation** is a state and federal partnership that helps people with disabilities prepare for, find, and keep jobs. Individualized work related services may include counseling, training, medical treatment, assistive devices, job placement assistance, and other services. Eligibility criteria for this program include: the presence of a physical or mental disability that results in a substantial impediment to employment, whether the individual is employable after receiving services, and whether services are required to achieve employment outcomes.

**Injured workers receiving SIBs do not receive the help needed to return to the workforce.**

- SIB recipients are not effectively moving back into the workforce. A 1998 Research and Oversight Council on Workers' Compensation (ROC) survey found that almost 70 percent of one-time SIB recipients still had not returned to work and a second report found that of the SIB recipients that reached the statutory benefit limit in 1999, only 5 percent were able to return to the workforce. The 1998 ROC report indicated that former SIB recipients were turning to other means of support, including family and friends, public assistance, and Social Security Disability Income benefits.<sup>2</sup>
- TWCC does not have data on the barriers injured workers face when attempting to access services at DARS and TWC. SIB recipients often cannot return to their previous line of work due to their injury and may need to be retrained to successfully find new employment. DARS and TWC are the two state agencies that have resources that could provide job training and employment services to an injured worker. However, TWCC provides little assistance to injured workers to successfully access these services. The ROC, in a 1998 survey, found that 43.6 percent of SIB recipients surveyed were referred by TWCC to DARS and roughly half reported that they did not find the services helpful.<sup>3</sup> In addition, TWCC does not have a formal relationship with TWC other than to list registration with TWC as a factor to consider when evaluating an injured worker's good faith effort to find a job.
- Current statutory requirements clearly demonstrate a legislative intent for TWCC to analyze each injured employee to determine if they could be assisted by vocational rehabilitation services. TWCC minimally complies with those statutes. At the original report of injury to TWCC, long before an injured worker is eligible for SIBs, the statute requires TWCC to make appropriate referrals for each injured worker that is determined by TWCC to need vocational rehabilitation. TWCC also must refer all injured workers, once they are eligible for SIBs, to DARS for vocational rehabilitation. The only effort that TWCC makes to comply with those requirements is to send a computer generated letter to injured workers notifying them that they may benefit from services at DARS.
- TWCC does not track return to work outcomes for SIB recipients. The agency does not facilitate the worker's contact with DARS and does not follow up to see if the worker actually applies for services. DARS does not currently track how many injured workers referred from TWCC are accepted into its vocational rehabilitation programs, but not all that apply are accepted due to limited funds. In 2003, DARS and TWCC signed a Memorandum of Agreement that allows DARS to share aggregate data on the number of TWCC referrals. This data was not available at the time of this report.
- Insurance carriers may provide vocational rehabilitation services through a private provider that is registered with the commission. TWCC may notify insurance carriers of the need for vocational rehabilitation services,

  
*TWCC provides little assistance to SIB recipients to successfully access return to the workforce programs.*

but does not have guidelines for those referrals and does not assist injured workers to obtain services from carriers if unavailable from DARS.

- TWCC does not have dedicated staff available to assist SIB recipients. If a SIB recipient calls TWCC for support, he or she talks to a Customer Assistant who is trained in all aspects of the workers' compensation system, but is not trained to give the specialized information that meets the needs of SIB recipients, such as how to apply for services at DARS. SIB recipients, due to the severity of their injuries, may also require proactive involvement to guide them to necessary resources.
- Other states' workers' compensation divisions provide more training and support for their permanently partially disabled workers. For instance, the State of Florida requires that insurance carriers or employers provide at least six months of suitable education and job training for unemployed permanently partially disabled workers. The State of Oregon has a preferred worker program that pays for up to \$25,000 of work site modifications, covers some of the expenses of starting a new job, such as tools and moving expenses, and repays the employer half of the injured worker's wages for the first six months.



*Lack of clarity in the definition of a good faith effort to find work may delay income benefits.*

**Supplemental Income Benefit work search requirements are ambiguous, creating unnecessary disputes.**

- The requirements for good faith effort to obtain employment, as defined by TWCC, are complicated and TWCC has not given insurance carriers or injured workers clear direction on compliance with the requirements. An injured worker can provide documentation for any of ten different categories to show good faith effort including number and type of jobs sought, cooperation with DARS, and registration with TWC. The textbox, *Definition of Good Faith Effort*, gives more detail on the requirements. Lack of clarity may result in carriers disputing continued income benefits rather than chance inappropriate payments.
- Although intended to give the worker flexibility in finding work, the rules set minimal levels for compliance and TWCC provides no direction about the quality of the work search

**Definition of Good Faith Effort**

*The injured worker has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:*

- returned to work;
- has been enrolled full-time in a vocational rehabilitation program through Department of Assistive and Rehabilitative Services or a private vocational rehabilitation program;
- has been unable to perform any type of work in any capacity; or
- has provided sufficient documentation that he or she has made a good faith effort as defined below.

*In determining good faith effort to find employment, the reviewing authority considers the information from the injured worker, which may include, but is not limited to information regarding:*

- number of jobs applied for throughout the qualifying period;
- type of jobs sought by the injured employee;
- applications or resumes which document the job search efforts;
- cooperation with the Department of Assistive and Rehabilitative Services;
- cooperation with a vocational rehabilitation program provided by a private provider;
- education and work experience of the injured employee;
- amount of time spent in attempting to find employment;
- any job search plan by the injured employee;
- potential barriers to successful employment searches;
- registration with the Texas Workforce Commission; or
- any other relevant factor.

*Source: TWCC Rule 130.102*

efforts, or definition of minimal level of effort related to number job applications or job searches. Also, the rules loosely define an injured worker's required interaction with DARS and TWC by only minimally specifying "cooperation" and "registration" with the agencies, providing no guidance on the expected level of interaction. Again, this leeway provides potential grounds for dispute.

- SIB cases are disputed disproportionately more compared to other benefits in the workers' compensation system. SIB recipients make up only 1 percent of the total number of benefits paid under workers' compensation, but make up a larger percentage of disputes. As shown

<b>Number of SIB Disputes</b>			
	<b>2001</b>	<b>2002</b>	<b>2003</b>
Total Valid Disputes	63,766	54,493	44,635
SIB Disputes	6,116 (10%)	6,953 (13%)	8,073 (18%)

in the chart, *Number of SIB Disputes*, the number of SIB disputes are increasing. The potentially large expense of SIB cases compared to other claims can act as an incentive to dispute. SIB claims usually involve significant medical expenses and several years of income benefits. The average cost of SIBs has increased from \$139,448 in 1992 to \$158,223 in

1997.<sup>4</sup> Insurance carriers also have an incentive to dispute because of the large cost savings if they win. TWCC's lack of clarity in its definition of good faith effort to find employment can provide the grounds to dispute. Although TWCC does not collect data on what grounds SIB cases are disputed, TWCC staff indicate that disputes often center around "good faith effort" to find work, and lack of documentation that a SIB recipient is medically unable to work.

## Recommendation

### Change in Statute

#### 6.1 Require TWCC to improve access to return to the workforce programs for SIB recipients.

This recommendation would require the agency to better use existing state resources to assist SIB recipients to return to the workforce by implementing the following.

- Identify and attempt to remove barriers to successful employment of SIB recipients at the Texas Workforce Commission, the Department of Assistive and Rehabilitative Services, and private vocational rehabilitation programs.
- Ensure data is tracked between TWCC and the Texas Workforce Commission, the Department of Assistive and Rehabilitative Services, and insurance carriers, including outcome data.
- Establish a referral mechanism to the Texas Workforce Commission and Local Workforce Centers.
- Create a method to promote employment success that will include post referral contact by TWCC with SIB recipients.

Identifying barriers to successful employment and improved data sharing, within the standards of federal privacy requirements, with workforce programs will inform TWCC of changes needed to assist SIB recipients to successfully re-enter the workforce. TWCC should train existing staff to

understand and specialize in SIBs to respond to questions and assist workers in their effort to return to the workforce. Staff could target SIB recipients to assist based on level of impairment, giving an injured worker a continuous point of contact that would be an expert on return to work programs, such as those at the Department of Assistive and Rehabilitative Services and Local Workforce Centers. Staff could also encourage SIB recipients to contact their insurance carrier for a referral to a private vocational rehabilitation program. If an injured worker is never able to return to the workforce, staff can inform SIB recipients of possibilities of other forms of benefits, such as Social Security Disability Income.

Issue 8 recommends the agency establish a call center that would consolidate most of the customer assistance, although at least one customer assistant would remain at each field office to assist walk-ins. The existing customer assistant staff person could be trained to provide services to SIB recipients, in addition to their duties to assist walk-ins. Due to the small number of SIB recipients, most field offices will have few SIB recipients to have post referral contact with. For instance, Dallas, the largest field office, should have approximately 140 SIB recipients a year to contact and many of the smaller field offices, such as San Angelo and Lufkin, should only have about 10 SIB recipients a year to contact.

## **6.2 Set compliance standards for SIB recipients work search requirements, which would replace the current standards for good faith effort.**

This recommendation would set straightforward standards to define efforts of SIBs recipients. SIB recipients would have to meet at least one of the following standards:

- Participation with Department of Assistive and Rehabilitative Services or private vocational rehabilitation program;
- Active participation with the Texas Workforce Commission; or
- Active work search efforts documented by number of job applications.

TWCC should establish rules that will define the level of activity a SIB recipient should have with the Texas Workforce Commission and the Department of Assistive and Rehabilitative Services. TWCC should also establish rules that define the number of job applications required for a SIB recipient to submit to meet the new work search requirements. The requirements should be defined with recognition of rural and other appropriate employment availability factors. TWCC should look to practices of other agencies, such as the Texas Workforce Commission, to help define the number of job applications required. This new requirement would take away the ambiguity of good faith effort. The burden of proof of participation in these programs would continue to be on the injured worker. Ultimately, the agency should see a significant decline in disputes arising from the question of good faith work search efforts.

## **Impact**

According to studies, only a small percentage of workers that receive disabling injuries return to the active workforce. Although many such workers could return, TWCC and insurance companies provide little assistance. Instead, TWCC manages an approach that can encourage income benefit disputes that delay income checks to injured workers or lead to unnecessary payments by carriers. Improved access to return to the workforce programs will increase the opportunity for SIB recipients to receive the services needed to find employment after their injury. As SIB recipients can successfully return to the workforce, they will no longer need income benefits, which reduces workers' compensation system costs. The changes will improve the quality of life for SIB recipients who would otherwise live off of income benefits and later turn to other benefits, such as Social Security Disability Income, after workers' compensation benefits end.

## Fiscal Implication

These recommendations will result in a positive fiscal impact to the state. Clarifying job search requirements for SIBS should reduce dispute resolution at a savings to TWCC. If the agency experienced a 10 percent reduction in SIB disputes, a minimum cost savings of \$112,000 would be realized based on the average cost of TWCC staff time spent processing disputes.

TWCC will incur minimal internal costs for implementing post referral contacts with SIB recipients. TWCC will use existing staff at each of the field offices to make contact with SIB recipients, limiting the cost to training the existing staff person to specialize in SIBs cases. The consolidation of customer assistants discussed in Issue 8, will reduce the duties of customer assistance staff in the field offices and allow these staff to take on the recommended SIB-related duties.

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>
2006	\$112,000
2007	\$112,000
2008	\$112,000
2009	\$112,000
2010	\$112,000

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1 Research and Oversight Council On Workers' Compensation, *Supplemental Income Benefits: Statistical Update and Survey Results*, August 1998.

2 Research and Oversight Council On Workers' Compensation, *Biennial Report of the Research and Oversight Council on Workers' Compensation*, December 31, 2002, p.112.

3 Research and Oversight Council On Workers' Compensation, *Supplemental Income Benefits: Statistical Update and Survey Results*, August 1998.

4 Research and Oversight Council On Workers' Compensation, *Update on Frequency, Cost, and Dispute Prevalence for Supplemental Income Benefits (SIBs)*, p.14.

*TWCC's Regulatory Approach Is Inefficient and Does Not Emphasize or Reward Overall Performance.*

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## **Summary**

### **Key Recommendations**

- Require TWCC to provide incentives for overall compliance and emphasize performance-based oversight linked to regulatory outcomes.
- Require the agency to establish rules that govern the filing of a complaint against a regulated entity, and to make this information available on its Web site.
- The agency should prioritize complaint investigations based on risk.

### **Key Findings**

- TWCC cannot ensure its regulatory efforts are improving the performance of the workers' compensation system.
- The agency does not adequately coordinate compliance and enforcement efforts, preventing effective oversight of participants.
- TWCC does not provide regulatory incentives to improve overall compliance, or system performance.
- The current complaint process diverts attention and resources from more significant violations or system problems.

### **Conclusion**

TWCC's current regulatory approach limits its ability to assess the performance of a regulated entity individually and across regulatory programs, efficiently target resources, and objectively assess system-wide problems that need legislative or agency attention. The Sunset review found that the agency generally has sufficient regulatory and enforcement tools necessary, but has not used them in the most aggressive way possible to drive improved performance system-wide, and cannot demonstrate its regulatory efforts improve the performance of the workers' compensation system. These recommendations would establish a new regulatory approach for TWCC that emphasizes overall compliance, rewards performance, and is strategically directed, while ensuring the accountability of regulated entities.

## Support

### **TWCC primarily uses a traditional regulatory approach to hold system participants accountable in the workers' compensation system.**

- The Labor Code requires the agency to monitor the activities of key system participants and enforce compliance with the statute and TWCC rules to ensure the workers' compensation system works appropriately. Though employers and employees are subject to certain regulatory requirements, system providers, particularly insurance carriers and doctors, are the primary focus of regulatory oversight. The textbox, *System Participants*, shows the number of workers' compensation system participants.

<b>System Participants</b>	
Private Employers	313,035
Injured Workers	166,300
Doctors	15,523
Insurance Carriers	251
Privately Self-Insured	275
Publicly Self-Insured	3,371
Attorneys	814
Source: Texas Workers' Compensation Commission	

TWCC's regulatory oversight focuses on workers' compensation claims management; the delivery of benefits and medical care; and worker health and safety services. The system generates between 13 and 16 billion medical billing lines, and millions of income benefit checks annually, all of which are statutorily required to be accurate and paid on time.

- The agency operates under a traditional rules-based regulatory structure that includes prescriptive mandates; assessment of compliance through complaint investigations, periodic audits, and quality of care medical reviews; and enforcement action against violators through penalties and other corrective measures. The Legislature has granted TWCC significant enforcement and penalty authority to ensure compliance with the statute and agency rules.
- The agency conducts its regulatory duties in multiple divisions and programs as shown in the textbox, *Texas Workers' Compensation Commission Regulatory Programs* on the next page. The following information gives a picture of TWCC's volume of compliance activity and results. In fiscal year 2003, the agency received more than 9,600 complaint referrals and conducted 72 audits, resulting in 1,566 warning letters and 866 penalties with fines totaling \$548,500. In addition, TWCC conducted 27 medical quality reviews of medical providers, and four of insurance carriers, resulting in 27 actions or pending actions against medical providers, including the removal of three doctors from the Approved Doctor List.

### **TWCC cannot ensure its regulatory efforts are improving the performance of the workers' compensation system.**

- The Commission has not developed a comprehensive approach to use its extensive regulatory authority and corresponding programs to ensure the system functions appropriately. TWCC does not have the ability to audit all carriers and medical providers for compliance with each of the

  
*The agency received 9,600 complaints and conducted 72 audits in fiscal year 2003.*

## **Texas Workers' Compensation Commission Regulatory Programs**

### Workers' Health and Safety Division

- **Accident Prevention Services Program:** inspects insurance carriers to ensure appropriate accident prevention services are provided to employers.
- **Hazardous Employer and Rejected Risk Programs:** inspects public and private employers with high risk, or substantially high injury rates to ensure compliance with required safety plans. Private employers are not subject to inspections or additional oversight under the Hazardous Employer Program.

### Compliance and Practices Division

- **Office of Investigations:** investigates allegations of fraud.
- **Audits and Enforcement:** conducts compliance audits of insurance carriers, investigates complaints, and enforces compliance by issuing penalties and warning letters to violators.
- **Violation Processing:** reviews incoming complaints, and makes referrals of possible violations to enforcement, or other appropriate agency, such as the Texas Department of Insurance.

### Medical Division

- **Medical Compliance Audits:** conducts audits of medical providers and insurance carriers to contain medical costs by ensuring compliance with medical policies and fee guidelines, and by reviewing medical-related complaint referrals.
- **Medical Quality Review and Approved Doctor List:** monitors medical providers approved to provide services in the system to ensure compliance and the appropriate delivery of health care and recommend sanctions or removal from the Approved Doctor List. The Medical Advisor and Medical Quality Review Panel review care, provide expertise and make recommendations to the agency on enforcement actions.

system's 402 possible violations. However, TWCC has not developed a more strategic approach to make its oversight responsibilities more workable. Instead, different divisions and regulatory programs make regulatory decisions independently with little coordination. This approach limits TWCC's ability to address issues that cross division boundaries and adversely affect the system as a whole.

- The Commission has not defined regulatory outcomes to measure the impact of its regulatory efforts. While the agency has defined compliance expectations for individual requirements, these are primarily used for case-by-case enforcement actions and are not part of a larger strategic effort. As a result, TWCC cannot measure or demonstrate, beyond isolated enforcement actions, that its regulatory efforts are improving or having an impact on the performance of the workers' compensation system. Without this information the Legislature, or even TWCC management, cannot assess the agency's job of regulating the system, or how well the system functions.

### **The agency does not adequately coordinate compliance and enforcement efforts, preventing effective oversight of participants.**

- The agency does not coordinate its oversight efforts across regulatory programs to identify participants with system-wide compliance problems. The lack of coordination limits the efficient and effective use of limited



*TWCC cannot measure whether its regulatory approach has an impact on system performance.*



*TWCC regulatory programs operate in silos, without adequate coordination.*

resources. As a result, TWCC regulatory programs operate in silos, focus on a narrow set of compliance issues, and do not efficiently target resources towards those entities causing the most harm to the system. For example, regulatory programs develop audit plans and other methods to target resources on outliers. These assessments, however, are not coordinated or consistently applied across programs, limiting their effectiveness as a compliance tool.

- In addition, TWCC lacks a function within the agency to assess overall compliance issues of an insurance carrier or medical provider. Instead, agency staff assess a participant's compliance history based on non-compliance with individual regulatory requirements. This approach may indicate evidence of specific violation problems, but does not provide information on the overall compliance history or performance of any one carrier or medical provider. As a result, TWCC does not identify participants with continuing problems throughout various parts of the system.
- The lack of comprehensive and coordinated monitoring is inefficient, makes it more difficult to build an overall enforcement case, and hampers efforts to remove or significantly sanction carriers or medical providers consistently operating far outside the rules. For example, Sunset found that Medical Quality Review, Medical Audit, complaint, and fraud investigators do not regularly coordinate efforts to identify and focus on the most egregious doctors that may be non-compliant on multiple fronts such as over billing for services, providing substandard medical care, billing for services not rendered, and having poor compliance history. As a result, the agency does not use all of its regulatory tools to focus its oversight efforts on particularly "bad actors," and develop a significant enforcement case to correct behavior, or remove that medical provider from the system.

**TWCC does not provide regulatory incentives to improve overall compliance or system performance.**

- TWCC only provides regulatory incentives to those carriers and doctors that have already violated state law or agency rules. The agency's enforcement process provides incentives to improve compliance after a violation has been discovered, but only for improving or correcting a deficiency for that particular incident. For example, the agency provides a grace period from future complaint investigations to insurance carriers after violations are discovered through an audit. However, TWCC audited the carrier because it was identified as having performance problems. While these incentives may be useful for improving specific areas of non-compliance, they do not address overall compliance.

Conversely, TWCC does not provide comparable incentives or reward system participants that are high performing. Sunset found that the lack of rewards for system participants that are not causing compliance problems does not promote confidence in the agency's regulatory efforts.

- Some statutory provisions limit incentives for participants to improve performance beyond minimum compliance, and require an inefficient



*Monitoring efforts do not identify participants with compliance problems that cross divisional boundaries.*

use of agency resources. According to TWCC, the injury incidence rate in Texas has decreased from 7.3 per 100 workers in 1992 to 4.9 workers in 2003.<sup>1</sup> In spite of this trend, the Labor Code requires TWCC to extensively audit carriers' accident prevention programs no less than every two years, and to employ a minimum of 10 staff to conduct these audits. According to staff, only four carriers have failed an audit since fiscal year 2000, and no employers have complained about the services they receive from insurance carriers. TWCC should be able to focus enhanced oversight on carriers that are performing poorly in this area, and provide incentives and flexibility to high performing carriers.

- TWCC misses an opportunity to improve overall system performance by not providing feedback on performance to system participants. The agency collects significant amounts of data from system participants and uses this data as part of its risk assessment to identify candidates for an audit. However, the agency does not routinely run these performance assessments throughout the year or across programs, and does not provide feedback on the results to carriers and doctors that are not identified for potential audit. As a result, participants lack the information they need to modify their business or treatment practice patterns to improve performance, or as a validation of adequate performance.

**The current complaint process diverts attention and resources from more significant violations.**

- TWCC does not provide adequate information to system participants on how to appropriately file a complaint with the agency, resulting in staff spending unnecessary time sorting through incomplete, non-jurisdictional, and frivolous complaints. The agency accepts complaints in any format and does not require complaints to contain a minimum amount of information necessary to evaluate the complaint. TWCC does not provide information on how to file a complaint on its Web site, what common complaints are non-jurisdictional, or information about the complaint process and what complainants can expect.
- TWCC does not have a clear process to effectively determine the potential severity of the alleged violation before taking action. For example, the agency does not make a distinction between a complaint from a doctor receiving payment a day late versus a claimant receiving income benefits a month late. While both are violations, the latter may have a more adverse impact on the complainant.
- TWCC does not sufficiently prioritize complaints for a formal investigation and enforcement action. While TWCC loosely prioritizes certain types of complaints, the agency has not formalized this process in rule, or in any published agency policy. As a result, TWCC generally investigates complaints on a first come first serve basis, limiting efficient use of staff resources to focus on the most serious violations. According to TWCC staff, the number of complaints has impacted agency resources, resulting in a diversion of staff from auditing functions, and a backlog of more than 5,300 complaint cases, as shown in the chart,



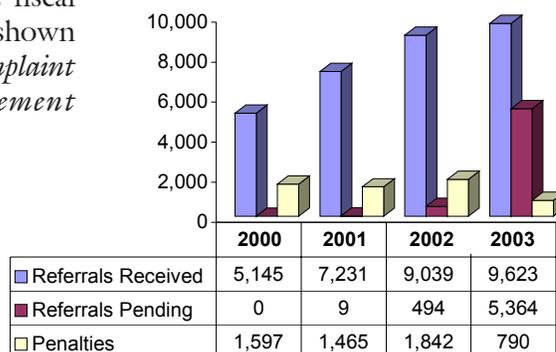
*Some statutory provisions limit incentives for improved performance.*



*TWCC does not effectively prioritize complaints, limiting staff's ability to focus on serious violations.*

*Complaint Referrals.* In addition, this approach results in the agency focusing its limited resources on relatively minor infractions, such as timely filing reports, or infractions that have little fiscal impact on the violator, as shown in the chart, *Top Five Complaint Referrals and Enforcement Outcomes*.

**Complaint Referrals**



Source: Texas Workers' Compensation Commission

- Finally, TWCC has not developed a formal process for resolving some complaints through its customer assistance program, rather than through an investigation and enforcement process. TWCC's customer assistance programs handle and resolve some complaints that may also reveal a violation. However, by addressing all complaints through its more formal complaint process, the agency may delay resolution of important and time sensitive complaints, such as an insurance carrier's failure to timely pay benefits to an injured worker. As a result, the agency cannot easily ensure certain complaints are resolved promptly, with a formal investigation and penalties for non-compliance at a later date.

<b>Top Five Complaint Referrals and Enforcement Outcomes FY 2003</b>					
<b>Violation Type</b>	<b>Referrals</b>	<b>Referrals Completed</b>	<b>Penalties Issues</b>	<b>Penalty Amount Paid*</b>	<b>Avg. per Penalty</b>
Failure to timely pay/dispute medical bill	2,157	1,135	299	\$88,754	\$297
Failure to timely file a correct work status report	1,526	920	41	\$1,775	\$43
Failure to provide sufficient explanation for denial/reduction of medical bill	757	351	92	\$85,505	\$929
Failure to timely respond to a request for reconsideration on a medical bill	449	142	11	\$5,462	\$497
Failure to timely file a report of medical evaluation	407	165	28	\$3,051	\$109
Total for all others	4,327	1,546	319	\$295,712	\$927
<b>Grand Total</b>	<b>9,623</b>	<b>4,259</b>	<b>790</b>	<b>\$480,259</b>	<b>\$608</b>

\*Source: Texas Workers' Compensation Commission

## Recommendation

### Change in Statute

#### **7.1 Require TWCC to provide incentives for overall compliance and emphasize performance-based oversight linked to regulatory outcomes.**

This recommendation would require the agency to implement the following.

- Develop key regulatory goals to provide for assessing performance of insurance carriers and medical providers. The goals should align with regulatory goals of the agency, such as improving workplace safety and return to work outcomes, in addition to goals that support timely payment of benefits and increased communication.
- Regularly assess (at least every two years) the performance of carriers and medical providers based on meeting key regulatory goals, overall compliance history across programs, and dispute resolution practices to identify entities that are having an adverse impact on the workers' compensation system, and that may require enhanced regulatory oversight. The agency should conduct this assessment through data maintained by the agency and self-reporting by regulated entities.
- Develop regulatory tiers based on the regular performance assessment. The regulatory tiers should distinguish between poor performers, entities who generally are average performers, and consistently high performers. TWCC should focus its regulatory oversight towards poor performers.
- Develop incentives within each tier that promote greater overall compliance and performance. The agency should work with system participants to develop these incentives through the enhanced stakeholder process detailed in Issue 3 of this report. Some regulatory incentives could include modified penalties, self-audits, or flexibility based on performance. TWCC should ensure high performing entities are publicly recognized, and allow them to use that designation as a marketing tool.
- Authorize the agency to conduct audits of carriers' accident prevention services based on the comprehensive risk assessment, rather than every two years. The agency should still review these services regularly, but would be able to provide incentives for less regulation of carriers based on performance.

#### **7.2 Require the agency to establish rules that govern the filing of a complaint against a regulated entity, and to make information on the process available on its Web site.**

This recommendation would ensure that TWCC clearly defines the method for filing a complaint in rule, and accepts public input into the process. The rules should encourage informal resolution through the agency's customer assistance function for appropriate types of complaints before initiating the formal complaint process, and should define what constitutes a frivolous complaint. TWCC should develop, and post on its Web site, a simple and standardized form for filing complaints, and information on the filing process.

#### **7.3 The agency should prioritize complaint investigations based on risk.**

TWCC should develop a formal risk-based complaint investigation system that takes into consideration the severity of the alleged violation, whether the alleged violator showed continued or willful noncompliance, or if an order of the Commission has been violated when prioritizing its complaint investigations. TWCC should develop additional risk-based criteria as needed.

## Impact

These recommendations would establish a new regulatory approach for TWCC that emphasizes overall compliance, rewards performance, and is strategically directed, while ensuring the accountability of regulated entities. Comprehensively assessing participants based on strategic regulatory goals would allow TWCC to use its existing oversight and enforcement authority more effectively to improve system performance, and to better target resources towards those entities having an adverse impact on the system. In addition, developing incentives and reward-based performance would allow TWCC to recognize high performing entities, and encourage others to perform beyond minimum compliance. Establishing a formal, yet still simple to use, complaint processes would ensure minor problems are resolved quickly and efficiently, and allow the agency additional staff time and resources for investigations and enforcement actions of more serious violations.

## Fiscal Implication

These recommendations would not have a fiscal impact to the State. These recommendations would require TWCC to modify its existing regulatory approach and would not require additional staff. The agency may need to reallocate staff from different programs to conduct and analyze the required comprehensive risk assessments and subsequent audits of poor performers. Any changes to revenue generated through penalties and agency charges for audits would be dependent on the incentive programs developed by the agency, and could not be estimated for this report.

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<sup>1</sup> Texas Workers' Compensation Commission, *System Data Report* (Austin, Texas, December 2003), p. 2.

*TWCC Does Not Adequately Inform Injured Workers About the Workers' Compensation System.*

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## **Summary**

### **Key Recommendations**

- Require TWCC to centralize the majority of its customer assistance functions into call centers.
- TWCC should improve its Web site to be more customer friendly.
- The agency should review and revise all its forms, standard letters, and brochures to ensure the use of plain language.

### **Key Findings**

- TWCC's decentralized customer service efforts are inefficient and create an inconsistent level of service.
- The agency does not maintain easy to understand resources or information about its operations or the State's workers' compensation system.

### **Conclusion**

Workers' compensation is a complex system that can be confusing for anyone to understand. The initial information provided to injured workers regarding the workers' compensation system must be accurate, in plain language, and easily accessible. The Sunset review evaluated the effectiveness of TWCC's customer service efforts, focusing on the performance of customer assistants, and the agency's Web site, forms, and brochures. The review found that the agency's customer service efforts by their customer assistants are inconsistent and inefficient, and that the agency's Web site, forms, and brochures are cumbersome and do not provide vital information in plain language. Overall, TWCC does not have the expected standard for customer service that focuses on integrating call centers and a highly effective Web site to increase productivity. The review concluded call centers would improve the accuracy of the information provided by the agency and would also, through their efficiency, allow the customer assistants more time to provide in-depth assistance to injured workers. Also, the agency can increase productivity by improving its Web site to supply much of the information that customers currently call in for.

## Support

### **Injured workers can receive information regarding workers' compensation benefits in a variety of ways.**

- Injured workers can directly call TWCC using a toll-free number that automatically sends them to a customer assistant in the nearest field office. TWCC employs 64 customer assistants and eight supervisors throughout the state in 24 field offices. If customer assistants in the field office cannot resolve a call, they refer it to one of six customer assistants in the central office. The customer assistants in the central office can also be contacted using a separate toll-free number.
- Customer assistants also make referrals when necessary, such as to the Department of Assistive and Rehabilitative Services for vocational rehabilitation, TWCC's Medical Review Division for questions about medical treatment, or the Board of Medical Examiners for questions about medical providers. If necessary, customer assistants research the status of workers' compensation claims using a centralized database and mail out any necessary forms. TWCC staff indicate that the most common calls are from injured workers who have not received their benefit check on time. Customer assistants facilitate contact with the insurance carriers for those callers. Other common calls involve questions on recent changes to the workers' compensation system, such as the recent implementation of the Approved Doctor List.
- Ombudsmen, located in each field office, also assist injured workers with certain aspects of the workers' compensation system. The ombudsmen provide assistance to unrepresented workers during the dispute resolution process. TWCC employs approximately 65 ombudsmen across the state.
- Injured workers also access information about TWCC and the workers' compensation system through the agency's Web site, brochures, letters, and orientation tapes. All injured workers receive correspondence in the mail from TWCC once an injury is reported, including a brochure called *Employee Rights and Responsibilities under the Texas Workers' Compensation System*. The Web site provides information about TWCC's organization; contact information; laws, rules, and forms; administrative decisions; and general system information. Injured workers can also find out about the workers' compensation system through an informational video available in the field offices.

### **TWCC's decentralized customer service efforts are inefficient and create an inconsistent level of service.**

- Having customer calls handled at 24 locations leads to inconsistent answers, levels of service, and ultimately to client frustration. Using 24 points of contact also prevents TWCC from taking advantage of productivity gains from more centralized provision of services.
- Many injured workers are frustrated with the customer assistance they receive from TWCC. In 2002, TWCC conducted a phone-based customer satisfaction survey, which 401 injured workers completed. While the majority of injured workers were satisfied with the service

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*Customer Assistants  
answer questions  
about workers'  
compensation in 24  
field offices around  
the state.*

they received, about a third of injured employees indicated they were not getting an adequate level of customer service.

- Some participants indicated that the quality of customer assistance efforts is not consistent at each field office. System participants and injured workers have indicated they can get different answers and varying levels of service depending on which customer assistant and which field office they call. TWCC has difficulty providing consistent and adequate customer service through its customer assistants because its organizational structure is fragmented into 24 different field offices.
- The large volume of calls at field offices limits TWCC's ability to provide quality customer service. Only the five largest field offices have the technology to track performance in handling phone calls. Due to the high call volume, customer assistants have little time to provide in-depth research or assistance for injured workers. Each of the five field offices that have technology to track calls has a call volume of about 5,000 calls a month. The Dallas field office has the highest call volume answering about 7,500 calls a month with nine customer assistance staff averaging more than 40 calls a day. In addition to answering phone calls about workers' compensation claims and the system, customer assistants must meet with and answer questions that walk-in clients may have. The Dallas office averages 350 walk-in clients a month.

**Results From Customer Satisfaction Survey**

- 29.6 percent disagreed or strongly disagreed that staff were able to answer questions
- 26.7 percent did not get the information they needed
- 37.3 percent were not given a clear explanation about services available



*TWCC does not provide consistent or adequate customer service.*

**The agency does not maintain easy to understand resources or information about its operations or the State's workers' compensation system.**

- TWCC's Web site design is cumbersome, making it difficult to access useful information targeted for specific audiences. The Web site does not have separate sections with targeted information for different system participants, like injured workers, employers, or insurance carriers, and has no general Frequently Asked Questions page to answer important questions about forms, benefits, and deadlines. While some useful information is available, such as a Frequently Asked Questions page regarding return to work, the overall lack of quality information on the Web site likely results in many phone inquiries to customer assistance staff.

Standard information is primarily organized based on advisories, laws, rules, and forms related to the agency's operation. Searches on the Web site must be made by these advisories, rules, laws, or forms. Since most rules and statutes are not in plain language, they are difficult to read and have limited value to injured workers or the general public.

- TWCC has not consistently written letters and forms in plain language and they are often difficult to read, understand, and fill out; and sometimes do not convey necessary information. For instance, TWCC's brochure, *Employee Rights and Responsibilities under the Texas Workers' Compensation System*, is sent to all injured workers and focuses primarily on the statutory steps an injured worker must follow to receive benefits.



*TWCC's Web site is cumbersome, making access to useful information difficult.*

The brochure does not discuss the objectives of the system, such as return to work, or give the worker a roadmap to help meet this goal. The brochure also fails to include a list of all necessary forms and deadlines for an injured worker to receive medical treatment and income benefits.

**Other state agencies have developed tools to improve customer service.**

- Call centers have proven to be a valuable tool for many state agencies to consistently and efficiently provide customer service. Other state agencies in Texas, with similar tasks as TWCC's customer service, use call centers. The Texas Department of Insurance (TDI) has several call centers, including one for consumer protection that handles 20,000 to 21,000 calls a month with 18 operators. While the calls are not directly comparable, the TDI call center clearly has a higher level of productivity. TDI operators use a detailed informational database to further ensure the accuracy of information that they provide to consumers.

The Texas Workforce Commission (TWC) also has a call center system that efficiently handles intakes for unemployment insurance. TWC relocated unemployment insurance claims processing from 120 dispersed points of service into seven networked call centers. This change created a small cost savings the first year that increased over time. Other states' workers' compensation divisions, including Arizona, Tennessee, and Ohio, have consolidated their customer service efforts into call centers.

- Many agencies have Web sites that are very customer friendly, providing easy to find, key information in a logical framework. For example, the Texas Workforce Commission recently updated its Web site to be very customer friendly. The Web site has individual portals on its home page that directs different system participants, such as employees, businesses, and service providers, to the information they need. Texas Mutual Insurance Company has a Web site, as well, that has individual portals on its home page to direct system participants.

The Attorney General's Child Support Division maintains a Web site that allows both custodial and non-custodial parents to access extensive information about their child support case and payments. Call volumes to the Division dropped dramatically after the Web site was installed and promoted. Having an easy to use, comprehensive, Web site offers customers an effective option to calling for information and reduces call volume. This use of technology allows the agency to use its staff more productively.

- The State of Florida consolidated its licensing agency customer service functions into one call center that increased efficiency by 50 percent; and also reduced its call volume by 30 percent by providing detailed information on its Web site and improving its interactive voice response technology.<sup>1</sup> Before the call center, staff answered 40 calls a day (the same average as the Dallas field office), and after the call center staff were able to answer 60 calls a day mainly because of improved training, management oversight, and support.

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*Call centers have proven to be a valuable tool for many state agencies to consistently and efficiently provide customer service.*

## Recommendation

### Change in Statute

#### **8.1 Require TWCC to centralize the majority of its customer assistance functions into call centers.**

This recommendation would increase the consistency and efficiency of customer service efforts. Call centers would allow inquires to be answered in a queue, rather than dealt with by each individual field office with some offices receiving much higher call volumes than others. The agency's existing informational database should be improved to provide detailed information regarding potential inquires related to workers' compensation, to ensure quality and consistency of information provided by the customer assistants. TWCC should determine the number and location of call centers, although only a small number will allow the agency to take advantage of call center efficiencies. TWCC should explore the option of sharing call center resources with other agencies such as the Texas Workforce Commission and the Health and Human Services Commission, who have or plan to implement call centers. Under this arrangement, TWCC could share infrastructure resources with and lease space from those agencies to save on some of the costs of developing and maintaining call centers. Generally, one customer assistant would remain in most field offices to handle walk-in questions. Larger offices may require additional staff. TWCC should reallocate all other customer assistant positions to the call center.

### Management Action

#### **8.2 TWCC should improve its Web site to be more customer friendly.**

This recommendation would make it easier for all participants to find the needed information on the agency's Web site and would decrease the number of inquiries the agency receives by phone. The Web site should have individual portals on its home page for different system participants, including employers, injured workers, health-care providers, and insurance companies. The informational database used by customer assistants should be made available on the Web site to ensure consistency of information between customer assistants and the Web site. The Web site should have a Frequently Asked Questions link for injured workers that would clarify often misunderstood, frequently asked, or confusing parts of the workers' compensation system. The Web site should have return to work information for injured workers and employers that will provide steps for how an injured worker can to return to work and programs available to help injured workers access services such as job training and vocational rehabilitation.

#### **8.3 The agency should review and revise all its forms, standard letters, and brochures to ensure the use of plain language.**

This recommendation would further ensure that all system participants have the information they need regarding the workers' compensation system. The workers' compensation system can be complicated and confusing, and clear information is vital for injured workers to protect their rights and receive proper benefits under the law.

### Impact

Each of the recommended changes would enhance customer service to injured workers and provide better access to information regarding workers' compensation to all system participants. These changes would also make TWCC's operations consistent with other state agencies' customer assistance departments. The call center would improve the accuracy and consistency of information that injured

workers receive. Customer assistants would have more time to do research or informal dispute resolution for an injured worker, which could decrease the number of disputes in the system. Centralizing customer assistants into a maximum of four locations would eliminate the need for 24 separate supervisors. Improvements to the quality of information provided to injured workers through the Web site, forms, and brochures would reduce the workloads and increase agency productivity.

## Fiscal Implication

Centralized call center operations will allow the agency to consolidate 40 customer assistants into a maximum of four locations, with 24 customer assistants remaining in field offices. This will allow a reduction in the ratio of supervisors to customer service staff from 1:8 to 1:15, resulting in a reduction of five supervisor positions with an annual savings of about \$200,000. The agency may identify additional savings through increased productivity and reduced operating expenses once the call centers begin operations and the agency gets a better handle on call volumes. Creating the call centers will have a one-time cost to purchase or upgrade to an appropriate phone system. TWCC was unable to provide an estimate of the cost with the information currently available. The agency recently spent approximately \$200,000 for similar upgrades to its phone systems serving the five largest offices. Based on that project and accounting for additional complexity related to integration of all call centers, this estimate assumes an implementation cost of \$400,000. Redesigning forms, distribution materials, and the Web site will have a minimal fiscal impact. The five-year impact chart includes the total fiscal impact of this recommendation.

<b>Fiscal Year</b>	<b>Cost to the General Revenue Fund</b>	<b>Savings to the General Revenue Fund</b>	<b>Change in FTEs From 2005</b>
2006	\$400,000	\$200,000	-5
2007	\$0	\$200,000	-5
2008	\$0	\$200,000	-5
2009	\$0	\$200,000	-5
2010	\$0	\$200,000	-5

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<sup>1</sup> e-Texas, *Limited Government, Unlimited Opportunity*, January 2003. Online. Available: [www.cpa.state.tx.us/etexas2003/gg06.html](http://www.cpa.state.tx.us/etexas2003/gg06.html). Accessed: March 26, 2004.

*The Medical Advisory Committee Is Not an Effective Resource for the Agency.*

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## **Summary**

### **Key Recommendations**

- Abolish the Medical Advisory Committee.
- Authorize the Medical Advisor to appoint ad hoc medical workgroups.

### **Key Findings**

- The Legislature established the Medical Advisory Committee to provide access to medical expertise for the TWCC Medical Review Division.
- Since the initial reforms, the Legislature and the agency have created additional entities providing medical expertise for TWCC.
- The functions of the Medical Advisory Committee are now obsolete because of recent legislative changes.
- The MAC has not served an effective role as an advisor to TWCC.

### **Conclusion**

The Legislature created the Medical Advisory Committee (MAC) in 1989 to advise the agency's Medical Review Division on medical policies and fee and treatment guidelines. The Sunset review examined the responsibilities and work of the committee to assess its effectiveness in advising on the agency's policymaking process. The review found that, in recent years, as the Legislature and TWCC have created additional bodies of medical expertise, the work of the MAC has become duplicative. Also, most functions of the MAC have either already been accomplished or have been superseded by legislative changes. Sunset staff concluded that the MAC should be abolished, leaving the agency and the Medical Advisor with the statutory authority to appoint advisory committees and ad hoc medical workgroups as needed.

## Support

### **The Legislature created the Medical Advisory Committee to provide access to medical expertise for the TWCC Medical Review Division.**

- The Legislature created the Medical Advisory Committee (MAC) during the comprehensive workers' compensation system reforms in 1989 to assist the Medical Review Division in the development, administration, and ongoing review of the agency's medical policies and fee guidelines. The statute provides for an 18-member committee representing specific system stakeholders, appointed by the Commission to two-year terms. The Commission has made it a practice to appoint alternate members to the MAC in cases of primary member absences. The statute requires all members appointed to the MAC to be knowledgeable and qualified about work-related injuries and diseases. Serving as a MAC member is fully voluntary, with no reimbursement for per diem, travel expenses, or salary replacement. Members include health-care providers and representatives of health-care facilities, employees, employers, insurance carriers, and the general public. The textbox, *Medical Advisory Committee Composition*, provides more detail on the committee's membership.

#### **Medical Advisory Committee Composition**

The Commission is statutorily required to appoint the following members to the MAC.

- Public Health Care Facility
- Private Health Care Facility
- Medical Doctor
- Osteopathic Doctor
- Chiropractor
- Dentist
- Physical Therapist
- Occupational Therapist
- Podiatrist
- Pharmacist
- Medical Equipment Supplier
- Registered Nurse
- Acupuncturist
- Employer
- Employee
- Insurance Carrier
- General Public  
Representatives (2)

  
*The Commission  
appoints the 18 MAC  
members,  
representing system  
stakeholders, to two-  
year terms.*

  
*TWCC's Medical  
Review Division  
provides staff and  
administrative  
support to the MAC.*

- The MAC operates publicly and usually meets quarterly at the call of the Chair. The agency's Medical Review Division provides staff and administrative support to the MAC, and the Medical Review Director acts as the liaison between the committee and the agency. The committee typically receives presentations from agency staff on recently proposed and adopted rules and guidelines and occasional updates on other current issues. At most meetings, the TWCC Medical Review Director and the Medical Advisor make brief statements about medical-related issues at the agency. MAC workgroups or subcommittees also report on progress addressing their charges, or deliver presentations on reports they have developed.

### **Since the initial reforms, the Legislature and the agency have created additional entities providing medical expertise for TWCC.**

- The Legislature passed House Bill 2600 in 2001, creating a position for a full-time Medical Advisor at TWCC. The statute charges the Medical Advisor with making recommendations on the development, implementation, and review of fee and treatment guidelines and other medical policies. The Medical Advisor's primary objective is to control

excessive use of health-care services by managing the Approved Doctor List (ADL), monitoring the quality of the doctors on the list, and sanctioning doctors not in compliance with ADL requirements.<sup>1</sup> The textbox, *Approved Doctor List*, provides additional information on the requirements of the ADL. The Medical Advisor is also assisted by staff drawn from the Medical Review and Legal divisions at the agency.

- HB 2600 requires the Medical Advisor to appoint a Medical Quality Review Panel (MQRP), composed of health-care providers authorized to provide treatment in the workers' compensation system, to provide broader medical expertise and to monitor and review health-care providers who treat injured workers. The MQRP reviews documentation related to the appropriate delivery of health care and makes recommendations to the Medical Advisor on adding or deleting doctors to the ADL, and on appropriate sanctions for health-care providers, insurance carriers, and utilization review agents.
- During legislative development of HB 2600, an informal group of stakeholders was brought together to provide input on the bill. In response to legislative interest, TWCC retained this concept as the agency implemented the provisions of HB 2600. The stakeholder group usually involves 15 to 25 members, and the agency supplements the core group with additional members representing more specific interests as needed. Most of the interests represented on the MAC also serve on the stakeholder group.

**The functions of the Medical Advisory Committee are now obsolete because of recent legislative changes.**

- HB 2600 removed the need for TWCC to rely on the MAC to develop, review, and modify fee and treatment guidelines. MAC was originally formed to make recommendations to the Medical Review Director, who is not required to have formal medical training, on medical policies and fee and treatment guidelines. HB 2600 required TWCC to adopt Medicare-based payment policies and reimbursement methodologies, rendering the MAC powerless to establish these guidelines.
- HB 2600 also abolished the 1996 treatment guidelines developed by the agency with the assistance of the MAC. The statute authorizes the agency to adopt new treatment guidelines, but they must be nationally recognized and scientifically based. To date, TWCC has not adopted new treatment guidelines. Agency administration of both fee and treatment guidelines is now coordinated by the Medical Advisor, a licensed physician.
- With little participation in the development of TWCC medical policies, MAC has evolved to operate as a stakeholder group, its broad composition duplicated for the most part by the membership of the agency's informal stakeholder group, which is discussed in Issue 3.

**Approved Doctor List**

Doctors who wish to treat patients in the Texas workers' compensation system are required to register with TWCC to be eligible for payment for services (with an exception for providers of emergency or immediate post-injury care.) To be included on the Approved Doctor List, a doctor must:

- have a clear status with the licensing board and be in good standing with TWCC;
- complete Commission-prescribed training through an online course;
- file an application for inclusion on the ADL; and
- provide a statement of health-care related business interests.



*HB 2600 eliminated the need for TWCC to rely on MAC for fee and treatment guidelines.*

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*MAC has provided the agency with little substantive medical input despite more than 25 meetings since 1999.*

**The MAC has not served an effective role as an advisor to TWCC.**

- Despite its charges to provide medical expertise to the Medical Review Division, the MAC has little formal input into the agency's rulemaking process. When the agency's rulemaking process coincides with MAC meetings, agency staff present medical-related rule proposals at the meetings, but members generally have little opportunity to suggest revisions or redirection outside the regular public comment process. MAC members are not involved early in the rulemaking process and are not given access to agency staff or drafted rules to assist in rulemaking. The MAC Chair has created workgroups or subcommittees to focus on selected policy issues, but these efforts are ad hoc and not formally integrated into the agency's policymaking process. As a result, substantive actions by MAC have been rare despite more than 25 meetings since 1999, providing the agency with little actual medical input as the agency made medical-related policies and rules during that time.
- While the MAC has been largely ineffective, the size and structure of the committee requires the use of considerable agency resources for support. The Medical Review Division supplies staff and administrative support for the MAC, and is responsible for coordinating appointment applications for recommendation to the TWCC Commissioners. According to the agency, the total human resources cost of operating MAC is about \$45,000 annually, or the equivalent of one full-time employee. These resources could be used to support other priority activities.

## **Recommendation**

### **Change in Statute**

#### **9.1 Abolish the Medical Advisory Committee.**

This recommendation would abolish the Medical Advisory Committee and remove the requirement for the Director of Medical Review to receive advisory committee recommendations. The agency would retain the statutory authority to appoint advisory committees as needed.

#### **9.2 Authorize the Medical Advisor to appoint ad hoc medical workgroups.**

This recommendation would allow the Medical Advisor to access additional medical expertise as needed to assist the agency in developing and reviewing medical policies and fee and treatment guidelines. These workgroups, focused on policy and rulemaking efforts at the agency, would exist independently from the Medical Quality Review Panel, which focuses on quality of care issues, and would provide program area staff with additional medical expertise as appropriate in the development of certain policies and rules.

### **Impact**

These recommendations remove a statutory advisory committee whose duties duplicate those of other, more recently created advisory bodies. In addition, the MAC has not been an effective source

of input on medical policy. Authorizing the Medical Advisor to appoint ad hoc medical workgroups provides an effective way to gain needed advice. The Director of Medical Review would continue to collaborate with the Medical Advisor to gain the perspective of a licensed medical professional in rulemaking and policymaking issues. The broader interests represented on the committee would still be served by the agency's stakeholder group. The improved stakeholder input process, detailed in Issue 3, will allow the agency to more effectively gather and analyze the input of all affected interest groups when developing new agency processes and rules.

### **Fiscal Implication**

According to the agency, the current annual cost of operating the Medical Advisory Committee is about \$47,500. Since these resources are drawn from the agency's operating divisions, abolishing the committee would allow the resources to be reallocated within the agency.

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<sup>1</sup> Texas Workers' Compensation Commission, *Self-Evaluation Report*, submitted to the Sunset Advisory Commission (August 2003).



*Texas Has a Continuing Need for the Texas Workers' Compensation Commission.*

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## **Summary**

### **Key Recommendation**

- Continue the Texas Workers' Compensation Commission for 12 years.

### **Key Findings**

- Texas has a clear and continuing interest in overseeing the delivery of workers' compensation benefits.
- Under the current system, TWCC is the most appropriate agency to oversee workers' compensation.
- TWCC needs to make significant improvements to its operations.
- Other states regulate workers' compensation through a structure similar to TWCC.

### **Conclusion**

The Workers' Compensation Commission's responsibilities – overseeing, regulating, and ensuring benefit delivery for workers' compensation system participants – are important to the State. As the system has struggled to deal with issues like rising medical costs, TWCC's role is key in ensuring that injured workers receive appropriate and timely medical treatment, and return to work quickly, resuming active and productive roles in the Texas workforce. The Sunset review evaluated the continuing need for a single, independent agency to oversee workers' compensation. Sunset staff assessed whether the agency's functions could be successfully transferred to another agency, and looked at how other states administer similar functions. While other recommendations in this report identify significant improvements the agency needs to make in its operations, the agency should be continued by the Legislature. However, if the Legislature chooses to make significant changes to the workers' compensation system, a reexamination of both organizational alternatives and agency functions would be necessary.

## Support

**The Workers' Compensation Commission is primarily responsible for overseeing, regulating, and ensuring benefit delivery for workers' compensation system participants.**

- The Workers' Compensation Commission (TWCC) was created in 1989 as part of a broad effort to reform the workers' compensation system in Texas. The Workers' Compensation Act provides for no-fault income-replacement benefits and medical care for workers who are injured on the job and are unable to earn their preinjury wage. TWCC administers key parts of the system including ensuring the timely, appropriate, and cost-effective delivery of benefits to injured workers; overseeing and regulating system participants to ensure compliance with statutes and rules; and providing training and informational services to help system participants understand and operate within the system. TWCC is overseen by a part-time, six-member Commission, and operates with a staff of 1,050 full-time employees and a budget of \$55 million.

### **TWCC Functions**

- Oversees a benefit delivery system and provides income and medical-related dispute resolution services.
- Reviews medical utilization patterns of health-care providers.
- Provides health and safety resources, education services, and training for system participants.
- Certifies employers who choose to act as their own workers' compensation insurance carriers.
- Performs compliance audits and fraud investigations.

- In 2001, in response to concerns over rising medical costs and quality of care issues in the workers' compensation system, the Legislature enacted House Bill 2600. New mandates from HB 2600 require TWCC to collect information on return to work outcomes, patient satisfaction, and the cost and utilization of health care provided; establish a list of licensed doctors approved to provide workers' compensation services; help the Health Care Network Advisory Committee assess the feasibility of developing and evaluating regional health care networks; and adopt Medicare-based reimbursement methodologies.
- TWCC oversees the activities of thousands of workers' compensation system participants including employers, employees, insurance carriers, health-care providers, and attorneys. TWCC's interaction with these entities includes providing health and safety consultations for employers, providing information to injured workers about their claims, regulating the correct and timely payment of benefits by insurance carriers, approving medical fees, authorizing health-care providers to treat in the system, and setting fees for attorneys representing injured workers in the system. The table, *Workers' Compensation System Participants*, lists the system participants and provides some representative data on TWCC's interaction with each. TWCC also oversees the Subsequent Injury Fund (SIF) that is designed, primarily, to compensate an injured employee if the combination of a previous and subsequent injury entitle the worker to Lifetime Income Benefits in the workers' compensation system.



*TWCC oversees the activities of thousands of workers' compensation system participants.*

### **Workers' Compensation System Participants**

<b>Entity</b>	<b>Number</b>	<b>TWCC Interaction</b>	<b>Activities</b>
Employers	About 313,000 carry workers' compensation insurance	<ul style="list-style-type: none"> <li>● Conducts worker health and safety training and on-site consultations</li> <li>● Certifies and regulates self-insurers</li> </ul>	<ul style="list-style-type: none"> <li>● 2,948 workers attended safety training programs in 2003.</li> <li>● TWCC certified 51 self-insurers representing 257 entities in FY 2003.</li> <li>● TWCC performed 3,149 safety consultations in 2003.</li> </ul>
Employees	Approximately 84 percent are covered by workers' compensation insurance	<ul style="list-style-type: none"> <li>● Provide customer assistance to workers navigating system</li> <li>● Administers the dispute resolution process</li> <li>● Ombudsman services</li> </ul>	<ul style="list-style-type: none"> <li>● TWCC's largest field office, in Dallas answers an average of 7,558 calls and handles 350 walk-in requests for assistance every month.</li> <li>● 18 percent of claims result in disputes that TWCC helps resolve.</li> <li>● TWCC resolved 88 percent of income benefit disputes and 93 percent of medical disputes informally in 2003.</li> </ul>
Insurance Carriers	251 carriers wrote workers' compensation insurance policies in FY 2002	<ul style="list-style-type: none"> <li>● Conducts compliance audits</li> <li>● Collects claim data for system analysis</li> <li>● Conducts accident prevention service inspections</li> </ul>	<ul style="list-style-type: none"> <li>● TWCC completed 47 audits on insurers in 2003.</li> <li>● TWCC inspected 68 insurance groups/152 subordinate companies in 2003.</li> </ul>
Health-Care Providers	Approximately 15,000 doctors are authorized to treat injured workers	<ul style="list-style-type: none"> <li>● Administers the Approved Doctor List</li> <li>● Convenes the Medical Quality Review Panel to conduct quality of care reviews</li> <li>● Administers the medical dispute resolution process</li> </ul>	<ul style="list-style-type: none"> <li>● TWCC implemented a new process for ADL authorization in 2003, allowing doctors to register and complete a new training course on-line.</li> <li>● MQRP has reviewed more than 60 doctors for quality of care and practice patterns.</li> </ul>
Attorneys	522 claimant attorneys participated in FY 2003	<ul style="list-style-type: none"> <li>● Approves fees</li> </ul>	<ul style="list-style-type: none"> <li>● The commission approved \$43,526,098 in fees to injured workers' attorneys in 2003.</li> </ul>

**Texas has a clear and continuing interest in regulating the delivery of workers' compensation benefits.**

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*Workers' compensation insurance provides partial wage replacement and medical care for employees with work-related illnesses or injuries.*

- Workers' compensation insurance serves the state by providing benefits that allow injured workers to access appropriate medical care for their work-related injuries or illnesses, and that provide partial wage replacement for employees who are unable to work as a result of workplace injuries or illnesses. Injured workers who receive appropriate and timely medical treatment and return to work quickly are better able to resume active, productive roles in the Texas workforce.
- The State has a continuing interest in overseeing the activities of workers' compensation system participants. Ultimately, the State has a role in ensuring the system appropriately treats injured workers because state law prohibits an employee from suing a covered employer for compensation for a work-related injury. The law builds in protections for injured workers to ensure they receive appropriate medical care and wage replacement. The Workers' Compensation Act places TWCC as the overseer and arbiter to ensure fair treatment of injured workers and other participants within this system. The State also has an interest in promoting worker health and safety to help employers prevent accidents, minimizing the overall cost of workers' compensation benefits.
- The delivery of workers' compensation benefits is more complex than other types of insurance benefits because system participants must consider compensability, extent of injuries, and whether care is medically necessary. The involvement of multiple system participants protecting their own interests inevitably leads to disputes. Consequently, the State has been an administrative and regulatory neutral third-party to ensure injured workers receive the appropriate benefits. The system, particularly complicated because of the broad range of system participants and their widely varied interests, should benefit from the existence of a single entity to set standards, monitor compliance, and resolve disputes for all system participants.

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*The complex workers' compensation system should benefit from a single entity to set standards, monitor compliance, and resolve disputes for all participants.*

- Rising medical costs in the workers' compensation system necessitate a role for state oversight. The Research and Oversight Council on Workers' Compensation (ROC) began reporting in 1998 that Texas' medical costs were higher than other states and other health care delivery systems. Medical care utilization was also high in areas such as surgery, physical medicine, and diagnostic tests. In response, the Legislature has mandated a number of measures that the State should continue to monitor, including limiting overutilization in the system and controlling fees paid for medical care.
- The State also needs an entity to continue to collect and analyze data related to the workers' compensation system. In 1987, the Joint Select Committee on Workers' Compensation Insurance found the available data to be inadequate for legislative policymaking. Subsequently, the State has maintained an organization to ensure that objective information on workers' compensation would be available to system participants and to keep legislators generally informed on system issues. A single source of data and analysis allows Texas to measure the performance of

its workers' compensation system internally and against the systems operated by other states. Additionally, high-quality data allows all system participants to evaluate their own performance, and allows for comparison of the performance of system participants.

**Within the current system, TWCC is the most appropriate agency to oversee the delivery of workers' compensation benefits.**

- Sunset staff closely examined two organizational options for operation of the State's role in workers' compensation: transfer of functions to the Texas Department of Insurance and transfer to the Texas Workforce Commission. Either option could work. However, no duplication of effort or functions were identified, nor did staff find any functional advantages to such transfers. The material below discusses these findings. In addition, the table, *TWCC Consolidation Options*, discusses the pros and cons of consolidation.
- The Department of Insurance (TDI) regulates companies that write workers' compensation insurance in Texas, and licenses agents, adjusters, medical utilization review agents, and independent review organizations. However, the nature of the regulation performed by the state agencies is fundamentally different. TWCC regulates the activities of all participants in the Texas workers' compensation system (including employers, employees, insurance carriers, attorneys, and health-care providers), regulates the payment of income and medical benefits, and certifies and regulates self-insured employers. TDI's regulation includes ensuring rates are reasonable and calculated correctly, and policies and forms comply with the law. TDI has little interaction with insurance system participants other than insurance companies. Due to the different nature of workers' compensation regulation, Sunset staff did not find that significant cost savings or improved operation would result from consolidation of these functions since a similar number of staff and resources would continue to be needed to perform the tasks.
- The Texas Workforce Commission (TWC) is charged with overseeing and providing workforce development services to Texas employers and job seekers. Its functions include workforce development (such as the oversight and support of an employer-driven system consolidating employment, job training, and work-related services into one place), support services for some training program participants, and administering the unemployment compensation benefit program. Due to the different nature of the agencies' missions, consolidation of these functions would not result in any significant cost savings since a similar number of staff and resources would continue to be needed to perform the tasks.
- Significant changes to the workers' compensation system would necessitate a reexamination of alternatives to the current approach used to administer the system. With the recommended improvements, the existing Commission is the best agency and structure to administer the current system. However, major changes to the workers' compensation system may create a situation where it could be better administered by a different agency.



*Sunset staff found that significant cost savings or improved operation would not result from the consolidation of TWCC functions with the Texas Department of Insurance, or the Texas Workforce Commission.*

<b>TWCC Consolidation Options</b>	
<i>Texas Workforce Commission</i>	
<b>Pro</b>	<b>Con</b>
<ul style="list-style-type: none"> <li>● Policy board would maintain distinct employer and labor representation, on a full-time basis.</li> <li>● Improved return to work coordination services for employees through 218 workforce centers providing employment assistance and job training.</li> <li>● TWC has an established dispute resolution process for Unemployment Insurance (UI).</li> <li>● Provides better accountability for appeals since the three appointed Commissioners serve as the final appeals panel.</li> <li>● Would combine research and analysis of labor market, outcome data, and other issues facing Texas' employers and economy.</li> <li>● Limited cost savings by eliminating executive and duplicative management and indirect administrative staff.</li> </ul>	<ul style="list-style-type: none"> <li>● Major consolidation of additional staff and an extremely complex system into TWC, which already oversees a still maturing and complex workforce system.</li> <li>● TWC has no experience with large-scale regulatory programs such as workers' compensation.</li> <li>● Would add an additional workload burden on Commissioners with already full administrative schedules.</li> <li>● TWC has no experience in management or oversight of medical issues.</li> <li>● UI is less complex than workers' compensation and the State is the payer, lessening the potential benefit of integrating these functions.</li> </ul>
<i>Texas Department of Insurance</i>	
<b>Pro</b>	<b>Con</b>
<ul style="list-style-type: none"> <li>● Consolidates regulatory oversight of insurance carriers.</li> <li>● Provides for a single Commissioner, increasing accountability to the Governor.</li> <li>● Experience certifying health-care networks, regulating insurance-related health-care entities such as independent review organizations (IROs), and responding to complaints.</li> <li>● Experience regulating large, complex industries with compliance and enforcement functions.</li> <li>● Limited cost savings by eliminating executive and duplicative management and indirect administrative staff.</li> <li>● Better oversight of any dually-regulated entities.</li> </ul>	<ul style="list-style-type: none"> <li>● Elimination of balanced policymaking board.</li> <li>● Dramatic increase in size of TDI by adding more than 1,000 staff and field offices.</li> <li>● TDI does not have experience with dispute processes like those in workers' compensation.</li> <li>● Focus on workers' compensation issues could be diluted because TDI regulates much larger lines of insurance.</li> <li>● Limited cost savings since functions are not currently duplicated.</li> </ul>

**TWCC needs to make significant improvements to its operations.**

- As workers' compensation system participants continue to deal with significant issues impacting the performance of the system, TWCC's ability to operate effectively becomes increasingly important. As noted in the previous issues in this report, TWCC has not created a strategic vision for the agency's operations and how they impact the system in

general. This lack of vision manifests itself most visibly in little focus on return to work outcomes in the agency's policies and operations. In addition, the agency does not have an effective means of creating rules through discussions with affected parties and interested individuals. Sunset staff has also identified problems with the agency's customer assistance structure, the dispute resolution process, and the focus of compliance efforts.

Given the complexity of the workers' compensation system, TWCC's role in educating and informing injured workers of their rights and responsibilities and helping workers navigate the system is a key function. Currently, overall customer service efforts are inconsistent across the agency and do not provide an adequate level of information regarding the workers' compensation system. TWCC does not have a transparent, simple system in place for the public to access information about the state workers' compensation system.

TWCC's regulatory efforts are not effectively changing the behavior of system participants. As discussed in Issue 7, because TWCC does not assess compliance history across regulatory requirements, the agency limits its ability to identify insurance carriers or health-care providers that are failing to comply in more than a single area. Agency analysis of repeated non-compliance only in certain areas, such as timely payment of medical bills, does not provide sufficient information for TWCC staff to easily identify providers or carriers who may be "outliers", creating major problems in the system as a whole.

- The agency has not been proactive in dealing with issues negatively impacting the system. In the past five years, multiple studies have indicated medical costs were becoming an issue in the system, but TWCC never articulated strategies or organizational changes to the Legislature to address the problem of increasing medical costs. As a result, in 2001 the Legislature passed HB 2600 which included several new strategies to manage medical costs and overutilization and created the position of Medical Advisor at the agency. TWCC has been slow to effectively implement many of these key changes and the resulting impact of the changes cannot yet be determined.

#### **Other states regulate workers' compensation through a structure similar to the Texas Workers' Compensation Commission.**

- By its nature, the workers' compensation system involves an exchange between the employer and the injured worker, where the employee agrees to waive the right to sue a covered employer, who does not admit to liability for the illness or injury, in exchange for medical and income benefits. Most states have a similar system of workers' compensation coverage.
- Including Texas, 19 states have set up a separate state agency to administer the state's workers' compensation system. The remaining 31 states have workers' compensation divisions attached to a larger state agency (generally the equivalent of a division of the Texas Workforce Commission or the Texas Department of Insurance.)



*The agency has not been proactive in dealing with issues negatively impacting the system.*

- A majority of states (27) have a single commissioner, administrator, or presiding judge to oversee the administration of the workers' compensation system. Generally, these are also the states with a workers' compensation division attached to a larger state agency. The remaining 23 states, including Texas, have governing boards that range from three full-time members to 16 part-time members. The majority of these boards are appointed by the state's Governor.<sup>1</sup>

## Recommendation

### Change in Statute

#### 10.1 Continue the Texas Workers' Compensation Commission for 12 years.

### Impact

This recommendation would continue TWCC as an independent agency, responsible for regulation and administration of the Texas workers' compensation system. The agency would continue to oversee the activities of the primary system participants and to enforce participant compliance with the statutes and TWCC rules and regulations. TWCC would remain responsible for its primary functions of administering a medical and income benefit system and benefit dispute process for injured employees, authorizing health-care providers to treat injured workers in the workers' compensation system, certifying and regulating qualified self-insurers, providing accident prevention and training services to encourage safer Texas workplaces, and developing and administering medical cost containment initiatives. As discussed previously, TWCC is best suited to administer the current workers' compensation system. Should the system change significantly, other organizational options may provide a more effective structure.

### Fiscal Implication

If the Legislature continues the current functions of the Workers' Compensation Commission, using the existing organizational structure, the agency's annual appropriation of about \$55 million from the General Revenue Fund would continue to be required for its operation. The State would continue to assess the maintenance tax collected on workers' compensation insurance premiums to recover TWCC's operating costs.

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<sup>1</sup> Texas Department of Insurance Workers' Compensation Research Group. *Comparison of State Workers' Compensation Systems*. Presented to the Senate Select Committee on Workers' Compensation, March 25, 2004, p. 28.

## **ACROSS-THE-BOARD RECOMMENDATIONS**

**Texas Workers' Compensation Commission**

<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
Do Not Apply	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Already in Statute	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require training for members of the policymaking body.
Already in Statute	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Modify	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.





## **AGENCY INFORMATION**

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# Agency Information

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## Agency at a Glance

The Texas Workers' Compensation Commission (TWCC) was created in 1990 as part of a broad effort to reform the workers' compensation system in Texas. The Workers' Compensation Act provides for no-fault income-replacement benefits and medical care for workers who are injured on the job and are unable to earn their preinjury wage. TWCC administers key parts of the system including ensuring the timely, appropriate, and cost-effective delivery of benefits to injured workers; overseeing and regulating system participants to ensure compliance with statutes and rules; and providing training and informational services to help system participants understand and operate within the system.

To accomplish this, TWCC:

- oversees a benefit delivery system and provides income and medical-related dispute resolution services;
- certifies doctors to provide medical services and reviews medical utilization patterns of health-care providers;
- develops and adopts fee and treatment guidelines for medical services;
- provides health and safety resources, education services, and training for system participants;
- certifies employers who choose to self-insure as their own workers' compensation insurance carriers; and
- performs compliance audits and fraud investigations, and enforces compliance with statutes and rules.



*On the Internet:*

*The Commission provides information about agency programs, access to rules and forms, and other information at [www.twcc.state.tx.us](http://www.twcc.state.tx.us).*

## Key Facts

- **Funding.** In fiscal year 2003, the Commission operated on a \$55 million budget, including \$2.3 million in federal funds. The agency is required to cover its state appropriations via maintenance taxes on workers' compensation insurance premiums.
- **Staffing.** The Commission is authorized to employ a total of 1,050 people, in its 24 field offices and central office in Austin.
- **System Participation.** In fiscal year 2003, 251 insurance carriers wrote workers' compensation insurance coverage. Approximately 65 percent of Texas employers, employing approximately 84 percent of the workforce, carried workers' compensation insurance coverage in 2003. The remaining employers self-insure, offer alternative benefits, or offer no workers' compensation coverage.

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*In FY 2003, a  
workers' compensation  
claim cost an average  
of \$3,400.*

- **Workers' Compensation Claims.** In fiscal year 2003, workers reported 178,081 claims, with at least one day of lost time. The average cost of a workers' compensation claim was \$3,400.
- **Self Insurers.** In fiscal year 2003, TWCC issued 51 certificates representing 257 employers as self-insurers covering about 250,000 employees, allowing the employer to act as its own workers' compensation insurance carrier.
- **Dispute Resolution.** In fiscal year 2003, TWCC received 59,989 benefit disputes. The agency informally resolved 88 percent of cases. TWCC also received 15,883 valid medical disputes, the majority of which were medical fee disputes.
- **Compliance.** In fiscal year 2003, TWCC issued 866 penalties with fines totalling \$548,500.

## **Major Events in Agency History**

- 1884** State-planned workers' compensation first appears in western countries as Otto von Bismarck introduces compulsory workers' compensation for Prussian workers.
- 1913** Texas enacts its first workers' compensation law.
- 1917** The U.S. Supreme Court rules that states could legally require employers to provide workers' compensation. Texas chooses to retain voluntary employer participation in the system.
- 1957** The Legislature extends medical benefits to the injured worker's lifetime, and establishes a maintenance tax paid by insurance carriers to fund the Industrial Accident Board (IAB).
- 1975** Employees of certain public entities in Texas are brought into the system.
- 1987** The Legislature authorizes the IAB to establish guidelines for medical treatments and charges, and appoints a Joint Select Committee on Workers' Compensation Insurance to study Texas' system and make recommendations for change.
- 1989** The Joint Select Committee completes a comprehensive, two-year study of the system that leads to the adoption of the new Texas Workers' Compensation Act. The new law includes provisions creating TWCC and eliminating the IAB.
- 1995** The Legislature extends the TWCC Sunset date to 2007; consolidates the Workers' Compensation Research Center and the Legislative Oversight Committee for Workers' Compensation into the Research and Oversight Council on Workers' Compensation (ROC); requires TWCC to establish qualifications and training for designated doctors; transfers hearings related to the Administrative Procedures Act from the Commission to the State Office of Administrative Hearings.

**1997** The Legislature creates the State Office of Risk Management to administer the state employees workers' compensation insurance and the state risk management programs.

**2001** The Legislature passes HB 2600 to address rising medical costs and quality of care issues in the system, establish voluntary regional networks for workers' compensation medical services, improve communication about return to work issues, improve medical dispute resolution, modify fee and treatment guidelines, and move TWCC Sunset date to 2005. Appendix D, "House Bill 2600 – Highlights by Article," provides more detail on the provisions included in the legislation.

**2003** The Legislature transfers the duties and responsibilities of the ROC to the Texas Department of Insurance and ROC is abolished.

  
*The duties and  
responsibilities of  
ROC transferred to  
TDI in 2003.*

## Organization

### Policy Body

The six-member Workers' Compensation Commission adopts rules to implement and enforce the Workers' Compensation Act; oversees the operations of the agency; and hires the Executive Director. The Governor appoints all six members, three representing employers and three representing employees, with the advice and consent of the Senate. The Governor also designates the Chair, who serves in that capacity for a two-year term expiring on February 1 of each odd-numbered year. The chairmanship alternates between the employer and the employee representatives.

The Legislature, in 2003, set staggered, two-year terms for the Commissioners, to comply with a constitutional amendment on terms of board and commission members. The current members' terms all expire in 2005. At that time, the Governor is to appoint one member representing employers and two members representing employees to terms expiring February 1, 2006; and one member representing employees and two members representing employers to terms expiring February 1, 2007.

The chart, *Texas Workers' Compensation Commission Members*, provides information on the current Commissioners. The Commission met in Austin six times in fiscal year 2002 and seven times in fiscal year 2003.

The Commission receives assistance from two statutorily required advisory committees. The Commission-appointed Medical Advisory Committee (MAC), consisting of 18 primary and 18 alternate members representing system participants, advises the Medical Review Division in the development, review and

<b>Texas Workers' Compensation Commission Members</b>		
<b>Name</b>	<b>Term Expires</b>	<b>Qualification</b>
Mike Hachtman, Chairman, Houston	February 2005	Employer
Edward J. Sanchez, Houston	February 2005	Employee
Richard A. Smith, Bryan	February 2005	Employer
Carolyn J. Walls, San Antonio	February 2005	Employee
Lonnie Watson, Cleburne	February 2005	Employer
Eddie Wilkerson, La Porte	February 2005	Employee

revision of medical policies and fee guidelines. The Health Care Network Advisory Committee (HNAC) consists of 13 Governor-appointed members representing system participants, plus TWCC's Medical Advisor who serves as chair. Both advisory committees are discussed in further detail under the Agency Operations section. The Commission may appoint additional advisory committees as necessary.

### Staff

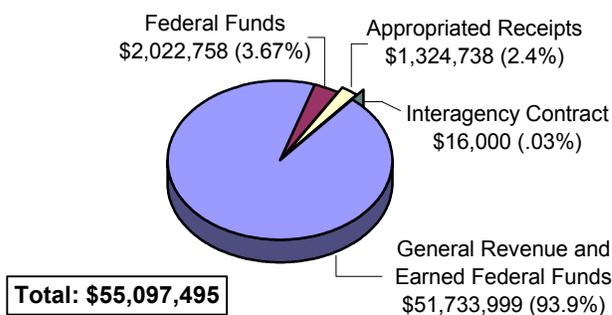
As of August 2003, the Commission employed 961 staff. Approximately 500 employees work in the Austin headquarters. The remainder work in the Commission's 24 field offices. The *Texas Workers' Compensation Commission Organizational Chart* depicts the organization of the Commission's staff. Appendix B compares the agency's workforce composition to the minority civilian labor force. The agency generally meets or exceeds civilian labor force guidelines for most job categories.

## Funding

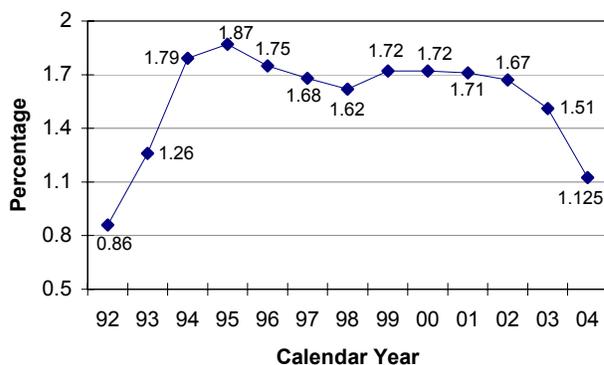
### Revenues

The Commission received funding from General Revenue totaling about \$55 million in fiscal year 2003. Detailed revenue is shown in the pie chart, *TWCC Revenue*. The chart, *Workers' Compensation Assessment Rates*, illustrates how the tax rate has changed over the last 10 years.

**TWCC Revenue  
FY 2003**



**Workers' Compensation Assessment Rates**



### TWCC Maintenance Tax

The Texas Workers' Compensation Act established a maintenance tax, collected on workers' compensation premiums, to cover the cost of the agency's administration. Workers' compensation insurance carriers pay the tax to the Comptroller's Office which then deposits the tax into General Revenue. The tax may not exceed 2 percent of the gross workers' compensation insurance premiums. TWCC sets the tax annually, by October 31, taking into account the previous year's maintenance tax collections and the agency's spending needs. The 2004 tax rate is 1.125 percent.

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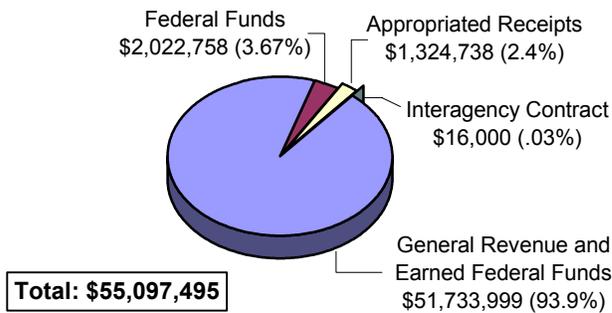
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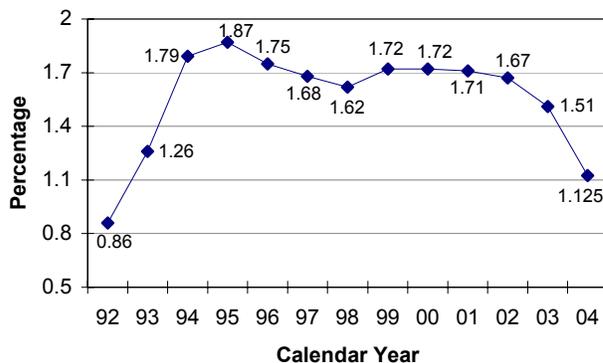
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**Workers' Compensation Assessment Rates**



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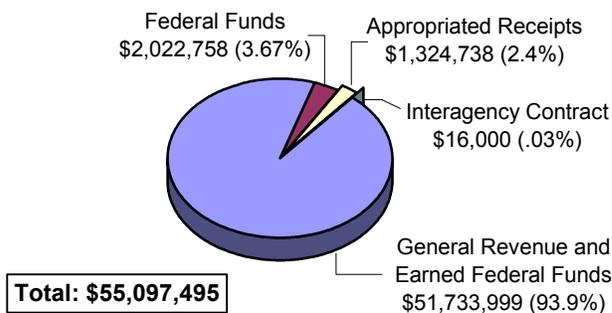
As of August 2003, the Commission employed 961 staff. Approximately 500 employees work in the Austin headquarters. The remainder work in the Commission's 24 field offices. The *Texas Workers' Compensation Commission Organizational Chart* depicts the organization of the Commission's staff. Appendix B compares the agency's workforce composition to the minority civilian labor force. The agency generally meets or exceeds civilian labor force guidelines for most job categories.

## Funding

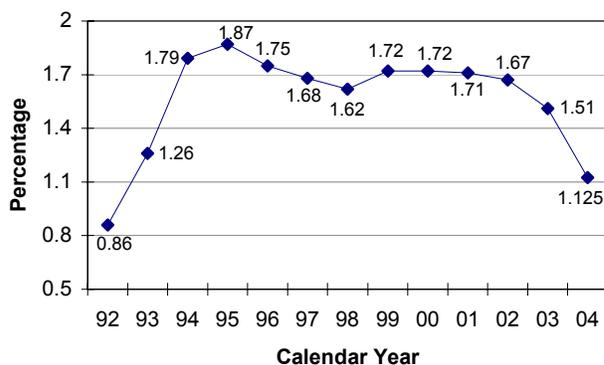
### Revenues

The Commission received funding from General Revenue totaling about \$55 million in fiscal year 2003. Detailed revenue is shown in the pie chart, *TWCC Revenue*. The chart, *Workers' Compensation Assessment Rates*, illustrates how the tax rate has changed over the last 10 years.

**TWCC Revenue  
FY 2003**



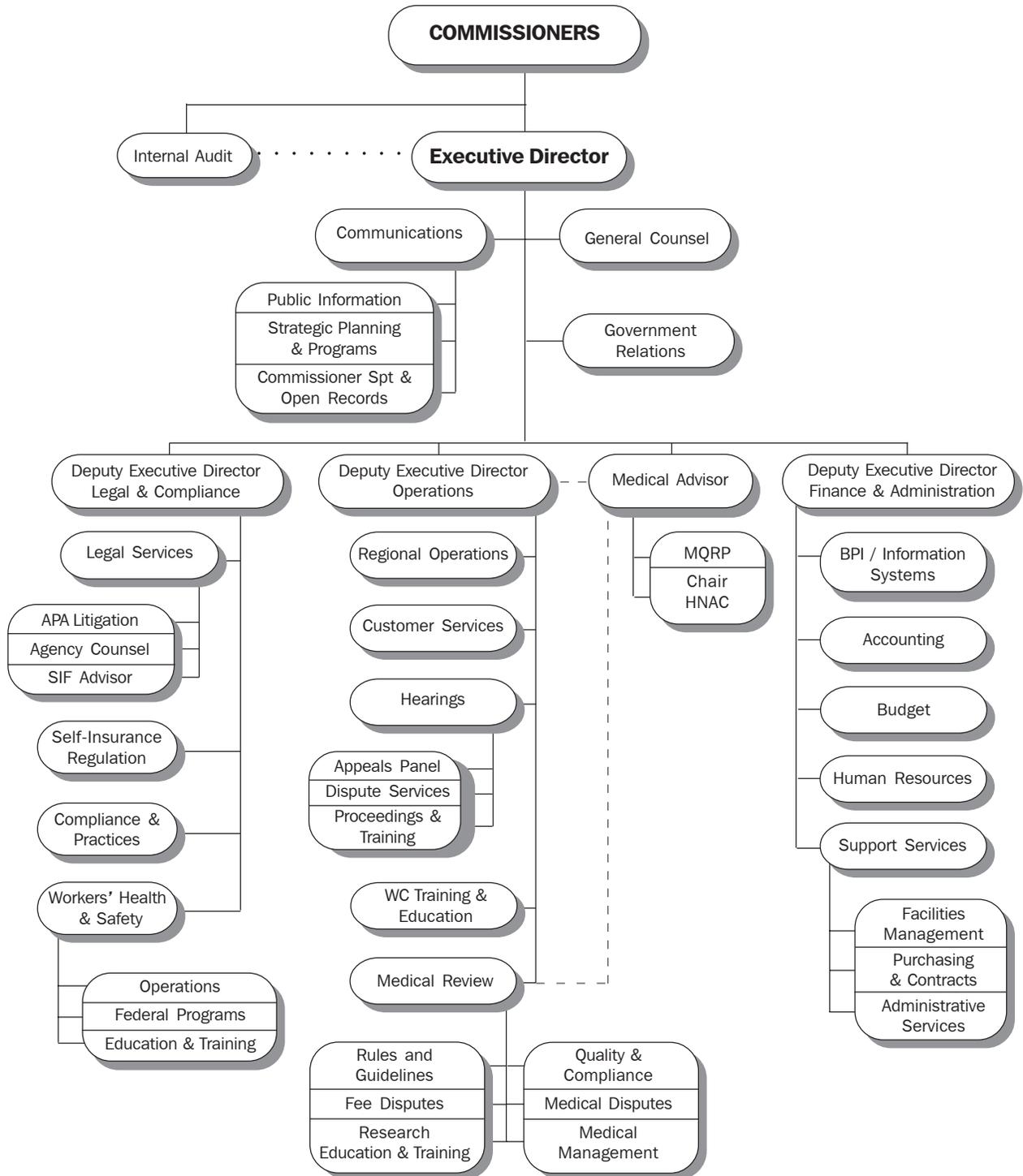
**Workers' Compensation Assessment Rates**



### **TWCC Maintenance Tax**

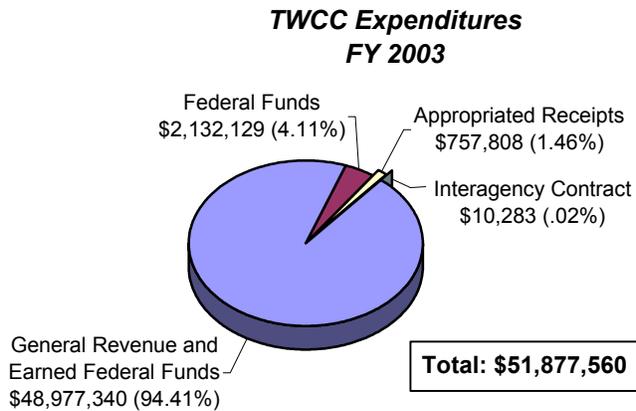
The Texas Workers' Compensation Act established a maintenance tax, collected on workers' compensation premiums, to cover the cost of the agency's administration. Workers' compensation insurance carriers pay the tax to the Comptroller's Office which then deposits the tax into General Revenue. The tax may not exceed 2 percent of the gross workers' compensation insurance premiums. TWCC sets the tax annually, by October 31, taking into account the previous year's maintenance tax collections and the agency's spending needs. The 2004 tax rate is 1.125 percent.

## Texas Workers' Compensation Commission Organizational Chart



## Expenditures

In fiscal year 2003, the Commission expended \$51,877,560. Detailed expenditures are shown in the pie chart, *TWCC Expenditures*.



The difference between General Revenue and expenditures are attributed to the State leadership's 2003 7 percent budget reduction request. The Legislature later restored TWCC's revenue; however, the agency did not fully expend all General Revenue appropriations.

Other differences between revenue and expenditures are attributed to decreased travel costs and training fee receipts; ROC requiring less-than-anticipated services of TWCC; and increases in federal grants. Appendix C describes the agency's use of

Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2000 to 2003. TWCC uses HUBs in the category of commodities, but generally falls behind its goals in other services, professional services, and special trade.

## Agency Operations

### System Overview

Workers' compensation insurance provides a state-regulated system that oversees the payment of medical bills and income benefits to replace some portion of lost wages if an employee is injured at work or has a work-

related illness. Benefits are provided by the insurance carrier if the employer carries workers' compensation insurance or by the employer if the company is certified by TWCC to self-insure. If the employer provides coverage, the employee will receive statutory medical and income-replacement benefits and the employer is protected from injury-related lawsuits except in cases of gross negligence. Texas law does not require employers to provide workers' compensation coverage; however political subdivisions such as cities, counties, and school districts must provide coverage. In Texas, about 65 percent of employers provide workers' compensation coverage for their employees representing about 84 percent of the workforce.

Several state agencies and state-established entities provide system regulation and workers' compensation benefits in Texas. For a list, see the textbox, *Texas Workers' Compensation Entities*.

#### **Workers' Compensation Coverage in Texas**

Several terms are used to define an employer's coverage status in Texas.

**Non-covered** – An employer that chooses not to provide workers' compensation coverage for employees. The employer may provide alternative types of income and medical benefits for work-related injuries but can still be sued for injury-related compensation.

**Self-insured** – A private employer who has been approved by TWCC to act as its own insurance carrier to administer workers' compensation claims. Political subdivisions can be self-insured, form a "pool" to provide coverage, or elect to purchase coverage from a private carrier.

**Subscriber** – An employer that purchases coverage from a carrier licensed by TDI to offer workers' compensation insurance in Texas.

### ***Texas Workers' Compensation Entities***

#### **Texas Workers' Compensation Commission (TWCC)**

- regulates the activities of participants in the Texas workers' compensation system including employers, employees, insurance carriers, attorneys, and health-care providers
- regulates the payment of income and medical benefits
- provides for the adjudication of disputes
- administers medical cost containment initiatives
- certifies and regulates employers that self-insure
- monitors and provides accident prevention and training services

#### **Texas Department of Insurance (TDI)**

- regulates most lines of insurance in Texas
- ensures companies are solvent
- ensures rates are reasonable and calculated correctly
- ensures policies and forms comply with law
- protects public from fraud and unethical behavior
- licenses agents and adjusters, and certifies independent review organizations and medical utilization review agents
- develops and maintains insurance data
- performs research related to the workers' compensation system (formerly the functions of ROC)

#### **Texas Mutual Insurance Company (TMIC)**

- insurance company created by the state to serve as an insurer of last resort for employers who want workers' compensation coverage but cannot obtain coverage through other private carriers
- created to be a competitive force in the market to lower workers' compensation insurance rates
- although created by state action, TMIC is not a state agency and does not receive legislative appropriations

#### **Texas Property and Casualty Insurance Guarantee Association (TPCIGA)**

- nonprofit, unincorporated association of all Texas admitted property and casualty insurance companies
- handles claims against all covered insolvent companies, including those that write workers' compensation

#### **State Office of Risk Management (SORM)**

- administers workers' compensation benefits for most state employees (except employees of UT, TAMU, and TxDOT)
- inspects state agency risk management programs

## **Claims Process**

A worker must give notice of an injury or occupational disease to an employer within 30 days of the date of injury or the date the worker knew, or should have known, the disease may be related to employment. The worker must also file notice of a claim with TWCC within one year of the injury date. The employer must report the injury to its insurance carrier if the injury causes an employee to miss more than one day of work. Once notified of the injury, the carrier must file a notice of the injury with TWCC and begin paying benefits or notify TWCC and the employee of its refusal to pay. A carrier may dispute the payment of benefits based on several factors such as questions about whether or not the injury is work-related, the extent of the injury, and the calculation of wage benefits.

Workers' compensation insurance provides the following benefits.

- **Medical Benefits** cover the medical care necessary to treat a work-related injury or illness. The insurance carrier pays medical benefits directly to the health-care provider who treats the injured worker.
- **Income Benefits** replace some of the wages lost because of a work-related injury or illness. An employee becomes eligible for income benefits on the eighth day of lost time. The insurance carrier pays income benefits directly to the injured worker based on the wage earned before the injury, the length of time off work, and the seriousness of the injury. The textbox, *Income Benefits*, provides more detail on the different types of income benefits.
- **Death and Burial Benefits** are paid to eligible family members to replace a portion of lost income and help pay the funeral expenses of workers killed on the job.

<b><i>Income Benefits</i></b>	
Temporary Income Benefits (TIBs)	<ul style="list-style-type: none"> <li>● Available if injury or illness causes a loss of some or all of wages for more than seven days.</li> <li>● Benefits are not paid for the first week of lost wages unless the disability lasts for four weeks or more.</li> <li>● TIBs end at the date maximum medical improvement (MMI) is reached or the date the worker is able to earn their average weekly wage; the law sets a statutory MMI date of 104 weeks for TIBs.</li> <li>● The day the injured worker reaches MMI, the worker becomes eligible for impairment income benefits.</li> </ul>
Impairment Income Benefits (IIBs)	<ul style="list-style-type: none"> <li>● Workers receive IIBs once temporary income benefits have ended, the worker has reached MMI, and has a permanent impairment from the work-related injury or illness.</li> <li>● Benefits are based on the percentage of whole body impairment determined for the injured worker at the date of MMI.</li> <li>● The injured worker receives three weeks of IIBs for each percentage of impairment.</li> <li>● IIB recipients receive the same level of benefits even if they have returned to work.</li> <li>● IIBs are generally paid weekly and equal 70 percent of the worker's average weekly wage.</li> </ul>
Supplemental Income Benefits (SIBs)	<ul style="list-style-type: none"> <li>● Injured workers may qualify for SIBs if they have a whole body impairment rating of 15 percent or greater, remain unemployed or underemployed as a result of impairment from the compensable injury, have not received a lump sum payment of impairment income benefits, and make a "good faith effort" to find work.</li> <li>● Eligibility for SIBs begins the day after IIBs end.</li> <li>● Injured workers must meet SIBs eligibility requirements on a quarterly basis by applying to TWCC for the first quarter of SIBs, with reapplication to the insurance carrier for eligibility every subsequent quarter.</li> <li>● SIBs are paid on a monthly basis and equal 80 percent of the difference between 80 percent of the worker's average weekly wage and the weekly wage after the injury.</li> <li>● Eligibility to receive SIBs ends 401 weeks from the date of injury.</li> </ul>

<b>Income Benefits (continued)</b>	
Lifetime Income Benefits (LIBs)	<ul style="list-style-type: none"> <li>● Paid for the life of the injured worker for specific catastrophic injuries (e.g. loss of sight in both eyes, loss of use of both feet, certain burns.)</li> <li>● LIBs are paid monthly and equal 75 percent of the worker's average weekly wage, with a 3 percent annual cost of living increase.</li> </ul>
Death and Burial Benefits	<ul style="list-style-type: none"> <li>● Replace a portion of lost family income for the eligible family members of workers killed on the job.</li> <li>● Death benefits are paid either weekly or monthly, depending on the preference of the beneficiary, and equal 75 percent of the deceased worker's average weekly wage.</li> <li>● An eligible spouse is entitled to receive death benefits for life or until remarriage.</li> <li>● Burial benefits not to exceed \$6,000 are paid to the person who paid for funeral expenses.</li> <li>● In the absence of beneficiaries where death benefits are due, the insurance carrier pays 364 weeks of death benefits into the Subsequent Injury Fund.</li> </ul>

## **TWCC Functions**

TWCC implements its responsibilities related to administration and oversight of the workers' compensation system through three main functional areas: benefits and delivery; compliance and oversight; and administration.

### **Benefits and Delivery**

Most workers' compensation benefits are handled between the insurance carriers and injured workers without involvement of TWCC. However, about 18 percent of claims result in disputes that TWCC helps resolve, as discussed in the material below.

**Income Benefit Dispute Resolution.** The income benefit dispute resolution program resolves disputes for injured workers, employers, and insurance carriers about workers' compensation claims.

Income benefit disputes typically involve issues of compensability, and determinations of the amount, duration, and liability for income benefits. In fiscal year 2003, the Commission received 59,989 disputes, of which approximately 44,600 were valid. The dispute resolution process includes informal benefit review conferences (BRCs), contested case hearings (CCHs), Appeals Panel review, and judicial review. TWCC resolved 56 percent of all the valid income benefit disputes informally prior to a BRC.

**Benefit review conferences** attempt to informally resolve disputes through mediation. Agency mediators in TWCC's field offices, called Benefit Review Officers, help the participants resolve disputed issues. The textbox, *Ombudsman Program*, explains resources available to assist injured workers in the dispute process. Of the valid disputes received in fiscal year 2003, 29 percent were resolved at the BRC level. TWCC

#### **Ombudsman Program**

The Commission's Ombudsman Program assists unrepresented parties in dispute resolution proceedings. The ombudsmen explain the benefit process and review the disputed issues. Ombudsmen prepare participants by helping determine the necessary information and available options. They may, if requested, present information at benefit conferences and hearings. This service, created in 1989, is provided at no expense to the injured worker. The ombudsmen may not give legal advice or make decisions.

conducted approximately 20,000 BRCs in fiscal year 2003. Binding arbitration is offered if the dispute is not resolved at the BRC; however, parties have not used arbitration since 1998.

**Contested case hearings**, held in the field offices, are similar to hearings in a court of law. Participants present their side of the dispute and may question witnesses and introduce evidence to support their case. TWCC Hearing Officers preside at these hearings. The Hearing Officers examine the evidence and testimony, and issue decisions and orders adjudicating each dispute. Of the valid disputes received in fiscal year 2003, TWCC resolved about 8 percent at the CCH level. TWCC conducted approximately 6,800 CCHs in fiscal year 2003. Parties dissatisfied with the Hearing Officer's decision may file an appeal with a Commission Appeals Panel. Approximately 50 percent of the Hearing Officers' decisions are appealed.

An **Appeals Panel**, consisting of three agency administrative law judges, reviews the Hearing Officer's decision and the record from the CCH. Participants do not appear in person, but submit written statements describing their positions. The Appeals Panel may either uphold the Hearing Officer's decision, overturn the decision and issue its own decision, or order that a second CCH be held. The Appeals Panel decision is the Commission's final decision on the dispute.

Of the valid disputes received in fiscal year 2003, TWCC resolved about 5 percent at the Appeals Panel level. Appeals Panels reviewed 2,779 cases in fiscal year 2003. If either participant disagrees with an Appeals Panel decision, the decision may be appealed to a court of law. Less than 20 percent of Appeals Panel decisions, less than 1 percent of all disputes, are appealed to a court of law.

**Medical Dispute Resolution.** Medical dispute resolution (MDR) is the administrative process used to resolve disputes involving health care delivered to injured workers in the workers' compensation system. Medical disputes are handled separately from income benefit disputes. The majority of medical disputes are between health-care providers and insurance carriers regarding payments for health care that the health-care worker has provided or recommended. However, injured workers may also file medical disputes for the denial of health care or for reimbursement of out-of-pocket expenses that the carrier has denied. In fiscal year 2003, the Commission concluded approximately 18,500 medical disputes.

The Medical Dispute Resolution process handles three types of medical disputes.

**Prospective medical necessity disputes** involve insurance carriers denying the reasonableness or necessity of medical services that require preauthorization or concurrent review before the services are provided. Currently, 14 categories of medical services require preauthorization before the services can be rendered, such as spinal surgery; inpatient hospital admissions; and chemical dependency or weight loss programs.

**Retrospective medical necessity disputes** involve insurance carriers denying payment for medical services after they have been provided based on the reasonableness or necessity of the services.

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*TWCC concluded  
about 18,500 medical  
disputes in FY 2003.*

**Medical fee disputes** involve the pricing or coding of medical services and other billing issues not directly related to the medical necessity of individual services.

HB 2600 required all preauthorization and retrospective medical necessity disputes to be assigned to Independent Review Organizations (IROs) to determine whether the disputed health care is medically necessary. See the textbox, *Independent Review Organizations*, for more information. Prior to this approach, TWCC staff reviewed and resolved all medical dispute requests internally. IROs charge \$650 for a medical doctor review and \$460 for a specialty classification review, including review by a chiropractor. The insurance carrier pays the IRO fee for preauthorization disputes, and the losing party typically pays the fee for retrospective medical necessity disputes. All medical fee disputes are assigned to the Commission's Medical Dispute Resolution Officers (MDROs) who review the disputes, obtain any additional information and issue decisions that resolve the fees in dispute.

***Independent Review Organizations (IROs)***

An IRO is an external panel made up of medical professionals and certified by the Texas Department of Insurance. The doctors review and resolve prospective and retrospective medical necessity disputes in the workers' compensation system. Currently, seven IROs review and resolve these disputes.

At the conclusion of the MDR process, a party can appeal the IRO or MDRO decision and request a contested case hearing at the State Office of Administrative Hearings (SOAH). However, the Commission conducts an Informal Resolution Conference to attempt to resolve the dispute informally before the formal SOAH hearing. TWCC must pay the costs for the hearings at SOAH. A party that exhausts the administrative process and is not satisfied at the conclusion of the SOAH hearing can seek judicial review of the SOAH decision.

***Medical Review / Cost Containment.*** The Medical Review Division, in conjunction with the Office of the Medical Advisor (MA), is responsible for the dual responsibilities of controlling medical costs while ensuring that quality health care is delivered to injured workers. The Division monitors health-care providers, insurance carriers, and workers' compensation claimants who receive medical services to ensure appropriate medical care is provided in a timely fashion. The MA can also make recommendations to the Commission on treatment guidelines for medical care and serves as the Chair of the Health Care Network Advisory Committee (HNAC), described in more detail in the textbox, *Health Care Network Advisory Committee*.

Activities related to the function of medical cost containment are discussed below.

**Medical Rules and Guideline Development Division** is responsible for researching and analyzing the economic factors and treatment protocols that form the basis for development of medical rules and fee, treatment, and return to work guidelines. As an example, the Division was responsible for developing the medical fee guidelines and the rules implementing the Approved Doctor List as required by HB 2600.

***Health Care Network Advisory Committee***

The Governor appoints three representatives of employers, employees, insurance carriers, and health-care providers, and one independent actuary, to serve staggered two-year terms. TWCC's Medical Advisor serves as Chair, while the Commission provides administrative and procurement services.

HNAC is statutorily charged with determining the feasibility of establishing regional workers' compensation health care delivery networks encompassing effective cost-control mechanisms while ensuring quality medical care.

TWCC contracted, on behalf of the HNAC, with MedFX of California to conduct a study to determine whether fee-for-service regional workers' compensation health care delivery networks are feasible in Texas. The Subsequent Injury Fund funded the study.

When appropriate, the medical review division seeks input from the Medical Advisory Committee (MAC) created to advise the agency on medical policies and fee and treatment guidelines. MAC is an 18-member committee knowledgeable and qualified about work-related injuries and diseases representing system stakeholders. Members include health-care providers and representatives of health-care facilities, employees, employers, insurance carriers, and the general public.

**Approved Doctor List Management Group** is responsible for adding, removing, and reinstating health-care providers to TWCC's Approved

Doctor List (ADL) and the Designated Doctor List (DDL). See the textbox, *TWCC Approved Health-Care Providers*, for further discussion of the lists and types of doctors regulated by TWCC.

Doctors wishing to be approved for inclusion on the ADL must have a clean status with their licensing board and be in good standing with TWCC. Since September 1, 2003, doctors have also been required to complete a Commission-prescribed training module and provide disclosure of health-care related business interests with their registration application to the ADL. TWCC's Executive Director and Commissioners may remove or reinstate a doctor found to have violated the statute or rules. More than 14,500 doctors have applied and been approved to treat injured workers for fiscal year 2004.

***TWCC Approved Health-Care Providers***

Approved Doctor List – All doctors wishing to serve in the system must apply to TWCC and meet specific training requirements before being added to the list.

Designated Doctor List – DDLs are doctors who have completed additional training to perform workers' compensation impairment and MMI ratings.

Types of Regulated Doctors

MD - Medical Doctor

DO - Doctor of Osteopathy

DC - Doctor of Chiropractic Degree

DDS - Doctor of Dental Surgery

OD - Doctor of Optometry

DPM - Doctor of Podiatric Medicine

**Health-care Provider Reviews Division** conducts two types of health-care provider reviews — quality and compliance reviews. The Division, working with the MA, coordinates assignment of reviews to either an internal staff review or to the Medical Quality Review Panel (MQRP).

Internal staff reviews focus on statutory and rule compliance to ensure appropriate medical payments by providers and carriers. The MQRP is appointed by the Medical Advisor to conduct independent reviews of health-care providers in the workers' compensation system. Composed of health-care providers with varied areas of specialty, the MQRP reviews documentation related to the appropriate delivery of health care and makes recommendations to the Medical Advisor on adding or deleting doctors to the ADL; and on appropriate sanctions for health-care providers, insurance carriers, and utilization review agents.

**Compliance and Oversight**

**Self-Insurance Regulation.** The Self-Insurance program offers qualifying large private employers that have a total workers' compensation insurance premium of \$500,000 in Texas, or \$10 million nationally, the option to act as their own insurance carriers for workers' compensation liabilities. Approval by the Commission to act as a "Certified Self-Insurer" entitles an employer to receive liability protections under the Texas Workers' Compensation Act. Applicants are evaluated by the Self-Insurance division

on their financial stability, quality of safety programs, and the ability to provide an adequate benefit delivery system. After evaluating the applicant, TWCC staff presents its recommendations to the Board of the Texas Certified Self-Insurer Guaranty Association and TWCC Commissioners in their respective public meetings. The textbox, *Texas Certified Self-Insurer Guaranty Association*, describes the Association. If approved by both, the company is issued a certificate of authority to self-insure for a one-year period. The program has ongoing regulatory responsibility to monitor the financial condition of each certified company, including the adequacy of the company's security deposit; to review the adequacy of safety program plans; and conduct claims liability audits as needed.

The self-insurance regulatory program is funded through the Self-Insurance Regulatory Fee, which is assessed to all certified self-insurers, as required by the Labor Code, to cover all direct and indirect program costs. Like the TWCC maintenance tax, the fees are deposited in the General Revenue account.

**Workers' Health and Safety.** TWCC's Workers' Health and Safety program provides health and safety resources and services to Texas employers and employees to help prevent occupational injuries, illnesses, and fatalities. The program's main functions include performing workers' compensation safety research and analysis, and administering regulatory programs described in the chart on the following page, *Workers' Health and Safety Programs*.

**Compliance and Enforcement.** The Compliance and Practices Division investigates system participants to identify administrative and criminal violations and initiate sanctions against non-compliant entities. Staff identifies violations through referrals from other divisions, complaints, and audit activities. Within the Division, the Office of Investigations targets allegations of workers' compensation fraud. Investigations may lead to prosecution and recovery of money gained through fraudulent activity. Approximately 75 percent of fraud allegations are against injured workers, 15 percent are against health-care providers, and the other 10 percent involve attorneys, carriers, and employers. In fiscal year 2003, 22 cases were referred for prosecution resulting in 10 convictions.

The Audits and Enforcement section conducts statutorily-mandated performance reviews of insurance carriers and intergovernmental risk pools. The section also monitors system participants through reviews of violation referrals from external and intra-agency sources. In fiscal year 2003, the agency conducted 36 compliance audits of insurance carriers and 36 medical compliance audits. The Division enforces compliance by issuing penalties,

**Texas Certified Self-Insurer  
Guaranty Association**

The Texas Certified Self-Insurer Guaranty Association provides funding for the payment of workers' compensation insurance benefits for the injured employees of an impaired employer. Each certified self-insured company must be a member of the Association.

The Association board of directors is composed of three certified self-insurers, one TWCC commission member representing employees, one TWCC commission member representing employers, and the public counsel of the Office of Public Insurance Counsel. The TWCC Executive Director and the self-insurance regulation division Director serve as nonvoting members of the board.

Once TWCC determines a self-insurer has become impaired, the security deposit is released and TWCC determines the available assets for payment of all incurred workers' compensation liabilities. The Association assesses the remaining certified self-insurers, based on income benefits paid during the preceding year, if additional funds are needed to pay all liabilities.

<b>Workers' Health and Safety Programs</b>	
<b>Regulatory Programs</b>	<b>Description</b>
Accident Prevention Services (APS)	Inspects workers' compensation insurance carriers to ensure they are providing the required APS to their policyholders. Carriers that do not provide the required APS may be assessed administrative penalties. The program also reviews the qualifications of the carriers' field safety representatives who provide APS.
Hazardous Employer	Identifies employers that have injury rates substantially above the average for their industries. Hazardous public employers must develop accident prevention plans, which the program monitors through inspections to create safer workplaces. The program also provides safety and health consultative services as requested by hazardous employers.
Rejected Risk	The Texas Mutual Insurance Company identifies companies needing safety and health assistance. The Rejected Risk program inspects these companies to ensure implementation of accident prevention plans.
Approved Professional Source	Individuals that provide safety consultations for the Hazardous Employer or Rejected Risk programs must be designated as an Approved Professional Source. This program provides training for these individuals and monitors them to ensure they meet the requirements.
Drug-Free Workplace	Employers with 15 or more employees that carry workers' compensation insurance must institute a written drug policy. This program performs random audits to ensure employers meet this statutory requirement.
<b>Voluntary Programs</b>	<b>Description</b>
Safety Education and Training	Educates employees and employers on workplace health and safety through on-site training, regional seminars, and free videos and publications available through the agency's Resource Center Library.
Safety Violations Hotline	Provides a 24-hour, toll-free hotline to report workplace safety and health violations. The allegations are sent to employers and workers' compensation insurance carriers for investigation and results are reported to the Commission.
Occupational Safety and Health Consultation (OSHCON)	Federally-funded program that provides free safety and health consultations to Texas employers, primarily smaller companies (250 or fewer employees) in high-hazard industries. No fines or citations are issued. Instead, the program helps employers understand safety regulations, identify and correct workplace hazards, and establish required written programs. OSHCON also recognizes employers with exemplary safety and health programs and may exempt them from OSHA inspections when they participate.

warnings, and educational letters to violators. Audits and violation referral reviews may result in the development of action plans to improve compliance. In fiscal year 2003, the agency issued 866 penalties. The majority, 86 percent, involved insurance carriers with 11 percent involving health-care providers. These penalties resulted in fines totalling \$548,500. By General Appropriations Act rider, the agency retains \$100,000 per year of the penalty collections with the remainder accruing to General Revenue.

The chart, *Most Frequent Administrative Violation Allegations*, gives a breakdown of the majority of violation referrals received by the agency in fiscal year 2003.

<b>Most Frequent Administrative Violation Allegations FY 2003</b>	
<b>Violation Type</b>	<b>Percent of Violations</b>
Failure to pay or dispute medical bill within 45 days	18.6
Failure to timely file a correct work status report	17.1
Failure to provide reason for reduction or denial of benefits	8.6
Failure to timely file report of medical evaluation	6.1
Failure to timely respond to reconsideration of a medical bill	5.9

### **Agency Administration**

The remaining agency functions provide management and support for the agency's program functions, as discussed below.

*Executive Director* serves as the executive officer and administrative head of the Commission, and directs the day-to-day operations at TWCC.

*Deputy Executive Directors* are responsible for the operations of the three functional areas of the agency.

*General Counsel* provides legal advice to the Commissioners and the Executive Director, and coordinates the rulemaking functions of the agency.

*Communications and Public Information* tracks all executive management correspondence; handles requests for documents under the Public Information Act; manages all public meetings and public hearings; produces brochures, news releases, and public information documents; and serves as the point of contact for communications with the commissioners.

*Strategic Planning and Programs* coordinates the agency's planning functions, including statistical analysis and performance measurement and develops TWCC's Web sites.

*Governmental Relations* serves as the liaison to the Legislature.

*Human Resources* is responsible for employment services, benefits, payroll, and employee relations.

*Accounting* performs accounting functions and prepares the annual financial statement.

*Budget* prepares and monitors legislative appropriations requests, external operating budget, and the internal division operating budgets.

*Legal Services* provides the legal advice to the Commission staff on issues such as contracts, personnel, and ethics; administers the Subsequent Injury Fund; and works with the Office of the Attorney General in representing the Commission in lawsuits.

*Information Systems* provides telephone and computer services, and support for all agency operations and offices.

*Business Process Improvement* manages the agency's re-engineering project to transition the agency off of its closed legacy application to a system that provides improved services and less paper-intensive processes.

*Support Services* provides procurement and contracting, facility and lease management, mail operations, switchboard services for the central office, security for agency facilities, physical asset management, and fleet vehicle management.

*Records Management* operates the archiving center and works with each field office to collect, maintain, and appropriately archive injury claim and insurance coverage records.

# APPENDICES

## Potential Changes to Improve the Workers' Compensation System

### Reform the medical model for delivery of workers' compensation benefits.

#### 1. Transition to a managed care/network system based on contractual relationships between system participants rather than State intervention.

- The Research and Oversight Council on Workers' Compensation (ROC) has continually reported that Texas' medical costs were higher than other states and other health care delivery systems. Average medical cost per claim has increased approximately 21 percent from injury year 1999 to injury year 2001. Medical care utilization is also high in areas such as surgery, physical medicine, and diagnostic tests. Texas injured workers have noticeably longer treatment durations compared to workers in other states. In addition, the current system encourages retrospective review of medical decisions resulting in more than 17,000 medical disputes filed in 2002. As a result, the dispute resolution process has become costly and time-consuming for all system participants.
- The new model would allow insurers, under State supervision, to establish networks similar to Health Maintenance Organizations (HMOs) or Preferred Provider Organizations (PPOs). Providers would enter into contractual relationships establishing fees, treatment guidelines, payment policies, and dispute resolution. The State would oversee these arrangements by setting minimum standards and outcome measures, collecting and maintaining data on performance, and monitoring compliance. The statute would require the networks to periodically report performance information, including information on access to care, return to work outcomes, utilization and cost data, and customer satisfaction, for monitoring purposes. Regulation could be performed by either TWCC or TDI, although TDI currently has a similar regulatory structure in place for HMOs and PPOs.

The managed care model would include designation of "gatekeeper" treating doctors, with ultimate responsibility over treatment outcomes of injured workers, who can make referrals for other services as needed. The treating doctors would be held accountable for efficiently and effectively managing the medical care of injured workers with a particular emphasis on returning them to work in a timely and appropriate manner. Other health-care providers would still be able to provide services to injured workers on a referral from the primary care physician.

The medical dispute resolution process, currently managed by TWCC, would be handled between the contracting parties, similar to the process for HMO and PPO organizations. The State could set standards for these arrangements, including the possibility of third-party appeal, and would oversee and monitor the outcomes of the process. The adequacy of the dispute resolution process would be an element of the performance evaluation system. Income dispute resolution would be managed similarly with insurers establishing or contracting with independent entities to review and make benefit determinations.

# Appendix A

## Potential Changes to Improve the Workers' Compensation System

The following areas for change (2 - 5) would be addressed by moving to a managed care model for delivery of workers' compensation benefits discussed above, but should be considered for resolution if that approach is not adopted.

**2. Restructure the delivery of medical care using a disability management process.**

- The current process encourages disputes through retrospective review of medical decisions and can delay return to work. An improved disability management process would stress up front communication and decisionmaking. After a predetermined period of a worker being off the job, the process would require the treating doctor to determine the extent of injury and diagnosis, and work with the insurance carrier to set up a treatment plan for each subsequent month. Additionally, the parties could discuss modified duty options.

**3. Require TWCC to regularly review and modify, as necessary, the fee schedule to ensure that it appropriately establishes economic incentives for a doctor to effectively manage a medical/return to work program.**

- Require periodic reevaluation of the medical fee guidelines to ensure adequate access to quality care; and to account for changes in utilization as a result of other system tools that manage medical costs, such as the approved doctor list. Ensure that the fees adequately compensate evaluation and management services of treating doctors, and that fees do not inappropriately encourage extending disability periods.

**4. Require the adoption of treatment guidelines and clarify their appropriate use by system participants.**

- The Labor Code currently authorizes TWCC to adopt treatment guidelines but the agency has not done so. As a result, the system lacks a consistent basis for determining the necessity of medical care. In addition, the agency's interpretation of medical necessity limits the effectiveness of the payment policies for certain types of services. Consequently, the current system encourages retrospective review and denial of medical care, which is costly and delays care for injured workers.

**5. Require medical providers to submit billing information in electronic formats.**

- Currently, the workers' compensation system primarily operates in a paper-based medical billing and payment environment. As a result, review and payment processes are inefficient and relatively expensive, slowing down processing time and limiting prompt and accurate payment of medical bills. In addition, TWCC has limited access to timely medical billing data for reporting and analysis.

# Appendix A

## Potential Changes to Improve the Workers' Compensation System

### Improve the Relationship Between System Performance and the Rates Charged Businesses for Workers' Compensation Insurance.

#### 6. Increase availability of workers' compensation insurance rate information to allow employers to make more informed choices.

- The State allows insurers to establish their own rate levels for workers' compensation policies under a file-and-use approach. In 1992, rates were deregulated, to provide flexibility for individual insurers in the marketplace to determine the cost of coverage. The Texas Department of Insurance (TDI) oversees the regulatory approach that, in theory, allows market competition to drive rates, with individual employers shopping for the most affordable rates, based on risk.

Employers and insurers have flexibility to negotiate prices based on experience modifiers that can increase or decrease premiums based on past loss history or implementation of safety programs. The insurer may also apply a schedule rating debit or credit depending on individual business characteristics not reflected in the base rate. Employers can further reduce premiums using deductibles.

- TDI's current regulation of workers' compensation insurance focuses primarily on the financial solvency of companies licensed to write policies in Texas. It does not involve much scrutiny of rates charged. TDI oversight of the rating process is company-specific and limited to checking for proper coding of employees classifications, overseeing the calculation of experience modifiers, and reviewing form filings.

Employers have expressed confusion over the pricing of policies and rising costs, even though many do not have losses. With more than 250 rate filings at TDI, insurer rate adjustments vary from a reduction of 30 percent, to an increase of more than 90 percent. Also, insurers typically file schedule rating debits and credits of up to 40 percent compared to the base rate.

- TDI could be charged with taking a more active role in the monitoring of rates charged by insurers. While TDI currently generates some information about rates, it does not include much analysis to use for comparison purposes. While still not "approving" the rates, TDI could be more specific about information on rates charged by insurers. This information, while not necessarily insurer specific, could be in the form of a report card of sorts on what employers can reasonably expect to pay for coverage. This transparency would help employers look for the best deals when shopping for coverage, and help ensure that any improvements made by the employer, or to the system as a whole, translated into premium savings.

## Appendix A

### Potential Changes to Improve the Workers' Compensation System

7. Create an outcome-based monitoring system for insurer oversight, with premium discounts for employers with successful outcomes.

- Appropriate outcomes in the workers' compensation system include effective cost containment, improved worker health and safety, and successful return to work of injured workers. Insurer practices can have an impact on all these outcomes. These practices include communication between all participants while adjusting claims, case management that focuses on return to work, and third party review that focuses on outcomes rather than procedure-based cost containment.
- As discussed above, TDI's regulation focuses on insurer solvency and proper rate calculation. TWCC's oversight concentrates on identifying claim-specific administrative violations of workers' compensation benefit delivery requirements. Neither agency does any real assessment of insurer performance and the impact of that performance on the system. Also, the agencies do not share with each other any information they do gather that indicates insurer performance.
- Requiring both TDI and TWCC to more actively monitor insurer performance would benefit both the system and individual employers. TDI could provide information to employers to use when shopping for coverage. Comparative information related to cost containment, health and safety, and successful return to work outcomes would be a valuable tool for employers in their search.

Rates for employers with an effective return to work program should be less than for other employers. A premium discount or experience modifier, similar to the existing discount for worker safety would encourage this practice and allow employers to realize a savings from the effort.

TWCC could use the information gathered by TDI, and its own efforts, to judge the "state" of the system, and to provide incentives for improved performance by all system participants. This is discussed in more detail in the first section of this Appendix.

# Appendix A

## Potential Changes to Improve the Workers' Compensation System

### **Modify the governance of TWCC to better administer system changes.**

Significant system changes may necessitate a reevaluation of the TWCC governance structure. Because of experience in evaluating the structure of policymaking bodies, Sunset staff offer the following discussion of the benefits and drawbacks of retaining the current six-member, part-time Commission; changing to a three-member, full-time Commission; and moving to a single, full-time Commissioner.

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### **Option 1 - Retain the six-member, part-time Commission.**

The six, part-time Commission members would continue to be appointed by the Governor for two-year terms. Three members would represent employers and three would represent wage earners. The Governor annually alternates the chairmanship between the two groups represented.

In accordance with SB 287 of the 78th Legislature, the current members' terms expire February 1, 2005. The Governor must appoint one member representing employers and two members representing wage earners to terms expiring February 1, 2006 and one member representing wage earners and two members representing employers to terms expiring February 1, 2007.

#### *Benefits*

- Retains the balanced perspectives of employers and wage earners that the Commission members bring to decisionmaking.
- Provides more discussion and openness in making important policymaking decisions because the members conduct deliberations in open meetings.
- Provides standard structure for state boards that have policymaking responsibilities, but do not have a quasi-judicial function.

#### *Drawbacks*

- Places considerable responsibility on members of a part-time policy body for quickly developing the necessary expertise and determining regulatory policy given the complexity of the workers' compensation system.
- Could result in ties on specific issues split between employers and wage earners.
- Could result in turnover of half the Commission members every year.

# Appendix A

## Potential Changes to Improve the Workers' Compensation System

### Option 2 - Replace the six-member, part-time Commission with a three-member, full-time Commission.

The Governor would appoint the Commission members to six year terms, confirmed by the Senate, and include one member representing the public, one member representing employers, and one member representing wage earners. The Governor would appoint the Chair.

#### *Benefits*

- Allows the body responsible for making decisions to develop and maintain expertise on the complex workers' compensation system.
- A full-time Commission would build expertise on the workers' compensation system, and rely less on staff for policy development.
- The Commission could replace the Appeals Panel and act as an Appeals Tribunal to resolve income benefit disputes. The Commission would provide more consistency in decisions which would come from the employer, wage earner, and public perspective. Eliminating the Appeals Panel would result in savings for the agency.

#### *Drawbacks*

- Unless the Commission took on the role of appeals panel, the workload does not necessitate a full-time Commission.
- Could create confusion regarding the management of the agency because a full-time Commission is more likely to become involved in the day-to-day operations of the agency.
- Employing a full-time Commission would result in additional costs to the agency; however, eliminating the Appeals Panel could offset these costs.

# Appendix A

## Potential Changes to Improve the Workers' Compensation System

### Option 3 - Replace the six-member, part-time Commission with a single, full-time Commissioner.

The Commissioner would be appointed by the Governor and approved by the Senate, for a two-year term. The Commissioner would be responsible for all activities currently vested with the Commission, including rule making. This structure would be similar to the Commissioner of Insurance's role with regard to TDI and the regulation of the insurance industry. In addition, the Commissioner could employ an assistant to represent workers and one to represent employers, as currently contemplated by the Labor Code.

#### *Benefits*

- Improve accountability to the Governor for regulating the workers' compensation system by providing for the direct appointment of the person responsible for establishing policy and administering the agency.
- Ensures that the person responsible for making decisions would be able to develop expertise on the complex workers' compensation system.

#### *Drawbacks*

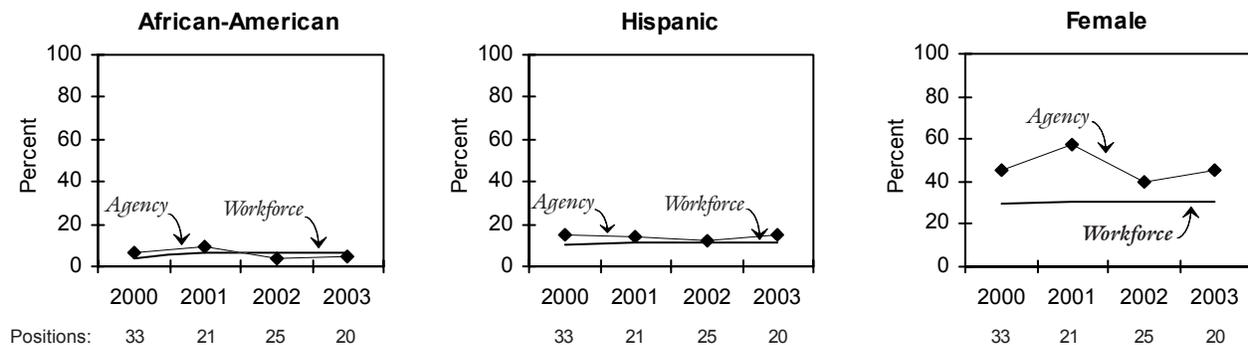
- Eliminates the balanced representation and perspective of employers and employees on the Commission.
- Provides less discussion and openness in making important policymaking decisions because deliberations would not be conducted in open meetings.
- Could detract from strategic policymaking and accountability of the workers' compensation system because a full-time Commissioner would be directly involved in the day-to-day operations of the agency.



## Equal Employment Opportunity Statistics 2000 to 2003

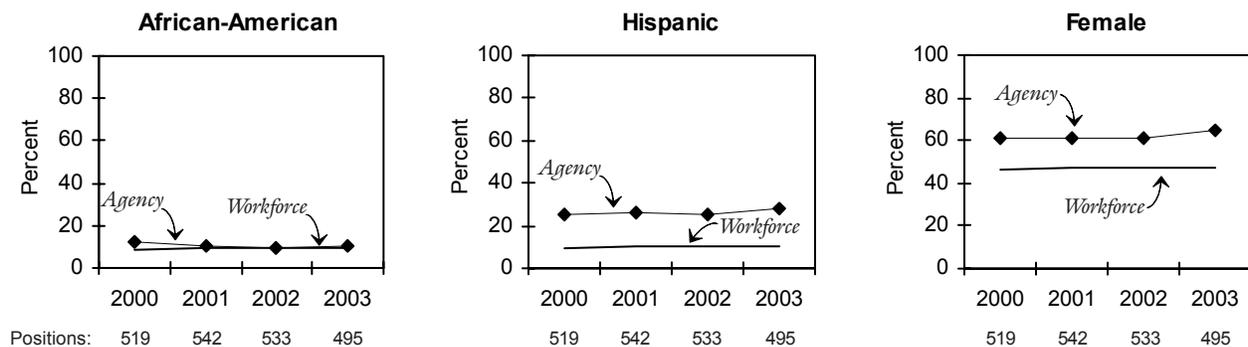
In accordance with the requirements of the Sunset Act, the following material shows trend information for the Texas Workers' Compensation Commission employment of minorities and females in all applicable categories.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.<sup>2</sup> In the charts, the solid lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond-dashed lines represent the agency's actual employment percentages in each job category from 2000 to 2003. Finally, the number under each year shows the total number of positions in the category.

### Administration



The agency exceeded the percentages for Hispanic and female employment, but fell short for African-Americans two of the years.

### Professional

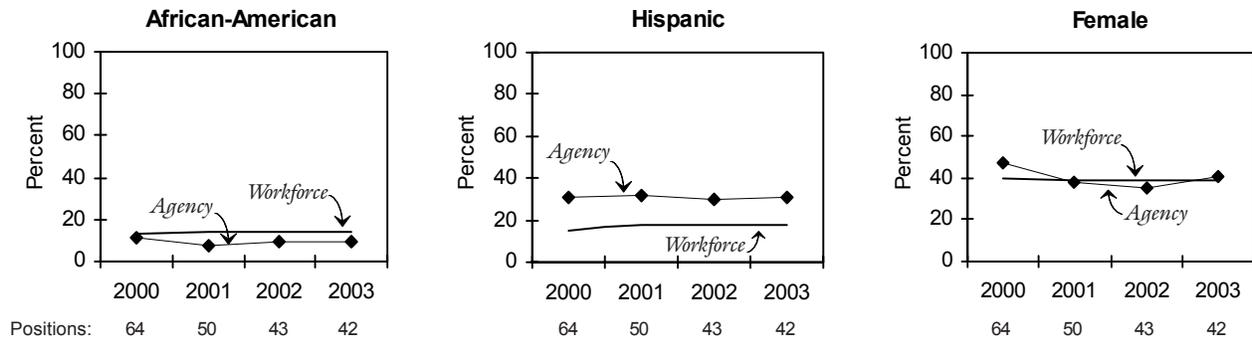


The agency met or exceeded the percentages for all three groups.

# Appendix B

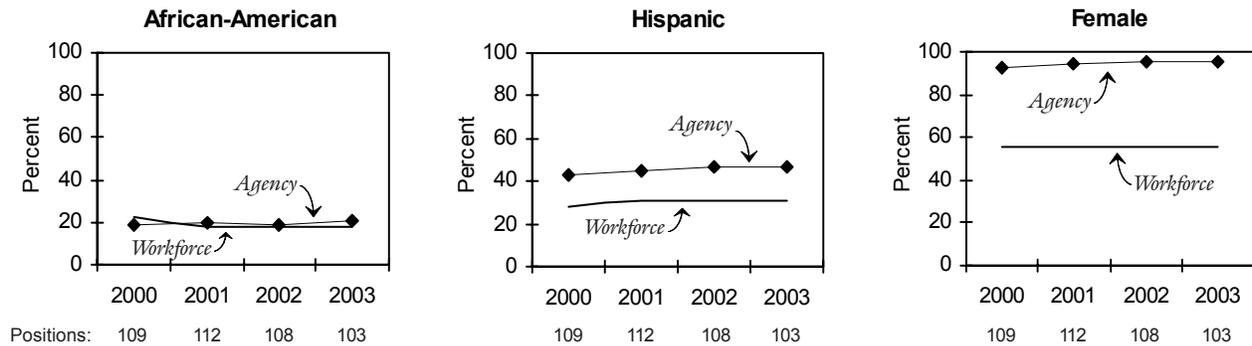
## Equal Employment Opportunity Statistics

### Technical



The agency exceeded the percentage for Hispanic employment, but generally fell short for African-American and females.

### Para-Professionals

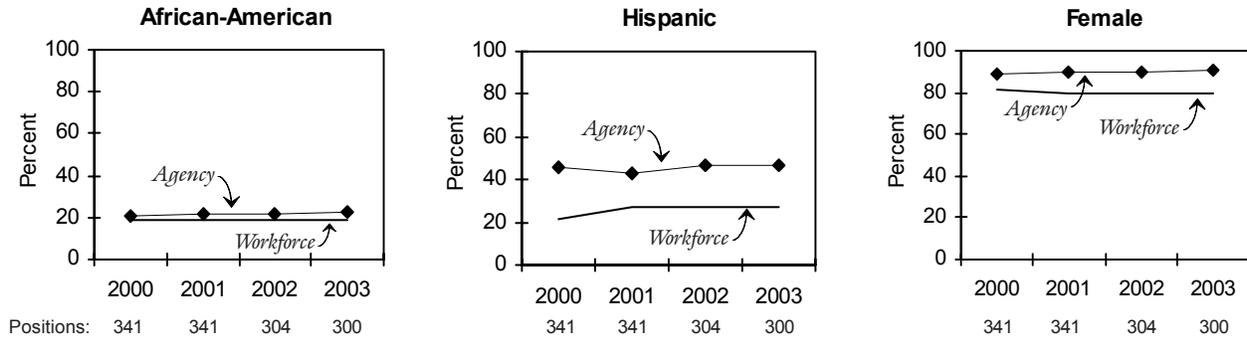


The agency met or exceeded the percentages each year in all three groups.

# Appendix B

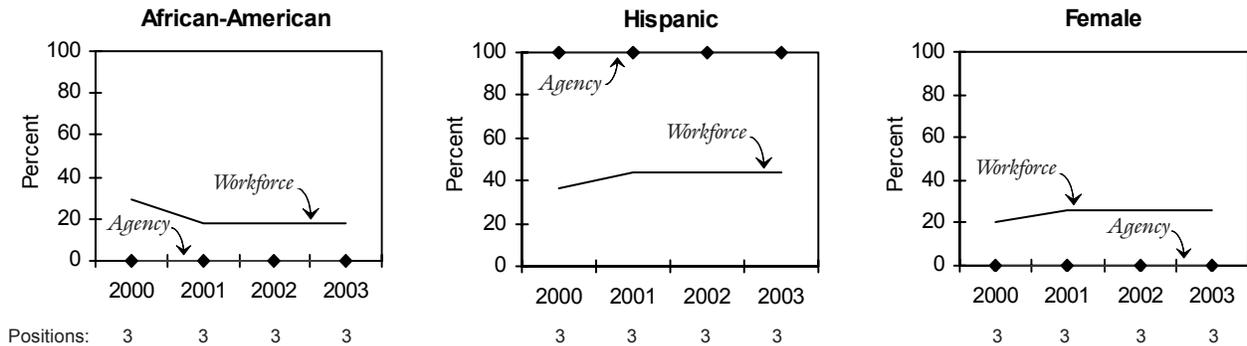
## Equal Employment Opportunity Statistics

### Administrative Support



The agency exceeded the percentages each year in all three groups.

### Service/Maintenance



The agency employed 100 percent Hispanics in this category, exceeding the goal for Hispanics, but fell well below the percentages for African-Americans and females.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(A).

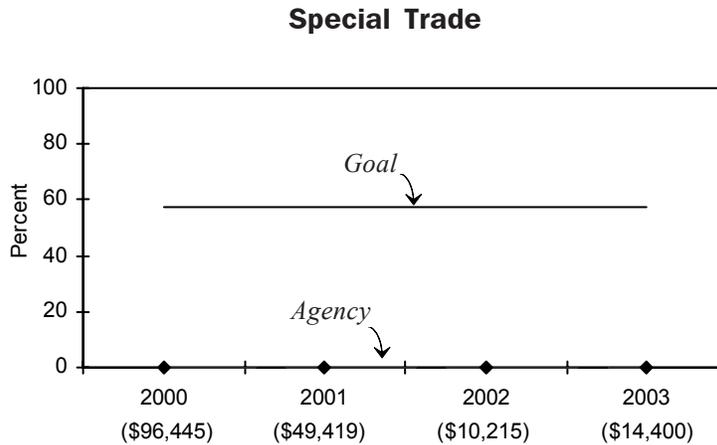
<sup>2</sup> Texas Labor Code, sec. 21.501. The Texas Human Rights Commission (HRC) has been the agency responsible for collecting and distributing EEO data. During the 2003 Session, the Legislature passed HB 2933 transferring the functions of HRC to a new civil rights division within the Texas Workforce Commission (TWC). The legislation is to take effect upon certification of the TWC civil rights division by the appropriate federal agency; no specific date has yet been established.



## Historically Underutilized Businesses Statistics 2000 to 2003

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.<sup>1</sup>

The following material shows trend information for the Texas Workers' Compensation Commission use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The diamond-dashed lines represent the percentage of agency spending with HUBs in each purchasing category from 2000 to 2003. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

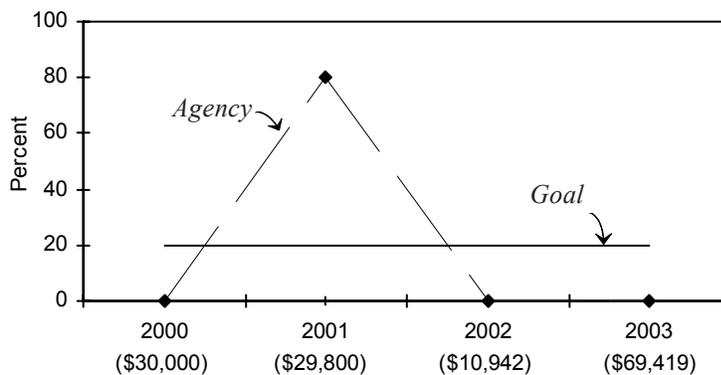


The agency does not use HUBs for any expenditure in this category.

## Appendix C

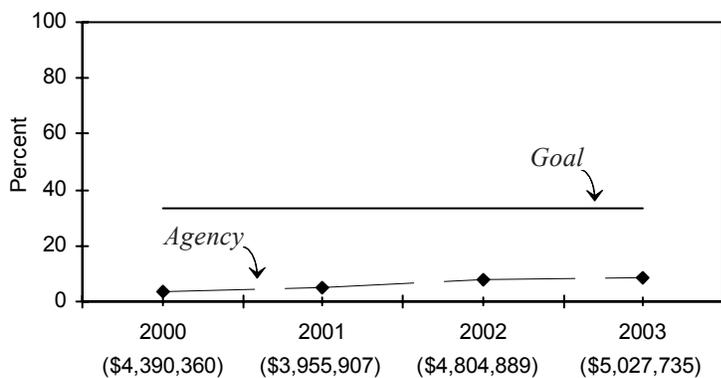
### Historically Underutilized Businesses Statistics

#### Professional Services



The agency fell below the goal in 2000, 2002, and 2003, but exceeded the goal in 2001.

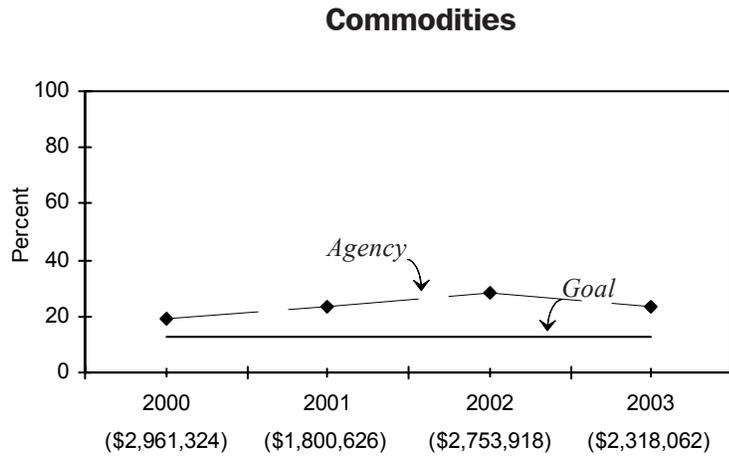
#### Other Services



The agency fell well below the goals in this category during each of the last four years.

## Appendix C

### Historically Underutilized Businesses Statistics



The agency exceeded goals in all four years in commodities.

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<sup>1</sup> Texas Government Code, sec. 325.011(9)(B).

<sup>2</sup> Texas Government Code, ch. 2161.



**House Bill 2600 – Highlights by Article**

<b>HB 2600 (77th Legislature) – Highlights by Article</b>	
<b>Article</b>	<b>Provisions</b>
1	<ul style="list-style-type: none"> <li>● Requires TWCC to establish a list of licensed doctors who are approved to provide workers' compensation services.</li> <li>● Requires TWCC to collect information regarding return to work outcomes, patient satisfaction, and the cost and utilization of health care provided or authorized.</li> <li>● Establishes the medical advisor position within the agency.</li> </ul>
2	<ul style="list-style-type: none"> <li>● Establishes the Health Care Network Advisory Committee.</li> <li>● Limits the cost of assessing the feasibility of developing and evaluating regional health care networks to \$1.5 million.</li> <li>● Requires a public employer, other than a political subdivision, to participate in a regional network, and specifies that participating insurers must agree to the terms of the contracts between TWCC and the networks.</li> </ul>
3	<ul style="list-style-type: none"> <li>● Sets forth requirements and provisions for an employer, upon request, to notify an injured employee, the employee's treating doctor, and the insurer of the possibility of modified duty opportunities or a modified duty return to work program available through the employer.</li> <li>● Requires TWCC to adopt rules necessary to collect data on return to work outcomes.</li> </ul>
4	<ul style="list-style-type: none"> <li>● Establishes a minimum list of medical services that require preauthorization, including spinal surgery.</li> <li>● Eliminates the current spinal surgery second opinion process.</li> <li>● Authorizes TWCC by rule to require an insurer to provide for payment of specified pharmaceutical services sufficient for the first seven days following the date of injury if the health-care provider requests.</li> </ul>
5	<ul style="list-style-type: none"> <li>● Alters the process for required medical examinations by directing workers to designated doctor exams first, rather than an exam by a doctor chosen by the insurer.</li> </ul>
6	<ul style="list-style-type: none"> <li>● Requires TWCC to adopt rules to develop an open formulary that requires the use of generic drugs and clinically appropriate over-the-counter alternatives to prescription drugs.</li> <li>● Requires TWCC to adopt the health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other Medicare systems with as few modifications as necessary to meet occupational injury requirements, and to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services.</li> <li>● Authorizes rather than requires TWCC by rule to establish medical policies or treatment guidelines, including return to work guidelines, relating to necessary treatment of injuries.</li> <li>● Provides that a review of the medical necessity of a health-care service requiring preauthorization shall be conducted by an Independent Review Organization.</li> </ul>
7	<ul style="list-style-type: none"> <li>● Changes TWCC's Sunset date from September 1, 2007 to September 1, 2005.</li> <li>● Provides that TWCC is subject to audit by the state auditor.</li> </ul>
8	<ul style="list-style-type: none"> <li>● Provides that an insurer who seeks judicial review of a final decision by a TWCC appeals panel regarding compensability or eligibility for income or death benefits is liable for the claimant's attorney's fees if the claimant prevails.</li> </ul>

## Appendix D

### **House Bill 2600 – Highlights by Article**

<b>HB 2600 (77th Legislature) – Highlights by Article</b>	
<b>Article</b>	<b>Provisions</b>
9	<ul style="list-style-type: none"> <li>● Expands the current definition of eligibility for lifetime income benefits to include employees who suffer third degree burns that cover at least 40 percent of the body.</li> </ul>
10	<ul style="list-style-type: none"> <li>● Sets forth procedures for computing the average weekly wage of an employee with multiple jobs for the purpose of determining benefits, allowing employees with more than one job to collect benefits based on all of their IRS reportable wages rather than only the wages at the job where the injury occurred.</li> <li>● Expands the liabilities of the Subsequent Injury Fund and requires the fund to be supplemented by maintenance taxes paid by insurers other than governmental entities if TWCC determines that the funding is not adequate.</li> </ul>
11	<ul style="list-style-type: none"> <li>● Requires disclosure by carrier of its “true corporate name” at contested case hearing dispute.</li> </ul>
12	<ul style="list-style-type: none"> <li>● Removes weekends and holidays from timeframe for appeals of TWCC decisions.</li> </ul>
13	<ul style="list-style-type: none"> <li>● Requires TWCC to study the implementation and development of drug-free workplace policies.</li> </ul>
14	<ul style="list-style-type: none"> <li>● Requires State Office of Risk Management (SORM) to establish a formula for allocating the state’s workers’ compensation costs among covered agencies and specifies that the risk management board of SORM has final authority to determine the assessments to be paid by the covered agencies.</li> <li>● Expands the definition of peace officer to allow more officers to be eligible for workers’ compensation coverage.</li> </ul>
15	<ul style="list-style-type: none"> <li>● Requires TWCC to compute and publish the Texas Workers’ Compensation Act interest and discount rate using the treasury constant maturity rate for one-year treasury bills issued by the US government rather than the auction rate.</li> </ul>
16	<ul style="list-style-type: none"> <li>● Prohibits the waiver of a cause of action against an employer who does not have workers’ compensation insurance coverage before an employee’s injury or death.</li> </ul>
17	<ul style="list-style-type: none"> <li>● Effective September 2001.</li> </ul>

Source: HB 2600 enrolled bill analysis, enrolled bill, and Research and Oversight Council (<http://www.roc.capnet.state.tx.us/2600table.htm>)

## Staff Review Activities

The Sunset staff engaged in the following activities during the review of the Texas Workers' Compensation Commission (TWCC).

- Worked extensively with TWCC Commissioners, executive management, and staff. Observed Commission, Medical Advisory Committee, and stakeholder meetings and hearings. Reviewed agency documents, reports and publications.
- Visited three regional TWCC field offices in Fort Worth, Dallas, and Houston. Observed office operations, ombudsmen preparation conferences, on-site worker health and safety consultation, and several Benefit Review Conferences and Contested Case Hearings.
- Interviewed in person or by phone regional directors, office directors, ombudsmen, customer assistants, fraud investigators, dispute resolution officers, benefit review officers, hearing officers, worker health and safety staff, as well as injured workers with disputes.
- Worked extensively with staff responsible for workers' compensation research at the Texas Department of Insurance, and the former Research and Oversight Council on Workers' Compensation. Reviewed agency documents, reports, and publications.
- Interviewed and received written comments from employers, employees, insurance carriers, health-care providers, research organizations, and other workers' compensation system stakeholders. Attended stakeholder briefings, seminars, and conferences.
- Interviewed staff from the Governor's Office, Lieutenant Governor's Office, Speaker's Office, Legislative Budget Board, State Office of Administrative Hearings, State Office of Risk Management, Texas Department of Insurance, Texas Department of Transportation, Texas Workforce Commission, University of Texas, Texas A&M University, and Legislative committees charged with examining workers' compensation issues.
- Attended Senate Workers' Compensation Select Interim Committee and House Business and Industry Committee hearings.
- Researched past legislation and legislative reports involving workers' compensation issues.
- Researched other state workers' compensation administrative and oversight functions.
- Performed background and comparative research using the Internet, and reviewed literature on workers' compensation and health care related issues.



**SUNSET REVIEW OF THE  
TEXAS WORKERS' COMPENSATION COMMISSION**

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