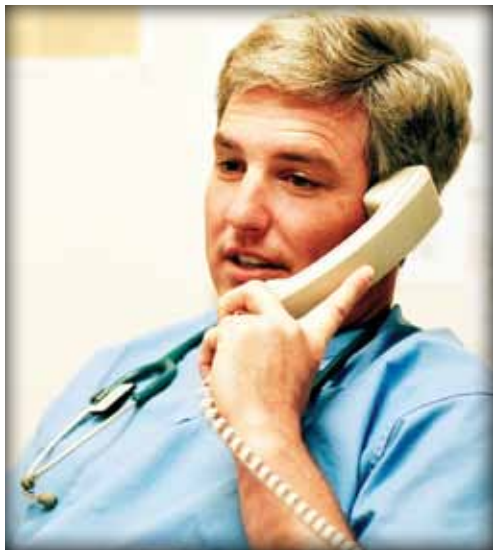
Office of the Ombudsman for Self-Insured Workers

2011 Annual Report

Reporting Period:
July 1, 2010 – June 30, 2011



The Office of the Ombudsman advocates for the rights of injured workers of self-insured employers by providing information, investigating complaints, and taking action to ensure the worker receives the appropriate benefits under industrial insurance law.

Denise McKay, Ombudsman

State of Washington
Office of the Ombudsman for Self Insured Injured Workers
Department of Labor and Industries
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September 25, 2011

The Honorable Chris O. Gregoire
Honorable Members of the Legislature

I am pleased to submit our report for the Office of the Ombudsman for Self-Insured Injured Workers (OSIIW). This report provides an accounting of our activities for the period July 1, 2010, through June 30, 2011, along with our recommendations for change.

Responding to the needs of injured workers remains our top priority. To ensure we are on the right track, a worker survey was conducted earlier this spring. Over 90 percent of the respondents indicated we met or exceeded their expectations.

We appreciate the opportunity to serve as advocates for self-insured workers of Washington State.

Respectfully submitted,

Denise McKay

Denise McKay
Ombudsman

Table of Contents

Executive Summary 1

Our Role 1

Investigations 1

Responding to Worker Complaints 1

Customer Survey 2

Outreach 2

Recommendations to Improve the System 2

New Responsibilities 2

Office of the Ombudsman for Self-Insured Injured Workers 3

Authority 3

Key Features of the Law 3

Independence 3

Powers and Duties 3

Confidentiality 3

Structured Settlements 4

Staffing 4

Self-Insurance in Washington 5

What are the basic requirements to qualify for self-insurance? 5

What types of businesses choose to self-insure? 5

Who manages the self-insured claims? 6

What percentages of industrial insurance claims are filed by self-insured workers? 6

What benefits are provided to injured workers? 6

How does the department ensure self-insured employers are in compliance with industrial insurance law, rules and regulations? 6

What is included in an audit? 6

How often are audits conducted? 7

What happens after an audit? 7

Our Role 8

Focus on Customer Service 8

Outreach 8

Tools and Resources 8

Responding to Worker Issues 9

Referral Procedures 10

Protecting Worker Confidentiality 10

Tracking and Reporting 10

Completed Investigations 11
Distribution of Investigations 11
Resolution Profile 12
Explanation of Terms 13
Claim Adjudicated Correctly 13
Unable to Resolve/Out of Jurisdiction 13
Reported Issues 14
What are the most commonly reported issues? 14
Comparison of Reported Issues 15
What were the most commonly reported issues relating to medical treatment? 16
What were the most commonly reported issues relating to time-loss compensation? 17
What were the most commonly reported issues relating to IMEs? 17
Medical Bills 18
Communication 19
Case Scenarios 20
Claim Allowance 20
Delayed Time-Loss Benefits 20
Delay of Medical Treatment 20
Surgery Authorization 21
Delay of Benefits 21
Claim Closed - Worker Still Needed Treatment 21
Worker Sent to Collections 21
Unpaid Medical Bills 21
Allowed Conditions 22
Working Together 23
Self-Insured Ombudsman Workgroup 23
Timely Notice of Issues 23
Recommendation for Change 24
Establish Rules Requiring Timely Payment of Medical Bills 24
Recommendation 24
Contact the Ombudsman's Office 25

Executive Summary

The Office of the Ombudsman for Self-Insured Injured workers was established by the 2007 legislature to advocate for the rights of injured workers of self-insured employers. The Ombudsman was appointed by the Governor on January 12, 2009. This report represents our second complete fiscal year of operations and covers the period July 1, 2010, through June 30, 2011.

Our Role

The Office of the Ombudsman provides help to injured workers of self-insured employers. Workers contact this office for information on industrial insurance and assistance in resolving issues related to their workers' compensation claims. Through this office, injured and ill workers have the support and assistance of knowledgeable and effective advocates. We work in partnership with self-insured employers, third party administrators, and department adjudicators to ensure the worker receives the appropriate benefits under the law.

Investigations

During this fiscal year, we completed 400 investigations into complaints filed by injured workers. This number represents an approximate 40% increase as compared to the 2010 reporting period. This change is likely due to an increased awareness of this office.

Responding to Worker Complaints

The preferred method of addressing worker complaints is through the self-insured employer (SIE) or third party administrator (TPA). Working to resolve issues at the lowest possible level, without need for action or intervention by the department, is the most efficient method of complaint resolution.

Pursuant to RCW 51.14.350, the office established referral procedures to refer the complaints to the Department of Labor and Industries for action. A referral is made if resolution cannot be achieved with the employer or TPA. The department has acted quickly on all referrals to date.

Customer Survey

We conducted a customer service survey to determine if we were meeting the needs of the workers. Over 90% of the respondents indicated we met or exceeded their expectations in providing information and assistance in resolving their issues. 98% indicated the information was presented in a clear and concise manner.

Outreach

We actively partner with labor organizations by providing educational and training opportunities for their members and staff. Our website offers an overview of our services as well as information on workers' compensation.

Recommendations to Improve the System

An important function of this office is to identify deficiencies in the workers' compensation system and make recommendations for improvements. In making these recommendations, we recognize the great majority of self-insured employers adjudicate claims appropriately. Our role is to ensure all injured workers receive the appropriate benefits, and make recommendations based upon our findings.

Our last annual report noted late payment or non-payment of medical bills as a significant concern for workers. We recommended a rule or statutory change to ensure timely payments. During this reporting period, we continued to receive the same complaints from workers. Almost one in ten investigations included issues related to late payment or non-payment of medical bills. Timely payment of medical bills continues to be of concern for workers. Based upon the number of complaints reported, we again recommend the department consider rule changes to require the timely payment of injury-related medical bills.

New Responsibilities

2011 legislative changes bring new responsibilities to this office. Effective January 2012, the law provides an option for workers to enter into a structured settlement agreement to resolve claim issues and/or certain benefits. Injured workers of self-insured employers who are not represented by legal counsel have the option to request this office provide assistance or be present during negotiations. We are developing informational materials for workers to explain the structured settlement process and clearly identify our role.

Office of the Ombudsman for Self-Insured Injured Workers

The Office of the Ombudsman advocates for the rights of injured workers of self-insured employers by providing information, investigating complaints, and taking action to ensure the worker receives the appropriate benefits under Washington state industrial insurance law.

Authority

SSB5053, passed by the legislature in 2007, established the Office of the Ombudsman for Self-Insured Injured Workers (OSIIW). RCW's 51.14.300 through 51.14.400 govern our actions and grant our authority to act. The Ombudsman was appointed by the Governor on January 12, 2009, and serves a six-year appointment.

Key Features of the Law

The following components of the law guide our actions, grant our authority to act, and protect the confidentiality of workers.

Independence

The Ombudsman reports to the Director of Labor and Industries, however, the office operates independently from the agency.

Powers and Duties

The statute directs the Ombudsman to advocate for injured workers by:

- Providing information on industrial insurance
- Investigating complaints
- Facilitating resolution
- Referring complaints to the department when appropriate

Confidentiality

The legislature recognized the importance of worker confidentiality. Under the protection of RCW 51.14.370, workers may contact our office for help with the understanding their information will not be disclosed without their consent.

RCW 51.14.370 *All records and files of the ombudsman relating to any complaint or investigation made pursuant to carrying out its duties and the identities of complainants, witnesses, or injured workers shall remain confidential unless disclosure is authorized by the*

complainant or injured worker or his or her guardian or legal representative. No disclosures may be made outside the office of the ombudsman without the consent of any named witness or complainant unless the disclosure is made without the identity of any of these individuals being disclosed.

Structured Settlements

2011 brought significant legislative changes to workers' compensation. A provision was added to Washington industrial insurance law which allows eligible workers to initiate resolution of claim issues and/or benefits through a structured settlement process. This change is effective January 2012.

The law also provides injured workers of self-insured employers who are not represented by legal counsel the option to request this office provide assistance or be present during negotiations. Informational materials are in development to explain the structured settlement process and clearly identify our role.

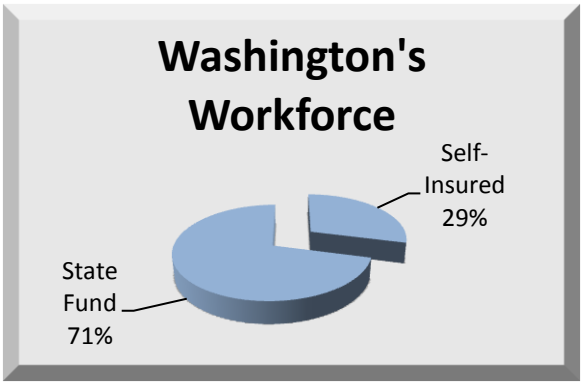
Staffing

The Ombudsman Program is funded by self-insured employers as part of their annual administrative assessment. The 2007 legislation provided for an ombudsman and three additional staff, and allows for additional staffing adjustments based on workload demands. The office is currently fully staffed with an ombudsman, two workers' compensation adjudicators, and a customer service specialist. With this staffing level, we are currently able to respond to worker requests for assistance in a timely manner.

The potential impact on staff time and budget related to the structured settlement process is unknown. Time and costs associated with the additional duties will be monitored to determine if additional resources are required.

Self-Insurance in Washington

Self-insurance is an alternative method of providing workers' compensation coverage for some of Washington's largest employers. Under this option, the employer provides industrial insurance benefits to the injured worker.



There are 361 active self-insured employers in Washington. Self-insured companies employed over 852,000 workers in 2010. They provide workers' compensation benefits to approximately three out of every ten workers in this state.

Labor and Industries oversees the provision of benefits to ensure compliance with the law and regulations and reviews the financial strength of the self-insurer to ensure that workers' compensation obligations can be met.

L&I's self-insurance staff assists and trains self-insured employers on the application of Washington's workers' compensation laws. They provide policy and perform audits to determine if claims are managed in accordance with Title 51.

What are the basic requirements to qualify for self-insurance?

- Firm must be in business for at least three years
- Firm must have total assets of at least $25 million
- Firm must have a written accident prevention program that has been in place in Washington for six months prior to applying to self-insurance
- Current financial ratio (current Assets divided by current Liabilities) must be at least 1.3 to 1
- Debt to net worth ratio cannot be greater than four to one
- Firm must have positive earnings in two of the last three years (including current year being positive) and overall positive earnings for the three-year period

What types of businesses choose to self-insure?

Self-insured employers represent all major industry groups, and include some of the largest public and private employers in this state. These employers do business in approximately 15,000 locations throughout Washington.

Who manages the self-insured claims?

Self-insured employers may elect to self-administer their claims or contract with a Third Party Administrator (TPA) to manage the claims. During this reporting period, 91% of the active self-insurers contracted with a TPA to manage their industrial insurance claims. Roughly half of the TPA offices managing Washington claims are located out of state.

What percentages of industrial insurance claims are filed by self-insured workers?

During 2010, 47,934 claims were filed by self-insured injured workers. This number represents approximately 36% of all industrial insurance claims filed in Washington during calendar year 2010.

What benefits are provided to injured workers?

Whether a company is self-insured or covered through the state fund, all Washington workers are entitled to the same level of workers' compensation benefits.

Those benefits may include:

- Treatment for a work-related injury or illness paid for by the workers' compensation system.
- Benefits to partially replace lost wages if the injury or occupational disease prevents the worker from working.
- Vocational assistance if the worker qualifies to be retrained in order to be employable.
- Partial disability benefits to compensate for the permanent loss of bodily function.
- A disability pension if the worker is permanently disabled from any gainful employment.
- Death benefits for survivors if the worker dies as the result of an industrial injury or disease.

How does the department ensure self-insured employers are in compliance with industrial insurance law, rules and regulations?

L&I's Self-Insurance Section conducts audits of all self-insured employers to determine whether they are complying with our laws governing workers' compensation. Employers may be subject to penalties for non-compliance.

What is included in an audit?

An emphasis is placed on timeliness and accuracy of benefits delivered to injured workers and on proper reporting requirements. Records are examined to ensure total claim costs and worker hours were accurately reported. Claims are reviewed for compliance with workers' compensation laws and regulations. The auditor will review 70 claims consisting of a combination of time-loss, medical only,

rejected claims, and claims with reopening applications. For smaller employers, this may result in an audit of all claims filed during the audit period. For larger employers, this sample size may represent a very small percentage of total claims filed.

How often are audits conducted?

The department audits both active self-insured and inactive self-insured employer with open claims. There are 361 active self-insured employers in this state, as well as 67 inactive employers subject to audit. The average audit cycle for FY 2010 was 5.9 years, and FY 2011 was 5.2 years. The department currently has 9 auditors to complete this work.

What happens after an audit?

The employer is provided a report of the auditor's findings. If compliance issues were identified, the employer is given directives to bring the areas into compliance. The employer is given 60 days to provide a written response to the auditor's report. The department may issue penalty violations for the delay of benefits to injured workers or violations of the Washington Administrative code (WAC).

Our Role

The Office of the Ombudsman is an advocate for the rights of injured workers of self-insured employers. We provide information, investigate complaints, and take action to ensure workers receive the appropriate benefits under Washington industrial insurance law.
We track complaints received, document outcomes, and analyze the data from a trending perspective. This information is used to make recommendations to improve to the system.

Focus on Customer Service

This office is dedicated to providing a high level of service to the workers in the state. To determine how well we are meeting their needs, we surveyed workers who contacted our office during FY 2010.
120 workers responded to our survey. The majority of respondents (99%) indicated they contacted our office for help in resolving a claim related issue. Over 90% of those responding indicated we met or exceeded their expectations.

Industrial insurance laws and regulations can be confusing to workers, and a challenge to explain in a clear concise manner. 98% of the respondents indicated the information we shared was clearly presented.

Outreach

A brochure outlining the functions of the program is available and distributed to employers and labor organizations. Information about this program is included in the worker's *Guide to Industrial Insurance Benefits*, and our contact information is printed on worksite posters.

Labor organizations are strong supporters of the program, and we are frequently requested to meet with their staff and members to provide an overview of our program and workers' compensation.

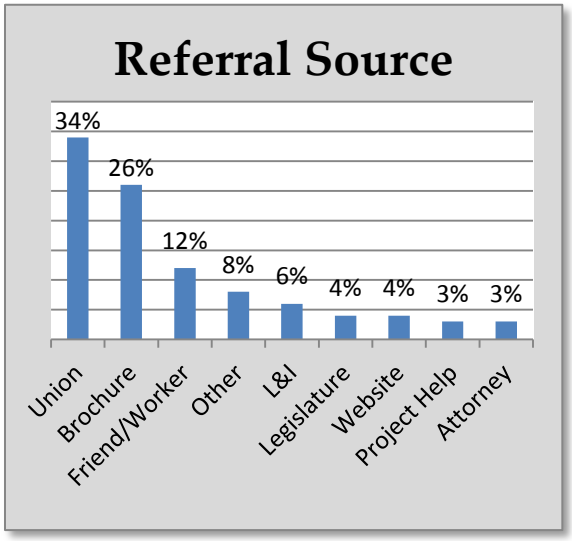
Tools and Resources

Our website offers information about the office, and provides contact information and links to other resources for workers. Our *Frequently Asked Questions* section offers answers to common questions received from workers. Our web address is: ombudsman.selfinsured.wa.gov.

Responding to Worker Issues

Workers contact this office for general information and/or help with specific claims issues. Referrals come to this office from a variety of sources, including legislative offices, attorneys, labor organizations, and through friends and family.

The chart below shows the referral source for workers contacting our office during the past fiscal year. As a number of workers chose not to disclose this information, the chart reflects the distribution of reported referral sources only.



Referrals from unions remain the most frequent source of referrals to this office. This year showed a significant increase in the number of workers who heard about this office from our brochures.

Our goal is to respond to the initial worker inquiry within one business day. An intake evaluation is done to identify the issues and determine the best course of action. Our objective is to resolve their complaint as quickly as possible. If the issues require further investigation, we notify the worker and tell them what to expect. We maintain contact with the worker and involve them in the resolution process.

The time to complete an investigation can vary from a few days to several months depending on the complexity of the issues and the time it takes to obtain and review the necessary information. Claim files are maintained by the self-insured employer or third party administrator. By law, they have ten working days from the date they receive a written request to provide a copy of the claim file.

The best method to resolve a worker inquiry or complaint is directly with the SIE or TPA. Issues are resolved much faster as they have the authority to pay time-loss benefits and authorize medical treatment. We encourage the worker to maintain communication with their employer and self-insured claims manager throughout the claims process.

Referral Procedures

RCW 51.14.350 required this office to develop referral procedures for complaints reported by injured workers. In the event this office is unable to resolve the complaint with the SIE or TPA, a referral is made to the department for review and action. The department conducts a thorough review of the claim information and makes an independent adjudicative decision based upon their analysis of the claim. A summary of the action taken by the department is provided to the Ombudsman's Office. The department has responded quickly to all referrals to date.

Protecting Worker Confidentiality

Workers rely on the confidentiality of this office. Some workers are reluctant to ask for help and express concerns of retaliation if it were known they contacted our office for assistance.

RCW 51.14.370 protects the confidentiality of Ombudsman records and files. It states that all records and files of the Ombudsman relating to any complaint or investigation made pursuant to carrying out its duties and the identities of complainants, witnesses, or injured workers shall remain confidential unless disclosure is authorized by the complainant or injured worker or his or her guardian or legal representative. No disclosures may be made outside the office of the Ombudsman without the consent of any named witness or complainant unless the disclosure is made without the identity of any of these individuals being disclosed.

Tracking and Reporting

The Self-Insured Ombudsman Data System (SIOD) is used to capture and report information on investigations. The system tracks investigations by:

- Employer
- Third party administrator (TPA)
- Referral source
- Issues
- Resolution

We use this information to identify trends or patterns in complaints filed by injured workers.

Completed Investigations

During this reporting period, we completed 400 investigations from workers employed by 128 self-insured employers. The majority, nearly two-thirds of the 361 active self-insured employers, did not have any complaints filed which warranted an investigation.

Distribution of Investigations

There was a slight decrease in the number of self-insured employers from 366 in 2010, to 361 in 2011. As in 2010, the majority of investigations completed during this reporting period involved only a small percentage of the total number of self-insured employers.

Number of Investigations	2011 (n=361)	2010 (n=366)
Zero investigations	233	243
1-2 investigations	86	98
3	16	9
4-5	9	7
6-9	10	4
10-14	4	3
17-18	2	0
23-25	0	2
33	1	0

Resolution Profile

In Washington, a self-insured employer (SIE) may elect to self administer their industrial insurance claims or contract with a third party administrator (TPA) to manage their industrial insurance claims. In either case, it is the self-insured employer that holds the self-insured certificate and is held responsible to ensure claims are managed in accordance with Washington industrial insurance law.

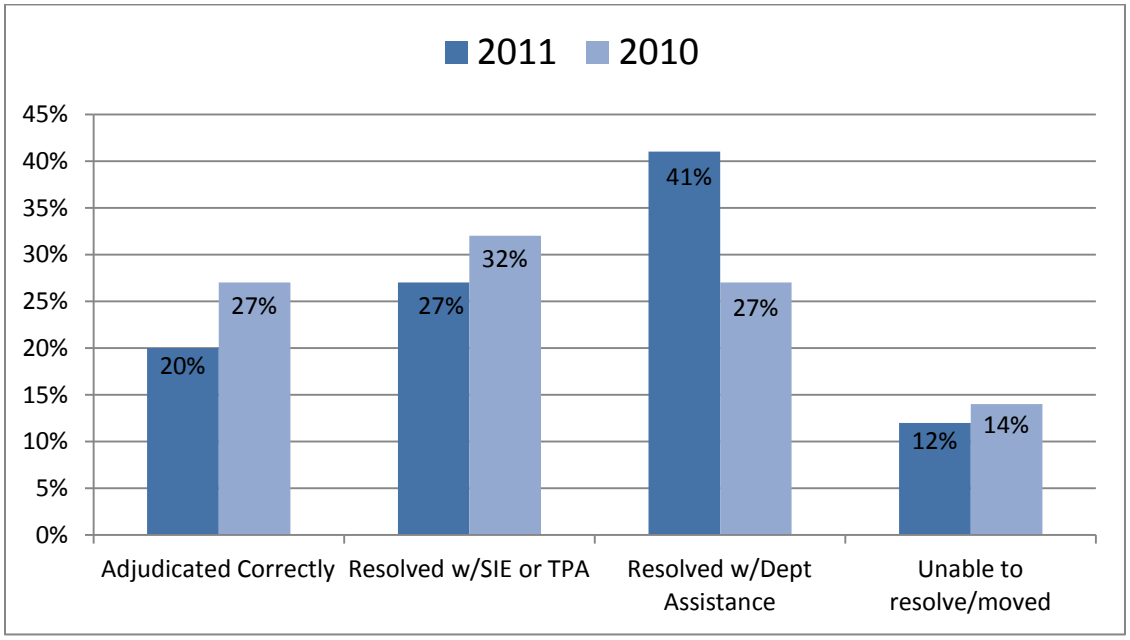
The overwhelming majority of self-insured employers, approximately 90 percent, contract with a third party administrator to manage their worker' compensation claims. The Department of Labor and Industries is not authorized to regulate third party administrators. Self-insured employers are held responsible for the management of their claims.

Resolving the worker complaints directly with the SIE or TPA provides the best outcome for everyone. Working directly with the claims administrator allows for a quick resolution. Changes to worker benefits or treatment authorizations can be immediately implemented.

We completed 400 investigations during the fiscal year. The following two charts show the number and method of resolution for investigations completed in 2011 and 2010.

Resolution Profile		
	2011 (n=400)	**2010 (n=289)**
Claim Adjudicated Correctly	81	77
Resolved with Employer / Third Party Administrator	106	92
Resolved with the assistance of the Department	164	78
Unable to resolve / moved out of our jurisdiction	49	42

Unfortunately, there was a marked decrease in the number of claims resolved with the SIE or TPA for FY 2011. We hope the number of claims successfully resolved at SIE/TPA level will increase during the next reporting period as it offers the most efficient resolution.



Explanation of Terms

Claim Adjudicated Correctly

Based upon the results of the investigation, it was determined to be adjudicated correctly. The percentage of complaints this office determined to be adjudicated correctly is based upon the number of complaints we investigated. This data should not be used to make general assumptions or interpretations as to the accuracy of self-insured claims adjudication as a whole.

Unable to Resolve/Out of Jurisdiction

This represents the percentage of complaints we are unable to successfully resolve. This category also includes claims in which a final order was issued or an appeal filed with the Board of Industrial Insurance Appeals (BIIA). If a final order has been issued or an appeal filed at the BIIA or through the court system, the department no longer has jurisdiction.

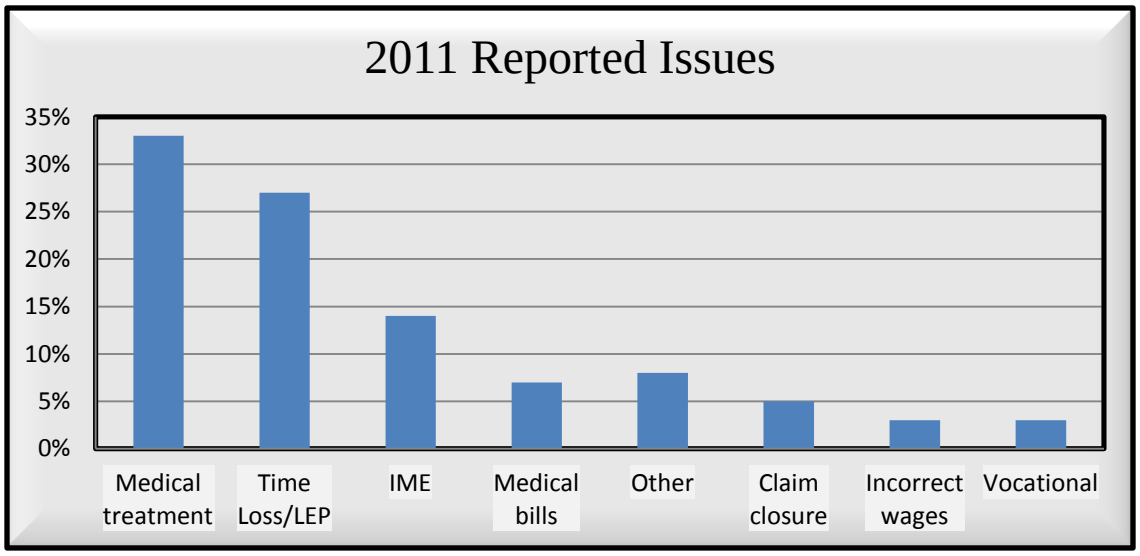
Reported Issues

What are the most commonly reported issues?

Most of the complaints and subsequent investigations involve more than one claims issue. The numbers are expressed as a percentage of the total number of issues reported by workers during the fiscal year. The top four categories remain the same as reported last year.

The top four categories are:

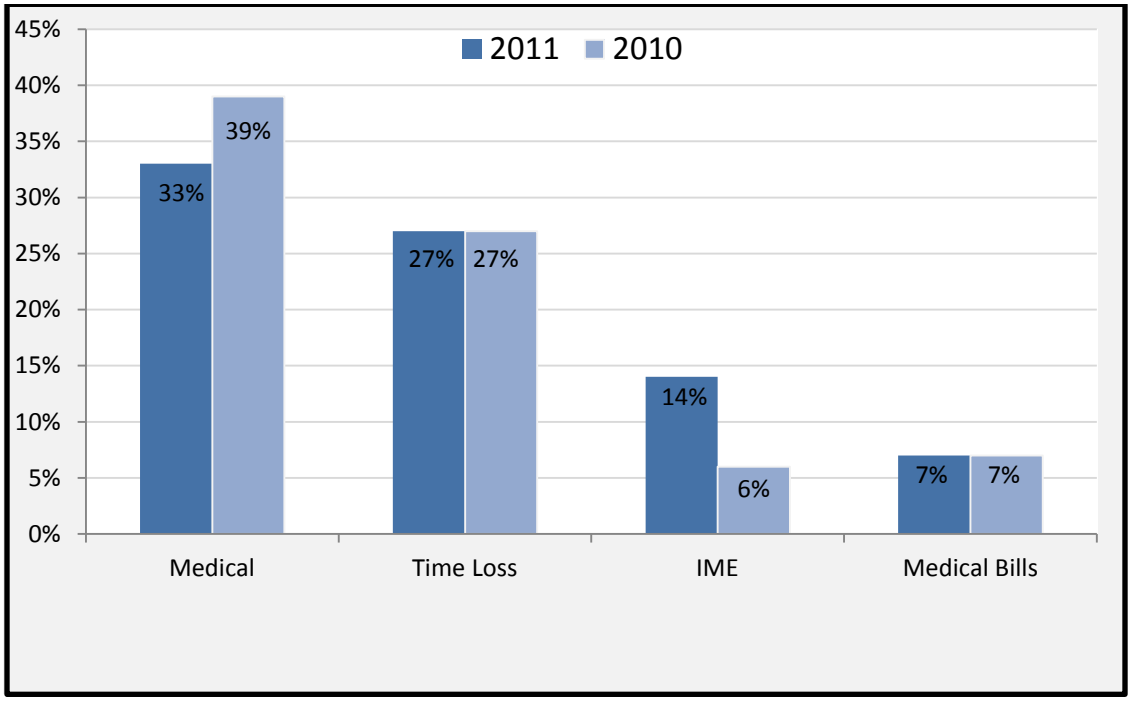
- Delayed or denied medical treatment (33%)
- Delayed or denied time loss or loss of earning power (LEP) (27%)
- Complaints related to independent medical exams (IMEs) (14%)
- Non-payment or late payment of medical bills (7%)



Comparison of Reported Issues

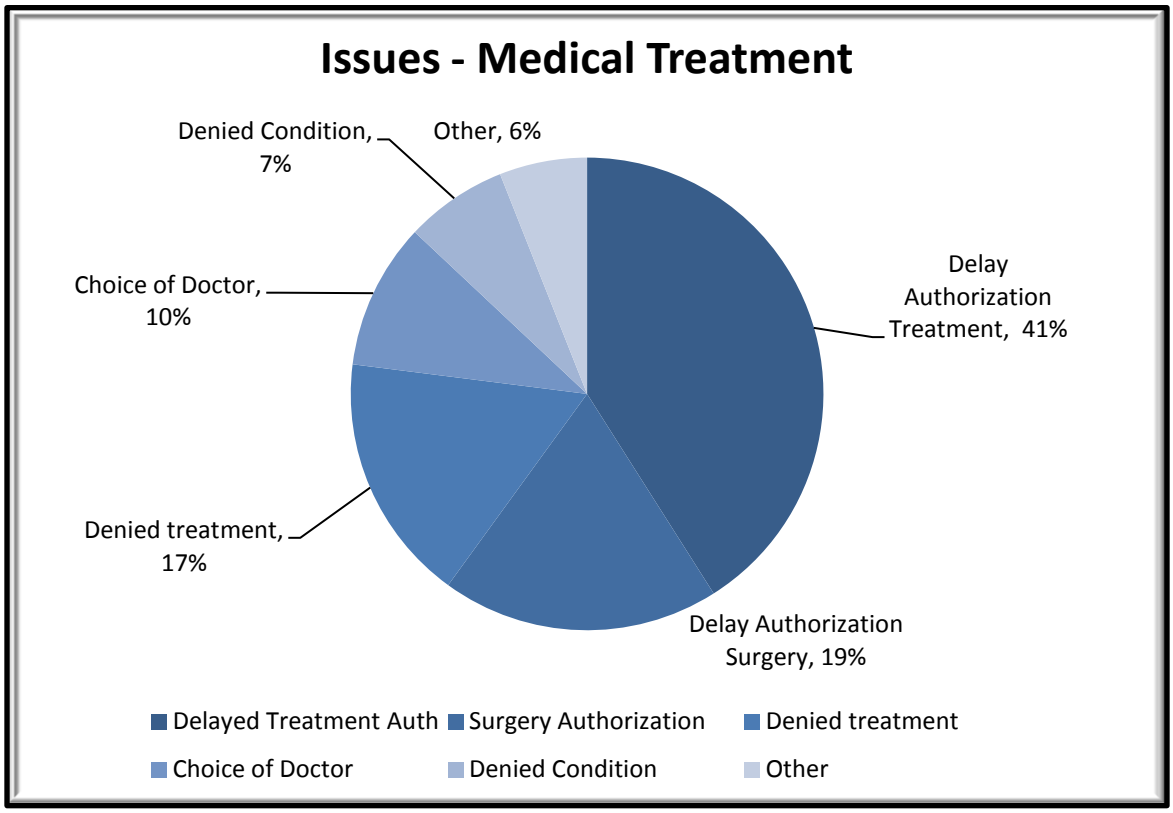
This table shows the comparative distribution of the top four categories for the 2011 and 2010 reporting periods. The numbers are reflected as the percentage of the total number of issues reported during each fiscal year. As most of the investigations involved more than one issue, it is important to note there is not a 1-1 relationship between the number of reported issues and the number of completed investigations.

During 2011, the relative percentage of issues in the medical category decreased, while issues related to time loss remained the same for both reporting periods.



What were the most commonly reported issues relating to medical treatment?

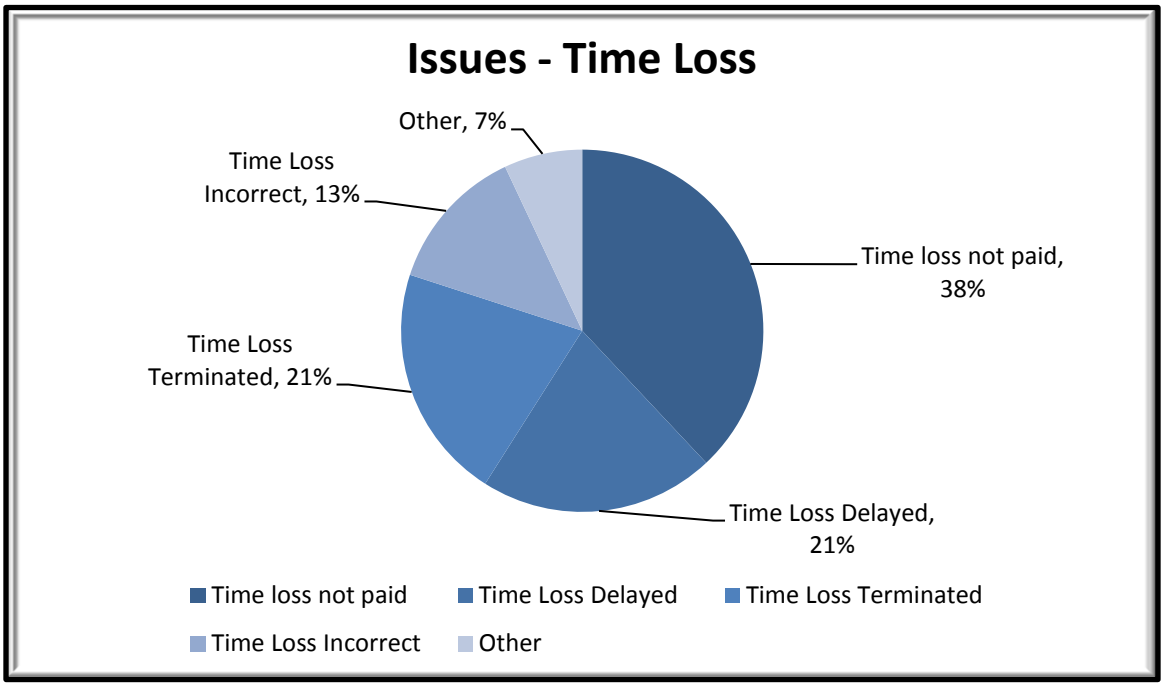
The most commonly reported issues regarding medical treatment involved a delay in the in authorization of medical treatment or surgery. Many workers expressed concern that this delay was hindering their recovery.



Another concern expressed by workers was that the accepted condition(s) under their claim was unclear. This could be easily remedied by the SIE or TPA by providing clarification to the worker of the accepted conditions for the claim.

What were the most commonly reported issues relating to time-loss compensation?

Time loss not paid or delayed continues to be the most common complaint reported by workers. Workers rely on time-loss compensation as partial wage replacement while they are unable to work due to an industrial injury. Any delay in payment can cause significant hardship for the worker.

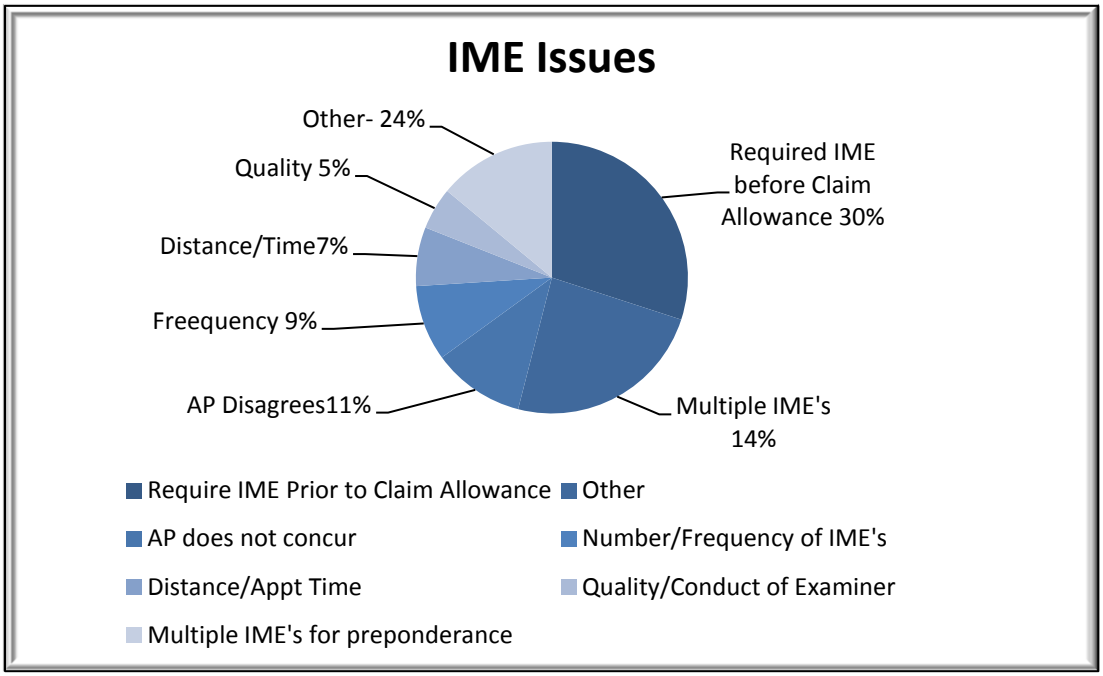


What were the most commonly reported issues relating to IMEs?

The number of complaints involving independent medical exams (IMEs) rose during FY 2011. The most common complaint was from workers who reported their SIE or TPA would not make an allowance determination on their claim until the worker attended an IME. In cases where the SIE or TPA does not have enough information to make an allowance determination, it is appropriate to schedule an IME as part of the information gathering process. In cases where the claim was filed with sufficient evidence to support that the worker's medical condition was caused by the workplace incident or exposure, the claim should be allowed. Three requirements establish a case for injury claim allowance: a descriptive statement that satisfies the legal definition of an injury, the worker must have been acting in the course of employment, and a medical opinion must relate the condition diagnosed to the incident or exposure on a more probable than not basis. If our investigation shows the requirements were met, a referral

is made to the department for review. Over the next year we will be looking more closely at these issues.

Until the claim is allowed, the SIE or TPA is not required to pay for medical treatment. Several months can pass from the date the workers' compensation claim is filed, to receipt of the completed IME report. During this time period, the worker is not covered for treatment, and many do not have the funds to self-pay. In general, most private insurance plans will not cover injury-related treatment unless/until the claim is rejected.



Medical Bills

Last year we reported that non-payment or late payment of medical bills was a continual source of complaints from workers. This continues to be a significant concern. Although these issues represent only 7% of the total number of issues reported, over 10% of the investigations completed this year involved complaints relating to the payment of medical bills.

Issue - Medical Bills	
Reported Issue	**Number of Complaints**
Bills sent to collections	9
Medical bills denied	17
Medical bills not paid within 60 days	15
Prescriptions not paid/not paid timely	8

Late payment or non-payment of medical bills can negatively affect the worker's ability to obtain medical treatment for their injury or disease. Nine workers reported they were sent to collections. This is devastating for those trying to exist on a reduced income. Many do not have private insurance or the ability to pay from personal resources.

Our current remedy is to make a referral to the department to issue an order directing payment. Sometimes this is not enough. There are no statutory provisions or regulations to enforce compliance or penalize an employer for non-payment of late payment of medical bills.

We also received a number of contacts from providers who expressed frustration in trying to collect their billings. They were referred to the department's Self-Insurance Program for assistance.

Communication

We encourage workers to maintain communication with both their employer and claims manager throughout their recovery process. Last year, we noted a significant number of workers reported a lack of communication from their employer or third party administrator. The workers reported their calls were unanswered, and their requests for assistance were not met. We began to track the number of workers reporting this lack of communication and found that one in seven workers contacting our office reported their claims manager did not return their calls or respond to their inquiries. Often this was cited as the reason they called this office. This is a customer service issue, and is outside the purview of this office. However, this does represent a missed opportunity for the SIE or TPA to resolve claims issues without the involvement of the Ombudsman.

Case Scenarios

The following case scenarios are representative of common issues reported by injured workers during the past year.

Claim Allowance

A worker contacted our office to help expedite the allowance of his claim and obtain authorization for surgery. He enjoyed his job and wanted to return to regular duties as soon as possible. By working together with the worker, claims manager, and doctor's office, his claim was quickly allowed and surgery scheduled. He was back to work at full duties within two weeks of surgery. This is an example of how quickly a claim can be resolved when everyone is working together toward the same goal.

Delayed Time-Loss Benefits

In 2009, two orders were issued directing an employer to pay time-loss benefits for separate time periods in 2004 and 2008. The employer appealed the orders to the BIIA, and then dismissed their appeal in June 2010. Although they dismissed the appeal, the employer continued to refuse to pay the worker. In April 2011, the worker contacted their legislator, who referred him to our office. We asked the department to intervene. The worker's benefits were not paid until the department issued a delay of benefits penalty to the employer for more than $3,000. Delay of benefits penalties are payable to the worker.

Delay of Medical Treatment

An interlocutory or temporary order may be issued if additional information is required to determine claim allowance. During an interlocutory period, the insurer is not required to pay for medical treatment. Department rules require the SIE or TPA to submit all records with their request so the department can determine if an interlocutory order is warranted. This worker had a specific injury in March 2011, and his doctor provided medical information to support allowance of a claim. The TPA requested an interlocutory order on a claim, but did not provide the medical information to the department with their request. An interlocutory order was issued. In June, the worker contacted our office as he was unable to obtain medical treatment. We obtained copies the medical information from the worker and requested the department issue an allowance order. The allowance order was issued in July. As this worker did not have the means to privately pay for medical expenses, his treatment was delayed for over four months.

Surgery Authorization

This worker had a severe ankle injury, and required the removal of hardware following reconstruction. He was having difficulty obtaining authorization for surgical removal. We contacted the nurse case manager assigned by the TPA, and obtained the necessary approval for surgery. He underwent the surgery and was able to return to work within two weeks.

Delay of Benefits

A TPA submitted the vocational assessment to the department in 2007. The assessment indicated the worker was employable and terminated time loss. The department disagreed with their assessment and issued a determination that the worker was not employable. Under this circumstance, the TPA is required to reinstate time loss and re-assess the worker's employability. No action was taken by the TPA to reinstate the worker's benefits or conduct a new assessment. The worker called our office in December 2010. Efforts to resolve the issue with the TPA were unsuccessful. A referral to the department resulted in an order to pay back time loss, and a delay of benefits penalty. Ultimately, the employer paid approximately $67,000 in back time-loss compensation plus a delay of benefits penalty of $9,760.

Claim Closed - Worker Still Needed Treatment

This worker injured his shoulder in September 2010. An MRI documented a rotator cuff tear, and his doctor requested authorization for surgery to repair the tear. An IME disagreed with the doctor's requested surgery and the claim was closed in December 2010. The worker asked for our assistance to protest the closure, obtain time loss, and secure treatment. With the department's assistance, the closure was reversed and the worker received the necessary treatment and time-loss compensation.

Worker Sent to Collections

A worker contacted our office after receiving a phone call from a collections agency. An overdue bill for an authorized medical procedure was not paid, and the provider had turned over the bill to the collection agency. We contacted the TPA and they agreed to call the provider and pay the billing.

Unpaid Medical Bills

The worker received physical therapy in 2009. An order was issued directing payment in 2010. The order was not protested. In 2011, the provider was still trying to collect for more than $5,000 in unpaid services. We worked with the provider, and they agreed not to send the worker to collections for the unpaid balance. Ultimately, the provider was finally paid in April

2011. This provider expressed reluctance to provide future treatment for workers insured through that employer or TPA.

Allowed Conditions

A claim was filed for multiple injuries. One of the conditions diagnosed by the provider on the initial report of accident was a shoulder injury. For some reason, this diagnosis was not included as an accepted condition, and treatment for the shoulder was denied. We contacted the claims manager regarding the inclusion of the shoulder injury. The claims manager agreed, included the shoulder injury as an accepted condition, and authorized appropriate medical treatment.

Working Together

Self-Insured Ombudsman Workgroup

In December 2009, an Ombudsman workgroup was formed to share information and foster communication between stakeholder groups. The workgroup meets to discuss current issues and potential solutions. The membership consists of two representatives from the labor community, two representatives from the self-insured employer community, the program manager for the department Self-Insurance Program, and the Ombudsman.

The current members include:

Matt Webby	Teamsters #174
Rebecca Johnson	Governmental Affairs Director - Washington State Labor Council
Kelly Early	Manager of Claims - ESD 113
Rebecca Forrestor	Risk Manager Group Health Cooperative
AnnaLisa Gellermann	Dept. of Labor and Industries - Program Manager - Self-Insurance
Denise McKay	Ombudsman for Self-Insurance Injured Workers

Timely Notice of Issues

On occasion, the Ombudsman's Office will note an increase in a specific issue or concern reported by workers. To share this information with the self-insured community, the workgroup proposed a periodic e-news alert shared via the self-insured list serve. This news alert titled "Observations from the Ombudsman" and "Tips from Self-Insurance" couples the reported issues/concerns with regulatory and policy guidelines from the Self-Insurance Program. This is intended as an educational opportunity for the employer to review current claims practices and implement changes as appropriate.

Recommendation for Change

In making this recommendation we acknowledge that the majority self-insured claims are managed appropriately, with the workers receiving medical and time-loss benefits as provided by law. The following recommendation for change is based upon complaints received by this office. This recommendation was also included in the 2010 annual report.

Establish Rules Requiring Timely Payment of Medical Bills

RCW 51.36.085 requires all fees and medical charges shall be paid within sixty days of receipt by the self-insured of a proper billing or sixty days after the claim is allowed by final order or judgment. Interest at the rate of one percent per month can be assessed whenever the payment period exceeds the applicable sixty-day period on all proper fees and medical charges.

We continue to receive a significant number of complaints concerning payment of medical bills for treatment of accepted medical conditions. One in ten investigations completed this year included issues related to the payment of medical bills. This can negatively affect the worker's ability to obtain treatment for their injuries. A number of workers were sent to collections or forced to pay using their personal resources or private medical insurance.

Our current remedy is to make a referral to the department to issue an order directing payment, but there are no provisions to enforce compliance or penalize an employer for non-payment or late payment of medical bills.

Recommendation

Our October 2011 report recommended the Department of Labor and Industries begin the process of researching the frequency and severity of this issue, and assess the need for rule changes or statutory amendments.

During the 2011 legislative session, Senators Karen Keiser, Jeanne Kohl-Welles, Steve Conway, and Adam Kline sponsored a bill to address the issue of timely medical payment. This bill, Senate Bill 5341, provides for a penalty to be assessed under RCW 51.48.080 if the self-insurer does not comply with the provisions of RCW 51.36.085. The department testified in support of the bill. SSB5341 was passed by the Senate Labor, Commerce & Consumer Protection Committee. We ask for your support in passing this legislation during the 2012 legislative session.

Contact the Ombudsman's Office

If you or someone you know works for a self-insured employer and needs help with a workers' compensation issue, we are available to help.

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Department of Labor and Industries
7273 Linderson Way SW
PO Box 44001
Olympia, WA 98504-4001
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For more information on this report, please contact:

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