
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.

Other states report considerably more information

States report both comprehensive financial information and claims processing performance.

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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