

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

*Fiscal Year (FY) 2021 Annual Report to the Governor*

**September 2021**



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## A MESSAGE FROM THE OMBUDS

This year's report marks the completion of my first term as Ombuds for Self-Insured Injured Workers—highlighting progress toward the program's initial priorities, goals and recommended improvements. In the Executive Summary and throughout the report, you will find information focused on three key areas:

- 1. Ongoing work:** Throughout the COVID-19 pandemic, the Ombuds team continues receiving referrals, as well as providing support and training for the self-insured community. Although new inquiries dipped at the outset of the pandemic, new referrals are returning to pre-pandemic rates.
- 2. Impacts of new legislation and rules:** The legislature passed important legislation in 2020 (ESSB 6440, HB 2409) to address Independent Medical Exams, self-insurance penalties, and third-party administrator requirements, which has required L&I to develop several new rules and related procedures. I participated in a collaborative advisory work group led by L&I that helped inform new rules, processes, and will help identify opportunities for self-insured process improvements as these new regulations evolve.
- 3. Deficiencies and recommendations:** You will read of several identified areas for improvement and in particular, I recommend the Self-Insurance Rules Review Work Group reconvene to address important ongoing changes in, and modernization of, the Self-Insurance Program. Continued evolution of the Self-Insurance Audit Governance Committee is also important, ensuring continual development of L&I's regulation and enforcement efforts.

The Office of the Ombuds for Self-Insured Injured Workers remains committed to supporting injured workers and expanding community outreach. These activities are key to identifying issues and establishing priorities for making workers' compensation program improvements among self-insured employers. Ombuds Office initiatives and projects continue to identify positive solutions and recommendations to modernize the Washington workers' compensation system.

Thank you for your support of the Office of the Ombuds for Injured Workers of Self-Insured Employers. March 2021 marks the beginning of my second term and I look forward to continuing to help workers of Self-Insured Employers to heal and get back to work.

Donna Egeland  
Ombuds for Injured Workers of Self-Insured Employers

# Executive Summary

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## Introduction

The Department of Labor & Industries' (L&I's) Self-Insurance Program oversees and provides services to Washington employers that are certified to do so. Self-insured employers pay workers' compensation benefits directly to employees who are injured or become ill due to their job. More than 350 Washington companies are certified to self-insure, employing 27 percent of our workforce.

Self-insured employers manage their own worker injury claims, usually through a third-party administrator (TPA). This includes making decisions about paying benefits and getting 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 fiscal year reporting period of July 1 through June 30. It summarizes each year's Ombuds Office activities, including:

- Issues addressed during the past year, along with case scenarios.
- Activities, findings, and community outreach.
- Identifying deficiencies in the self-insured workers' compensation system, and providing 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.

The Ombuds has been reappointed for a second six-year term starting March 2021. This year's report describes accomplishments during the Ombuds' first term, as well as top priorities currently identified for the next six-year term.

## Summary of Fiscal Year 2021 activities and findings

As mentioned, the issues and activities addressed in this report are for FY 2021 (July 1, 2020 through June 30, 2021). Although the total volume of inquiries decreased, due to the COVID-19 pandemic, the Ombuds Office continues to receive new cases daily and the number of new referrals is returning to pre-pandemic rates.

The Ombuds Office resolved 2,380 inquiries regarding workers' compensation claims of self-insured employers this past year. Of these inquiries, 1,166 resulted in an official investigation, while others were resolved by sharing information. Investigations involved 44 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.
- Initial claim reporting delays via the Self-Insurance Electronic Data Reporting System (SIEDRS), not using new L&I communication templates and forms, and failure to respond to Ombuds Office claim file requests.
- Claim status issues, such as claim closure, denial, allowance, and re-opening.
- Unresponsive TPAs.
- Independent medical exams (IMEs).
- Incorrect wage and loss of earning power (LEP) benefit calculations.

The Ombuds Office attempts to resolve issues quickly by working directly 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 a significant upward trend in the ability to resolve issues with the self-insured employer or TPA, resulting in faster resolution and better outcomes for injured workers. The team continues to assist workers with unresponsive claim managers, and despite the pandemic, we are meeting virtually with these TPAs.

## Ombuds Office business transformation

The Ombuds Office implemented significant business transformation to modernize operations—making it well-positioned for the future. Strategic improvements include:

- Reorganized and relocated the Ombuds Office.
- Established an official project team that focuses on community outreach, data analytics, quality assurance, and policy and procedural updates.
- Implemented several internal policies and procedures to improve workflow.
- Provisioned a new Self-Insured Ombuds Database offering ready access to information and improving data analytics.

## Self-Insurance Program improvements

The Ombuds serves on several committees and work groups and collaborates with multiple stakeholders to address improvements in the Washington Self-Insured Employer workers' compensation system. These improvements are:

- Self-Insurance established a new, modernized tiered audit system and the initial project team established a collaborative governance committee consisting of representatives from labor and business. Self-Insurance auditors are amid the second biennial audit cycle and must begin using trend data to continue to evolve the audit model. This ensures strengthened regulation and appropriate training and penalties for those SIEs/TPAs that fail audits.
- As of July 1, 2021, about one-third of self-insured employers failed their Tier 1 benefit timeliness audit and moved to a Tier 2 wage calculation accuracy audit. The Self-Insurance Program audit team is closely monitoring this concerning trend and its potential causes. When the current audit cycle ends, the team will identify opportunities for improvement.
- With the implementation of ESSB 6440, the IME process continues to evolve. A cross-disciplinary collaborative work group identified several improvements to the IME process. L&I is implementing these and Self-Insurance must follow suit. The Ombuds will continue to monitor new rules and processes and their impact on self-insured IMEs.

## Other initiatives supported by this Office

- Filing self-insured claims is complicated for providers, workers, and employers, alike. Much of it is manual, risking errors. L&I's modernization project offers opportunities for improvement, such as expediting a single pathway to reporting.
- Fortunately, the L&I COHE Program is considering expansion to include the self-insured community—understanding the information-sharing barriers to be addressed. L&I is also planning to conduct an updated recruitment for COHE vendors in FY 2022, and exploring ways to further self-insured employer engagement in the next COHE contracting cycle.
- Injured workers still have trouble getting approved mental health care because there are not enough approved providers. L&I continues a pilot project to expand care by adding master's-level therapists and is considering a survey to determine the cause of low provider enrollment.

## Recommendations

- The complexity of wage calculations continues to be an issue due to vast differences in occupational wages in the self-insured community. This often causes time-loss benefit underpayments and overpayments, which creates financial hardships for injured workers. The Ombuds recommends the rules review work group address simplifying the self-insured wage calculation.



- The Ombuds continues to collaborate with the Self-Insurance Program to identify opportunities for process improvement. Many of their current priorities are related to multiple new rules and processes. The Ombuds recommends the following:
  - Establish an efficient dispute resolution process
  - Streamline the current penalty process to ensure timely, consistent penalties
  - Shift the focus of re-adjudication to stronger regulatory oversight, enforcement, audit, and training
  - Improve self-insurance data reporting
  - Reconvene the Self-Insurance Rules Review Work Group
- The Self-Insurance Rules Review Work Group addresses outdated rules/processes, including those identified by the audit reform initiative. They implemented several important rule updates, including:
  - New rules related to HB 2409 on self-insured employer/TPA penalties and duties
  - Licensing of TPAs
  - Rules surrounding ESSB 6440, addressing independent medical exams (IMEs)
- Recommend the Rules Review Work Group reconvene to address specific improvements, including:
  - Implement several new rules related to HB 2409 and ESSB 6440
  - Effectively communicate with injured workers
  - Reduce re-adjudication with a shift to stronger regulation, enforcement, and training
  - Make the dispute resolution process more efficient
  - Address complex wage calculations
  - Improve the L&I Self-Insurance Risk Analysis System
- The Ombuds continues to recommend self-insured employers use services offered by the Centers of Occupational Health and Education (COHEs). Their health services coordinators (HSCs) manage care and care transitions, helping injured workers heal and return to work faster. Unfortunately, a pilot project to help employers begin using these services was delayed. The Ombuds team advocates for moving this pilot forward.

## **Conclusion**

The Ombuds Office is committed to a strong advocacy program for injured workers, including timely and efficient resolution of issues and complaints. The Ombuds Office advocates for new rules and procedures to further the goal of continual process improvement.

# Introduction

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The Office of the Ombuds for Self-Insured Injured Workers advocates for injured workers of self-insured employers, identifies program deficiencies, and makes recommendations for policy and process improvements.

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

The Ombuds Office works to ensure a smooth claim process for injured workers by identifying areas for process improvement and related policy enhancements. Effective collaboration 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 describes the structure of the Ombuds Office and Self-Insurance in Washington. This is followed by a summary of inquiries and investigation results for Fiscal Year 2021, spanning July 1, 2020 through June 30, 2021, including statistical analysis of the issues addressed. Each section then details work to resolve issues as well as process improvement recommendations.

## Office of the Ombuds

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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 second six-year term effective March 2021. The Ombuds reports to L&I Director, Joel Sacks, but operates independently from the agency. The team consists of the official Ombuds position, an operations and outreach supervisor, 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. The Ombuds operates in the best interest of all parties involved in the Washington Self-Insured Employer workers' compensation system.

## PRIMARY RESPONSIBILITIES

### **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 for excellent customer service and empathy—helping workers understand and maneuver through the often-complex workers' compensation claims process. The team provides a range of training and education on appropriate regulations, administrative procedures, or claim 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 improvements. To prepare our recommendations, we coordinate with applicable L&I divisions, external stakeholders, work groups, and committees as well as other groups.

### **Maintain collaborative relationships**

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

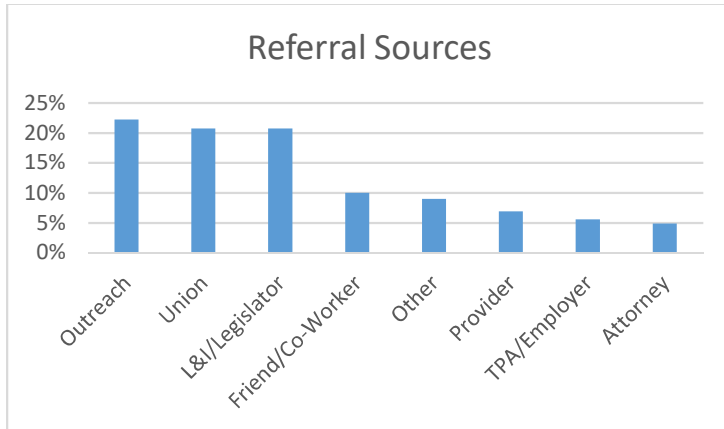
### **Conduct community outreach**

- We participate in community events, providing training and education to constituents. Participation in conferences, meetings, and committees offer meaningful ways to share information, build relationships, and identify both issues and solutions.

## Referrals

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

**Figure 1: Referral sources**



Source: Self-Insurance Ombuds Database (SIOD)

## SELF-INSURANCE IN WASHINGTON

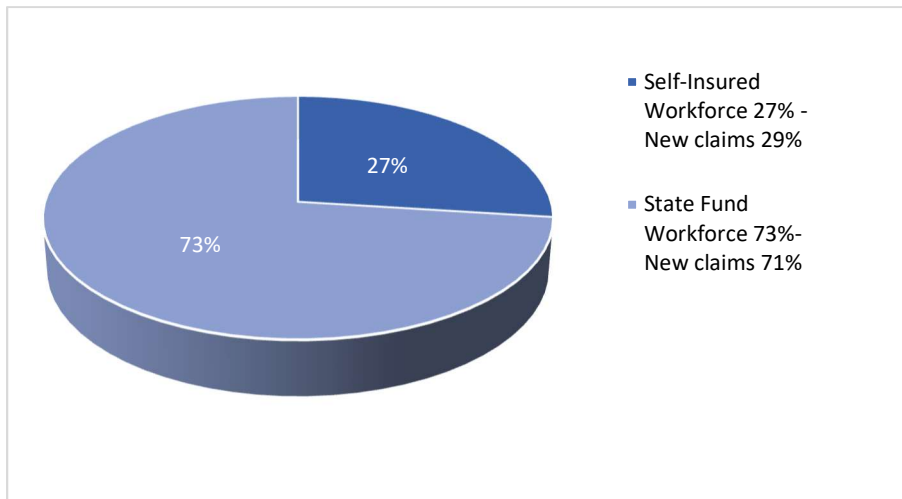
Self-insured employers typically represent the state's largest companies. They choose to self-administer their workers' compensation program or to contract with a third-party administrator (TPA) to manage their claim process. L&I has regulatory authority over all industrial insurance rules and regulations, and enforces these regulations for self-insured employers. This includes providing certification services, audits, and education and training, and assessing penalties if indicated.

### Self-Insured Employer Facts:

- There are 351 active self-insured employers in Washington, employing approximately 972,068 workers.
- Self-insured workers represent 27 percent of Washington's workforce.
- Self-insured employers reported 40,118 new claims compared to 99,995 new State Fund claims (29 percent of new claims) during FY 2020.
- More than 94 percent of self-insured employers currently contract with a TPA. There are 68 TPA locations, and 59 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

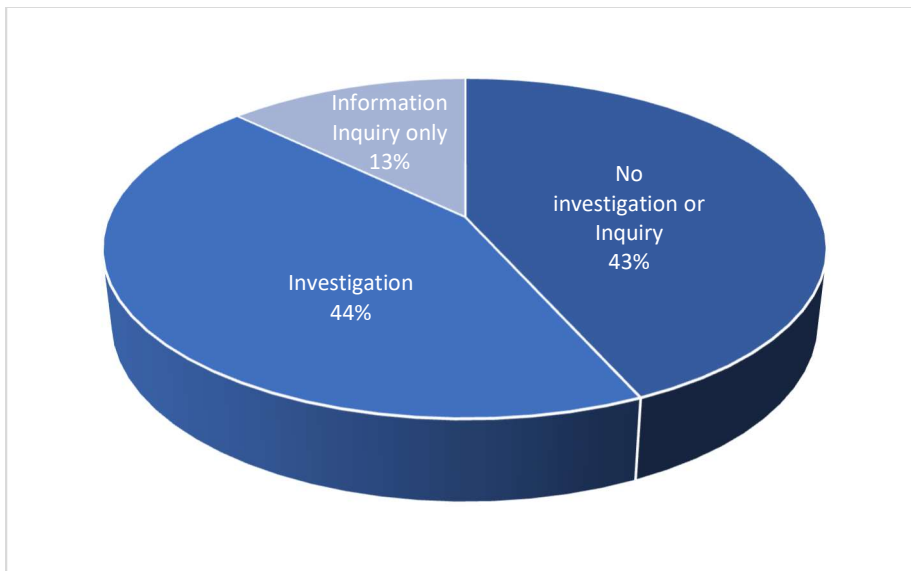
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The Ombuds Office highest priority is to advocate for injured workers of self-insured employers. This involves providing information about industrial insurance and identifying, investigating, and facilitating resolution of issues and complaints from workers and their representatives.<sup>1</sup> The following information is a summary of investigation activities and findings for FY 2020/2021.

## INQUIRIES

The Ombuds Office resolved 2,380 inquiries regarding workers' compensation claims of self-insured employers for the 2020/2021 reporting period as of June 30, 2021. We received information-only inquiries on about 13 percent of self-insured employers. The rest were split almost evenly, with investigations for 44 percent and no investigation or inquiry needed for 43 percent of self-insured employers.

**Figure 3: Inquiries proportion by self-insured employers**



Source: SIOD

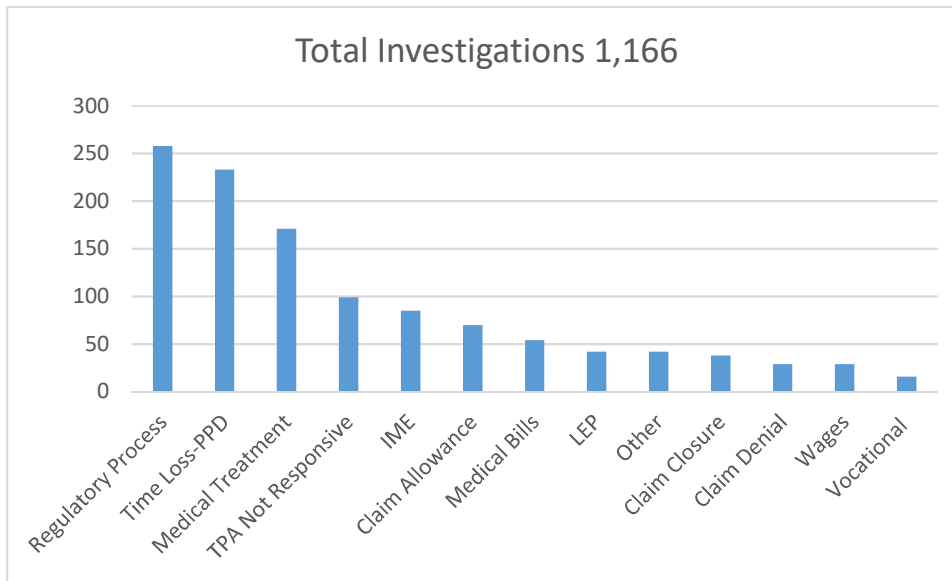
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<sup>1</sup>RCW 51.14.340

## INVESTIGATIONS

Of the 1,166 investigations during FY 2020/2021, Figure 4 compares the issues involved.

**Figure 4: Reported investigation issues**



Source: SIOD

The categories remain fairly consistent with the prior reporting period, however, issues regarding following regulatory processes has moved to the top. The Ombuds Office’s new tracking system continues to evolve—now with expanded data hierarchy that expands the nature of inquiries.

Points of interest:

- The timeliness and accuracy of time-loss benefits remain a primary source of complaints and resolving these benefit issues continues to be a top priority for the Ombuds Office. We believe instituting self-enforced late benefit-payment penalties will help reduce late benefit payments—a proven solution in surrounding states (AK, CA, OR). The Audit Governance Committee continues to ensure effective audits of time-loss benefit payments and establishing trends for self-insured employers/TPAs that do not pass these audits.
- The new Regulatory Process category is now also a top issue. This category tracks a regulatory process that is otherwise not addressed in another existing category. Examples are initial claim reporting via the Self-Insurance Electronic Data Reporting System (SIEDRS), not using L&I templates and forms, and failure to respond to our claim file requests.
- The current two-year audit cycle includes addressing correct use of new L&I templates and forms. The Ombuds Office outreach team contacts TPAs with high complaints in this area—meeting with those requesting help to grasp new regulatory processes.



- Concerns regarding claim status (claim allowance, closure, and denial) continue to be a source of inquiries. New rules recommended by the Self-Insurance Rules Review Work Group addressed some of these issues by streamlining and modernizing both process and forms. The work group should continue to address ongoing issues, including medical-only claim delays and related orders.
- The team continues work with TPAs noted for low responses to workers and representatives.
- Independent medical exam (IME) investigations increased slightly. Forty percent of IME investigations were a failure to send the IME report to the injured worker or attending provider, which is now required per RCW 51.36.070. Several new IME rules are under development per ESSB 6440—and closely monitored by the team.
- Incorrect wage calculations continue. Current Tier 2 audits address the accuracy of wage calculations. In early FY 2020, new rules required better communication with injured workers about the wages used to calculate disability benefits. The Ombuds team continues to monitor the impact of these new communications and Tier 2 audits. We recommend the Rules Review Work Group address the complex self-insurance wage calculation issue.

## RESOLUTION PROFILE

The following describes how investigations were resolved. Please note, some involve multiple issues.

**Figure 5: Resolution profile**

	FY2021	FY2020	FY2019	FY2018
Total Number of Investigations	1,166	1,086	1,208	1,069
Claim Adjudicated Correctly	283	304	360	258
Resolved – SIE / TPA	588	366	313	292
Resolved - L&I Assistance	155	224	184	186
Not in Jurisdiction	100	125	172	253
No worker follow-up	40	67	179	80

Source: SIOD

The team first works directly with the injured worker’s employer or a TPA and we’re making significant progress—in FY 2021, *we achieved a 60% increase in faster resolutions and better outcomes for injured workers*. If we cannot resolve the issue with the self-insured employer or TPA, we engage L&I’s Self-Insurance Program and the complaint may be referred for further review and action (RCW 51.14.350). If that happens, they make an independent claim review and determination, providing our team with a thorough summary.

## CASE SCENARIOS

This report includes case scenarios on a wide range of issues summarizing Ombuds Office activities (RCW 51.14.400). These case scenarios describe some of the cases closed FY 2021.

### **Time-loss benefit delays**

A worker contacted the Ombuds Office stating their time-loss benefits were terminated because they declined a light-duty job offer. Following research, we found the offer did not meet valid light-duty job offer requirements, under RCW 51.32.090. The Ombuds assistant provided the TPA with the elements of a valid light-duty job offer, resulting in prompt reinstatement of time-loss benefits.

Another worker contacted us after the TPA terminated time-loss benefits. We found it was based on the worker's voluntary resignation. Yet, the worker had not reached maximum medical improvement and was not released to the job of injury by their medical provider. The Ombuds Office oversaw proper review of the medical and claim file, finding the employer didn't accommodate light-duty limitations. Benefits were reinstated and the worker received over \$20,000 in back time-loss benefits.

### **Medical treatment**

A worker contacted the Ombuds Office for assistance with a delay of more than three months in their surgery authorization. The Ombuds Office contacted the TPA and learned that additional medical documentation was needed to authorize the surgery. The Ombuds assistant helped the worker request L&I intervention on the delay, and the TPA authorized the surgery.

### **Claim allowance**

A fire fighter reached out to the Ombuds Office because they were seeking allowance of their claim. The Ombuds assistant contacted the TPA regarding occupational disease presumption criteria, as the worker was diagnosed with work-related cancer. The TPA submitted a claim denial request; however, the criteria for presumption was met and L&I issued an allowance order.

### **IME concerns**

A worker contacted the Ombuds Office after receiving notice of an IME with an examiner whom they previously filed a formal complaint. The worker felt they would not receive a fair and unbiased evaluation by this examiner and we helped to schedule her IME with a different examiner.

A worker reached out to the Ombuds Office because they had not received a copy of their IME report. We learned the TPA was not aware of new regulations (RCW 51.36.070) requiring copies to be sent to both the worker and the attending provider. The TPA promptly sent the report to the worker.

## **Communication concerns**

A worker contacted us after several unsuccessful attempts to reach the claim manager about surgery authorization. We experienced the same, then escalated to a supervisor after which the claim manager promptly provided verbal and written surgery authorization.

## **Claim closure**

A worker contacted us requesting assistance after L&I advised that the TPA had closed their claim. The worker needed further treatment; however, the claim closure appeared to be final and binding. The Ombuds Office found a chart note received after claim closure, which could be construed as a timely protest. We also discovered the closing order was sent to an incorrect mailing address. L&I reviewed the protest and overturned the TPA's closure.

## **Claim denial**

A worker contacted the Ombuds Office after their claim was denied because the injury happened in a parking lot. Our investigation found the injury actually occurred on the job. We helped the worker file a protest, which resulted in L&I allowing the claim.

Another worker reached out to the Ombuds Office after the TPA submitted a claim denial request for a COVID-19 exposure. We reviewed it, discussing claim dispute rights and the criteria for claim allowance with the worker. The worker submitted additional information regarding the exposure at work and L&I issued an allowance order.

## **Wage concerns**

A worker contacted the Ombuds Office with concerns about the calculation of their wages and rate of overtime. We explained that overtime hours are calculated at the regular rate of pay, not the overtime rate of pay. However, during review of the representative period used by the TPA for the calculation, an error was identified. The Ombuds Office assisted the worker with disputing the wage calculation, which resulted in a more than \$200 increase in monthly time-loss benefits.

## **Regulatory process**

A worker reached out to the Ombuds Office with concerns regarding time-loss calculations. Our investigation also found the claim was not reported in a timely manner, the claim allowance was not requested, and the time-loss benefits paid were not reported correctly. We worked with the TPA to ensure the claim and time-loss benefits were corrected and L&I issued an allowance order.

# Major Initiatives

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The Ombuds Office was involved in several important projects that improved the self-insurance system. Significant projects are highlighted in this section.

## OMBUDS OFFICE BUSINESS TRANSFORMATION

The Ombuds Office made several internal process changes over the past six years and is well-positioned for the future. These improvements focus on modernizing our Office, supporting a positive customer service experience and timely resolution of issues and complaints. We continue to monitor these process improvements—making amendments as necessary.

### Ombuds Office modernization

Our modernization includes updating staff job descriptions, implementing flexible work schedules, and a department reorganization. These include updating Ombuds investigator processes to help streamline investigation and resolution timeliness, and establishing a project team that focuses on data analytics, quality assurance, community outreach, and policy and procedure updates.

Primary policy and procedural updates include:

- Revised investigation procedures, including internal investigation and official claim file requests. Provisioned electronic access to TPA claims management systems and secure email messaging.
- Created internal workflow efficiencies through new procedures and process checklists.
- Improved referral processes with the Self-Insurance Program, IME Provider Quality and Compliance, Discrimination and Claim Suppression, State Fund claim issues, DOSH complaints, and Civil Rights.
- Updated internal records retention schedule.

The Ombuds Office also relocated to Tacoma, providing separation and autonomy from L&I, a key stakeholder, and better access to the majority of labor and business stakeholders.

### Ombuds Office Self-Insured Ombuds Database (SIOD)

One of the Ombuds's initial, major projects was to select and implement a new Self-Insured Ombuds Database (SIOD). This system is fully functional, and we continue to improve data analytics, including developing trend reports by SIE/TPA, quality assurance reports, and a new dashboard. This

data has been instrumental in expanding community outreach to appropriate areas, implementing quality assurance standards, and developing dashboard metrics.

## **Community outreach**

We created a team to expand community outreach—update the Ombuds website and informational materials, increase our presence at conferences, and offer more training for all stakeholders. Just as the team gained momentum, we faced the COVID-19 pandemic. The team rose to the occasion, identifying ways to share information about our services via social media and reached out to key union leaders.

We also started meeting with TPAs to review their specific summary inquiry data, identifying improvements from each encounter to help streamline claim management. We found these virtual meetings especially helpful to address the pandemic’s unique claim management challenges. We established regular, reoccurring meetings with some TPAs and plan expansion to others.

## **Mission statement**

The Ombuds Office adopted an official mission statement and core values, as follows:

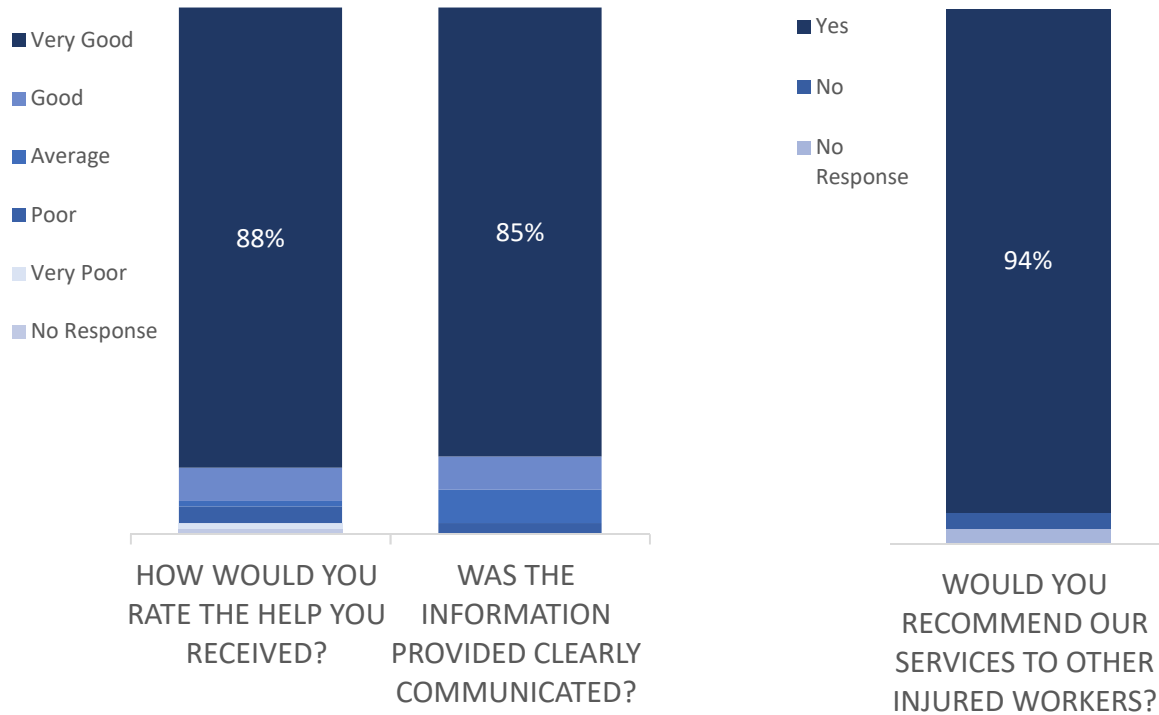
The primary mission of the Office of the Ombuds for Self-Insured Injured Workers is to provide a confidential dispute resolution process, which advocates for fair and equitable outcomes for injured workers of self-insured employers. We provide an informed annual report to the Governor and Legislature containing a summary of our activities, findings, and recommendations for systemic improvements to the Washington Self-Insured Workers’ Compensation system.

Core Values:

- **Independence:** We are independent and collaborate with multiple stakeholders (injured workers of self-insured employers and their representatives, self-insured employers and their representatives, medical providers, L&I).
- **Integrity:** We take pride in our work and are committed to ethical, honest, and fair outcomes.
- **Professionalism:** We maintain the highest level of professionalism at all times.
- **Empathy:** We are committed to kindness and understanding the needs of our customers and the impact of our actions.
- **Confidentiality:** We are committed to the highest level of confidentiality at all times, and protect the information given to us.

## Injured worker customer service surveys

The Ombuds Office sends surveys to injured workers after resolution of their issue(s). The current response rate is 23 percent, and overall, survey results are positive. Ninety-four percent of customers said they would recommend our services to other injured workers.



## SELF-INSURANCE AUDIT REFORM

The modernized Self-Insurance audit process has been in place for over three years, and auditors are amid their second official two-year audit cycle. Audit processes continue to be informed by the Self-Insurance Audit Governance Committee, which is led by L&I. The advisory committee consists of representatives from the labor community, self-insured employer community, and the Ombuds.

The 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 and representatives, including payment of accurate and timely benefits.
- Detect non-compliers using reliable data, and apply a tiered audit approach to bring them into compliance.
- Communicate clear expectations to self-insurers and provide effective claim management tools, consultation, and training.
- Shorten the prior audit cycle to ensure all self-insured employers and TPAs experience an audit every two years.

The current two-year audit cycle is scheduled for completion in December 2021.

### **2020/2021 Self-Insurance Compliance Audit Plan**

Self-Insurance began the current 2020/2021 two-year audit cycle in January 2020. The Self-Insurance Compliance Audit Plan continues aligning with Red Book audit standards, maximizing audit resources across the self-insured community. The three areas of audit continue to be performance-based audits, issue-based audits, and complaint-based audits. Completion of the current, second full audit cycle will begin establishing trends, which will help inform future audits and regulatory compliance priorities.

#### **Performance-based audits**

These audits address timeliness, accuracy, and entitlement to disability benefit payments. They consist of three progressive levels of audit using a tiered audit approach, with each tier increasing in depth based on audit findings.

For example, failure to pass Tier 1 will lead to a Tier 2 audit. Failure to pass a Tier 2 audit will lead to a comprehensive Tier 3 audit. An 80 percent passing threshold is required to pass each audit tier.

- **Tier 1 audits** – Verify time-loss payments are paid timely and in compliance with applicable rules and regulations. A maximum of 10 claims and 50 transactions were evaluated.
  - 203 employers passed Tier 1.  
98 employers did not pass and moved to Tier 2.  
26 employers are amidst audit or have not started this cycle’s audit.
  - 23 employers had no time-loss audit eligible claims, moving to the next audit cycle.

As of July 1, 2021, about one-third of self-insured employers failed their Tier 1 audit. The self-insurance audit team is closely monitoring this trend and potential causes. After this current audit cycle the audit team will identify opportunities for improvement.

- **Tier 2 audits** – Verify the correct wage was calculated, which is used to determine time-loss benefits. A maximum of 10 claims were evaluated, and employers are allowed up to a five percent variance below the auditor’s wage calculation.
  - 16 employers passed Tier 2.  
9 employers did not pass and moved to Tier 3.  
61 employers are amidst audit or have not started this cycle’s audit.
  - 12 employers had no eligible claims, moving to the next audit cycle.

Top wage accuracy issues include health care benefit contributions and bonuses, and correct use of the representative wage period and multiple rates of pay.

Auditors continue with difficulties in auditing wage calculations, primarily due to vastly different, complex wages in the self-insured community. Also, errors in wage calculations create time-loss benefit overpayments and underpayments, creating financial hardships for injured workers.

The Ombuds strongly recommends the Rules Review Work Group address this issue, and simplify these wage calculations. Many states have adopted proven solutions.

- **Tier 3 audits** – Verify time-loss and loss of earning power payments are paid correctly and in compliance with applicable rules and regulations.
  - 9 employers have started Tier 3 audits - no audit results available to date.

Employers that fail the Tier 3 entitlement audit are required to take further action to improve their processes, as follows:

- Develop a Performance Improvement Plan if they had fewer than five claims available for review.
- Participate in L&I’s mandatory training, with a six-month follow-up review if they had five or more claims available for review.



### **Issue-based audits**

Self-Insurance Program Compliance Auditors are auditing a sample of self-insured employers and TPAs regarding the new WAC templates and forms. Their purpose is to review use of proper forms and templates when changing time-loss benefit calculations and starting, stopping, or denying time-loss benefit payments (WAC 296-15-425). This pilot audit will be used to assess the feasibility of this new audit type. The issue-based audit includes 80 firms over a variety of TPAs. Each firm has a maximum of 10 claims audited and a maximum of 50 correspondence templates reviewed.

Auditors had a specific learning curve on this new audit process, and the time needed to research the varying self-insured employer and TPA claim management systems. The pilot is working, however, with auditors further developing this important audit concept.

### **Complaint-based audits**

Self-Insurance auditors completed one reasonable inquiry audit during the current audit cycle, involving claim documentation. Results found that the TPA followed appropriate claim management processes, and that the issue was a communication breakdown. As often is the case, good communication between all parties involved in a claim remedies many concerns.

### **Audit accomplishments**

Self-insurance audit reformation resulted in improved, modernized audit processes. Primary lessons learned and audit changes include:

- The initial audit reform project team became an advisory governance committee.
- Improved communication between auditors, employers, and TPAs, leading to better understanding of the audit process, outcomes, reports, and audit cycle timelines.
- Increased electronic access to employer/TPA systems and decreased onsite audits—and a more streamlined audit process, overall.
- Refined performance-based tier audits, with these processes now adopted in the current audit cycle. Close monitoring of outcomes is important as the new audit model continues to evolve. For example, Tier 3 entitlement audit scope may need updating because of reduction in wage orders.
- Implemented use of medical EDI and SIEDRS data to help inform audit scope.
- Implementing out-of-scope audits, empowering auditors to find out-of-scope issues during an audit. This will help inform the SIE/TPA and provide an opportunity to correct the issue.

The pandemic continues to delay some Tier 2 and Tier 3 audits. These audits require a large volume of documentation that is mailed to L&I and reviewed by staff, many of whom continue to telework. Fortunately, Tier 1 audits are processed remotely and auditors will likely begin transitioning back to the office as needed to process paperwork by the end of 2021.

## Audit priorities

The Ombuds is closely monitoring evolution of the new audit model, as it takes multiple audit cycles to establish reliable trends. Ombuds audit priorities continue to include the following:

- Timeliness and accuracy of time-loss benefits, and efficient establishment of trends.
- Correct use of new rules and processes, with a focus on new TPA claim administration and IME legislation (HB 2409, ESSB 6440).
- Timeliness and efficiency of time-loss claim allowance and claim closure.
- Timeliness and efficiency of medical-only claim allowance and claim closure.
- Timeliness of initial claim reporting by the self-insured employer, including the employer's internal claim reporting system (e.g., date stamping, posting notices, claim packets).
- Efficiency of claim reserve practices.
- Accuracy of self-insured employer's quarterly assessment reporting, including payroll data.
- Efficient use of medical electronic data reporting and the Self-Insurance Data Reporting System (SIEDRS), and implement new claim management electronic data reporting via the electronic data interchange (EDI) to help identify future issue-based audit concepts.

As the new audit model evolves, so should Self-Insurance regulatory enforcement standards. It takes several years for new audit models to mature and establish trends and so we will continue to track the impact of new legislation and new audit processes on current audit cycle results. This includes:

- Ensuring audit volume is commensurate with the size of employer. The Ombuds continues to question the size of Tier 1 timeliness audits for large employers, as the current number of claims audited for large employers seems low. Self-Insurance will evaluate this issue at the end of the current audit cycle to ensure fair and efficient use of audit resources.
- Audits for small self-insured employers and TPAs have proven challenging because there are not as many claims eligible for audit. Consequently, we recommend establishing training early on for these entities to ensure they understand Washington's workers' compensation processes.
- Ensuring audit resources are adequately allocated, including those for issue-based and complaint-based audits.
- Monitoring impact on benefit delays and accuracy based on inquiry and complaint-based data contained in the Self-Insured Ombuds Database (SIOD), as well as L&I audit results.

- Ensuring Tier 3 audits involve a comprehensive review of self-insured employer workers' compensation systems, including administrative assessments and timely claim reporting.
- Monitoring impact on self-insured employers that repeatedly do not pass at any level of the audit process. The second audit cycle will begin to establish trends.
- Monitoring self-insurance regulatory enforcement standards for non-compliance and corrective action. It should complement the L&I goal that non-compliers will experience a different L&I than those who comply with workers' compensation rules and regulations.

The Ombuds serves 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 WORK GROUP

The Self-Insurance Rules Review Work Group was established in 2017 as part of a collaborative rules modernization effort in follow-up to the Self-Insurance Audit Reform initiative. As the audit reform project evolved, it identified many outdated rules and processes. The work group's guiding principles ensure better communication with workers, greater certainty for employers, and reduced re-adjudication and stronger regulation by L&I. The committee is sponsored by L&I with members representing labor and business communities, and the Ombuds Office.

The Rules Review Work Group shifted focus in FY 2021, addressing newly enacted legislation (HB 2409 and ESSB 6440). Previously, the Self-Insurance Program implemented 13 important rule updates improving self-insured claims administration. These include new comprehensive training for certified claims administrators, new purpose-driven claim management forms, and several new templates to communicate important information to injured workers. Self-Insurance monitors these updated processes to make necessary amendments, and is auditing proper use of new communication templates during the current audit cycle.

New rules are in process to address HB 2409 concerning self-insured employer and TPA penalties, TPA duties, and the licensing of TPAs. The new rules include updating several elements of appropriate TPA claim administration, including:

- Establishing procedures to ensure confidentiality of claim information.
- Requiring mandatory certification and training for all self-insured claim administrators.
- Informing claim administrators of developments in the workers' compensation system, and ensuring there is a sufficient number of claim administrators to manage their claim volume.
- Ensuring a means of communicating with injured workers and establishing procedures to answer questions and address concerns of workers, providers, or L&I.

- Designating a primary certified claim administrator contact for L&I and a central mailing address for all claim related information.
- Requiring a legible date stamp or an imprint on incoming correspondence, and a claim number on claim-related communications with workers, providers, and L&I.
- Requiring that TPAs who manage Washington claims be licensed by L&I.
- Establishing TPA penalties, duties, and performance requirements:
  - Agree to be responsible for ensuring that claims are managed in accordance with self-insured rules and regulations.
  - Follow recognized claim processing practices:
    - Promptly respond to inquiries from workers, L&I, Ombuds Office, and medical providers.
    - Timely response to telephone inquiries and written correspondence.
    - Provide workers with a current contact name and phone number.
    - Provide the reason(s) for an IME in writing.
    - Preserve claim records per L&I rules.
    - Demonstrate competent claim handling per L&I rules, as verified by performance-based audits, and promptly remediate deficiencies.

The Self-Insurance Program is also responsible for implementing new IME processes related to changes established by ESSB 6440 (see the following IME section for further detail). HB 2409 also requires communication to injured workers about the purpose of an IME.

Many of these rule changes are being developed, and require adequate Self-Insurance resources to ensure proper implementation and monitoring for effectiveness.

The Ombuds recommends that the Self-Insurance Program establish an efficient, streamlined dispute resolution process to address complaints and concerns in a timely manner—especially for complaints related to IMEs and several other new rules and processes required by new legislation.

The Ombuds recommends the Self-Insurance Rules Review Work Group reconvene to ensure continued progress toward modernization, and better communication with injured workers. This includes shifting the focus of Self-Insurance staff from re-adjudicating claims to strengthening

regulatory enforcement, improving self-insurance rules and processes, and developing electronic data reporting to identify risks and opportunities for claim management improvement.

Top Ombuds recommended topics for the Rules Review Work Group include:

- Shift the Self-Insurance Program focus from re-adjudication to audits, enforcement, dispute resolution, claim management improvements, education, and electronic data reporting. This concept aligns with L&I's goals of making it easier to do business with L&I and focusing effort on the bad actors—consistent with protocols in other states. Expanded authority must be accompanied by strong L&I regulation and penalties for failure to deliver timely and accurate benefits, including automatic self-enforcement penalties.
- Enable self-enforcement by self-insured employers and TPAs, including automatic penalties for late payment of time-loss disability benefits, which is a common practice in some surrounding states (AK, CA, OR). Automatic late time-loss payment penalties should decrease benefit payment delays, one of the top sources of complaints to the Ombuds Office. This may require statutory language.
- Establish an official, efficient dispute resolution process for the Self-Insurance Program.
- Review the current Self-Insurance penalty process and ensure timely, consistent penalties.
- Solve the delays related to medical-only claim issues, including requiring allowance orders on medical-only claims. The current statute (RCW 51.14.130) requiring timely claim allowance or denial of a claim does not provide an exception for medical-only claims. However, Self-Insurance rules do not require these orders due to limited resources. Consider allowing self-insured employers to issue more orders in exchange for requiring allowance and denial orders on all claims.
- Oversee L&I's implementation of new rules requiring self-insured employers' submit information via the medical Electronic Data Interchange (EDI). This component of the L&I Self-Insurance Risk Analysis System (SIRAS) establishes medical data reporting standards and benchmarking with other states. It will inform policy discussions, establish training curriculum, audit criteria, penalties, and corrective actions for the self-insured community.

The Ombuds recommends collection of claim management information via the EDI, including detailed time-loss benefit payments and information related to IMEs. The Ombuds suggests improving the Self-Insurance Electronic Data Reporting System (SIEDRS) for collecting more detailed claim management information.

- The Washington complex wage calculation continues to be an issue in the self-insured claim process (e.g., time-loss benefit underpayments and repayment of overpayments). There is a way to maintain fairness and equity for injured workers and streamline administrative

processes for self-insured employers, including an acceptable, consistent entitlement for all injured workers.

The Ombuds will continue to serve on the Rules Review Work Group when it reconvenes, to improve processes, reduce re-adjudication, and strengthen L&I regulation.

## INDEPENDENT MEDICAL EXAMS

Independent Medical Exam (IME) issue inquiries increased from self-insured injured workers (85 vs 72 in prior year). Complaints continue to be primarily related to claim management, and forty percent of complaints are due to the IME report not being sent to the injured worker or attending provider, now required per RCW 51.36.070. Other claim management issues are related to the use of IMEs in claim management—such as poor communication regarding the purpose of the exam, high number of exams on a particular claim, and poor coordination of the exam. The Ombuds Office expects to see continued improvements in the IME process.

Engrossed substitute senate bill 6440 (ESSB 6440) amended requirements for IMEs, effective January 1, 2021, mandating a collaborative work group to address certain elements of the IME process, including development of strategies and recommendations for improving the IME process.

The amended requirements include:

- Adding specific criteria regarding when an IME can be ordered.
- Ensuring exams are conducted at a location reasonably convenient to the worker, or via telemedicine.
- Addressing in rule how to accommodate the worker if no approved medical examiner in the specialty needed is available in the worker's community.
- Placing limits on no-show fees assessed by L&I or self-insured employers.

The work group was led by L&I and consisted of 10 representatives from the legislature and labor, business, and IME provider communities. The work group published a report of the committee's findings and recommendations to the legislature in December 2020. This report is available at [https://lni.wa.gov/agency/\\_docs/2020essb6440imelegreport.pdf](https://lni.wa.gov/agency/_docs/2020essb6440imelegreport.pdf).

The work group's report contains 25 strategies across seven topics for L&I's consideration. L&I recommended 15 of these strategies. Key aspects of these recommendations that impact self-insured IMEs are as follows:

- Enforce current rules for consultation exams.

- Encourage consultations via the attending provider, and claim manager training on the process.
- Conduct rulemaking to define case progress (or lack thereof).
- Update the IME fee schedule to improve the availability of examiners.
- Focus on claims that have too many IMEs.
- Set an enforceable deadline for claim/medical records to be sent to the IME firm.
- Update IME letters and materials to provide information on how to file a complaint.
- Conduct exit interviews of examiners who do not reapply for IME credentialing.
- Compensate examiners for IME record reviews when a worker fails to appear or there is a late appointment cancellation.
- Add incentives to recruit more bilingual examiners.
- Revisit extensive requirements on documentation for the IME report to determine if they can be streamlined.

L&I remains committed to improving the IME process, and continues considering input offered by all stakeholders during the work group process.

Additionally, SB 2409 requires improved communication between TPAs and injured workers, including information about the intent of an IME, as well as mandatory certification and training for all self-insured claim administrators. The training should include information about the frequency and use of an IME.

The Ombuds strongly recommends the Self-Insurance Program improve the dispute resolution process to address IME complaints and concerns—closely monitoring new processes to ensure they are being followed and are effective.

The Ombuds also recommends a strong focus on improving EDI data reporting for the self-insured program, to help inform the use and frequency of self-insured IMEs. The ESSB 6440 work group also suggested that L&I consider reconvening the work group when self-insured EDI data is more mature. Nonetheless, the Self-Insurance Program should move forward with using EDI data to evaluate the use of IMEs.

L&I's IME Steering Committee is an internal, cross-divisional collaborative effort that oversees IME improvements. The L&I IME Business and Labor Advisory Committee responds to stakeholder

concerns and IME quality issues. We recommend that both committees continue to oversee new processes and evaluate their impacts on the IME process.

The Ombuds will monitor the progress of new rules and processes and their impacts on self-insured IMEs, and continue to attend relevant L&I committee meetings.

## SELF-INSURANCE PROGRAM

The Ombuds meets regularly with L&I's Self-Insurance Program staff and stakeholders regarding timely resolution of injured worker concerns and to identify opportunities for process improvement.

There were several Self-Insured Program improvements over the past six years. The Ombuds attributes much of this success to Self-Insurance Program Manager, Jim Nylander, who recently retired. Although we will miss Jim's collaborative spirit and commitment to modernizing the self-insured workers' compensation system, we look forward to working with his successor. The Ombuds Office's current Self-Insurance Program top priorities include the following:

- Recent legislation (HB 2409) requires licensing of TPAs and establishes new rules related to TPA claim administration and penalties. Self-Insurance must adapt by creating related rules and processes, and monitor those for effectiveness.
- HB 2409 also mandates official certification for self-insured claim administrators. Self-Insurance must establish requirements for related training, and ensure evolution of this important training.
- ESSB 6440 requires several new rules and processes related to IMEs. HB 2409 also requires communication with injured workers about the purpose of an IME. Self-Insurance must implement related rules and processes, monitor the impact of these important, evolving rules, and amend processes accordingly.
- Establish an effective dispute resolution process, especially in light of new rules and processes related to IMEs, third-party administrator licensing, claim administration, and related penalties and processes.
- Streamline the current penalty request process, ensuring timely, consistent penalties in order to strengthen self-insurance regulatory standards.
- Focus on decreasing re-adjudication, and increasing and strengthening regulatory oversight, enforcement, audit, and training.
- L&I adopted new rules requiring self-insured employers' submit information via the medical Electronic Data Interchange (EDI). This component of the L&I Self-Insurance Risk Analysis System (SIRAS) establishes medical data reporting standards and benchmarking with other states. It will inform policy discussions, establish training curriculum, audit criteria, penalties, and corrective actions for the self-insured community.



- The system for filing self-insured claims is complicated for providers, workers, and employers—much is done manually. L&I’s modernization initiative offers opportunities for greater efficiencies, such as a centralized single pathway to reporting.
- Finally, the Self-Insurance Rules Review Work Group should reconvene, addressing new rules and processes so Self-Insurance continues to modernize claims management.

## Other Initiatives

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

### CENTERS OF OCCUPATIONAL HEALTH AND EDUCATION

The Ombuds Office continues to experience issues related to medical care and return-to-work coordination—this can affect time-loss benefit payments and medical treatment authorization. The Ombuds recommends self-insured employers use services offered by the Centers of Occupational Health and Education (COHEs). Their health services coordinators (HSCs) manage care and care transitions, helping injured workers heal and return to work faster.

Discussions started with a large COHE and a TPA representing multiple self-insured employers, and a pilot project was planned in 2020. Unfortunately, discussions have stopped primarily due to electronic system challenges. We continue to search for opportunities to initiate COHE services in the self-insured community.

The Ombuds recently learned the L&I COHE Program continues to consider expanding involvement of the self-insured community and realizes the information-sharing barriers that need to be addressed. Fortunately, L&I is planning to conduct an updated recruitment for COHE vendors in FY 2022, and will explore opportunities to include self-insured employer engagement in the next COHE contracting cycle.

### EXPAND AVAILABILITY OF APPROVED MENTAL HEALTH PROFESSIONALS

The Ombuds team continues to face challenges with helping injured workers find approved mental health treatment due to the low number of approved providers.

L&I continues a pilot project to increase approved mental health professionals, including master’s-level therapists, to provide behavioral health services focused on recovery and return to work. L&I is considering a survey to determine the cause of low provider enrollment.

In the meantime, the Ombuds team will continue to assist injured workers with the current process to access mental health care, which requires referral and oversight from an approved treatment provider. Ideally, the pilot project will result in a streamlined process to access treatment with master's-level therapists.

# Conclusion

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The Ombuds Office adapted and remains active throughout the COVID-19 pandemic 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. Our team modernized several processes and is well-positioned to assist interested parties with many new self-insured rules and processes. Community outreach remains a top priority and is key to maintaining awareness of issues and establishing priorities for the self-insured community. The Ombuds Office team is dedicated to efficiently resolving issues and complaints, and identifying positive solutions and recommendations to improve the Washington workers' compensation system.

## How to get help

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

- Ombuds Confidential Hotline: 888-317-0493
- Ombuds Confidential Secured Email: [SIombuds@Lni.wa.gov](mailto: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](http://www.Lni.wa.gov/Ombuds)

## Contact information

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*This document is available in alternative formats to accommodate persons with disabilities. Copies of this document can be obtained in alternative formats by calling 1-888-317-0493.*