



Washington State Department of
Labor & Industries

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

Fiscal Year (FY) 2023 Annual Report to the Governor

September 2023

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A MESSAGE FROM THE OMBUDS

The Office of the Ombuds for Self-Insured Injured Workers (Ombuds Office) has completed another successful year, and this year's report highlights progress toward the program's priorities and recommended improvements. In the Executive Summary and throughout the report, you will find information focused on three key areas:

- 1. Ongoing work:** The Ombuds team continues to process new referrals and resolved 2,132 inquiries this year. The team continues to provide support and training for the self-insured community, including injured workers, employee representatives, medical providers, self-insured employers, and their representatives.
- 2. Impacts of new legislation and rules:** The legislature passed important legislation in 2023 to address Independent Medical Exams (SHB1068); ensure self-insurance good faith and fair dealings and related penalties for some self-insured employers (SHB1521); establish a new, separate second-injury pension fund for self-insured employers (SB5084); and expand approved mental health providers (HB1197). L&I is now developing several related rules and processes. We will continue to monitor new rules and help identify opportunities for self-insured process improvements as the new rules and regulations evolve.
- 3. Deficiencies and recommendations:** This report identifies several areas for improvement. In particular, I recommend: new processes to allow for partial pensions for injured workers unable to return to their job of injury but wish to return to some form of lesser gainful employment; simplifying the complex self-insured wage calculation used to determine time-loss benefits; and implementing electronic claim reporting and use of Centers of Occupational Health and Education's (COHE) for the self-insured community. Continued modernization of Self-Insurance compliance and audit processes is also important, ensuring evolution of L&I's regulatory and enforcement efforts, including comprehensive audits and consistent penalties, and decreasing re-adjudication of self-insured claims.

The Ombuds Office remains committed to supporting injured workers and community outreach. These activities are key to identifying issues and establishing priorities for workers' compensation program improvement recommendations. Ombuds Office initiatives and projects continue to focus on modernizing the Washington workers' compensation system.

Thank you for your continued support of the Ombuds Office. We look forward to another productive year supporting injured workers and monitoring new policies and procedures related to new legislation.

Donna Egeland
Ombuds for Injured Workers of Self-Insured Employers

Executive Summary

Introduction

The Department of Labor & Industries' (L&I's) Self-Insurance Program oversees and provides services to certified self-insured employers (SIE) in Washington. SIEs 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 about 26 percent of Washington's workforce.

Self-insured employers manage their own workers' compensation claims, usually through a third-party administrator (TPA). This includes making decisions about paying benefits and accessing medical care.

Office of the Ombuds

The legislature established the 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 an annual requirement under [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*. The initiatives described in this report aim to ensure fair and equitable benefits for injured workers, and continual process and systemic improvements.

Summary of Fiscal Year 2023 activities and findings

The issues and activities addressed in this report are for FY 2023 (July 1, 2022 through June 30, 2023). The Ombuds Office team resolved 2,132 inquiries regarding workers' compensation claims of self-insured employers during this time, and the office continues to receive new cases daily.

Of the 2,132 inquiries, 978 resulted in an official investigation, while the others were resolved by sharing information. Investigations involved 52 percent of self-insured employers. Reported issues remain similar to those of the previous reporting period, including concerns about:

- Delays in time-loss benefits, medical treatment, and medical bill payments.
- Claim status issues, such as claim allowance, closure, denial, and re-opening.
- Unresponsive SIE's/TPAs.
- TPAs not sending independent medical exam (IME) reports to injured workers and medical providers.
- 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 to see progress toward correct claim adjudication by the SIE/TPA and better use of new L&I templates and forms, resulting in faster resolution and better outcomes for injured workers. The team also continues to assist workers with unresponsive claim managers.

Ombuds Office other priorities and changes

The Ombuds Office has made significant internal process changes, and is well-positioned for the future. This includes new protocols to serve limited English proficiency customers better. These improvements focus on modernizing our office, supporting a positive customer service experience, and timely resolution of issues and complaints.

Self-Insurance Program improvements

The Ombuds serves on several committees and work groups and collaborates with multiple stakeholders to identify improvements in the Washington self-insured employer workers' compensation system. These improvements include:

- The Self-Insurance modernized tiered audit system has been in place for five years and auditors are in their third two-year audit cycle (2022/2023). The collaborative governance committee continues to inform the evolving audit process and consists of representatives from labor and business.

The governance committee will have several new business and labor representatives this year due to retirement and expiring terms. Self-Insurance also has a new compliance operation manager overseeing the audit process, and we look forward to working with the new manager to help move the audit process forward.

More than half of the 349 self-insured employers included in the current audit cycle will start with a Tier 1 performance based audit. L&I added a special wage only review for the remaining 164 employers who have passed Tier 1 audits consistently and have not had a recent wage review. Less than a quarter of SIE's failed their Tier 1 audit — an improving trend. Tier 2, Tier 3, and the special wage review audits are ongoing.

There have been no issue-based or complaint-based audits this audit cycle.

The Ombuds audit priorities remain mostly unchanged, including:

- Auditing the correct use of new rules and related processes; timeliness and efficiency of claim allowance and claim closure; timeliness of initial claim reporting; efficiency of claim reserve practices; accuracy of self-insured employer quarterly assessment reporting; and, efficient use of medical electronic data reporting.
 - Ensuring audit volume is commensurate with employer size.
 - Establishing training early on for smaller employers and TPAs.
 - Ensuring adequate allocation of audit resources, including issue and complaint based audits.
 - Monitoring audit trends and the impact on benefit delays and accuracy.
 - Monitoring the impact and increasing enforcement efforts on self-insured employers and TPAs that repeatedly do not pass audits.
- Implemented several new rules and processes related to HB 2409, including new TPA licensing requirements related to claim administration and penalties, and claim administrator certification and related training.
 - Other new legislation requires Self-Insurance to implement related rules and policies, including IME recordings (SHB1068); expanding medical providers, including allowing psychologists on mental health claims (HB1197); allowing post-traumatic stress disorders (PTSD) for some nurses (SSB5454); and creating a new, separate second-injury pension fund for self-insured employers (SB5084).
 - Updated penalty request process, ensuring timely, consistent penalties, and added a new penalty adjudicator position.
 - Implemented improved language access processes (translated forms in at least eight languages), and a new Self Insurance Certification Services assessment collection process.

Other initiatives supported by this Office

- The IME process continues to evolve since the implementation of ESSB 6440. A cross-disciplinary collaborative work group identified several improvements to the IME process and L&I has implemented related new rules and processes, including scheduling and use of IMEs, and electronic data reporting.
L&I is also implementing new rules related to SHB 1068 concerning injured worker rights during an IME, including recording exams. The Ombuds will continue to monitor new rules and processes and their impact on self-insured IMEs.
- The Ombuds continues to recommend self-insured employers use services offered by the Centers of Occupational Health and Education (COHE). Their health services coordinators (HSCs) manage care and care transitions, helping injured workers heal and return to work faster. The Ombuds recently learned L&I has chartered a project to evaluate how and if the self-insured community can be directly involved in the COHE program. L&I plans to launch the project in 2023, pending resource availability.
- We are pleased L&I's request legislation (HB1197) to expand mental health providers passed during the 2023 session, which should help injured workers find approved mental health care. L&I continues a pilot project to expand care by adding master's-level therapists, and anticipates use of master's-level therapists will become effective in early 2024.

Additional recommendations

- Injured workers should be allowed to return to some form of gainful employment when they are unable to return to their job of injury. L&I should identify a solution to help injured workers return to a lighter job without jeopardizing their entire workers' compensation pension, such as a partial pension.
- Filing a self-insured claim is complicated for providers, workers, and employers, who do much of this manually. L&I should find a solution to expedite self-insured claim reporting, such as an electronic, centralized single pathway to reporting similar to the State Fund accident reporting system.
- The complexity of self-insured 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 create financial hardships for injured workers. The Ombuds hoped the rules review work group could address simplifying the self-insured wage calculation and try to identify feasible solutions without legislation. However, progress has been slow and a statutory fix may be necessary.
- The Ombuds continues to recommend opportunities for Self-Insurance process improvements. The Ombuds recommends:
 - Continue to evolve the modernized audit process and address SIEs that continue to fail audits.

- Shift the focus of re-adjudication to stronger regulatory oversight, enforcement, audit, and training.
- Improve self-insurance data reporting, including IME data.
- Improve communication with customers, including use of secured email.
- Reconvene the Self-Insurance Rules Review Work Group.

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 continues to advocate for new rules and procedures to further the goal of continual process improvement.

Introduction

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 while helping 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 crucial 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 2023 (July 1, 2022 through June 30, 2023), 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

Self-insured employers fund the Ombuds program. Revised Code of Washington (RCW) 51.14.300 through 51.14.400 governs the program. All information is strictly confidential, and injured workers are informed of their rights to confidentiality under RCW 51.14.370.

Gov. Jay Inslee appointed the current Ombuds for a second six-year term effective March 2021. The Ombuds reports to L&I Director Joel Sacks, yet operates independently from the agency. The team consists of the official Ombuds position, one 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, maintaining contact with the worker throughout the investigation process. When a timely resolution is not feasible, we refer the complaint 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 relative 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.

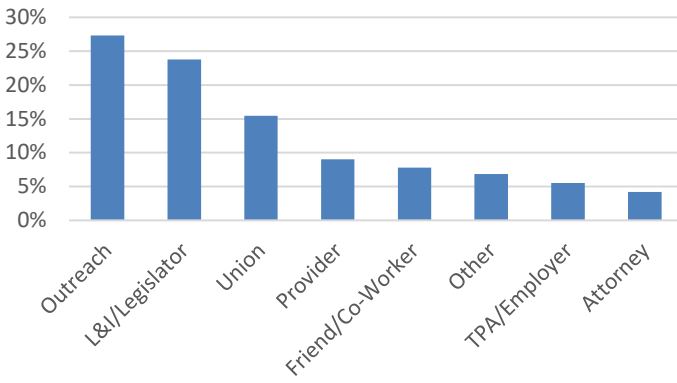
Conduct community outreach

- 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 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

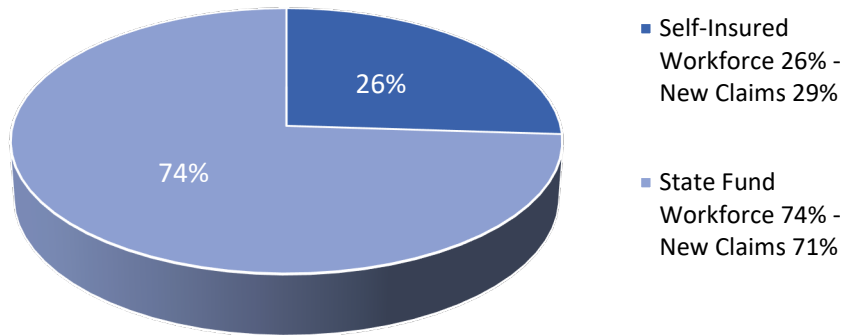
Self-insured employers typically represent the state's largest companies. They choose to self-administer their workers' compensation program or to contract with a third-party administrator (TPA) to manage their claim process. L&I has regulatory authority over all industrial insurance rules and regulations,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

Self-Insured Employer Facts:

- There are 352 active self-insured employers in Washington, employing approximately 928,957 workers.
- Self-insured workers represent about 26 percent of Washington's workforce.
- Self-insured employers reported about 41,149 new claims compared to 102,868 new State Fund claims (29 percent of new claims) during FY 2022.
- More than 95 percent of self-insured employers currently contract with a TPA. There are 20 licensed TPAs with 10 headquartered out of state.

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.

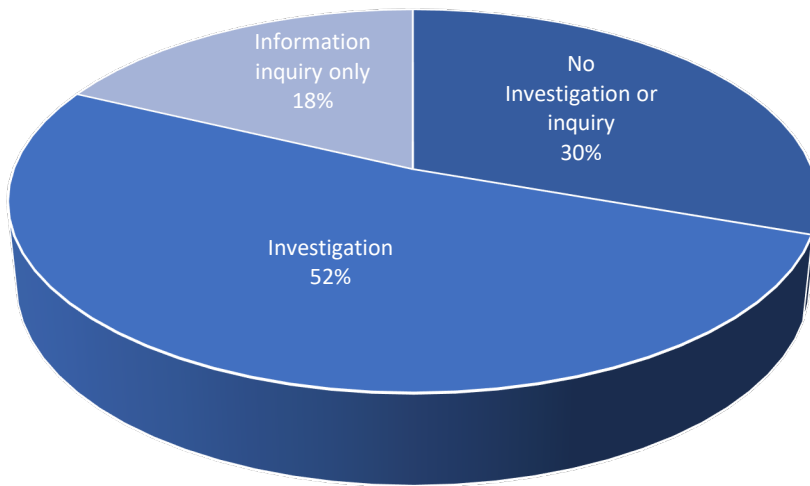
Summary of Activities and Findings

The 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.¹ Here is a summary of investigation activities and findings for FY 2022/2023.

INQUIRIES

The Ombuds Office resolved 2,132 inquiries regarding workers' compensation claims of self-insured employers for the 2022/2023 reporting period as of June 30, 2023. We received information-only inquiries on about 18 percent of self-insured employers. Investigations were necessary for 52 percent of employers, and about 30 percent of self-insured employers needed no investigation or inquiry.

Figure 3: Inquiries proportion by self-insured employers



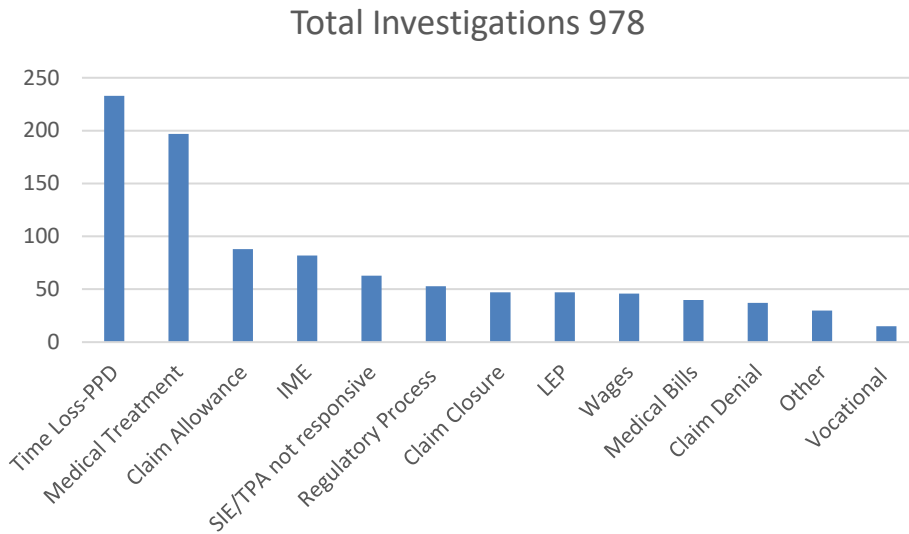
Source: SIOD

¹RCW 51.14.340

INVESTIGATIONS

Of the 978 investigations during FY 2022/2023, Figure 4 compares the issues involved.

Figure 4: Reported investigation issues



Source: SIOD

The categories remain fairly consistent with the prior reporting period, and the Ombuds Office’s tracking and reporting system continues to evolve.

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 continue to believe instituting self-enforced late benefit-payment penalties will help reduce late benefit payments—a proven solution in other states (AK, CA, OR). The Self-Insurance audit team also continues to audit time-loss benefit payments, and should begin establishing trends and increasing enforcement efforts for self-insured employers/TPAs that do not pass these audits.
- Incorrect wage calculations continue and 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, and we continue to recommend improvements to the complex self-insurance wage calculation. Legislation to address this ongoing issue is likely necessary.
- The Regulatory Process category continues to improve (5 percent from 12 percent last year). This category tracks inquiries about a new regulatory process that is not otherwise captured

in a different category (e.g., not using L&I templates and forms, failure to respond to our claim file requests, initial claim reporting via the Self-Insurance Electronic Data Reporting System {SIEDRS}).

- 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 began to address some of these issues by streamlining and modernizing both processes and forms. The work group should continue to address ongoing claim status issues, including medical-only claim delays and related orders. Streamlining the claim process, including reducing Self-Insurance re-adjudication of claims, may require legislation.
- The Ombuds team continues to work with TPAs noted for low response rates to workers and representatives, and provide information regarding WAC 296-15-550, which requires prompt response to inquiries from workers, L&I, the Ombuds Office, and medical providers.
- Independent medical exam (IME) investigations decreased slightly (8 percent from 10 percent last year). Seventy-four percent of IME investigations were about new rules related to RCW 51.36.070, and of those 51 were due to failure to send the IME report to the injured worker or attending provider. We continue to monitor complaints related to IMEs and provide training on new rules as necessary.

RESOLUTION PROFILE

The following describes how investigations were resolved. Note: some involve multiple issues.

Figure 5: Resolution profile

	FY2023	FY2022	FY2021	FY2020
Total Number of Investigations	978	1,007	1,166	1,086
Claim Adjudicated Correctly	389	306	283	304
Resolved – SIE / TPA	249	364	588	366
Resolved - L&I Assistance	185	177	155	224
Not in Jurisdiction	86	108	100	125
No worker follow-up	69	52	40	67

Source: SIOD

The team first works directly with the injured worker’s employer or TPA to resolve issues, and we are pleased to see continued progress in the claims adjudicated correctly category. 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 do 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 2023.

Time-loss benefit delays

A worker reached out to our office because their modified duty was no longer accommodated and they were not being paid time-loss benefits. Our office reached out to the third party administrator (TPA) claims manager (CM) who contended the worker had retired so they were not eligible for benefits. After reviewing the file, we did not see any documentation of a valid light duty job offer or that the worker had retired or resigned. The worker said they had previously retired, but had returned to the workforce before the injury and the claim. The worker submitted a written dispute to L&I and time-loss benefits were paid.

A worker reached out to our office after their claim was reopened because they had not received time-loss benefits. We reached out to the TPA CM and reviewed with them certification in the file going back to the effective date of the claim reopening. The CM said they needed to review the issue with their counsel. After the review, the CM paid the back pay of benefits.

Permanent Partial Disability (PPD)

A worker contacted our office when they received information from their TPA that closed their claim without PPD. Our office reviewed the claim file. We found an authorization for surgery, but we could not find a closing rating exam report. Also, the attending medical provider had completed an Activity Prescription Form (APF) that documented incorrectly that there was no impairment post-surgery. The worker protested closure of the claim and L&I ordered an IME for the PPD rating. The IME supported a PPD rating and claim closure.

Medical treatment

A worker contacted our office after the TPA denied a request for surgery. Our office reached out to the TPA CM to review the matter, and the CM said the decision was based on a medical Utilization Review. We advised the worker their surgeon is able to dispute the decision and request a peer-to-peer medical review. After additional medical was provided, supporting the medical necessity of the surgery, the CM authorized the surgery.

Claim allowance

A worker reached out to our office because they recently filed a claim for a covered presumptive cancer and had questions regarding presumptive benefits for firefighters. They also felt there was a delay in the determination of their claim, as the interlocutory claim review period had been extended. Our office reviewed the claim file and determined that criteria for presumptive claim allowance had been met. We contacted L&I, and they reviewed the claim and issued an allowance order.

IME concerns

A worker reached out to our office because they had not received a copy of their IME report. We contacted the TPA CM who indicated they first needed a written request from the worker. We reviewed RCW 51.36.070 and Claims Adjudication Guidelines with them, which states a copy of the report must be provided. The CM thanked us for providing this information, as they were not aware of this change, and promptly provided a copy of the report to the worker.

Communication

A worker reached out to our office contending they repeatedly did not get return calls from their TPA CM. Our office contacted the CM several times without receiving a return call. We escalated the matter to a supervisor and discussed the requirement of WAC 296-15-550, which requires a return call to our office and the worker within three business days. The supervisor addressed the concern and calls were returned.

Claim closure

A worker contacted our office after their claim was closed. A review of the file indicated that several IMEs were missing from the TPA claim closure request to L&I. The worker protested the closure, and after review of the entire claim file, L&I reversed the claim closure because medical documentation supported restrictions and employability was not properly addressed before closure.

Claim denial

A worker contacted our office because they were unclear on their claim status. After we contacted the TPA, we learned the claim was going to be submitted for denial. Our office reviewed the claim file and saw there was medical supporting a diagnosis allowing the claim on a more probable than not basis. The worker disputed the denial request and L&I allowed the claim based on the medical support in the file.

Wage concerns

A worker reached out to our office with concerns that their bonus pay was not included in their wage calculation for time-loss benefits. The TPA indicated they would review the benefit calculation. However, due to continuous delays, the worker requested L&I to intervene. The TPA responded to the dispute and provided an updated SIF5a with the bonus included, and paid the underpayment.

Regulatory process

A worker contacted our office with several claim concerns. We reviewed the file and determined the claim was compensable since 2021, but there was no claim determination submitted to L&I as required per WAC 296-15-420. We contacted the CM and they submitted a claim allowance request.

Major Initiatives

The Ombuds Office was involved in several important projects that improved the self-insurance system. This section highlights significant projects and future recommendations.

OMBUDS OFFICE BUSINESS TRANSFORMATION

The Ombuds Office has made significant internal process changes 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 collaborate with stakeholders to improve processes and awareness to serve limited English proficiency customers better. We continue to monitor these process improvements and make amendments as necessary.

The Ombuds team has shifted to a hybrid work model and we are happy to return to more in-person community outreach events. We have found great value in meeting with TPAs to review their Ombuds inquiry data and identifying improvements to help streamline claim management. The Ombuds database (SIOD) has also continued to evolve. Please feel free to contact us if you are interested in meeting to discuss your summary claim statistics and the nature of referrals to our office (no confidential claimant info will be shared).

Mission statement

The Ombuds Office has adopted an official mission statement and core values:

Mission statement:

The primary mission of the Office of the Ombuds for Self-Insured Injured Workers is to provide a confidential dispute resolution process that 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.

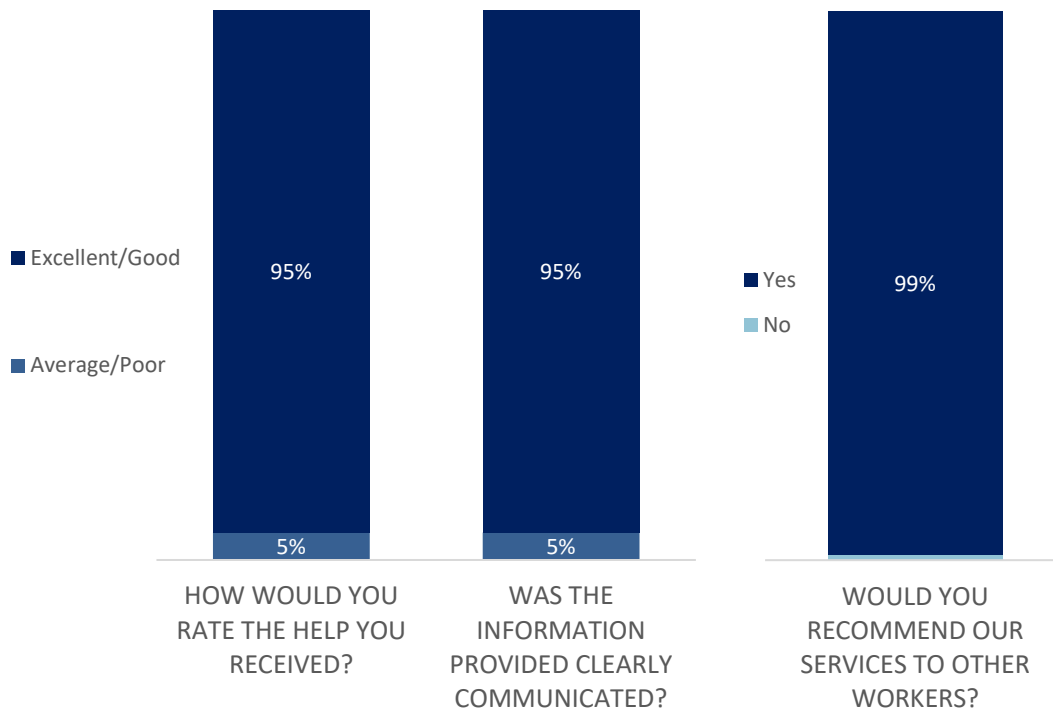
Core values:

- **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 resolving their issue(s). The current response rate is 22 percent, and overall, survey results are positive. Ninety-nine percent of customers said they would recommend our services to other injured workers.



INDEPENDENT MEDICAL EXAMS

Independent Medical Exam (IME) issues decreased slightly from self-insured injured workers (82 vs 99 in prior year); they are the fourth top source of our investigations.

Primary self-insured complaints are related to claim management, and 74 percent of complaints are related to new rules connected to RCW 51.36.070. Of those, 51 are due to the IME report not being sent to the injured worker or attending provider. The Ombuds Office expects continued improvement using new IME processes, and we continue to educate on the new processes whenever possible.

In 2020, Engrossed Substitute Senate Bill 6440 (ESSB 6440) amended requirements for IMEs for L&I and self-insured employers. L&I has established several new rules and processes related to ESSB 6440, including publishing a regular report containing emerging trends related to IMEs for state fund and self-insured employers ([IME Report May 2023](#)). The first report published in May 2023. While the report contains valuable and useful data, the Ombuds is concerned about the accuracy and reliability of the self-insured data, and recommends Self-Insurance address missing data and regulatory enforcement of mandatory data reporting.

Additionally, the long-standing L&I IME Business and Labor Advisory Committee continues to respond to stakeholder concerns and IME quality issues, and the IME Steering Committee is an internal, cross-divisional collaborative effort that oversees IME improvements. It is important these committees also continue to oversee new processes and evaluate impacts on the IME process.

With regard to items identified for L&I consideration/action in the [Legislative Work Group on Independent Medical Examinations \(ESSB 6440 Implementation\)](#), several WACs were implemented in April 2022:

- 296-23-308 Scheduling case progress examinations.
- 296-23-302 Definitions (updated).
- 296-23-309 How many examinations may be requested?
- 296-23-401 Can L&I schedule an examination or order a self-insured employer to schedule an examination after receipt of an appeal to the Board of Industrial Insurance Appeals (BIIA)?
- 296-23-403 Independent medical examinations – L&I data reporting.
- 296-15-440 Use of independent medical examinations.

Items still outstanding from the 6440 work group report:

- Analysis of claims that have too many IMEs was referred to the IME Steering Committee (resources are not yet prioritized)
- Recruit bilingual examiners using incentives (analysis complete, decision not finalized).
- Research into the issues of improving availability and quality of chart notes and required documentation for attending providers, and review of documentation requirements for IME reports started in May 2023.
- CR-102 filed April 18, 2023, to address in rule how to accommodate a worker when there is no reasonably convenient examiner in the needed specialty near the worker’s community, and define when it may be appropriate to conduct IMEs via telemedicine. L&I expects to file the CR-103 to adopt the rules August 1, 2023, with a September 1, 2023 effective date.

L&I is also developing new rules and processes related to SHB 1068 concerning injured worker rights during an IME, including recording the exam. A formal project team and steering committee are overseeing new processes, and a draft FAQ was published in July 2023 to help injured workers, employers, and providers understand the changes. [SHB 1068 frequently asked questions \(FAQ\)](#).

The Ombuds team will continue to monitor new rules and processes and their impact on IME inquiries/complaints to the Ombuds Office, and recommend policy and process improvement recommendations as necessary for the self-insured community.

SELF-INSURANCE AUDITS

The modernized Self-Insurance audit process has been in place for more than five years, and auditors are amidst their third official two-year audit cycle. The Self-Insurance Audit Governance Committee, led by L&I, continues to inform the audit process. 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.

Retirement and expiring terms will lead to several new governance-committee representative appointments this year. Self-Insurance has a new compliance operation manager, Cyal Christmas, overseeing the audit process. We look forward to working with Cyal to continue evolving the audit process.

2022/2023 Self-Insurance Compliance Audit Plan

Self-Insurance began the 2022/2023 two-year audit cycle in January 2022 for 349 self-insured employers. The three primary areas of audit continue to be performance-based audits, issue-based audits, and complaint-based audits. L&I added a special wage only review for 160 employers who have passed timeliness Tier 1 audits consistently and have not had a recent wage review. These SIE's will not experience a Tier 1 audit this audit cycle.

Performance-based audits

Performance-based 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 timeliness Tier 1 will lead to an entitlement 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 timeliness review 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. Tier 1 audits are complete and included 189 employers.
 - 118 employers passed Tier 1.
43 employers did not pass and moved to Tier 2.
(Note: Of the 43 that did not pass, 15 had four or fewer claims reviewed.)
 - 28 employers had no time-loss audit eligible claims, moving to the next audit cycle.
- **Tier 2 accuracy (wage) review 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. Tier 2 audits are in process and include 43 employers.
 - Six employers have passed Tier 2.
Nine employers did not pass and moved to Tier 3.
(Note: Of the nine that did not pass, eight had four or fewer claims reviewed.)
 - 21 employers are currently in process.

- Seven employers had no eligible claims, moving to the next audit cycle.

The Ombuds continues to recommend a solution to simplify these wage calculations, which may require a statutory fix. Many states have adopted proven solutions.

- **Tier 3 entitlement review audits** – Verify time-loss and loss of earning power payments are paid correctly and in compliance with applicable rules and regulations. Tier 3 audits are in process and currently include nine employers.
 - Three employers have passed Tier 3.
 - Two employers did not pass.
(Note: Of the two that did not pass, one had four or fewer claims reviewed.)
 - Three employers are currently in process.
 - One employer had no eligible claims, moving to the next audit cycle.

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

- 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.
- **Special wage review 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. These special Tier 2 audits included 160 employers.
 - 34 audits remain in process.
 - 69 employers passed.
 - 36 employers did not pass.
(Note: Of the 36 that did not pass, 26 had four or fewer claims reviewed.)
 - 21 employers had no audit eligible claims, moving to the next audit cycle.

Issue-based audits

Self-Insurance has accomplished no issue-based audits this fiscal year. We expect new issue-based audit concepts will be identified soon, and we look forward to working with Self-Insurance to help identify these audit concepts.

Complaint-based audits

Self-Insurance auditors completed no complaint-based audits this fiscal year.

Lessons learned and opportunities

There are no lessons learned reported yet, but audits are on track to be completed by the end of the audit cycle (December 31, 2023).

Audit priorities

The Ombuds continues to monitor evolution of the modernized audit model, as it takes multiple audit cycles to establish reliable trends. It is our understanding the audit team is fully staffed and will restore regular audit goals and timelines.

The Ombuds continues to recommend audits include these audit priorities:

- Correct use of new rules and processes, with a focus on new TPA claim administration and IME legislation, including the use of several new mandatory Self-Insurance forms and templates.
- 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.

The Ombuds understands it takes several years for new audit models to mature and establish trends; however, Self-Insurance's regulatory enforcement standards must continue to evolve. This includes:

- Ensuring audit volume is commensurate with the size of employer. For instance, 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 remains committed to evaluating this issue 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 and can pass future audits.

- Ensuring audit evolution, including comprehensive review of self-insured employer workers' compensation systems, including administrative assessments and timely claim reporting.
- Ensuring adequate allocation of audit resources, including ensuring resources for issue-based and complaint-based audits, and expanding the focus of audits.
- Monitoring audit trends and the impact on benefit delays and accuracy based on L&I audit results and complaint-based data contained in the Self-Insured Ombuds Database (SIOD). If audits are effective, benefit complaints and issues should decrease.
- Monitoring impact on self-insured employers that repeatedly do not pass at any level of the audit process. Completion of the second audit cycle in December 2021 should begin to establish trends, and we expect to see stronger regulatory enforcement and corrective action for those that continue to fail audits. 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 continues to serve 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 ensured better communication with workers, greater certainty for employers, and reduced re-adjudication and stronger regulation by L&I. The committee was sponsored by L&I with members representing labor and business communities, and the Ombuds Office.

The initial work group continued to meet until January 2021, and during that time L&I accomplished several process improvements, including implementing 13 important rule updates improving self-insured claims administration.

Due to the work group's positive impact, the Ombuds recommended the Self-Insurance Rules Review Work Group reconvene to ensure continued progress toward modernization of the self-insured system 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.

The Ombuds is grateful that the Self-Insurance Program Manager reconvened the work group; however, the work group has not made the progress we had hoped for and has not met in 2023. The Ombuds remains optimistic the work group can continue to meet and move forward in a positive

way, including ensuring representation from the labor and self-insured business communities. Meanwhile, the Self-Insurance Program continues to improve the system where possible (see Self-Insurance section for further detail).

Ombuds top recommendations for the Rules Review Work Group continue to 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 efforts 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.

The Ombuds continues to recommend allowing self-insured employers to issue formal orders when accepting, closing, or denying a claim. The Joint Legislative Audit and 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

- 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.
- 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.
- Oversee L&I’s continued evolution and use of EDI data. 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. Expand EDI data collection to include claim management information, including detailed time-loss benefit payments and more detailed information related to IMEs. Also, improve the Self-Insurance Electronic Data Reporting System (SIEDRS) for collecting more detailed claim management information.

²JLARC Proposed Final Report: Workers’ Compensation Claim Management, Published January 2016

- 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 if it meets again to improve processes, reduce re-adjudication, and strengthen L&I regulation.

SELF-INSURANCE PROGRAM

The Ombuds team 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.

The Self-Insured Program has a new program manager, Knowrasa Patrick, as well as a new assistant director, Brenda Heilman, responsible for the Self-Insured Program. We continue to build a collaborative relationship that ensures continued modernization of the self-insured system.

The Self-Insurance Program has implemented several new processes, which align with Ombuds Office prior recommendations, including:

- 2020 legislation (HB 2409) requires licensing of TPAs and establishes new rules related to TPA claim administration and penalties. Self-Insurance has developed related rules and processes, and we will continue to monitor those for effectiveness.

Legislation (SHB1521) passed this year requires additional TPA duties (i.e., good faith and fair dealing) for certain self-insured employers, and will require Self-Insurance to adopt additional rules and practices.

- HB 2409 mandates official certification for self-insured claim administrators. Self-Insurance has established related training, and continues to ensure evolution of this important training.
- Updated the current penalty request process, ensuring timely, consistent penalties that strengthen self-insurance regulatory standards, including developing a new internal self-referral process requiring self-insurance claim managers to refer a penalty request when necessary. Self-Insurance increased penalty staff, adding a new penalty adjudicator position.
- Implemented improved language access processes, including translated forms in at least eight languages.
- Self-Insurance Certification Services updated their assessment collection process.

Current Ombuds Recommendations:

- Continue to focus on decreasing re-adjudication, and increasing and strengthening regulatory oversight, enforcement, audit, and training.
- Other new legislation will require Self-Insurance to implement related new rules and policies, including new IME recordings (SHB1068); expanding medical providers, including allowing psychologists on mental health claims (HB1197); allowing post-traumatic stress disorders (PTSD) for some nurses (SSB5454); and creating a new, separate second-injury pension fund for self-insured employers (SB5084).
- The system for filing self-insured claims is complicated for providers, workers, and employers and much continues to be done manually. L&I must implement a solution to expedite claim filing and reporting, such as an electronic, centralized single pathway to reporting similar to the State Fund accident reporting system. This electronic system should allow a claim to be initiated by the injured worker, medical provider, or self-insured employer or their representative TPA.
- Improve slow, antiquated communication processes between Self-Insurance and customers (e.g., self-insured employers, injured workers, and representatives). For instance, use secured email until the L&I Workers' Compensation Systems Modernization project is complete, and more standardized communication forms similar to state fund processes and templates for injured workers (e.g., structured settlement and dispute requests).

Other Initiatives

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.

PARTIAL PENSIONS

The Ombuds believes a solution should be identified to help injured workers return to some form of gainful employment when they are unable to return to their job of injury, such as allowing for a partial pension. A partial pension allows an injured worker to return to a lighter job at reduced wages without jeopardizing their entire workers' compensation pension (i.e., the pension is decreased based upon the worker's wages at the new job). This solution works in other states, such as Arizona.

CENTERS OF OCCUPATIONAL HEALTH AND EDUCATION

The Ombuds Office continues to receive issues related to medical care and return-to-work coordination, which can affect time-loss benefits and medical treatment authorization. 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.

Discussions started with a large COHE and a TPA representing multiple self-insured employers, and a pilot project was planned in 2020. Unfortunately, discussions stopped primarily due to electronic system challenges. The Ombuds is surprised electronic billing and system issues have stalled SIE's use of COHE services. Regardless, we continue to search for opportunities to initiate COHE services in the self-insured community.

The Ombuds recently learned L&I has chartered a project to evaluate if and how the self-insured community can be directly involved in the COHE program. L&I plans to launch the project later in 2023, pending resource availability.

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. We are gratified L&I's proposed legislation to expand mental health providers passed this legislative session (HB1197). This change will allow psychologists to act as the attending provider for mental health claims. We look forward to L&I's new rules related to this new process.

Additionally, 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. The pilot project includes about 70 therapists and runs through December 31, 2024, and L&I anticipates use of master's level therapists will become effective in early 2024.

Conclusion

The Ombuds Office continues 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 has 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

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 online:

- [Ombuds Office website](http://www.lni.wa.gov/Ombuds) (www.lni.wa.gov/Ombuds)

Contact information

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

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