
AGENCY RESPONSE

Workers' Compensation Claims Processing



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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.

Senator April Brimmer Kunz
June 11, 2003

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.

Senator April Brimmer Kunz
June 11, 2003

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.

Senator April Brimmer Kunz
June 11, 2003

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.

Senator April Brimmer Kunz
June 11, 2003

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.

Senator April Brimmer Kunz
June 11, 2003

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.”

Senator April Brimmer Kunz
June 11, 2003

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