

Workers' Compensation Claims Processing

Management Audit Committee
June 2003

Management Audit Committee

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EXECUTIVE SUMMARY

Workers' Compensation Claims Processing

Program Evaluation Section

June 2003

Purpose

The Workers' Compensation and Safety Division (WSCD or the Division) in the Department of Employment is the only workers' compensation provider for employers and employees in Wyoming. The Legislature's Management Audit Committee directed staff to evaluate claims processing as carried out by WSCD.

The Committee requested an evaluation of claims processing, based on the following questions:

- What obstacles does the Division face in providing quick, efficient delivery of workers' compensation benefits?
- What causes delays in claims processing?
- Who makes customer service policy and are participants satisfied with services?
- Has the Division developed guidelines for avoiding unnecessary hearings?
- How does the program gather input to help improve delivery of services?
- How is the Division's overall performance monitored?

Background

The Legislature approved the Wyoming Workers' Compensation Act in 1915. Intended to provide a balance for workers and employers, it assures benefits to workers injured on the job and gives employers immunity from lawsuits by workers. It directs WSCD to provide quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to the employers who are subject

to the Act. There is no federal involvement in WSCD's operations. The Act mandates some employers to participate in Workers' Compensation, while others may opt into the program.

Results in Brief

Most injured workers receive benefits soon after their injuries occur and are satisfied. However, those workers whose injuries result in lost time at work are more likely to face delays in receiving the benefits authorized by law.

We found that the Division can improve its processing of claims in several ways. To minimize hardship and delays for injured workers needing indemnity (lost wage) benefits, the Division should seek improvement in areas including timeliness of lost wage payments to injured workers, staffing, communications, and contested cases. In addition, the Legislature has not established an oversight body for workers' compensation.

Principal Findings

The Division does not routinely contract for an independent review of its financial condition, as is done in other states' workers' compensation agencies. We recommend that the Division contract for a comprehensive assessment of its financial practices and condition.

While the Division is operating at a reasonable cost to employers, it is not as successful in

providing quick and efficient benefits for disabled workers who seek indemnity benefits. We recommend the Division improve the timeliness of both compensability and initial lost wage payments.

Several Division practices negatively affect the staff's ability to process claims quickly and efficiently. These include high turnover among contract employees, experienced staff not being utilized most effectively, and a lack of written policies to direct staff decision-making as they process claims. We recommend the Division monitor and evaluate turnover among contract analysts, consider adapting its current use of skilled staff, and improve guidance for staff by developing written policies.

Informational materials for claimants and employers are not user-friendly and the Division's education efforts currently reach a small audience. We recommend the Division improve written materials that go to claimants and employers and increase education efforts for both groups. We also recommend creating a customer service unit with a 1-800 number so claimants can obtain answers to questions at no charge.

The Division has not promoted the use of less formal dispute resolution options that are available to claimants and employers. It also does not systematically track the reasons cases are referred to hearing, or provide a neutral source of information for claimants. As a result, two hearings bodies have overwhelmed dockets, and the Division has little internal management information about hearings, and it incurs costs and sustains losses at hearing. We recommend the Division promote the use of less formal approaches to dispute resolution, provide participants with a neutral source of procedural and legal information, and identify ways to improve the current referral process and its outcomes.

WSCD currently receives little independent assessment and oversight. Other than the annual statewide financial audit, the Division is not independently and systematically monitored. It also has not reported in depth on its own performance. Other states have advisory councils to monitor program effectiveness. We recommend the Legislature consider establishing a Workers' Compensation Advisory Council to provide this kind of oversight.

Agency Comments

The Division agrees it should improve the timeliness of compensability decisions and partially agrees that it should improve the timeliness of one type of payment. The Division agrees it should contract for a comprehensive assessment of financial practices and condition and that it can identify ways to improve the current referral process to hearing, as well as its outcomes. The Division agrees it should improve written materials and customer service, as well as increase education for claimants and employers, but is reluctant to provide a 1-800 number. The Division agrees it should monitor turnover among contract analysts and improve retention and partially agrees to developing policies and improving the procedures manual.

The Division disagrees it should promote the use of less formal approaches to dispute resolution, and that it should provide participants with a neutral source of procedural and legal information. It also disagrees that a new allocation of skilled staff should be adopted. It is neutral on the recommendation that the Legislature consider establishing a Workers' Compensation Advisory Council.

Copies of the full report are available from the Wyoming Legislative Service Office. If you would like to receive the full report, please fill out the enclosed response card or phone 307-777-7881. The report is also available on the Wyoming Legislature's website a legisweb.state.wy.us

Recommendation Locator

Page Number	Recommendation Summary	Party Addressed	Agency Response
15	WSCD should improve the timeliness of its compensability decisions.	WSCD	Agree
18	WSCD should improve the timeliness of initial TTD payment.	WSCD	Partially Agree
22	WSCD should consider contracting for a comprehensive assessment of its financial practices and condition.	WSCD	Agree
29	WSCD should monitor and evaluate turnover among contract analysts and develop a plan to improve retention.	WSCD	Agree
31	WSCD should consider adapting the triage model to suit its organizational structure.	WSCD	Disagree
32	WSCD should develop written policy statements and improve the procedures manual.	WSCD	Partially Agree
37	WSCD should improve its written materials for claimants and employers.	WSCD	Agree
38	WSCD should expand education for claimants and employers.	WSCD	Agree
41	WSCD should create a customer service unit.	WSCD	Partially Agree
49	WSCD should develop explicit policies and materials promoting the use of less formal approaches to dispute resolution.	WSCD	Disagree

50	WSCD should provide participants with a neutral source of procedural and legal information.	WSCD	Disagree
51	WSCD should identify ways to improve the current referral process and its outcomes.	WSCD	Agree
59	The Legislature should consider establishing a Workers' Compensation Advisory Council.	Legislature	Neutral

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INTRODUCTION

Scope and Acknowledgements

Scope

W.S. 28-8-107(b) authorizes the Legislative Service Office to conduct program evaluations, performance audits, and analyses of policy alternatives. Generally, the purpose of such research is to provide a base of knowledge from which policymakers can make informed decisions.

In December 2002, the Management Audit Committee directed staff to undertake a review of workers' compensation claims processing within the Division of Workers' Safety and Compensation, Department of Employment. The Committee requested an analysis focusing on the following questions:

- What obstacles to providing quick, efficient delivery of workers' compensation benefits does the Division face?
- What causes delays in claims processing?
- Who makes customer service policy and are participants satisfied with the service they get?
- Has the Division developed guidelines for avoiding unnecessary hearings?
- How does the program gather input to help it improve delivery of services?
- How is the Division's overall performance monitored?

Acknowledgements

The Legislative Service Office expresses appreciation to those at the Department of Employment, Division of Workers' Safety and Compensation who assisted in this research, with a special thanks to the Information Technology staff. We also gratefully acknowledge assistance from former Department officials, the Office of Administrative Hearings, the Medical Commission, the Department of Insurance, and members of the public.

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CHAPTER 1

Wyoming Workers' Compensation

Workers' Compensation Programs Benefit Injured Workers and Employers

Injured workers receive medical and lost wage benefits, regardless of fault.

Workers' compensation programs provide benefits to workers who are injured on the job or who contract work-related illnesses. Regardless of fault, injured workers receive predictable compensation and coverage of costs associated with their injuries. Benefits include cash payments designed to partially replace lost wages; they also cover the costs of medical care and in the case of fatality, provide death and burial payments to dependents.

Employers receive immunity from legal action in exchange for paying annual premiums.

In exchange for paying premiums that fund these benefits, employers receive immunity from lawsuits that may result from worker injuries. Except under very limited circumstances, for employers and employees covered by workers' compensation, program benefits are the exclusive remedy for employees who are injured at work. This means a mutual renunciation of common law rights and defenses by both employers and employees. In order for Wyoming to establish a workers' compensation program, the citizens of the state had to approve amending the Constitution, Article 10, Section 4, which originally prohibited laws limiting damages in personal injury cases (see Appendix A).

Wyoming's Workers' Compensation program began in 1915.

The Wyoming Worker's Compensation Act (W.S. 27-14-101 through 27-14-805; Also see Appendix B) was first enacted in 1915, although the Act has been modified often since then. The most recent comprehensive revisions to the Act occurred in 1994. Then, the Legislature stated its intent for the Workers' Compensation Division, requiring the law it administers to "be interpreted to assure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to the employers who are subject to the Worker's Compensation Act." (W.S. 27-14-101(b)).

Wyoming Workers' Compensation Differs From Other States

States design their own programs as there is no federal component.

All states have workers' compensation programs, although there is considerable variation in their structure and operation. The federal government does not have jurisdiction over state programs. Wyoming's Workers' Compensation program differs from those in most other states in two key ways.

First, in most states employers can purchase insurance from private carriers or can self-insure to meet the requirements of state law. Wyoming is one of a group of five states termed "monopolistic," meaning employers purchase coverage from the state fund in order to obtain immunity from lawsuit.¹

Wyoming is one of five monopolistic state programs.

Second, most other states require all employers to carry workers' compensation coverage, while Wyoming only requires specified extrahazardous industries to be insured. Employers not designated as extrahazardous may elect coverage under the state program. Many Wyoming employers select this optional coverage to obtain the benefit of immunity.

Department of Employment Administers Wyoming Workers' Compensation

The Workers' Safety and Compensation Division (Division, or WSCD) within the Department of Employment (Department, or DOE) administers the program. Before government reorganization in 1989, the State Treasurer administered the workers' compensation program through Clerks of District Court located throughout the state.

WSCD is organized according to three major administrative functions: Workers' Compensation claims, the Medical Commission, and the Occupational Safety and Health

¹ Other monopolistic states are: North Dakota, Ohio, Washington, and West Virginia. Three of these states allow employers to self insure under specific circumstances.

This study's focus is on claims processing.

Administration (OSHA). This study focuses on claims processing, which involves the first two of these functions. Claims is the Division's largest function and as its name implies, processes claims filed for Workers' Compensation payment. The Medical Commission serves as one of two administrative hearing bodies that adjudicate Workers' Compensation disputes. The second hearing body, the Office of Administrative Hearings, is organizationally independent from the Division.

WSCD claims processing has a staff of 108 organized into six operational units: claims, information technology, case support services, administrative services, internal audit and compliance, and training. The claims unit is further divided into five districts, with seven field offices.

Workers' Compensation Covers Most Wyoming Employers and Employees

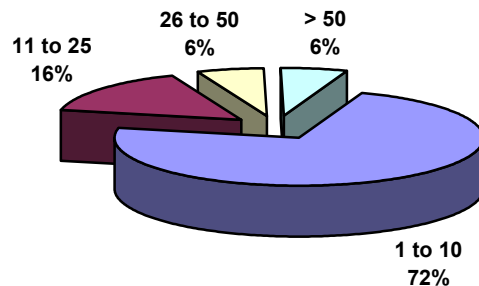
An estimated 83 % of Wyoming's workforce is covered by Workers' Compensation.

An average of 15,242 employers participated in WSCD in FY '02, covering 267,596 employees or 231,473 individuals (some hold several jobs and are covered by more than one employer). The Department does not track statistics necessary to calculate what proportion of total Wyoming employers and employees are covered by Workers' Compensation. A national study of workers' compensation programs in 2002 estimated that 83 percent of Wyoming's workforce was covered by WSCD.

Most employers participating in WSCD are small, with ten or fewer employees. Figure 1.1 shows the distribution of employers with Workers' Compensation coverage by their numbers of employees.

Figure 1.1**Distribution of WSCD Participating Employers
By Size of Workforce: FY '02**

**72 % of employers
participating in
WSCD have fewer
than 11 employees.**



Source: LSO analysis of WSCD data

**The majority of Wyoming employers participating in
Workers' Compensation are required by law to do so**

**33% of participating
employers opt to
enroll in the
program.**

WSCD has three categories of coverage: mandatory, optional and other. Mandatory and optional industries are specified in W.S. 27-14-108; 51 percent of employers paying for state Workers' Compensation coverage are required by statute to have it because they are classified as extrahazardous. Another 33 percent of participating employers, those in the optional category, elect to have the coverage. The third category of coverage includes 16 percent of employers who may have some employees whose coverage is mandatory, some whose coverage is optional, and some who are specifically excluded from coverage.

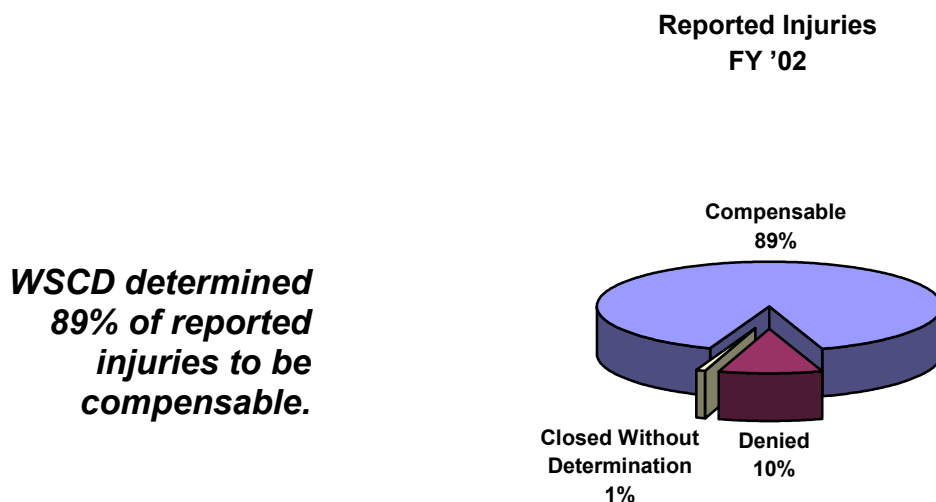
Injuries Reported Each Year

WSCD reports the number of injuries that covered workers or employers report each year as being work related. Some of these are acute injuries resulting from workplace accidents, and others are long-term injuries and diseases that have developed over time. Initial reports of these conditions are included in WSCD injury report counts.

Injured workers cannot apply for benefits before their injury is determined compensable.

Once WSCD receives reports of injuries or deaths, claims analysts must determine whether or not they are compensable. The Worker's Compensation Act (W.S. 27-14-102 (a) (xi)) defines "injury" as "any harmful change in the human organism other than normal aging" that arises "out of and in the course of employment while at work in or about the premises occupied, used or controlled by the employer." WSCD must determine an injury compensable in order for a worker to apply for any medical or indemnity benefits associated with it. Division information for FY '01 and FY '02 shows that in both years, WSCD determined approximately 89 percent of the reported injuries as compensable.

Figure 1.2



Source: LSO analysis of WSCD data

Workers' Compensation Benefits

Injured workers may be eligible for several different benefits.

Wyoming workers with compensable injuries may be eligible for different types of benefits, depending on the nature and severity of their injuries: medical, indemnity or lost wage, vocational rehabilitation, and death benefits.

In FY '02, the system processed 15,400 compensable injuries and 250,000 claims for medical benefits.

Workers' compensation offers medical benefits

Medical benefits cover medical care reasonably required to cure or relieve the effects of a workplace injury, with no deductible or co-payments by the injured worker. These benefits are often short-term, but Wyoming's Act provides that they can extend throughout the injured worker's lifetime, if warranted.

Every request for a benefit is considered a claim, and every injury may result in multiple claims for medical benefits. For example, in FY '02 there were more than 250,000 claims for medical benefits, but only some 15,400 compensable injuries.

WSCD makes medical payments according to a variety of guidelines and fee schedules which are established in rules. The payments go directly to the health care providers that deliver services, not to the injured workers. As illustrated in Figure 1.3, WSCD paid in full more than 90 percent of medical bills submitted in FY '01 and FY '02.

Figure 1.3

Number and Percentage of Paid and Unpaid Medical Bills FY '01 and '02

WSCD approved and paid nearly 91% of all medical bills.

Medical Claims	FY '01	FY '02	Percentage	
			FY '01	FY '02
Total Claims	239,997	253,619		
Paid in Full	217,428	230,467	90.6%	90.9%
Denied	22,568	23,132	9.4%	9.1%
Denied in Full	15,536	14,848	6.5%	5.9%
Denied in Part	7,032	8,284	2.9%	3.3%
Other	1	20	<1%	<1%

Source: LSO analysis of WSCD data, rounded

Most injuries require only medical benefits and not lost wage payments.

Most of the injuries WSCD determines compensable are termed "medical-only" because they require only medical benefits. This means most workers reporting compensable injuries do not make claims for lost wage payments. According to WSCD data, in

both FY '01 and FY '02, approximately 78 percent of compensable injuries were medical-only, leaving just 22 percent requiring both medical and indemnity benefits.

Workers' Compensation also offers lost wage benefits

Benefits are intended to offset the loss of income caused by a workplace injury.

Workers' Compensation also offers benefits to partially offset the loss of income that some injured workers experience. These are lost wage or indemnity benefits, based upon the degree of impairment or disability workers suffer. Statute and WSCD classify these benefits, commonly referred to by their abbreviations, as follows: temporary total disability (TTD), permanent partial impairment (PPI), permanent partial disability (PPD), and permanent total disability (PTD). TTD is the most commonly applied-for lost wage benefit. All have statutorily-prescribed eligibility and duration criteria as well as benefit levels. An injured worker must apply for each indemnity benefit separately.

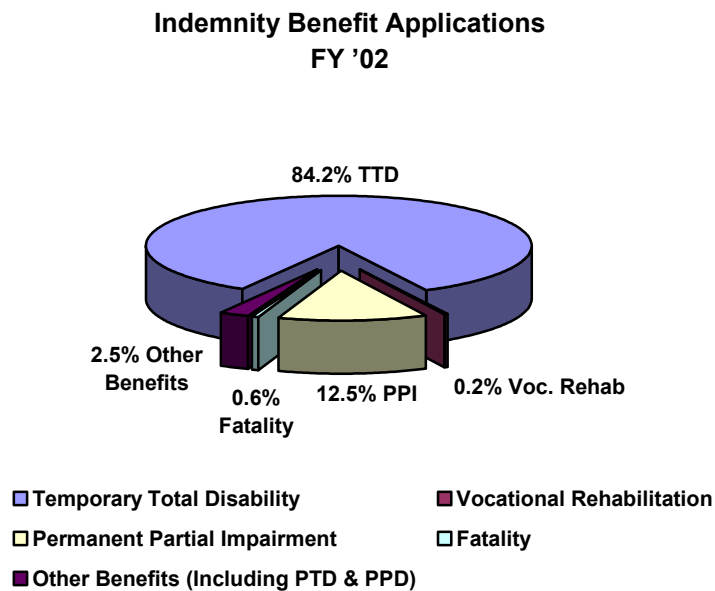
Death and burial benefits are also available in case of a workplace fatality.

In addition to the lost wage benefit categories, vocational rehabilitation benefits may be available to cover the cost of education, retraining and living expenses. These benefits can help an injured worker return to the workforce, but they are only available to eligible individuals who waive PPD benefits. In case of death due to work-related causes, death and burial benefits are available to the surviving spouse, children, or dependent parents.

Figure 1.4 illustrates the type and number of indemnity benefit applications in FY '02. TTD claims account for approximately 84 percent of all indemnity benefit applications in FY '02; information from FY '01 is comparable.

Figure 1.4

84% of all lost wage benefits applied for are Temporary Total Disability (TTD).



Source: LSO analysis of WSCD data

Contested Cases

Participants have a right to dispute any decision made by WSCD.

The vast majority of Workers' Compensation claims are processed quickly and without dispute or litigation. However, employees, employers, and health care providers are given the right to request a hearing when disagreement exists about a case or claim. The Workers' Compensation Fund covers attorney costs for injured workers in contested cases. When disputes arise, WSCD claims analysts can refer parties to several different venues for resolution, depending on the nature of the dispute and the amount of money at issue.

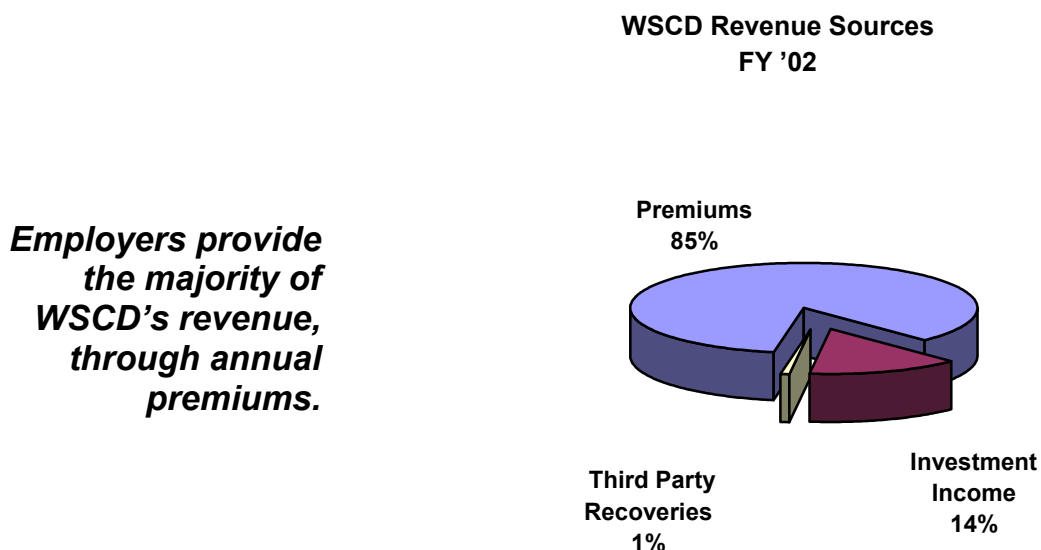
- The Internal Hearings Unit hears cases concerning late filing.
- The Small Claims Court hears cases where the disputed amount is less than two thousand dollars and the issue is not one of compensability of an injury.
- The Medical Commission hears cases related to medical claims or treatments and physical impairment.

- The Office of Administrative Hearings (OAH) hears cases involving compensability and denial or modification of compensation benefits.
- With claims supervisor, assistant administrator, and administrator approval, the Division may settle cases.

Employer Premiums Provide Most Workers' Compensation Revenues

According to W.S. 27-14-201(a), the Workers' Compensation program will be neither more nor less than self-supporting. The primary source of program revenues is employer premiums. Additional funds come from Workers' Compensation investment income and third party recoveries, as shown in Figure 1.5.

Figure 1.5



Source: LSO analysis of WSCD and Employment Tax Division data

To set premiums, the Department's Employment Tax Division groups employers into industry classifications. Pursuant to W.S. 27-14-108 (a), effective January 2003, WSCD replaced the Bureau of Labors' Standard Industry Classification system (SIC) with the North American Industry Classification System (NAICS) as the basis for these groupings.

Employers pay premiums based on their industry and claims history.

These classifications group employers with similar operations to set base rates. Base rates for each industrial classification are adjusted annually to reflect the current and estimated future benefit costs for injuries incurred in that industry classification each year. Base rates for 2003, stated as a percentage of payroll, range from 0.22 percent (or 22 cents per \$100 of payroll) for banking-related industries, to 12.24 percent (or \$12.24 per \$100) for the logging industry.

Then, within each industry classification, individual employers' premiums are modified according to their own claims history, or their claims "experience." The base rate modified by the individual employers experience rating determines the premium that the employer pays into the Workers' Compensation Fund (Fund). Statute and rules specify caps on discounts and penalties that WSCD can assess employers based on their payroll size.

Premiums fund present and estimated future costs.

Program funding situation has improved over time

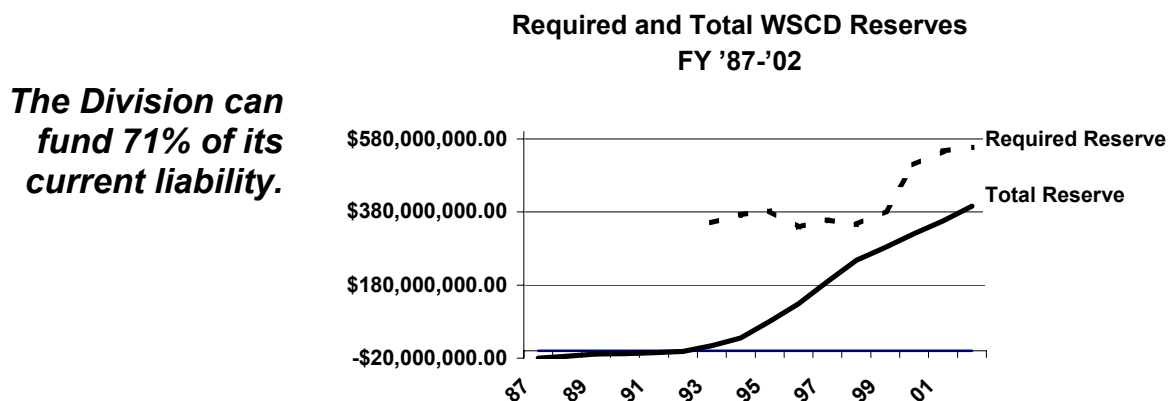
In contrast to earlier decades, Wyoming Workers' Compensation does not receive any support from other state funds. Premiums paid by participating employers, plus interest earnings, fund the program's present-day costs in addition to estimated future costs for the current year's injuries. Premiums and other reserve amounts accrue interest to be dispersed as future benefits. Prior to 1993, there was no fund balance to invest. Since then, however, investment income has increasingly contributed to program revenues. From FY '99 through '02, it contributed an average of almost 16 percent of annual revenues.

Workers' Compensation fund solvency is statutorily required by 2008.

WSCD has an unfunded liability

In the mid-1980's, Wyoming Workers' Compensation was not generating premium revenues to meet its expenses, finally prompting the Governor to call the Legislature into Special Session in 1986. In that session, the Legislature directed the program to fix rates to cover ongoing costs as well as all unfunded liabilities by 2008. By 1987, the program's unfunded liability for future benefits owed was estimated to be \$20,000,000. Since then, WSCD has made progress towards solvency, as Figure 1.6 illustrates (also see Appendix C). At the end of FY '02, the Fund's balance was \$396,192,348, or 71 percent of the estimated \$556,900,000 required reserve.

Figure 1.6



Source: LSO analysis of WSCD data

WSCD Current Expenditures

84% of the nearly \$115 million FY '02 expenditures were on claims costs.

In FY '02, 84 percent of WSCD total expenditures were spent on claims costs. Indirect costs, including expenditures related to claims processing and hearings, accounted for the remaining 16 percent of expenditures. Figure 1.7 shows expenses and proportion of expenses by category.

Figure 1.7

WSCD Expenditures FY '02

Expense Category	Dollar amount	Percent of total expenditures
Total Costs	\$114,289,881	100
Claims Costs	\$96,152,561	84.1
Indirect Costs	\$18,137,320	15.9

Source: LSO analysis of WSCD data

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CHAPTER 2

WSCD Delivers Benefits At Reasonable Cost, But Not Always Quickly

***WSCD operates its
program efficiently, in
terms of costs to
revenues.***

Basic performance measures are mixed as to whether WSCD claims processing is quickly and efficiently delivering indemnity and medical benefits to injured workers at a reasonable cost to the employers. On one hand, WSCD operates its program efficiently, as measured in terms of costs to revenues and average employer premium levels among states. Over the years, the Division has focused on modifying its rate and reserve setting practices. These efforts have resulted in the program operating efficiently in terms of costs, and moved it closer to solvency, as statute requires by 2008.

***Few eligible injured
workers receive lost
wage payments within
14 days of their injury
reports.***

WSCD does not do as well in comparison to industry standards for timely delivery of benefits. For just over half the injuries it ultimately determines are covered by Workers' Compensation, the Division meets the industry standard for timeliness. However, it cannot provide information on the time it takes to determine that injuries are not covered. A second industry standard deals with how quickly injured workers receive lost wage or indemnity benefits. WSCD information indicates that only a small percentage of workers injured severely enough to need these benefits receive them within 14 days of notice of lost time, which is both the industry standard and the Division's goal.

***Dissatisfaction stems
from the minority of
claimants with more
complicated cases.***

Most injuries that WSCD determines covered by the Act are relatively uncomplicated and involve only payment for medical expenses. Division surveys reflect that most claimants are satisfied with the manner in which WSCD handles their claims. However, the Governor and legislators receive complaints from individuals about the disposition of their claims and their treatment by WSCD. While the dissatisfaction stems from a minority of WSCD claimants, it points to problems that can occur when the Division processes claims for more complicated injuries and cases of longer duration.

WSCD Makes Affirmative Decisions on Injury Reports in 14 Days

In both FY '01 and FY '02, WSCD determined that approximately 89 percent of the injuries reported were compensable. For these affirmative decisions, WSCD provided FY '02 data showing that it met an important industry standard: workers' compensation programs should determine whether a reported injury is covered by the Act (is compensable) within 14 days of notice of the injury. For WSCD, a compensable injury is one that arises out of and in the course of employment.

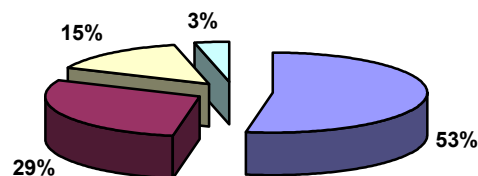
Statute gives WSCD 60 days to make compensability decisions, but WSCD rarely takes that long.

Wyoming statute calls for these decisions to be made in 15 days, unless more information is needed. If so, WSCD has another 45 days to request and receive the additional information, and make a decision. WSCD met the stricter industry standard of 14 days for 53 percent of the injuries reported that were subsequently determined compensable. Further, WSCD rarely takes the full 60 days statute allows it to determine that injuries are covered by the Act. According to WSCD data, analysts make 82 percent of their affirmative decisions within 30 days.

Figure 2.1

**Determination Time for Compensable Injuries
FY '02**

WSCD makes 53% of affirmative decisions on compensability within 14 days.



■ 14 days or less ■ 15-30 days ■ 31-60 days ■ More than 60 days

Source: LSO analysis of WSCD data

Decisions on injury compensability are critical

The initial decision on the compensability of an injury is the threshold determination upon which claimants' subsequent requests for benefits depend. If the initial determination is not

made promptly, subsequent decisions affecting the flow of benefits are also delayed. In other words, worker claims for lost wage benefits and health care provider claims for payment are on hold until the Division makes compensability decisions.

WSCD does not track decision-making time to deny

Information on denials would help determine where problems occur.

However, WSCD cannot demonstrate that it meets this performance outcome for the injuries it determines are not compensable. The Division does not retain this information on the injury reports it denies, approximately 10 percent of the total reports received in both FY '01 and FY '02. Timeliness information on WSCD decisions to deny injury compensability is important because 42 percent of contested cases involve this issue. Having this information would be useful in analyzing where problems in the process occur.

Recommendation: WSCD should improve the timeliness of its compensability decisions.

Waiting for an initial compensability decision adds to the uncertainty stemming from a workplace injury.

At the least, WSCD should regularly track how long it takes to make initial decisions, both denials and approvals. Further, compared to a monopolistic workers' compensation program of similar size, North Dakota, WSCD can improve its performance on this timeliness measure. North Dakota reported meeting the 14-day standard in 73 percent of its injury compensability decisions in 2002.

Just a slim majority of the injured Wyoming workers reporting compensable injuries received their determinations within two weeks in FY '02. Still, workers who made 2,847 injury reports waited for a month or longer for affirmative decisions. The Division also may have taken longer than 14 days to reach determinations on the almost 1,700 reports it denied, but without data we cannot conclusively comment. Waiting for an initial compensability decision adds to the uncertainty stemming from a workplace injury, and thus creates stress on those involved, as well as possible hardship and dissatisfaction.

WSCD Does Not Track Its Own Performance Measure on Lost Wage Payment Timeliness

WSCD goal is also the industry standard.

WSCD has set an objective of providing timely and appropriate benefits for all injured workers, and an outcome measure of scheduling 75 percent of lost wage payments within 14 days of notice of lost time. This is also the industry standard. However, WSCD did not track its performance on this measure for the FY '01 – '02 period, although it plans to do so by FY '03 – '04.

20% of compensable injuries are severe enough to qualify workers for lost wage payments.

TTD benefits are the most used indemnity benefit

Temporary Total Disability (TTD) payments are the lost wage benefits that workers receive from WSCD when their injuries have left them temporarily unable to work at all. TTD is the most commonly provided indemnity benefit in the Wyoming Workers' Compensation program. To put these benefits in perspective, of the injuries WSCD determines compensable in a year, 20 percent will be severe enough that employees receive TTD benefits for some period of time.

Once WSCD certifies workers as eligible for TTD, they can receive these benefits for the duration of their temporary disabilities. To receive TTD benefits, injured workers must formally apply for them, and produce periodic physician certification of their disabilities.

WSCD could not provide us with requested data on TTD payment timeliness.

We used a substitute to measure WSCD performance

WSCD could not provide us with performance information for its measure, the time lag between notice of lost time and its authorization of the initial TTD payment. At our request, however, the Division compiled data on the time lag between injury report and first payment authorization, as a substitute for that information. This substitute time lag could be longer because applications for TTD payments, signifying notice of lost time, may occur after injury reports. Using this measure, WSCD data indicated that in FY '02, the Division authorized 13 percent of initial TTD payments within 14 days of injury reports.

Statute limits WSCD to monthly payment of lost wages.

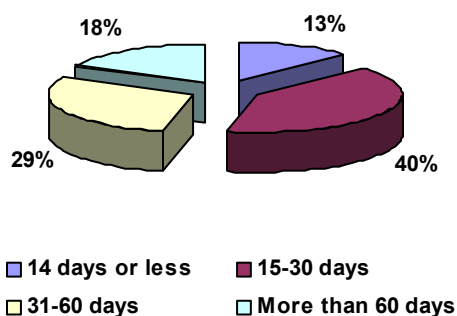
WSCD should pay TTD to workers in the months in which they are injured, or at least, in 30 days

Statute (W.S. 27-14-403 (c)) provides that injured workers receive indemnity payments monthly, so the Division cannot replicate regular pay periods that are less than a month long. Therefore, the 14-day standard and Division goal may not be appropriate for WSCD. Rather, the optimal outcome may be for WSCD to authorize TTD payments for all eligible workers in the months of their injury reports, or at the most, within 30 days of those reports. In FY '02, WSCD accomplished this for a slight majority (53 percent) of workers certified for TTD. However, this left 47 percent waiting more than 30 days for initial replacement wages, including 18 percent waiting more than 60 days.

Figure 2.2

**Authorization Time for Initial TTD Payment
FY '02**

WSCD authorized lost wage payments for 53% of eligible workers within a month of their injury reports.



Source: LSO analysis of WSCD data

WSCD improved medical bill payment timeliness in response to provider complaints.

WSCD makes timely payment to health care providers

Medical providers bill WSCD directly for services provided. By law, providers cannot bill injured workers for fees or portions of fees for injury-related services. Data from WSCD on the timeliness of medical bill payment shows that in FY '02, WSCD paid 79 percent of medical bills within 30 days of date of billing, up from 43 percent in FY '01. Former program officials said they requested an internal review to improve performance in this area because providers had voiced their displeasure.

Recommendation: WSCD should improve the timeliness of initial TTD payment.

Injured workers may not be prepared to wait beyond normal pay days for lost wage payments.

One of the motivations for implementing workers' compensation was that people who were hurt at work would not be financially ruined. WSCD information shows that the average worker receiving TTD benefits in FY '02 earned an annual income of just over \$28,000. Injured workers at this income level may not be prepared to wait for lost wage payments. WSCD should focus on its goal of providing timely and appropriate benefits: it needs to develop policies and procedures that will deliver TTD payments as early as possible, and should track its progress.

WSCD Has Operated at a Reasonable Cost

Statute calls for WSCD to deliver benefits at a reasonable cost to employers. In comparison to other states and a basic insurance industry performance measure, WSCD performed well in the two years for which we made comparisons, FY '01 and FY '02. Also, Wyoming Workers' Compensation average premium rates compare favorably to those in other states.

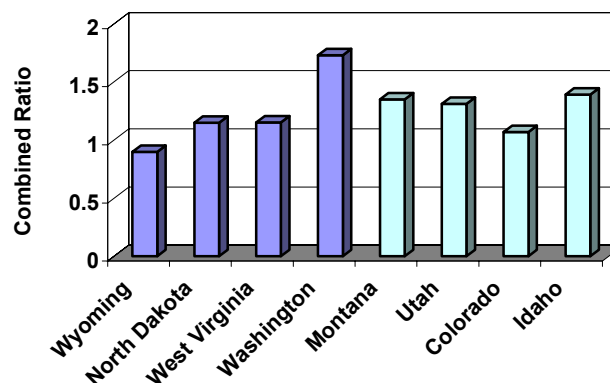
A combined ratio measures performance

Combined ratios measure costs to revenues.

An insurance company's combined ratio is the comparison of costs and revenues. These costs include claims costs, administrative expenses to adjust the claims and collect premiums, and dividends. This ratio is commonly used to measure an insurer's performance. A combined ratio of 100 is considered the industry standard; the lower the combined ratio, the more profitable for an insurance company.

WSCD had "profitable" ratios in FY '01 and FY '02.

WSCD combined ratios were in the "profitable" category for the two fiscal years we reviewed: .90 in FY '01, and .87 in FY '02. This means that for every \$1.00 of premium, there were 90 cents and 87 cents in total costs for the two years, respectively. The WSCD ratio compares favorably to the other monopolistic state funds, as well as to competitive state funds in neighboring states.

Figure 2.3**Combined Ratios of Wyoming and Other States
FY '01 or Most Recent Available Data**

WSCD's combined ratio is below that of comparator states.

Source: LSO analysis of WSCD and American Association of State Compensation Insurance Funds (AASCIF) data. Colorado and Idaho data is from FY '00. Lighter-shaded bars indicate competitive state funds; darker are monopolistic programs. Information was not available for Ohio.

Wyoming's premium rates are comparatively low

The average base tax rate over the last decade is 2.91 percent of payroll.

Comparing WSCD employer premium rates to those in other states also indicates that the program is operating at a reasonable cost. In a 1998 ranking of states' average workers' compensation premium costs, Wyoming ranked 42nd out of 50 states and the District of Columbia. The average Wyoming Workers' Compensation base tax rate over the last decade is 2.91 percent of payroll, the rate having ranged from a high of 3.50 to a low of 2.48. The average cost to employers decreased from FY '97 through FY '01, but increased in FY '02.

The Legislature and WSCD Made Covering the Unfunded Liability a Program Priority

The Legislature and WSCD have taken steps to make the fund solvent.

In the late 1980's, the Wyoming Workers' Compensation Fund was unable to pay claims costs and had to borrow from the state to maintain operations. Today, the fund is operating at a profitable combined ratio and is gradually accumulating the reserves needed to cover its liabilities. To get to this point, the Legislature and WSCD have taken steps meant to make the fund solvent, which statute requires it to be by 2008.

The Legislature has modified the experience-based premium rate system over the years.

Experience-based premiums have been critical in establishing adequate program revenues

Since the early 1990's, Wyoming Workers' Compensation premiums have been experience-based. WSCD contracts with independent actuaries to assign industry classification base rates that they mathematically determine from actual claims costs to the system. Since the experience-based premium rate system was implemented, WSCD has worked through the Legislature to modify it. Notable among the changes was the elimination of a cap on the maximum rate that can be charged to employers. Legislation established a cap at 5.5 percent of payroll in 1986; it was gradually increased and finally eliminated in 1998.

Legislature authorized a temporary rate surcharge

In 1989, the Legislature gave Workers' Compensation authority to impose a 12 percent surcharge on employers rates if the revenues generated from premiums and interest were not adequate to pay benefits and repay state loans. This surcharge was in effect from 1989 through 1997.

WSCD uses a computer program to help estimate future costs of injuries, or reserves.

WSCD sets aside funds for the future costs of injuries

WSCD has made it a priority to accurately estimate future costs that will result from injuries, to ensure that premiums cover those as well as incurred costs. A large portion of the total cost of each year's workers' compensation injuries is paid out in subsequent years. Claims analysts estimate these future costs, or case reserves, using computer software that incorporates specific case characteristics and historical claims data. WSCD recently had the system audited to ensure its accuracy. Employer premiums reflect both the incurred costs and the reserves.

Employer premiums cover full estimated future costs.

WSCD has not discounted its reserves

WSCD has managed to cover expenses and build reserves for future costs in part because it has not discounted reserves. This means it has not reduced the estimated amount needed for future costs to reflect the investment income that can be earned on funds held until claim payments come due. Thus, WSCD employer premium rates are set to cover the full amount of expected future claims costs.

***Investment income
has averaged 16% of
total revenues in
recent years.***

All investment income goes into the program reserve

WSCD has used these returns to augment reserves to cover the program's unfunded liability. Investment income has increased annually since the reserve first had a balance in 1993, accounting for an average of 16 percent of total program revenues FY '99 - '02. Statute gives WSCD authority to grant premium discounts, up to 50 percent of the investment earnings after inflation on reserves. However, WSCD has not done so, and officials are not considering this discount until the program is fully funded.

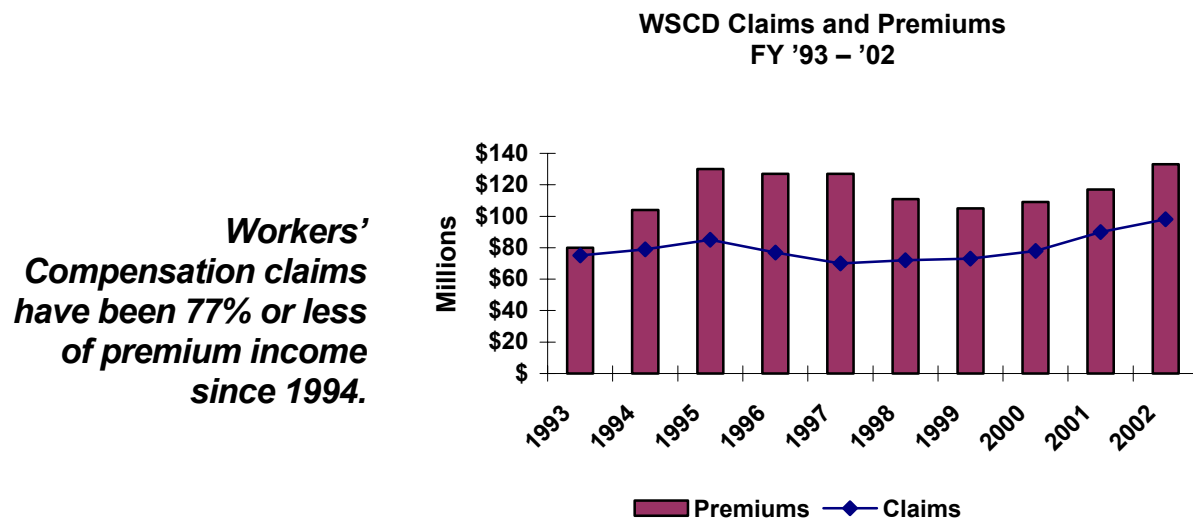
***WSCD analysts
critically review every
claim submitted on a
compensable injury.***

WSCD reviews all claims for merit

Over the years, WSCD has increased its scrutiny over Workers' Compensation claims, to ensure that it is appropriate to pay them. The Legislature has amended statutes, and the Division has in turn promulgated rules to specify what claimants must do or exhibit to obtain benefits. In 1994, the Legislature added a statement of intent with regard to Workers' Compensation: "It is the specific intent of the Legislature that benefit claims be decided on their merits and that the common law rule of 'liberal construction' based on the supposed 'remedial' basis of workers' benefits legislation shall not apply in these cases."

In practical terms, this means WSCD claims analysts must carefully review every claim submitted on a compensable injury to ensure that it is related to the injury and appropriate. The Legislature aided WSCD in doing this by authorizing the Division to contract for programs in medical bill review, medical case management, and utilization review. WSCD loss ratios (total claims to premiums) have been lower than 0.77 since FY '94.

Figure 2.4



Source: LSO analysis of WSCD data

Recommendation: WSCD should consider contracting for a comprehensive assessment of its financial practices and condition.

The scope of our report was claims processing, and we did not evaluate the Division's financial practices. Therefore, our comments in this area reflect only very basic outcome measures: WSCD operating costs and claims costs are below its income, and it is coming closer to fully funding its liabilities.

An independent review is needed to evaluate WSCD financial practices.

We did not attempt to determine whether the Division is reaching those outcomes in the most advantageous manner. That type of assessment calls for financial expertise and familiarity with best practices in workers' compensation programs nationwide. We believe WSCD should consider contracting with an independent firm that has this experience. A basic principle of fiscal transparency is that government sector fiscal information should be subjected to independent scrutiny, and other monopolistic state funds routinely do this. As we discuss in Chapter 6, we do not believe that WSCD annual reports to the Legislature allow for the necessary level of scrutiny.

Reassessing financial practices may be prudent as the Fund approaches solvency.

Moreover, as the Division nears the point of fully funding its liability, it may be prudent to objectively and expertly assess its financial practices. For example, should it continue to estimate its reserves on an undiscounted basis? What should the program do with any surplus that might accrue? Will WSCD grant premium discounts as statute allows, or should it first assess its services, benefits and medical fees for adequacy? Should it establish more than one reserve, as is anticipated in statute (W.S. 27-14-201 (e))?

The Division acquired an outside audit of its reserving system, and starting in 2003, will have an actuarial analysis twice a year to guide its premium rate adjustments. Similarly, as it moves towards fund solvency, the Division stands to benefit from a comprehensive review of its financial goals and practices.

WSCD Has Not Focused on Improving Claims Processing to the Extent It Has Focused on Improving Its Funding Situation

WSCD has not reported on improving claims processing, as statute requires.

WSCD has a two-part goal to ensure prompt and accurate payment of benefits and to maintain solvency in the Workers' Compensation Fund. However, program outcomes indicate that the Division has not given both parts of the goal equal attention. WSCD officials told us the Division is dedicated to continuous improvement. Statute calls for an annual report on the effectiveness of the process and for recommendations to improve the initial claims processing and determination process (W.S. 27-14-804 (a)(iv)). The Division has not produced the report, nor analyzed the aggregate data available on claims processing that would help it develop recommendations for improvement.

Claimant Satisfaction Depends on Experience with Claims Processing

In order to evaluate injured workers' satisfaction, WSCD mails a survey to 300 randomly-selected claimants each month. During FY '02, 90 percent of those claimants responding reported they

For the majority of claimants with medical-only injuries, making a claim is relatively simple.

were satisfied with WSCD service in processing their claims. We reviewed these surveys, and determined that most respondents appeared to have had injuries requiring only medical services, not lost wage payments.

This is consistent with overall program statistics for FY '02 that show most (78 percent) compensable injuries are medical-only, and most (91 percent) medical bills are paid in full. For claimants with medical-only injuries, making a Workers' Compensation claim can be a relatively simple process, since WSCD pays their health care providers directly.

Complaints to the Governor's Office reveal a host of issues related to more complicated cases.

We sought information from another indicator of WSCD claims processing performance, records of complaints coming through the Governor's Office. These are the only complaints to which WSCD has formally responded. During the period January 2001 through November 2002, the Governor's Office received 91 complaints, most coming from injured workers and a few from health care providers. Most of the complaints concerned the following issues:

- Missing or late benefit payments
- Confusion regarding impairment versus disability
- Dissatisfaction with hearings outcomes
- Objections to WSCD denial of specific benefits
- Disagreements with WSCD refusal to address new claims on old injuries
- Aggravation that claims analysts had not returned telephone calls or responded to correspondence

WSCD responses have been legalistic and sometimes condescending.

WSCD officials responded to these complaints with letters citing the statutes and rules that guided the Division's initial decision. In a few instances, officials acknowledged that WSCD had erred, made apologies, and took immediate steps to rectify problems. However, many WSCD responses were legalistic and sometimes condescending in tone. Our sense was that many Division responses would not have done much to alleviate the frustration and desperation that seemed to underlie the complaints.

Making a claim is not a neutral experience for many.

Polarized views of workers' compensation are typical

Workers' compensation experts hired to evaluate the State of Washington program, another monopolistic state fund, noted that claimant surveys tend to have these results; making a claim is not a neutral experience for many. When claims are straightforward, only involving medical payments that are obviously related to the injury, they are easier for analysts to dispatch. However, for the minority of injured workers with more serious injuries that involve lost wage benefits and multiple claims for medical services, claims processing becomes more complicated. These are the claimants most likely to be dissatisfied.

Improving claims processing could benefit most Wyoming workers.

Even though most injured workers may be satisfied, the Washington experts said that negative survey results should be used to identify problem areas in claims processing. Similarly, in order to increase overall satisfaction with services, WSCD needs to focus on the causes of complaints from more complicated cases. Improvements may directly affect only a small portion of claimants, but they will enhance WSCD services for the 83 percent of Wyoming workers estimated to be covered by Workers' Compensation who potentially could be injured.

We Offer Recommendations for Claims Processing Improvements

Recommendations are in the areas of staffing, communications, and handling of contested cases.

The mixed results for basic timeliness measures of claims processing in two key areas indicate there is opportunity for WSCD to more quickly and efficiently deliver benefits to injured workers. In this chapter, we recommend that WSCD seek improvement in the time it takes both for making initial injury compensability decisions and for scheduling lost wage benefits. In the following chapters, we discuss specific areas in which changes could be made to improve these comprehensive measures.

These areas are staffing, communications, and handling of contested cases. These are not the only aspects of a complex claims processing system that, if not done well, could undermine the overall Division responsibility to quickly and efficiently deliver benefits at a reasonable cost. However, we believe they are areas WSCD could reasonably address, and thereby move toward improving overall claims processing.

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CHAPTER 3

Several Staffing Issues Create Problems

Claims analysts first determine coverage, then process injured workers' payments.

Claims analysts are responsible for determining coverage and compensability on an injury and, having made these determinations, for processing any medical and indemnity payments to which the injured worker is entitled. The complexity of claims processing requires analysts to have frequent interaction with injured workers, employers, health care providers, attorneys, and other state agencies, and to document the contacts. This documentation provides an audit trail for internal review and also supports the decisions made, should disputed cases go to hearing.

As of April 2003, the Division employed 31 permanent analyst positions, five supervisors and an assistant administrator, plus 17 AWEC (at-will employee contractor) analysts. The 48 analysts are organized into five districts, each with a supervisor. A district services the employers in one geographic region of the state (see Appendix D), allowing analysts to handle claims arising from specific employers within that district.

Some staffing issues stand in the way of quick, efficient delivery of benefits.

An organization's staffing practices are widely understood to have a profound impact on efficiency and productivity. We identified several staffing issues that create obstacles as the Division attempts to deliver medical and indemnity benefits quickly and efficiently. These include high turnover among contract analyst positions; allocation of staff in ways that do not make best use of experienced staff; and inconsistencies in analyst practices that stem from an absence of written policy.

Additional Contract Positions Have Decreased Analysts' Caseloads

With high caseloads, analysts did little investigating of claims.

According to Division staff, as recently as 2001, each analyst carried a caseload averaging 600 to 700 cases.¹ With caseloads this high, analysts say they simply processed claims after minimal screening and had little time to investigate, return phone calls, or make follow-up contacts. They also struggled to get payments made within statutory deadlines.

When contract staff were added, caseloads dropped 50%.

The Legislature appropriated funding in 2001 to hire additional staff as at-will-employee-contractor (AWEC) analysts, and the Division began hiring AWEC analysts in May 2001. It took approximately a year to fill 17 positions and deliver initial training; once AWEC analysts began working, overall caseloads dropped. The agency's goal had been to reduce caseloads from the 600 – 700 range to an average of 350 per analyst. By March 2002 the average had dropped to 360 cases, and a year later, the average was even lower, 306. Thus, the hiring of AWECs contributed to a 50 percent reduction in average caseload.

Timeliness of initial determinations has improved.

Analysts and supervisors we interviewed generally agreed that current caseloads are “manageable.” With the present level of staffing, they say they are able to scrutinize cases and have more contact with and provide service to injured workers. While still considerably higher than the standard of 150 to 175 cited by one national expert, Wyoming's average caseload size is considerably improved. One effect of the lower staff-to-case ratio may be that timely initial determinations have improved. In FY '01, the Division made affirmative determinations of compensability within 14 days of receiving an employee's injury report for 43 percent of claims; in FY '02, this rose to 53 percent.

Turnover Among AWECs Is a Problem

However, in the first 18 months of using AWEC analysts, 65 percent of the AWEC position incumbents left their jobs. Of the 17 AWEC positions filled, four persons took permanent analyst positions, and seven left the agency. The average tenure of

¹ Because WSCD does not keep caseload data by analyst for longer than one year, we used their estimated numbers.

High turnover has occurred among the contract analysts.

AWECs who left their positions was less than seven months; by contrast, analysts who terminated permanent positions during this period had an average tenure of three years.

AWECs and analysts with permanent positions have identical job duties and exercise the same decision-making authority. The difference is that AWECs receive somewhat higher wages and no benefits; also, the agency can terminate their contracts at any time. Analysts in permanent positions receive paid benefits and cannot be terminated without cause.

Turnover undermines the purposes for which contractors were hired.

Experience contributes to analyst proficiency

The job of an analyst requires a breadth of knowledge that is not quickly acquired. Analysts must be familiar with the state's constitution and statutes, which at times can be both highly detailed and also unclear. To make decisions about compensability based on complex facts, analysts must also understand medical procedures and terminology, human relations and communication, and legal rights and procedures. Analysts and supervisors agree it takes at least a year to acquire the basic skills and attain a degree of proficiency in these positions.

In the short run, AWECs have reduced caseload sizes to manageable proportions and functioned as a "feeder system" for hiring permanent analysts. However, there have not been enough permanent position openings to accommodate the number of AWECs who seek to stay in the same line of work but who want benefited positions with more job security. AWEC analysts who left the agency were not in their positions long enough to master the job.

Recommendation: WSCD should monitor and evaluate turnover among contract analysts and develop a plan to improve retention.

High turnover in AWEC positions is undermining the long-term benefits that added staff were intended to deliver. Turnover requires other analysts to pick up extra cases, requires the

Division to concentrate on training and supervising new analysts, and means injured workers, employers, and health care providers do not have an opportunity to develop a steady working relationship with the same analyst. The Division needs to assess AWEC turnover regularly and, if it continues, bring forward a plan to turn the pattern around.

Enhanced Staffing Attention Should Be Given to Difficult, High-Value Claims

Analysts' cases range from straightforward to complex.

At the request of employers, Workers' Compensation analysts are employer-based, meaning they are assigned to handle claims from specific employers. This is thought to provide consistency in decision-making for injured workers and employers, as well as better communications. After initial training, newly-hired analysts take on full caseloads with a mix of cases ranging from straightforward to complex.

Many cases are routine and therefore easily handled, but a certain number of cases are complicated or difficult from the very start while others become more so over time. Analysts say that when confronted with difficult cases, they consult with other workers and may turn hard-to-handle cases over to a supervisor, who generally has more experience. Essentially, this approach to staffing relegates senior experienced staff to involvement after claims become problematic.

Another approach, triage, quickly assigns experienced workers to difficult cases.

The Division's employer-based, generic caseload approach is not conducive to a triage model, which is considered an industry best practice. With triage, cases are immediately screened and differentiated at the time of intake. As soon as a difficult or potentially high-value case is identified, it is assigned to a seasoned worker who can exercise the level of judgment gained from training and long experience. This practice puts the most experienced managers up front in the process to assure better quality and faster response at the early stages. Less experienced analysts can concentrate on rapid processing of routine claims, since they constitute the bulk of claims submitted.

Recommendation: WSCD should consider adapting the triage model to suit its organizational structure.

According to one industry expert, triage “is an excellent way to utilize scarce experienced people for maximum benefit and impact for all parties in the system.” The goal of giving difficult cases a higher level of attention and expertise upfront is to prevent delays in issuing benefits and avoid costly litigation.

Inconsistencies Call For Written Policy Plus Improvements to Procedures Manual

Analyst procedures vary in different districts.

As we conducted interviews, observed procedures, and reviewed data associated with claims processing, we learned that to some extent, each of the five districts “has its own way of doing things.” For example, we saw variations in how analysts processed injury reports, when they contacted injured workers, how much assistance they gave workers in navigating the paperwork, and the points at which they obtained supervisory review.

In subsequent chapters, we provide examples of such inconsistencies and how they affect claims processing. Here, we highlight the importance of providing equal treatment to all, especially in a program designed to assist vulnerable persons.

Equal treatment depends on consistent procedures

Analysts' decisions need to be guided by clear policies and procedures.

To dispense equal treatment, government programs need the guidance and controls that come not just from statute and rules, but also from explicit policies and consistent operational procedures. The Division has an online procedures manual to which analysts can refer, although it is primarily transactional, describing in detail how to navigate the program's computer system.

As opposed to procedures, “policy” expresses how management proposes to attain its objectives. In other words, policy is a

statement of the principles of what is expected. Lacking in the manual and in other WSCD materials is written policy intended to guide analysts at major decision points, when they are called on to exercise particular latitude and discretion. For example, analysts can manually over-ride the automated case reserving system, and a recent WSCD internal audit suggests this occurs with some frequency. Although the procedures manual permits over-rides if the system “does not appear to be making an accurate prediction,” we did not find policy to guide the analysts in deciding when to take such action.

Written policies can help prevent unequal treatment of claimants.

Because so many variables are associated with each claim, a procedures manual cannot cover all possibilities. As a result analysts must have some latitude in decisionmaking, but this introduces the potential for analyst subjectivity. Subjectivity on the part of an analyst can be tempered by an understanding of the overall policies of the program. However, in the absence of written policy and if analysts’ procedures are inconsistent, the likelihood is greater that claimants may receive unequal treatment.

Recommendation: WSCD should develop written policy statements and improve the procedures manual.

Overall, we detected an organizational belief that districts are not consistent in how analysts perform their job duties, and that such inconsistency is acceptable. WSCD does not collect data in a way that would allow us to examine consequences in depth. Nevertheless, we believe when procedures are repeated often enough and passed on from one analyst to others, they have the potential of becoming the informal policy by which an organization is run. Under these circumstances, unequal treatment of workers can occur. Written policy, revisions to the manual, and analyst training can remove some of this risk.

CHAPTER 4

WSCD Needs to Improve Customer Service in Claims Processing

WSCD often receives incomplete information from injured workers, their employers, and health care providers. This contributes to delays in issuing compensability decisions and in making subsequent benefit decisions, starting with Temporary Total Disability (TTD), while more information is requested. In turn, injured workers wait longer for benefit payments. When submitting claims, individuals are responsible for filling out the forms accurately and completely. However, the Division also bears responsibility to make clear what information is required, what the time constraints are, and what the consequences for non-compliance will be.

Division does not make clear what is required of claimants.

WSCD is not providing a level of customer service necessary for claimants (injured workers and health care providers) and employers to navigate the claims system efficiently. Improving written materials and education, and creating a customer service unit, can help the Division more effectively communicate the Workers' Compensation process. In turn, this will reduce delays in payment for those who are eligible for lost wage benefits.

WSCD Frequently Requests Additional Information

Delays in lost wage payments cause hardship for injured workers.

To an injured worker who may have no other income and who needs to compensate for income that has been cut off, prompt payment of lost wage benefits is extremely important. However, obtaining Workers' Compensation benefits requires the worker first to wait for WSCD to determine the injury compensable, and then for it to process a separate application for lost wage benefits. Thus, two waiting periods may occur. We examined these two steps to determine why payment of benefits is delayed.

Requesting more information gives the Division up to 60 days to determine a case

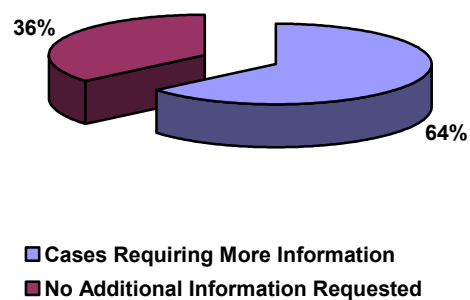
In many cases, injury reports and TTD applications lack required information. Analysts then must send form letters to workers, employers, or health care providers requesting what is missing, such as a missing signature from a worker or employer or a missing note from a doctor verifying appointment dates. Sending a form letter is the mechanism that gives the Division additional time (a total of 60 days) to make a decision.

Division requests for more information result in delays for workers.

We reviewed two types of decisions, initial compensability and TTD eligibility decisions, in 600 cases. We looked for the frequency with which the Division requested more information from claimants and employers in TTD cases because most claims for lost wage benefits are for TTD. In more than half the compensability decisions in this sample, analysts requested more information, and for TTD eligibility, nearly two-thirds needed more information. In addition, in making decisions on compensability or TTD, analysts sometimes send more than one letter, although WSCD does not track those numbers.

Figure 4.1

**Requests for More Information
200 TTD Cases in February '03**



LSO case study shows additional information is often required.

Source: LSO analysis of WSCD data

WSCD should improve materials for claimants to decrease delays.

Lack of timeliness points to a disconnect between the Division and involved parties

Delays in making TTD eligibility decisions, combined with high numbers of letters requesting more information, point to a lack of clarity in the materials or instructions WSCD makes available to injured workers, employers, and providers. This increases delays in getting lost wage benefits to workers. If in more cases, analysts receive the information needed to process claims, the Division will be better able to meet the statutory requirement that it pay benefits to workers quickly and efficiently.

WSCD materials should be easy to read and understand.

Division Materials for WSCD Claimants and Employers Are Not User-Friendly

Information for injured workers should be as complete and clear as possible. The average education level of injured workers in Wyoming who apply for benefits is 12th grade. Since they are not likely to be familiar with the claims process and with statutory language, the legal requirements of Workers' Compensation need to be expressed in terms that are easily understood. The more understanding applicants have of the material, the more likely they are to comply with Division rules and time requirements.

Injury report is difficult to complete.

WSCD materials are difficult to use

For the Division to determine compensability of an injury, a worker must first file an injury report. However, to complete the report, the worker is asked to code the injury type and the nature of the injury, as well as locate the employer class code, employer number, and account number. This information may not be readily available to an injured worker. Those who have questions can refer to the "Wyoming Department of Employment Notice to Employees" poster which must be displayed at all workplaces; it displays a 1-800 number that leads callers to a recorded message. The recording lists services no longer provided by phone, and suggests the caller leave a message so someone at the Division can return the call. A second number on the poster is not toll-free.

Materials to claimants do not provide a clear picture of process.

After receiving an injury report, the Division sends the worker an information handbook. The handbook is meant to be a guide to the claims process, including information about medical and indemnity (lost wage) benefits. However, it is written in a style and format much like statute and is organized in a way that is difficult to access. It also lacks essential information such as a description of the claims process from start to end, and information about contested case procedures.

For most injured workers the terminology used by Workers' Compensation is new, and deciphering the meanings and process is a daunting task. WSCD materials do not make the task any easier. The injury report requires information that may be hard for an employee to find, and it does not designate what information is essential for the claim to be processed.

Providers and employers are not informed how their actions affect injured workers.

Materials do not provide the bigger picture

For health care providers, Division materials consist of billing guidelines and bulletins about new procedures; employers receive blank copies of the injury report and a poster. Collectively, this information does not offer a larger context that explains an employer's or a provider's role in the claims process. It is not made clear what effect their non-compliance or failure to fill out information may have on the injured worker's claim for benefits.

Other states' programs provide easy to read materials.

Other states offer models

We reviewed the materials other monopolistic states provide to guide an injured worker through the workers' compensation claims process. North Dakota prints a toll free help line phone number on its injury report, instructing claimants to call with any questions. Ohio and West Virginia provide instruction sheets explaining what is required on every line of the injury report. Similarly, North Dakota publishes an easy-to-use guide for injured workers, as well as one for employers.

Recommendation: WSCD should improve its written materials for claimants and employers.

Information needs to be clear for the average worker unfamiliar with Workers' Compensation.

To effectively assist claimants through the process of applying for benefits and obtaining payment, WSCD needs to review and upgrade the materials it requires them to use. All workers' compensation materials should be designed for easy use by the average worker and should state information about requirements and procedures in simple, clear terms. This is particularly true for paperwork injured workers must fill out; if they inadvertently make errors, they are likely to encounter otherwise avoidable delays in getting benefits.

Education Provided to Claimants and Employers Reaches a Small Audience

WSCD's efforts to educate claimants (employees and health care providers) are limited. If injured on the job, employees throughout the state depend primarily on the Workers' Compensation poster and their employer for information and help. Although the Division will deliver training on request, it offers no regularly scheduled employee training except to new state government employees.

Claimants are not adequately educated about Workers' Compensation.

Also on request, the Division conducts some health care provider training. However, interviews we conducted indicate that providers and staff at medical clinics could benefit from more training on Workers' Compensation procedures, to reduce misunderstandings associated with medical billing practices. More informed and involved providers can contribute to better outcomes for injured workers.

Three divisions within the Department of Employment offer "Workers' Comp 101" training for employers at irregular intervals. In addition, WSCD has a goal for analysts to visit two employers per year to provide training. However, these education efforts reach only a small segment of the state's

WSCD education for employers reaches a small audience.

employers. If analysts routinely meet their yearly goal, and if employer training sessions are at full capacity, these education efforts would reach approximately four percent of Wyoming employers.

More importantly, most businesses in Wyoming are small employers with few resources to devote to human resource matters. Small employers with fewer than 50 employees represent 94 percent of the Workers' Compensation employer count. These employers provide work for 42 percent of the Wyoming workforce covered by Workers' Compensation. While WSCD should be commended for developing a training program and attempting to visit employers, these efforts need to increase.

Recommendation: WSCD should expand education for claimants and employers.

Educating claimants and employers will yield better outcomes.

A workers' compensation agency is responsible for informing claimants and health care providers about the importance of prompt and complete reporting when accidents occur on the job. The Division's current education efforts reach only a small audience. WSCD needs to expand education efforts to reach more employees, employers, and health care providers, so they will be more informed about the claims process and their responsibilities within the system. Well-informed claimants and employers are more likely to send the necessary information the first time, thus avoiding payment delays for injured workers.

Over Time, WSCD Customer Service Has Diminished

WSCD's customer service has been reduced in the past decade, with analysts now expected to provide services that were previously handled by other positions within the Division. For example, industry standards call for workers' compensation agencies to provide a free hotline for injured workers. The four other monopolistic states have customer service units and toll-

Analysts provide customer service and also carry caseloads.

free numbers to assist callers. In Wyoming, the Division formerly accepted the first report of injury through its 1-800 phone number, but it no longer offers this service. Also, at one time WSCD had field representatives to help employees and employers with the process, but these positions were converted to analyst positions.

Analysts have been expected to absorb the function of providing customer service for their caseloads. This approach may have the advantage of economy, but it also has limitations. The employee handbook directs injured workers to contact their analyst if they have questions. Thus, to an injured worker, the only apparent line of contact with the Division is through the assigned analyst. If the analyst is not available, or does not relate well to the worker, there is no customer assistance unit or neutral party to turn to.

Many claimants must make a long distance phone call to receive direct assistance.

Little assistance for filing the injury report

Workers who are filing an injury report may need assistance with the paperwork, but the injury report form does not list a phone number to call for clarification. Workers who are near a Division field office can get help there, but others may need assistance over the phone; it is not clear how an injured worker copes, if unable to pay for a long distance phone call or get to a field office.

WSCD has not planned for on-line injury reporting and medical billing.

Internet site offers limited assistance to claimants and employers regarding claims processing

Injured workers can access WSCD's employee handbook on the internet, and claimants can order forms or download provider billing guidelines and e-mail questions regarding the website. In June 2003, the Division plans to begin offering web services that will give claimants and employers the ability to view their case and bill status online.

However, Division officials believe statute does not permit it to meet its strategic plan goal of "increasing the amount of reports filed electronically." The Division does not accept electronic submittal of medical bills and injury reports, citing W.S. 27-14-501 (a) and W.S. 27-14-805 (d), which require "written medical

1999 legislation allows for on-line injury reporting and medical billing.

reports” and that an injured worker “sign” a waiver. However, the Governmental Electronic Transactions Act, W.S. 9-2-2501, allows state agencies to conduct business electronically in accordance with the Uniform Electronic Transactions Act in Title 40, Chapter 21. Although the state does not require agencies to conduct business electronically, it does not prohibit it.

Two of the other four monopolistic states, Ohio and North Dakota, allow online injury report filing, and all four allow online submission of medical bills. Wyoming statutes are also seen as preventing the Division from adopting standardized national forms; these allow insurance carriers to submit claim and benefit information electronically.

Three-point contact is not tracked

Making three-point contact within 48 hours of receiving injury reports is an industry standard for workers’ compensation agencies and industries. As soon as analysts receive injury reports, they are to call the injured worker, employer, and health care provider to answer questions. Creating open lines of communication by initiating telephone contact is an effective method of problem avoidance.

Internal audit suggests inconsistencies in communication practices.

In contrast to the industry standard, WSCD says it strives to make three-point contact within 15 days. While analysts are reviewed annually as to whether they are making three-point contacts, the Division does not keep this information in aggregate. Thus, we could not determine whether and how quickly these contacts are made in all districts.

A WSCD internal audit of a small random sample of cases found improper documentation for employee and employer contact in 63 percent of the cases reviewed. Also, we note that a 15-day requirement leaves room for inconsistency in analyst practice: while some analysts may be making contact within 48 hours, others may wait 15 days (360 hours). We believe the Division can better serve its customers by making these calls quickly.

Recommendation: WSCD should create a customer service unit.***Customer service units lead to better outcomes for injured workers.***

WSCD needs to focus on improving customer service and at the least, should provide a 1-800 number to contact for more information about the claims process. A customer service unit can provide assistance previously rendered by the various customer service positions the Division had in the past. Many other states have customer service units and have found that this dedication of resources benefits injured workers and leads to more positive outcomes.

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CHAPTER 5

Emphasis on Formal Hearings By-Passes Other Alternatives for Dispute Resolution.

WSCD dependence on formal proceedings to resolve disputes has disadvantages.

When dealing with issues as complicated as what caused a compensable injury or how disabled an individual may be, some cases inevitably will lead to disagreements. Those disagreements sometimes become too complicated or ambiguous to be resolved except through formal hearing or medical review. However, hearings on Workers' Compensation cases are expensive to conduct, often concern relatively small dollar amounts, threaten to overwhelm the capacity of the Office of Administrative Hearings (OAH) and the Medical Commission, and prolong the time it takes claimants to obtain benefits. In addition, most claimants win their disputes at the hearings level.

Use of alternative approaches is left to analysts' discretion.

W.S. 27-14-601 through 616 outlines the use of formal hearings to resolve Workers' Compensation disputes. Several less formal alternatives exist for settling disagreements, but the decision to refer injured workers to them is a matter for analyst discretion. WSCD has not promoted the use of less contentious dispute resolution procedures and continues to rely on the formal hearing process. It needs to adopt a new focus to ensure disputing claimants are consistently offered resolution alternatives appropriate to their dispute level.

Any Party Can Contest WSCD's Decisions

According to statute, employers and health care providers as well as injured workers can request a hearing if they disagree with a WSCD determination regarding injury compensability, medical benefits, indemnity benefits, or related costs. In addition, if WSCD has not made a final determination regarding a benefit within 60 days, an interested party can request a hearing.

Most WSCD decisions are not contested.

In FY '02, analysts determined 2,337 reported injuries to be non-compensable, and denied payment at least partially on

23,108 medical claims. Potentially, each of these decisions could be disputed at a hearing before the OAH or the Medical Commission, although most are not. OAH has jurisdiction over compensability disagreements, while the Medical Commission hears disputes on issues requiring the evaluation of conflicting medical evidence.

WSCD loses 55 percent of the cases referred to hearing

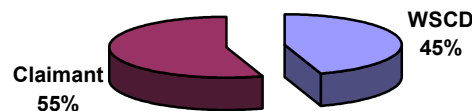
More than half of contested cases are withdrawn or settled prior to hearing.

Relatively few denied cases advance to these bodies, but those that go to hearing tend to be decided in favor of the claimants. In the two-year period FY '01 and '02, claimants took 1,765 cases to OAH and the Medical Commission. Of those cases decided and for which resolution and prevailing party are known, 61 percent were withdrawn or settled prior to being heard. Of the remaining 39 percent of cases that went through the formal hearing process, WSCD won fewer than half (see Figure 5.1).

Figure 5.1

**Contested Cases Decided at Hearing in Favor of WSCD
FY '01-'02**

Claimants win over half the contested cases heard.



Source: LSO analysis of WSCD data

In addition to settling some cases already referred to hearing, the Division on occasion offers claimants unhappy with their decisions the opportunity to settle as an alternative to a hearing. However, the Division could not provide the number of cases settled in this manner, or on the final outcome in those cases.

Relatively few Workers' Compensation appeals reach the Supreme Court each year, and the Division appears to fare better

at this level. For the period 1990 to 2001, the Supreme Court heard 184 Workers' Compensation cases. WSCD won 80 percent of these cases.

Not all requests for hearing are appropriate.

Additional claims should be put on hold until the initial compensability decision is made.

The 1,765 cases referred to OAH and the Medical Commission in FY '01 and '02 represented 1,591 injuries and even fewer individuals; this is because some individuals had multiple cases referred to one or both hearing bodies. These cases were often claims that could not be paid because the compensability of an injury had been denied and this decision was being contested.

According to W.S. 27-14-601(a) additional claims cannot be considered until a compensability decision is made; in essence, they are on hold. The referral rate to OAH and the Medical Commission would have been almost 13 percent lower in FY '01 and '02, had these additional cases been put on hold. We did not find written procedures directing analysts to put subsequent claims for these individuals on hold. Each of these additional cases has its own administrative, court, attorney, discovery, and deposition costs.

Cases go to the wrong hearing body

Improper referrals cause further delay in decisions.

OAH and Medical Commission staff expressed frustration that each receives cases more appropriate for the other hearing body. Inappropriately referred cases are further prolonged because they must be returned to WSCD for re-referral to the proper hearing body. Both staffs also expressed frustration with the quality and completeness of information WSCD sends when referring a case.

Several Less Formal Dispute Resolution Procedures Exist

Alternatives to a formal hearing process are available, some developed by the Division and some authorized in statute:

- Individuals who have missed an application deadline can request a hearing with the Internal Hearing Unit
- WSCD can reverse its final determination within one year, if additional relevant information arises

- Disputes involving \$2,000 or less that do not involve a compensability issue can be pursued in small claims hearings
- WSCD can settle for up to \$2,500 without acknowledging compensability
- OAH and the Medical Commission offer voluntary mediation services

Alternatives to formal hearings are not always apparent.

When first denying a worker's injury or benefit compensability, the claims analyst sends a letter that announces the denial and explains the worker has the right to request a hearing. The letter does not mention less formal alternatives for resolving disputes. Consequently, use of these options depends on whether the analyst informs the parties of them verbally.

Analysts we interviewed seemed largely unfamiliar with the mechanics of referring disputes to mediation and with other less adversarial means of resolving issues. Referral data shows that analysts continue to rely on the most formal procedures to resolve claims disputes.

Reliance on Formal Hearings Has Negative Financial and Medical Consequences

Hearings cost WSCD nearly \$3 million annually.

An emphasis on formal hearings has financial consequences for WSCD since the Division pays its own attorney fees, the injured workers' attorney fees, court fees, and OAH and Medical Commission costs. In FY '01 and '02, the Division's costs for contested cases averaged \$2.7 million annually; this represents 2.5 percent of total Workers' Compensation program costs, and 15 percent of the program's administrative costs.

Attorney and court fees were recorded for only a handful of cases in the data we obtained from WSCD. Consequently, our analysis is limited by lack of complete information and cannot be considered statistically reliable. Nevertheless, the available data suggests an additional area of concern: cases in which information on legal costs were recorded show that WSCD frequently paid far more in legal costs, or settled for a larger sum, than the amount originally at dispute. One dispute

concerning \$28 in benefits resulted in court and claimants' attorney costs (not including WSCD attorney fees) of \$2,001. While this case is extreme, it is representative of other cases for which data were available; in one, a dispute over \$452 in benefits was settled for \$5,000.

No written policy directs analysts to pursue early dispute resolution.

Division officials maintain that each case has the potential of setting a precedent, and in some, a good business decision may be less important than the principle at stake. However, we found no written policy or training that directs WSCD staff to do all they can to resolve disputes early in the process.

Cases Threaten to Overwhelm OAH and the Medical Commission

OAH and the Medical Commission staff say they are overwhelmed with the volume of WSCD cases they receive. In their words, their dockets are out of control: OAH has WSCD hearings scheduled five months in advance. Medical Commission hearings are currently scheduled ten months in advance.

Contested case load results in hearings being scheduled months in advance.

Once a case goes to OAH or the Medical Commission, the rules, procedures, legal requirements and timeframes of those bodies supersede WSCD requirements. Hearings proceed according to their own schedules and legal requirements. In FY '01 and '02, less than one percent of the injury compensability cases that went to hearing were decided in under 60 days after referral to hearing. By comparison, 93 percent of all injuries found compensable were decided in that amount of time.

Hearing delays can result in financial and medical hardships for injured workers.

In addition, injured workers may encounter financial hardships due to the extra time it takes to resolve disputes and receive benefits. A less obvious but potentially more serious outcome is that some injured workers may make their own decision to discontinue medical treatment pending the outcome of their hearing. In cases where delaying treatment can result in deterioration, this can have long term or even permanent health consequences for the injured worker.

Little Attention Given to Promoting Alternative Methods

WSCD has not developed policy to guide the use of alternatives.

Alternative dispute resolution procedures are known to minimize time and aggravation and reduce costs for all parties in a dispute. WSCD has not set up an administrative structure that directs analysts to suggest dispute resolution alternatives such as redeterminations, mediation, and settlements. If the Division is committed to alternative dispute resolution, it needs to develop policy, written procedures, analyst training, outcome measures, an information system, and review procedures to highlight that commitment.

Rather than finding written policy that promotes use of such alternatives, we found a disturbing acceptance of formal hearings as the only option. In denying benefits or missing the statutory 60-day decision limit, WSCD sets the stage for a dispute because referral to hearing is the only recourse an injured worker may be told about. When asked to describe how they decide which cases to refer to hearing, several analysts and supervisors commented that statute says they have 60 days to make a decision and then the matter goes to hearing.

WSCD has not developed procedures to inform analyst decision making.

WSCD's written procedures are not adequate to guide analysts through the range of alternatives; the procedure manual provides little more than their legal definitions. Generally, information the manual contains about hearings, such as who pays court reporter fees, is not germane to the analyst's decision-making process. There is no written policy to assist in determining the circumstances under which a settlement or a redetermination might preclude the need for a hearing.

WSCD staff depend heavily on informal employee mentoring and word of mouth for transmitting policy and procedural changes. This appears to be the case with referrals to hearing: within individual districts (internal units consisting of analysts and a supervisor), we saw a similarity in the rate of referrals and the proportion of "wins" at hearing. These measures were not, however, consistent among districts. Consistency within districts suggests that each supervisor is successfully communicating a

version of policy to subordinates. However, differences among districts suggest that Division policy and procedure may not be consistently communicated across the organization.

Recommendation: WSCD should develop explicit policies and materials promoting the use of less formal approaches to dispute resolution.

Other states initially require less formal means to resolve disputes.

Analysts need specific guidance on their key role in the resolution of disputes, a role that starts at the earliest stages of a case. Analysts are in a position to steer some disputes towards less costly and less contentious resolution than can occur in a formal hearing venue. Some states allow, and at least one even requires, disputing parties to participate in less formal attempts to resolve their differences. In North Dakota, cases cannot be referred to a formal hearing process or review body, nor will attorney fees be paid, until less litigious alternatives have been exhausted. In this way, hearings are reserved for cases that cannot be resolved less adversarially.

Claims Analysts Are Claimants' Only Identified Source of Information

Participants rely on analysts to inform them of alternatives.

WSCD's procedures make the claims analyst an individual's initial contact, the ongoing contact, and generally only contact and source of information about the Workers' Compensation system. No suggestions of alternate contacts appear in the written information available to claimants. For example, if a benefit is denied, the disputing party is instructed to discuss the matter with the claims analyst. However, this is the very person who decided to deny the benefit in the first place. If the misunderstanding or disagreement continues, the disputing party can only know of alternatives from the information the analyst chooses to transmit. At present, a claimant can get independent information and impartial legal advice in one of two ways: by requesting a contested case hearing, or by paying for the services of an attorney out of pocket.

Recommendation: WSCD should provide participants with a neutral source of procedural and legal information.

As an initial step, WSCD needs to provide participants with a clear explanation of dispute resolution alternatives that are currently available. Participants should have a description of the procedures, the costs and who covers them, and the average time associated with each choice so they can make informed choices regarding the resolution of disagreements. Should a customer service unit be created as recommended in Chapter 4, that staff could also transmit this information verbally.

Other states find independent review of disputes to be cost effective.

Other states provide participants with an independent source of information in addition to their claims analysts. For example, North Dakota provides no-cost assistance to injured workers attempting to resolve disputes through its Office of Independent Review (OIR). OIR staff have several functions: they help avoid costly and lengthy litigation by offering an independent review of the disputed claim, they communicate with Workers' Compensation staff, and they advocate on behalf of the claimant. Their efforts are geared to resolving disagreements early, before disputes grow to become formally contested cases.

WSCD Lacks Information Needed to Improve Referrals to Hearing

WSCD does not study why it loses so many contested cases.

With the data currently available, WSCD management cannot determine why the Division loses as many cases as it does at hearing. The Division lacks internal procedures that ensure a substantive review of cases that are going to hearing, and it knows little about the outcomes of the hearings. The Division also does not track data that would demonstrate whether cases are lost because the information on which a decision was made was inadequate or incorrect.

Current procedures call for supervisors to review referrals to hearing to ensure that required paperwork has been completed. However, they do not consistently review the appropriateness of the decisions that prompted claimants to request hearings.

Recommendation: WSCD should identify ways to improve the current referral process and its outcomes.

Alternative approaches may require new policies, procedures, and staffing practices.

WSCD needs to undertake a systematic review of its role in referring cases to hearing, and revise current practices. Management can set the tone by emphasizing the importance of resolving disputes early, thereby avoiding unnecessary legal proceedings and their related costs. Management needs to develop policy that directs analysts to recommend alternative dispute resolution options when appropriate. New procedures and materials highlighting these options should be created and integrated into the Division's way of doing business.

WSCD may also need staff with special skills. For example, a professional with expertise in resolving administrative, legal, and medical issues could review referrals for substantive merit. This level of scrutiny could help ensure that claimants are treated fairly and equitably, and that appropriate cases are offered mediation, settlement, or other means of resolution.

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CHAPTER 6

WSCD Performance Is Not Independently Monitored

WSCD has not adequately monitored or reported on its performance.

Wyoming lacks an intermediary entity dedicated to monitoring WSCD performance in meeting the intent of the Act. What monitoring occurs comes through the legislative, rule making, and contested case hearing processes. This arrangement has not resulted in the Division comprehensively monitoring or reporting its own performance, especially with respect to claims processing.

Other states monitor their workers' compensation systems.

Other states have established various entities or organizational structures to monitor their workers' compensation systems. Nearly 2/3 of states, including the other monopolistic states, have advisory groups to monitor program performance, advise on administrative policies and rules, and study issues affecting workers' compensation. In the states that allow private insurers, state agencies charged with administering workers' compensation do this by monitoring insurers' performance and compliance with the laws. States with competitive workers' compensation funds rely upon boards of directors appointed by the Governor to monitor financial and program performance.

An advisory council could provide needed oversight.

The Legislature could add needed oversight to WSCD by establishing a workers' compensation advisory council. Such a group could provide needed program monitoring to ensure that claims processing is occurring as the Act intends.

WSCD Acts as an Insurance Claims Adjustor

Claims, the Division's largest administrative function, has one responsibility: reviewing claims and authorizing benefits if analysts determine they are warranted. WSCD is not in charge of generating program revenues; another Department of Employment (DOE) division, Employment Tax, sets employer rates and collects premiums.

Division authority is vested in a single administrator.

Division authority is vested in a single administrator appointed by the DOE director, who in turn serves at the Governor's pleasure. WSCD includes a one-person internal audit section, which is also under the administrator. It has been Division practice for the administrator to direct the focus of internal audits, which so far have concentrated upon individual analyst performance.

WSCD operates like a competitive state fund, with only the responsibility to provide insurance benefits.

In comparison to other state workers' compensation systems, we found that WSCD operates much like a competitive state fund, in that it has no responsibility other than providing insurance benefits. Competitive state funds are operated by states that also allow private providers. In this model, the state funds compete with private insurers to provide employers with coverage, and often serve as the insurer of last resort. They are directed and overseen by boards of directors appointed by governors, and operate much like private companies. For example, boards appoint chief executive officers to manage the funds. Four neighboring states, Utah, Montana, Idaho, and Colorado have this arrangement.

Most Other States Have an Intermediary Role to Monitor Workers' Compensation

States with private insurers monitor them to ensure that they provide benefits as laws intend.

In states that allow employers to either purchase workers' compensation insurance from private carriers or self-insure, the state workers' compensation agencies have an intermediary role between the insurer and the claimants. Their role is ensuring that insurers provide benefits as state laws intend. These state agencies accomplish this by monitoring the performance of private carriers and self-insured employers. They also often have regulatory authority over insurers, although some share this responsibility with state insurance departments.

States with competitive funds also have workers' compensation agencies acting in intermediary roles to ensure that both private insurers and the state fund implement the laws appropriately. Further, all insurers providing workers' compensation coverage, including the competitive state funds, are subject to state insurance department oversight.

The Wyoming Department of Insurance has no authority to monitor or regulate WSCD.

As a monopolistic state, Wyoming does not have private workers' compensation insurers to monitor. The Wyoming Department of Insurance regulates the private insurance industry, investigates consumer complaints, and monitors insurance companies' financial conditions. However, it has no authority to regulate or monitor WSCD. The Legislature amended statute in 1994 to eliminate the Insurance Department's participation in the Division's rate-making process, which had been its only involvement with Workers' Compensation.

Other Monopolistic State Programs Have Advisory Councils Advising Administrators

The other four monopolistic states have workers' compensation organizations like Wyoming's, with administrative authority vested in single administrators. However, in every other monopolistic state, the administrators also rely on advisory groups, created in statute and charged with a range of responsibilities including:

Statutes establish advisory bodies and give them specific responsibilities.

- Assisting program administrators in developing overall administrative policy
- Advising on administrative rules
- Establishing and monitoring performance measures to ensure continued improvement in key areas of operations
- Studying issues identified by the advisory group or requested by administrators
- Issuing annual reports on program cost and quality objectives
- Establishing fund investment policies and objectives

North Dakota most recently added an advisory board.

North Dakota Workers' Compensation (NDWC) most recently added an advisory group. In 1997, legislation created a customer-based board of directors of ten members, appointed by the governor. Board members represent employers, employees, and health care providers. The board's role is to ensure continuity of leadership at NDWC and to ensure the program operates efficiently and effectively.

The ND board's function includes regular performance monitoring.

The structure in place to accomplish this includes regular performance monitoring and an internal auditor who reports to the board. The NDWC board also has several committees, including a customer service committee with the specific task of evaluating services provided to customers and making recommendations for improvement. This committee meets at various locations throughout the state so interested parties may express their concerns.

An NCSL Workers' Compensation Blue Ribbon Panel recommended advisory councils for continuing oversight.

Nearly two-thirds of all states have advisory boards

Workers' compensation administrators, governors, legislatures, or combinations of these groups appoint the advisory groups. The members include representatives of employers, employees, and other groups with interest in the system, such as health care providers. Their results range from better communication and cooperation among the groups affected by workers' compensation to recommendations for legislative and administrative changes.

NCSL Panel: Individuals who understand the system should be involved in monitoring it.

The National Council of State Legislatures (NCSL) organized a Blue Ribbon Panel to bring recommendations to NCSL's Task Force on Workers' Compensation. In 1994, the panel produced a report with several recommendations including some on the administration of state workers' compensation programs. Among these was a recommendation that states have advisory councils, with the purpose of providing continuing oversight and input to the state agency and the legislature.

According to the NCSL panel, councils were also needed to monitor programs to determine if administrative and legislative changes meet their intent. Further, the panel found that rational improvements to the system were more likely if individuals who understand the system and can speak for their respective interest groups are actively involved in monitoring the program.

WSCD Has Not Fully Monitored Its Performance, Nor Fully Reported Its Status

We found that the existing organizational arrangement has not led WSCD to fully monitor its performance, as the Legislature

Wyoming statute requires annual reports.

requested. Statute (W.S. 27-14-804 (a)) requires the DOE director to compile information relevant to the Act's administration and annually report income, expenditures, and fund balances. In addition, statute requires an annual report on recommendations for improvement to claims processing.

WSCD reports have been solely financial, but not complete financial summaries.

We reviewed the Annual Report to the Joint Labor, Health and Social Services Interim Committee (Labor Committee), which DOE produces in response to this directive, and found that it provides only basic financial information and statistics. WSCD reporting has been solely financial, yet has not provided a complete summary of the program's financial status.

Annual reports have not identified investment income or administrative costs.

For example, the Division reports fund balance, recommended reserve, total expenditures, total revenues, number of injuries, and calendar year average base tax rate. However, much of this information is presented only in graph form, which limits its precision. WSCD does not distinguish among the sources of revenues, to show the portion contributed by premiums and that by investments. Having this information would enable policymakers to see the portion of premiums that covers claims, and the portion that augments reserves. Further, the annual report lacks other essential pieces of financial information, such as investment income and administrative costs.

WSCD does not report on claims processing performance or track the impact of legislative changes

The annual report to the Labor Committee does not include any claims processing performance measures. WSCD has not compiled statistics to indicate its performance with respect to other benchmarks that would allow policymakers and the public to assess whether it is quickly and efficiently delivering benefits to injured workers at a reasonable cost.

WSCD has not tracked its claims processing performance.

The 1994 NCSL Blue Ribbon Panel stated there is a need for a monitoring program to determine if administrative and legislative changes meet their intent, to allow policy makers to fine-tune their efforts and correct problems. Along these lines, we found that WSCD is not tracking outcomes to see if a 2002 legislative change to reduce the number of determinations going to contested case hearings is working.

This change allows the Division, at its own discretion, to make a “re-determination” within one year of having denied benefits to a worker (W.S. 27-14-601(k)(vi)). The Division must, by statute, deny claims if it does not have necessary information within 60 days; the new provision gives it an opportunity to change determinations if claimants provide additional information within a year. WSCD personnel believe this is working, but have not designed a tracking system to demonstrate its success.

States report both comprehensive financial information and claims processing performance.

Other states report considerably more information

We reviewed information from several other states and found much more basic program information, related to both finances and claims processing, than WSCD provides. For example, North Dakota Workers’ Compensation produces a biennial report that includes comprehensive financial information as well as the time it takes analysts to accept or deny claims. West Virginia reports the cost of claims, broken down according to the type of benefits provided. The Ohio program provides information on a host of benchmarks, including administrative cost per claim, average days to adjust medical bills, and percent of claims contested.

1989 Government Reorganization Philosophies Limited Advisory Boards

DOE officials believed solving Workers’ Compensation financial problems required direct accountability to the Governor.

The Legislature created DOE in 1989 during government reorganization, and transferred in the Workers’ Compensation Division from the Office of the State Treasurer. At that time, the Legislature did not establish a workers’ compensation advisory board, as it has done for many functions in state government that provide services to the public. In fact, at the time of reorganization, there was a concerted effort to move away from boards and commissions to avoid diffusion of responsibility in state government.

Further, Wyoming state government reorganization occurred at the time when the Workers’ Compensation program was in dire financial straits. In the same year it passed reorganization statutes, the Legislature gave the Division authority to borrow \$20 million from state funds and extended repayment for previously authorized loans. A former DOE official said that

The DOE reorganization did not include an advisory board specific to Workers' Compensation.

executive branch officials believed they could most efficiently address the program's financial problems by establishing direct accountability from the department officials to the Governor.

Thus, while reorganization statutes allowed agency reorganization plans to include advisory bodies, the DOE plan was developed and approved by the Legislature without one. WSCD officials, past and present, maintain that contested case hearings and rule-making processes (especially those setting rates) provide sufficient opportunity for outside input and oversight.

Recommendation: The Legislature should consider establishing a Workers' Compensation Advisory Council.

On its own, WSCD has not focused upon identifying and solving systemic problems with claims processing.

WSCD controls the administration of Workers' Compensation in the state. Statute directs it to interpret the laws to quickly and efficiently deliver medical and indemnity benefits at a reasonable cost. Under the current system, we found no consistent and comprehensive oversight of the Division's administration of the program to ensure this is occurring, especially with respect to claims processing.

Workers' Compensation is a complex and challenging program, the nuances of which can easily absorb administrators and managers at very detailed levels, leaving little perspective for objective oversight and evaluation. We believe WSCD has focused its efforts on handling individual cases, rather than on identifying and solving systemic problems with claims processing. Wyoming statute (W.S. 9-2-1707 (a)(iii)(F)) provides for advisory bodies to study problems in specified program areas of state government, and to provide recommendations and policy alternatives. WSCD would benefit from such a perspective.

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AGENCY RESPONSE

Workers' Compensation Claims Processing



DAVE FREUDENTHAL
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June 11, 2003

The Honorable April Brimmer Kunz
Wyoming State Senate
Chairman, Management Audit Committee
c/o Wyoming Legislative Service Office
213 Capitol Building
Cheyenne, WY 82002

Dear Senator Kunz:

The Workers' Safety and Compensation Division (WSCD) and I appreciate the opportunity to respond to the Legislative Service Office's (LSO) revised report draft ("Report") on the Workers' Compensation Claims Processing. The LSO evaluation team is to be acknowledged and commended for their substantive research, analysis, and thoughtful direction as evidenced by the detailed report and recommendations on this complex and legalistic program. We thank them for their understanding, insight, and professionalism.

The Report's background section, overall content, and recommendations are quite adept with respect to the program and service delivery issues. These recommendations serve to confirm a number of issues heretofore identified by the current administration. This validation provides considerable reassurance of our initial assessment, as well as greater impetus for initiatives previously implemented and those tentatively scheduled. Further elaboration as to the administration's preexisting activities will be addressed under each of the respective thirteen (13) LSO recommendations. Additionally, we believe it incumbent to note that inherent in many of the recommendations is the potential for fiscal impact. Management is sensitive to the fact that any costs incurred may affect the rates charged to employers and must be within the appropriation. Cost estimates commensurate with the respective recommendations are undetermined at this time and are contingent upon potential statutory change(s) and management decisions.

Following are our comments respective to each recommendation:

Senator April Brimmer Kunz
June 11, 2003

Chapter 2 Recommendation page 15: “WSCD should improve the timeliness of its compensability decisions.”

Agency Response: Agree

It has been recommended that, “At the least, WSCD should regularly track how long it takes to make initial decisions, both denials and approvals.” We concur with the need to quantify performance for purposes of providing programmatic assessment and accountability. WSCD will implement measures that provide for ongoing accounting in this respect. Further, WSCD will review current case analyst standards and assess the viability of establishing additional appropriate performance standards and indicators. Albeit, we are unclear as to the source of the “industry standard” that is referenced throughout the Report, research will be directed towards such standards in the development and implementation of further appropriate performance measures.

WSCD has an internal policy that directs case analysts to obtain additional information to determine compensability when the injured worker has a certain type of injury. These injuries include, but are not limited to, hernias, heart attack, cumulative trauma, stress, seizures, vehicle accidents, needle sticks, blood/disease exposure, and back/joint injuries. A considerable amount of time is expended in these specific cases obtaining medical evidence and additional information. Needless to say, often the timeliness in obtaining this information is an external factor outside of the Division’s immediate control and, therefore, adversely impacts the timeliness of decisions. A review will be undertaken to assess the continued viability and ongoing need for such policy.

Chapter 2 Recommendation page 18: “WSCD should improve the timeliness of initial TTD payment.”

Agency Response: Partially Agree

Commentary germane to this recommendation indicates “WSCD should focus on its goal of providing timely and appropriate benefits: it needs to develop policies and procedures that will deliver temporary total disability (TTD) payments as early as possible, and should track its process.” It is notable that this recommendation has a significant correlation to the prior recommendation in that the issue of compensability is involved and much of the foregoing narrative is applicable. However, issues associated with this recommendation also encompass measurement methodology and statute.

Senator April Brimmer Kunz
June 11, 2003

As appropriately noted by LSO, WSCD could not provide performance information specific to this measure, the time lag between notice of lost time and payment date of the initial TTD payment for Fiscal Years 2001 and 2002. At their request, WSCD compiled data on the time lag between the injury report and first payment date. Utilizing this methodology, WSCD paid 13% of initial TTD payments within 14 days of the injury reports. However, injured workers must apply for TTD benefits, as a report of injury is not a claim for TTD benefits. Thus, we question the accuracy of this measurement as structured. WSCD data from July 1, 2002, through May 28, 2003, measures the date the TTD application is received versus the date TTD payment is scheduled/authorized. This data demonstrates that 1,966 claims were scheduled within 14 days, 314 claims were scheduled outside of 14 days, thereby concluding that 86.22% of the TTD payments were scheduled within 14 days.

Irrespective of how one measures the timeliness of TTD, WSCD agrees that as a matter of customer service TTD payment needs to be afforded to injured workers at the earliest opportunity. As noted in the Report, W.S. 27-14-403(c) provides that injured workers receive indemnity payments monthly, thus WSCD cannot replicate regular pay periods less than one month in length. This statutory requirement is often an obstacle and presents an impediment to enhancing the timeliness of initial TTD payment. WSCD is supportive of this recommendation conceptually and will explore a statutory change allowing for TTD payment semimonthly to injured workers.

Chapter 2 Recommendation page 22: “WSCD should consider contracting for a comprehensive assessment of its financial practices and condition.”

Agency Response: Agree

At present, WSCD has an annual financial review as part of the statewide audit contracted by the Department of Audit and monitored by the State Auditor. Routinely a sample of claims' expenditures, paid by WSCD, is tested and revenues received through the Employment Tax Division are tested in both Cheyenne and Casper. Testing includes reviewing supporting documentation for both claims to be paid and revenue received.

We appreciate that the foregoing recommendation goes beyond normal accounting measures currently being practiced. LSO rightfully advocates for a comprehensive assessment with an independent firm with expertise specific to Workers' Compensation to determine if we are attaining our fiscal goals in the most advantageous manner. We believe this recommendation to be particularly meritorious and in fact had identified this as an initiative to be addressed. Prior administrative discussions have revolved around the need to obtain an independent assessment and validation of the Department's contract actuary, to include assessment of unfunded liability and financial practices. WSCD will initiate measures to obtain such a comprehensive assessment in State Fiscal Year 2004.

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Chapter 3 Recommendation page 29: “WSCD should monitor and evaluate turnover among contract analysts and develop a plan to improve retention.”

Agency Response: Agree

The Division has been diligently involved in assessing circumstances that pertain to at-will-employee-contractor (AWEC) case analyst positions. LSO has accurately identified this as a staffing issue, one we fervently believe undermines the efficiency of continued operations. As was noted, the Legislature appropriated funding in 2001 to hire AWEC case analysts and within the first 18 months, 65% of these individuals left their jobs for varied reasons. Fundamental to this issue is the fact that contract employees do not receive retirement and health benefits. This creates morale issues, as well as perpetuates continued job seeking for full-time positions providing full benefits, which further attributes to turnover. On May 12, 2003, we discussed these concerns with Governor Freudenthal and Chris Boswell, Chief of Staff. The Joint Labor, Health, and Social Services Interim Committee has also been apprised of these concerns. These positions are paramount to maintaining workable caseloads and providing timely customer service. It is our belief that given the documented need, identified issues associated with AWEC, and the preexisting appropriation, FTE positions should be sought and AWEC case analyst staff transitioned to State positions. WSCD will respectfully pursue legislative support for this initiative in the forthcoming legislative session.

Chapter 3 Recommendation page 31: “WSCD should consider adapting the triage model to suit its organizational structure.”

Agency Response: Disagree

This recommendation notes that, “According to one industry expert, triage “is an excellent way to utilize scarce experienced people for maximum benefit and impact for all parties in the system.” The goal of giving difficult cases a higher level of attention and expertise upfront is to prevent delays in issuing benefits and avoid costly litigation.”

WSCD has previously employed a version of triage in its case management practices and found it not to be customer friendly. By utilizing staff with varied expertise, the injured worker potentially deals with a multitude of case analysts. This often culminated in frustration for the injured worker because each analyst had to review the case anew to become familiar with the specifics. Concomitant with this issue was the Division’s concern relevant to effective utilization of staff.

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WSCD has developed and implemented a system whereby case analysts are assigned to employers within their district. This allows for continuity for the employer and provides a consistent point of contact. In difficult cases, case analysts always have access to supervisory guidance, therefore, adding to their knowledge base and expertise on an ongoing basis. With the triage model that calls upon staff with varying degrees of expertise, we found it problematic to provide opportunity for analysts to acquire enhanced skills and knowledge because they were consistently being utilized in a specific capacity.

Concurrent with the above issue of not being customer friendly is the systems issue this would present for WSCD. As noted in the foregoing paragraph, caseloads assigned to case analysts are employer specific. To implement a change in this business model would require redevelopment and redesign of the mainframe computer system. Further, our imaging system is predicated on current workflow design and this would also necessitate major modification.

Chapter 3 Recommendation page 32: “WSCD should develop written policy statements and improve the procedures manual.”

Agency Response: Partially Agree

WSCD concurs with this recommendation and prior to the program evaluation had directed the Division’s internal auditor and trainer to review and present suggestions for modification of the procedures manual. Under the Department of Employment’s goal of continuous improvement, we will endeavor to enhance guidance for staff to provide equitable services and decisions statewide.

However, we do have concerns as to comments that state, “Lacking in the manual and in other WSCD materials is written policy intended to guide analysts at major decision points, when they are called on to exercise particular latitude and discretion.” WSCD believes that the Workers’ Compensation statutes provide much of this guidance. Injured workers’ cases are unique to the individual employee and must be handled on a case-by-case basis. Policy simply cannot address every decision point, therefore, we must rely on qualified staff to exercise appropriate discretion and professional judgment. Heretofore the procedures manual has been reviewed by the claims’ management team on a quarterly basis to maintain currency with statute and rule changes. WSCD recently contracted with Octagon Risk Services, Inc., for a reserve audit report. Recommendations evolving from this report are also being incorporated into the procedures manual. As with any organization, policy and procedures are an ongoing work in progress, a challenge that we acknowledge and willingly accept for the mutual benefit of staff and customers.

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Chapter 4 Recommendation page 37: “WSCD should improve its written materials for claimants and employers.”

Agency Response: Agree

The LSO evaluation team has most appropriately noted that Workers’ Compensation materials should be designed for easy use by the average worker and should state information about requirements and procedures in simple, clear terms.

Because of the inherent legal nature of this program, much of the material has historically been written with the assistance of the Attorney General’s Office, to insure that it is defensible in potential future litigation. WSCD readily acknowledges the need to upgrade written materials so that they are more understandable and customer friendly. Efforts underway, prior to receipt of the Report, included rewriting of the Report of Injury form, Information for Injured Workers handbook, letters of request for medical information, etc. The Division will be assessing all written materials at a future date and believes certain materials should be made available in Spanish.

Chapter 4 Recommendation page 38: “WSCD should expand education for claimants and employers.”

Agency Response: Agree

At present, the Employment Tax Division, OSHA, and Workers’ Compensation are conducting employer seminars. These may be provided separately or in conjunction with each other. With the majority of employers in Wyoming being small, the seminars may be reaching those employers that can participate and desire to attend. Admittedly, educational seminars for claimants pose a challenge, in that they do not become such until they are injured and subsequently file an application. Experience substantiates that prior to being involved with the program, employees have minimal interest in taking the time to be advised of the specifics.

Nonetheless, WSCD is most supportive of this recommendation and wholeheartedly acknowledges the need for continued educational efforts. At present, case analysts are required twice a year to make personal employer contacts for purposes of education and professional relations. Staff conducts numerous “Workers’ Compensation 101” seminars throughout the State. We had determined the need for an additional risk management specialist and are in the midst of recruiting for this position. WSCD will continue to assess these and similar efforts, both programmatically and fiscally, and reinforce such initiatives wherever plausible.

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Chapter 4 Recommendation page 41: “WSCD should create a customer service unit.”

Agency Response: Partially Agree

The report indicates, “WSCD needs to focus on improving customer service and at the least, should provide a 1-800 number to contact for more information about the claims process. A customer service unit can provide assistance previously rendered by the various customer service positions the Division had in the past.”

Historically, WSCD had provided a 1-800 number to assist injured workers with Reports of Injury. However, a legal opinion rendered that WSCD could not act upon the injury report until it was submitted with signature. This combined with the fact that it was being consistently used beyond its intended purpose, culminated in its termination.

The concept of staff dedicated exclusively to a customer service unit is intriguing and would have some distinct advantages. Staffing of such a unit would require individuals with knowledge and expertise in the Workers’ Compensation program, which would ultimately pose human resource challenges. One drawback to such positions, as pertains to customer service, is that not being familiar with individualized cases. Customer service staff responses normally are tailored as to how WSCD provides services and make determinations, not why it was done a particular way in the individual injured worker’s case. We estimate the unit would require three staff positions with additional furnished space and equipment requirements. Such an initiative would require additional appropriation and authorization for the positions.

At present, WSCD does have several initiatives underway that serve to compliment this recommendation. In approximately 60 days, WSCD’s Web Project will be available to the injured workers and medical providers. The employer portion of the Web Project will be available by the end of the year. This initiative will provide a host of services from case benefits information, to billing status, to on-line “Loss-Run” capability. Simultaneously, WSCD is in the process of procuring an Interactive Voice Response (IVR) system that will provide all of the aforementioned Web Project information, with the exception of the “Loss-Run” employer data. This system will incorporate a 1-800 number, and we believe it will provide exceptional customer service.

Please be assured of WSCD’s commitment to customer service and know that we will judiciously continue to evaluate methods for further enhancement.

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Chapter 5 Recommendation page 49: “WSCD should develop explicit policies and materials promoting the use of less formal approaches to dispute resolution.”

Agency Response: Disagree

WSCD has opted to disagree with this recommendation as it is unclear conceptually exactly what the LSO evaluation team visualizes as “less costly and less contentious resolution” procedures.

Dispute resolution procedures have been developed and implemented over time with the assistance of the Attorney General’s Office. Modification to these procedures will necessitate their involvement and concurrence. Given the nature of the prevailing dispute resolution process, injured workers are hesitant to enter into resolution because of the program’s complexity and by requesting a hearing, they will be provided with paid legal assistance.

WSCD will take this recommendation under further advisement and pursue appropriate research and analysis in an attempt to implement less litigious alternatives. It is important to note that WSCD has been involved in ongoing discussion with both the Medical Commission and the Office of Administrative Hearings (OAH) in an effort to facilitate the dispute resolution process. Effective May 1, 2003, WSCD has been purchasing mediation services from OAH. This initiative has realized a high degree of success and will be continued.

Chapter 5 Recommendation page 50: “WSCD should provide participants with a neutral source of procedural and legal information.”

Agency Response: Disagree

This recommendation is not without merit and believed by WSCD in theory to be quite good, but in reality is questionable from an administrative perspective. It has been stated that with the implementation of a customer service unit, this information could be imparted verbally. However, being employees of WSCD brings to immediate question, their neutrality. In effect, this recommendation would require the services of an outside entity comparable to the State’s Protection and Advocacy program, which once again gives question to the issue of resources. Of further issue, in this potential scenario, are the employers and their potential concerns as to the balance of equitability.

WSCD is respectful of the opinion that participants are provided appropriate information as to “procedures, the costs and who covers them, and the average time associated with each choice so they can make informed choices regarding the resolution of disagreements.” Admittedly, we are hard pressed to see where such a process would legitimize the return on investment, should this be pursued with a strictly “neutral source.”

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Chapter 5 Recommendation page 51: “WSCD should identify ways to improve the current referral process and its outcomes.”

Agency Response: Agree

WSCD concurs entirely with the recommendation and will be assessing current established measures for review of cases referred to hearing. Quality assurance measures will be reviewed, refined, and monitored by management staff on an ongoing basis.

Chapter 6 Recommendation page 59: “The Legislature should consider establishing a Workers’ Compensation Advisory Council.”

Agency Response: Neutral

We believe it is important to note the Workers’ Insurance Advisory Council was created on April 1, 1990; it was charged to advise the Department regarding the Workers’ Compensation program and to make recommendations to improve coordination between Workers’ Compensation and Unemployment Insurance.

Attempts were made to have the Council meet as required. A quorum was not obtainable. Consequently, the recommendation was made not to appoint any new members and the legislation, W.S. 27-3-606(a) and (b) was repealed during the 1996 legislative session in HB0013, House Enrolled Act No. 2.

The foregoing concludes our comments regarding the Report, which encompasses the individual recommendations. A preponderance of these recommendations revolve around issues of customer service, of which we are most cognizant. At present, I am auditing customer service presenters and seminars for content in order that we may address this concern at a Departmental level, inclusive of WSCD. Please be assured of the Department’s sincere commitment to enhance customer service and optimize the Workers’ Compensation program’s effectiveness and efficiency. To that end, we welcome the opportunity to work with the Management Audit Committee and the Legislature in this endeavor.

Thank you for the opportunity to comment and for the Committee’s anticipated review and counsel. We look forward to discussing the Report in greater detail with the Committee.

Sincerely,

Cynthia A. Pomeroy
Director

APPENDICES

Workers' Compensation Claims Processing

APPENDIX A

Constitutional Authority for Workers' Compensation

Wyoming Constitution Article 10, section 4: **Damages for personal injuries or death not to be limited; worker's compensation.**

No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person. Any contract or agreement with any employee waiving any right to recover damages for causing the death or injury of any employee shall be void. As to all extrahazardous employments the legislature shall provide by law for the accumulation and maintenance of a fund or funds out of which shall be paid compensation as may be fixed by law according to proper classifications to each person injured in such employment or to the dependent families of such as die as the result of such injuries, except in case of injuries due solely to the culpable negligence of the injured employee. The fund or funds shall be accumulated, paid into the state treasury and maintained in such manner as may be provided by law. Monies in the fund shall be expended only for compensation authorized by this section, for administration and management of the Worker's Compensation Act, debt service related to the fund and for workplace safety programs conducted by the state as authorized by law. The right of each employee to compensation from the fund shall be in lieu of and shall take the place of any and all rights of action against any employer contributing as required by law to the fund in favor of any person or persons by reason of the injuries or death. Subject to conditions specified by law, the legislature may allow employments not designated extrahazardous to be covered by the state fund at the option of the employer. To the extent an employer elects to be covered by the state fund and contributes to the fund as required by law, the employer shall enjoy the same immunity as provided for extrahazardous employments.

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APPENDIX B

Index of Wyoming Workers' Compensation Act Statutes

Article 1 - Generally

27-14-101 Short title; statement of intent.

27-14-102 Definitions.

27-14-104 Exclusive remedy as to employer; nonliability of co-employees; no relief from liability; rights as to delinquent or noncontributing employer.

27-14-105 Action against third party; notice; subrogation; legal representation; payment under reservation of rights; actions by department.

27-14-106 Minor employee to be free of any legal disability.

27-14-108 Extra hazardous industries, employment's, occupations; enumeration; definitions; optional coverage.

Article 2 – Premiums and Rates

27-14-201 Rates and Classifications; rate surcharge.

27-14-202 Premium payments; payroll reports; department authority to establish joint reporting; remedies for incorrect earnings categorizations by employers.

27-14-203 Failure of employer to make payments; interest; lien; injunction; nonexclusive remedies.

27-14-204 Coverage of out-of-state injuries; filing.

27-14-205 State contributions; presumed pay of specified employees.

27-14-206 Public contract work; coverage procedure; responsibility on private contracts.

27-14-207 Employer registration required; employer acquiring trade of another employer.

Article 3 – Nonresident Employers

27-14-301 Applicability of provisions.

27-14-302 Required reporting; security required for certain nonresident employers.

27-14-303 Contact with nonresident conditioned upon compliance.

27-14-304 Return of deposit to nonresident employer after cessation of operations.

27-14-305 Secretary of state designated agent for service of process.

27-14-306 Extraterritorial applicability of provisions.

27-14-307 Penalty for failure to post bond.

Article 4 – Employee Benefits

27-14-401 Medical, hospital and ambulance expenses; review of claim; employer and division designated providers; contracts for bill review, case management and related programs.

27-14-402 Payment for artificial replacement.

27-14-403 Awards generally; method of payment.

27-14-404 Temporary total disability; benefits; determination of eligibility; exceptions for volunteers or prisoners; period of certification limited; temporary light duty employment.

27-14-405 Permanent partial disability; benefits; schedule; permanent disfigurement; disputed ratings.

27-14-406 Permanent total disability; benefits.

27-14-407 Forfeiture of benefits due to unsanitary or injurious practice.

27-14-408 Vocational rehabilitation; application; eligibility; plan; limitation; modification; suspension or termination.

Article 5 – Claim Procedure

27-14-501 Reports by health care provider accepting cases; report of examination; recertification; bills; filing of claims.

27-14-502 Employee's injury report to employer and division; presumption raised by failure to file report; release of information.

27-14-503 Statute of limitations.

27-14-504 Amendment of employee's injury report.

27-14-505 Tolling of statute of limitation while persons under disability.

27-14-506 Employer's injury report; penalty for failure to report.

27-14-507 Employer required to post notice.

27-14-508 Blank form supplied by director; instructions to employees, employers and health care providers; training programs for clerks of court.

27-14-509 Autopsy may be required; procedure.

27-14-510 Misrepresentations or false statements; failure of employer to establish account or furnish payroll report.

27-14-511 Recovery of benefits paid by mistake or fraud.

Article 6 – Contested Cases

27-14-601 Payment of denial of claim by division; notice; objections; review and settlement of claims; filing fee.

27-14-602 Contested cases generally.

27-14-603 Burden of proof; required proof of circumstances; coronary conditions; hernia.

27-14-604 Examination by impartial health care provider; costs; report by nonresident provider.

27-14-605 Application for modification of benefits; time limitation; grounds; termination of case; exceptions.

27-14-606 Determination and awards are administrative determination as to all parties; notice and hearing requirements.

27-14-607 Rights of director to defend against claim; no waiver.

27-14-608 Attorney fees; penalty for violation.

27-14-609 Periodic review of temporary total award; physical examination after temporary total award; purpose; report to division.

27-14-610 Health care providers required to testify; refusal; privilege inapplicable.

27-14-611 Administrative determination for compensation; copies to employer and auditor; warrants for payment.

27-14-612 Appeal by employee; costs.

27-14-613 Appeal by employer; stay of award.

27-14-614 Direct appeal by director from any order; stay of execution; costs.

27-14-615 Appointment of attorneys for court proceedings; fees.

27-14-616 Medical commission; hearing panels; creation; membership; duties; rulemaking.

Article 7 – Fiscal Provisions

27-14-701 Trust and agency fund; worker's compensation account established; investments; administrative expenses; rehabilitation expenses; worker's compensation claims payment account established for Workers' Compensation revenue bond proceeds.

27-14-702 No garnishment, attachment or execution on unpaid award.

27-14-703 Disclosure of child support obligations required; notification; amount withheld; payment; applicability of provisions.

27-14-704 Worker's compensation revenue bonds; department determination; issuance by state loan and investment board; bonding procedure; terms and conditions.

Article 8 – Administrative Provisions

27-14-801 Duties of director.

27-14-802 Rulemaking power; fees; state's average wages; vocational rehabilitation; contracts with clerks of district court.

27-14-803 Investigatory powers; examination of employer's records; subpoenas.

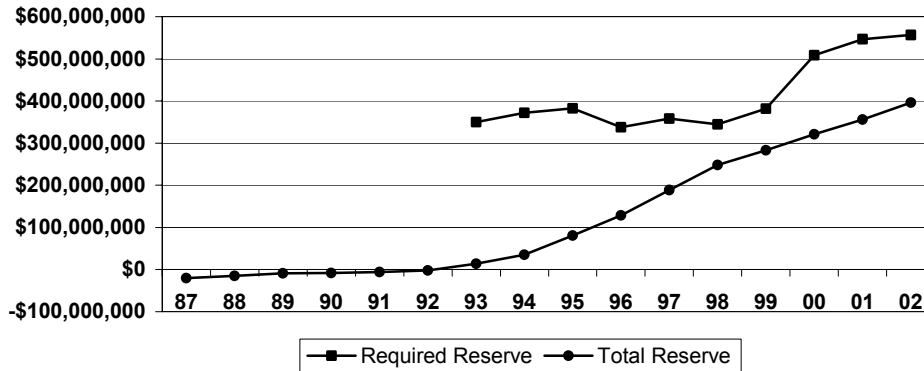
27-14-804 Statistical compilation; annual report and projection; additional reporting requirements.

27-14-805 Confidentiality of information; unlawful disclosure; exception.

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APPENDIX C

Required vs. Total Workers' Compensation Fund Reserves



Year	Required Reserve	Total Reserve
1987		-\$20,000,000
1988		-\$15,000,000
1989		-\$9,000,000
1990		-\$8,000,000
1991		-\$5,500,000
1992		-\$2,000,000
1993	\$350,000,000	\$14,000,000
1994	\$372,000,000	\$35,000,000
1995	\$383,000,000	\$81,000,000
1996	\$338,000,000	\$129,000,000
1997	\$358,000,000	\$189,000,000
1998	\$345,000,000	\$248,000,000
1999	\$382,000,000	\$283,000,000
2000	\$509,000,000	\$321,000,000
2001	\$546,636,000	\$356,000,000
2002	\$556,900,000	\$396,192,348

Source: LSO analysis of WSCD data

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APPENDIX D

WSCD Districts and Offices

**Appendix D is available only in hard copy form.
To obtain a copy of this attachment, contact:**

*Wyoming Legislative Service Office
213 State Capitol Building Cheyenne, Wyoming 82002
Telephone: 307-777-7881 Fax: 307-777-5466
Website: <http://legisweb.state.wy.us>*

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