



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued March 23, 2021

Department of Industrial Accidents

For the period July 1, 2017 through June 30, 2019





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Making government work better

March 23, 2021

Sheri Bowles, Esq., Interim Director / Director of Operations
Department of Industrial Accidents
2 Avenue de Lafayette
Boston, MA 02111-1750

Dear Ms. Bowles:

I am pleased to provide this performance audit of the Department of Industrial Accidents. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2017 through June 30, 2019. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Department of Industrial Accidents for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular background.

Suzanne M. Bump
Auditor of the Commonwealth

cc: Rosalin Acosta, Secretary, Executive Office of Labor and Workforce Development

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LIST OF ABBREVIATIONS

BCP	business continuity plan
CMS	case management system
DIA	Department of Industrial Accidents
DMS	document management system
EOLWD	Executive Office of Labor and Workforce Development
EOTSS	Executive Office of Technology Services and Security
ID	identification number
IRS	Internal Revenue Service
MMARS	Massachusetts Management Accounting and Reporting System
OATP	Opioid Alternative Treatment Pathway Program
OSA	Office of the State Auditor
WCAC	Workers' Compensation Advisory Council

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Department of Industrial Accidents (DIA) for the period July 1, 2017 through June 30, 2019. In this performance audit, we determined whether DIA reported all fees, penalties, and continuances to the Workers' Compensation Advisory Council¹ (WCAC) within the timeframes established by Sections 7F and 11 of Chapter 152 of the General Laws and adjudicated workers' compensation cases in accordance with Sections 10A and 11 of Chapter 152 of the General Laws. We also determined whether DIA administered its Opioid Alternative Treatment Pathway Program in accordance with its policies and procedures, its employee flextime program in accordance with the Massachusetts Human Resources Division's "Time and Attendance Policy for 2012 and 2018," and the parking privileges in its property lease agreements in accordance with the Division of Capital Asset Management and Maintenance's² best practices for parking.

Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 Page 15	DIA did not report all fees, penalties, and case continuances to WCAC.
Recommendations Page 15	<ol style="list-style-type: none">1. DIA should report attorney fees, insurer penalties, and case continuances to WCAC.2. DIA should develop policies and procedures to establish a process for reporting attorney fees, insurer penalties, and case continuances to ensure that this information is reported to WCAC.
Finding 2 Page 16	DIA did not always meet its mandated timeframes for completing certain case claim events.
Recommendation Page 18	DIA should develop policies and procedures regarding the completion of single- and group-case claim events to ensure consistency in meeting its timeframes.
Finding 3a Page 19	DIA did not retain employees' security awareness training certificates.
Finding 3b Page 20	DIA did not have documented management approval for certain employees' access rights in its case management system (CMS).
Finding 3c Page 21	DIA did not always immediately revoke terminated employees' access rights in its CMS.

1. WCAC oversees the workers' compensation system in Massachusetts.
2. According to its website, "The Division of Capital Asset Management and Maintenance . . . is responsible for capital planning, major public building construction, facilities management, and real estate services for the Commonwealth."

Finding 3d Page <u>22</u>	DIA did not have a business continuity plan (BCP).
Recommendations Page <u>23</u>	<ol style="list-style-type: none">1. DIA should keep security awareness training certificates in employee personnel files.2. DIA should develop a formal process to ensure that security awareness training certificates are collected and retained in each employee's personnel file.3. DIA should develop a formal process for recording and maintaining approvals of CMS user access requests.4. DIA should revoke employees' access to its CMS immediately upon termination.5. DIA should formally develop a BCP.

OVERVIEW OF AUDITED ENTITY

The Department of Industrial Accidents (DIA), within the Executive Office of Labor and Workforce Development (EOLWD), administers and oversees the Commonwealth's workers' compensation system in accordance with Chapter 152 of the Massachusetts General Laws, known as the Workers' Compensation Act. DIA acts as the court system—the place where disputes regarding benefits are resolved—for workers' compensation cases. It is also responsible for making sure employers in Massachusetts have workers' compensation insurance. DIA is organized into 11 functional areas: the Office of Claims Administration, Office of Investigations, Office of Legal Counsel, Office of Insurance, Office of Self-Insurance, Office of Education and Vocational Rehabilitation, Office of Health Policy, Office of Safety, Office of Conciliation, Impartial Scheduling Unit, and Division of Dispute Resolution. DIA's main office is at the Lafayette City Center, 2 Avenue de Lafayette, in Boston. It has four regional offices, in Fall River, Lawrence, Springfield, and Worcester.

DIA's appropriation was \$19.6 million for fiscal year 2018 and \$20 million for fiscal year 2019. DIA repays the Massachusetts General Fund quarterly for its full appropriation plus fringe and indirect costs. DIA's main sources of revenue include assessments levied on the premiums of each workers' compensation policy, fines on assessments not paid within 30 days of their due dates, fines related to stop work orders³ and late first reports of injury,⁴ and insurer penalties⁵ and referral filing fees⁶ for cases that have not been resolved by conciliation. These revenue sources fund DIA's operating expenses, expenditures for claims, and other statutorily required payments. Assessments represent 90% of DIA's funding. In fiscal year 2019, DIA collected \$69 million in assessments.

DIA administers the Workers' Compensation Trust Fund and the Workers' Compensation Special Fund. The trust fund has a private component (the private trust fund) and a public component (the public trust fund). Assessments levied against private employers are deposited in the Workers' Compensation Special Fund (see [Appendix C](#)) and the private trust fund (see [Appendix A](#)) in proportion to each fund's share of the total amount budgeted for each fiscal year. The special fund reimburses the Massachusetts General Fund for DIA administrative costs (e.g., payroll, fringe benefits, rent, and indirect costs). The

3. According to Section 8.02 of Title 452 of the Code of Massachusetts Regulations, a stop work order, issued by DIA, is "a citation issued to an employer that has failed to provide evidence of workers' compensation insurance coverage."

4. A first report of injury must be filed by an employer within seven days, not including Sundays and legal holidays, after the injured worker's fifth day of full or partial disability.

5. Insurers pay penalties for not paying or responding to claims within a set timeframe.

6. Insurers pay these fees when cases are referred from conciliation to conference.

private trust fund makes payments to uninsured injured workers and to workers whose insurers will not pay for their vocational rehabilitation services. It also reimburses insurers for costs of employee latent-injury (injury that is not immediately apparent) and second-injury (injury related to a prior injury claim that results in permanent and total disability) claims and certain cost-of-living adjustments. Assessments levied against self-insurers and public employers are deposited in the public trust fund (see [Appendix B](#)), which is used for entitlement programs' cost-of-living adjustments.

During the audit period, DIA had 191 employees, including 54 who were paid through the Workers' Compensation Trust Fund as of December 31, 2018. In fiscal year 2019, DIA's main office received 24,570 visitors and 17,781 calls. The regional offices (Fall River, Lawrence, Springfield, and Worcester) received a total of 40,613 visitors and 19,972 calls.

Workers' Compensation Advisory Council

Chapter 572 of the Acts and Resolves of 1985 created the Workers' Compensation Advisory Council (WCAC). The council has 16 members, who are appointed by the Governor to serve five-year terms. Ten of them are voting members, 5 of whom represent employees and 5 of whom represent employers. The nonvoting members include one representative from each of the following groups: workers' compensation attorneys, the insurance industry, medical providers, and vocational rehabilitation providers. The Secretary of Labor and Workforce Development and the Secretary of Housing and Economic Development are ex officio (nonvoting) members.

WCAC is responsible for monitoring and annually reporting on all aspects of the workers' compensation system, as well as making recommendations and giving testimony about the system. The annual report is filed with the Secretary of Labor and Workforce Development and the clerks of the state House of Representatives and Senate. It includes an evaluation of DIA operations and recommendations for improving the Massachusetts workers' compensation system. WCAC is also required to review DIA's annual operating budget; upon the affirmative vote of at least seven members, WCAC may submit recommendations for the budget to the Secretary of Labor and Workforce Development. WCAC may also offer testimony regarding insurance rate filings and workers' compensation legislation.

DIA is required to report to WCAC referral filing fees, attorney fees,⁷ continuances,⁸ and insurer penalties.

Workers' Compensation Claim Process

If an employee experiences a work-related injury or illness, the employer must report this event to the appropriate insurance company. The insurer must decide to contest or begin paying benefits within 14 days after receiving the claim. If an insurer denies, reduces, or stops payment of benefits, the employee can file a claim with DIA's Office of Claims Administration.

Upon receipt of a claim for workers' compensation benefits or a complaint from an insurer to stop or modify benefits, DIA schedules a conciliation, which is the first step of the five-step adjudicatory process (conciliation, conference, appeal, impartial medical exam, and hearing) for dispute resolution. The formality and requirements for the parties increase with each step. At any step of this process, a claim may be withdrawn, voluntarily adjusted, or settled for a lump sum.

A conciliation is an informal meeting of the claimant, the claimant's attorney, the insurer's attorney, and a conciliator from DIA's Division of Dispute Resolution. Successful conciliations result in payment or in withdrawal or adjustment of the claim. If no resolution is reached at the conciliation, the matter is referred to a DIA administrative judge for a conference to be scheduled within 28 days. This administrative judge retains jurisdiction over the case throughout the process, unless otherwise directed by a senior judge.

A conference is an adjudicatory event involving the claimant, the claimant's attorney, the insurer's representatives, and an administrative judge. If the matter is not resolved at the conference, the administrative judge issues a conference order with a determination of the claim within 7 days of the conference. If the claimant, or the insurer, or both are not satisfied with the conference order, they can file appeals within 14 days. According to Section 11A(2) of Chapter 152 of the General Laws,

When any claim or complaint involving a dispute over medical issues is the subject of an appeal of a conference order pursuant to section ten A [of Chapter 152 of the General Laws], the parties shall agree upon an impartial medical examiner from the roster to examine the employee and submit such choice to the administrative judge assigned to the case . . . or said administrative judge shall appoint such examiner from the roster.

7. The insurer pays the attorney fees to the employee's attorney when the company contests and loses a case.

8. A continuance is a postponement of a pending action in response to a motion by a party involved with the claim.

The case moves to the presiding administrative judge's hearing queue after the impartial medical exam is completed.

A hearing is a formal proceeding in which Massachusetts rules of evidence apply, witnesses are called, and a stenographer produces a verbatim transcript of the hearing proceedings. Before the hearing, the parties may file motions seeking to submit additional medical evidence because of the medical complexity of the case or inadequacy of the impartial medical exam report. The parties may also choose to depose the impartial medical examiner. A hearing decision is issued within 28 days after the hearing ends.

A hearing decision can be appealed to the DIA Reviewing Board within 30 days after it is issued. A DIA Reviewing Board panel, which consists of three administrative judges, then examines the hearing transcripts and legal briefs and asks for oral arguments when necessary. The panel can summarily affirm the hearing decision, send it back to the administrative judge for further findings of fact, or reverse it. According to Section 11C of Chapter 152 of the General Laws, a hearing decision can only be reversed "if [the board] determines that [the] administrative judge's decision is beyond the scope of his authority, arbitrary or capricious, or contrary to law." Appeals of the DIA Reviewing Board's decisions are heard by the Massachusetts Court of Appeals.

During the audit period, only 25 claims went through the entire adjudicatory process. There were, on average, 308 days from filing of the claim to hearing decision.

Case Management System / Document Management System

DIA uses an automated case management system (CMS) and a document management system (DMS) to maintain cases and schedule appointments for conciliations, conferences, hearings, and appeals. When an initial first report of injury is submitted to DIA, by either the employer or the employee, the CMS issues a board number for the case.

The processing timeline for cases waiting to be scheduled for conferences begins on the referral date from conciliation. Scheduling from the conference queue in CMS depends on the availability of the claimant, the claimant's attorney, the employer's attorney (if applicable), the insurer's attorney, and a judge. The system does not schedule any conference for sooner than 24 days from the current date. The queue runs on a first-in, first-out basis.

At the hearing level, cases awaiting impartial medical exams are tracked in the judges' hearing queues. The CMS automatically schedules cases for hearings when they have been inactive for 100 days and have had impartial medical exams scheduled but not yet completed. It also automatically schedules cases for hearings when they have been inactive for 200 days, an appeal fee has been paid, and no impartial medical exam has been scheduled. Cases that have been inactive for 400 days are removed from the hearing queues, and notices that the cases have expired are sent to the parties.

Each case is also assigned a default priority status by the CMS that may be updated by the Impartial Scheduling Unit for conferences and hearings. The priority status is signified by a number from 0 through 9; however, the Impartial Scheduling Unit currently only uses priority statuses 7 and 8. Priority status 7 is used to schedule a conference because of hardship, and priority status 8 is used when a case has not moved forward in the process (usually because of scheduling delays). Cases can be processed individually or grouped. An individual case is a single case with one case identification number (ID) and one board number. A grouped case has multiple board numbers and case IDs. Parties involved with a case may file a motion for the administrative judge to group additional cases with theirs. The grouping function uses one time slot in the schedule for associated cases. To identify associated cases, the CMS uses a field called a group meeting leader number, which joins multiple cases. Cases are generally grouped at judges' discretion.

Conferences, hearings, and impartial medical exams can be rescheduled for multiple reasons, including, but not limited to, parties not being available, additional time being required for settlement discussion, or additional documents being required. As a result, cases may be delayed and their timelines extended. Additional reasons for extensions include things like appeals, problems with parties obtaining required records, a lack of physicians to perform impartial medical exams, or a lack of attorneys to handle cases. Also, judges can request that cases be continued. Each week, the Impartial Scheduling Unit manager/supervisor manually enters all judges' schedules in the CMS, which generates updated reports on the judges' case assignments and distributes the reports electronically.

Opioid Alternative Treatment Pathway Program

The Opioid Alternative Treatment Pathway Program (OATP) was started as a pilot program in 2017, in response to the national opioid crisis, and was made a permanent program in 2019. The program aims to reduce the time required to resolve clinical disputes and improve the care of injured workers who have chronic pain conditions. OATP is a voluntary program available in DIA cases where injured workers

have settled workers' compensation claims, but are still prescribed opioids, and insurers seek to discontinue payment for opioid treatment. The insurers incur the cost of the program, including any alternative medical treatments for the injured workers.

A senior judge oversees OATP and has an informal committee (made up of insurers; medical personnel; employees of EOLWD, DIA, and/or the Executive Office of Health and Human Services; and attorneys representing injured employees) to help administer the program.

All DIA judges are aware of OATP and inform all parties of the program during the adjudication process when an insurer or injured worker wants to reduce the worker's use of opioids. Either party may ask to participate in OATP, but both parties have to agree and submit a medical mediation form to an administrative judge for approval. OATP provides an opportunity for injured workers to learn how to manage their pain through evidence-based pain management strategies other than opioids. With the assistance of DIA-approved care coordinators, teams of highly trained medical providers, therapists, and other health professionals collaborate to help the worker achieve pain management goals via specific interventions. DIA currently has 28 care coordinators, from seven medical consulting companies, available to assist with the program.

During the audit period, there were a total of 57 requests to join OATP: 45 by insurers and 12 by injured workers. Nine of these resulted in agreements, signed by injured workers and insurers, to participate in the program. Eight of these workers successfully⁹ completed the program, and one withdrew from it.

Flextime and Parking Benefits for Employees

DIA allows employees to participate in an alternative work hours program if they file an Alternative Work Hours Request Form and a Request for Change or Reduction in Scheduled Work Hours Form. These forms are approved by the employee's direct supervisor, department manager, and director and then filed with EOLWD's Human Resources Department.

DIA has property lease agreements for its offices in Boston, Lawrence, Fall River, and Worcester. (The Springfield office is in a building owned by the Commonwealth.) For Worcester, there is no employee parking in the property lease agreement. For Lawrence and Fall River, there are reserved spaces for the administrators. For Boston, there are 3 reserved and 12 unreserved spaces in the Government Center

9. DIA personnel told us in interviews that injured workers who have decreased or stopped their opioid dosages have successfully completed the program.

Garage. DIA distributes the parking spaces at the Government Center Garage by seniority to the administrative judges, deputy director, and director. At the end of the year, DIA includes the parking benefits on these employees' Internal Revenue Service (IRS) Form W-2s in accordance with IRS and Massachusetts Department of Revenue requirements for qualified parking.¹⁰

10. Qualified parking allowances are outlined in Subchapter A(1)(1.132-9) of Chapter I of Title 26 of the US Code and Massachusetts Department of Revenue Technical Information Release 18-12.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of certain activities of the Department of Industrial Accidents (DIA) for the period July 1, 2017 through June 30, 2019.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Does DIA report all fees and penalties and submit continuances to the Workers' Compensation Advisory Council (WCAC) within the timeframes established by Sections 7F and 11 of Chapter 152 of the General Laws?	No; see Finding <u>1</u>
2. Does DIA ensure that cases are adjudicated in accordance with the timeframes established by Sections 10A and 11 of Chapter 152 of the General Laws?	No; see Findings <u>2</u> , <u>3a</u> , <u>3b</u> , <u>3c</u> , and <u>3d</u>
3. Does DIA's Opioid Alternative Treatment Pathway Program (OATP) fulfill the intended purpose documented on OATP's website?	Yes
4. Does DIA administer employee benefits related to flextime in accordance with the Massachusetts Human Resources Division's "Time and Attendance Policy for 2012 and 2018"?	Yes
5. Does DIA administer employee benefits related to parking in accordance with the parking guidelines of the Division of Capital Asset Management and Maintenance?	Yes

We gained an understanding of internal controls we deemed significant to our audit objectives through inquiries and observations. We evaluated the design of controls over the reporting of fees, penalties, and continuances to WCAC; case processing; OATP; flextime; and parking benefits. In addition, we performed the following procedures to obtain sufficient, appropriate audit evidence to address our audit objectives.

Reporting of Referral Filing Fees, Attorney Fees, Insurer Penalties, and Continuances to WCAC

We examined all the Fiscal Year End Collection and Expenditures Reports filed during the audit period for referral filing fees, and the Case Management System (CMS) Compensation Screen Report for attorney fees and penalties from DIA, and compared these reports to WCAC's 2018 and 2019 annual reports to determine whether WCAC reported all three types of fees and penalties in its annual reports. We performed an inquiry to request correspondence, reports, and emails from DIA to WCAC that listed fees, penalties, and continuances to determine whether DIA notified WCAC of fees, penalties, and continuances. We examined CMS data to identify instances when penalties should have been charged, compared them to the CMS Compensation Screen Report, and performed an inquiry to request documentation that DIA notified WCAC of the penalties. We also examined DIA's reconciliations of referral filing fees to the Massachusetts Management Accounting and Reporting System (MMARS) for 2018 and 2019 to determine amounts that should have been reported. Finally, we examined WCAC's 2018 and 2019 board minutes for discussions regarding referral filing fees, attorney fees, insurer penalties, and continuances.

Adjudication of Cases in Accordance with Required Timeframes

We extracted case data from DIA's CMS for our audit period. During this period, there were 24,695 claims and 39,496 events.¹¹ (A case can contain one or more claims, and each claim can have one or more events.) We filtered and extracted cases in which at least one of six principal events—conciliation, conference, conference order, appeal to hearing, hearing, and hearing decision—occurred during the audit period. This totaled 26,221 events¹² within the 24,695 claims. Other events sometimes also occur between principal events or at the end of a case (for example, an impartial physician exam might occur between a conference order and hearing); if we encountered one of these other events after a principal event, we used the length of time between the principal event and the other event to determine whether the principal event was completed within the mandated timeframe.

We divided the sample into two populations—events within single-claim cases and events within grouped cases—and performed the following procedures:

11. See [Appendix D](#) and [Appendix E](#) for codes used in the CMS.

12. The remaining 13,275 events were related to withdrawn or resolved cases.

- To determine whether four types of event (conferences, conference orders, hearings, and hearing decisions)¹³ were scheduled, and took place, during mandated timeframes, for the 10,114 single-case claims that were heard during our audit period, we filtered for these four types of event. We analyzed 100% of the four types of event (totaling 10,695 events) and calculated the number of days between the first date each event could be scheduled and the date it occurred or was processed, when applicable.
- To determine whether four events (conferences, conference orders, hearings, and hearing decisions) were scheduled and occurred during mandated timeframes, for the 14,581 group-case claims that were heard during our audit period, we filtered for these four types of event (totaling 15,526 events). We separated the population into two groups based on required timeframes.
 - The first group was conference orders, which have 7 days to be processed. We selected a statistical random sample of 24 events out of a population of 4,075, with a confidence level of 90%, expected error rate of 0%, and tolerable error rate of 10%. We calculated the number of days between the first date each event could be scheduled and the date it occurred to determine whether each one was completed within the mandated timeframe.
 - The second group was conferences, hearings, and hearing decisions, which have 28 days to be scheduled and take place. We used a statistical random sample of 102 events from a population of 11,451, with a confidence level of 95%, expected error rate of 50%, and tolerable error rate of 20%. We calculated the number of days between the first date each event could be scheduled and the date it occurred to determine whether each one was completed within the mandated timeframe.

OATP

To determine whether DIA administered OATP for its intended purpose, we reviewed all applicable program policies and procedures and identified all potential participants for this program. Of the potential participants who had applied and been accepted, we determined how many had successfully completed the program, were still in the program, or had withdrawn from the program.

We determined whether all nine potential participants who were interested in entering OATP had their cases forwarded to the Division of Dispute Resolution with notations that they wanted to enter OATP and that a mediating judge was assigned within 30 days. We also determined whether the parties subsequently had their first meetings in order to complete the agreement to enter OATP.

13. The dates for conciliation and appeal to hearing do not have mandated timeframes for DIA. We used the dates of the conciliations to calculate the timeframes for the conference dates and the dates of the appeals to hearing to calculate the timeframes for the hearing dates.

We examined OATP committee agendas to determine whether informal policies and procedures established for the program were reported to the OATP committee. We also reviewed program updates provided to WCAC to determine whether DIA complied with these informal policies and procedures.

Employee Benefits and Flextime

We requested from DIA management a list of all DIA employees who were on flextime schedules during the audit period and determined that 1 of 191 employees had a flextime schedule. We examined that employee's personnel file to determine whether the employee had been approved for, and received, a flextime schedule. We did this by determining whether the file included a completed Alternative Work Hours Request Form and Request for Change or Reduction in Scheduled Work Hours Form.

Parking

We queried MMARS data regarding parking lease contracts and property leases for all four properties DIA leased (in Boston, Worcester, Lawrence, and Fall River) to determine whether DIA's contracts included parking spaces. We reviewed whether the documentation of parking assignments for each employee was in accordance with DIA's informal policy regarding the Boston contract for its 3 reserved and 12 unreserved parking spaces. We verified DIA's parking rates with the garage in the property lease agreement. We examined the Internal Revenue Service (IRS) Form W-2 information for all 13 DIA employees who received parking spaces as a fringe benefit from DIA. These 13 employees do not pay for parking because it is included and paid for in the property lease agreement. The IRS and the state Department of Revenue have rules that parking benefits with values above a specific amount, which changes annually, must be reported on Form W-2 as income. Therefore, for these 13 employees, we recalculated this benefit's value, as reported by DIA to the IRS, as a taxable fringe benefit to determine whether the proper amount was reported.

Data Reliability

DIA uses its CMS to administer claim information and case management. For the CMS, we reviewed certain information system general controls and policies for security management, access controls, and configuration management.

In addition, we selected a sample of 20 claims recorded in the CMS that were created or modified during our audit period and traced scanned documents in the CMS for each claim to supporting hardcopy

documentation such as employers' first reports of injury, employees' claims, and insurers' notices of payment. Finally, we conducted walkthroughs of the Office of Claims Administration, Office of Conciliation, and Impartial Scheduling Unit to observe hardcopy records being uploaded to the document management system, case details being entered in the CMS, and case conferences being scheduled. To determine completeness, we compared the 67,737 total first reports of injury and 24,638 claims from CMS to WCAC's annual reports during the audit period. We also requested DIA's business continuity plan. Based on the analyses conducted, with the exceptions noted in Finding 3, we determined that the data obtained were sufficiently reliable for the purposes of this audit.

In 2018, OSA performed a data reliability assessment of MMARS that focused on testing selected system controls (access controls, configuration management, contingency planning, and segregation of duties) for the period April 1, 2017 through March 31, 2018. As part of our current audit, we asked DIA management for a list of employees with access to MMARS. However, no DIA employees have access to MMARS; MMARS transactions are handled by state executive offices.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Department of Industrial Accidents did not report all fees, penalties, and case continuances to the Workers' Compensation Advisory Council.

The Department of Industrial Accidents (DIA) did not perform mandated annual reporting of attorney fees and insurer penalties, or quarterly reporting of case continuances, to the Workers' Compensation Advisory Council (WCAC). During our audit period, DIA's Case Management System (CMS) Compensation Screen Reports listed insurer penalties of \$60,430 and attorney fees of \$157,694,993. However, DIA only reported referral filing fees to WCAC. In addition, our analysis showed multiple case continuances that were not reported to WCAC.

As a result, the council cannot accurately monitor penalties, fees assessed against Commonwealth insurers and paid to attorneys, and case continuances. In addition, WCAC may not have an accurate record of case continuances.

Authoritative Guidance

According to Section 7F of Chapter 152 of the Massachusetts General Laws, DIA is responsible for reporting insurer penalties and attorney fees to WCAC at least annually.

According to Section 11 of Chapter 152 of the General Laws, "Any continuance shall be . . . compiled quarterly by [DIA] and shall be submitted to the advisory council."

Reasons for Lack of Reporting

DIA management stated that they did not report insurer penalties and attorney fees to WCAC because these funds are not retained by DIA but rather are passed through the agency to attorneys and employees. They also stated that they did not have policies and procedures to establish a process for reporting this information. According to the minutes of DIA's WCAC board meeting on April 10, 2019, DIA management stated that the CMS was not designed to track case continuances.

Recommendations

1. DIA should report attorney fees, insurer penalties, and case continuances to WCAC.
2. DIA should develop policies and procedures to establish a process for reporting attorney fees, insurer penalties, and case continuances to ensure that this information is reported to WCAC.

Auditee's Response

The Department of Industrial Accidents (DIA) reports data in a monthly report card to the Worker's Compensation Advisory Council, and includes data specifically requested by the Council. The standard report includes: Conference and Hearing queue updates, Impartial Exam fees, waivers, and scheduled exams, Reviewing Board inventory, Stop Work Orders issued, fines collected, compliance checks, First Reports of Injury and cases filed with the DIA, COVID-19 statistics, WC Trust Fund cases and payments made, civil recovery efforts, Second Injury Fund payments and [cost of living adjustment] reimbursements, personnel update, referral fees collected and assessment collections.

The standard WCAC monthly report card does not include attorney fees, insurer penalties and case continuances as this has not been an area of focus for the council. The DIA will update its practices to ensure that all fees, penalties, and case continuances are included in the data presented to the Advisory Council during the regularly scheduled meetings.

The DIA will begin including the attorney fees, insurer penalties and case continuances at the next Council meeting.

2. DIA did not always meet its mandated timeframes for completing certain case claim events.

DIA did not always meet timeframes for the overall completion of four types of single-case claim event for which it has mandated timeframes: conferences, conference orders, hearings, and hearing decisions. As a result, cases could become backlogged and individuals could suffer economic losses because of delays in case processing.

For the 10,114 single-case claims that were heard during our audit period, 4,540 (42%) of the 10,695 associated claim events were completed within the mandated timeframes. For example, as detailed in the table below, 68% of the conferences that were completed during our audit period were not processed within the mandated timeframe; on average, they were 89 days late.

Analysis of Completed Single-Case Claims by Claim Event

Claim Event	Timeframe (Days to Complete)	Completed Claim Events	Claim Events Exceeding Timeframe	Percentage of Claim Events Exceeding Timeframe	Average Days Past Timeframe	Maximum Days Past Timeframe	Minimum Days Past Timeframe
Conference	28	6,659	4,537	68%	89	203	29
Conference Order	7	2,532	178	7%	19	123	8

Claim Event	Timeframe (Days to Complete)	Completed Claim Events	Claim Events Exceeding Timeframe	Percentage of Claim Events Exceeding Timeframe	Average Days Past Timeframe	Maximum Days Past Timeframe	Minimum Days Past Timeframe
Hearing	28	1,479	1,419	96%	159	785	29
Hearing Decision	28	25	21	84%	134	324	71

In addition, DIA did not consistently meet timeframes for three types of group-case claim event for which it has mandated timeframes: conferences, hearings, and hearing decisions. Of the 11,451 claim events of these three types whose cases were heard during our audit period, 7,561 (66%) to 9,554 (83%) were not completed within the mandated 28-day timeframe. In addition, 1 of the 24 conference orders we tested did not meet the mandated 7-day timeframe.

Authoritative Guidance

According to Section 10A(1–3) of Chapter 152 of the General Laws,

The administrative judge shall require the parties to appear before him for a conference within twenty-eight days of receipt of the case by the division of dispute resolution. . . .

Within seven days of the conclusion of the conference the administrative judge shall file:

- (a) a written order requiring or denying that weekly compensation or other benefits be paid;*
or
- (b) a written order modifying, terminating, or denying modification or termination of weekly compensation or other benefits. . . .*

[An appeal] hearing shall be held within twenty-eight days of [DIA's] receipt of such appeal.

According to Section 11 of Chapter 152 of the General Laws, a hearing decision “shall issue within twenty-eight days of the conclusion of the hearing.”

Reasons for Issue

DIA management stated that these timeframes were impractical because DIA has to coordinate the availability of the court, the judge, and all parties involved, along with their respective attorneys. Additionally, DIA management cited case law, Rapo v. American Optical Corp. 1988 MA Workers' Comp

Rep. 245–247, and stated that their interpretation of Section 11 of Chapter 152 of the General Laws was that the 28-day timeframe is advisory and not a mandate.

However, our conclusion is that the statute is mandatory regarding the timeframes. The case sent by DIA (Mass. Workers' Comp. Rep. 245), and the Superior Court and Supreme Judicial Court cases from which it was derived (e.g., Cheney v. Coughlin, 201 Mass. 204 [Mass. 1909]), stand for the proposition that a late decision is valid. The timeframes are still statutorily required, and "officers may be liable to legal animadversion [adverse criticism], perhaps to punishment, for not observing" such timeframes (Cheney at 212).

In addition, DIA management stated that they did not have written policies and procedures to ensure that case events were completed within the required timeframes.

Recommendation

DIA should develop policies and procedures regarding the completion of single- and group-case claim events to ensure consistency in meeting its timeframes.

Auditee's Response

The Department of Industrial Accidents (DIA) is responsible for facilitating the fair allocation of all claims and complaints, for ensuring each administrative judge receives a balanced and equitable case load during the calendar year, and for adjudicating each claim in a timely manner. To ensure progression of each case, the DIA regularly contacts parties of each case to ensure necessary information has been received, or any conflicts preventing receipt of information [are] resolved. The DIA will continue its efforts to meet the 28-day timeframe specified in the statute. Because each case presents its own unique facts and considerations, the 28-day timeframe may not be consistently achievable. Cases delayed beyond the 28-day timeframe are a direct result of the processes completed by external parties to ensure that complete and accurate information is available and presented in each case. Accordingly, for almost three decades, the extended timeframe between Conciliation and Conference has been viewed by insurance carriers, attorneys, and the DIA as an acceptable best practice.

Auditor's Reply

The Office of the State Auditor acknowledges that certain case claim event processing times vary widely because of several factors, some of which may not always be in DIA's control. However, as noted above, during our audit period, 58% of single-case claim events, and a minimum of 66% group-case claim events for conferences, hearings, and hearing decisions, did not meet mandated timeframes prescribed by Sections 10A(1–3) and 11 of Chapter 152 of the General Laws. We believe this indicates significant

problems in this area, which DIA needs to address as far as possible. As noted above, delays in case processing could cause economic losses for some individuals. Therefore, we recommended that DIA should develop policies and procedures regarding the completion of single- and group-case claim events to ensure consistency in meeting its timeframes.

We acknowledge that it is ultimately up to DIA management to determine what measures it can and should take to improve this process given DIA's available resources. Based on its response, DIA is taking some measures to address our concerns in this area. We urge DIA to fully implement our recommendation.

3. DIA had inadequate logical access controls for its CMS.

DIA did not have adequate logical access controls for its CMS. Specifically, DIA did not retain employees' security awareness training certificates, did not have documented management approval for certain employees' access rights in the CMS, did not always immediately revoke terminated employees' access rights to the CMS, and did not have a business continuity plan (BCP). Inadequate logical access controls could compromise the security and integrity of DIA's data.

a. DIA did not retain employees' security awareness training certificates.

During our audit period, 232 employees were active CMS users. We randomly selected a nonstatistical sample of 41 employees and determined that there were no security awareness training certificates in 25 employees' personnel files to show that they had completed either initial or annual training. Insufficient security awareness training may lead to user error and compromise the integrity and security of protected information in DIA's CMS.

Authoritative Guidance

Section 6.2.4 of the Executive Office of Technology Services and Security's (EOTSS's) "Information Security Risk Management Standard," which was put into effect October 18, 2018, states, "All personnel will be required to complete Annual Security Awareness Training."

Section 6 of Executive Order 504, which was effective from January 1, 2009 through October 25, 2019, states,

All agency heads, managers, supervisors, and employees (including contract employees) shall attend mandatory information security training within one year of the effective date

of this Order. For future employees, such training shall be part of the standardized orientation provided at the time they commence work. Such training shall include, without limitation, guidance to employees regarding how to identify, maintain and safeguard records and data that contain personal information.

Reasons for Noncompliance

DIA did not have a formal process to ensure that security awareness training certificates were collected and retained in each employee personnel file.

Auditee's Response

Each staff member is required to review and acknowledge in writing receipt of a range of policy documents annually, including a security awareness policy, and the documents are retained by the Executive Office of Labor and Workforce Development Office of Human Resources (EOLWD HR) in the staff member's personnel file. The Department of Industrial Accidents (DIA) will work with EOLWD HR to ensure the security awareness training certificate is included in the personnel file and will retain a copy of the certificate in the DIA's internal document management system.

b. DIA did not have documented management approval for certain employees' access rights in its CMS.

We randomly selected a nonstatistical sample of 41 of the active CMS users from the audit period and determined that 25 did not have management approval for access to the CMS in their employee personnel files. Without management approval, there was insufficient verification that the user accounts were limited to the fewest privileges necessary for employees' job duties. This increases the risk of some employees having access to and/or altering personal information in the CMS beyond what their job duties require.

Authoritative Guidance

Section 2.1 of EOTSS's "Enterprise Access Control Security Standards," which were in effect from May 14, 2012 through October 15, 2018, state,

Access control procedures for user registration and de-registration must include . . .

- *Validation of user's authorization for the use of the information system or service from the system or service owner.*

Section 6.1.4.3 of EOTSS's "Access Management Standard," effective October 15, 2018, states, "User access requests shall be recorded (paper or tool-based) and approved by the requestor's supervisor."

Reasons for Noncompliance

DIA did not have a formal process for recording and maintaining approvals of CMS user access requests.

Auditee's Response

The historical practice of the Department of Industrial Accidents (DIA) has been to assign CMS access at the written request of a supervisor or manager. The request is submitted the Sr. Software Developer with the specific role(s) and security level(s) identified for the employee. The Sr. Software Developer is then responsible for creating CMS accounts with unique login credentials and the appropriate security level(s).

The supervisor or manager's written request to the Sr. Software Developer serves as documented approval for access. An employee's access will only change in cases of separation, promotion, or change of job function. Access changes are also made at the written request of a supervisor or manager.

The DIA will not change this practice, as it has been effective in ensuring that employees have only the necessary access required to perform their job functions. However, the DIA will create a policy document that details the described process and update the DIA's Internal Control Plan document. The process document is expected to be completed by April 30, 2021 and the Internal Control Plan will be completed by the end of the current fiscal year as required by the Office of the Comptroller.

c. DIA did not always immediately revoke terminated employees' access rights in its CMS.

Of the 23 employees terminated during our audit period, 2 did not have their access to the CMS revoked immediately upon termination. This increases the risk of terminated employees improperly accessing CMS information, including claimants' personal health information and personally identifiable information.

Authoritative Guidance

EOTSS's "Enterprise Access Control Security Standards," effective May 14, 2012, state, "A terminated employment status must be reflected in the users' access privileges immediately upon termination being carried out."

Reasons for Noncompliance

DIA management stated that it was an oversight that the two terminated employees still had access to its CMS. Management immediately revoked access when we notified them.

Auditee's Response

The Department of Industrial Accidents' (DIA) current practice is for a supervisor or manager to submit a written request to the Sr. Software Developer to revoke access immediately upon an employee's separation. During the audit period this practice was 92% effective and a change in process to revoke access is not warranted.

For an additional check on this process, the DIA is implementing monitoring procedures that include partnering with the EOLWD Office of Internal Control and Security to implement a quarterly review of access and appropriate access levels. This review process will be implemented [by] April 30, 2021.

d. DIA did not have a BCP.

Although DIA had a draft BCP, it had not been formally developed. A BCP, in conjunction with EOTSS policies, provides for the timely restoration of mission-critical and essential business functions. It is important that DIA have a BCP in place, because a BCP ensures that staff members are sufficiently trained in recovery efforts for mission-critical applications such as DIA's CMS.

Authoritative Guidance

Section 14 of EOTSS's "Enterprise Information Security Policy," effective March 7, 2014, states,

Agencies are required to document, implement and annually test plans including the testing of all appropriate security provisions to minimize impact to systems or processes from the effects of major failures of IT Resources or disasters.

EOTSS's "Business Continuity and Disaster Recovery Standard," effective October 15, 2018, states, "[Commonwealth executive offices and agencies] shall develop BCPs for critical business processes."

Reason for Noncompliance

DIA stated that it would not formally develop a BCP until it finished moving its main office to another location.

Auditee's Response

The Department of Industrial Accidents (DIA) has recently implemented a complete Business Continuity Plan (BCP). During the audit period, the DIA had a fully developed draft BCP that was formulated in accordance with the EOTSS Business Continuity and Disaster Recovery Standard, and the relevant state and federal guidelines. However, the document required updates to include the DIA's migration of operations to the cloud. The DIA will review the BCP annually to ensure it remains current and accurately reflects risks and planned responses.

Recommendations

1. DIA should keep security awareness training certificates in employee personnel files.
2. DIA should develop a formal process to ensure that security awareness training certificates are collected and retained in each employee's personnel file.
3. DIA should develop a formal process for recording and maintaining approvals of CMS user access requests.
4. DIA should revoke employees' access to its CMS immediately upon termination.
5. DIA should formally develop a BCP.

APPENDIX A

Workers' Compensation Trust Fund—Private Trust Fund Statement of Revenue, Expenditures, and Changes in Fund Balance¹⁴

	Fiscal Year 2018	Fiscal Year 2019
Balance July 1	<u>\$ 35,097,288</u>	<u>\$ 45,588,750</u>
Revenue		
Interest	\$ 67,327	\$ 107,738
Assessments	60,220,391	48,262,678
Reimbursements	1,531,822	1,490,637
Total Revenue	<u>\$ 61,819,540</u>	<u>\$ 49,861,053</u>
Expenditures		
Payments to Claimants	\$ 8,102,089	\$ 6,613,536
Payment to Insurers	34,897,940	34,926,733
Defense of Fund*	8,328,049	9,496,493
Total Expenditures	<u>\$ 51,328,078</u>	<u>\$ 51,036,762</u>
Balance June 30	<u>\$ 45,588,750</u>	<u>\$ 44,413,041</u>

* This item includes various expenses, such as payroll; fringe benefits; printing; indirect costs; memberships; state office maintenance; automobile leases; office equipment, software, and maintenance; telecommunications; and snow removal.

14. Our review was not intended to enable us to express, and we do not express, an opinion on the Private Trust Fund Statement of Revenue, Expenditures, and Changes in Fund Balance. The disclosures of revenue, expenditures, and changes in fund balance represent information in the Workers' Compensation Advisory Council Annual Report for the fiscal year ended June 30, 2019, and are intended solely for informational purposes.

APPENDIX B

Workers' Compensation Trust Fund—Public Trust Fund Statement of Revenue, Expenditures, and Changes in Fund Balance¹⁵

	Fiscal Year 2018	Fiscal Year 2019
Balance July 1	<u>\$ 0</u>	<u>\$ 409,694</u>
Interest	2	0
Assessments	409,692	0
Expenditures	0	166,236
Balance June 30	<u>\$ 409,694</u>	<u>\$ 243,458</u>

15. Our review was not intended to enable us to express, and we do not express, an opinion on the Public Trust Fund Statement of Revenue, Expenditures, and Changes in Fund Balance. The disclosures of revenue, expenditures, and changes in fund balance represent information in the Workers' Compensation Advisory Council Annual Report for the fiscal year ended June 30, 2019, and are intended solely for informational purposes.

APPENDIX C

Workers' Compensation Special Fund Statement of Revenue, Expenditures, and Changes in Fund Balance¹⁶

	Fiscal Year 2018	Fiscal Year 2019
Balance July 1	<u>\$ 10,176,338</u>	<u>\$ 15,243,340</u>
Revenue		
Interest	\$ 42,817	\$ 68,516
Assessments	24,723,931	20,751,229
Referral Fees	4,519,959	4,968,914
First Report Fines	203,200	192,844
Stop Work Orders	983,445	1,165,656
Late Assessment Fines	5,500	0
Miscellaneous	0	1,235
Total Revenue	<u>\$ 30,478,852</u>	<u>\$ 27,148,394</u>
Expenditures		
Total Direct	\$ 868,377	\$ 873,337
Salaries	14,243,306	14,658,574
Fringe Benefits	4,927,580	5,084,151
Indirect Costs	556,239	1,388,155
Non-Personnel Costs	4,816,348	4,834,912
Total Expenditures	<u>\$ 25,411,850</u>	<u>\$ 26,839,129</u>
Balance June 30	<u>\$ 15,243,340</u>	<u>\$ 15,552,605</u>

16. Our review was not intended to enable us to express, and we do not express, an opinion on the Special Fund Statement of Revenue, Expenditures, and Changes in Fund Balance. The disclosures of revenue, expenditures, and changes in fund balance represent information in the Workers' Compensation Advisory Council Annual Report for the fiscal year ended June 30, 2019 and are intended solely for informational purposes.

APPENDIX D¹⁷

Event Codes

<i>Event Code</i>	<i>Event Description</i>
<i>AC</i>	<i>Agreement to Pay Compensation</i>
<i>AC37</i>	<i>SEC 37/37A Agreement—Pay Compensation</i>
<i>AH</i>	<i>Appeal for Hearing</i>
<i>AW</i>	<i>Administrative Withdrawal</i>
<i>C</i>	<i>Employee Claim</i>
<i>C-A</i>	<i>Employee Claim for Post-Lump-Sum Medical Mediation</i>
<i>CONC</i>	<i>Conciliation</i>
<i>CONF</i>	<i>Conference</i>
<i>D</i>	<i>Insurer Discontinuance Request</i>
<i>D-A</i>	<i>Insurer Request for Post-Lump-Sum Medical Mediation</i>
<i>HEAR</i>	<i>Hearing</i>
<i>IMP</i>	<i>Impartial Physician Exam</i>
<i>IPR</i>	<i>Impartial Physician Report</i>
<i>LSR</i>	<i>Lump Sum Conference Request</i>
<i>Lump</i>	<i>Lump Sum Conference</i>
<i>LW</i>	<i>Lien Withdrawal</i>
<i>LWR</i>	<i>Lien Release</i>
<i>NE30G</i>	<i>Non-Entitlement of Benefits (S.30G)*</i>
<i>NM</i>	<i>Modify Payment Without Prejudice</i>
<i>S19</i>	<i>Section 19 Agreement</i>
<i>S46A</i>	<i>SEC46A Conference[†]</i>
<i>S46AR</i>	<i>SEC46A Conference Request</i>
<i>SCONF</i>	<i>Status Conference</i>
<i>TPC</i>	<i>Third-Party Claim</i>
<i>WFP</i>	<i>Withdrawal From Proceedings</i>
<i>WLUMP</i>	<i>Walk-in Lump Sum Conference</i>

* This refers to the suspension or reinstatement of weekly benefits.

† In an SEC46A conference, an administrative judge meets with the employee, employer, insurer, and attorneys to resolve certain liens. These conferences are generated by the entry of Department of Industrial Accidents Form 46a.

17. This table is quoted from the Department of Industrial Accidents case management system. Notes below the table were added by the Office of the State Auditor.

APPENDIX E¹⁸

Disposition Codes

<i>Disposition Code</i>	<i>Disposition Description</i>
101	<i>Claim [Referred] to [the Industrial Accident Board, or IAB] After Conciliation</i>
102	<i>Claim [Referred] to IAB Without Conciliation</i>
103	<i>Complaint [Referred] to IAB After Conciliation</i>
104	<i>Complaint [Referred] to IAB without Conciliation</i>
105	<i>Conciliated—Pay Without Prejudice</i>
106	<i>Conciliated-Adjusted</i>
107	<i>Referred to Lump Sum</i>
108	<i>Rescheduled For Conciliation</i>
109	<i>Withdrawn Prior to Conciliation</i>
110	<i>Withdrawn at Conciliation</i>
111	<i>Withdrawn by Department</i>
112	<i>Adjusted Prior to Conciliation</i>
114	<i>Lump Sum Request Received</i>
115	<i>Lump Sum Reviewed—Approved As Complete</i>
120	<i>Walk-in Lump Sum Reviewed</i>
121	<i>Walk-in Lump Sum Rejected</i>
185	<i>SEC46A Request Received</i>
199	<i>Administrative Withdrawal</i>
201	<i>Withdrawn by Moving Party</i>
202	<i>Withdrawn by [Administrative Judge, or AJ]</i>
204	<i>Voluntarily Adjusted</i>
205	<i>Referred To Lump Sum</i>
207	<i>Order Issued</i>
208	<i>Withdrawal Proceeding Received</i>
209	<i>Lump Sum Request Received</i>
210	<i>Lump Sum Approved [After] 12/25/1991 [and] Recommended [After] 12/25/1991</i>
211	<i>Withdrawn by Department</i>
230	<i>Schedule for AJ Lump Sum</i>

18. This table is quoted from the Department of Industrial Accidents case management system. Notes below the table were added by the Office of the State Auditor.

<i>Disposition Code</i>	<i>Disposition Description</i>
285	<i>SEC46A Request Received</i>
299	<i>Administrative Withdrawal</i>
301	<i>Withdrawn by Moving Party</i>
302	<i>Withdrawn by AJ</i>
304	<i>Voluntarily Adjusted</i>
305	<i>Referred to Lump Sum</i>
306	<i>Rescheduled for Hearing</i>
307	<i>Decision Filed</i>
310	<i>Lump Sum Approved [Before] 12/25/91 [and] Recommended [After] 12/25/91</i>
311	<i>Withdrawn by Department</i>
326	<i>Rescheduled After Secondary Exam</i>
330	<i>Schedule for AJ Lump Sum</i>
336	<i>Reschedule After Supplemental Exam</i>
385	<i>SEC46A Request Received</i>
399	<i>Administrative Withdrawal</i>