

HOUSE RESEARCH ORGANIZATION

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Workers' Comp Practices Faulted; Carriers, Legislators Spar Over Data Request

Workers' compensation insurance carriers in Texas came under fire at a January 27 meeting of the House Business and Insurance Subcommittee on Workers' Compensation Insurance Carrier Practices. June Karp, executive director of the Research Oversight Council, the state agency established to study and oversee the workers' compensation system, told legislators that "disturbing patterns" of behavior have been noted that have adversely affected injured workers. Days later, Rep. Kim Brimer, chair of the House Business and Industry Committee, accused carriers of "stonewalling" legislators by refusing to provide requested information on industry practices and criticized testimony suggesting the committee was overstepping the bounds of its charge. Carriers had claimed they could not easily retrieve the data from their files and that the effort would have necessitated extensive and costly file-by-file reviews of records.

At the hearing, Texas Workers' Compensation Commission (TWCC) Chair Dick Reynolds and several insurance carriers told the subcommittee that while improvements may be necessary, overall the system is working. The number of violations and problems in the system is minuscule when compared to the volume of workers' compensation business in the state, they pointed out.

'Growing pains'

While agreeing that the vast majority of workers' comp cases are handled without dispute, Karp said 5 percent of cases experience problems. Insurance adjusters provide slow or inattentive responses to claimants, the TWCC reduces recommended fines to violating carriers, and carriers initiate seemingly arbitrary disputes over payment of supplemental income benefits (SIB) to workers who are still unable to return to the job after their initial income benefits are exhausted. Karp also suggested that there may be problems arising from the relationships between the workers' comp carriers and the unregulated third party administrators they hire to run their plans.

Robert Marquette, TWCC acting director, said many of the SIB problems cited by Karp can be attributed to the growing pains of a new workers' compensation system that dates only from 1991. Because claimants are not eligible for SIBs until their initial benefits are exhausted, the recent flare-up of SIB disputes illustrates the evolution of the system, he said. Marquette noted that the commission is considering new rules that may help alleviate some of the roots of SIBs disputes, such as definitions for gauging whether an injured worker is making a good-faith effort to find work and procedural changes in SIB filings and dispute resolution.

While the TWCC does not have a sufficient number of auditors to investigate every complaint, Marquette continued, the commission has implemented a priority system to rank and investigate complaints and an insurance carrier self-audit program to help enforcement. He explained that the TWCC's enforcement policy is structured to balance penalties with compliance. The commission seeks to induce carriers to behave lawfully in conformance

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with the objectives and rules of the program while ensuring the quick delivery of benefits to injured workers. Marquette stressed that the TWCC is required by law to consider the characteristics of a violation, the compliance history of the carrier, and the deterrent effects of penalties when proposing and adopting fines, and, consequently, sometimes adjusts proposed fines downward. Experience has taught that the imposition of large fines often leads to administrative appeals, curbs collections, and thwarts carrier compliance, he noted.

Data duel

On January 12, the House Business and Industry Subcommittee on Workers' Compensation Insurance Carrier Practices sent a letter to 24 insurance carriers requesting them to appear before it on January 27 to answer 15 specified multi-part questions, many of them covering the time period of 1993-1997. The carriers were requested to submit written answers to the committee by January 22. The questions asked for information concerning:

- number of TWCC audits and fines;
- participation in TWCC compliance plans;
- use of adjusters, in-house and outside counsel and their associated costs;
- use of attorneys in SIB disputes;
- percentage of claims involving medical disputes, reasons for disputes, and the number of cases in which the company prevailed;
- number of complaints received and the top three most frequent types of complaint;
- adjuster qualifications, job descriptions, caseload and attrition rate;
- use and cost of using third-party administrators;
- use of incentives for early closure of claims;
- number of SIBs claims and types of disputes;
- peer review procedures; and
- certain health care provider use and contracting.

On January 27, the day of the subcommittee meeting, the American Insurance Association (AIA) issued a press release on the effort involved in compiling the requested information. AIA represents more than 300 property and casualty insurance companies; AIA members write about 60 percent of the workers' compensation insurance in Texas. The association said that since the data requested by the subcommittee were not routinely maintained, insurers would have had to perform a very costly file-by-file review. "For most carriers," the association said, "these files number in the tens of thousands over the past five years."

Such research would adversely affect a company's ability to do business, according to the release. Skilled staff would have been pulled from their routine duties and regular business interrupted, at a potential cost of millions of dollars. Much of the information requested by the committee was readily available through TWCC, it added.

Many of the 24 carriers invited to appear before the subcommittee said that they had problems researching and responding to the list of questions requested of them prior to the meeting. They said they received insufficient advance notice to formulate responses and that compiling the information would be very expensive and labor intensive and could expose trade secrets. David Anderson of CNA, for example, said his company would have to spend some \$4 million to \$5 million to respond to the subcommittee's list of questions. That kind of expenditure was not warranted by the small number of problems with the workers' compensation system, he said. Other carriers said they would be able to respond in a more general fashion to the committee's questions.

On February 6, Rep. Brimer responded that the carriers were failing to cooperate with the committee and were being unreasonable. "We as legislators, not the insurance industry, represent the citizens of the State of Texas and have oversight on a system set up for employers and employees," Brimer said. He accused the companies of "stonewalling" legislators by claiming the information requested was proprietary and by suggesting the committee obtain the data from state agencies, only to later attack the information produced as flawed or unfair.

— by *Kristie Zamrazil*

TDCJ Prison Industries Program Tackles Pricing, Performance Issues

Prison industries operated by the Texas Department of Criminal Justice (TDCJ) must incorporate current and complete information on expenses associated with producing an item or service in order to set reasonable prices for its goods, according to the Office of the State Auditor. In testimony February 5 before the House Corrections Subcommittee on Traditional Prison Industries, Julie Ivie of the auditor's office said that while TDCJ has addressed many concerns raised by an audit of the prison industries program, cost accounting systems could be improved by using more information, up-to-date costs of raw materials, and actual, rather than estimated, overhead costs. Such data would enable managers of the prison industries program to set prices to properly cover expenses, Ivie said.

Prison officials said other aspects of the program also are being reviewed with an eye to making improvements. However, many cost factors — including labor, funding and buildings — cannot be directly controlled by the overall industries program, said John Benestante, TDCJ assistant director for industry.

The state must be careful to keep decisionmaking from becoming bogged down in multiple layers of bureaucracy rather than using a business-oriented approach that makes decisions based on market needs, said Rep. Ray Allen, subcommittee chair. Allen suggested that TDCJ explore using such private-sector incentives as productivity bonuses. TDCJ Executive Director Wayne Scott noted that, in a change from past practices, the department last year enacted a policy allowing wardens input into prison factory administration by helping choose supervisory personnel.

TDCJ's prison industries program operates 47 prison-run factories and businesses. Factories produce numerous items used in the operations of TDCJ and state agencies, including clothes and shoes for inmates, uniforms for guards, highway signs, furniture, license plates, cardboard boxes, and recapped tires.

Inmates also repair school buses and other vehicles and work on computerized geographical information services (GIS) to create computer models of maps and other geographic information. About half of the products from these traditional industries are used by TDCJ, and the remainder are sold to the state or local governments, but not on the open market, according to Benestante. Inmates working in the prison industries are not paid wages. Under the Private Sector Prison Industries Enhancement (PIE) program certified by the federal government, limited numbers of prison inmates are employed by private industries, subject to federal guidelines on wages and other restrictions. PIE goods and services are exempt from federal and state prohibitions against the open-market sale of prison-made products.

Benestante said that TDCJ is considering expanding the PIE program to include work with private-sector GIS firms to create computer models of geographic information. Keith Kite with Landata Geo Services, Inc., told the subcommittee that private-sector firms often subcontract to companies outside the United States the type of work now done by inmates at the GIS facility within the Ferguson Unit. The unit currently is losing money by selling its services at a loss in its contracts with state and local governmental entities, Kite said. He suggested that state law be changed so that private companies could subcontract to use the service, thereby keeping the work in this country.

TDCJ currently is analyzing each prison industries shop and factory, Benestante said, to determine the fit between its activities and the program's statutory objectives, which include inmate training and rehabilitation, agency self-maintenance, reimbursement for incarceration costs, and expansion of prison industry operations. The results of the analyses will be used to develop the program's strategic plan, he said.

Scott added that the department also is reviewing the skills associated with every job performed by inmates in the prison industries program. Inmates

facing long prison sentences might be assigned jobs that are necessary to keep the agency running but that do not involve marketable skills, while inmates close to being released might be placed in jobs that give them marketable skills, Scott said.

TDCJ is working to address the issues raised in the audit report and has acted on many of the recommendations, Scott continued. TDCJ is continuing its cooperation with the State Auditor's Office and will

also use an internal audit group to monitor its efforts, to ensure that the 76th Legislature has good information about management and control of the prison industries program. In addition, as required by a rider in the General Appropriations Act, he noted, the Comptroller's Office has initiated a Texas Performance Review of the prison industries program.

— by *Kellie Dworaczyk*

House Research Organization

Texas House of Representatives
Capitol Extension
Room E2.180



P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0752
FAX (512) 463-1962

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