



Washington State Department of  
Labor & Industries

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

*2019 Annual Report to the Governor*

**September 2019**



# Table of Contents

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<b>Executive Summary</b> .....	<b>1</b>
<b>A Message From the Ombuds</b> .....	<b>6</b>
<b>Introduction</b> .....	<b>7</b>
<b>Office of the Ombuds</b> .....	<b>8</b>
Primary Responsibilities of Ombuds Office.....	8
Self-Insurance in Washington.....	10
<b>Summary of Activities and Findings</b> .....	<b>12</b>
Inquiries.....	12
Investigations.....	13
Resolution Profile.....	15
Case Scenarios.....	16
<b>Major Initiatives</b> .....	<b>19</b>
Self-Insurance Audit Reform.....	19
Self-Insurance Rule Update.....	22
Independent Medical Exams.....	25
Internal Process Changes.....	26
<b>Other Initiatives</b> .....	<b>28</b>
Self-Insurance Program.....	28
Out-of-State Claims Management.....	28
Centers of Occupational Health and Education .....	28
Medical Provider Outreach.....	29
Expand Availability of Approved Mental Health Professionals.....	29
<b>Conclusion</b> .....	<b>30</b>

## Figures

Figure 1: Referral Source.....	9
Figure 2: Washington's Workforce.....	10
Figure 3: Inquiries Proportion by Self-Insured Employers.....	12
Figure 4: Reported Investigation Issues.....	13
Figure 5: Resolution Profile.....	15

# Executive Summary

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## Introduction

The Department of Labor & Industries (L&I's) Self-Insurance Program oversees and provides services to Washington employers that are certified to "self-insure." Self-insured employers pay workers' compensation benefits directly to employees who are injured or become ill on the job. More than 350 Washington companies are currently certified to self-insure and employ 25 percent of Washington workers.

Self-insured employers manage their own worker injury claims, usually through another company, called a third-party administrator (TPA). Managing claims includes making decisions about paying benefits and accessing medical care.

## Office of the Ombuds

The Legislature established the Office of the Ombuds (Ombuds Office) for injured workers of self-insured employers in 2007, with the mission of advocating for injured workers. To accomplish this mission, the Ombuds Office coordinates with workers, employers, and providers, or their representatives, to:

- Inform injured workers about industrial insurance and their rights and responsibilities.
- Investigate and resolve complaints.
- Identify Self-Insurance Program deficiencies.
- Recommend policy solutions.

Ombuds Office staff collaborates with multiple stakeholders and conducts community outreach to help ensure the awareness and success of the Ombuds program.

## About this report

This report to the Governor is required annually by RCW 51.14.400 for the reporting period July 1 through June 30. It summarizes activities of the Ombuds Office, including:

- Issues addressed during the past year, along with case scenarios.
- Monitoring activities, findings, and community outreach.
- Deficiencies in the self-insured workers' compensation system, and recommendations for improvement.

The Ombuds Office is committed to L&I's mission to keep Washington safe and working. Ombuds Office initiatives described in this report are geared toward ensuring fair and equitable benefits for injured workers, and continual process and systemic improvements.

## Summary of activities and findings

The issues and activities addressed in this report are for July 1, 2018 through June 30, 2019.

The Ombuds Office resolved 2,800 inquiries regarding workers' compensation claims of self-insured employers. General inquiries increased 30 percent due to enhanced community outreach. Of these inquiries, 1,208 resulted in an official investigation, while others were resolved by sharing information. Investigations involved 51 percent of self-insured employers. Reported issues remain similar to those of the prior reporting period, including concerns about:

- Delays in time-loss benefit payments, as well as medical treatment and medical bill payments.
- Independent medical exams (IMEs).
- Claim status issues, such as claim closure, denial, allowance, and re-opening.
- Incorrect wage and loss of earning power benefit (LEP) calculations.

The Ombuds Office attempts to resolve issues quickly by working directly with the self-insured employer or TPA. If this is not possible, the Ombuds Office engages L&I's Self-Insurance Program to help resolve the issue.

## Major initiatives 2018/2019

- The Ombuds Office outreach team continues to expand our participation in labor community events, as well as providing training for L&I field offices and TPAs. We continue to test electronic access to certain TPA systems, thereby improving investigation completion rates. Our goal is to expand this new process with other TPAs. We now have an experienced team member dedicated to electronic systems and data analytics, and look forward to enhanced trend analyses.
- The Ombuds continues to serve on essential committees/workgroups:
  - The collaborative Self-Insurance Audit Reform project continues to be an important function to maintain compliance and identify process improvements for the self-insured community. Self-Insurance auditors are amid the first official two-year audit cycle, and on target to complete the audit cycle by the end of 2019. Performance-based audits are addressing delivery of accurate and timely benefits, and issue-based audits are reviewing timeliness of medical bill payments.

The Audit Governance Committee will begin discussions in the fall of 2019 to help identify audit priorities for the next audit cycle that begins January 1, 2020. Other Ombuds audit priorities include tracking audit finding trends, timeliness and efficiency of claim allowance and closure, timeliness of self-insured employer claim reporting, accuracy of self-insured employer quarterly assessment reporting, and the use of IMEs in claims management.

The Ombuds will continue to monitor the success of the new audit model, including ensuring audit volume is commensurate with the employer size, ensuring audit resources are adequately allocated, monitoring the impact on benefit delays and benefit accuracy, ensuring Tier 3 audits include a comprehensive review of self-insured employer workers' compensation systems, and monitoring the impact on repeat offenders who do not pass audits. As the new audit model evolves, so should Self-Insurance regulatory enforcement standards.

- The Self-Insurance Rules Review Workgroup was established in early 2017 as a collaborative rules modernization effort in follow-up to the Self-Insurance Audit Reform initiative. The workgroup's guiding principles ensure better communication to workers, greater certainty for employers, and reduced re-adjudication and stronger regulation by L&I.

The workgroup has made significant progress resulting in 13 new rules that went into effect July 1, 2019. New rules include new comprehensive training for certified claims administrators, which includes training on worker-centric return to work practices to help injured workers heal and return to work; new modern purpose-driven forms to request claim allowance, denial and closure; several new templates to communicate important claim information to injured workers; a new approach to penalty requests related to unreasonable delay of benefits arising from wage calculation errors; and mandatory claims administrator certification for out-of-state adjudicators.

The good work being done through audit reform and the Rules Review Workgroup is moving in the right direction. However, the Ombuds continues to believe that self-insured employers should be allowed to issue formal orders when accepting, closing, or denying a claim. This will free up L&I resources to focus on audit, enforcement, dispute resolution, improving claims management, education, and electronic data reporting. The Ombuds also continues to recommend that a collaborative workgroup of L&I, labor, and business representatives begin discussions to address this topic, and suggests the Rules Review Workgroup address this issue.

The Ombuds recommends that the Rules Review Workgroup also address the Washington complex wage calculation, identify a solution to address delays related to medical-only claim orders, develop parameters for the self-insured community regarding IME best practices, expand self-insurance certification and related training, and develop a self-insured structured settlement application.

- IME inquiries remained the same this reporting cycle (100 inquiries). Complaints continue to be primarily related to claims management, understanding the IME process, or the quality of the IME. While there has been progress toward improving the IME process, there is still work to be done.

The Self-Insurance IME Tool-Kit training continues to have a positive impact on claims management; however, this training is not mandatory. The Ombuds recommends some form of mandatory training for claims adjusters, as well as requiring communication to workers (e.g., mandatory brochure to worker) about the intent of the IME and what to expect during the IME process.

The Ombuds also recommends that the Audit Governance Committee address the use of IMEs in claims management. However, parameters defining the reasonableness and necessity of an IME, mandatory IME best practices, and training requirements are necessary to help hold parties involved in the IME process accountable.

L&I is establishing an internal IME Steering Committee to help ensure quality IMEs, prioritize IME improvements, and ensure adequate allocation of resources. The Ombuds is hopeful the committee will help reduce variation between self-insured and State Fund IME processes; include self-insured IMEs in L&I quality improvement initiatives; address the use and frequency of IMEs, including gathering relevant data; and develop IME best practices and guidelines.

The Ombuds will continue to attend IME Business and Labor Advisory Team, Self-Insurance Rules Review Workgroup, and Self-Insurance Audit Governance Committee meetings and monitor progress toward improving the self-insured IME experience and the use of IMEs in claims management.

### **Other initiatives 2018/2019**

- The Ombuds Office team continues to focus on claims suppression and related training, as well as expanding skills and knowledge related to structured settlements. The Ombuds outreach team has updated our injured worker customer service survey and is now sending it to injured workers when their issue is resolved.
- The Ombuds team continues to experience issues with delays in orders when there are multiple TPAs and/or the State Fund involved in a claim. The Ombuds will work with the Self-Insurance Program to identify solutions to eliminate these delays. Additionally, the system for filing claims is complicated for providers, workers, and employers, and much is done manually without automation. The business transformation initiative that L&I is undertaking may present additional opportunities for improvement and greater efficiencies, such as an expeditious single pathway to reporting.
- The Ombuds recommends that self-insured employers start using the valuable services offered by Centers of Occupational Health and Education (COHEs). COHE health service coordinators help injured workers heal and return to work and provide support and training for providers. Discussions have recommenced with a TPA representing multiple self-insured employers and a large COHE, and a pilot project is scheduled to begin early 2020.

- The Ombuds team has experienced an increase in complaints from injured workers about difficulties finding providers within the L&I Medical Provider Network (MPN). Fortunately, L&I is implementing a new provider system in the fall of 2019 (Provider One). This new automated system will allow providers to update their provider information real-time. The Ombuds is hopeful the new system will also improve L&I's communication with providers.
- The Ombuds team continues to struggle with helping injured workers find approved mental health treatment due to the low number of approved providers. L&I is amidst a pilot project to expand approved mental health professionals, to include master's level therapists to provide behavioral health services focused on recovery and return to work for workers with a work-related injury or illness.

## **Conclusion**

The Ombuds Office is committed to a strong advocacy program for injured workers, including timely and efficient resolution of issues and complaints. This requires ensuring an efficient self-insured workers' compensation system, and cultivating collaborative relationships with stakeholders.

Community outreach and claims management process improvements will remain a primary focus in 2019/2020.

## A MESSAGE FROM THE OMBUDS

I am pleased to report that the Office of the Ombuds has accomplished several goals and projects this year, which are detailed in this year's report.

I want to thank the Legislature, and labor and business communities for their continued support of the Ombuds Office. Our outreach team continues to expand its participation in labor community events, as well as provide training for L&I field offices and third party administrators (TPAs). The Ombuds Office resolved over 2,800 inquires during this reporting period, a 30 percent increase over the prior year. We will continue to focus on enhancing electronic access to TPA systems to help expedite investigations, as well as trend data analytics.

The Self-Insurance Audit Governance Committee and Rules Review Workgroup continue to make progress. The Self-Insurance audit team will complete the first official two-year audit cycle at the end of 2019, and the Audit Governance Committee will begin discussions this fall that will help guide Self-Insurance audit planning for the 2020/2021 audit cycle. The collaborative Rules Review Workgroup discussions resulted in 13 new rules that went into effect July 1, 2019. The workgroup will continue to meet and we anticipate additional process improvements.

We remain committed to supporting injured workers and expanding community outreach, which are key to maintaining awareness of issues and establishing priorities for the self-insured community. Ombuds Office initiatives and projects will continue to concentrate on improving processes and identifying positive solutions and recommendations to improve the Washington workers' compensation system. We look forward to another productive year.

Donna Egeland  
Ombuds for Injured Workers of Self-Insured Employers

# Introduction

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The 2007 Legislature established the Office of the Ombuds for Self-Insured Injured Workers to advocate for injured workers of self-insured employers, identify program deficiencies, and make recommendations for policy and process improvements.

The top priority of the Ombuds Office is to help injured workers and their representatives with questions and concerns about industrial insurance rules and regulations, and quickly resolve specific workers' compensation complaints. The Ombuds Office team aims to provide a high level of customer service as we help injured workers maneuver through the complexities of the workers' compensation system.

Another goal of the Ombuds Office is to ensure a smooth claim process for injured workers, which includes identifying areas for process improvement and related policy enhancements. Effective collaboration with multiple interested parties is critical, and the team strives to maintain objectivity and positive relationships with all stakeholders, including worker advocates, L&I staff, and the self-insured business community.

This report begins by describing the structure of the Ombuds Office and Self-Insurance in Washington. This is followed by a summary of inquiries and investigation results for July 1, 2018 through June 30, 2019, including statistical analysis of the issues addressed. Subsequent sections go into greater detail about process improvement recommendations and efforts to resolve primary issues.

# Office of the Ombuds

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The Ombuds program is funded by self-insured employers and governed by Revised Code of Washington (RCW) 51.14.300 through 51.14.400. All information is highly confidential, and injured workers are informed of their rights to confidentiality under RCW 51.14.370.

Governor Inslee appointed the current Ombuds for a six-year term effective March 2, 2015. The Ombuds reports to L&I Director Joel Sacks, but operates independently from the agency. The highly qualified Ombuds Office team consists of the official Ombuds position, an operations and outreach liaison, two workers' compensation adjudicators, and a program specialist.

Ensuring fair and certain relief on behalf of injured workers is the primary mission of the Ombuds Office, and is in the best interest of all parties involved in the Washington self-insured workers' compensation system. Efficient systems and approaches are key to streamlining processes for injured workers, and are a common goal of the workers' compensation community.

## PRIMARY RESPONSIBILITIES OF OMBUDS OFFICE

### Investigate and resolve complaints

- We ensure injured workers receive appropriate benefits under Washington industrial insurance rules and regulations. It is important for workers to understand their rights and responsibilities and the investigation process. The top priority of the Ombuds Office is to resolve all complaints as efficiently and quickly as possible, and maintain contact with the worker throughout the investigation process. When a timely resolution is not feasible, the complaint is referred to L&I's Self-Insurance Program for further action.

### Provide information and training

- We address questions and concerns about the workers' compensation process. The Ombuds Office team strives to provide excellent customer service and empathy as we help workers understand the complexities of the workers' compensation system and maneuver through the claim process. The team provides training and education, from official training to simply directing an individual claims adjuster to the appropriate regulation, administrative procedure, or claims management tools and resources.

### Track complaints and inquiries

- We maintain a comprehensive database of complaints and inquiries, document outcomes, and analyze trends. Ombuds staff uses data analytics to identify systemic issues, as well as potential policy and process improvements.

## Recommend policy and process improvements

- We identify solutions and opportunities for potential self-insured program improvements, and provide recommendations. We coordinate with applicable L&I divisions, external stakeholders, workgroups and committees.

## Maintain collaborative relationships

- We collaborate with multiple interested parties and cultivate positive relationships with all stakeholders, including worker advocates, L&I staff, and the self-insured business community.

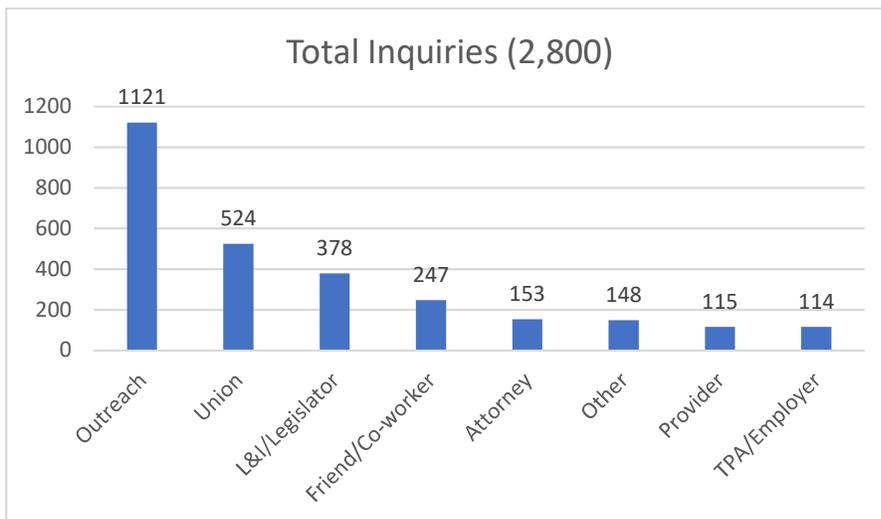
## Conduct community outreach

- We participate in community events and provide training and education to constituents. The Ombuds Office team appreciates the opportunity to participate in conferences, meetings, and committees. These forums provide a meaningful way to share information about the Ombuds program, build relationships, gather information, learn more about issues and concerns, and help identify solutions.

## Referrals

As shown in Figure 1, community outreach and referrals from worker advocates are the major source of referrals to the Ombuds Office. Other sources of referrals include friends, providers, legislators, L&I staff, attorneys, and employers and their representatives.

**Figure 1: Referral Source**



Source: Self-Insurance Ombuds Database (SIOD)

Injured workers receive *A Guide to Workers' Compensation Benefits for Employees of Self-Insured Businesses*, which includes a reference to the Ombuds program. The Ombuds program brochure is also widely distributed by the Ombuds Office and within the business and labor communities. The Ombuds Office website at [www.Lni.wa.gov/Ombuds](http://www.Lni.wa.gov/Ombuds) provides additional information.

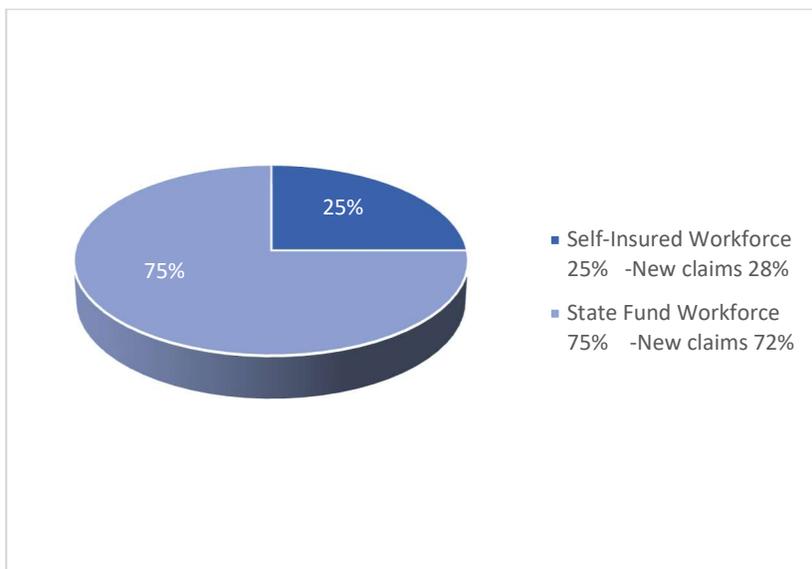
## SELF-INSURANCE IN WASHINGTON

Self-insurance is an alternative method of providing workers' compensation coverage for Washington's largest employers. Self-insured employers may choose to self-administer their workers' compensation program or contract with a third-party administrator (TPA) to manage their claims process. L&I has regulatory authority over industrial insurance rules and regulations, and L&I's Self-Insurance Program enforces these regulations for self-insured employers. This includes providing certification services, audits, education, and training, and assessing penalties if indicated.

There are currently 351 active self-insured employers in Washington, employing approximately 933,731 workers. Self-insured workers represent 25 percent of Washington's workforce. Self-insured employers reported 44,355 new claims compared to 111,605 new State Fund claims (28 percent of new claims) during FY 2018. More than 92 percent of self-insured employers currently contract with a TPA. There are 65 TPA locations, and 52 percent are located outside of Washington.

Figure 2 shows the proportion of workers covered by self-insured employers, compared to workers covered by State Fund employers in Washington.

**Figure 2: Washington's Workforce**



Source: L&I Self-Insurance Section

## **Self-insurance basic requirements**

To qualify for self-insurance, businesses must meet certain requirements, including:

- Be in business for at least three years.
- Meet mandatory financial standards and obligations.
- Demonstrate the existence of an established safety program, including an effective accident prevention program.
- Submit a description of an acceptable industrial insurance administration process to L&I.

## **Standard workers' compensation benefits**

All workers are entitled to the same level of benefits provided by Washington industrial regulations, including but not limited to:

- Medical benefits for approved treatment related to a work-related injury or illness.
- Partial wage replacement for lost wages due to a temporary disability resulting from a work-related injury or illness.
- Vocational assistance if the worker qualifies for retraining.
- Permanent partial disability award to compensate for a permanent loss of bodily function.
- Disability pension if the worker is totally, permanently disabled from any gainful employment.
- Death benefits for survivors if a worker dies as the result of a work-related injury or illness.

# Summary of Activities and Findings

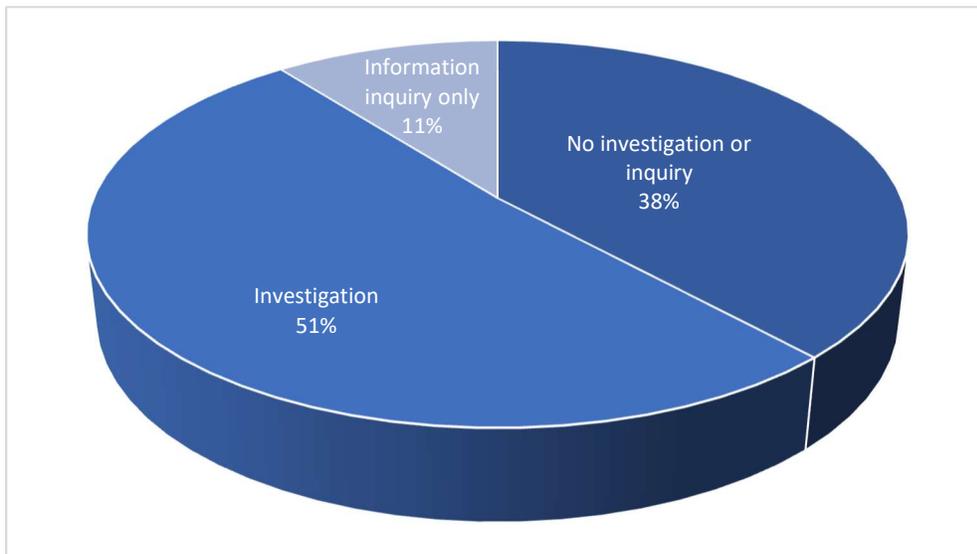
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The first priority of the Ombuds Office is to act as an advocate for injured workers of self-insured employers. This involves providing information on industrial insurance and identifying, investigating, and facilitating resolution of issues and complaints from workers and their representatives.<sup>1</sup> The following information is a summary of investigation activities and findings for FY 2018/2019.

## INQUIRIES

The Ombuds Office resolved over 2,800 inquiries regarding workers' compensation claims of self-insured employers for the 2018/2019 reporting period as of July 1, 2019. General inquiries increased 30 percent, primarily due to expanded community outreach. Many inquiries were informational in nature and did not warrant an official investigation. However, 1,208 investigations were required. Investigations involved 51 percent of self-insured employers; 38 percent of employers did not encounter any type of inquiry in the Ombuds Office, and 11 percent had information-only inquiries.

**Figure 3: Inquiries Proportion by Self-Insured Employers**



Source: SIOD

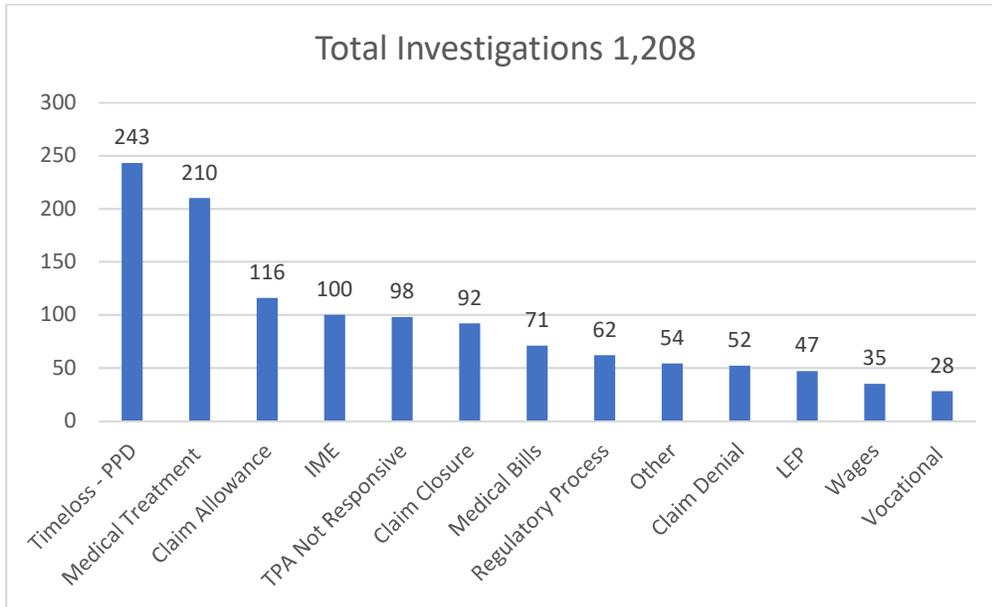
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<sup>1</sup>RCW 51.14.340

## INVESTIGATIONS

The Ombuds Office completed 1,208 investigations during the FY 2018/2019 reporting period. Figure 4 compares the issues involved in these investigations.

**Figure 4: Reported Investigation Issues**



Source: SIOD

The categories remain fairly consistent with the prior reporting period. The Ombuds Office implemented a new tracking system, which has improved reporting functionality and has an expanded data hierarchy describing the nature of inquiries.

### Points of interest:

- Delayed or unpaid time-loss benefits remain the primary source of complaints. Resolution of these benefit delays continues to be a top priority for the Ombuds Office, as well as the Self-Insurance Audit Governance Committee. The current Tier 1 audit cycle addresses the timeliness of time-loss benefit payments for all self-insured employers, and is scheduled for completion by the end of 2019.
- The second most common source of inquiries is medical treatment issues. Medical bill payment delays also continue to be an issue. The current audit cycle requires an issue-based audit for all self-insured employers and focuses on medical bill payments. The Self-Insurance audit team is using Self-Insurance Risk Analysis System (SIRAS) electronic data to identify employers at the highest risk of non-compliance with timely payments of medical bills, and is then performing a manual audit on that group of employers.
- Independent medical exam (IME) investigations remained the same (100 investigations). We believe the L&I Self-Insurance Program's IME Tool-Kit training, emphasizing proactive

communication with injured workers and knowing when it is appropriate to schedule an IME, continues to make a positive impact. However, this training is not mandatory for all claims adjudicators.

- Concerns regarding claim status (claim allowance, closure and denial) continue to be a source of inquiries. New rule recommendations established by the Self-Insurance Rules Review Workgroup addressed some of these issues by streamlining and modernizing the claim status process.
- The Ombuds Office team provides assistance when a TPA does not respond to an injured worker. The Ombuds outreach team has started meeting with TPAs who experience a high volume of no response to injured workers or the Ombuds Office, and plans to expand this outreach.
- We have added a new category (Regulatory Process) to show when a self-insured employer or TPA does not follow regulatory processes that are not already reflected in an existing category, such as initial claim reporting.
- Loss of earning power (LEP) benefit payment issues have increased (47 v. 28). Fortunately, L&I has established a collaborative workgroup to address LEP guidelines.
- Incorrect wage calculation investigations continue to be an issue. Current Tier 2 audits address the accuracy of wage calculations. However, only SIE/TPAs that fail Tier 1 time-loss benefit audits move to a Tier 2 benefit accuracy audit. We are monitoring the progress of the current audit cycle and the impact of training that occurred during the pilot audits, and it will take a few audit cycles to establish trends.

## RESOLUTION PROFILE

The following describes the methods used to resolve self-insured workers' compensation investigations. Some investigations involve more than one issue.

**Figure 5: Resolution Profile**

	FY2019	FY2018	FY 2017	FY 2016
Total Number of Investigations	1,208	1,069	629	443
Claim Adjudicated Correctly	360	258	173	158
Resolved – SIE / TPA	313	292	197	92
Resolved - L&I Assistance	184	186	176	137
Not in Jurisdiction	172	253	83	56
No worker follow-up	179	80	*N/A	*N/A

\*N/A due to no available data

Source: SIOD

In the spirit of quick resolution, the Ombuds Office team attempts to resolve issues directly with the injured worker's employer or a third-party administrator (TPA).

If the Ombuds Office team is unable to resolve the issue with the self-insured employer or TPA, the team engages L&I's Self-Insurance Program for assistance in resolving the issue. If necessary, the complaint is referred to the program for further review and action (RCW 51.14.350). Self-Insurance Program staff conducts a thorough review, makes an independent claim determination, and provides the Ombuds Office with a summary of the action taken.

The Ombuds Office team tries to resolve issues with the employer or TPA directly. We are happy to report continued progress in this area, as well as findings that claims are adjudicated correctly, resulting in faster resolution and better outcomes for injured workers.

## CASE SCENARIOS

### **Time-loss Benefit Delays**

A worker reached out to the Ombuds Office because they started working a reduced schedule and had questions about their time-loss benefits. The Ombuds Office reviewed the wage order issued under the claim and determined that loss of earning power (LEP) and time-loss benefits were not being paid correctly per the wage order. Additionally, it was determined that the worker's healthcare benefits had recently terminated and additional benefits to cover the employer's healthcare contribution had not started. The Ombuds Office worked with the third party administrator (TPA) to ensure accurate recalculation of LEP and time-loss benefits, as well as proper payment of these benefits.

Another worker contacted the Ombuds Office for assistance, as the TPA was not addressing the worker's ability to return to the job of injury. After review of the claim file, it was determined that overall employability had not been properly addressed, and the worker was entitled to almost two years of unpaid time-loss benefits. The Ombuds Office attempted to resolve the issue with the assistance of the TPA, but ultimately requested L&I intervention. This resulted in an order directing payment of the delayed time-loss benefits and a penalty for unreasonable delay of benefits.

### **Medical Treatment**

A worker contacted the Ombuds Office with concerns about delay in surgery authorization. Upon review of the claim file, we realized several medical opinions supported a total knee replacement. The Ombuds assistant discussed these claim findings with the TPA, who was in the process of pursuing further opinions by way of an addendum to a previous independent medical examination (IME). After the discussion, the TPA agreed that there was enough medical support to move forward with surgery authorization, and promptly approved the surgery.

Another worker's provider contacted the Ombuds Office about a TPA that was refusing to pay a consultation medical bill because they had not authorized the consultation appointment. The Ombuds Office contacted the TPA to remind them that consultations do not require prior authorization per WAC 296-20-030, and the medical bill was paid timely.

### **Claim Allowance**

A worker contacted the Ombuds Office stating that the TPA was refusing to authorize recommended treatment. Upon review of the claim file, it was determined that an interlocutory order was initially requested; however, both the medical history from the attending provider and the independent medical examination supported claim allowance and surgery authorization. Several attempts to contact the TPA to request allowance and obtain surgery authorization were unsuccessful. Consequently, the Ombuds Office requested L&I intervention resulting in issuance of the allowance order and TPA authorization of surgery.

## **IME Concerns**

A worker contacted the Ombuds Office asking why she had to attend an independent medical exam (IME). The worker stated that the TPA indicated the purpose of the IME was to make a determination on whether or not her recent hospital stay was related to her industrial injury. The worker did not understand why a physical exam was necessary when she had already healed from her injury. The Ombuds Office contacted the TPA and discussed other available resources, such as seeking the treating provider's opinion on causality, utilizing a nurse case manager, or scheduling a record review. The TPA agreed that a record review would be more appropriate and canceled the IME.

An injured worker contacted our office regarding an upcoming IME appointment. Review of the claim information revealed it was the fourth IME scheduled in a years' time. The Ombuds Office contacted the TPA and the IME was cancelled, as there was sufficient medical information available to assess treatment needs and make further claim decisions.

## **Communication Concerns**

A worker contacted the Ombuds Office because they had been working reduced hours for approximately a month with no wage replacement benefits paid. The Ombuds Office placed numerous calls to the TPA with no response. After contact with the claims adjuster's supervisor, benefits were paid. The worker was then taken off work completely. The worker contacted our office again because no benefit payment was received. The Ombuds Office placed numerous calls to the claims adjuster without response and once again escalated to a supervisor to ensure payment of benefits. Benefits were paid and the employer was assessed a penalty for unreasonable delay of benefits.

## **Claim Closure**

A worker reached out to the Ombuds Office after receiving notice that his claim had closed; however, he was recently authorized for a third injection under the claim. The worker was advised to protest the closure and provide medical evidence supporting the need for further treatment. Upon doing so, L&I found closure to be premature and reversed the claim closure.

## **Wage Concerns**

An injured worker contacted the Ombuds Office regarding the calculation of their wages. The worker was a full-time, year-round employee with a school district, but her wages were calculated as intermittent resulting in a significant decrease in her monthly wages. The Ombuds Office contacted the TPA and the wages were recalculated, resulting in a benefit increase of over \$1,000 per month.

## **Vocational Concerns**

A worker contacted the Ombuds Office because they were having problems accessing their training fund and were not getting a response from the TPA. The Ombuds Office reached out to the TPA who was not familiar with the request and was not sure if the training funds could be accessed. The Ombuds Office provided education regarding the entitlement to training funds under Option 2 and advised that the training goal or program does not have to be the same as originally approved. The TPA authorized the training after review and the worker was able to enroll in classes the following week.

# Major Initiatives

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The Ombuds Office has been involved in several important projects this past year, including Self-Insurance Program improvements. Significant projects are highlighted in this section.

## SELF-INSURANCE AUDIT REFORM

The Self-Insurance Audit Reform project began in 2013 with the goal of developing a new audit process, and it continues to make progress. The project is guided by the Self-Insurance Audit Governance Committee, which is led by L&I. The advisory committee consists of representatives from the labor community, self-insured employer community, and the Ombuds Office. The new audit model focuses on issues identified by the governance committee and promotes compliance with Washington State industrial insurance regulations and education.

The new Self-Insurance audit model is designed to:

- Build an effective, industry-leading audit model that combines performance-based, complaint-based, and issue-based audits.
- Ensure program compliance by self-insurers, including delivery of accurate and timely benefits.
- Detect non-compliers using reliable data, and apply a tiered audit approach to bring them into compliance.
- Communicate clear expectations to self-insurers and provide effective claims management tools, consultation, and training.
- Shorten the prior audit cycle to ensure all self-insured employers and third party administrators (TPAs) experience an audit every two years.

The first official two-year audit cycle is well underway, and is scheduled for completion by December 31, 2019. L&I is on target and expects to complete all performance- and issue-based audits by the end of 2019. We anticipate a full report on the two-year audit cycle in late 2019.

### Tier 1 audits

- Tier 1 audits involve review of initial and continuous time-loss payments to make sure the benefits were paid timely, and apply to 353 self-insured employers (Two employers have withdrawn their self-insurance certification since the beginning of the audit cycle). Tier 1 audits are near completion and only three employers remain in the initial fieldwork phase.

- Of 350 completed Tier 1 audits: 229 employers passed Tier 1 with an accuracy rate of 80 percent or greater; 92 employers did not pass Tier 1 and moved to a Tier 2 audit; and 29 employers had no audit-eligible claims during the audit reporting cycle.

## **Tier 2 audits**

- Tier 2 audits involve review of payroll information provided by the employer to determine if wages used to calculate time-loss benefits were calculated correctly.
- Of the 92 Tier 2 wage review audits: 34 employers are in the initial fieldwork phase; 28 employers passed Tier 2 with an accuracy rate of 80 percent or greater; 16 employers did not pass Tier 2 and moved to a Tier 3 audit; and 14 employers had no audit-eligible claims during the audit reporting cycle.

## **Tier 3 audits**

- Tier 3 audits involve review of entitlement to benefits for specific periods to determine if the injured worker received the time-loss benefits due to them.
- Of the 16 benefit entitlement audits: 14 employers are in the initial fieldwork phase; one employer has not started its Tier 3 audit; and one did not pass.
- If an employer does not pass the Tier 3 audit and had four or less claims reviewed, they will be required to submit a Performance Improvement Plan (PIP). If they had five or more claims reviewed and do not pass they will be required to attend mandatory training, and six months later they will have a follow-up review by an auditor.

## **Issue-based audits**

Current issue-based audits involve using data collected through the Medical Electronic Data Interchange (EDI) to review the timeliness of medical bill payments. L&I reviewed medical bills for all self-insured employers who are currently reporting via the new interchange (296 of 353 employers) over a 60-day period. Only seven employers were identified to pay medical bills beyond the 60-day maximum payment time frame. Those employers will receive a more in-depth medical bill audit as a pilot using the new Medical EDI data collection process. L&I is actively working on setting up Medical EDI reporting for the remaining employers, and the new EDI reporting rule should help with this process.

Medical EDI and upcoming claims management EDI data should help identify future issue-based audit concepts, such as IME issues and claim allowance and claim closure notices.

## **Next steps**

The Audit Governance Committee will begin discussions in the fall of 2019 to help identify goals and audit priorities for the next audit cycle, which will commence January 1, 2020. The upcoming final audit report for the 2018/2019 audit cycle will also help determine future audit priorities.

The Ombuds audit priorities include the following:

- Continue auditing of the timeliness and accuracy of time-loss benefits, and tracking of trends.
- Timeliness and efficiency of time-loss claim allowance and claim closure.
- Timeliness and efficiency of medical-only claim allowance and claim closure.
- Timeliness of initial claim reporting by the self-insured employer, including the employers internal claim reporting system (e.g., date stamping, posting notices, claim packets).
- Efficiency of claim reserve practices.
- Accuracy of self-insured employer's quarterly assessment reporting, including payroll data.
- Other claims management issues, such as IME, vocational, modified duty and return-to-work practices.

As the new audit model continues to evolve, so should Self-Insurance regulatory enforcement standards. The Ombuds will continue to closely monitor the success of the new audit model, including:

- Ensuring audit volume is commensurate with the size of employer.
- Ensuring audit resources are adequately allocated, including resources dedicated to issue-based and complaint-based audits.
- Monitoring impact on benefit delays and benefit accuracy based on inquiry and complaint-based data contained in the new Self-Insured Ombuds Database, as well as future L&I audit results.
- Ensuring Tier 3 audits are in-depth and involve a comprehensive review of self-insured employer workers' compensation systems, including administrative assessments and accident reporting.
- Monitoring impact on self-insured employers that repeatedly do not pass at any level of the audit process.
- Monitoring evolution of Self-Insurance regulatory enforcement standards for non-compliance and implementation of applicable corrective action and Self-Insurance certification withdrawal regulations (RCW 51.14.095, RCW 51.14.080, WAC 296-15-260). This should be consistent with the L&I director's goal that non-compliers will experience a different L&I.

The Ombuds will continue to participate on the Self-Insurance Audit Governance Committee, as the audit process is vital to ensuring compliance and identifying self-insured non-compliance and systemic issues.

## SELF-INSURANCE RULE UPDATE

The Self-Insurance Rules Review Workgroup was established in early 2017 as a collaborative rules modernization effort in follow-up to the Self-Insurance Audit Reform initiative. As the audit reform project evolved, many outdated rules and processes were identified. The workgroup's guiding principles ensure better communication to workers, greater certainty for employers, and reduced re-adjudication and stronger regulation by L&I. The committee is sponsored by L&I and consists of representatives from the labor community, business community, and Ombuds Office.

I am pleased to report that the workgroup has made significant progress resulting in 13 rule updates effective July 1, 2019. Key rule changes include the following:

- New comprehensive goal-oriented training for a certified self-insured professional claims administrator, which includes training on worker-centric return to work practices to help injured workers heal and return to work.
- New modern purpose-driven forms to request allowance, denial, or closure of a claim from L&I that replaces the prior all-purpose SIF-5 and SIF-4 forms. L&I will continue to allow, deny, or close certain claims.
- Several new communication templates to communicate important claim information to injured workers throughout the life of a claim, requiring L&I intervention only if there is a dispute. These forms explain to an injured worker what to do if they dispute an action taken by a self-insured employer.
- A new approach to penalty requests related to unreasonable delay of benefits arising from wage calculation errors when the new communication process is followed. The goal is to greatly reduce the number of administrative wage orders.
- Eliminate the requirement for a manual claims log and replace it with an electronic record of claims, when requested by L&I.
- All out-of-state adjudicators must maintain a professional workers' compensation claims administrator certification and keep core business hours for Pacific Standard Time.

The Ombuds Office will closely monitor the impact of these rule changes and continue to participate on the Rules Review Committee to continue improving processes, reducing re-adjudication, and strengthening L&I regulation.

## Self-insured authority

The good work being done through audit reform and the Rules Review Workgroup continues to move in the right direction. However, the Ombuds still believes that as long as the L&I Self-Insurance Program continues to re-adjudicate claims, Self-Insurance resources will be limited and key process improvement hampered, including strengthening regulatory enforcement, updating rules, supporting programs like Centers of Occupational Health and Education, and developing electronic data reporting to identify risks and opportunities for improvement.

The Ombuds continues to recommend that self-insured employers be allowed to issue formal orders when accepting, closing, or denying a claim. The Joint Legislative Audit & Review Committee (JLARC) 2015 audit report on workers' compensation claims management confirmed that the current process of re-adjudication by Self-Insurance takes an average of 66 days, compared to an average of six days to make a decision on a State Fund claim. According to the JLARC study, "L&I agrees with the [self-insured] employer for 99 percent of acceptance decisions and 98 percent of denials."<sup>2</sup>

Reducing Self-Insurance re-adjudication will free-up L&I resources to focus on audits, enforcement, dispute resolution, improving claims management, education, and electronic data reporting. This concept aligns with L&I's goals of making it easier to do business with L&I and focusing enforcement efforts on the bad actors rather than the good ones, which is consistent with many self-insured claims management protocols in other states.

The Ombuds continues to recommend that a collaborative workgroup of L&I, labor, and business representatives begin discussions to address this topic. Unfortunately, this workgroup has not been established to date. Consequently, the Ombuds recommends continued focus on expanding self-insured authority via discussions in the Rules Review Workgroup. Any expanded authority must be accompanied by strong L&I regulation and penalties for failure to deliver timely and accurate benefits, such as automatic penalties for late disability benefit payments consistent with regulations in other states.

## Wage calculations

Wage calculation errors and confusion related to the Washington complex wage calculation continues to be an issue in the self-insured community, and the Ombuds is disappointed in the lack of progress toward finding a reasonable solution. Understandably, it appears there are several competing interests and complexity among industries across the state. Therefore, the Ombuds recommends that the Rules Review Workgroup take-up this topic and attempt to identify opportunities for improvement specific to the self-insured community.

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<sup>2</sup>JLARC Proposed Final Report: Workers' Compensation Claim Management, Published January 2016

The Ombuds is confident there is a reasonable set of calculations that maintain fairness and equity for injured workers while streamlining the administrative process for self-insured employers, which likely requires a legislative fix. For instance, consider reverting back to using the wage at time of injury and a representative seasonal wage calculation; use a standard percentage for benefit entitlement for all workers (e.g., 66 2/3 of all wages used in many states) and maintain the additional Cackle benefit to cover the employer's healthcare contribution when stopped; and use the higher wage calculation that benefits the injured worker when more than one calculation is possible. Some form of exception calculation should also be considered (self-insured employer can choose to use the current wage calculation process or pay the maximum time-loss benefit).

## **Other rule changes and opportunities**

- L&I is proposing new rules regarding self-insured employers' submission of medical information via the Medical Electronic Data Interchange (EDI), which is an important component of the L&I Self Insurance Risk Analysis System. The new rules will establish reporting standards for the accuracy and timeliness of medical data reporting. This data will be used for benchmarking with other states, informing policy discussions in our state, and establishing training curriculum, audit criteria, penalties and corrective actions for the self-insured community.

Currently, there's a gap in workers' compensation medical data in our state. We're not getting the data for self-insured employers, who represent approximately 25 percent of the workforce. This data will help close the gap. The data will also be used to help problem-solve in areas such as opioid over-use, back fusion surgeries, and concerns with the use and frequency of IMEs. Today 98 percent of self-insured employers have registered with the EDI and 84 percent are reporting data. The new rules may also include an exemption for reporting and are intended to be effective January 1, 2020.

- Like the claim rules modernization effort of the Rules Review Workgroup, L&I is starting a similar effort for the Self-Insurance Financial Rules. Much has changed since these rules were originally written, and many of the rules are outdated for today's modern business environment. L&I's goal is to ensure a sound workers' compensation system for both employers and workers, whether employers secure coverage through the State Fund or self-insure.
- The Ombuds team continues to recommend a solution to address delays related to medical-only claim orders, including requiring allowance orders on medical-only claims. The current statute (RCW 51.14.130) requiring timely claim allowance or denial of a claim does not provide an exception for medical-only claims. However, Self-Insurance rules do not require these orders due to limited resources. A potential solution may be to allow self-insured employers to issue orders, as discussed previously in this report, in exchange for requiring allowance and denial orders on all claims.

The Ombuds recommends the Rules Review Workgroup address this issue.

- The Ombuds recommends the Rules Review Workgroup develop parameters for the self-insured community defining the reasonableness and necessity of an IME; mandatory IME best practices; and mandatory training requirements for self-insured claims administrators (see IME section below for additional detail).
- The Ombuds has recommended implementation of an official application to help injured workers start the structured settlement process when necessary, similar to the State Fund application. However, we have seen no progress on creation of an application. The Ombuds recommends the Rules Review Workgroup address this issue.

## INDEPENDENT MEDICAL EXAMS

Independent Medical Exams (IMEs) continue to be a top source of inquiries and complaints from self-insured injured workers (investigations remained the same - 100). Complaints continue to be primarily related to claims management or the quality of the IME. Fifty-three percent of Ombuds Office IME complaint investigations are related to the use of IMEs in claims management, such as poor communication regarding the purpose of the exam, high number of exams on a particular claim, failure to send IME reports to the attending provider, and poor coordination of the exam, including the distance to the exam not meeting statutory guidelines. There has been some progress toward improving the IME process, but there is still work to be done.

The Ombuds strongly recommends that all self-insurance claims managers attend the Self-Insurance IME Tool-Kit training. This training addresses the correct use of an IME, such as when it is appropriate to schedule an IME and how to adequately communicate with injured workers about the IME process. The L&I Self-Insurance Program has ramped up training efforts in this area, including requiring all certified claims managers to attend the IME Tool-Kit training this year, as well as training on the new self-insurance rules.

However, this training is not mandatory for claims managers that do not maintain the self-insured claims administrator certification. Consequently, the Ombuds recommends that all self-insured claims managers must obtain and maintain this certification just like out-of-state claims managers are now required to do under a new rule, or at least maintain some form of registration with L&I so Self-Insurance can ensure all self-insured claims managers attend important training and stay abreast of current policies, rules, and regulations.

The Ombuds Outreach Team has also provided IME training with some self-insured employers and TPAs as part of our expanded community outreach. We are scheduling additional training sessions with TPAs, and continue to coordinate training efforts with the Self-Insurance training team.

We have also previously recommended that mandatory communication be provided to workers regarding the intent of the IME and what to expect during the IME (i.e., mandatory brochure to injured worker). Self-Insurance has included sample communication documentation as part of the IME Tool-Kit training, which is a step in the right direction. However, this communication is not

mandatory, and again, all claims managers should be required to attend training and be held accountable for using best practices.

Parameters defining the reasonableness and necessity of an IME, mandatory IME best practices, and training requirements are necessary to help hold parties involved in the IME process accountable. These matters should be addressed in the Rules Review Workgroup and/or the new IME Steering Committee. The Ombuds also continues to recommend that the Audit Governance Committee address the use of IMEs in claims management (e.g., schedule an issue-based audit addressing the IME process). The new self-insured medical EDI data will help inform IME priorities.

L&I is establishing a new IME Steering Committee to help ensure quality IMEs, prioritize IME improvement initiatives, and ensure adequate allocation of resources. The L&I IME Steering Committee is an internal, cross-divisional collaborative effort that will oversee IME improvements that are in the best interest of helping injured workers heal and return to work and make it easy to do business with L&I.

Development of the IME Steering Committee is in its early stages, and the Ombuds is hopeful the committee will help reduce variation between self-insured and State Fund IME processes; include self-insured IMEs in L&I quality improvement initiatives; address the use and frequency of IMEs, including gathering relevant data; and develop IME best practices and guidelines. The committee should triage any IME issue brought to the committee to ensure all IME issues are addressed fairly.

The L&I Provider Quality and Compliance Unit established the IME Business and Labor Advisory Team in 2007 to respond to stakeholder concerns and validate IME quality issues. The advisory team members represent State Fund and self-insured employers, and will continue to provide insight on short-term and long-term strategies regarding IME quality.

The Ombuds will continue to attend meetings of the IME Business and Labor Advisory Team, Self-Insurance Rules Review Workgroup, and Self-Insurance Audit Governance Committee and monitor progress toward improving the self-insured IME experience and the use of IMEs in claims management, including communication with injured workers.

## INTERNAL PROCESS CHANGES

The Ombuds Office continually reviews internal processes to ensure excellent customer service and timely resolution of issues and complaints. The following process improvements have increased efficiency and timeliness of investigations.

### **Community outreach expansion**

The Ombuds outreach team continues to focus on expanding community outreach and increasing our presence at conferences and training (participated in over 20 events). We will continue to use new data analytics to help identify future opportunities, including outreach to TPAs experiencing a high volume of workers' compensation program issues. Outreach with TPAs and self-administered

employers has been well received, and we have received positive feedback that the training will help improve claims management processes. We will monitor the impact of this training using Ombuds SIOD trend data.

We have also expanded awareness about Ombuds Office services to Spanish-speaking communities with news articles, increased distribution of the Ombuds brochure, and improved internal language access processes.

### **Use of TPA systems**

The Ombuds team has started testing limited access to TPA claims management systems to expedite investigations. This is similar to Self-Insurance auditors' access to TPA systems for audit purposes. The pilot project with a large TPA has been positive, saving a significant amount of time over receiving claims documentation via fax or US mail. We plan to expand this process with other TPAs and self-administered employers.

### **Claims suppression**

The Ombuds team met with the L&I Discrimination and Claims Suppression Unit to ensure continued education and focus on claims suppression. This is an important issue and we want to make sure we remain abreast of current rules and regulations to identify potential claim suppression and make appropriate referrals to the L&I Fraud Unit. We referred at least six cases to this unit last year.

### **Structured settlements**

The Ombuds team has engaged in training to maintain current knowledge and skills to assist injured workers with structured settlements. We have recommended implementation of an official application similar to the State Fund application to help injured workers start the structured settlement process when necessary. However, we have seen no progress on creation of an application, so we recommend that the Rules Review Workgroup address this issue.

### **Injured worker customer service surveys**

The Ombuds Office has updated injured worker customer service surveys and is now sending surveys to injured workers after their issue(s) has been resolved. The initial survey results have been positive, and we look forward to reporting detailed results in the future.

# Other Initiatives

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The Ombuds Office continues to search for opportunities to improve internal Self-Insurance Program processes and identify enhancements to self-insured systems. The Ombuds Office is confident these initiatives will lead to further positive solutions.

## SELF-INSURANCE PROGRAM

The Ombuds continues to meet regularly with L&I's Self-Insurance Program staff and stakeholders to ensure injured worker concerns are resolved in a timely manner, and to identify opportunities for process improvement.

- The Ombuds team continues to experience issues with delays in orders when there are multiple TPAs and/or the State Fund involved in a claim. For example, a worker filing an occupational disease claim may include multiple employers. The State Fund is not required by statute to make a claim determination within a defined timeframe (self-insured employers are required by statute to issue orders within a defined timeframe), which can impact the self-insured order. The Ombuds will work with the Self-Insurance Program to identify solutions to eliminate these delays.
- The system for filing self-insured claims is complicated for providers, workers, and employers, and much is done manually without automation. The business transformation initiative that L&I is undertaking may present additional opportunities for improvement and greater efficiencies, such as an expeditious single pathway to reporting.

## OUT-OF-STATE CLAIMS MANAGEMENT

New rules effective July 1, 2019 require all out-of-state adjudicators to maintain a professional workers' compensation claims administrator certification and keep core business hours for Pacific Standard Time. The Ombuds Office is optimistic this new rule will help improve out-of-state claims management, and will continue to monitor this issue.

## CENTERS OF OCCUPATIONAL HEALTH AND EDUCATION

The Ombuds office continues to experience issues related to return-to-work coordination, which can impact time-loss benefit payments, and medical treatment authorization delays. Consequently, the Ombuds continues to recommend that self-insured employers start using the valuable services offered by Centers of Occupational Health and Education (COHEs). COHE health services coordinators have developed sophisticated protocols that help injured workers heal and return to work, and provide support and training for providers.

Discussions have recommenced with a large COHE and a TPA representing multiple self-insured employers, and a pilot project is expected to begin by early 2020. The Ombuds Office remains committed to moving this important issue forward.

## MEDICAL PROVIDER OUTREACH

The Ombuds team has experienced an increase in complaints from injured workers about difficulties finding providers within the L&I Medical Provider Network (MPN). A primary issue is that the MPN list of providers is often not current, which is reliant on providers maintaining their provider information.

The good news is L&I is implementing a new provider system in the fall of 2019 (Provider One). This new automated system will allow providers to update their information in real-time. The Ombuds is hopeful the new system will also improve L&I's communication with providers, including reminding provider groups to update their information.

## EXPAND AVAILABILITY OF APPROVED MENTAL HEALTH PROFESSIONALS

The Ombuds team continues to struggle with helping injured workers find approved mental health treatment due to the low number of approved providers, especially in light of new first responder PTSD presumption coverage (SB6214). We are happy to report that L&I is amidst a pilot project to expand availability of approved mental health professionals, to include master's level therapists to provide behavioral health services focused on recovery and return to work for workers with a work-related injury or illness.

# Conclusion

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The Ombuds Office is available to help injured workers of self-insured employers, worker advocates, providers, self-insured employers and their representatives, and any other party involved in the self-insured system. Community outreach is a top priority for the Ombuds Office and is key to maintaining awareness of issues and establishing priorities for the self-insured community. The Ombuds Office team is dedicated to efficient resolution of issues and complaints, and identifying positive solutions and recommendations to improve the Washington self-insured workers' compensation system.

## How to get help

For assistance with a self-insured workers' compensation issue, please call:

- Ombuds Confidential Hotline: 888-317-0493
- Ombuds Confidential Secured Email: [SIOMbuds@Lni.wa.gov](mailto:SIOMbuds@Lni.wa.gov)

## Let us know your thoughts

The Ombuds Office welcomes feedback and suggestions about this report, as well as any suggestions for improving the self-insured workers' compensation system. Additional information about the Ombuds program can be found at:

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

## Contact information

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