Washington State Department of Labor & Industries

Office of the Ombuds for Injured Workers of Self-Insured Employers

2018 Annual Report to the Governor

September 2018

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Executive Summary

Introduction

The Department of Labor & Industries (L&I's) Self-Insurance Program oversees and provides services to Washington employers that are certified to "self-insure." Self-insured employers pay workers' compensation benefits directly to employees who are injured or become ill on the job. More than 350 Washington companies are currently certified to self-insure and employ 25 percent of Washington workers.

Self-insured employers manage their own worker injury claims, usually through another company, called a third-party administrator (TPA). Managing claims includes making decisions about paying benefits and accessing medical care.

Office of the Ombuds

The Legislature established the Office of the Ombuds (Ombuds Office) for injured workers of self-insured employers in 2007, with the mission of advocating for injured workers. To accomplish this mission, the Ombuds Office coordinates with workers, employers, and providers, or their representatives, to:

- Inform injured workers about industrial insurance and their rights and responsibilities.
- Investigate and resolve complaints.
- Identify Self-Insurance Program deficiencies.
- Recommend policy solutions.

Ombuds Office staff collaborates with multiple stakeholders and conducts community outreach to help ensure the awareness and success of the Ombuds program.

About this report

This report to the Governor is required annually by RCW 51.14.400 for the reporting period July 1 through June 30. It summarizes activities of the Ombuds Office, including:

- Issues addressed during the past year, along with case scenarios.
- Monitoring activities, findings, and community outreach.
- Deficiencies in the self-insured workers' compensation system, and recommendations for improvement.

The Ombuds Office is committed to L&I's mission to keep Washington safe and working. Ombuds Office initiatives described in this report are geared toward ensuring fair and equitable benefits for injured workers, and continual process and systemic improvements.

Summary of activities and findings

The issues and activities addressed in this report are for July 1, 2017 through June 30, 2018.

The Ombuds Office received 2,149 inquiries regarding workers' compensation claims of self-insured employers, concerning 2,253 issues. General inquiries increased 33 percent due to enhanced community outreach. Of these inquiries, 1,069 resulted in an official investigation, while others were resolved by sharing information. Investigations involved 47 percent of self-insured employers. Reported issues remain similar to those of the prior reporting period, including concerns about:

- Delays in time-loss benefit payments, as well as medical treatment and medical bill payments.
- Independent medical exams (IMEs).
- Claim status issues, such as claim closure, denial, allowance, and re-opening.
- Incorrect wage calculations.

The Ombuds Office attempts to resolve issues quickly by working with the self-insured employer or TPA. If this is not possible, the Ombuds Office engages L&I's Self-Insurance Program to help resolve the issue.

The Ombuds Office team continues to experience an upward trend in the ability to resolve issues with the self-insured employer or TPA, which results in faster resolution and better outcomes for injured workers. We continue to assist workers with unresponsive claims managers, and have implemented an outreach plan to meet with these TPAs.

Initiatives 2017/2018

- The Ombuds Office is grateful to the Legislature, labor community, and business community for their continued support.
    - The Ombuds Office is fully staffed, our new database is functional, new data reporting is evolving, and the Ombuds Outreach team has expanded community outreach. Increased community outreach and improved data have helped provide a better understanding of the nature of issues in the self-insured community (inquiries increased 33 percent this year).
    - The Ombuds Office moved to Tacoma in January 2018. This move provides further separation and autonomy from L&I, and the new office is closer to much of the self-insured labor and business communities.
- The Ombuds continues to serve on several essential committees/workgroups:
    - The collaborative Self-Insurance Audit Reform project continues to be an important function to maintain compliance and identify process improvements for the self-insured community. The audit reform pilot project is complete and Self-Insurance

auditors are amid the first official audit cycle. Performance-based audits are addressing delivery of accurate and timely benefits, and issue-based audits are reviewing timeliness of medical bill payments.

The Ombuds will continue to monitor the success of the new audit model, including ensuring audit resources are adequately allocated, monitoring the impact on benefit delays and benefit accuracy, ensuring Tier 3 audits include a comprehensive review of self-insured employer workers' compensation systems, and monitoring the impact on repeat offenders who do not pass audits. As the new audit model evolves, so should Self-Insurance regulatory enforcement standards.

- The Self-Insurance Rules Review Workgroup was established in early 2017 as a collaborative rules modernization effort in follow-up to the Self-Insurance Audit Reform initiative. The workgroup's guiding principles ensure better communication to workers, greater certainty for employers, reduced re-adjudication, and stronger L&I regulation.

  The workgroup has identified several opportunities to streamline and modernize the self-insured system. Proposals include updating the workers' compensation administrator training curriculum, updating dispute resolution processes, enhancing worker communications, and a proposal to require out-of-state adjudicators to maintain a professional workers' compensation claims administrator certification. Rule changes are underway, and the Ombuds will continue to participate in discussions to identify future opportunities to improve processes and reduce re-adjudication. However, as long as the Self-Insurance Program continues to re-adjudicate claims, resources will be limited to improve self-insured processes.

  The work being done through audit reform and the Rules Review Workgroup is moving in the right direction, but the Ombuds continues to believe that self-insured employers should be allowed to issue formal orders when accepting, closing, or denying a claim. This will free up L&I resources to focus on audit, enforcement, dispute resolution, education, and electronic data reporting. The Ombuds also continues to recommend that a collaborative workgroup of L&I, labor, and business representatives begin discussions to address this topic.

- IME inquiries increased this reporting cycle (100 investigation vs. 62 last year). Complaints are primarily related to claims management, understanding the IME process, or the quality of the IME.

  The Self-Insurance Tool-Kit training continues to have a positive impact on claims management; however, this training is not mandatory. The Ombuds recommends some form of mandatory training for claims adjusters, as well as requiring communication to workers (mandatory brochure to worker) about the intent of the IME and what to expect during the IME process.

The Ombuds also recommends that the Audit Governance Committee address IME claims management (e.g., schedule an issue-based audit addressing the necessity of an IME, if feasible). Parameters defining the reasonableness and necessity of an IME may be required to help hold parties involved in the IME process accountable. We remain hopeful that Self-Insurance Risk Analysis System (SIRAS) medical bill payment data becomes available soon to establish IME data, including the number of self-insured IMEs.

The L&I Provider Quality and Compliance Unit ensures high quality, objective IMEs and has recently established provider quality improvement initiatives for review of examiners performing IMEs on State Fund claims. The Ombuds will continue to work with L&I and stakeholders to identify a systematic process for including Self-Insurance IME reports in the review process. The IME Business and Labor Advisory Team led by L&I has also identified opportunities to improve IME processes, including aligning complaint data for sources that track IME issues (State Fund, Self-Insurance, Ombuds Office, Project Help), using complaint data and feedback for quality assurance and trending patterns, and establishing a future opportunity task list, which involves including self-insured data.

- The Ombuds Office will continue to provide support and guidance to the new Hanford Workers Engagement Center (HWEC), workers of Hanford and their representatives, and the Department of Energy. We will coordinate with Self-Insurance to ensure processes are consistent and in compliance with current rules and regulations, including the new Hanford site workers presumption bill (SHB 1723), and will track all related issues in the Ombuds Self-Insured Ombuds Database (SIOD) system.

- The Ombuds Office will continue to support firefighters and law enforcement officers, help ensure processes related to the new post-traumatic stress disorder presumption legislation (SB 6214) are consistent and in compliance, and track and monitor related inquiries.

- The Ombuds recommends that self-insured employers start using the valuable services offered by Centers of Occupational Health and Education (COHEs). COHE health service coordinators help injured workers heal and return to work and provide support and training for providers. Preliminary discussions have occurred with a TPA representing multiple self-insured employers and a large COHE.

- The Ombuds Office will continue to work with stakeholders, including L&I's medical provider outreach team, to identify solutions that improve provider understanding of Self-Insurance protocols and communication with the self-insured community.

Conclusion

The Ombuds Office is committed to a strong advocacy program for injured workers, including timely and efficient resolution of issues and complaints. This requires ensuring an efficient self-insured workers' compensation system, and cultivating collaborative relationships with stakeholders. Community outreach and claims management process improvements will remain a primary focus in 2018/2019.

A MESSAGE FROM THE OMBUDS

I am pleased to report that the Office of the Ombuds has accomplished several goals and projects this year, which are detailed in this year's report.

I want to thank the Legislature, and labor and business communities for their continued support of the Ombuds Office. Our outreach team has increased their presence at outreach events and developed related outreach materials, including news articles and radio ads in multiple languages. As a result, the Ombuds Office received 2,149 inquires during this reporting period, a 33 percent increase over the prior year.

The new Self-Insured Ombuds Database (SIOD) has expanded our ability to track the nature of complaints and inquiries received in our office. This improved data reporting has helped us develop data driven solutions and monitor and identify key issues, including the impact of audit reform, impact of new legislation (e.g., new presumption bills), and training opportunities for third party administrators.

The Self-Insurance Audit Governance Committee and Rules Review Workgroup have made significant progress this year. The Audit Reform Committee transitioned to an official governance committee, the pilot project is complete, and the Self-Insurance audit team is amid the first official audit cycle. The Rules Review Workgroup has identified several outdated rules and processes and made recommendations to streamline and modernize the self-insured system. Independent Medical Exams (IMEs) continue to be a source of inquiries, and efforts to improve the IME process have been made by several interested parties, including the IME Business and Labor Advisory Team.

The Ombuds team has settled into our new Tacoma location (L&I Region 3 Office) and we're happy to be centrally located and closer to many self-insured labor and business stakeholders. Please stop by for a visit if you're in the area. Our new website is up and running – check it out at www.Lni.wa.gov/Ombuds.

Our primary mission is to advocate for injured workers, protect their rights and benefits under Washington industrial insurance rules and regulations, and resolve issues and complaints quickly. Key initiatives and projects will continue to concentrate on this mission and on improving processes. Expanding community outreach continues to be a top priority, and is key to maintaining awareness of issues and establishing priorities for the self-insured community.

We remain committed to building relationships with all stakeholders and identifying positive solutions and recommendations to improve the Washington workers' compensation system. We look forward to another productive year.

Donna Egeland
Ombuds for Injured Workers of Self-Insured Employers

Introduction

The 2007 Legislature established the Office of the Ombuds for Self-Insured Injured Workers to advocate for injured workers of self-insured employers, identify program deficiencies, and make recommendations for policy and process improvements.

The top priority of the Ombuds Office is to help injured workers and their representatives with questions and concerns about industrial insurance rules and regulations, and quickly resolve specific workers' compensation complaints. The Ombuds Office team aims to provide a high level of customer service as we help injured workers maneuver through the complexities of the workers' compensation system.

Another goal of the Ombuds Office is to ensure a smooth claim process for injured workers, which includes identifying areas for process improvement and related policy enhancements. Effective collaboration with multiple interested parties is critical, and the team strives to maintain objectivity and positive relationships with all stakeholders, including worker advocates, L&I staff, and the self-insured business community.

This report begins by describing the structure of the Ombuds Office and Self-Insurance in Washington. This is followed by a summary of inquiries and investigation results for July 1, 2017 through June 30, 2018, including statistical analysis of the issues addressed. Subsequent sections go into greater detail about process improvement recommendations and efforts to resolve primary issues.

Office of the Ombuds

The Ombuds program is funded by self-insured employers and governed by Revised Code of Washington (RCW) 51.14.300 through 51.14.400. All information is highly confidential, and injured workers are informed of their rights to confidentiality under RCW 51.14.370.

Governor Inslee appointed the current Ombuds for a six-year term effective March 2, 2015. The Ombuds reports to L&I Director Joel Sacks, but operates independently from the agency. The highly qualified Ombuds Office team consists of the official Ombuds position, an operations and outreach liaison, two workers' compensation adjudicators, and a program specialist.

Ensuring fair and certain relief on behalf of injured workers is the primary mission of the Ombuds Office, and is in the best interest of all parties involved in the Washington self-insured workers' compensation system. Efficient systems and approaches are key to streamlining processes for injured workers, and are a common goal of the workers' compensation community.

PRIMARY RESPONSIBILITIES OF OMBUDS OFFICE

Investigate and resolve complaints

- We ensure injured workers receive appropriate benefits under Washington industrial insurance rules and regulations. It is important for workers to understand their rights and responsibilities and the investigation process. The top priority of the Ombuds Office is to resolve all complaints as efficiently and quickly as possible, and maintain contact with the worker throughout the investigation process. When a timely resolution is not feasible, the complaint is referred to L&I's Self-Insurance Program for further action.

Provide information and training

- We address questions and concerns about the workers' compensation process. The Ombuds Office team strives to provide excellent customer service and empathy as we help workers understand the complexities of the workers' compensation system and maneuver through the claim process. The team provides training and education, from official training to simply directing an individual claims adjuster to the appropriate regulation, administrative procedure, or claims management tools and resources.

Track complaints and inquiries

- We maintain a comprehensive database of complaints and inquiries, document outcomes, and analyze trends. Ombuds staff uses data analytics to identify systemic issues, as well as potential policy and process improvements.

Recommend policy and process improvements

- We identify solutions and opportunities for potential self-insured program procedural improvements, and provide recommendations. We coordinate with applicable L&I divisions, external stakeholders, workgroups and committees.

Maintain collaborative relationships

- We collaborate with multiple interested parties and cultivate positive relationships with all stakeholders, including worker advocates, L&I staff, and the self-insured business community.

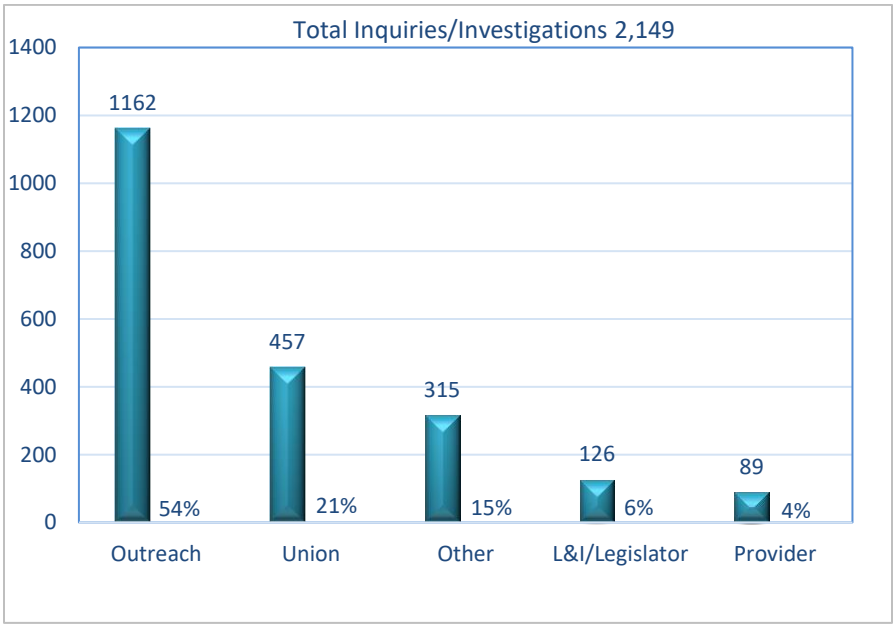
Conduct community outreach

- We participate in community events and provide training and education to constituents. The Ombuds Office team appreciates the opportunity to participate in conferences, meetings, and committees. These forums provide a meaningful way to share information about the Ombuds program, build relationships, gather information, learn more about issues and concerns, and help identify solutions.

Referrals

As shown in Figure 1, community outreach and referrals from worker advocates are the major source of referrals to the Ombuds Office. Referrals from treatment providers have increased. Other sources of referrals include friends of workers, legislators, L&I staff, attorneys, and employers and their representatives.

Figure 1: Referral Source



Source: Self-Insurance Ombuds Database (SIOD)

Injured workers receive *A Guide to Workers' Compensation Benefits for Employees of Self-Insured Businesses*, which includes a reference to the Ombuds program. The Ombuds program brochure is also widely distributed by the Ombuds Office and within the labor community. The Ombuds Office website at www.Lni.wa.gov/Ombuds provides additional information and was updated this year.

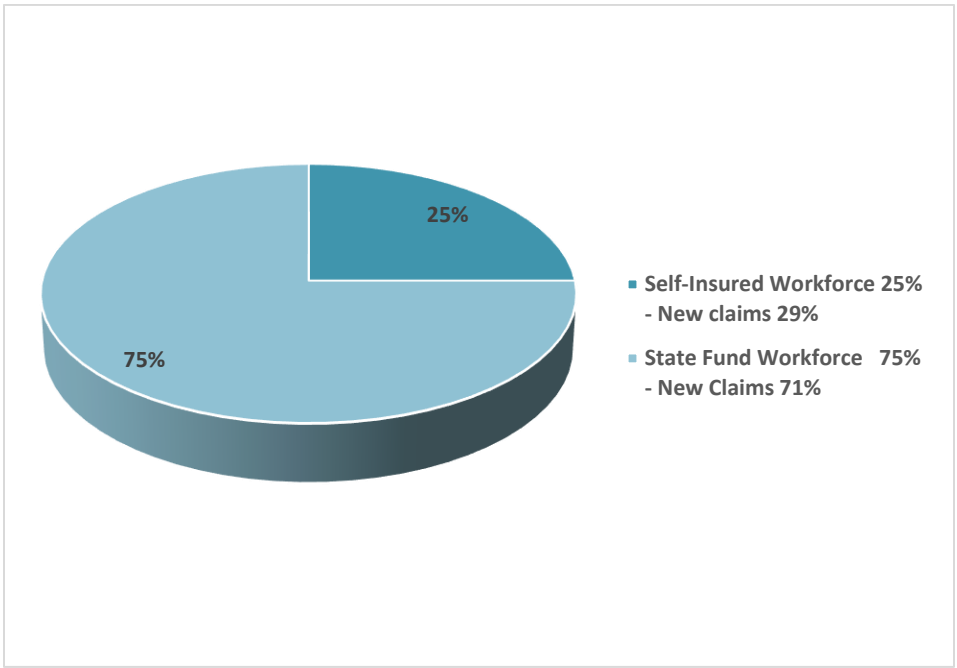
SELF-INSURANCE IN WASHINGTON

Self-Insurance is an alternative method of providing workers' compensation coverage for Washington's largest employers. Self-insured employers may choose to self-administer their workers' compensation program or contract with a third-party administrator (TPA) to manage their claims process. L&I has regulatory authority over industrial insurance rules and regulations, and L&I's Self-Insurance Program enforces these regulations for self-insured employers. This includes providing certification services, audits, education, and training, and assessing penalties if indicated.

There are currently 358 active self-insured employers in Washington, employing over 917,000 workers. Self-insured workers represent 25 percent of Washington's workforce. Self-insured employers reported 44,074 new claims compared to 109,962 new State Fund claims (29 percent of new claims) during FY 2017. More than 92 percent of self-insured employers currently contract with a TPA. There are 65 TPA locations, and 52 percent are located outside of Washington.

Figure 2 shows the proportion of workers covered by self-insured employers, compared to workers covered by State Fund employers in Washington.

Figure 2: Washington's Workforce



Source: L&I Self-Insurance Section

Self-Insurance basic requirements

To qualify for Self-Insurance, businesses must meet certain requirements, including:

- Be in business for at least three years.
- Meet mandatory financial standards and obligations.
- Demonstrate the existence of an established safety program, including an effective accident prevention program.
- Submit a description of an acceptable industrial insurance administration process to L&I.

Standard workers' compensation benefits

All workers are entitled to the same level of benefits provided by Washington industrial regulations, including but not limited to:

- Medical benefits for approved treatment related to a work-related injury or illness.
- Partial wage replacement for lost wages due to a temporary disability resulting from a work-related injury or illness.
- Vocational assistance if the worker qualifies for retraining.
- Permanent partial disability award to compensate for a permanent loss of bodily function.
- Disability pension if the worker is totally, permanently disabled from any gainful employment.
- Death benefits for survivors if a worker dies as the result of a work-related injury or illness.

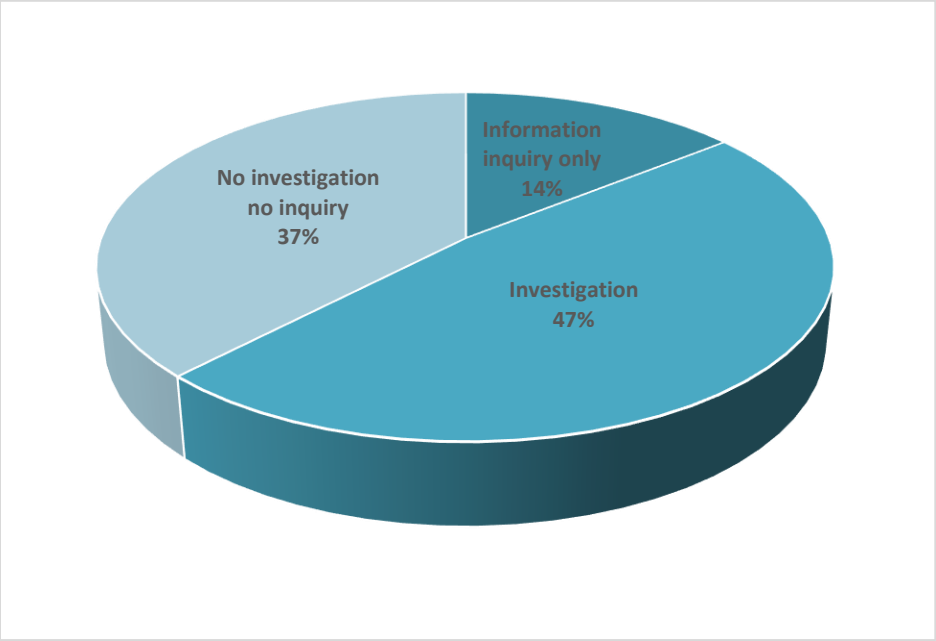
Summary of Activities and Findings

The first priority of the Ombuds Office is to act as an advocate for injured workers of self-insured employers. This involves providing information on industrial insurance and identifying, investigating, and facilitating resolution of issues and complaints from workers and their representatives.[1] The following information is a summary of investigation activities and findings for FY 2017/2018.

INQUIRIES

The Ombuds Office received 2,149 inquiries regarding workers' compensation claims of self-insured employers, involving 2,253 different issues. General inquiries increased 33 percent, primarily due to expanded community outreach. Many inquiries were informational in nature and did not warrant an official investigation; however, 1,069 investigations were required during the 2018 fiscal period. Investigations involved 47 percent of self-insured employers; 37 percent of employers did not encounter any type of inquiry in the Ombuds Office, and 14 percent had information-only inquiries.

Figure 3: Inquiries Proportion by Self-Insured Employers



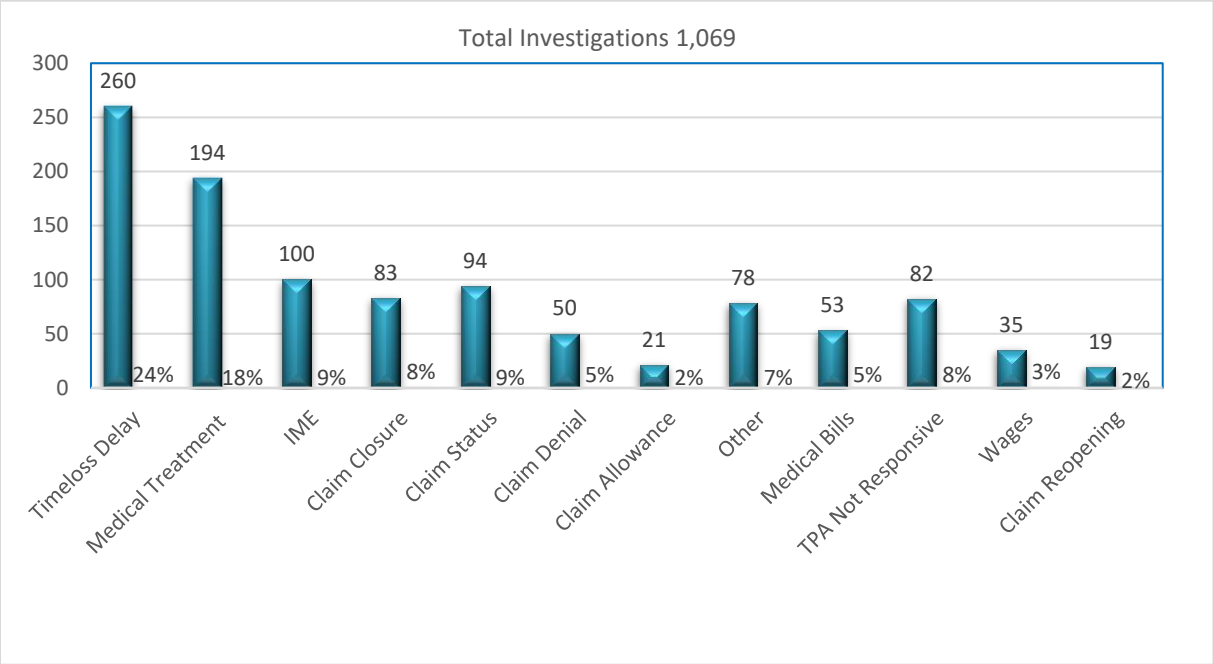
Source: SIOD

[1]RCW 51.14.340

INVESTIGATIONS

The Ombuds Office completed 1,069 investigations during the FY 2017/2018 reporting period. Figure 4 compares the issues involved in these investigations. Some investigations involve more than one issue about a claim.

Figure 4: Reported Investigation Issues



Source: SIOD

The categories remain fairly consistent with the prior reporting period. The Ombuds Office implemented a new tracking system in 2017, which has improved reporting functionality and has an expanded data hierarchy describing the nature of inquiries.

Points of interest:

- Delayed or denied time-loss benefits remain the primary source of complaints. Resolution of these benefit delays continues to be a top priority for the Ombuds Office, as well as the Self-Insurance Audit Governance Committee. The Tier 2 pilot audit addressed the timeliness of time-loss and permanent partial disability benefit payments, but only employers that failed Tier 1 benefit accuracy audits moved to a Tier 2 audit. Consequently, Tier 1 of the current audit cycle addresses the timeliness of time-loss benefit payments for all self-insured employers.

- The second most common source of inquiries is medical treatment issues. Medical bill payment delays continue to be an issue. The current audit cycle requires an issue-based audit for all self-insured employers, and is focusing on medical bill payments. The Self-Insurance audit team will use Self-Insurance Risk Analysis System (SIRAS) electronic data to identify

employers at the highest risk of non-compliance with timely payments of medical bills, and will then perform a manual audit on that group of employers.

- Independent medical exam (IME) investigations increased (100 investigations in 2018 vs. 62 in 2017). We believe the L&I Self-Insurance Program's new IME Tool-Kit training module, emphasizing proactive communication with injured workers and knowing when it is appropriate to schedule an IME, has made a positive impact. However, this training is not mandatory for all claims adjudicators. The good work of the IME Business and Labor Advisory Team should also have a positive impact, and we will continue to closely monitor the impact on IME issues.

- Concerns regarding claim status (claim closure, denial, allowance, re-openings) continue to be a source of inquiries. New rule recommendations established by the Self-Insurance Rules Review Workgroup address some of these issues by streamlining and modernizing the claim status process (for example, changing the SIF-5 SI Report on Occupational Injury or Disease form, improving injured worker communications).

- The Ombuds Office team provides assistance when a TPA does not respond to an injured worker. These investigations increased significantly (82 in 2018 vs. 30 in 2017). However, our new SIOD system has improved our capability to capture this data, and we are now also able to track when a TPA does not respond to our office (it's rare that a self-insured employer does not respond). Consequently, the Ombuds outreach team has started identifying and meeting with TPAs who experience a high volume of no response to injured workers or the Ombuds Office.

- Incorrect wage calculation investigations have increased 30 percent this reporting cycle (35 in 2018 vs. 27 in 2017). The Tier 1 pilot audit, which ended in early 2017, addressed some of the more complex elements of Washington's wage calculations. The Self-Insurance audit team approached these audits with an "education before sanction" mind-frame, and stakeholders agree there were several lessons learned.

  Current Tier 2 audits address the accuracy of wage calculations. SIE/TPAs that fail Tier 1 time-loss benefit audits will move to this benefit accuracy audit. We will monitor the progress of the current audit cycle and the impact of training that occurred during the pilot audits. The Ombuds also recommends that business and labor continue to work toward an agreement to modernize the wage definition.

RESOLUTION PROFILE

The following describes the methods used to resolve self-insured workers' compensation investigations. Some investigations involve more than one issue.

Figure 5: Resolution Profile

	FY2018	FY 2017	FY 2016	FY 2015
Total Number of Investigations	1,069	629	443	440
Claim Adjudicated Correctly	258	173	158	155
Resolved – SIE / TPA	292	197	92	95
Resolved - L&I Assistance	186	176	137	143
Not in Jurisdiction / No Response	333	83	56	47

Source: SIOD

In the spirit of quick resolution, the Ombuds Office team attempts to resolve issues directly with the injured worker's employer or a third-party administrator (TPA).

If the Ombuds Office team is unable to resolve the issue with the self-insured employer or TPA, the team engages L&I's Self-Insurance Program for assistance in resolving the issue. If necessary, the complaint is referred to the program for further review and action (RCW 51.14.350). Self-Insurance Program staff conducts a thorough review, makes an independent claim determination, and provides the Ombuds Office with a summary of the action taken.

The Ombuds Office team continues to increase efforts to resolve issues with the SIE or TPA directly. We are happy to report another increase this year in this regard, resulting in faster resolution and better outcomes for injured workers.

CASE SCENARIOS

Time-loss benefit delays

An injured worker contacted the Ombuds Office with concern after reading about entitlement to Cost of Living Adjustments (COLAs) on the L&I website. He thought his benefits were being underpaid and that he should have been receiving COLAs every July 1. A review by our office found that there were several years of COLAs that had not been paid, resulting in an underpayment of benefits in

excess of $5,000. The Ombuds team contacted the TPA and the unpaid benefits were promptly paid. L&I penalized the TPA for delay of benefits.

Another worker contacted the Ombuds Office requesting assistance with determining if she was entitled to time-loss benefits. The worker contended she was terminated from employment with physical restrictions still in place at the time of her termination. The Ombuds Office contacted the TPA and obtained a copy of the claim file. Upon thorough review, it was determined that the worker was entitled to time-loss benefits because she was not released to full duty prior to termination. The Ombuds Office worked closely with the TPA to ensure proper payment of time-loss benefits.

Medical treatment

An injured worker contacted the Ombuds Office seeking assistance because the TPA rescinded her surgery authorization. The Ombuds Office contacted the TPA claims manager and it was determined that the worker attended an IME, which did not support surgery. However, the attending physician (AP) disagreed and recommended Utilization Review (UR). The UR recommended the surgical procedure. It was also determined that the post-surgical rehabilitative care caused an aggravation to the cervical spine. The Ombuds Office requested L&I intervention, resulting in an order directing the TPA to authorize surgery and accept responsibility for the aggravation of the cervical spine.

Another worker contacted the Ombuds Office regarding delayed authorization for his hearing aids and lack of response from the TPA to his provider's requests for authorization. The Ombuds Office contacted the TPA and determined that the authorization request had not been received. The hearing aid center submitted a new request and the TPA claims manager promptly authorized the hearing aids.

IME concerns

An injured worker contacted the Ombuds Office contending a TPA refused to reschedule his independent medical examination (IME) at a location closer to his residence. The worker explained that the exam was at a location nearly 88 miles away from where he lives. The Ombuds Office contacted the out-of-state TPA and asked that the exam be scheduled in accordance with the Self-Insured Claim Adjudication Guidelines (at a location, time and place reasonably convenient to the worker). The TPA was initially resistant because they needed to make a claim determination within the allotted 60-day period. The Ombuds Office recommended they request an interlocutory order and reschedule the exam at a location reasonably convenient to the worker. The TPA obtained an interlocutory order and rescheduled the IME closer to the worker's residence.

Another injured worker contacted the Ombuds Office regarding a request for surgery by her AP and indicated the TPA required an IME prior to approving surgery. The worker explained that an IME a year prior indicated that surgery was possible. The new IME did not recommend surgery; however, neither the examiner nor the AP had been provided a copy of the prior IME report. The

Ombuds Office contacted the TPA and explained that a prior IME and attending physician had recommended surgery and the current IME did not have all pertinent claim records available at the time of the exam. Surgery was then authorized.

Claim status

A TPA contacted the Ombuds Office concerning claim allowance and delay of benefits. A worker filed three separate claims, State Fund and self-insured, in September 2016, contending an occupational hearing loss. Both self-insured employers provided L&I with information that they were not the employer responsible for the last injurious exposure. In February of 2018, L&I's Self-Insurance Program requested a claim determination as a State Fund claim. Upon review by the Ombuds Office, a determination of claim allowance as a State Fund claim was ultimately rendered in June 2018.

Claim closure

An injured worker contacted the Ombuds Office because her claim was closed based on medical preponderance; however, medical evidence resulting from a subsequent MRI supported further treatment. The worker was advised to protest the closing order with supporting medical from her AP. The Ombuds Office worked with the L&I claims adjudicator and an order was issued reversing the claim closure.

Claim denial

An injured worker contacted the Ombuds Office in September 2017 concerning a claim rejection based on the opinion of an independent medical examiner who felt the worker's job duties did not contribute to an occupational injury. At the time the examiner rendered his opinion, he did not have a copy of the worker's job description or job duties. Upon suggestion from our office, the worker obtained additional opinions from his long-time family doctor and his treating specialist, both supporting that the worker's job duties contributed to his medical condition. This resulted in L&I's reversal of the claim denial and allowance of the claim.

Communication concerns

An injured worker contacted the Ombuds Office with concerns after months of trying to contact the TPA regarding her unpaid medical bills. The Ombuds Office team contacted the TPA multiple times with no response. After further review, it was also determined that a claim determination had not been made on the medical-only claim within the allotted 60-day period. Additionally, the claim had not been reported to L&I. Concerns were escalated to the TPA supervisor, and ultimately issues surrounding communication, payment of medical bills, and claim allowance were resolved.

Major Initiatives

The Ombuds Office has been involved in several important projects this past year, including Self-Insurance Program improvements. Significant projects are highlighted in this section.

SELF-INSURANCE AUDIT REFORM

The Self-Insurance Audit Reform project began in 2013 with the aim of developing a new audit process. The project has made significant progress since then. The initial audit reform workgroup has transitioned to an official Self-Insurance Audit Governance Committee led by L&I, with an advisory committee consisting of representatives from the labor community, self-insured employer community, and the Ombuds Office. The new audit model focuses on issues identified by the governance committee and promotes compliance with Washington State industrial insurance regulations and education.

The new Self-Insurance audit model is designed to:

- Build an effective, industry-leading audit model that combines performance-based, complaint-based and issue-based audits.
- Ensure program compliance by self-insurers, including delivery of accurate and timely benefits.
- Detect non-compliers using reliable data, and apply a tiered audit approach as necessary to bring them into compliance.
- Communicate clear expectations to self-insurers and provide effective claims management tools, consultation and training.
- Shorten the prior audit cycle to ensure all self-insured employers and third party administrators (TPAs) experience an audit every two years.

Tier 1 audits

- L&I's Self-Insurance audit team completed initial Tier 1 pilot audits in 2017. This project was limited in scope and involved wage calculations only. L&I's primary goal was to spend a sufficient amount of time with each self-insured employer and their representative TPA, if applicable, to provide clear expectations of the new audit process and training on wage calculations.
- Of 358 self-insured employers: 162 employers passed Tier 1 with an accuracy rate of 70 percent or greater; 135 employers did not pass Tier 1 and moved to a Tier 2 audit; and 61

employers were not eligible for a Tier 1 audit due to new or inactive status and experienced no eligible claims.

- Wage calculation methodology errors significantly outnumbered calculation errors due to the complexity of determining the correct monthly wage. A methodology error is an error in the application of rules, policies or guidelines. A calculation error is a mathematical error or transposition of numbers.

  There were over 3,000 methodology errors identified vs. 108 calculation errors. Of 1,703 claims audited: 231 calculations were correct, 573 wages were over-calculated, and 899 wages were under-calculated. Of the 899 claims that were under-calculated, 635 were below the five percent acceptable variance. If the wage was under-calculated, the employer was required to correct the wage calculation and pay any additional benefits owed. If a wage was over-calculated, the employer had the choice of requesting a wage order and/or pursuing recovery of the overpayment from the injured worker.

  The top methodology errors involved including all hourly rates of pay (shift differential, weekend premiums, working out-of-class); including employer paid healthcare contribution and/or correct amount for medical, dental and vision; establishing a period that fairly represents the wage at time of injury; and including all bonuses and other compensation. Unlike specific calculation errors, general methodology errors stem from procedural complexities and payroll variations, which present challenges to aligning with existing law. Consequently, it is not uncommon to see more than one methodology error in a claim.

- Lessons learned and future opportunities include:

  - The walkthrough with the auditor and SIE/TPA was educational for all parties. Collaboration throughout the life of the audit, including education in the walkthrough, allowed all participants to share ideas and tools.

  - Flexible communication expedited the audit process, including use of secure email and Outlook calendaring, providing an option for an in-person walkthrough, and establishing a payroll contact to ease the process of gathering complex payroll information.

  - Using a new Wage Classification Matrix to standardize the new audit review processes improved consistency between auditors.

  - There is now a better understanding regarding the complexity and inconsistency of wage calculations in the Washington workers' compensation system. Findings were provided to L&I State Fund claims administration to improve consistency of wage calculations for self-insured and State Fund claims. The Ombuds recommends that business and labor continue to work toward an agreement to modernize the wage definition.

- There is a need to improve the rigid audit review process, such as documenting a one-cent difference in the benefit calculation or performing an in-depth wage review when the injured worker is receiving the maximum time-loss rate.

- The pass/fail threshold (70 percent) should be established after data is available, and should accurately reflect the performance of the self-insured business community, especially for large employers with a high volume of claims or employers with a small number of claims.

Tier 2 audits

- Tier 2 pilot audits addressed timeliness of time-loss and permanent partial disability benefit payments. Audits ran from February 2017 through July 2017 and were done for 126 of 358 self-insured employers (nine SIEs that did not pass Tier 1 did not have any audit-eligible claims due to the period that was selected for Tier 2 review). Audit results are:

    - 59 employers passed Tier 2 audits.

    - 20 employers were required to submit a Performance Improvement Plan.

    - 16 employers did not pass Tier 2 and qualified for a Tier 3 audit.

    - 31 employers did not pass the threshold due to a limited number of transactions available for review.

- Lessons learned and future opportunities include:

    - Training and outreach should be provided for SIEs/TPAs regarding the requirement to date stamp documents, which impacts important compliance deadlines to begin paying benefits.

    - Develop clearly defined pass/fail audit thresholds due to the low number of transactions in certain payment categories.

    - Develop short and concise letters and reports to be used in the audit process. This will prevent delays and limit confusion on the audit process.

    - Due to the importance of benefit timeliness, the next Tier 1 audit cycle will involve all self-insured employers.

Tier 3 audits

- The Tier 3 pilot audits focused on the entitlement of time-loss compensation and loss of earning power (LEP) payments, which is important to ensure injured workers receive sure and certain relief (RCW 51.04.010). Tier 3 audits ran from October 2017 through February 2018. Nine self-insured employers were reviewed (seven of 16 SIEs that did not pass Tier 2

did not have any audit-eligible claims due to the period that was selected for Tier 3 review). Audit results are:

  - One employer passed.
  - One employer did not pass their Tier 3 audit and is required to participate in training provided by L&I.
  - Three employers did not pass and were required to participate in L&I training with a six-month follow-up audit.
  - Three employers did not pass and were required to submit a Performance Improvement Plan.
  - One employer moved to a Tier 3 audit, but did not have any audit eligible claims.

- Lessons learned and future opportunities include:
  - L&I's direct access to certain TPA online claims management systems expedited the audit process.
  - Tier 3 audit results reinforced training on the importance of date stamping.
  - Training and outreach are needed regarding missing documentation (LEP worksheets and supporting information, medical reports, electronic and paper notes).
  - Training and outreach are needed regarding how to calculate LEP correctly and the importance of paying the first three days of time-loss for the waiting period if owed.

Next steps

L&I's Self-Insurance audit team has implemented the first official two-year audit plan for 2018 through 2019. The three major areas of focus include:

- Performance-based audits (Tier 1 – timeliness of time-loss benefits; Tier 2 – benefit accuracy, including wage calculations; Tier 3 – benefit entitlement).
- Issue-based audits (medical bill payments).
- Complaint-based audits.

Audits from the first tiers will run concurrently with audits from the prior 2nd and 3rd tiers, as completed, so that delays are minimized and efficiencies are maximized.

The primary goal of the new audit model is to correct behavior through auditing and training. As the new audit model continues to evolve, so should Self-Insurance regulatory enforcement standards. The Ombuds will closely monitor the success of the new audit model, including:

- Ensuring audit resources are adequately allocated, including resources dedicated to issue-based and complaint-based audits.

- Monitoring impact on benefit delays and benefit accuracy based on inquiry and complaint-based data contained in the new SIOD system, as well as future L&I audit results.

- Ensuring Tier 3 audits are in-depth and involve a comprehensive review of self-insured employer workers' compensation systems, including administrative assessments and accident reporting.

- Monitoring impact on self-insured employers that repeatedly do not pass at any level of the audit process.

- Monitoring evolution of Self-Insurance regulatory enforcement standards for non-compliance and implementation of applicable corrective action and Self-Insurance certification withdrawal regulations (RCW 51.14.095, RCW 51.14.080, WAC 296-15-260). This should be consistent with the L&I director's goal that non-compliers will experience a different L&I.

The Ombuds will continue to participate on the Self-Insurance Audit Governance Committee, as the audit process is vital to ensuring compliance and identifying self-insured non-compliance and systemic issues.

SELF-INSURANCE RULES REVIEW WORKGROUP

The Self-Insurance Rules Review Workgroup was established in early 2017 as a collaborative rules modernization effort in follow-up to the Self-Insurance Audit Reform initiative. As the audit reform project evolved, many outdated rules and processes were identified. The workgroup's guiding principles ensure better communication to workers, greater certainty for employers, reduced re-adjudication, and stronger L&I regulation. The committee is sponsored by L&I and consists of representatives from the labor community, business community, and Ombuds Office.

Current opportunities to streamline and modernize the self-insured system include the development of the following rule change proposals:

- A new comprehensive goal-oriented curriculum for a professional workers' compensation claims administrator designation and certification.

- A new process to request allowance, denial, or closure of a claim from L&I that replaces the all-purpose SIF-5 with modern purpose-driven forms.

- A new way to communicate important claim actions between employers and injured workers that only requires L&I intervention if there is a dispute.

- A new set of templates for employers and TPAs that enhances communication to workers and provides greater certainty for employers.

- A new approach to unreasonable delay of benefits penalty requests arising from wage calculation errors when the new communication process is followed. The goal is to greatly reduce the number of administrative wage orders.

- A new expectation that eliminates the requirement for a manual claims log to be replaced by an electronic record of claims.

- A new proposal to require that out-of-state adjudicators maintain a professional workers' compensation claims administrator designation and certification.

Next steps

Rule changes are underway; the following is the rule change process:

- File the rule language.
- Obtain public comment.
- Adopt new rules.
- Implement new rules, and make any necessary operational changes by summer 2019.
    - New procedures
    - Updated training

The Ombuds will monitor progress of these rule changes, continue to participate on the Rules Review Committee, and help identify future opportunities to improve processes and reduce re-adjudication. However, as long as the Self-Insurance Program continues to re-adjudicate claims, Self-Insurance resources will be limited to improve necessary self-insured processes, transform claim initiation work flows to better support programs like COHE, and further develop SIRAS electronic data reporting to identify risks and opportunities for improvement (i.e., use SIRAS medical bill payment data to establish useful IME data, develop SIRAS claims management data).

The work being done through audit reform and the Rules Review Workgroup is moving in the right direction, but the Ombuds continues to believe that self-insured employers should be allowed to issue formal orders when accepting, closing or denying a claim. The Joint Legislative Audit & Review Committee (JLARC) 2015 audit report on workers' compensation claims management confirmed that the current process of re-adjudication by Self-Insurance takes an average of 66 days, compared to an average of six days to make a decision on a State Fund claim. According to the JLARC study,

"L&I agrees with the [self-insured] employer for 99 percent of acceptance decisions and 98 percent of denials."[2]

Reducing Self-Insurance re-adjudication will free-up L&I resources to focus on audits, enforcement, dispute resolution, education, and electronic data reporting. This claims management concept aligns with L&I's goals of making it easier to do business with L&I and focusing enforcement efforts on the bad actors rather than the good ones, which is consistent with many self-insured claims management protocols in other states. The Ombuds continues to recommend that a collaborative workgroup of L&I, labor, and business representatives begin discussions to address this topic.

INDEPENDENT MEDICAL EXAMS

Independent Medical Exams (IMEs) continue to be a top source of inquiries and complaints from self-insured injured workers (100 investigations in 2018 vs. 62 in 2017). Complaints are primarily related to claims management or the quality of the IME.

The Ombuds team believes the Self-Insurance IME Tool-Kit training, which addresses when it is appropriate to schedule an IME and proper communication with injured workers, continues to have a positive impact on claims management. However, this training is not mandatory and we continue to see that claims management guidelines are not followed. Forty-seven percent of Ombuds Office IME complaint investigations are related to IME claims management issues, such as poor communication regarding the purpose of the exam, high number of exams on a particular claim, failure to send IME reports to the attending physician, and poor coordination of the exam, including the distance to the exam not meeting statutory guidelines.

The Ombuds Outreach Team is scheduling training visits with TPAs that experience a high volume of complaints, and is coordinating training efforts with the Self-Insurance training team. We recommend that Self-Insurance IME training become mandatory in some form, and that mandatory communication be provided to workers regarding the intent of the IME and what to expect during the IME (i.e., mandatory brochure to injured worker). The Ombuds also recommends that the Audit Governance Committee address IME claims management (e.g., schedule an issue-based audit addressing the IME process, if feasible). Parameters defining the reasonableness and necessity of an IME may be necessary to help hold parties involved in the IME process accountable.

Ombuds team investigations regarding the quality of IME exams and examiner conduct account for 29 percent of Ombuds team IME investigations. These investigations are referred to the L&I Provider Quality and Compliance Unit, whose goal is to ensure high quality, objective IMEs and

[2] JLARC Proposed Final Report: Workers' Compensation Claim Management, Published January 2016

reports and develop quality improvement initiatives. The Provider Quality and Compliance Unit reviews and takes appropriate action on each complaint.

The L&I Provider Quality and Compliance Unit established the IME Business and Labor Advisory Team in 2007 to respond to stakeholder concerns and validate IME issues. The advisory team members represent State Fund and self-insured employers, and provide insight on short-term and long-term strategies. The advisory team advises L&I on IME issues and provides feedback on new processes, including L&I's IME action plan to improve the IME process and the IME Business and Labor Advisory Team Charter.

The Ombuds joined the advisory team in 2017 to address IME issues in the self-insured environment, and has seen positive movement toward addressing ongoing IME quality concerns. Following are recent actions taken by L&I to improve the IME process and future opportunities identified by the advisory team:

- L&I developed an IME Business and Labor Advisory Team Charter, which establishes a framework for the work of the advisory team, role of an advisory team member, and purpose of the advisory team. The advisory team meets three times per year. Advisory team members advise L&I on their experiences with IMEs and provide input on process improvements which support L&I IME initiatives.

- L&I recently established Provider Quality and Compliance Unit quality improvement initiatives for review of examiners performing IMEs on State Fund claims. The Ombuds will continue to work with L&I and stakeholders to identify a systematic process for including Self-Insurance IME reporting in these review processes.

- The advisory team identified future IME process improvements:

    - L&I initiated a project to align data with all sources that track IME issues and complaints (State Fund, Self-Insurance, Ombuds Office, Project Help).
        - A new self-insured SIRAS medical Electronic Data Interchange (EDI) reporting system will collect data for the self-insured employer community regarding cost, frequency, and use of IMEs.

    - The team recommends using complaint/feedback data for quality assurance and trending patterns, including identifying systemic problems (e.g., training, scheduling, IME reports, etc.) and identifying training initiatives.

    - The team prioritized topics for upcoming meetings: Legal issues (testimony, billing), examiner training, including self-insured data, panel company quality assurance, and review of complaints regarding out-of-state examiners.

The Ombuds will continue to attend advisory team meetings and monitor progress toward improving the IME experience, specifically around the issue of improving self-insured claims management and communication with injured workers. We remain hopeful that self-insured SIRAS medical bill payment data will soon become available to establish IME data, including the number of self-insured exams.

INTERNAL PROCESS CHANGES

The Ombuds Office continually reviews internal processes to ensure excellent customer service and that complaints and issues are resolved as quickly as possible. The following process improvements have improved efficiency and timeliness of investigations.

Community outreach expansion

Thanks to the Legislature and labor and business communities for supporting the addition of a new Operations and Outreach Liaison position. The Ombuds outreach team focuses on expanding community outreach and related outreach materials, including new marketing with radio interviews and news articles in multiple languages. The outreach team has also increased their presence at conferences and training. We will use new data analytics to help identify future opportunities, including expanding outreach to TPAs experiencing a high volume of workers' compensation program issues. We also plan to continue to expand outreach to Spanish-speaking communities.

Self-Insured Ombuds Database (SIOD) replacement

Implementation of the new SIOD system, which was fully functional effective July 2017, continues to be a significant project for the Ombuds team. This new system increases functionality and data analytics, which will improve our ability to identify trends and help develop solutions to improve the self-insured workers' compensation system. We continue to expand functionality and reporting capabilities.

Injured worker communication improvements

The new, modernized Ombuds website can be found at www.Lni.wa.gov/Ombuds

Structured settlement training

The Ombuds team has engaged in training to maintain current knowledge and skills needed to assist injured workers with structured settlements. We have recommended implementation of an official application, similar to the State Fund application, to help injured workers start the structured settlement process when necessary. We will monitor the status of implementing this form.

Other Initiatives

The Ombuds Office continues to search for opportunities to improve internal Self-Insurance Program processes and identify enhancements to self-insured systems. The Ombuds Office is confident these initiatives will lead to further positive solutions.

SELF-INSURANCE PROGRAM

The Ombuds continues to meet regularly with L&I's Self-Insurance Program staff and stakeholders to ensure injured worker concerns are resolved in a timely manner, and to identify opportunities for process improvement:

- The Ombuds team has determined that delayed orders on medical-only claims are an issue that needs to be addressed. We recommend working on a solution such as requiring allowance orders on all claims. The current statute (51.14.130), which requires timely claim allowance or denial of a claim, does not provide an exception for medical-only claims; however, the Self-Insurance rules do not require these orders due to limited resources. A potential solution may be to allow self-insured employers to issue orders, as discussed previously in this report, in exchange for requiring allowance and denial orders on all claims.

- The Ombuds team will work with the Self-Insurance Program to identify how to eliminate delays in issuing orders when there are multiple TPAs and/or the State Fund involved in a particular claim.

OUT-OF-STATE CLAIMS MANAGEMENT

The Ombuds Office continues to have concerns about the availability of out-of-state adjusters and their understanding of the unique characteristics of Washington's workers' compensation system. Recent experiences with complaint-based audits and results from the Self-Insurance Audit pilot project suggest that Washington should join the surrounding region (AK, CA, ID, OR, MT) in requiring in-state adjudication, or at a minimum require self-insurance certification for out-of-state adjudicators.

HANFORD SITE – DEPARTMENT OF ENERGY

The Ombuds team will continue to provide support and guidance to the new Hanford Workers Engagement Center (HWEC), workers of Hanford and their representatives, and the Department of Energy regarding workers' compensations processes, including the new Hanford site workers presumption bill (SHB 1723) that went into effect on June 7, 2018. We will coordinate with the dedicated team within the Self-Insurance Program overseeing Hanford claims to ensure processes are consistent and in compliance with current rules and regulations. We will also track and monitor all related inquiries and complaints in the Ombuds SIOD system.

FIRST RESPONDER PTSD PRESUMPTION

The Ombuds team supports firefighters and law enforcement officers who have workers' compensation questions and concerns. We will continue to ensure processes are consistent and in compliance with current rules and regulations, including the new post-traumatic stress disorder (PTSD) presumption legislation (SB 6214). We will track and monitor related inquiries and complaints in the Ombuds SIOD system.

CENTERS OF OCCUPATIONAL HEALTH AND EDUCATION

The Ombuds continues to recommend that self-insured employers start using the valuable services offered by Centers of Occupational Health and Education (COHEs). COHE health services coordinators (HSC) have developed sophisticated protocols that help injured workers heal and return to work and provide support and training for providers.

To this end, L&I's Occupational Health Services has helped facilitate discussions regarding the possibility of conducting a pilot project with self-insured employers and one of the largest COHEs. Preliminary discussions have occurred with the COHE and a TPA representing multiple self-insured employers. One of the keys to success identified in a previous pilot is to address system issues early, including the exchange of information (HSC access to claims, billing data) between the COHE and the self-insured employer/TPA. The Ombuds remains committed to moving this important issue forward.

MEDICAL PROVIDER OUTREACH

The Ombuds team will continue to work with stakeholders, including L&I's medical provider outreach team, to identify solutions that improve medical provider understanding of Self-Insurance protocols and communication with the self-insured community, as well as increase provider support in rural areas.

Conclusion

The Ombuds Office is available to help injured workers of self-insured employers, worker advocates, providers, self-insured employers and their representatives, and any other party involved in the self-insured system. Community outreach is a top priority for the Ombuds Office and is key to maintaining awareness of issues and establishing priorities for the self-insured community. The Ombuds Office team is dedicated to efficient resolution of issues and complaints, and identifying positive solutions and recommendations to improve the Washington self-insured workers' compensation system.

How to get help

For assistance with a self-insured workers' compensation issue, please call:

- Ombuds Confidential Hotline: 888-317-0493
- Ombuds Confidential Secured Email: SIOmbuds@Lni.wa.gov

Let us know your thoughts

The Ombuds Office welcomes feedback and suggestions about this report, as well as any suggestions for improving the self-insured workers' compensation system. Additional information about the Ombuds program can be found at:

- Ombuds Office website: www.Lni.wa.gov/Ombuds

Contact information

For more information about this report or Self-Insurance in Washington, please contact:

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