

THE STATE OF THE MASSACHUSETTS WORKERS'  
COMPENSATION SYSTEM

**FISCAL YEAR 2006 ANNUAL REPORT**

MASSACHUSETTS WORKERS' COMPENSATION  
ADVISORY COUNCIL

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## EXECUTIVE SUMMARY

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Fifteen years ago, the workers' compensation system in Massachusetts could best be described with one word: *broken*. Prior to the Reform Act of 1991, workers' compensation insurance costs were spiraling out of control, employee claims were at an all time high, and injured workers were provided with little or no incentives to return to work. Today, the workers' compensation system in Massachusetts bears no resemblance to the broken system of yesterday. Instead, the Commonwealth's workforce is now rewarded by a system that delivers timely benefits, provides the highest quality of healthcare, assists the injured worker with returning to employment, and promotes safety and health in the workplace, all while reducing the costs to employers.

The Department of Industrial Accidents (DIA) is the agency charged with the adjudication of disputed workers' compensation claims. The DIA is funded primarily by assessments charged on workers' compensation policies written in the Commonwealth - no taxpayer dollars are used to fund the agency. During the last two years, the DIA was able to reduce assessment rates by nearly 15%, resulting in a total estimated annual savings of \$10.2 million to businesses in Massachusetts. This significant reduction in employer costs enables companies to reinvest these savings back into the workforce thereby enhancing safety training and employee benefits.

Contributing to these accomplishments is the DIA's focus on customer service as evidenced by recent e-government initiatives. Currently, the public has access to numerous online forms, benefit calculators, conciliation schedules, board number searches, and judicial orders. In the past year, the DIA's website ([www.mass.gov/dia](http://www.mass.gov/dia)) has been overhauled with new content in multiple languages. Next year, the DIA will implement an electronic Document Management System that will revolutionize how the DIA operates by eliminating paper from the dispute resolution system. These investments in technology, which have been supported by the Advisory Council, will enhance workers' compensation services for injured workers, insurers, attorneys, vocational rehabilitation providers, and the medical community.

On an annual basis, the DIA's Office of Safety provides grants under the "*Occupational Safety and Health Education and Training Program*." To date, the program has funded a total of 653 preventive training programs, which have trained nearly 260,000 workers in Massachusetts. During the last fiscal year, the Office of Safety implemented a pilot program, which gave preference to grant proposals that attempt to reduce injuries associated with "high-risk" occupations. The Office of Safety has also expanded and enhanced outreach by monitoring on a quarterly basis those companies in Massachusetts with three or more injuries and providing them with informational materials on the benefits of the safety grant program. The emphasis placed on safety by employers and insurers in the Commonwealth has created a safer work environment. For the past decade, the rate of work related injuries in Massachusetts has been the lowest among all New England states and below the national average.

The DIA is also responsible for ensuring that every employer in Massachusetts provides workers' compensation insurance for their employees. Over the last two years, the DIA

has revamped their enforcement and compliance efforts making investigations more targeted, focused and research-driven. In fiscal year 2006, the DIA conducted a record number of investigations (21,525) and achieved 100% compliance with Stop Work Orders. The DIA's focus on enforcement has included the establishment of a Civil Litigation Unit. The unit aggressively recovers funds from employers for payments made by the Workers' Compensation Trust Fund to injured employees whose employer did not carry workers' compensation insurance. Since 2004, the DIA has recovered \$3.7 million, including \$600,000 in 2004, \$852,000 in 2005 and \$2.23 million in 2006. Through an improved enforcement and compliance program, coupled with a bilingual public awareness campaign, the DIA has helped level the playing field for competing employers in the Commonwealth.

The DIA is currently managing an audit process to verify the accuracy of assessments collected from the insurance community. Prior to this project, the DIA relied upon insurance carriers to self-report and pay the appropriate assessment amounts collected from employers. To date, the DIA has collected over \$10 million dollars as a result of underpaid assessments. As future phases of the audit commence, the project will continue to ensure that assessments are properly paid. The DIA remains committed to working closely with insurance companies and CPA firms to ensure that each review is completed in an accurate and timely manner.

The most recent study by the Workers' Compensation Research Institute (WCRI) examined the Massachusetts Medical Fee Schedule, which regulates the rates of payment for hospitals and health care providers rendering services covered by insurers under the Workers' Compensation Act. Surprisingly, WCRI found that although Massachusetts had the lowest fee schedule in the nation during 2003-2004, the Commonwealth's workforce, on average, reported better outcomes than states with higher fee schedules or no fee schedules at all. Regardless of this positive finding, medical rates should be closely examined to ensure they accurately reflect costs incurred by health care providers to deliver medical services. Adequate rates will provide injured workers with faster access to medical care and reduce friction costs associated with litigation.

In fiscal year 2006, the DIA set the goal of increasing the number of physicians that provide impartial medical examinations in an effort to expedite the dispute resolution process. Within 10 months, the number of doctors on the roster increased from 212 to 236, an increase of 11.3%. This increase in the number of doctors has directly contributed to the successful reduction in the amount of time it takes a disputed workers' compensation claim to advance to full resolution. Currently, 60% of all claims are resolved within 100 days and 95% are resolved within one year.

The DIA Office of Health Policy has implemented major improvements to the Utilization Review (UR) system. The system employed to perform UR has been streamlined to ensure that the health care determinations rendered by UR agents adhere to strict quality control standards, including improved methods of quality assessment and processing of UR claims. As a result of these improvements, processing of UR claims has increased from approximately 55% in fiscal year 2004 to 95% in fiscal year 2006. The faster processing of health care services has led to more appropriate medical care and better outcomes for claimants. In addition, the number of workers compensation claims

reviewed under these improved quality control standards increased from approximately 600,000 in fiscal year 2004 to well over a million in fiscal year 2006.

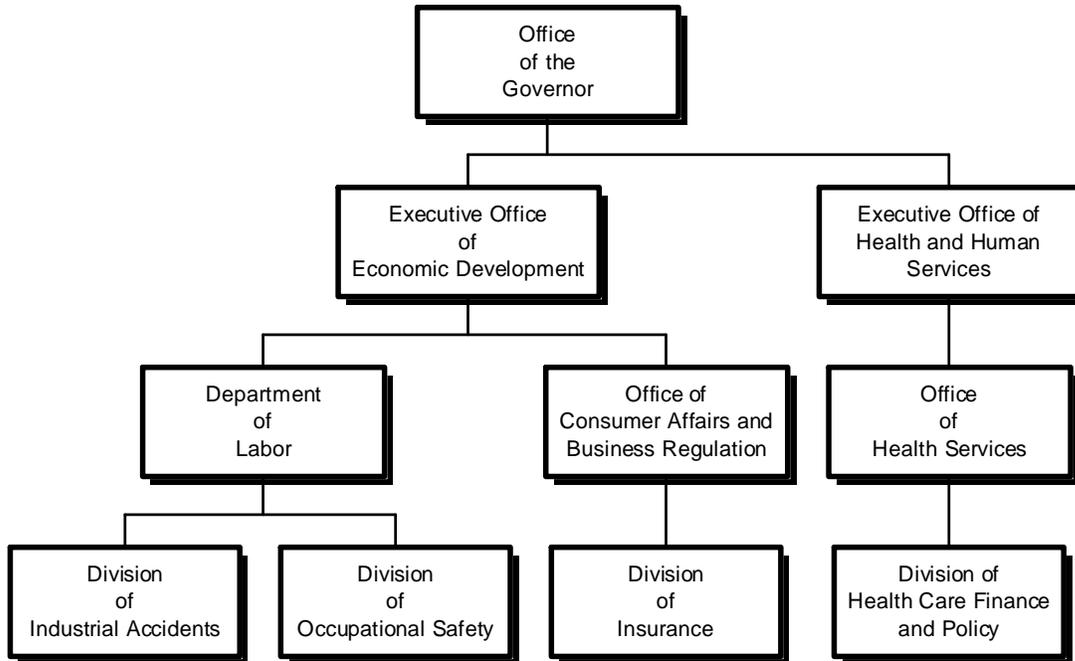
In fiscal year 2006, the Massachusetts workers' compensation insurance market remained healthy and competitive. During the fiscal year, nine new insurance companies entered the marketplace and 37 carriers were offering deviations or scheduled credits to their customers. Since 1994, workers' compensation premium rates have been reduced by the Division of Insurance seven times, or cumulatively more than 60%. A recent white paper by the Pioneer Institute for Public Policy Research asserted the fact that Massachusetts has made great strides in controlling workers' compensation costs. As a result of a strong insurance market, Massachusetts has gained a competitive advantage with recruiting new industries and employers into the state.

The Massachusetts workers' compensation system has come a long way in the past 15 years. Notwithstanding the steady progress made, state regulators need to be aware that the system is imperfect and perpetually changing. To maintain the present vitality of the workers' compensation system, policymakers will need to adopt certain administrative and legislative modifications when necessary. The Advisory Council hopes that this report will serve to highlight the successes of the past year and offer guidance to those looking to improve the system. Any effort to amend the workers' compensation system must be carefully considered to ensure that changes to the statute will build upon the successful aspects of the system, benefiting both injured workers and employers.

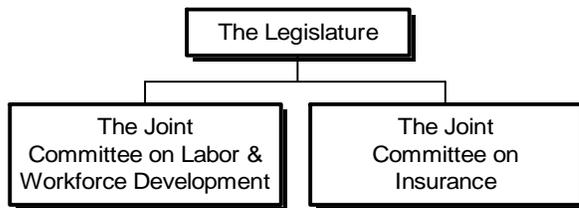
The Massachusetts Workers' Compensation Advisory Council is pleased to present our readers with the Fiscal Year 2006 Annual Report: The State of the Massachusetts Workers' Compensation System.

# Government Regulation of Workers' Compensation

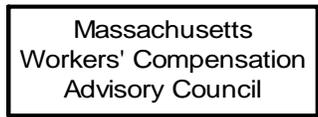
## Executive Branch



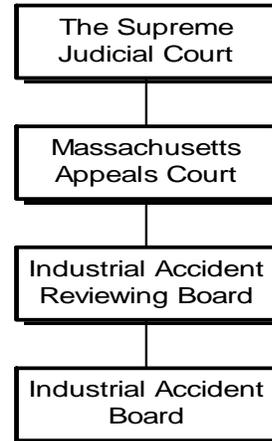
## Legislative Branch



## Oversight



## Appeals Process



**Note:** The Advisory Council monitors and reports on all aspects of the workers' compensation system.

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# INTRODUCTION

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## **ADVISORY COUNCIL**

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The Massachusetts Workers' Compensation Advisory Council was created by the Massachusetts General Court on December 10, 1985, with the passage of chapter 572 of the Acts of 1985. The function of the Council is to monitor, recommend, give testimony, and report on all aspects of the workers' compensation system, except the adjudication of particular claims or complaints. The Council also conducts studies on various aspects of the workers' compensation system and reports its findings to key legislative and administrative officials.

Pursuant to the Act, the Advisory Council is mandated to issue an annual report evaluating the operations of the Department of Industrial Accidents (DIA) and the state of the Massachusetts workers' compensation system. In addition, members are required to review the annual operating budget of the DIA and submit an independent recommendation when necessary. The Council also reviews the insurance rate filing and participates in insurance rate hearings.

The Advisory Council is comprised of sixteen members that are appointed by the Governor for five-year terms. The membership consists of: five employee representatives (each of whom is a member of a duly recognized and independent employee organization); five employer representatives (representing manufacturing classifications, small businesses, contracting classifications, and self-insured businesses); one representative of the workers' compensation claimant's bar; one representative of the insurance industry; one representative of the medical providers; and one representative of vocational rehabilitation providers. The Director of the Department of Labor and the Director of the Department of Economic Development serve as ex-officio members.

The voting members of the Council are comprised of the employee and employer representatives and cannot take action without at least seven affirmative votes. The Council's chair and vice-chair rotate between an employee representative and an employer representative.

The Advisory Council customarily meets on the second Wednesday of each month at 9:00 a.m. at the Department of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, Massachusetts. Meetings are open to the general public pursuant to the Commonwealth's open meeting laws (M.G.L. c.30A, §11(a)).

### **Advisory Council Studies**

The Advisory Council's studies are available for review Monday through Friday, 9:00 a.m. - 5:00 p.m. at the Massachusetts State Library, State House, Room 341, Boston, Massachusetts, 02133, or by appointment at the office of the Advisory Council, 600 Washington Street, 6<sup>th</sup> Floor, Boston, Massachusetts (617) 727-4900 ext. 378.

For further information about the Massachusetts Workers' Compensation Advisory Council, visit our web page at: <http://www.mass.gov/wcac/>.

## Advisory Council Studies: 1989-2006

Actuarial Analysis of the Insurance Rate Filing as Submitted by the Workers' Compensation Rating & Inspection Bureau of Massachusetts, KPMG (2005).

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## **FISCAL YEAR 2006 IN REVIEW**

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During fiscal year 2006, the Department of Industrial Accidents (DIA) experienced a slight decrease in the number of workers' compensation cases filed. Since the enactment of the Workers' Compensation Reform Act of 1991, the number of cases filed at the DIA has decreased by 65%. The majority of cases filed at the DIA are employee claims. Since 1991, employee claims have declined by 44%. The number of requests for a discontinuance or modification of benefits by insurers, which account for 14% of the total cases, decreased by 98 cases in fiscal year 2006 and have decreased by 78% since the 1991 Reform Act.

On August 10, 2005, the DIA presented the Advisory Council with a detailed proposal on Phase III of the database conversion project (Oracle). Several benefits of Phase III include reducing a significant amount of redundancy within units of the DIA, providing carriers with the capability for high-volume batch claim submissions, and creating a digital repository for all DIA documents. To finance this project, the fiscal year 2006 budget included a provision that allowed the release of sufficient funds from the Special Reserve Account upon the affirmative vote of the Advisory Council. At the conclusion of the presentation, Advisory Council members voted to immediately release funds totaling \$1,338,000 to support Phase III of the project.

On September 14, 2005, the Advisory Council examined the adequacy of workers' compensation medical reimbursement rates. Representatives from the Division of Health Care Finance & Policy (DHCFP), the Massachusetts Medical Society, and the Health Care Services Board spoke to Council Members on the obstacles associated with the rate setting process and how the resulting rates impact the medical community, insurers, and injured workers. In Massachusetts, medical reimbursement rates are set by DHCFP and represent the only amount that an insurer is required to pay. As a result of this discussion, Council Members unanimously agreed that the rates needed to be adjusted to more accurately reflect the costs incurred by health care providers. Council Members agreed to support the push for collaborative efforts within the insurance industry to assist the DHCFP with obtaining more reliable data.

In late September of 2005, the Massachusetts Floor Finishing Safety Task Force issued a report that outlined the potentially life-threatening hazards in the wood-floor finishing industry. The report, titled, "*Protecting Workers and Homeowners from Wood Floor-Finishing Hazards in Massachusetts*," also provided specific legislative and policy recommendations to protect the hundreds of wood-floor finishing workers in the Commonwealth, as well as the thousands of homeowners affected by their work.

On October 12, 2005, the Executive Director of the Massachusetts Coalition for Occupational Safety & Health (MassCOSH) addressed the dangers of the wood-floor finishing industry in further detail with the Advisory Council. It was explained that the wood-floor finishing industry in Massachusetts has virtually no government oversight and is dominated primarily by Vietnamese or Cape Verdean immigrants. This exposes a potentially serious problem in the industry, as many of these immigrants face language barriers that would prevent them from receiving or understanding information concerning

safety and chemical hazards. The Advisory Council agreed to closely monitor the work of a newly formed Floor Finishing Task Force that will be revising legislative proposals. Upon the conclusion of the Task Force's work, the Advisory Council agreed to examine the potential benefits of any regulatory proposals to ensure that both workers and homeowners are protected from unnecessary hazards.

In November of 2005, the Executive Director of the Advisory Council and a representative of the DIA, were invited before the WCRIB's Data Reporting Committee to discuss the potential benefits of providing the public with online access to verify workers' compensation coverage. Screenshots of existing coverage tools were displayed from Oregon and Washington State to demonstrate how rating bureaus have formed partnerships with government agencies to combat insurance fraud. At the time of the presentation, 17 states were providing the public with online coverage access and five other states were planning to implement similar online tools in 2006.

On December 14, 2005, the Advisory Council discussed the merits of increasing the salary level for workers' compensation judges at the DIA to better attract highly qualified judicial applicants. In order to assess where Massachusetts compared to the rest of the nation, Council Members examined the starting judicial salaries in eight large states, representing 40% of the nation's workers' compensation benefits. In addition to inter-state comparisons, the Advisory Council also examined the salary levels for various judges and state court administrators within the Commonwealth.

In January of 2006, the Massachusetts Division of Occupational Safety (DOS) released the results of their *Annual Survey of Occupational Injuries and Illnesses in Massachusetts* for 2004. Massachusetts had an incidence rate of 4.3 injuries and illnesses per 100 full-time equivalent workers (FTEs), compared to the national rate of 4.8 cases per FTEs. Among the reporting New England states, Massachusetts was the only state below the national average. The overall incidence rate in Massachusetts improved from 2002's rate of 4.6 cases per 100 FTEs for all private industries.

In February of 2006, the Advisory Council met in executive session to review the qualifications of seven judicial applicants seeking appointment or reappointment to the positions of Administrative Judge and Administrative Law Judge. Upon the affirmative vote of at least seven voting members, the Advisory Council may rate any candidate as either "qualified," "highly qualified," or "unqualified." On February 15, 2006, the Advisory Council forwarded all seven judicial recommendations to the Governor's Chief Legal Counsel and to the members of the Governor's Council for review.

In March of 2006, the Advisory Council voted to endorse the Governor's Fiscal Year 2007 Budget Recommendation (House 2) of \$20,406,316 to fund the DIA's line-item. At the recommendation of the Advisory Council's Budget Subcommittee, the Council forwarded a letter to the House Ways & Means Committee recommending that funding be allocated to the Department of Labor (DOL) within their designated line-item [7002-0001]. As a Secretariat, the DOL serves an essential function in the workers' compensation system by promoting harmonious relations between employers and employees and overseeing the general welfare of workers.

Early in April of 2006, a tragic scaffolding accident, that killed two workers and a bystander outside Emerson College, prompted public officials to hold an Oversight

Hearing on Construction Safety. The Committee on Public Safety and Homeland Security organized the hearing to better understand the legal and technical nuances between federal and state agencies in conducting workplace safety inspections.

Also in April of 2006, a subcommittee of the Advisory Council worked with members of the DIA administration to identify where modifications could be made to improve the Safety Grant Program. The subcommittee examined safety programs in other states and carefully reviewed the application to curtail burdensome or unnecessary criteria. As a result of the collaborative work, the DIA incorporated seven recommendations identified by the subcommittee members into a pilot program. The pilot program would use the remaining fiscal year 2007 funds (approximately \$300,000) to seek grant proposals that address high-risk workers and industries in Massachusetts.

On April 28, 2006, Workers' Memorial Day was observed in Massachusetts to honor workers' killed and injured on the job. Coinciding with Workers' Memorial Day was the release of a statewide occupational fatality report sponsored by the Massachusetts AFL-CIO, the Massachusetts Coalition for Occupational Safety and Health, and the Western Massachusetts Coalition for Occupational Safety and Health. The report, titled, "*Dying for Work in Massachusetts: The Loss of Life and Limb in Massachusetts*," highlights the fact that many workplace deaths are preventable. In 2005, 78 workers in Massachusetts died on the job.

On June 1, 2006, a subcommittee of the Advisory Council met to address the solicitation practices of a select group of law firms who are using the Massachusetts Public Records Law to obtain the names and addresses of employees who have been injured on the job. The subcommittee reviewed pending legislation, the Massachusetts Rules of Professional Conduct, and a public record lawsuit filed against the DIA. The subcommittee agreed to develop new legislation for the 2007-2008 Legislative Session to exempt the name, home address, and phone number of any injured employee, reported to any agency of the Commonwealth, from the Public Records Law.

On June 14, 2006, the Advisory Council was presented with findings from a new Workers' Compensation Research Institute (WCRI) report, titled, "*How Does the Massachusetts Medical Fee Schedule Compare to Prices Actually Paid in Workers' Compensation?*" Although Massachusetts has the lowest fee schedule in the nation, the report stated that the Commonwealth's workforce, on average, reports better outcomes than states with higher fee schedules or no fee schedules. According to the study, major surgical procedures were most often paid above the amounts set in the fee schedule. For each major surgical procedure listed, the Massachusetts fee schedule level was significantly lower than all nearby state fee schedule levels. The WCRI's report will assist policymakers in assessing the extent to which prices paid for medical services reflect those listed in the fee schedule.

## **CONCERNS & RECOMMENDATIONS**

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The Advisory Council is mandated by M.G.L. c.23E, §17 to include in its annual report “an evaluation of the operations of the [DIA] along with recommendations for improving the workers’ compensation system.” In an effort to enhance the workers' compensation system, the Council has identified the following areas of concern and offers these recommendations to address them.

### **1. Uninsured Employers & Misclassification**

In Massachusetts, every business with one or more employee(s) is required by law to have a valid workers' compensation policy at all times. Employers can meet this statutory requirement by purchasing a commercial insurance policy, gaining membership in a self insurance group, or licensing as a self insurer. While the vast majority of the Commonwealth's employers purchase workers' compensation insurance, there are still those that make a conscious business decision to operate without coverage or to misclassify their employees with the mindset that they can save a few dollars. To the contrary, uninsured employers unnecessarily jeopardize the financial stability of their own businesses and shift costs to employers who protect their employees under a workers' compensation policy.

When an employee is injured at work and it is discovered that their employer failed to provide workers’ compensation coverage, the employee may obtain benefits through the DIA’s Trust Fund. The Trust Fund was created by the legislature as a protective measure to pay for the benefits of injured employees of uninsured employers. The Trust Fund is financed through assessments paid by employers who purchase workers' compensation insurance. In fiscal year 2006, approximately \$6.6 million was paid in workers' compensation benefits to uninsured claimants and 264 claims were filed. During the last seven years, Trust Fund disbursements have nearly doubled. Although this increase is partially due to a modest rise in uninsured claims, the majority can be attributed to several unusually severe claims accepted by the Trust Fund.

To address this recent increase of uninsured payments, the Advisory Council formed a subcommittee in June of 2006 to investigate methods of protecting the Trust Fund and decreasing the financial burden placed on complying employers. Subcommittee members worked closely with the DIA administration to develop a comprehensive strategy in deterring employer fraud. At the recommendation of the subcommittee, the Advisory Council strongly believes that any solution to combat employer fraud in Massachusetts must be multifaceted and include both legislative and non-legislative solutions. Although there is no "silver bullet" that will force every employer to purchase workers' compensation insurance, the Advisory Council believes the following collective recommendations will be instrumental in winning the fight against employer fraud.

**1.1 Private Right of Action Legislation** - During the 2005-2006 Legislative Session, the Advisory Council endorsed **Senate Bill 1099**, filed by Senator Jack Hart and Representative Martin Walsh. This bill would provide a vehicle for both private citizens and insurers to bring forth a civil action against employers who illegally fail to carry workers' compensation insurance or intentionally misclassify their employees. When probable cause exists, such persons seeking civil action against a non-compliant business could seek damages for premium amounts not paid (with a maximum of \$25,000 or 25% of the premium that has been avoided - whichever is less). The remainder of damages would be deposited into the DIA's Workers' Compensation Trust Fund. Insurance carriers would be able to recover the full amount of the award in situations where they obtain court approval to replace the private citizens in a lawsuit.

In December of 2004, the University of Massachusetts and Harvard University's Schools' of Law and Public Health released a report, titled, "*The Social and Economic Costs of Misclassification in Construction.*" Specifically, the report focused on those construction employers in Massachusetts that misclassify their employees as "independent contractors." According to the study's findings, between 2001 and 2003, up to \$7 million of workers' compensation premiums were not paid for misclassified construction workers and up to \$91 million of premiums were not paid for misclassified workers across all industries.

Beyond creating an uneven playing field for competitors, it is well known that employers who misclassify their employees often engage in other illegal or deceptive business activity that can negatively affect unemployment insurance benefits, state income tax collection, Social Security tax collection, and healthcare/pension plans. To address this means of employer fraud, the Advisory Council urges the legislature to refile and pass the Private Right of Action Bill during the 2007-2008 Legislative Session. The Advisory Council believes that the enactment of this legislation will help alleviate the competitive disadvantage faced by the vast majority of honest employers who purchase workers' compensation policies, when their competitors may not.

**1.2 Drivers' License Suspension Legislation** - The Advisory Council has agreed that to adequately deter the Commonwealth's employers from operating without insurance, the current civil penalties that were established in 1987 need to be strengthened. Currently, a stop work order and a flat-fine of \$100 per day are assessed to companies who fail to secure workers' compensation insurance coverage. Although this may serve as a sufficient penalty to a low-risk business with few employees, the fine becomes both smaller in severity and less of a deterrent as the size and risk of a business increase.

As an alternative to increasing the present civil fines, the Advisory Council supports legislation that in extreme cases, would suspend the driver's license of an employer who is operating without insurance. License suspension programs have already proven to be effective in Massachusetts and are used for various violations involving motor vehicle laws, outstanding warrants, sex offender registration requirements and child support delinquency. During the summer of 2005, Representative Michael Rodrigues, co-chairman of the Joint Committee on Labor & Workforce Development, filed legislation (**House Docket 4709**) that would institute inter-agency cooperation between the DIA and

the Registry of Motor Vehicles by temporarily suspending the driver's license and registration of an uninsured employer until adequate workers' compensation coverage is secured. During the 2007-2008 Legislative Session, the Advisory Council will continue to support similar license suspension proposals, which would give the DIA a powerful enforcement tool to bring uninsured businesses into compliance with the law.

**1.3 Reinforcing Criminal Penalties** - In addition to civil penalties for non-compliance, the Workers' Compensation Act imposes criminal sanctions. Section 25C(5) of Chapter 152 provides for a criminal fine of up to \$1,500 or up to one year in prison. When the employer is a corporation, the statute holds liable the president and/or treasurer for criminal fines and imprisonment. Although criminal penalties are often reserved for the most flagrant violations of the law, a criminal complaint may be filed against any employer operating in the Commonwealth without insurance.

The Advisory Council has recently learned that the Massachusetts' Courts are often reluctant to fully enforce the civil and criminal fines outlined in the statute. Furthermore, district court judges have required the DIA to prove that the employer had clear intentions to violate the statute. In an effort to assist DIA Legal Unit in prosecuting workers' compensation fraud, the Advisory Council is recommending that legislation be developed to amend §25C to institute minimum-mandatory fines for criminal convictions. A provision of this bill should also contain language that ensures restitution is paid, allowing the Trust Fund to recoup a percentage of the premium that was avoided. Finally, the Advisory Council is recommending a section of this bill clearly state that intent is not a necessary element of the offense and that a strict liability standard apply.

**1.4 Increasing Investigative Staff** - At any given time, there are more than 200,000 businesses operating in Massachusetts, employing in excess of three million people. The DIA's Office of Investigations is charged with ensuring that each and every business is carrying the mandatory workers' compensation insurance. This is an overwhelming task considering the Office of Investigations is operating with only ten investigators to cover 351 cities and towns. Also understaffed is the Workers' Compensation Trust Fund that pays the benefits to injured employees of uninsured businesses. With over 260 uninsured claims filed on an annual basis, the Trust Fund relies on three investigators to conduct interviews and file reports on every potential claim. To say that the DIA is at a disadvantage in the fight against employer fraud is an understatement.

In March of 2007, the Advisory Council will form a Budget Subcommittee to review the Governor's Fiscal Year 2008 Budget Recommendations. At that time, Council Members will work with the DIA administration to reassess the benefit of increasing investigative staff in both the Office of Investigations and the Trust Fund. Upon determining an appropriate level of staffing, the Advisory Council will monitor the fiscal year 2008 budget process to ensure that adequate funding is available. The Advisory Council recognizes that with any increase in staffing levels there will be a cost-impact. However, the Advisory Council is confident that a larger presence of investigators in Massachusetts will ultimately bring more employers into compliance, providing savings that far outweigh the costs of additional personnel.

**1.5 Online Coverage Verification Searches** - Each year the Office of Investigations receives hundreds of anonymous calls and letters from the general public providing tips on companies that may be operating without workers' compensation insurance. Upon receiving public referrals, investigators will cross-match the referred employer to a coverage database furnished by the Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIBM). The WCRIBM is the licensed rating organization responsible for the collection of all policy data written by commercial carriers in the Commonwealth.

During the past few years, a national trend has emerged whereby state workers' compensation agencies are providing the general public with coverage verification tools on the internet. By allowing the public to directly verify whether an employer is insured, workers' compensation fraud referrals will increase in quality, while reducing needless inquiries. Furthermore, public access to coverage databases will create a new deterrent against fraud and allow businesses to "police" their own industries. Currently, 24 other states are utilizing these online tools to combat employer fraud.

The Advisory Council is recommending that the DIA form a partnership with the WCRIBM in developing an online tool that allows the general public to verify whether a specific company has workers' compensation insurance. This type of web-based service has already proven to be a successful tool for assisting other states in the identification of illegally uninsured employers. Although the vast majority of businesses in the Commonwealth purchase workers' compensation insurance for their employees, it is critical that all available resources and technology are used to identify those employers who are operating without coverage.

**1.6 "Issue Paper" on Workers' Compensation Fraud** - Fraud has consistently remained at the forefront of the Advisory Council's concerns since fiscal year 1997. During this period, the Advisory Council has put forth several legislative proposals to strengthen the enforcement and compliance of the statute. Although many of these proposals have been favorably received by the legislature, there seems to be reluctance among policymakers to amend the Workers' Compensation Act.

In fiscal year 2007, the Advisory Council will work with the DIA administration in developing a concise "issue paper" that puts into perspective the serious consequences of workers' compensation fraud. The issue paper will present details on how uninsured employers not only hurt the business climate in Massachusetts, but create a public health issue due to the lack of financial incentives for developing workplace safety programs. With the arrival of new legislators, staff members, and committees in 2007, the Advisory Council recognizes the importance of providing education on the far reaching effects of employer fraud. In addition to educating policymakers, the Advisory Council will share this document with the Massachusetts' Courts, emphasizing the significance of these criminal violations.

## 2. Scar-Based Disfigurement Benefits

During the 2005-2006 Legislative Session, the Advisory Council testified before the Joint Committee on Labor & Workforce Development advocating for the passage of **House Bill 1606**, filed by Representative Antonio Cabral, and **Senate Bill 1095**, filed by Senator Jack Hart. These two identical bills would provide compensation for scar-based disfigurement appearing on any part of the body. Since the Reform Act of 1991, benefits for scarring have been limited to the face, neck or hands.

In June of 2000, the Advisory Council asked the actuarial firm Tillinghast - Towers Perrin to estimate the cost-impact to the workers' compensation system if scarring awards were restored to their pre-chapter 398 levels. Although Tillinghast was unable to quantify the impact of such a proposed revision due to incomplete data, it was suggested that such a change would have a "relatively minimal impact on system costs."

In fiscal year 2007, the Advisory Council will commission a study to reassess the cost-impact of restoring scarring benefits to include all disfigurement, regardless of its location on the body. Specifically, the Advisory Council will ask a contracted actuary to estimate future workers' compensation claim costs using several different maximum benefit scenarios. In addition, the study will look at how scarring benefits are calculated and apportioned in other jurisdictions. The Advisory Council believes that updated data will assist policymakers in determining whether to expand coverage for scarring and deciding appropriate caps.

## 3. Maximum Burial Allowance

When an employee is killed on the job, the workers' compensation statute requires the insurer to "pay the reasonable expenses of burial, not exceeding four thousand dollars" [M.G.L. c.152, §33]. In 2001, the National Funeral Directors Association estimated that the average funeral and burial cost in Massachusetts was \$6,177. During fiscal year 2005, the Advisory Council examined funeral benefit levels throughout the United States to see how Massachusetts compared. The research results were striking in that state-mandated burial allowances fluctuated considerably, reaching a high of \$15,000 in Rhode Island to a low of \$2,000 in Mississippi.

The principle foundation to any healthy workers' compensation system is the establishment of a benefit structure that fairly and adequately compensates workers who are injured or killed on the job. Periodically, benefit structures must be reevaluated and adjusted to ensure payments reflect the overall economic conditions. The Advisory Council believes that the Commonwealth has an obligation to ensure there is sufficient compensation available to the families of those workers killed on the job so that they may be honored with a respectful burial. The Advisory Council is recommending legislation be filed to raise the maximum burial allowance from \$4,000 to \$8,000. The current burial allowance of \$4,000 has not been increased in fifteen years and appears to be well below the national average. In fiscal year 2007, the Advisory Council will also revisit the feasibility of tying the maximum burial allowance to an index such as the average weekly wage.

#### **4. Adequacy of IAB Medical Rates**

The Division of Health Care Finance and Policy (DHCFP) regulates the rates of payment (fee schedule) for hospitals and health care providers rendering services covered by insurers under the Workers' Compensation Act. The fee schedule is subject to a regulatory proceeding ensuring a public process through which rate setting is established. Although rate negotiation is common, the rates set by the DHCFP are the only amount that an insurer is required to pay.

In September of 2005, the Advisory Council examined the adequacy of workers' compensation medical reimbursement rates. Representatives from DHCFP, the Massachusetts Medical Society and the Health Care Services Board spoke to Council Members on the obstacles associated with the rate setting process and how the resulting rates impact the medical community, insurers, and injured workers.

In the past, DHCFP has experienced difficulties with obtaining reliable data because many insurance companies are often reluctant to share their medical claim information. Furthermore, there is evidence that many of the rates that physicians charge vary substantially for the same procedure. This inconsistency in fees, combined with a lack of medical data, illustrates the difficulties that DHCFP experiences when attempting to set an equitable rate.

In June of 2006, the Advisory Council was presented with findings from a new Workers' Compensation Research Institute (WCRI) report, titled, "*How Does the Massachusetts Medical Fee Schedule Compare to Prices Actually Paid in Workers' Compensation?*" Surprisingly, WCRI found that although Massachusetts had the lowest fee schedule in the nation during 2003-2004, the Commonwealth's workforce, on average, reported better outcomes than states with higher fee schedules or no fee schedules at all. The study also reported that major surgical procedures were most often paid above the amounts set in the fee schedule. For each major surgical procedure listed, the Massachusetts fee schedule was significantly lower than all nearby state fee schedules.

The Advisory Council recognizes the challenges that DHCFP faces in the rate setting process. If rates are set too low, injured workers could be denied proper access to quality medical care. Conversely, if rates are set too high, the fee schedule does not meet its goal as a cost containment tool. The Advisory Council fully supports the Department of Labor and the DIA's efforts with coordinating dialogue between the medical community, insurance companies, and the DHCFP to ensure that medical rates are fair and reasonable for all parties involved. It will take a collaborative effort by all parties to gather the necessary data to establish rates that accurately reflect costs incurred by health care providers to deliver medical services. Council Members recognize that there will be a cost-impact with any adjustment to rates. However, the Council also acknowledges the positive impact that adequate rates could generate, from allowing injured workers faster access to medical care to decreasing friction costs associated with litigation.

#### **5. Protecting the Privacy of Injured Workers**

In June of 2006, a subcommittee of the Advisory Council assembled to address the solicitation practices of a select group of law firms who are using the Massachusetts Public Records Law to obtain the names and addresses of employees who have been

injured on the job. Upon receiving this information from the DIA, these particular law firms have been sending mass mailings to injured workers indicating both lucrative and unrealistic settlement amounts if they engage their services. Several years ago, the DIA attempted to stop this practice by redacting the names and addresses on public record requests to protect the privacy of the injured worker. As a result, two separate civil actions were brought against the DIA. In 2004, a Suffolk Superior Judge ruled against the DIA stating that the name and address (even when associated with a workplace injury) are not "intimate details of a highly personal nature." The DIA subsequently appealed this decision to the Massachusetts Appeals Court where the ruling was reversed. After the plaintiff's appeal for further appellate review was denied by the SJC, the case has recently been remanded back to Superior Court.

During the 2005-2006 Legislative Session, Representative John Fresolo filed **House Bill 4563** on behalf of the Massachusetts Association of Insurance Agents (MAIA). This proposed legislation would exempt information contained within "DIA Form 101 - Employer First Report of Injury," from the Public Records Law. Although this bill was filed with good intentions, concern was expressed that by exempting the entire form, legitimate research could be hampered. Further troubling to Council Members, was the fact that House Bill 4563 would not protect an employee's home address on other forms that the DIA processes.

The Advisory Council is recommending that the DIA work in conjunction with MAIA on developing new legislation to exempt from the Public Records Law: the name, home address, and phone number of any injured employee reported to the DIA. Particular attention should be placed on ensuring that privacy protections are established for all DIA Forms and that legitimate research can still be conducted. The Advisory Council is also recommending that the DIA review the reasonableness of the current flat fee of \$25 charged for public records requests. In fiscal year 2007, the Advisory Council plans to bring this issue to the attention of the Massachusetts Bar Association.

## **6. Safety Grant Program - Teen Workers & High Risk Groups**

The Office of Safety is responsible for establishing and supervising programs that entail the education and training of employees and employers in the recognition, avoidance, and prevention of unsafe or unhealthy working conditions. To fulfill this mandate, the DIA annually awards grants to qualified applicants based on a competitive selection process.

Since 1991, the Office of Safety has been providing grants under the "*Occupational Safety and Health Education and Training Program*." Historically, the Safety Grant Program has been funded with an annual budget of \$800,000 and allots up to \$25,000 in grants for each proposal. To date, the Office of Safety has funded a total of 653 preventive training programs, which have trained nearly 260,000 workers in Massachusetts.

During the last year, the Office of Safety initiated a pilot project that focused the safety grant program towards high-risk industries. The pilot project was a result of the work from a Safety Grant Subcommittee, which included members from the Advisory Council, DIA administration, Department of Labor, and the Division of Occupational Safety. Under the pilot project, preference was given to grant proposals that attempt to reduce

injuries associated with "high-risk groups" defined by the Office of Safety. To date, the pilot project has proven to be a success and has been well received by grant participants.

In November of 2006, representatives from the Department of Public Health presented the Advisory Council with an overview of the injury statistics and unique risk factors that teen workers face. National studies have shown that 80% of teens have been employed at some point before leaving high school. In Massachusetts, the majority of teens are working in medium to high-risk industries such as restaurants and grocery stores. An array of data shows that teens have a higher rate of injury than adults that are doing the same type of work. Sadly, the increased risk to this segment of the workforce is most likely attributed to a lack of safety training.

Council Members acknowledge that more needs to be done in providing teen workers in the Commonwealth with proper safety training and education on their rights under the workers' compensation system. The Advisory Council is recommending that the DIA's Office of Safety expand outreach to get teen workers involved in the Safety Grant Program. Council Members also recognize the success of the Safety Grant pilot project, which targeted high risk groups in fiscal year 2006. The Advisory Council fully supports the DIA's decision to incorporate the guidelines and administrative modifications used in the pilot project into future grant programs.

## **7. Assessment Audit - Continuation and Automation**

According to Chapter 152, §65, revenues for the Special Fund and the Trust Fund are raised by an assessment on all employers. The Act specifies that the DIA must calculate an assessment rate which, when multiplied by an employer's standard premium, yields an employer's assessment amount. For many years, the assessment amount collected by the DIA was not audited, leaving insurance carriers with the sole responsibility for billing and collecting the proper assessments from insured employers.

In 1999, the DIA utilized the services of three accounting firms to ensure that accurate and complete assessments were collected from policyholders and then properly remitted to the DIA. The initial reviews were designed to cover a two-year period spanning from 7/1/96 to 6/30/98. Upon completion of Phase I in August of 2006, the DIA had collected a total of \$7.6 million from insurance carriers as a result of underpaid assessment amounts. The cost of conducting the Assessment Audit in Phase I totaled \$1.9 million. This represents a cost to collection ratio of 25%. In addition to the \$7.6 million collected as a result of CPA reviews, the DIA also collected \$1.9 million from conducting internal reviews, resulting in a grand total of \$9.5 million collected in Phase I of the project.

The Advisory Council strongly supports the continued efforts of the DIA in verifying that insurance companies are collecting and submitting proper assessment amounts from employers. Phase II of the assessment review, which began during fiscal year 2006, is focusing on assessments calculated and remitted from 1999-2003. The Advisory Council also supports the agency's goal of developing an assessment payment process that is fully automated with insurance carriers. To date, the assessment audit has been an overwhelming success. The Advisory Council believes this entire process will be beneficial to both insurers and the employers by ensuring that proper credit and debit adjustments are applied to the respective parties.

## LEGISLATION

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During the 2005-2006 Legislative Session, approximately thirty-nine bills were filed by the House and Senate seeking to amend the workers' compensation system (see Appendix O for a complete list of legislation). The vast majority of bills concerning workers' compensation matters are referred to the Joint Committee on Labor & Workforce Development. Once legislation is referred to this committee, a public hearing is held on the bills. For a list of members of the Joint Committee on Labor & Workforce Development, see Appendix C.

### Labor & Workforce Development Hearing

On June 29, 2005, the Joint Committee on Labor & Workforce Development held a hearing on all workers' compensation legislation before the committee. At this hearing, representatives from the Advisory Council appeared before the committee and testified on six legislative matters that had been previously endorsed by the Advisory Council.

First, the Advisory Council expressed support for **Senate Bill 1099**, filed by Senator Hart, which would provide a vehicle for both private citizens and insurers to bring forth a civil action against employers who illegally fail to provide workers' compensation insurance or misclassify their workers for the purpose of avoiding premiums.

Second, the Advisory Council endorsed **House Bill 1606**, filed by Representative Cabral, and **Senate Bill 1095**, filed by Senator Hart and Representative Walsh. These two bills would provide compensation for scar-based disfigurement appearing on any part of the body. Currently, scarring is only compensable if it appears on the face, neck or hands.

Although there is no specific legislation, the Advisory Council also voiced support for raising the maximum burial allowance from \$4,000 to \$8,000. The current burial allowance of \$4,000 has not been increased in fourteen years and appears to be below the national average.

The Advisory Council also voiced opposition on two bills. First, Council Members opposed **Senate Bill 1097**, filed by Senator Hart, Representative Walsh and Representative Galvin. Under this bill, the surviving dependent of a worker that had died from an occupational illness or disease would receive compensation based upon the earnings of the last full time employment, regardless of whether that worker was earning wages at the time of death. This bill would also expand benefit eligibility requirements to include workers who not currently subject to the Workers' Compensation Act.

Second, the Advisory Council opposed **House Bill 1604**, filed by Representative Rogers. This bill would require the Workers' Compensation Rating & Inspection Bureau to initiate a cost containment pilot project during 2006 whereby Third Party Administrators would service claims for policies within the Assigned Risk Pool.

Finally, the Advisory Council testified in regards to two bills that directly affect the rate of payment by insurers for health care services: **House Bill 3776** and **House Bill 3778**. Although the Advisory Council did not take a position on either of these bills, members

have unanimously acknowledged the fact that medical reimbursement rates set by the Division of Health Care Finance & Policy are inadequate and, where appropriate, need to be adjusted.

## Legislation Endorsed by the Advisory Council

The affirmative vote of at least seven voting members must occur in order for a bill to be endorsed by the Advisory Council. Of the thirty-nine bills filed in the 2005-2006 Legislative Session, the following four bills were endorsed by the Advisory Council.

### **SENATE BILL 1099**

**Filed By:** Senator John A. Hart, Jr. and Rep. Martin J. Walsh

**Type of Bill:** Similar

**Endorsed by Advisory Council:** YES

**Laws Affected:** Private Right of Action to Recover WC Coverage Payments (c.152, §25C)

Senate Bill 1099 (similar to H.2205 filed last session) would allow "any 10 persons" to bring a civil action against an employer to recover amounts which should have been paid in securing proper workers' compensation insurance as mandated by chapter 152. Such persons seeking civil action must first petition either the Attorney General's Office or a superior court to hold a "probable cause hearing." At the hearing, it shall be *prima facie* evidence that such probable cause exists if it is shown that:

- an employee was paid any portion of wages in cash with no deductions or taxes withheld;
- no accompanying pay slip showing the wage payment and deductions as required by law;
- an individual was misclassified as an independent contractor when actually an employee;
- wages were not timely paid;
- the employer failed to withhold from the employee's wages all related state taxes; or
- employees have not been properly reported on certified payroll records as required by law.

When probable cause exists, such persons seeking civil action against a non-compliant business may seek damages of up to \$25,000 (or 25% of the premium that has been avoided - whichever is less). The remainder of damages would be deposited into the DIA's Workers' Compensation Trust Fund. Insurance carriers would be able to recover the full amount of the award in situations where they obtain court approval to replace the private citizens in a lawsuit.

### **SENATE BILL 1095 & HOUSE BILL 1606**

**Filed By:** Senator John A. Hart, Jr. and Rep. Martin J. Walsh / Rep. Antonio Cabral

**Type of Bill:** Refile

**Endorsed by Advisory Council:** YES

**Laws Affected:** Scar-Based Disfigurement (c.152, §36(k))

These refiled bills would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. Compensation would be required for all disfigurement, whether or not scar-based, regardless of its location on the body. This bill would not affect the \$15,000 maximum benefit for scar-based disfigurement currently in the statute. In 1991, Section 36(k) was amended by chapter 398 to limit payments for purely scar-based disfigurement by requiring benefits only when the disfigurement is on the face, neck, or hands.

**HOUSE DOCKET 4709**

**Filed By:** Rep. Michael Rodrigues

**Type of Bill:** NEW

**Endorsed by Advisory Council:** YES

**Laws Affected:** Suspension of Driver's License - Uninsured Employers (c.90, §22)

House Docket 4709 would institute inter-agency cooperation between the DIA and the Registry of Motor Vehicles by allowing the temporary suspension of an uninsured employer's driver's license and registration until adequate workers' compensation coverage has been secured. Similar license suspension programs exist involving the violation of motor vehicle laws, outstanding warrants, sex offender registration requirements, and child support delinquency. This bill would also require the DIA to report in writing to the Joint Committee on Labor & Workforce Development on the utilization of the program.

**Legislation Opposed by the Advisory Council**

On occasion, the Advisory Council will also voice opposition to particular bills before the Joint Committee on Labor & Workforce Development. Currently the Advisory Council is opposed to the following two bills.

**SENATE BILL 1097**

**Filed By:** Senator John A. Hart, Jr., Rep. Martin J. Walsh, Rep. William C. Galvin

**Type of Bill:** Refile

**Endorsed by Advisory Council:** No

**Laws Affected:** Widow's Benefits (c.152, §35C, 32, 31)

This refiled bill (formerly a Senate amendment to the FY'06 Budget) would significantly alter the definition of the "average weekly wage" exclusively for Section 35C cases (latency claims). If passed, this legislation would directly affect a recent decision by the State Supreme Judicial Court (Joseph V. McDonough's Case).

According to the SJC's decision in the *McDonough's Case*, the widow of an employee who died as a result of past asbestos exposure is not entitled to receive compensation under Section 35C since the deceased had voluntarily retired in 1991 and was not receiving wages on the date of his death. Section 35C clearly states that "[w]hen there is a difference of five years or more between the date of injury and the initial date [of] eligib[ility] for benefits under Section thirty-one...the applicable benefits shall be those in effect on the first date of eligibility for benefits."

The Workers' Compensation Trust Fund is responsible for reimbursing insurers for certain payments made for Section 35C latency claims. In Fiscal Year 2003, the Trust Fund reimbursed insurers for approximately **\$1,189,898** in latency claims.

**HOUSE BILL 1604**

**Filed By:** Rep. John H. Rogers

**Type of Bill:** Similar

**Endorsed by Advisory Council:** No

**Laws Affected:** Workers' Compensation Reinsurance Pool (c.152, §65C)

House Bill 1604 (similar to H.3482 and H.4552) would require the Workers' Compensation Rating & Inspection Bureau (WCRIBM) to initiate a cost containment pilot project during 2006 whereby Third Party Administrators (TPAs) would service claims for policies within the Assigned Risk Pool. The bill states that the pilot project would attempt to reduce losses and introduce competition and innovation into the Assigned Risk Pool.

Currently, employers in Massachusetts who are unable to obtain workers' compensation insurance in the voluntary market can obtain coverage through a reinsurance pool known as the "Assigned Risk Pool." Nearly 60% of the total written Pool premium is assigned to 10 Voluntary Direct Assignment Carriers (VDAC). The VDACS handle the claims administration and are personally responsible for any losses on these policies. The remaining 40% of Pool premium is issued among three designated servicing carriers whereby losses are distributed among the remaining members of the Pool.

Last Legislative Session, the Governing Committee of the WCRIBM unanimously opposed a similar bill. Specifically, the Governing Committee believed that because TPAs have no vested interest in the costs or health of the Pool, injured employees could be put at risk for receiving poor claim service, thereby increasing an employer's premium. The Governing Committee stated that carriers in Massachusetts already have built-in incentives to provide quality service since they must collectively participate in the Pool burden, pay premium taxes, pay assessments to support the state's Insolvency Fund, the Insurance Fraud Bureau, the State Rating Bureau, and the Attorney General's Office.



# SECTION

# - 1 -

## *OVERVIEW*

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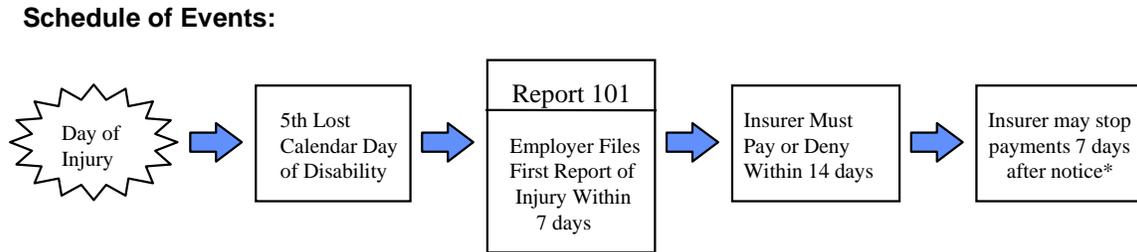
# PROVISIONS TO RESOLVE DISPUTES

## Workers' Compensation Claims

When an employee is disabled or incapable of earning full wages for five or more calendar days, or dies, as the result of a work-related injury or disease, the employer must file a First Report of Injury. This form must be sent to the Office of Claims Administration at the DIA, the insurer, and the employee within seven days of notice of the injury. If the employer does not file the required First Report of Injury with the DIA, they may be subject to a fine.

The insurer then has 14 days upon receipt of the employer's First Report of Injury, to either pay the claim or to notify the DIA, the employer, and the employee of their refusal to pay.<sup>1</sup> When the insurer pays a claim, they may do so without accepting liability for a period of 180 days. This is known as the "pay without prejudice period." This period establishes a window where the insurer may refuse a claim and stop payments at will. Up to 180 days, the insurer can unilaterally terminate or modify any claim, as long as it specifies the grounds and factual basis for so doing.<sup>2</sup> The purpose of the pay without prejudice period is to encourage the insurer to begin payments to the employee instead of outright denying the claim.

**Figure 1: Schedule of Events**



\*The insurer may stop payments unilaterally (with seven days notice) only if the case remains within the 180 day "pay without prejudice period," and the insurer has not been assigned or accepted liability for the case. Otherwise, the insurer must file a "complaint" and go through the dispute resolution process.

After a conference order is issued or the pay without prejudice period expires, the insurer may not stop payment without an order from an Administrative Judge (AJ). The insurer must request a modification or termination of benefits, based on an impartial medical exam and other statutory requirements. A discontinuance or modification of benefits may take place no sooner than 60 days following a referral to the division of dispute resolution.

<sup>1</sup> If there is no notification or payment has not begun, the insurer is subject to a fine of \$200 after 14 days, \$2,000 after 60 days, and \$10,000 after 90 days.

<sup>2</sup> The pay without prejudice period may be extended up to one year under special circumstances. The DIA must be notified seven days in advance.

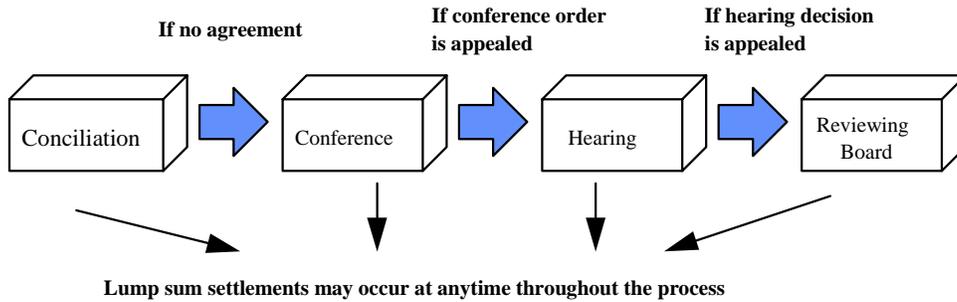
## Dispute Resolution Process

Requests for adjudication may be filed either by an employee seeking benefits or an insurer seeking modification or discontinuance of benefits following the payment without prejudice period.

**Figure 2: Dispute Resolution Process**

### Dispute Resolution:

**START:** 30 days after the onset of disability, or immediately following an insurer's "deny", the employee may file a claim with the DIA and Insurer.



Dispute resolution begins at conciliation, where a conciliator will attempt to resolve a dispute by informal means. Disputes should go to conciliation within 15 days of receipt of the case from the Division of Administration.

A dispute not resolved at conciliation will then be referred to a conference, where it is assigned to an AJ who retains the case throughout the process if possible. The insurer must pay an appeal fee of 65% of the state average weekly wage (SAWW) or 130% of the SAWW if the insurer fails to appear at conciliation. The purpose of the conference is to compile the evidence and to identify the issues in dispute. The AJ may require both injury and hospital records. A conference order may be appealed to a hearing within 14 days from the filing date of such order.

At the hearing, the AJ reviews the dispute according to oral and written documentation. The procedure at a hearing is formal and a verbatim transcript of the legal proceeding is recorded by a stenographer. Witnesses are examined and cross-examined according to the Massachusetts Rules of Evidence. The AJ may grant a continuance for reasons beyond the control of any party. Either party may appeal a hearing decision within 30 days.

This time limit for appeals may be extended up to one year for reasonable cause. A fee of 30% of the state average weekly wage must accompany the appeal. The claim will then proceed to the reviewing board, where a panel of ALJ's will hear the case.

At the reviewing board, a panel of three ALJ's review the evidence presented at the hearing. The ALJ's may request oral arguments from both sides. They can reverse the AJ's decision only if they determine that the decision was beyond the scope of authority, arbitrary, capricious, or contrary to law. The panel is not a fact-finding body, although it may recommit a case to an AJ for further findings of fact.

All orders from the dispute resolution process may be enforced by the Superior Court of the Commonwealth. Reviewing Board cases may also be appealed to the Appeals Court. The cost of appeals are reimbursed to the claimant (in addition to the award of the judgment), if the claimant prevails.

## **Lump Sum Settlements**

A case can be resolved at any point during the DIA's three-step dispute resolution process by either settlement or by the decision of an Administrative Judge (AJ) or Administrative Law Judge (ALJ).

Conciliators may "review and approve as complete" lump sum settlements, a standard that allows the conciliator to review a completed lump sum settlement. Conciliators or the parties at conciliation may also refer a case to a lump sum conference, where an ALJ will decide if a lump sum settlement is in the best interest of the parties.

AJ's, at the conference or hearing level of dispute resolution, may approve lump sum settlements in the same manner that an ALJ approves a settlement at the lump sum conference. AJ's and ALJ's must determine whether settlements are in the best interest of the employee, and they may reject a settlement offer if it appears to be inadequate. Dispute resolution begins at conciliation, where a conciliator will attempt to resolve a dispute by informal means.

## **Alternative Dispute Resolution Measures**

**Arbitration & Mediation** - At any time prior to five days before a conference, a case may be referred to an independent arbitrator. The arbitrator must make a decision whether to vacate or modify the compensation pursuant to M.G.L. c.251, §12 and §13. The parties involved may agree to bring the matter before an independent mediator at any stage of the proceeding. Mediation shall in no way disrupt the dispute resolution process, and any party may continue with the process at the DIA if they decide to do so.

**Collective Bargaining** - An employer and a recognized representative of its employees may engage in collective bargaining to establish certain binding obligations and procedures related to workers' compensation. Agreements are limited to the following topics: supplemental benefits under §34, §34A, §35, and §36; alternative dispute resolution (arbitration, mediation, conciliation); limited list of medical providers; limited list of impartial physicians; modified light duty return to work program; adoption of a 24-hour coverage plan; establishing safety committees and safety procedures; and establishing vocational rehabilitation or retraining programs.

## SUMMARY OF BENEFITS

An employee who is injured during the course of employment or suffers from work-related mental or emotional disabilities, as well as occupational diseases, is eligible for workers' compensation benefits. These benefits include weekly compensation for lost income during the period the employee cannot work.

Indemnity payments vary, depending on the average weekly wage of the employee (AWW) and the degree of incapacitation. The statute dictates that the maximum benefit be set at 100% of the State Average Weekly Wage (SAWW) and that a minimum benefit of at least 20% of the SAWW.<sup>3</sup> In addition, the insurer is required to furnish medical and hospital services, as well as any medicines if needed. The insurer must also pay for vocational rehabilitation services if the employee is determined to be suitable by the DIA.

Below is a list of the SAWW's, since 1993, and the maximum (SAWW) and minimum benefit levels for §34 and §34A claims. In October of 2006, the SAWW increased by \$41.85 from the previous year.

**Table 1: Indemnity Benefits**

<u>Effective Date</u>	<u>Maximum Benefit</u>	<u>Minimum Benefit</u>
10/1/93	\$565.94	\$113.19
10/1/94	\$585.95	\$117.19
10/1/95	\$604.03	\$120.81
10/1/96	\$631.03	\$126.21
10/1/97	\$665.55	\$131.11
10/1/98	\$699.91	\$131.98
10/1/99	\$749.69	\$149.93
10/1/00	\$830.89	\$166.18
10/1/01	\$890.94	\$178.19
10/1/02	\$882.57	\$176.51
10/1/03	\$884.46	\$176.89
10/1/04	\$918.78	\$183.76
10/1/05	\$958.58	\$191.72
<b>10/1/06</b>	<b>\$1,000.43</b>	<b>\$200.09</b>

**Source:** DIA Circular Letter No. 321 - Table I (October 1, 2006)

<sup>3</sup>The Statewide Average Weekly Wage (SAWW) is determined under M.G.L. c.151A, §29(2) & promulgated by the Director the Division of Employment and Training. As of October 1, 2006, the SAWW is \$1000.43.

## **Indemnity and Supplemental Benefits**

The following are the various forms of indemnity and supplemental benefits employees may receive depending on their average weekly wage, state average weekly wage, and their degree of disability.

**Temporary Total Disability (§34)** - Compensation will be 60% of the employee's average weekly wage (AWW) before injury, while remaining above the minimum and below the maximum payments that are set for each form of compensation. The maximum weekly compensation rate is 100% of the state average weekly wage (**\$1,000.43**), while the minimum is 20% of the SAWW (**\$200.09**), if claims involve injuries occurring on or after October 1, 2006. The limit for temporary benefits is 156 weeks.

**Partial Disability (§35)** - Compensation is 60% of the difference between the employee's AWW before the injury and the weekly wage earning capacity after the injury. This amount cannot exceed 75% of temporary benefits under §34 if they were to receive those benefits. The maximum benefit period is 260 weeks for partial disability, but may be extended to 520 weeks.

**Permanent and Total Incapacity (§34A)** - Payments will equal 66.67% of the AWW following the exhaustion of temporary (§34) and partial (§35) payments. The maximum weekly compensation rate is 100% of the state average weekly wage (**\$1,000.43**), while the minimum is 20% of the SAWW (**\$200.09**), if claims involve injuries that occurred on or after October 1, 2006. The payments must be adjusted each year for cost of living allowances (COLA benefits).

**Death Benefits for Dependents (§31)** - The widow or widower that remains unmarried shall receive 2/3 of the worker's AWW, but not more than the state's AWW or less than \$110 per week. They shall also receive \$6 per week for each child (not to exceed \$150 in additional compensation). There are also benefits for other dependents. Benefits paid to all dependents cannot exceed 250 times the state AWW plus any cost of living increases (COLA). However, children under 18 years old may continue to receive payments even if the maximum has been reached. Burial expenses may not exceed \$4,000.

**Subsequent Injury (§35B)** - An employee who has been receiving compensation, has returned to work for two months or more and is subsequently re-injured, will receive compensation at the rate in effect at the time of the new injury (unless the old injury was paid in a lump sum). If the old injury was settled with a lump sum, then the employee will be compensated only if the new claim can be determined to be a new injury.

## Attorney's Fees

The dollar amounts specified for attorney's fees are listed in M.G.L. c.152, §13A(10). As of October 1, 2006, subsections 1 through 6 were updated to reflect adjustments to the State Average Weekly Wage. Below is a summary of the attorney's fee schedule:

(1) When an insurer refuses to pay compensation within 21 days of an initial liability claim but prior to a conference agrees to pay the claim (with or without prejudice), the insurer must pay an attorney's fee of **\$985.01** plus necessary expenses. If the employee's attorney fails to appear at a scheduled conciliation, the amount paid is **\$492.50**.

(2) When an insurer contests a liability claim and is ordered to pay by an Administrative Judge at conference, the insurer must pay the employee's attorney a fee of **\$1,407.15**. The Administrative Judge can increase or decrease this fee based on the complexity of a case and the amount of work an attorney puts in. If the employee's attorney fails to appear at a scheduled conciliation, the fee may be reduced to **\$703.57**.

(3) When an insurer contests a claim for benefits other than the initial liability claim (as in subsection 1) and fails to pay compensation within 21 days, yet agrees to pay the compensation due, prior to conference, the insurer must pay the employee's attorney fee in the amount of **\$703.57** plus necessary expenses. This fee can be reduced to **\$351.79** if the employee's attorney fails to appear at a scheduled conciliation.

(4) When an insurer contests a claim for benefits or files a complaint to reduce or discontinue benefits by refusing to pay compensation within 21 days, and the order of the Administrative Judge after a conference reflects the written offer submitted by the claimant (or conciliator on the claimant's behalf), the insurer must pay the employee's attorney a fee of **\$985.01** plus necessary expenses. If the order reflects the written offer of the insurer, no attorney fee should be paid. If the order reflects an amount different from both submissions, the fee should be in the amount of **\$492.50** plus necessary expenses. Any fee should be reduced in half if the employee's attorney fails to show up to a scheduled conciliation.

(5) When the insurer files a complaint or contests a claim and then, either a) accepts the employee's claim or withdraws its own complaint within 5 days of a hearing, or b) the employee prevails at a hearing, the insurer shall pay a fee to the employee's attorney in the amount of **\$4,925.03** plus necessary expenses. An Administrative Judge may increase or decrease this amount based on the complexity of the case and the amount of work an attorney puts in.

(6) When the insurer appeals the decision of an Administrative Judge and the employee prevails in the decision of the Reviewing Board, the insurer must pay a fee to the employee's attorney in the amount of **\$1,407.15**. An Administrative Judge may increase or decrease this amount based on the complexity of the case and the amount of work an attorney puts in.

# SECTION

## - 2 -

### *WORKPLACE INJURY & CLAIM STATISTICS*

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## OCCUPATIONAL INJURIES AND ILLNESSES

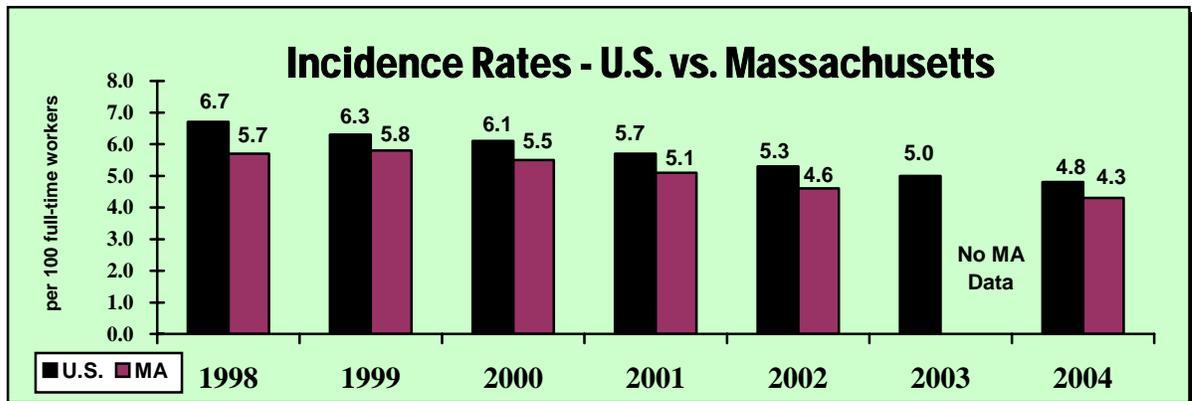
Since 1992, the Division of Occupational Safety (DOS) has been in a partnership with the U.S. Department of Labor, Bureau of Labor Statistics (BLS), in an effort to collect injury and illness data in a uniform format. Throughout the country, surveys are collected from over 173,800 private industry establishments in an effort to represent the total private economy. Once data has been correlated, these statistics are published in a document known as the *Annual Survey of Occupational Injuries and Illnesses*. Funding for the annual survey is split 50/50 between state (DOS) and the federal (BLS) government.

On January 1, 2002, the Occupational Safety and Health Administration (OSHA) revised its requirement for recording occupational injuries and illnesses. The DOS now collects data using the North American Industry Classification System (NAICS), rather than the Standard Industrial Classification System (SICS). Because of the revised requirements, the estimates from the 2002 and 2004 survey are not comparable with those from prior years. Massachusetts did not participate in the 2003 annual survey program due to a lack of state-funding for DOS.

### Injury and Illness Incidence Rates

Incidence rates are calculated to measure the frequency of injuries. Specifically, the study examines the frequency of non-fatal injuries and illnesses that occurred in the private sector workforce (not including the self-employed, farms with less than 11 employees, private households, and employees in Federal, State and local government) for every 100 full-time workers. Each year the level of incidence rates can be influenced by changes in the economic climate, working conditions, an employer's emphasis on safety, and the number of hours that employees work. In 2004, Massachusetts had a population of 6,416,505 people with a private sector employment of 2,718,600 workers.

During 2004, the private sector workforce in the United States experienced 4.3 million non-fatal injuries and illnesses, resulting in an incidence rate of 4.8 cases per 100 full-time workers. In Massachusetts alone, there were 93,400 occupational injuries and illnesses, resulting in an incidence rate of 4.3. The graph below shows how occupational injury and illness rates have steadily declined at both the national level and within Massachusetts from 1998 to 2004. The graph also displays how incidence rates in Massachusetts have consistently remained lower than the national rates.



## Incidence Rates by Region

The following table exhibits a regional breakout of the injury and illness incident rates per 100 full-time workers since 1998. The table demonstrates the downward trend in incidence rates both nationally and within Massachusetts. In 2004, Massachusetts had an incident rate of 4.3 work-related injuries or illnesses (resulting in lost work-time) for every 100 full-time workers in private industry. In 2004, the national average for injury and illness incident rates was 4.8.

**Table 2: Injury and Illness Incidence Rates - U.S. and New England 1998-2004 (Private Industry)**

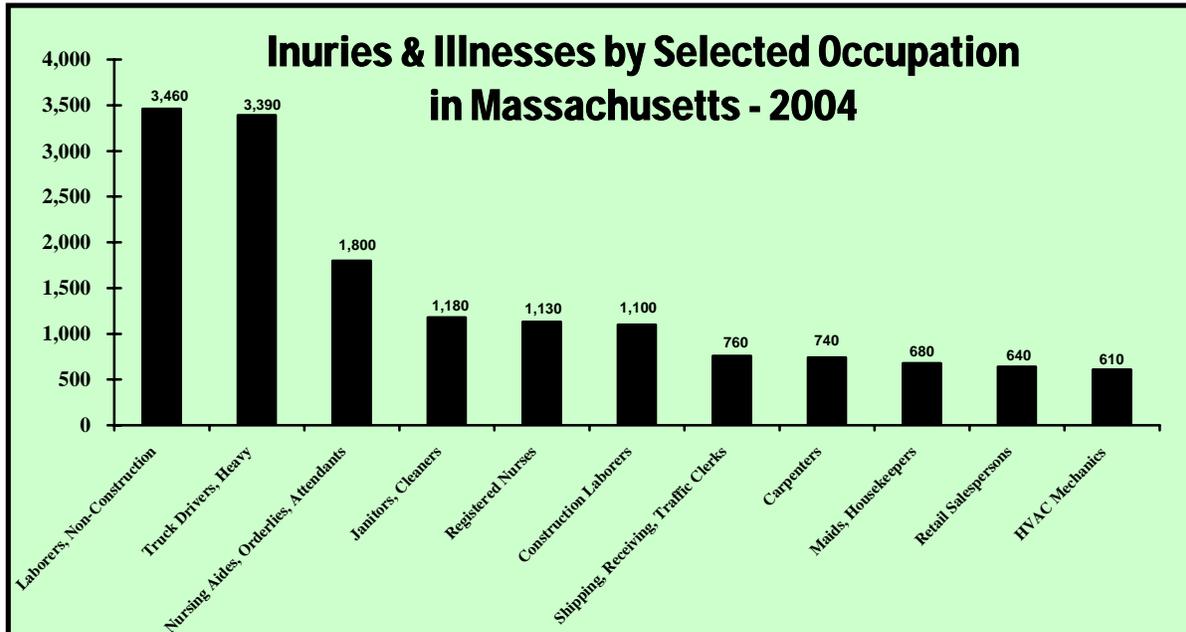
<i>Region</i>	<i>2004</i>	<i>2003</i>	<i>2002</i>	<i>2001</i>	<i>2000</i>	<i>1999</i>	<i>1998</i>
United States.....	4.8	5.0	5.3	5.7	6.1	6.3	6.7
Massachusetts.....	4.3	no data	4.6	5.1	5.5	5.8	5.7
Connecticut.....	5.2	5.1	5.4	6.3	6.7	6.8	7.1
Maine.....	6.6	7.7	8.1	8.7	9.0	9.3	9.2
Rhode Island.....	5.2	5.4	5.3	6.8	no data	7.0	6.7
Vermont.....	5.6	5.2	6.7	7.0	6.9	7.6	6.9
New Hampshire...	no data						

Source: Bureau of Labor Statistics - Boston Office.

## Injuries & Illnesses by Occupation

The survey also has the ability to categorize the number of injuries and illnesses by occupation in Massachusetts. In 2004, laborers (non-construction) and truck drivers had the highest number of injuries and illnesses involving days away from work in Massachusetts.

**Figure 3: Injuries & Illnesses by Selected Occupation in Massachusetts - 2004**



Source: Bureau of Labor Statistics - Boston Office.

## Incidence Rates by Industry

The survey also has the ability to categorize incidence rates by industry. In Massachusetts, the agriculture, forestry, and fishing industry had the highest overall incidence rate in 2002, with 7.8 injuries for every 100 full-time workers. Finance, insurance and real estate had the lowest incidence rates, with 1.1 injuries per 100 workers.

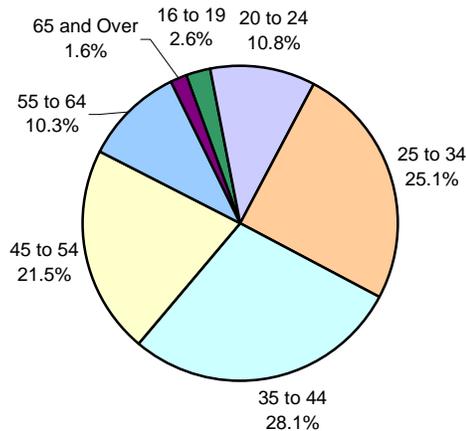
**Table 3: Nonfatal Injury & Illness Incidence Rates by Industry - Massachusetts 1998-2004**

<b>MASSACHUSETTS (Selected Industry Division)</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>	<b>1998</b>
<b>Private Industry:</b>	<b>4.3</b>	<b>no data</b>	<b>4.6</b>	<b>5.1</b>	<b>5.5</b>	<b>5.8</b>	<b>5.7</b>
Agriculture, forestry, and fishing:	4.5	no data	7.8	8.1	7.7	11.6	10.8
Construction:	6.9	no data	6.8	9.0	9.4	9.5	9.0
Manufacturing:	4.5	no data	5.3	5.4	6.0	6.3	6.6
Trade, Transportation & Utilities:	5.2	no data	7.4	8.2	8.2	8.1	9.3
Wholesale trade:	4.2	no data	5.5	5.4	7.6	6.1	6.2
Retail trade:	4.7	no data	5.3	5.7	6.6	6.8	5.8
Finance Activities:	1.2	no data	1.1	1.4	1.4	1.7	1.9

Source: Bureau of Labor Statistics - Boston Office.

## Case & Demographic Data - All Private Industries (MA)

Pie-Chart 1: Percent distribution of nonfatal injuries and illnesses involving days away from work by age of worker, all private industries, 2004

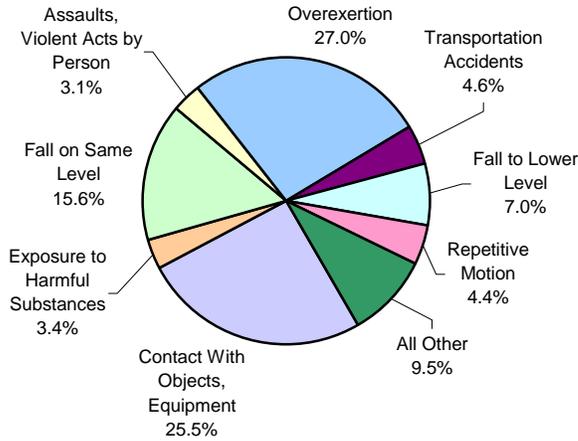


### Age

In 2004, workers aged 35 to 44 had the highest number of nonfatal occupational injuries and illnesses in Massachusetts (28%). Following close behind were workers aged 25 to 34 (25%) and workers aged 45 to 54 (22%).

Source: Massachusetts Division of Occupational Safety and the U.S. Department of Labor.

Pie-Chart 2: Percent distribution of nonfatal injuries and illnesses involving days away from work by event or exposure, all private industries, 2004

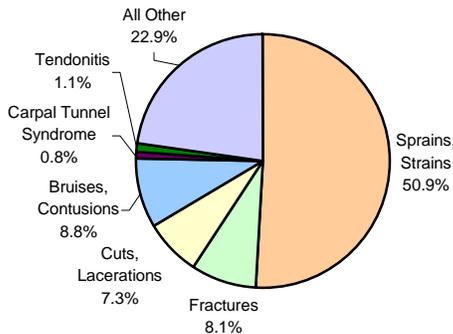


## Event or Exposure

In 2004, most nonfatal injuries in Massachusetts were caused by overexertion (27%) or contact with objects or equipment (26%). Falls on the same level accounted for 16% of the injuries, whereas, falls to a lower level accounted for 7% of the injuries.

Source: Massachusetts Division of Occupational Safety and the U.S. Department of Labor.

Pie-Chart 3: Percent distribution of nonfatal occupational injuries and illnesses involving days away from work by nature of injury or illness, all private industries, 2004

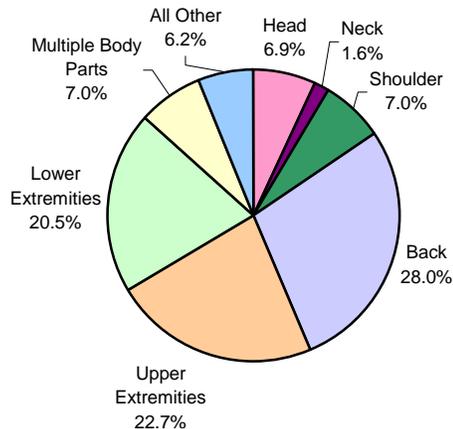


## Nature of Injury

In 2004, sprains and strains made up just over half of all nonfatal injuries and illnesses in Massachusetts.

Source: Massachusetts Division of Occupational Safety and the U.S. Department of Labor.

Pie-Chart 4: Percent distribution of nonfatal injuries and illnesses involving days away from work by part of body, all private industries, 2004



## Part of Body

In 2004, the back and upper extremities (arm, wrist, hand, finger and/or elbow) made up over half of all total nonfatal injuries and illnesses in Massachusetts.

Source: Massachusetts Division of Occupational Safety and the U.S. Department of Labor.

# OCCUPATIONAL FATALITIES

Fatal work injuries are calculated nationally each year by the U.S. Department of Labor, Bureau of Labor Statistics. The program, known as the *National Census of Fatal Occupational Injuries*, tracks data from various states and federal administrative sources including death certificates, workers' compensation reports and claims, reports to various regulatory agencies, and medical examiner reports. Much like the *Annual Survey of Occupational Injuries and Illnesses*, this census is a federal/state cooperative venture.

In 2005, a total of 5,702 work-related fatalities were recorded nationally by the program, representing a small decrease from the revised total of 5,764 fatalities in 2004. Although the number of workplace fatalities decreased minimally on the national level, the workplace fatality rate virtually remained the same in Massachusetts from the previous year (75 fatalities in 2005 / 72 fatalities in 2004).

## Workplace Fatalities in Massachusetts

In 2005, the leading cause of workplace death in Massachusetts came from transportation incidents in which 23 workers were killed. Nationally, transportation incidents were also the leading cause of on-the-job fatalities, accounting for 43% of the fatal work injuries in 2005. Following transportation incidents in Massachusetts, workers were killed by contact with objects and equipment (15), falls (14), assaults and violent acts (12), exposure to harmful substances (7) and Fires & Explosions (4).

**Figure 4: Fatal Occupational Injuries by State and Event or Exposure, 2005 (Northeast Region)**

State of Injury	Total Fatalities		Event or Exposure (state total for 2005)					
	2004	2005	Transportation Incidents	Assaults & Violent Acts	Contact with Objects & Equipment	Falls	Exposure to Harmful Substances	Fires & Explosions
U.S. Total.....	5,764	5,702	2,480	787	1,001	767	496	158
Northeast.....	784	740	294	133	125	109	46	16
Massachusetts....	72	75	23	12	15	14	7	4
Connecticut.....	54	46	12	14	10	8	--	--
Maine.....	16	15	5	--	5	3	--	--
New Hampshire..	15	18	9	--	5	3	--	--
New Jersey.....	129	111	51	17	16	15	6	5
New York.....	254	239	87	49	40	33	23	7
Pennsylvania.....	230	223	107	41	30	33	10	--
Rhode Island.....	7	6	--	--	--	--	--	--
Vermont.....	7	7	--	--	4	--	--	--

Source: Bureau of Labor Statistics, News-USDL-06-1364



# SECTION

# - 3 -

## *DISPUTE RESOLUTION*

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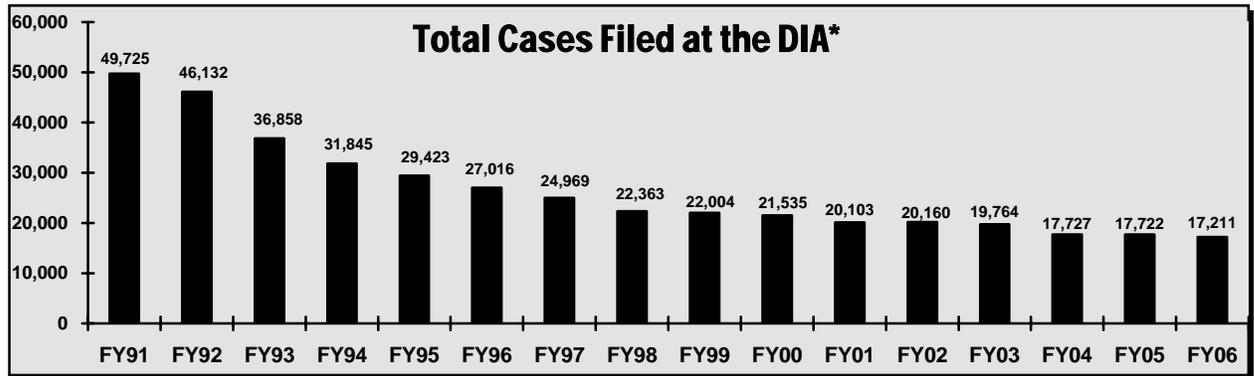
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## CASES FILED AT THE DIA

Cases originate at the DIA when any of the following are filed: *an employee's claim for benefits, an insurer's complaint for termination or modification of benefits, a third party claim, a request for approval of a lump sum settlement, or a Section 37/37A request.* As demonstrated in *Figure 5*, there has been a significant decline (-65%) in the DIA caseload since the implementation of the 1991 Reform Act. In FY'06, the total number of cases filed at the DIA decreased by 3% from the previous fiscal year.

**Figure 5: Total Cases Filed at the DIA, FY'91 - FY'06**



Source: CMS Report 28

Employee claims, which account for 76% of the total cases filed at the DIA, increased slightly by 125 cases in FY'06. In 1991, employee claims reached an all time high of 23,240 cases filed. Employee claims have decreased by 44% since 1991. Insurers who request for discontinuance or modification of benefits, which account for 14% of the total cases, decreased slightly by 98 cases in FY'06. Since the 1991 Reform Act, these insurer requests for discontinuance have decreased by 78%.

**Table 4: Breakdown of Total Cases Filed at the DIA, Fiscal Year 2006 and Fiscal Year 2005**

Total Cases Filed at the DIA FY'06 and FY'05	Number of Cases		Percentage	
	FY'06	FY'05	FY'06	FY'05
Employee Claims	12,995	12,870	75.5%	72.6%
Insurer's Request for Discontinuance	2,468	2,566	14.3%	14.5%
Lump Sum Conference Request	997	1,111	5.8%	6.3%
Third Party Claims	414	888	2.4%	5.0%
Section 37/37A Request	337	287	2.0%	1.6%
<b>TOTALS:</b>	<b>17,211</b>	<b>17,722</b>	<b>100%</b>	<b>100%</b>

Source: CMS Report 28

## CONCILIATION

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The first stage of the dispute resolution process is known as the conciliation. The main objective of the conciliation is to remove cases that can be resolved without formal adjudication from the dispute resolution system. At this stage, cases are reviewed for documentation substantiating the positions of both sides of the dispute. Conciliators are empowered to withdraw or reschedule a case until adequate documentation is presented. Although conciliators may encourage the parties to work out a settlement, they have no authority to order the parties to resolve their differences. Approximately 43% of the cases that are scheduled for conciliation are “resolved” as a result of this process and exit the dispute resolution system. Such resolved cases take on a broad range of dispositions including withdrawals, lump sum settlements, and conciliated cases. The remaining 57% of cases are referred from conciliation to a conference.

### The Conciliation Process

Conciliations are scheduled automatically by computer through the Data Processing Unit. Attendance of both the insurer and the employee is required. The employer may attend, as well as other interested parties, with the permission of all parties. All relevant issues (including causal relationship, disability, medical condition, etc.) are reviewed at the meeting.

When liability is not an issue but modification or discontinuance of benefits is sought, both parties are required to submit written settlement offers. If the employee fails to file, the conciliator must record either the last offer made by the employee or the maximum compensation rate. If the insurer fails to file, the conciliator must record the last offer made by them, or record a zero. In an effort to promote compromise, the last, best offer should indicate what each party believes the appropriate compensation rate should be.

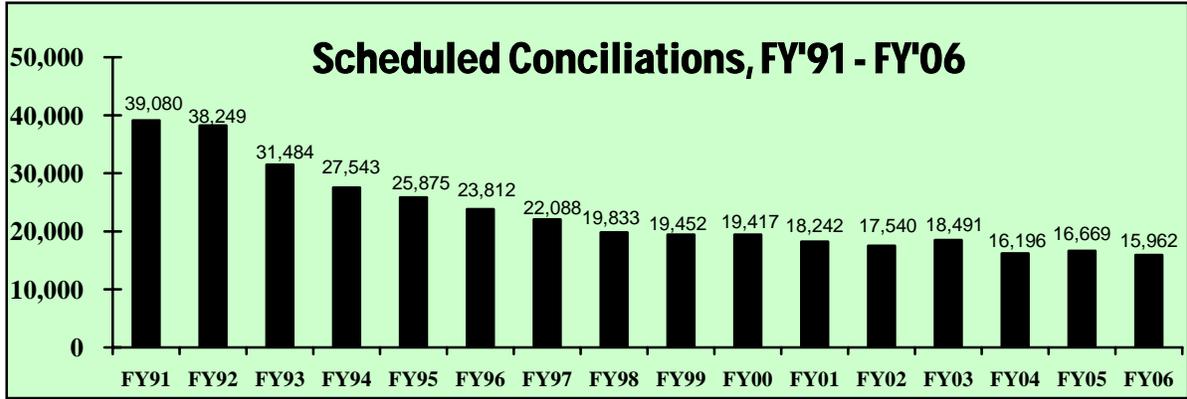
A conciliator’s recommendation is written into the case file and the disposition is recorded in the DIA’s Case Management System (CMS).

### Volume of Scheduled Conciliations

The number of cases reviewed at conciliation is indicative of the total volume of disputed claims, as nearly every case to be adjudicated must first go through conciliation. The caseload of scheduled conciliations peaked in 1991 at 39,080 cases. In FY’06, there were 15,962 cases scheduled for conciliation, which represents a 59% decrease since the Workers' Compensation Reform Act of 1991.

*Figure 6* displays the number of cases scheduled for conciliation at the DIA beginning in fiscal year 1991. In fiscal year 2006, the volume of cases scheduled for conciliation decreased by 4% (707 cases) from the previous year. It is important to note that many cases scheduled for a conciliation may never actually appear before a conciliator as cases can be withdrawn or adjusted prior to the scheduled meeting.

Figure 6: Volume of Cases Scheduled for Conciliation, FY'91-FY'06



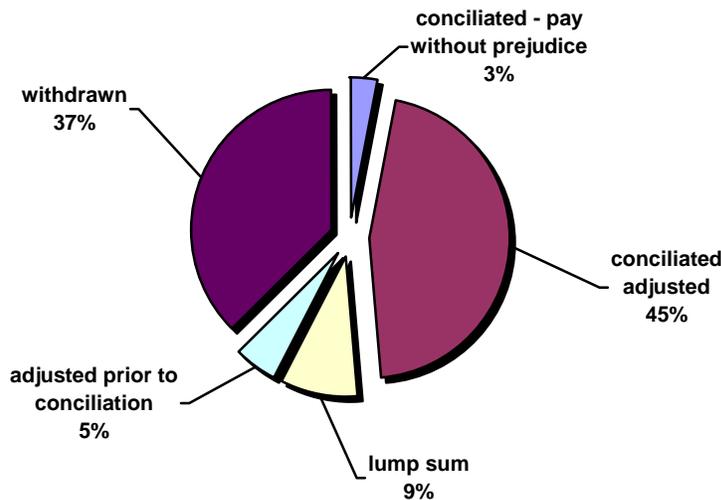
Source: CMS Report 17

### Resolved at Conciliation

Disputed cases that are scheduled for a conciliation can be divided into two distinct outcomes: “referred to conference,” or “resolved.” In FY’06, 6,853 cases were resolved (they were not referred on to a conference) and exited the dispute resolution system. Approximately 43% of cases that are scheduled for a conciliation are resolved while the remaining 57% of cases are referred to conference, the next stage of dispute resolution. As in previous years, a small percentage of the cases scheduled for conciliation are referred to conference without a conciliation taking place. This occurs when the respondent (the party not putting forth the case) does not appear for the conciliation.

Figure 7: Pie-Chart Detailing Cases Resolved at Conciliation, Fiscal Year 2006

### Resolved at Conciliation, Fiscal Year 2006



Source: CMS Report 17

**Table 5: Resolved at Conciliation, Fiscal Year 2006 and Fiscal Year 2005**

<b>Resolved at Conciliation FY'06 and FY'05</b>	<b>Number of Cases</b>		<b>Percentage</b>	
	<b>FY'06</b>	<b>FY'05</b>	<b>FY'06</b>	<b>FY'05</b>
Conciliated - Pay Without Prejudice	214	163	3.1%	2.2%
Conciliated Adjusted	3,078	3,256	44.9%	44.5%
Lump Sum	640	704	9.3%	9.6%
Adjusted Prior to Conciliation	356	446	5.2%	6.1%
Withdrawn	2,565	2,746	37.4%	37.5%
<b>TOTALS:</b>	<b>6,853</b>	<b>7,315</b>	<b>100%</b>	<b>100%</b>

Source: CMS Report 17

As displayed in *Table 5*, cases may be conciliated by two methods. Approximately 45% of the resolved cases were “conciliated-adjusted,” meaning an agreement was reached at conciliation between the parties to initiate, modify, or terminate the compensation. Secondly, cases may be “conciliated - pay without prejudice” (3% of resolved cases in FY’06), meaning the pay without prejudice period has been extended and the insurer may discontinue compensation without DIA or claimant approval.

The table also indicates that the second most prevalent method a case can exit the dispute resolution system at conciliation is through a withdrawal (2,565 cases in FY’06). A case can be withdrawn under various methods. Either before or during the conciliation, the moving party may choose to withdraw the case. A case can also be withdrawn by the agency if the parties either fail to show up for a conciliation or provide the required information.

A case may also be resolved at conciliation utilizing a lump sum settlement. Conciliators are empowered by law to approve lump sum agreements "as complete" but cannot make a determination that the lump sum is in the claimants "best interest." At conciliation, lump sum settlements only account for 9% of the resolved cases at this level of dispute resolution. The percentage of resolved cases that result in a lump sum increase dramatically at both conference and hearing stages.

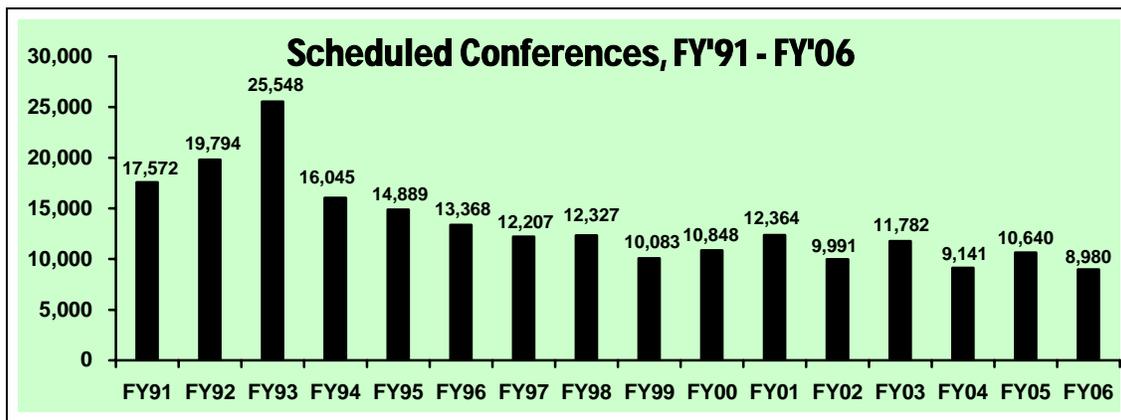
# CONFERENCE

The second stage of the dispute resolution process is known as the conference. Each case referred to a conference is assigned an Administrative Judge (AJ) who must retain the case throughout the entire process if possible. The intent of the conference is to compile the evidence and to identify the issues in dispute. The AJ may require injury and medical records as well as statements from witnesses. Although the conference is an informal proceeding, the AJ will issue a binding order shortly after the conference has concluded. This conference order is subject to appeal by the parties. The conference order is a short, written document requiring an AJ's initial impression of compensability, based upon a summary presentation of facts and legal issues at the conference meeting. Conference orders give the parties an understanding as to how the judge might find at a full evidentiary hearing thus providing incentives to pursue settlements or devise return to work arrangements. Approximately 86% of all conference orders in a given fiscal year are appealed to the hearing level of dispute resolution. In the remaining 14% of conference orders, the parties either accept the order or otherwise voluntarily adjust, withdraw or settle the matter.

## Volume of Scheduled Conferences

Conferences are scheduled by the Scheduling Unit at the DIA. This occurs after a conciliation has taken place and was unsuccessful at bringing the parties together to reach an agreement on the disputed issues. The number of conferences scheduled in FY'06 decreased by 16% (10,640 in FY'05 to 8,980 in FY'06) from last fiscal year.<sup>4</sup> Each year, the number of conferences scheduled is greater than the number of conferences that will actually take place before an Administrative Judge since many cases are withdrawn or resolved before ever reaching a conference.

Figure 8: Scheduled Conferences, FY'91 - FY'06



Source: CMS Report 45AB (Conference Statistics - For Scheduled Dates)

<sup>4</sup> In an effort to avoid duplication, the number of "scheduled conferences" does not include cases that were "rescheduled for a conference." In FY'06, 1,548 cases were "rescheduled for a conference."

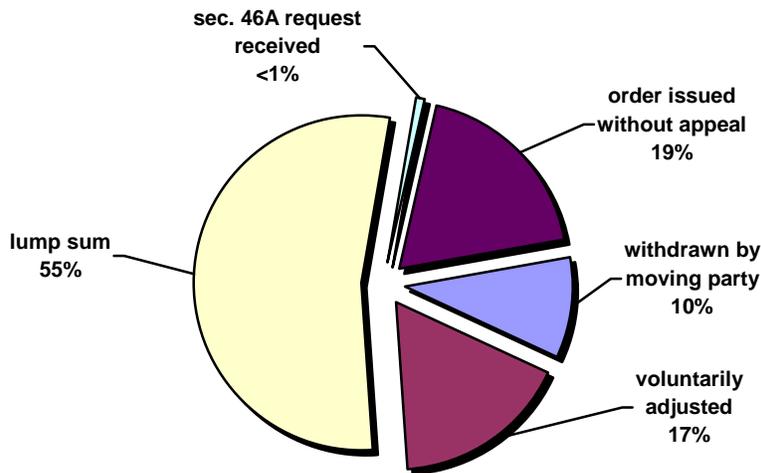
## Cases Resolved at Conference

Each year, thousands of disputed cases are resolved at the conference level of the dispute resolution process and will not be forwarded to a hearing. In fiscal year 2006, 4,437 cases were resolved at the conference level and exited the dispute resolution system. Although a case may be resolved at the conference level, this does not necessarily mean that the parties appeared before an Administrative Judge. Often a case may be withdrawn before a scheduled conference takes place either by the moving party or by the Administrative Judge. Furthermore, when a case is directed to a lump sum conference or is voluntarily adjusted, it may never actually reach the scheduled conference.

Figure 9 and Table 6 display the various methods a disputed case can be resolved at conference.

Figure 9: Pie-Chart Detailing Cases Resolved at Conference, Fiscal Year 2006

### Resolved at Conference, Fiscal Year 2006



Source: CMS Reports 434, 319AB, 476A, 431

Table 6: Cases Resolved at Conference, Fiscal Year 2006 and Fiscal Year 2005

Resolved at Conference FY'06 and FY'05	Number of Cases		Percentage	
	FY'06	FY'05	FY'06	FY'05
Withdrawn by Moving Party	449	566	10.1%	11.2%
Voluntarily Adjusted	741	870	16.7%	17.2%
Lump Sum	2,417	2,565	54.5%	50.8%
Section 46A Request Received	7	8	<1%	<1%
Order Issued Without Appeal	823	1,037	18.5%	20.6%
<b>Total</b>	<b>4,437</b>	<b>5,046</b>	<b>100%</b>	<b>100%</b>

Source: CMS Reports 434, 319AB, 476A, 431

As displayed in *Table 6* there are various methods by which a disputed case can be resolved at the conference level. First, the moving party may decide to withdraw the case completely from the system. In fiscal year 2006, 449 cases (10% of resolved cases at conference) exited the system in this manner.

Second, the parties may agree to have the case voluntarily adjusted. This occurs at the conference when a compromise on any part of the case (benefit level, benefit duration, etc.) can be reached among the parties. In fiscal year 2006, 741 cases (17% of resolved cases at conference) were voluntarily adjusted.

The most prevalent method in which a case exits the system at the conference level is through a lump sum settlement. Lump sum settlements may be approved either at a conference or a separate lump sum conference. The procedure is the same for both meetings. In some instances, the presiding AJ will hear the lump sum, while in others, an assigned ALJ will hear the case on a lump sum list. Most lump sum settlements are approved directly at the conference or the hearing level by the presiding AJ, rather than scheduling a separate meeting. In fiscal year 2006, 2,417 cases (55% of resolved cases at conference) exited the system through a lump sum.

Another method in which a case could exit the system is if a "Section 46A Request" is filed when there is an outstanding lien on a case that has been deemed compensable. A "Section 46A Request" occurs in conjunction with a lump sum settlement. The case is required to appear before an Administrative Law Judge (ALJ) to determine if reimbursement is owed out of the proceeds of the award. In fiscal year 2006, only 7 of these request have been documented.

Finally, the most obvious method in which a case can exit the system at the conference level is when the presiding Administrative Judge issues a conference order and it is not appealed by any of the parties to the hearing level. In fiscal year 2006, 823 conference orders (19% of resolved cases at conference) were issued by Administrative Judges, not resulting in an appeal. However, the vast majority of conference orders are appealed to the hearing stage of dispute resolution. In fiscal year 2006, 5,768 conference orders (88% of all conference orders) were appealed to a hearing.<sup>5</sup>

**Table 7: Conference Orders, FY'06 - FY'01**

<b>Conference Orders FY'06 - FY'01</b>	<b>Total Orders</b>	<b>Appealed</b>	<b>Without Appeal</b>
<b>Fiscal Year 2006</b>	<b>6,591</b>	5,768 (87.5%)	823 (12.5%)
<b>Fiscal Year 2005</b>	<b>7,494</b>	6,457 (86.2%)	1,037 (13.8%)
<b>Fiscal Year 2004</b>	<b>6,448</b>	5,609 (87.0%)	839 (13.0%)
<b>Fiscal Year 2003</b>	<b>7,899</b>	6,680 (84.6%)	1,219 (15.4%)
<b>Fiscal Year 2002</b>	<b>6,802</b>	5,841 (85.9%)	961 (14.1%)
<b>Fiscal Year 2001</b>	<b>8,486</b>	7,361 (86.7%)	1,125 (13.2%)

Source: CMS Reports 319AB, "Appealed Conference Order Statistics."

<sup>5</sup> CMS Report 319AB, "Appealed Conference Order Statistics."

## Conference Queue

The Senior Judge has explained that, depending on the number of available judges, a conference queue of between 1,500 and 2,000 cases can effectively be scheduled during the judges' regular cycles. If the queue increases beyond 2,000 cases, adjustments in scheduling and assignments would need to occur.

As *Figure 11* shows below, the conference queue during fiscal year 2006 remained well below the benchmark of 1,500 cases, thereby allowing cases to be efficiently scheduled. In FY'06 the conference queue ended 903 cases higher than the start of the year (237 on 7/6/05 and 1,140 on 6/28/06). The conference queue reached a high of 1,140 on 6/28/06 and a low of 102 on 11/21/05.

Figure 10: Conference and Hearing Queues; Fiscal Years 1991 - 2006

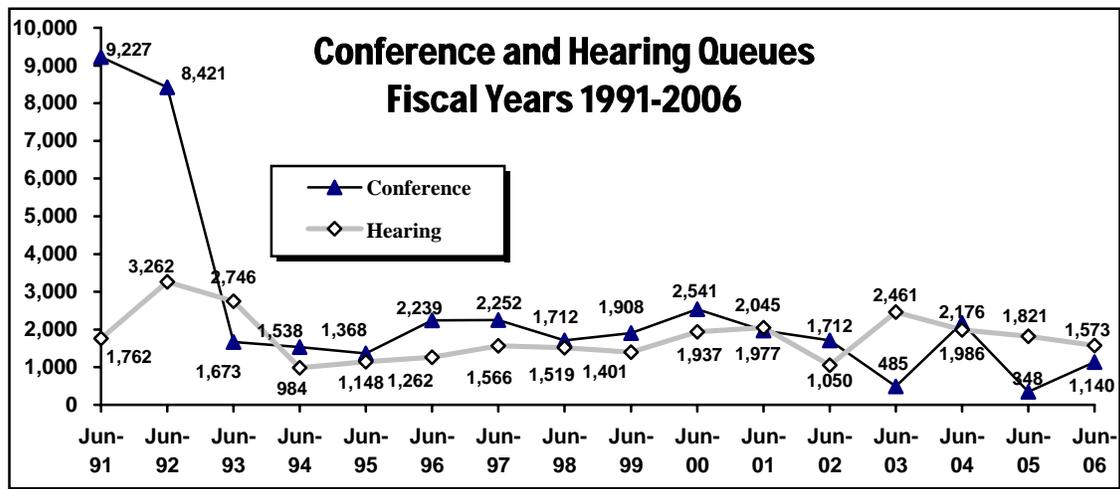
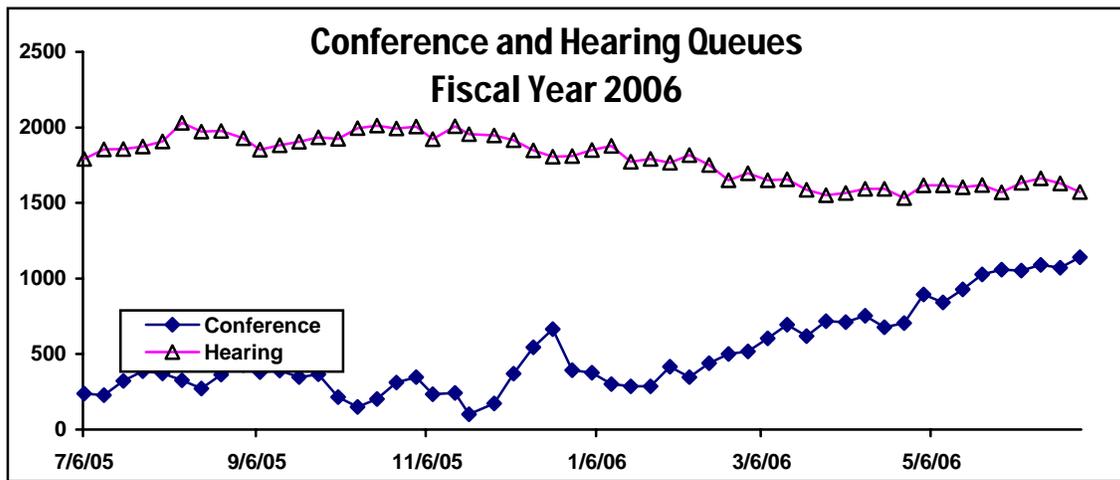


Figure 11: Conference and Hearing Queue; Fiscal Year 2006



Source: CMS Report 404

## HEARINGS

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The third stage of the dispute resolution process is known as the hearing. According to the Workers' Compensation Act, an Administrative Judge that presides over a conference must review the dispute at the hearing level, unless scheduling becomes "impractical." The procedure is formal and a verbatim transcript of the proceedings is recorded. Written documents are presented and witnesses are examined and cross-examined, in accordance with the Massachusetts Rules of Evidence. If the parties are disputing medical issues, an impartial physician will be selected from a DIA roster before the hearing takes place so that an Impartial Medical Examination (IME) of the injured employee can occur. At the hearing, the impartial physician's report is the only medical evidence that can be presented unless the judge determines the report to be "inadequate" or that there is considerable "complexity" of the medical issues that could not be fully addressed in the report. Any party may appeal a hearing decision within 30 days. This time may be extended up to 1-year for reasonable cause. Appealing parties must pay a fee of 30% of the state average weekly wage. The claim is then forwarded to the Reviewing Board.

### Hearing Queue

Much like conferences, hearings are scheduled by the Scheduling Unit at the DIA. This occurs after a conference has taken place and the judge's order has been appealed by any party. The scheduling of hearings is more difficult than conferences because the hearing must be assigned to the judge who heard the case at the conference level. This is especially problematic since judges have different conference appeal rates. A judge with a high appeal rate will generate more hearings than a judge with a low rate of appeal. This can create difficulty in evenly distributing cases, since hearing queues may occur for individual judges with high appeal rates.

It is difficult to compare the hearing queue with the conference queue because of the differences in the two proceedings. Hearings must be scheduled with the same judge who presided over the conference, whereas conferences are scheduled according to availability (when "judge ownership" is not yet a factor). Since hearings are also more time consuming than conferences, it takes more time to handle a hearing queue than a conference queue. Fiscal year 2006 began with a hearing queue of 1,791 and ended at 1,573. In the last seventeen years, the hearing queue has been as low as 409 cases in September 1989 and as high as 4,046 in November 1992.

### Volume of Scheduled Hearings

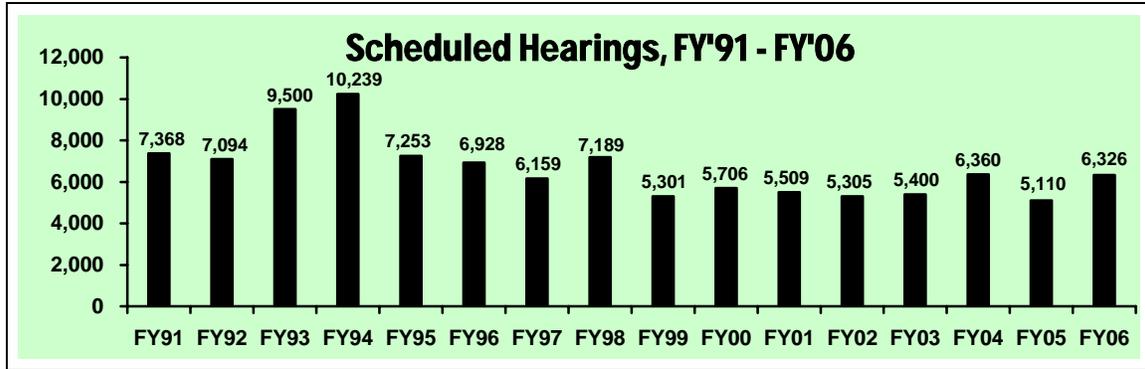
The number of hearings scheduled in FY'06 increased by 1,216 cases (5,110 in FY'05 to 6,326 in FY'06) from last fiscal year.<sup>6</sup> Each year, the number of hearings scheduled is greater than the number of hearings that will actually take place before an Administrative Judge since many cases are withdrawn or resolved before ever reaching a hearing.

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<sup>6</sup> In an effort to avoid duplication, the number of "scheduled hearings" does not include cases that were "rescheduled for a hearing." In FY'06, 4,074 cases were "rescheduled for a hearing."

The figure below shows that the number of "scheduled hearings" in fiscal year 2006 increased by 24% from the previous fiscal year.

Figure 12: Scheduled Hearings, FY'91 - FY'06



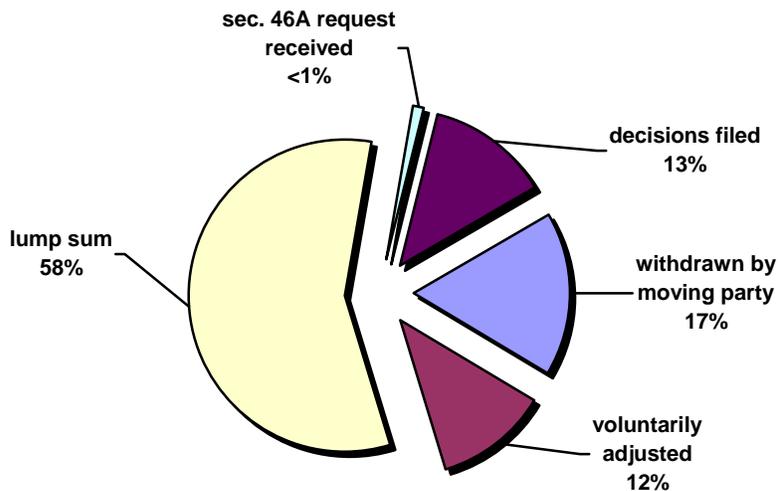
Source: CMS Report 46 (Hearing Statistics - For Scheduled Dates)

### Cases Resolved at Hearing

In fiscal year 2006, 5,579 cases were resolved at the hearing level. It is important to note that a case resolved at the hearing level does not necessarily exit the system as the parties have 30 days from the decision date to appeal a case to the reviewing board. Much like conferences, a case resolved at the hearing level does not mean that the case made it to the actual hearing as it may be withdrawn, voluntarily adjusted or a lump sum could occur prior to the proceeding. The following pie-chart and statistical table shows the various methods by which a disputed case can be resolved at hearing.

Figure 13: Pie-Chart Detailing Cases Resolved at Hearing, Fiscal Year 2006

### Resolved at Hearing, Fiscal Year 2006



Source: CMS Report 431

**Table 8: Cases Resolved at Hearing, Fiscal Year 2006 and Fiscal Year 2005**

<b>Resolved at Hearing FY'06 and FY'05</b>	<b>Number of Cases</b>		<b>Percentage</b>	
	<b>FY'06</b>	<b>FY'05</b>	<b>FY'06</b>	<b>FY'05</b>
Withdrawn by Moving Party	922	734	16.5%	15.0%
Voluntarily Adjusted	651	485	11.7%	9.9%
Lump Sum	3,229	2,955	57.9%	60.4%
Section 46A Request Received	35	31	<1%	<1%
Decisions Filed	742	684	13.3%	14.0%
<b>Total</b>	<b>5,579</b>	<b>4,889</b>	<b>100%</b>	<b>100%</b>

Source: CMS Report 431

As displayed in Table 8 there are various methods by which a disputed case can be resolved at the hearing level. First, the moving party may decide to withdraw the case completely from the system. In fiscal year 2006, 922 cases (17% of resolved cases at hearing) exited the system in this manner.

Second, the parties may agree to have the case voluntarily adjusted. This occurs at the hearing when a compromise on any part of the case (benefit level, benefit duration, etc.) can be reached among the parties. In fiscal year 2006, 651 cases (12% of resolved cases at hearing) were voluntarily adjusted.

Much like at the conference level, the most prevalent method by which a case exits the system at the hearing level is through a lump sum settlement. Lump sum settlements may be approved either at a hearing or at a separate lump sum conference. The procedure is the same for both meetings. Most lump sum settlements are approved directly at the conference or the hearing level by the presiding AJ, rather than scheduling a separate meeting. In fiscal year 2006, 3,229 cases (58% of resolved cases at hearing) exited the system through a lump sum settlement.

Another method in which a case could exit the system is if a "Section 46A Request" is filed when there is an outstanding lien on a case that has been deemed compensable. A "Section 46A Request" occurs in conjunction with a lump sum settlement. The case is required to appear before an Administrative Law Judge (ALJ) to determine if reimbursement is owed out of the proceeds of the award. In fiscal year 2006, only 35 of these requests have been documented at the hearing level.

Finally, the most obvious method by which a case can exit the system at the hearing level is when the presiding Administrative Judge issues a hearing decision. In fiscal year 2006, 742 hearing decisions (13% of resolved cases at hearing) were filed by Administrative Judges.

## REVIEWING BOARD

The fourth and final stage of dispute resolution at the DIA is known as the reviewing board. The reviewing board consists of six Administrative Law Judges (ALJ's) whose primary function is to review the appeals from hearing decisions. While appeals are heard by a panel of three ALJ's, initial pre-transcript conferences are held by individual ALJ's. The Administrative Law Judges also work independently to perform three other statutory duties: preside at lump sum conferences, review third party settlements (§15), and discharge and modify liens against an employee's lump sum settlement (§46A).

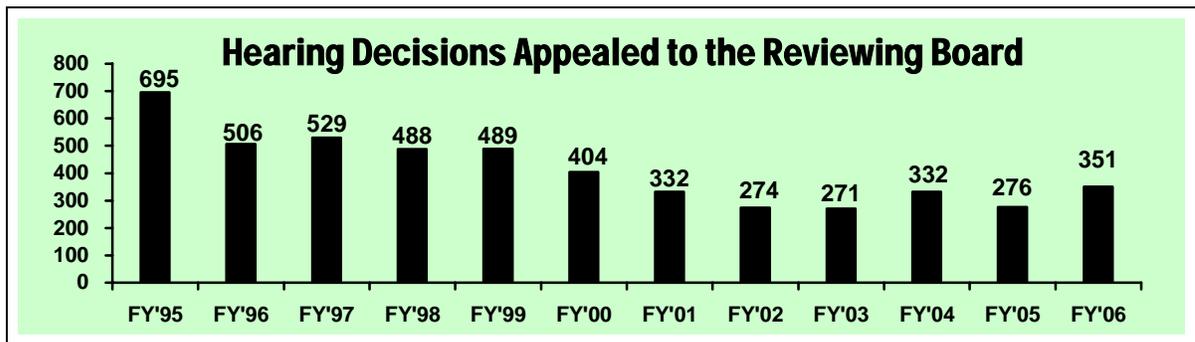
### Volume of Hearing Decisions Appealed to the Reviewing Board

An appeal of a hearing decision must be filed with the Reviewing Board no later than 30 days from the date of the decision. A filing fee of 30% of the state's average weekly wage, or a request for waiver of the fee, based on indigence, must accompany any appeal.

Pre-transcript conferences are held before a single ALJ to identify and narrow the issues, to determine if oral argument is required and to decide if producing a transcript is necessary. This is an important step that can clarify the issues in dispute and encourage some parties to settle or withdraw the case. Approximately 25% to 30% of the cases are withdrawn or settled following this first meeting. After the pre-transcript conference, the parties are entitled to a verbatim transcript of the appealed hearing.

Ultimately, cases that are not withdrawn or settled proceed to a panel of three ALJ's. The panel reviews the evidence presented at the hearing, as well as any findings of law made by the AJ. The appellant must file a brief in accordance with the board's regulations and the appellee must also file a response brief. An oral argument may be scheduled. The vast majority of cases are remanded for further findings of fact and/or review of conclusions of law. However, the panel may reverse the Administrative Judge's decision only when it determines that the decision was beyond the AJ's scope of authority, arbitrary or capricious, or contrary to law. The panel is not a fact-finding body, although it may recommit a case to an AJ for further findings of fact. The number of hearing decisions appealed to the Reviewing Board in fiscal year 2006 was 351.

Figure 14: Hearing Decisions Appealed to the Reviewing Board, FY'95 - FY'06

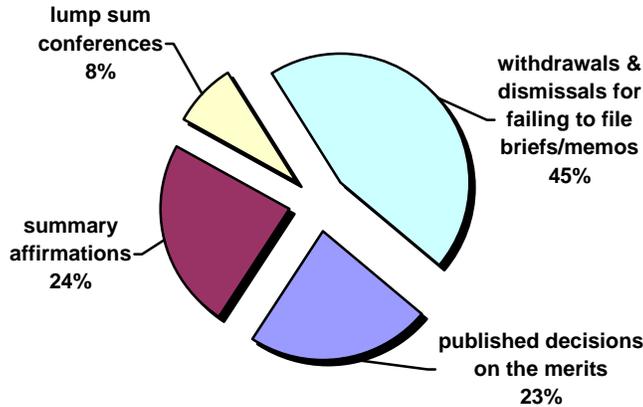


Source: CMS Report 46 (Hearing Statistics - For Scheduled Dates)

The Reviewing Board resolved 331 cases in FY'06 (some from the prior year) compared to 301 in the previous fiscal year.

**Figure 15: Appeals Resolved at the Reviewing Board, Fiscal Year 2006**

### Resolved at the Reviewing Board, Fiscal Year 2006



**Table 9: Appeals Resolved at the Reviewing Board, Fiscal Year 2006**

<b>Appeals Resolved at the Reviewing Board, FY'06</b>	<b>Number of Cases</b>
Published Decision on the Merits (Full Panel):	77 (23.3%)
Summary Affirmations (After Full Panel Deliberation):	78 (23.6%)
Lump Sum Conferences:	27 (8.2%)
Withdrawals/Dismissals for Failing to File Briefs/Memos:	149 (45.0%)
<b>Total Number of Appeals Resolved by the Reviewing Board:</b>	<b>331 (100%)</b>

Source: DIA Reviewing Board

### Lump Sum Conferences

The purpose of the lump sum conference is to determine if a settlement is in the best interest of the employee. A lump sum conference may be requested at any point during the dispute resolution process upon agreement of both the employee and insurer. Lump sum conferences are identical to the approval of settlements by Administrative Judges at the conference and hearing. Conciliators may refer cases to a lump sum conference at the request of the parties or the parties may request a lump sum conference directly. The number of lump sum conferences scheduled in 2006 was 1,803.

### **Third Party Subrogation (§15)**

When a work-related injury results in a legal liability for a party other than the employer, a claim may be brought against the third party for payment of damages. The injured employee may collect workers' compensation indemnity and health care benefits under the employer's insurance policy, and may also file suit against the third party for damages. For example, an injury sustained by an employee, as the result of a motor vehicle accident in the course of a delivery, would entitle the employee to workers' compensation benefits. However, the accident may have been caused by another driver not associated with the employer. In this case, the employee could collect workers' compensation benefits and simultaneously bring suit against the other driver for damages.

Monies recovered by the employee in the third party action must be reimbursed to the workers' compensation insurer. However, any amounts recovered that exceed the total amount of benefits paid by the insurer may be retained by the employee.

The statute provides that the Reviewing Board may approve a third party settlement. A hearing must be held to evaluate the merits of the settlement, as well as the fair allocation of amounts payable to the employee and the insurer. Guidelines were developed to ensure that due consideration is given to the multitude of issues that arise from settlements. During FY'06, Administrative Law Judges heard 1,216 Section 15 petitions on a rotating basis.

### **Compromise and Discharge of Liens (§46A)**

Administrative Law Judges are also responsible for determining the fair and reasonable amount to be paid out of lump sum settlements to discharge liens under M.G.L. c.152, §46A.

A health insurer or hospital providing treatment may seek reimbursement under this Section for the cost of services rendered when it is determined that the treatment provided arose from a work related injury. The Commonwealth's Department of Transitional Assistance (DTA) can make a similar claim for reimbursement after providing assistance to an employee whose claim has subsequently been determined to be compensable under the workers' compensation laws.

In those instances, the health insurer, hospital, or DTA may file a lien against either the award for benefits or the lump sum settlement. When a settlement is proposed and the employee and the lien-holder are unable to reach an agreement, the ALJ must determine the fair and reasonable amount to be paid out of the settlement to discharge the lien.

The number of Section 46A conferences that were heard in fiscal year 2006 was 81.

## LUMP SUM SETTLEMENTS

A lump sum settlement is an agreement between the employee and the employer's workers' compensation insurer, whereby the employee will receive a one-time payment in place of weekly compensation benefits. In most instances, the employer must ratify the lump sum settlement before it can be implemented. While settlements close out indemnity payments for lost income, medical and vocational rehabilitation benefits must remain open and available to the employee if needed.

Lump sum settlements can occur at any point in the dispute resolution process, whether it is before the conciliation or after the hearing. Conciliators have the power to "review and approve as complete" lump sum settlements that have already been negotiated.

Administrative Judges may approve lump sum settlements at conference or hearing just as an ALJ does at a lump sum conference. At the request of the parties, conciliators and Administrative Judges may also refer the case to a separate lump sum conference whereby an Administrative Law Judge will decide if it is in the best interest of the employee to settle.

**Table 10: Lump Sum Conference Statistics, FY'06-FY'91**

<i>Fiscal Year</i>	<i>Total lump sum conferences scheduled</i>	<i>Lump sum settlements approved</i>
<b>FY'06</b>	<b>7,416</b>	<b>6,830 (92.1%)</b>
FY'05	7,575	6,923 (91.4%)
FY'04	8,442	7,754 (91.9%)
FY'03	7,887	7,738 (95.7%)
FY'02	8,135	7,738 (95.1%)
FY'01	8,111	7,801 (96.2%)
FY'00	8,297	7,940 (95.7%)
FY'99	7,900	7,563 (95.7%)
FY'98	9,579	9,158 (95.6%)
FY'97	9,293	8,770 (94.4%)
FY'96	10,047	9,633 (95.9%)
FY'95	10,297	9,864 (95.8%)
FY'94	13,605	12,578 (92.5%)
FY'93	17,695	15,762 (89.1%)
FY'92	18,310	16,019 (87.5%)
FY'91	19,724	17,297 (87.7%)

**Source:** CMS Report 86: Lump Sum Conference Statistics for Scheduled Dates

The number of lump sum conferences scheduled has declined by 62% since FY'91. In FY'06, only 19 lump sum settlements were disapproved. The remainder of the scheduled lump sum conferences without an "approved" disposition were either withdrawn or rescheduled.

There are four dispositions that indicate a lump sum settlement occurred at either conciliation, conference, or hearing:

**Lump Sum Reviewed - Approved as Complete** - Pursuant to §48 of chapter 152, conciliators have the power to “review and approve as complete” lump sum settlements when both parties arrive at conciliation with a settlement already negotiated.

**Lump Sum Approved** - Administrative Judges at the conference and hearing may approve settlements, and just as an ALJ at a lump sum conference, they must determine if the settlement is in the best interest of the employee.

**Referred to Lump Sum** - Lump sums settlements may also be reviewed at a lump sum conference conducted by an assigned ALJ. Conciliators and Administrative Judges may refer cases to lump sum conferences to determine if settlement is in the best interest of the employee. Many lawyers prefer to have a case referred to a lump sum conference rather than have a conciliator approve a settlement. An ALJ renders a judgment regarding the adequacy and appropriateness of the settlement amount, whereas a conciliator merely approves the agreement "as complete." Most attorneys want their client's settlement reviewed and determined by a judge to be in their "best interest."

**Lump Sum Request Received** - A lump sum conference may also be requested after a case has been scheduled for a conciliation, conference, or hearing. In this situation, the parties would fill out a form to request a lump sum conference and the disposition would then be recorded as “lump sum request received.” Lump sum conferences may also be requested without scheduling a meeting.

Lump sum settlement dispositions become increasingly prevalent at the later stages of the dispute resolution process as indicated in the table below.

**Table 11: Lump Sum Settlements Pursued at Each Level of Dispute Resolution - FY'06**

<b>Fiscal Year 2006</b>	<b><i>Lump Sum Pursued<sup>7</sup></i></b>	<b><i>% Total Cases Resolved (at each level of dispute)</i></b>
Conciliation	640	9.3%
Conference	2,417	54.5%
Hearing	3,229	57.9%

**Source:** See Previous Sections on Conciliations, Conferences, and Hearings.

<sup>7</sup> Lump sum pursued refers to four dispositions for lump sum settlements: lump sum request received; lump sum reviewed-approved as complete; lump sum approved; referred to lump sum conference.

## **IMPARTIAL MEDICAL EXAMINATIONS**

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The impartial medical examination has become a significant component of the dispute resolution process, since it was created by the Reform Act of 1991. During the conciliation and conference stages, a disputed case is guided by the opinions of the employee's treating physician and the independent medical report of the insurer. Once a case is brought before an Administrative Judge at a hearing, however, the impartial physician's report is the only medical evidence that can be presented. Any additional medical testimony is inadmissible, unless the judge determines the report to be "inadequate" or that there is considerable "complexity" of the medical issues that could not be fully addressed by the report.

The 1991 reforms were designed to solve the problem of "dueling doctors," which frequently resulted in the submission of conflicting evidence by employees and insurers. Prior to 1991, judges were forced to make medical judgments by weighing the report of an examining physician, retained by the insurer, against the report of the employee's treating physician.

Section 11A of the Workers' Compensation Act now requires that the Senior Judge periodically review and update a roster of impartial medical examiners from a variety of specialized medical fields. When a case involving disputed medical issues is appealed to hearing, the parties must agree on the selection of an impartial physician. If the parties cannot agree, the AJ must appoint one. An insurer may also request an impartial examination if there is a delay in the conference order.<sup>8</sup> Furthermore, any party may request an impartial exam to assess the reasonableness or necessity of a particular course of medical treatment, with the impartial physician's opinion binding the parties until a subsequent proceeding. Should an employee fail to attend the impartial medical examination, they risk the suspension of benefits.<sup>9</sup>

Under Section 11A, the impartial medical examiner must determine whether a disability exists, whether such disability is total, partial, temporary or permanent, and whether such disability has as its "major or predominant contributing cause" a work-related personal injury. The examination should be conducted within 30 to 45 calendar days from assignment. Each party must receive the impartial report at least 7 days prior to the start of a hearing.

### **Impartial Unit**

The Impartial Unit, within the DIA's Division of Dispute Resolution, will choose a physician from the impartial physician roster when parties have not selected one or when the AJ has not appointed one. While it is rare that the Impartial Unit chooses the specialty, in most cases it must choose the actual physician. The unit is also required to collect filing fees, schedule examinations, and to ensure that medical reports are promptly filed and that physicians are compensated after the report is received.

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<sup>8</sup> M.G.L. c.152, §8(4).

<sup>9</sup> M.G.L. c.152, §45.

Filing fees for the examinations are determined by the Commissioner and set by regulation through the Commonwealth's Executive Office of Administration & Finance.

The following table details the DIA's fee schedule:

**Table 12: Fee Schedule - Impartial Medical Examinations**

<b>\$450</b>	Impartial medical examination and report
<b>\$500</b>	For deposition lasting up to 2 hours
<b>\$100</b>	Additional fee when deposition exceeds 2 hours
<b>\$225</b>	Review of medical records only
<b>\$125</b>	Supplemental medical report
<b>\$100</b>	When worker fails to keep appointment (maximum of 2)
<b>\$100</b>	For cancellation less than 24 hours before exam

**Source:** DIA Medical Unit

**Note:** Fee Schedule is subject to increase.

The deposing party is responsible for paying the impartial examiner for services and the report. Should the employee prevail at hearing, the insurer must pay the employee the cost of the deposition. In FY'06, approximately \$1,910,105 was collected in filing fees.

As of 6/30/06, there were 234 physicians on the roster consisting of 26 specialties.<sup>10</sup> The impartial unit is responsible for scheduling appointments with the physicians. Scheduling depends upon the availability of physicians, which varies by geographic region and the specialty sought. A queue for scheduling may arise according to certain specialties and regions in the state.

In FY'06 the impartial unit scheduled 6,201 examinations. Of these, 4,368 exams were actually conducted in the fiscal year (the remainder of the scheduled exams were either canceled due to settlements and withdrawals or took place in the next year).<sup>11</sup> Medical reports are required to be submitted to the Division and to each party within 21 calendar days after completion of the examination. Last year (FY'05), the impartial unit scheduled 5,282 examinations. Of these, 3,823 exams were actually conducted in the fiscal year.

### **Impartial Exam Fee Waiver for Indigent Claimants**

In 1995, the Supreme Judicial Court ruled that the Department of Industrial Accidents must waive the filing fee for indigent claimants appealing an Administrative Judge's benefit-denial order. As a result of this decision, the DIA has implemented procedures and standards for processing waiver requests and providing financial relief for the Section 11A fee.

<sup>10</sup> Including contracts pending renewal.

<sup>11</sup> Additional reports may be entered upon FY'06 closure.

**The Waiver Process** - A workers' compensation claimant who wishes to have the impartial examination fee waived must complete Form 136: "Affidavit of Indigence and Request for Waiver of §11A (2) Fees." This document must be completed before 10 calendar days following the appeal of a conference order.

It is within the discretion of the Commissioner to accept or deny a claimant's request for a waiver, based on documentation supporting the claimant's assertion of indigency as established in 452 CMR 1.02. If the Commissioner denies a waiver request, it must be supported by findings and reasons in a Notice of Denial report. Within 10 days of receipt of the Notice of Denial report, a party can request a reconsideration. The Commissioner can deny this request without a hearing if past documentation does not support the definition of "indigent" set out in 452 CMR 1.02, or if the request is inconsistent or incomplete. If a claimant is granted a waiver and prevails at a hearing, the insurer must reimburse the Division for any fees waived.

*An indigent party is defined as:*

- a) one who receives one of the following types of public assistance: Aid to Families with Dependent Children (AFDC), Emergency Aid to Elderly Disabled and Children (EAEDC), poverty related veteran benefits, food stamps, refugee resettlement benefits, Medicaid, or Supplemental Security Income (SSI) or;
- b) one whose annual income after taxes is 125% of the current federal poverty threshold (established by the U.S. Department of Health and Human Services) as referred to in M.G.L. c.261, §27A(b). Furthermore, a party may be determined indigent based on the consideration of available funds relative to the party's basic living costs.

**Table 13: DIA Indigency Requirements, 2006**

2006 HHS Poverty Guidelines	
Size of Family Unit	Amount*
1	\$9,800
2	\$13,200
3	\$16,600
4	\$20,000
5	\$23,400
6	\$26,800
7	\$30,200
8	\$33,600

For family units with more than eight members, add \$3,400 for each additional member in the family. The poverty guidelines are updated annually by the U.S. Department of Health and Human Services.

**Source:** *Federal Register*, Vol. 71, No. 15, January 24, 2006, pp. 3848-3849.

\*48 Contiguous States and the District of Columbia.

## **ADMINISTRATIVE JUDGES**

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DIA Administrative Judges (AJs) and Administrative Law Judges (ALJs) are appointed by the Governor, with the advice and consent of the Governor's Council. Candidates for the positions are first screened by the Industrial Accidents Nominating Panel [see Appendix D for membership] and then rated by the Advisory Council. M.G.L. c.23E allows for the appointment of 21 Administrative Judges, 6 Administrative Law Judges, and as many former judges to be recalled as the Governor deems necessary.

As one management tool to maintain a productive staff, the Senior Judge may stop assigning new cases to any judge with an inordinate number of hearing decisions unwritten. This provides a judge who has fallen behind with the opportunity to catch up. The administrative practice of taking a judge off-line is relatively rare and occurs for a limited time period. However, the Senior Judge may take an AJ off-line near the end of a term until reappointment is made. This enables the judges to complete their assigned hearings, thereby, minimizing the number of cases that must be re-assigned to other judges after their term expires.

### **Appointment Process**

**Nominating Panel** - The Nominating Panel is comprised of thirteen members as designated by statute. When a judicial position becomes available, the Nominating Panel convenes to review applications for appointment and reappointment. The panel considers an applicant's skills in fact finding and the understanding of anatomy and physiology. In addition, an AJ must have a minimum of a college degree or four years of writing experience and an ALJ must be a Massachusetts attorney (or formerly served as an AJ). Consideration for reappointment includes review of a judge's written decisions, as well as the Senior Judge's evaluation of the applicant's judicial demeanor, average time for disposition of cases, total number of cases heard and decided, and appellate record.

On December 18, 2003, the appointment process was revised when Governor Romney signed Executive Order #456. The main objective of the Executive Order was to strengthen the selection process to ensure that all applicants who apply for a judgeship have their qualifications reviewed on merit. The Executive Order increased confidentiality during the deliberation process and created a Code of Conduct for both applicants and members of the Nominating Panel.

**Advisory Council Review** - Upon the completion of the Nominating Panel's review, recommended applicants are forwarded to the Advisory Council. The Advisory Council will review these candidates either through a formal interview or by a "paper review." On the affirmative vote of at least seven voting members, the Advisory Council may rate any candidate as either "qualified," "highly qualified," or "unqualified." This rating must then be forwarded to the Governor's Chief Legal Counsel within one week from the time a candidate's name was transmitted to the Council from the Nominating Panel (see Appendix J for a complete description of the Advisory Council's interview guidelines).

# SECTION

## - 4 -

### ***DIA ADMINISTRATION***

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## **OFFICE OF CLAIMS ADMINISTRATION**

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The Office of Claims Administration (OCA) is responsible for reviewing, maintaining and recording the massive number of forms the DIA receives on a daily basis, as well as for ensuring that claim forms are processed in a timely and accurate manner. Quality control is a priority of the office and it is essential to ensure that each case is recorded in a systematic and uniform method.

The OCA consists of the Claims Processing Operations Unit, the Record Room, and the Administrative Office (which includes the Keeper of Records and First Report Compliance). The Manager of Claims Administration is responsible for overseeing the operations of each unit within the Office of Claims Administration.

### **Claims Processing Operations Unit**

The Claims Processing Operations Unit is responsible for the intake and entry of all mail, including electronic filings that come into the OCA.<sup>12</sup> The OCA reviews each form, ensuring they are complete and accurate. Any incomplete or inaccurate form is returned to the sender. Reports, transactions, and other relevant data are entered into the DIA's Oracle database. As data entry personnel update the computerized records with new forms, they also review the entire record to ensure that duplicate forms are not contained in the database, as well as to make certain that all necessary information has been entered properly for quality assurance.

While quality control measures slow down the process, they are necessary for accurate and complete record keeping. Forms are entered in order of priority, with the need for scheduling at dispute resolution as the main objective. All conciliations are scheduled upon entry of a claim through the Oracle Case Management System (CMS). Information entered into CMS generates violation notices, scheduling of conciliations and judicial proceedings, and statistical reports. The DIA and other agencies use this data to facilitate various administrative and law enforcement functions.

In FY'06, the OCA received 36,590 First Report of Injury Forms, 871 less than FY'05 (37,461). The number of First Report of Injury Forms filed online during FY'06 was 9,405, (26% of the total received) and 2,633 more than FY'05 (6,772). The number of claims, discontinuances and third party claims received by the office decreased in FY'06 by 2,010 to 17,206 (prior to review and CMS processing). The total number of referrals to conciliation for the FY'06 was 15,957, which represents a decrease of 319 from FY'05 (16,276).

### **Record Room**

The record room, located in the DIA's Boston office, is the central repository for all departmental case files and transactions. The Record Room staff is responsible for filing,

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<sup>12</sup> Online filing submissions of the First Report of Injury (Form 101) became effective at the DIA in April of 2003.

maintaining, storing, retrieving and tracking all files pertaining to a case in the dispute resolution process. Included in case files are copies of all briefs, settlement offers, medical records, and supporting documentation that accumulate during the dispute resolution process. Couriers transfer files between the regional office and the Boston office twice a week.

The DIA files have a retention cycle of 40 years, 32 at the state archive and 8 years on-site. In addition to the DIA's main Record Room, a mini archive area containing 2,000 boxes of quality files are located within the agency. The Record Room obtained space in the DIA's Lawrence Office to serve as a supplemental storage facility. Complex file management procedures, in accordance with State Record Center (SRC) regulations, are the key to maintaining information that is accessible and easy to transfer upon request.

## **Administrative Office**

OCA's Administrative Office serves as Keeper of Records and requests for workers' compensation file copies and other public information pursuant to the Massachusetts Public Records Law. Those seeking information, data and specific records include employees (past and current injured workers), attorneys, insurers, investigative and pre-employment services, as well as law enforcement agencies. The trend in public records request continue to rise and the number of these requests grow unabated. The Administrative Office also processes subpoenas and conducts in-house depositions. A fee charge is billed to the requestors for copies, labor and research. The Office also assists the Insurance Fraud Bureau, Attorney General's Office and other governmental agencies.

## **First Report Compliance Office**

All Employers must report any injury alleged to have arisen out of and in the course of employment that incapacitates an employee from earning full/partial wages for a period of five or more calendar days. Failure to file a First Report or a late First Report is a violation of M.G.L. c.152, §6. If an Employer violates this provision three or more times within any year, they shall be punished by a fine of one hundred dollars (\$100) for each violation. Each failure to pay a fine within thirty days of receipt of a bill from the DIA shall be considered a separate violation.

In fiscal year 2006, \$187,131 was collected in fines, a decrease of \$120,502 from the \$307,633 collected in FY'05. The office is also responsible for maintaining a database on cases discovered by the DIA, where there may be suspicion of fraud. In fiscal year 2006, the Office of Claims Administration received eleven (11) in-house referrals (telephone calls, anonymous letters or within DIA units via CMS). Outside referrals are directly reported to the Insurance Fraud Bureau or the Attorney General's Office. Claims Administration assists the Insurance Fraud Bureau investigators on copies of suspected workers' compensation files, and receives status update letters. A total of 28 such inquiries were processed during FY'06.

## **OFFICE OF EDUCATION AND VOC. REHAB**

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The Office of Education and Vocational Rehabilitation (OEV) oversees the rehabilitation of disabled workers' compensation recipients with the ultimate goal of successfully returning them to employment.

While OEVR seeks to encourage the voluntary development of rehabilitation services, it has the authority to mandate services for injured workers determined to be suitable for rehabilitation. Vocational rehabilitation (VR) is defined by the Act as "non-medical services reasonably necessary at a reasonable cost to restore a disabled employee to suitable employment as near as possible to pre-injury earnings. Such services may include vocational evaluation, counseling, education, workplace modification, and retraining, including on-the-job training for alternative employment with the same employer, and job placement assistance. It shall also mean reasonably necessary related expenses."<sup>13</sup>

A claimant is eligible for vocational rehabilitation services when an injury results in a functional limitation prohibiting a return to previous employment, or when the limitation is permanent or will last an indefinite period of time. Liability must be established in every case and the claimant must be receiving benefits.

### **Vocational Rehabilitation Specialist**

Each year, OEVR approves vocational rehabilitation specialists to develop and implement the individual written rehabilitation plans (IWRP). The standards and qualifications for a certified provider are found in the regulations, 452 C.M.R. §4.03. Any state vocational rehabilitation agency, employment agency, insurer, self-insurer, or private vocational rehabilitation agency may qualify to perform these services. All Request for Response (RFR) information, including application forms, are now available through the DIA website [[www.mass.gov/dia/](http://www.mass.gov/dia/)].

Credentials must include at least a master's degree, rehabilitation certification, or a minimum of 10 years of experience. A list of the providers is available from OEVR. In FY'06, OEVR approved 54 VR providers. It is the responsibility of the provider to submit progress reports on a regular basis, so that OEVR's Rehabilitation Review Officers (RROs) can have a clear understanding of the case's progress. Progress reports must include the following:

1. Status of vocational activity;
2. Status of IWRP development (including explanation if the IWRP has not been completed within 90 days);

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<sup>13</sup> M.G.L. c.152, §1(12).

3. If client is retraining, copy of grades received from each marking period and other supportive data (such as attendance);
4. Summary of all vocational testing used to help develop an employment goal and a vocational goal; and
5. The name of the OEVR Rehabilitation Review Officer.

## **Determination of Suitability**

It is the responsibility of OEVR to identify those disabled workers' who may benefit from rehabilitation services. OEVR identifies rehabilitation candidates according to injury type after liability has been established, and through referrals from internal DIA sources (including the Office of Claims Administration and the Division of Dispute Resolution), insurers, certified providers, attorneys, hospitals, doctors, employers and injured employees themselves.<sup>14</sup> Through the use of new technology, such as the automatic scheduling system, OEVR has made significant progress in identifying disabled workers for mandatory meetings early on in the claims process.

Once prospective candidates have been identified, an initial mandatory meeting between the injured worker and the Rehabilitation Review Officer is scheduled for the purpose of determining whether or not an injured worker is suitable for VR services. During this meeting, the RRO obtains basic case information from the client, explains the VR process (including suitability, employment objectives in order of priority, client rights, and OEVR's role in the process) and answers any questions the client may have. The failure of an employee to attend the mandatory meeting may result in the discontinuance of benefits until the employee complies.

Once a "mandatory meeting" has concluded, it is the duty of the RRO to issue a decision on the appropriateness of the client for vocational rehabilitation services. This is done through a Determination of Suitability (DOS) Form. Suitability is determined by a number of factors including: medical stability, substantial functional limitations, feasibility and cost-effectiveness of services, and liability must be established. If a client is deemed "suitable," the RRO will write to the insurer and request VR services for the injured worker. The insurer must then choose any OEVR-approved provider so that an Individual Written Rehabilitation Program (IWRP) can be developed. The insurer must also submit to OEVR any pertinent medical records within 10 days. If a client is deemed "unsuitable," the insurer can refer the client again after six months has elapsed.

At any point during the OEVR process after an injured worker has been found suitable for VR services, a RRO can schedule a "team meeting" to resolve issues of disagreement among any of the represented parties. All parties are invited and encouraged to attend team meetings. At the conclusion of the meeting, if parties are still in disagreement, the RRO can refer the matter back to the parties with recommendations and an action plan. All team meetings are summarized in writing.

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<sup>14</sup> M.G.L. c.152, §30 (E-H); 452 C.M.R. §4.00

## **Individual Written Rehabilitation Program (IWRP)**

After an employment goal and vocational goal has been established for the injured worker, an Individual Written Rehabilitation Program (IWRP) can be written. The IWRP is written by the vocational provider and includes the client's vocational goal, the services the client will receive to obtain that goal, an explanation why the specific goal and services were selected, and the signatures necessary to implement it. A vocational rehabilitation program funded voluntarily by the insurer has no limit of length, however OEVR-mandated IWRP's are limited to 52 calendar weeks for pre-12/23/91 injuries and 104 calendar weeks for post-12/23/91 injuries.<sup>15</sup> The IWRP should follow OEVR's priority of employment goals:

1. Return to work with same employer, same job modified;
2. Return to work with same employer, different job;
3. Return to work with different employer, similar job;
4. Return to work with different employer, different job;
5. Retraining; and
6. Any recommendation for a workplace accommodation or a mechanical appliance to support the employee's return to work.

In order for an IWRP to be successful, it needs to be developed jointly with the client and the employer. An IWRP with the specific employment goal of permanent, modified work must include:

1. a complete job description of the modified position (including the physical requirements of the position);
2. a letter from the employer that the job is being offered on a permanently modified basis; and
3. a statement that the client's treating physician has had the opportunity to review and comment on the job description for the proposed modified job.

Before any vocational rehabilitation activity begins, the IWRP must be approved by OEVR. Vocational Rehabilitation is successful when the injured worker completes a VR program and is employed for 60 days. A "Closure Form" must then be signed by the provider and sent to the appropriate RRO. Closures should meet the following criteria:

1. all parties should understand the reasons for case closure;
2. the client is told of the possible impact on future VR rights;
3. the case is discussed with the RRO;
4. a complete closure form is submitted by the provider to OEVR; and
5. the form should contain new job title, DOT code, employer name and address, client wage, and the other required information if successfully rehabilitated.

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<sup>15</sup> M.G.L. c.152, §19.

## Lump Sum Settlements

An employee obtaining vocational rehabilitation services must seek the consent of OEVR before a lump sum settlement can be approved. In the past, disabled and unemployed workers have settled for lump sum payments without receiving adequate job training or education on how to find employment. As a result, settlement money would run out quickly and employees would be left with no means of finding suitable work. OEVR tries to have disabled employees initiate, if not complete, rehabilitation before the lump sum settlement is approved. Nevertheless, OEVR will consent to a lump sum settlement if the insurer agrees to continue to provide rehabilitation benefits.

## Utilization of Vocational Rehabilitation

In fiscal year 2006, OEVR was headed by a Director and staffed by 10 Rehabilitation Review Officers, 1 Disability Analyst, and 4 Clerks. Out of the 2,932 cases referred to OEVR in FY'06, 79% (2,315) proceeded to a "mandatory meeting" for a determination of suitability for vocational rehabilitation services. The remaining 21% exited the system for reasons that include the non-establishment of liability or that the employee was not on compensation. Of those cases that received a "mandatory meeting," 32% (747) were referred to the insurer/self-insurer with a request to initiate vocational rehabilitation services by an OEVR certified provider. In FY'06, there was a 47% success ratio of injured workers who completed plans and returned to work.

**Table 14: Utilization of Voc. Rehab. Services, FY'02 - FY'06**

<i>Fiscal Year</i>	<i>Referrals to OEVR</i>	<i>Mandatory/ Inform. Meetings</i>	<i>Referrals to Insurer for VR</i>	<i>IWRPs approved</i>	<i>Return to work</i>	<i>% RTW after plan development</i>
FY'06	2,932	2,315/40	747	433	202	47%
FY'05	3,418	2,744/19	763	459	241	53%
FY'04	2,304	1,964/44	746	474	203	43%
FY'03	2,494	2,287/43	886	507	187	37%
FY'02	2,743	2,348/23	842	501	214	43%

Source: DIA - OEVR

## Trust Fund Payment of Vocational Rehabilitation

If an insurer refuses to pay for vocational rehabilitation services while OEVR determines that the employee is suitable for services, the office may utilize monies from the Trust Fund to finance the rehabilitation services. In fiscal year 2006, the Trust Fund paid \$87,483 for vocational rehabilitation services. OEVR is required to seek reimbursement from the insurer when the Trust Fund pays for the rehabilitation and the services are deemed successful (e.g., the employee returns to work). The DIA may assess the insurer a minimum of two times the cost of the services.

## **OFFICE OF SAFETY**

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The Office of Safety is responsible for establishing and supervising the Safety Grant Program for the education and training of employees and employers in the recognition, avoidance and prevention of unsafe or unhealthy working conditions. Each year the safety and training grants are awarded to qualified applicants based upon a competitive selection process initiated by a Grant Application. The Office of Safety also advises employees and employers of safety issues surrounding the work environment.

Since 1991, the Office of Safety has annually issued its Grant Application for the "Occupational Safety and Health Education and Training Program." To date, the DIA has funded a total of 653 preventive training programs, which have trained nearly 260,000 workers in the Commonwealth.

### **The Safety Grant Program**

Each fiscal year the DIA's Office of Safety awards \$800,000 in safety grants to pay for programs which provide workplace safety training for employees and/or employers of industries operating within the Commonwealth and whose entire staff is covered under the Massachusetts Workers' Compensation Law (M.G.L. c.152).

The overall objective of the education and training program is to reduce work related injuries and illnesses by:

- Targeting preventive educational programs for specifically identified audience with significant occupational health and/or safety problems;
- Fostering activities by employees/employers to prevent workplace accidents, injuries, and illnesses;
- Identifying, evaluating, and controlling safety and health hazards in the workplace;
- Making employees/employers aware of all federal and state health and safety standards, statutes, rules and regulations that apply, including those that mandate training and education in the workplace;
- Encouraging awareness and compliance with federal and/or state occupational safety and health standards and regulations;
- Encouraging labor/management cooperation in the area of occupational safety and health prevention programs; and
- Encouraging collaborations between various groups, organizations, educational or health institutions to devise innovative preventive methods for addressing occupational health and safety issues.

## Grant Applications

Each fiscal year the Office of Safety publishes a Grant Application to notify the general public that safety grants are available. The program has an annual budget of \$800,000. In FY'06, proposals could be submitted up to a maximum of \$25,000. During the fiscal year, 1,100 announcement letters were mailed to various industries throughout the state. As a result of these announcement letters and advertisements published in the regional newspapers, the Office of Safety issued over 116 Grant Applications in fiscal year 2006. Of the 116 Grant Applications issued, the DIA received 61 requests for funding (proposals). Of these, approximately 77% received funding.

A uniform criteria to competitively evaluate all proposals received is developed by a Proposal Selection Committee, appointed by the Commissioner. The Committee recommends a list of qualified applicants for funding. Upon approval of this list by the Commissioner, contracts are awarded. In FY'06, the Office of Safety was able to fund a total of 47 grants, which resulted in the training of 9,800 employees (see Appendix L for a list of proposals recommended for funding in FY'07). During the fiscal year, over 98% of the participants rated the program they attended as "excellent" or "good."

## Changes to the Grant Application Process

During the last two years, the Office of Safety examined the Safety Grant Program in an effort to simplify the application process and to expand the number of employees who could benefit from the program. After reviewing the application process, it was discovered that Grant Application was redundant and that a large amount of money was being spent on administrative costs. To address these issues, the Office of Safety significantly revised the Grant Application and no longer funds administrative costs without justification. The Office of Safety believes that these changes to the Grant Application process will help expand the number of grants that can be awarded, thereby, increasing the number of employees whom will benefit from the training.

## Frank S. Janas Training Center

In October of 2000, the DIA dedicated a safety training center in memory of the late Frank Janas at the Lawrence Regional Office. Mr. Janas was a beloved DIA employee who worked in the Office of Insurance for seven years. The training center is a valuable tool for both private employers and government agencies that would like to conduct safety-related training or seminars. The conference training center holds 100 auditorium style seats and 50 classroom style seats, has valuable conference amenities (wide-screen TV/VCR, Apollo projector, podium, computer hookups, etc.), and is handicap accessible. The Office of Safety has begun the process of cataloging all of the safety videos contained in the Frank Janas Training Center. The Office of Safety plans to establish an online library of safety videos to increase their accessibility to the public.

### **Frank Janas Training Center Contact:**

Dan DeMille  
Department of Industrial Accidents  
160 Winthrop Avenue  
Lawrence, MA 01840  
(978) 683-6420  
email: dand@dia.state.ma.us

## OFFICE OF INSURANCE

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The Office of Insurance issues self insurance licenses, monitors all self insured employers, maintains the insurer register, and monitors insurer complaints.

### Self Insurance

A license to self insure is available for qualified employers with at least 300 employees and \$750,000 in annual standard premium.<sup>16</sup> To be self insured, employers must have enough capital to cover the expenses associated with self insurance. However, many smaller and medium-sized companies have also been approved to self insure. The Office of Insurance evaluates employers annually to determine their eligibility for self insurance and to establish new bond amounts.

For an employer to qualify to become self insured, it must post a surety bond of at least \$100,000 to cover any losses that may occur.<sup>17</sup> The amount varies for every company depending on their previous reported losses and predicted future losses. The average bond is usually over \$1 million and depends on many factors including loss experience, the financial state of the company, the hazard of the occupation, the number of years as a self insured, and the attaching point for re-insurance.

Employers who are self insured must purchase reinsurance of at least \$500,000. The per case deductible of the reinsurance varies from \$100,000, a relatively modest amount, to much higher amounts. Smaller self insured companies may also purchase aggregate excess insurance to cover multiple claims that exceed a set amount. Many self insured employers engage the services of a law firm or a third party administrator (TPA) to handle claims administration.

In FY'06, two (2) new license were issued to bring the total number of "parent-licensed" companies to 131, covering a total of 434 subsidiaries. Each self insurance license provides approval for a parent company and its subsidiaries to self insure. This amounts to approximately \$276,727,874 in equivalent premium dollars.

Four semi-autonomous public employers are also licensed to self insure including the Massachusetts Bay Transportation Authority (MBTA), the Massachusetts Turnpike Authority (MTA), the Massachusetts Port Authority, and the Massachusetts Water Resource Authority (MWRA).<sup>18</sup>

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<sup>16</sup> C.M.R. 5.00: Code of Massachusetts Regulations concerning insurers and self insurers. These regulations may be waived by the Commissioner of the DIA for employers that have strong safety records and can produce the necessary bond to cover for all incurred losses.

<sup>17</sup> M.G.L. 452 C.M.R. 5:00.

<sup>18</sup> The Commonwealth of Massachusetts does not fall under the category of self insurance, although its situation is analogous to self insured employers. It is not required to have a license to self insure because of its special status as a public employer and it therefore funds workers' compensation claims directly from the treasury as a budgetary expense. The agency responsible for claims management, the Public Employee Retirement Administration, has similar responsibilities to an insurer, however, the state does not pay insurance premiums or post a bond for its liabilities (M.G.L. c.152, §25B).

## **Insurance Unit**

The Insurance Unit maintains a record of the workers' compensation insurer for every employer in the state. This record, known as the insurer register, dates back to the 1920's and facilitates the filing and investigation of claims after many years.

In the past, the insurance register had a record keeping system, which consisted of information manually recorded on 3x5 notecards (a time consuming and inefficient method for storing files and researching insurers). Every time an employer made a policy change, the insurer mailed in a form and the notecard was changed manually.

Through legislative action, the Workers' Compensation Rating and Inspection Bureau (WCRIBM) became the official repository of insurance policy coverage in 1991. The DIA was provided with computer access to this database, which includes policy information for the eight most current years. The remainder of policy information must be researched through the files at the DIA, now stored on microfilm. In FY'06, an estimated 5,252 inquiries were made to the Insurance Register.

The Insurance Unit is also responsible for handling insurance complaints. Complaints are often registered by telephone and the unit will provide the party with the necessary information to handle the case.

## **OFFICE OF INVESTIGATIONS**

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In Massachusetts, employers with one or more employees are required to have a valid workers' compensation policy at all times.<sup>19</sup> Employers can meet this statutory requirement by purchasing a commercial insurance policy, gaining membership in a self insurance group, or licensing as a self insurer (M.G.L. c.152, §25A). The Office of Investigations is charged with enforcing this mandate by investigating whether employers are maintaining insurance policies and by imposing penalties when violations are uncovered. When an employer fails to carry an insurance policy and an injury occurs at their workplace, the claim is paid from the DIA's Workers' Compensation Trust Fund (funded entirely by the employers who purchase workers' compensation policies).

### **Referrals to the Office of Investigations**

The Office of Investigations has access to the Workers' Compensation Rating and Inspection Bureau (WCRIBM) database on all policies written by commercial carriers in the state. From this database, it can be determined which employers have either canceled or failed to renew their insurance policies. Employers on this database are investigated for insurance coverage or alternative forms of financing (self-insurance, self-insurance group, reciprocal exchange).

The Office of Investigations also works with other state agencies for referrals. Both the Division of Employment & Training and the Secretary of State's Office have been utilized in the past.

Another type of referral the Office of Investigations utilizes is through anonymous calls and letters received from the general public. These tips have historically played a crucial role in identifying which companies may be without insurance.

Referrals can also come to the Office of Investigations internally within the DIA. Whenever a Section 65 claim (an injury occurs at an uninsured business) is entered into the system, the Office of Investigations will be notified by the Office of Insurance that a particular company is without insurance.

### **The Initial "In-House" Investigation**

Referrals received by the Office of Investigations are assigned to an individual investigator who conducts comprehensive "in-house" research utilizing all available databases. This initial research allows the investigator to close cases where an insurance policy has been discovered or when there is substantial evidence that a company has ceased operations. Once a referral has been thoroughly investigated "in-house" and it is demonstrated that a business is violating the statute, the DIA will issue a compliance letter requesting they provide proof of workers' compensation insurance. If the business

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<sup>19</sup> A recent change to the workers' compensation law allows officers of corporations who own at least 25% of the stock of the corporation to exempt themselves from coverage. If a corporation has non-exempt employees, the corporation does not need workers' compensation insurance.

fails to respond to this letter or is unable to display proof of coverage, the investigator will make an "on-site" visit to the worksite.

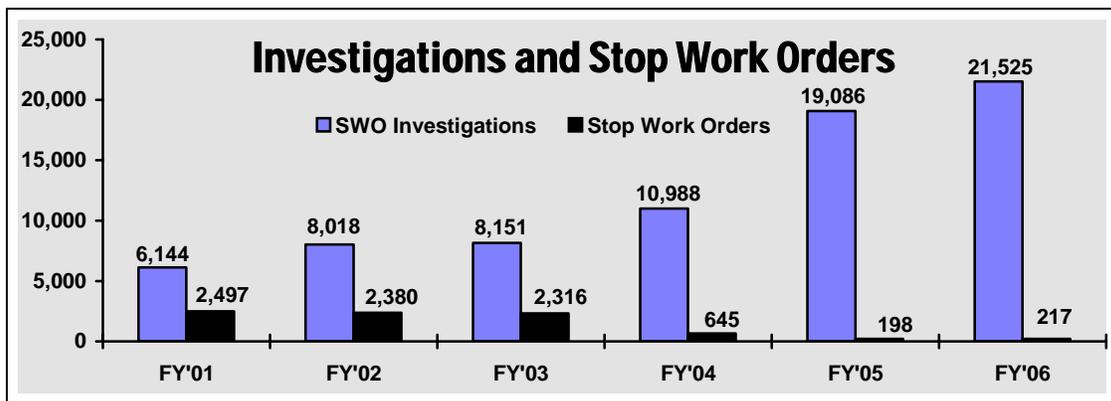
## "On-Site" Investigations - Stop Work Orders

During an "on-site" visit to a worksite, an investigator will request that the business provide proof of workers' compensation insurance coverage. If a business fails to provide proof of coverage, a "stop work order" (SWO) is immediately issued. Such an order requires that all business operations cease and the SWO becomes effective immediately upon service. However, if an employer chooses to appeal the stop work order, the business may remain open until the case is resolved.

Fines resulting from a stop work order begin at \$100 per day, starting the day the stop work order is issued, and continuing until proof of coverage and payment of the fine is received by the DIA. An employer who believes the issuance of the stop work order was unwarranted has ten days to file an appeal. A hearing must take place within 14 days, during which time the stop work order will not be in effect. The stop work order and penalty will be rescinded if the employer can prove it had workers' compensation insurance during the disputed time. If at the conclusion of the hearing the DIA finds the employer had not obtained adequate insurance coverage, the employer must pay a fine of \$250 a day. Any employee affected by a stop work order must be paid for the first ten days lost and that period shall be considered "time worked."

In addition to established fines, an employer lacking insurance coverage may be subject to a criminal court proceeding with a possible fine not to exceed \$1,500, or by imprisonment for up to one year, or both. If the employer continues to fail to provide insurance, additional fines and imprisonment may be imposed. The Commissioner or designee can file criminal complaints against employers (including the president and treasurer of a corporation) that violate any aspect of Section 25C.

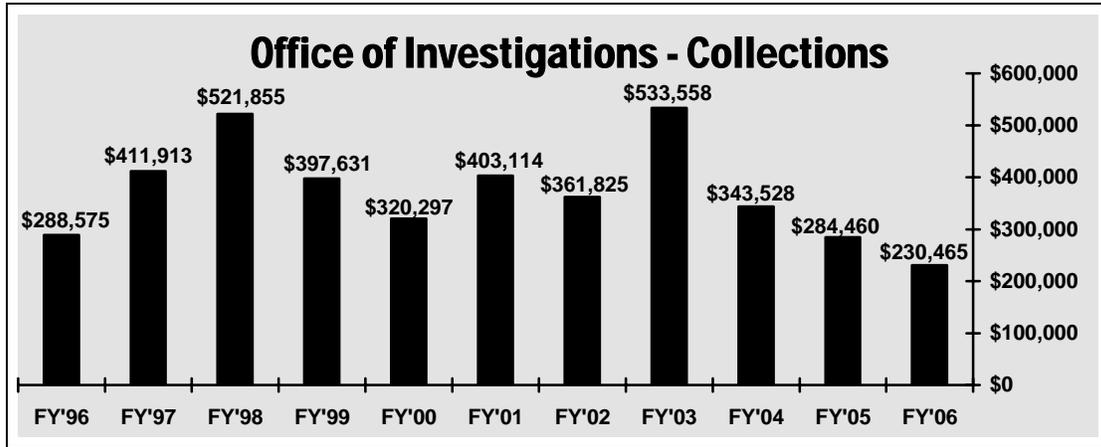
Figure 16: MA SWO's & Investigations, FY'01 - FY'06



Source: Office of Investigations

In fiscal year 2006, 227 stop work orders were issued as a result of 21,525 investigations conducted. Of the 227 stop work orders issued, 217 (96%) were issued to "small" companies (1-10 employees), 10 were issued to "medium" companies (11-75 employees) and none were issued to "large" companies (76+ employees).

Figure 17: Office of Investigations - Collections



Source: Office of Investigations

In fiscal year 2006, the Office of Investigations collected \$230,465 in fines from employers who violated the workers' compensation insurance mandate.<sup>20</sup> The total amount the Office of Investigations billed in fiscal year 2006 is \$219,100. The DIA has explained on numerous occasions that there will be an initial drop in both the number of stop work orders issued and the amount of collections received as the new revisions to the enforcement and compliance system take effect. In an effort to make paying Stop Work Order fines much easier, the DIA is now allowing the payment of fines online with credit cards. The DIA has established a secure website for online payment at: [www.mass.gov/dia/Investigation/OnlinePaymentPage.htm](http://www.mass.gov/dia/Investigation/OnlinePaymentPage.htm).

Employer compliance with stop work orders and collection rates on stop work order fines reached 100% for the first time in the agency's history in fiscal year 2004. By contrast, in fiscal year 2001, the compliance rate was 35% and the collection rate was 7%.

## Public Awareness Campaign

During the past three fiscal years, the Office of Investigations has administered a bilingual statewide public awareness campaign aimed at educating employers in the Commonwealth of the mandatory requirement to provide workers' compensation insurance. The campaign, titled "Putting Workers First," utilized paid and free media, television and radio public service announcements, and various forms of print media. In conjunction with the campaign, the DIA established a toll-free number (1-877-MASSAFE) to further educate employers and employees on their responsibilities and to allow for the reporting of suspected employers who are violating the law.

Television personality, Bob Vila, was the official spokesperson for the Public Service Announcements.<sup>21</sup> The campaign was designed to coincide with seasonal businesses (landscapers, painters, roofers, and domestic help) since they have historically had a high-risk for injuries. The intent of the campaign is to reduce the number of claims against the Trust Fund, resulting in reduced assessments to employers.

<sup>20</sup> This amount includes all fines recovered this year including a small percentage from previous years.

<sup>21</sup> Bob Vila is the television creator of "This Old House" and "Home Again." Mr. Vila donated his services to the Department of Industrial Accidents

In fiscal year 2006, the DIA designated \$200,000 to support this public awareness campaign.

## **Regional / Industry Sweeps**

In fiscal year 2006, the Office of Investigations utilized both regional and industry sweeps as a tool to combat uninsured employers in Massachusetts. During mid-June of 2006, the DIA Investigation Unit traveled to Martha's Vineyard and performed 120 on-site visits to businesses to determine if employers were carrying workers' compensation insurance for their employees. Of the 120 businesses that were checked, 22 were found to be in violation of the Workers' Compensation Act (all 22 have since come into compliance as a result of the DIA's post investigation follow-up).

During the fiscal year, regional sweeps were also conducted in Lawrence and Worcester and specifically targeted the automotive repair industry. The Office of Investigations has future plans to continue both regional and industry sweeps throughout the Commonwealth.

## **WORKERS' COMPENSATION TRUST FUND**

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Section 65 of the Workers' Compensation Act establishes a Trust Fund in the State Treasury to make payments to injured employees whose employers did not obtain insurance, and to reimburse insurers for certain payments under Sections 26, 34B, 35C, 37, 37A, and 30H. The DIA has established a department known as the Workers' Compensation Trust Fund (WCTF) to process requests for benefits, administer claims, and respond to claims filed before the Division of Dispute Resolution.

### **Uninsured Employers**

Section 65 of the Workers' Compensation Act directs the Trust Fund to pay benefits resulting from approved claims against Massachusetts' employers who are uninsured in violation of the law. The Trust Fund must either accept the claim or proceed to Dispute Resolution over the matter. Every claim against the fund under this provision must be accompanied by a written certification from the DIA's Office of Insurance, stating that the employer was not covered by a workers' compensation insurance policy on the date of the alleged injury, according to the Division's records.<sup>22</sup> In FY'06, \$6,649,799 was paid to uninsured claimants, 264 claims were filed, and 568 claims for benefits were paid. The DIA aggressively goes after uninsured employers to recoup monies paid out from the Trust Fund. Since 2004, the DIA has recovered \$7.3 million, including \$600,000 in 2004, \$852,000 in 2005 and \$2.23 million in 2006.

### **Second Injury Fund Claims (Sections 37, 37A, and 26)**

In an effort to encourage employers to hire previously injured workers, the Legislature established a Second Injury Fund to offset any financial disincentives associated with the employment of injured workers.

Section 37 requires insurers to pay benefits at the current rate of compensation to all claimants, whether or not their injury was exacerbated by a prior injury. When the injury is determined to be a "second injury," insurers become eligible to receive reimbursement from the DIA's WCTF for up to 75% of compensation paid after the first 104 weeks of payment.<sup>23</sup> Employers are entitled to an adjustment to their experience modification factors as a result of these reimbursements.

Section 37A was enacted to encourage the employment of servicemen returning from World War II. The Legislature created a fund to reimburse insurers for benefits paid for an injury aggravated or prolonged by a military injury. Insurers are entitled to

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<sup>22</sup> 452 C.M.R. 3.00

<sup>23</sup> An employee is considered to suffer a second injury when an on the job accident or illness occurs that exacerbates a pre-existing disability. How the preexisting condition was incurred is immaterial; the impairment may derive from any previous accident, disease, or congenital condition. The disability, however, must be "substantially greater" due to the combined effects of the preexisting impairment and the subsequent injury than the disability as a result of the subsequent injury by itself.

reimbursement for up to fifty percent of the payments for the first 104 weeks of compensation and up to one hundred percent for any amount thereafter.

Section 26 provides for the direct payment of benefits to workers injured by the activities of fellow workers, where those activities are traceable solely and directly to a physical or mental condition, resulting from the service of that fellow employee in the armed forces. (A negligible number of these claims have been filed.)

At the close of fiscal year 2006, 341 §37 claims were filed and 490 §37 claims were settled. The total amount paid in settlements in FY'06 was \$18,539,957.

### **Vocational Rehabilitation (Section 30H)**

Section 30H provides that if an insurer and an employee fail to agree on a vocational rehabilitation program, the Office of Education and Vocational Rehabilitation (OEVR) must determine if vocational rehabilitation is necessary and feasible to return the employee to suitable employment. If OEVR determines that vocational rehabilitation is necessary and feasible, it will develop a rehabilitation program for the employee for a maximum of 104 weeks. If the insurer refuses to provide the program to the employee, the cost of the program will be paid out of the Section 65 Trust Funds. If upon completion of the program OEVR determines that the program was successful, it will assess the insurer no less than twice the cost incurred by the office, with that assessment paid into the Trust Fund. In FY'06, 12 new cases were accepted for §30H benefits and the Trust Fund paid \$87,483 for vocational rehabilitation services.

### **Latency Claims (Section 35C)**

Section 35C states that when there is at least a five year difference between the date of injury and the date of benefit eligibility (for Section's 31, 34, 35A or 35), benefits' paid will be based upon levels in effect on the date of eligibility. This same date of eligibility rather than the date of injury is also used to compute supplemental benefits known as COLA (Cost of Living Adjustments) for employees subject to this Section. In FY'06, approximately \$43 was paid as latency claims.

### **Cost of Living Adjustments (Section 34B)**

Section 34B provides supplemental benefits for persons receiving death benefits under Section 31 and permanent and total incapacity benefits under Section 34A, whose date of personal injury was at least 24 months prior to the review date. The supplemental benefit is the difference between the claimant's current benefits and his/her benefit after an adjustment for the change in the statewide average weekly wage between the review date and the date of injury. Insurers pay the supplemental benefit concurrently with the base benefit. They are then entitled to quarterly reimbursements for the supplemental benefits paid on all claims with dates of injury occurring prior to October 1, 1986. For injury dates after October 1, 1986, insurers will be reimbursed for any increase that exceeds 5%. COLA payments for FY'06 totaled \$23,366,959 for the Private Trust Fund.

## OFFICE OF HEALTH POLICY

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The Office of Health Policy (OHP) was created in July of 1993 by the Commissioner pursuant to the promulgation of M.G.L. c.152, §5, §13, and §30. The statute authorizes the Office of Health Policy to approve and monitor workers' compensation utilization review (UR) programs in the Commonwealth to ensure compliance with the requirements of 452 CMR 6.00 et seq.

During fiscal year 2006, the Office of Health Policy was staffed by four employees: an Executive Director (Registered Nurse), a UR Coordinator (Registered Nurse), and two Program Analysts.

### Utilization Review

Utilization review is a system for reviewing the “appropriate and efficient allocation of health care services” to determine whether those services should be paid or provided by an insurer. This review of medical care is conducted before, during, or following treatment to an injured worker. The utilization review and quality assessment regulations mandate that all insurers conduct UR on all health care services provided to injured workers that have been delivered on or after October 1, 1993, regardless of the date the employee is injured. UR agents must use the treatment guidelines endorsed by the Health Care Services Board and adopted by the DIA for the specific conditions to which these guidelines apply. All medical care relating to workplace injuries must be reviewed under established guidelines and review criteria.

In Massachusetts, UR Agents are required to use licensed health care professionals to conduct utilization review. Care and treatment can be approved by a licensed or registered nurse using established guidelines and review criteria. Care that cannot be approved must be reviewed by a licensed health care practitioner in the same school as the provider prescribing the care or treatment for the injured employee. All decisions regarding care and treatment (and the basis for the decision) must be disclosed in writing to the injured employee and the ordering practitioner within specific timeframes. Any decision, by any licensed reviewer cannot be arbitrary and will be based on established guidelines. For care that cannot be approved, the UR Agent must inform the injured employee and the ordering practitioner of their rights and procedure to appeal the decision to the UR Agent. After the exhaustion of this process, the injured worker and practitioner have additional rights to appeal the determination of the UR Agent to the DIA or file a claim for payment to the DIA in accordance with 452 CMR 1.07.

The OHP conducts investigations on all complaints received. Within the year, twenty-one (21) complaints were analyzed and any violations were recorded and forwarded to the Commissioner for due process. The OHP tracks the nature and pattern of these complaints and takes this information into account when reviewing policy and procedures of UR Agents.

***To ensure the regulatory compliance with UR regulations, the OHP:***

- Reviews new applications from UR Agents seeking approval to conduct UR for workers' compensation in Massachusetts. The OHP UR Coordinator provides consultation as requested throughout the application process to ensure all systems, policies and procedures comply with the DIA's rules, regulations and standards.
- Conducts system wide Quality Assessment Audits annually for UR Agents. The OHP UR Coordinator supports and assists the UR Agent throughout the following alternating process to remain in compliance with the DIA's regulations and requirements:

Application Review - Conducted every two years, the Application Review examines demographic information, changes in operations, and policy procedures.

Medical Record Review Audits - A sample of the agent's medical records are reviewed to monitor the quality of care provided to injured workers and to ensure the agent's compliance with the DIA's rules and regulations.

On-Site Reviews - Upon a mutually agreed date, this review is conducted for the purpose of confirming that the organization is operating in a manner consistent with 452 CMR 6.0 *et seq.*

- Audits the applications of Preferred Provider Arrangements and processes them according to 452 CMR 6.03.

## **Outreach and Support to UR Agents**

The OHP provides outreach and support to UR Agents in an effort to assist them in offering the highest quality of service to injured workers. The OHP is providing educational sessions to all UR Agents, practitioners and school/peer reviewers who are interested in attending. Contact hours for the Massachusetts Association of Registered Nurses are offered to participants. UR Agents are encouraged to attend and discuss issues, as well as share new information. Agents are encouraged to contribute input for agenda items. As necessary, the agency's UR Coordinator will schedule meetings and telephone consultations with any UR Agent having difficulty complying with the DIA's regulations. The OHP provides site education to any UR Agent upon request. During fiscal year 2006, the OHP conducted one formal educational program presented in three different sessions for all UR Agents and fourteen individual educational programs for individual UR agents.

## **Health Care Services Board**

Pursuant to M.G.L. c.152 §13, the Health Care Services Board ("HCSB") is a medical advisory body of 14 members specified by statute and appointed by the Commissioner. The HCSB met throughout fiscal year 2006, discharged its statutory responsibilities with regularity, and continued to assist the Commissioner and the DIA with the implementation of multiple medical initiatives stemming from the Workers' Compensation Reform act of 1991.

The HCSB managed its affairs with its Chair appointed by the Commissioner, Legal Counsel and administrative staff.

**Complaints Against Providers** - The HCSB is required to accept and investigate complaints from employees, employers and insurers regarding the provision of health care services. Such complaints include provider's discrimination against compensation claimants, over-utilization of procedures, unnecessary surgery or other procedures, and inappropriate treatment of workers' compensation patients. Upon a finding of a pattern of abuse by a particular provider, the HCSB is required to refer its findings to the appropriate board of registration. The HCSB continues to receive, investigate and resolve complaints against health care practitioners providing medical services to injured workers under the workers' compensation statute. In fiscal year 2006, the HCSB received 3 such complaints and closed 6 complaints.

**IME Roster Criteria** - The HCSB is also required to develop eligibility criteria for the DIA to select and maintain a roster of qualified impartial physicians to conduct medical examinations pursuant to M.G.L. c.152, §8(4) and §11A. The HCSB continued to work with the Senior Judge in the recruitment of physicians and health care practitioners throughout fiscal year 2006.

**Treatment Guidelines** - Under §13 of c.152, the Commissioner is required to ensure that adequate and necessary health care services are provided to injured workers by utilizing treatment guidelines developed by the HCSB, including appropriate parameters for treating injured workers. In addition to an annual review and endorsement of the existing 28 medical treatment guidelines adopted by the DIA, the HCSB continues to work on medical guidelines for pain management while reviewing its existing guidelines.

## **Compensation Review System (CRS)**

As part of the 1991 Workers' Compensation Reform Act, the statute mandated that the DIA "monitor the medical and surgical treatment provided to injured employees and the services of other health care providers, and monitor hospital utilization as it relates to the treatment of injured employees. The monitoring shall include determinations concerning the appropriateness of the service, whether treatment is necessary and effective, the proper costs of services, and the quality of treatment" (M.G.L. c.152, §13).

In order to fulfill this legislative mandate, the OHP set out to create a Compensation Review System (CRS). The goals of CRS are to provide standardized, comparable data for the improvement of programs, policies, and services relative to injured workers in Massachusetts, as well as review compliance with HCSB Treatment Guidelines, review patterns of care, and review utilization of medical services and trends in medical care. In addition, CRS will aid in controlling costs by detecting over-utilization and improper utilization of treatments. This will be accomplished by collecting data from insurers, self-insurers and third party administrators (TPA) and comparing this data to the treatment guidelines. During 2006, the OHP focused on claims related to Treatment Guidelines #20 & #21 for back injuries. In 2006, data collection will continue to be related to back injuries and include Treatment Guideline #26 for Neuromusculo-Skeletal Injury and Treatment Guideline #27 for Chronic Pain Syndrome.

The OHP continues to receive and compile data from insurers, self-insurers, Third-Party Administrators (TPAs) and Bill Review companies from across the state. Data submission and compliance is monitored on an individual basis by contacting the insurer and, if applicable, their data reporting entity (TPA/Bill Reviewers). Individual contact facilitates the receipt of viable data and provides assistance and support where/when needed which results in the collection of data that produces meaningful and quantifiable information.

The OHP CRS system had been scheduled for conversion to Oracle in October 2003. This conversion project has promised to deliver data collection and processing to the OHP in a uniform manner. However, a 3-year delay in the conversion project has resulted in the continued manual system of collection and file processing.

The OHP continues to collect data to evaluate injured workers' access to medical care, standards of practice and compliance with the Massachusetts HCSB Treatment Guidelines, over and under-utilization of treatments, trends in the treatment of injured workers with back injuries and the need to update and revise the Massachusetts HCSB Treatment Guidelines. CRS will continue to monitor treatment guidelines and evaluate medical care received by injured workers.

## OFFICE OF ASSESSMENTS & COMPLIANCE

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In fiscal year 2005, the DIA created the Office of Assessments & Compliance to verify the accuracy of the assessments that are collected by the agency. Each year, the DIA determines an assessment rate that will yield revenues sufficient to pay the obligations of the Workers' Compensation Trust Fund and the operating costs for the DIA.<sup>24</sup> This assessment rate, multiplied by the employer's standard premium, is the DIA assessment, and is paid as part of an employer's insurance premium.

The DIA uses the Workers' Compensation Rating and Inspection Bureau of Massachusetts (WCRIBM) to communicate the annual assessment rate change, via circular letter, which is issued in July. The assessment rate changes are applied to policies, effective July 1<sup>st</sup> of that year, until notification of new rates are issued the following year. All insurance companies in Massachusetts that are licensed to write workers' compensation insurance must report and remit all collected assessments to the DIA on a quarterly basis.<sup>25</sup> Historically, the DIA has relied upon insurance carriers to self-report and pay the appropriate amounts collected from employers.

### Standard Premium

In the past, there has been confusion in the insurance industry regarding the definition of "standard premium." Confusion was eliminated in 1997 when Circular Letter 1778 was issued by the WCRIBM. The circular letter clearly stated that the assessment should be applied to premiums prior to the effect of any company deviations. As used in c.152, §65 and 452 CMR 7.00, standard premium is defined as "direct written premium equal to the product of payroll by class code and currently applicable manual rates multiplied by any applicable experience modification factor."

### Assessment Audit - Phase I

In 1999, the DIA utilized the services of three accounting firms to ensure that accurate and complete assessments were collected from policyholders and then properly remitted to the DIA. The initial reviews were designed to cover a two-year period spanning from July 1, 1996 to June 30, 1998 and included insurance carriers licensed to write workers' compensation in Massachusetts. Upon the completion of Phase I by the CPA firms in August of 2006, the DIA had collected a total of \$7.6 million from insurance carriers as a result of underpaid assessment amounts. The cost of conducting the Assessment Audit in Phase I totaled \$1.9 million. This represents a cost to collection ratio of 25%. In addition to the \$7.6M collected as a result of CPA reviews, the DIA also collected \$1.9 million from conducting internal reviews, resulting in a grand total of \$9.5 million collected in Phase I of the project.

<sup>24</sup> Regulated by M.G.L. c.152, §65(4).

<sup>25</sup> Quarterly assessment reports are due no later than 30 days after the end of the calendar quarter being reported. The quarterly assessment forms are mailed to each insurance company the first week in January, April, July and October.

The following table details the assessments that were remitted to the DIA on a fiscal year basis from the result of CPA reviews.

**Table 15: Assessment Recovery Project - Collections by Fiscal Year**

<b>Assessment Recovery Project</b> <b>Insurance Reviews Performed by CPA Firms</b>		
<b><u>Fiscal Year</u></b>	<b><u>Amount Collected</u></b>	<b><u>Cumulative Amount</u></b>
Fiscal Year 2000	\$158,704	\$158,704
Fiscal Year 2001	\$67,793	\$226,497
Fiscal Year 2002	\$1,106,377	\$1,332,874
Fiscal Year 2003	\$1,539,935	\$2,872,809
Fiscal Year 2004	\$223,939	\$3,096,748
Fiscal Year 2005	\$4,537,865	\$7,634,613
Fiscal Year 2006	\$1,847,086	\$9,481,699

**Source:** DIA Office of Assessments & Compliance

## **Assessment Audit - Phase II**

In FY'06, Phase II of the assessment reviews was initiated. In Phase II, the focus is on assessments calculated and remitted during the review period from January 1, 1999 to December 31, 2003. The insurance companies reviewed as part of Phase II include both companies currently licensed to write workers' compensation insurance in Massachusetts as well as companies that no longer write new business in Massachusetts but did so during the applicable review time period. Phase II encompasses a selection of companies that range from single insurance companies to multi-company insurance groups. The length of each review was originally estimated at four to six months per company but because of the number of companies involved in some insurance groups and the complexity of issues encountered, some reviews have taken longer. The DIA continues to work with the insurance companies and the CPA firms to ensure that each review is completed in an efficient and timely manner.

During the fiscal year, the DIA continued to strive to improve communication between the DIA and the insurance companies. The DIA issued electronic bulletins known as "DIA Communications" which addressed various issues surrounding the assessment process. The goal of the communications is to keep the dialogue flowing between the DIA and the insurance companies to allow for the improvement of the assessment process. During FY'06, the DIA made great strides in expanding its communication with insurers regarding the assessment process.

## **DIA REGIONAL OFFICES**

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The Department of Industrial Accidents has offices in Boston, Lawrence, Worcester, Fall River, and Springfield. The main headquarters are located in Boston where all DIA case records are stored.

The Senior Judge and the managers of the conciliation and vocational rehabilitation units are located in Boston, but each has managerial responsibility for the operations of their respective Divisions at the regional offices.

Each regional office has a regional manager, a staff of conciliators, stenographers, vocational rehabilitation counselors, disability managers, administrative secretaries, clerks, and data processing operators. In addition, Administrative Judges make a particular office the base of their operations, with an assigned administrative secretary.

### **Administration and Management of the Offices**

Each regional manager is responsible for the administration of his or her regional office. The offices are equipped with conference rooms and hearings rooms in which conciliations, conferences, hearings and other meetings are held. A principle clerk and a data processing operator manage the scheduling of these proceedings and the assignment of meeting rooms through the Oracle case scheduling system.

Cases are assigned to Administrative Judges by the Oracle system in coordination with the Senior Judge. Conciliators are assigned cases according to availability on the day of the meeting, and report to the conciliation manager located at the Boston office. Likewise, stenographers are assigned when needed, but report to the stenographer manager at the Boston office. The vocational rehabilitation personnel report directly to the OEVR manager in the Boston office, and take assignments as delegated from Boston.

When an employee or insurer files a workers' compensation claim or complaint with the DIA, the case is assigned to the office geographically closest to the home of the claimant. Assignments are based on zip codes, with each regional office accounting for a fixed set of zip codes.

Each regional office occupies space rented from a private realtor. The manager is responsible for working with building management to ensure the building is accessible and that the terms of the lease are met. Moreover, each regional manager is responsible for maintenance of utilities, including the payment of telephone, electricity, and other monthly services. Therefore, the costs of operating each office is managed by each regional manager.

## Resources of the Offices

Each of the regional offices has moved to expanded and enhanced office space within the last six years.

Court rooms have been updated and modernized according to the needs of each regional office, including handicap accessibility and security systems. Moreover, each regional office is equipped with video equipment to assist with the presentation of court room evidence.

Each office has been provided with personal computers networked to the Boston office and with a CD-ROM for access to software on the MA General Laws, MA court reporters, and DIA reports.

### The following are addresses for the regional offices:

#### **Fall River**

30 Third Street  
Fall River, MA 02720  
(508) 676-3406  
[www.mass.gov/dia/FallRiver1.htm](http://www.mass.gov/dia/FallRiver1.htm)  
Henry Mastey, Manager

#### **Lawrence**

160 Winthrop Avenue  
Lawrence, MA 01840  
(978) 683-6420  
[www.mass.gov/dia/Lawrence1.htm](http://www.mass.gov/dia/Lawrence1.htm)  
Dan DeMille, Manager

#### **Springfield**

436 Dwight Street, Room 105  
Springfield, MA 01103  
(413) 784-1133  
[www.mass.gov/dia/Springfield1.htm](http://www.mass.gov/dia/Springfield1.htm)  
Marc Joyce, Manager

#### **Worcester**

340 Main Street  
Worcester, MA 01609  
(508) 753-2072  
[www.mass.gov/dia/Worcester1.htm](http://www.mass.gov/dia/Worcester1.htm)  
Thomas Hannigan, Manager

# SECTION

# - 5 -

## *DIA FUNDING*

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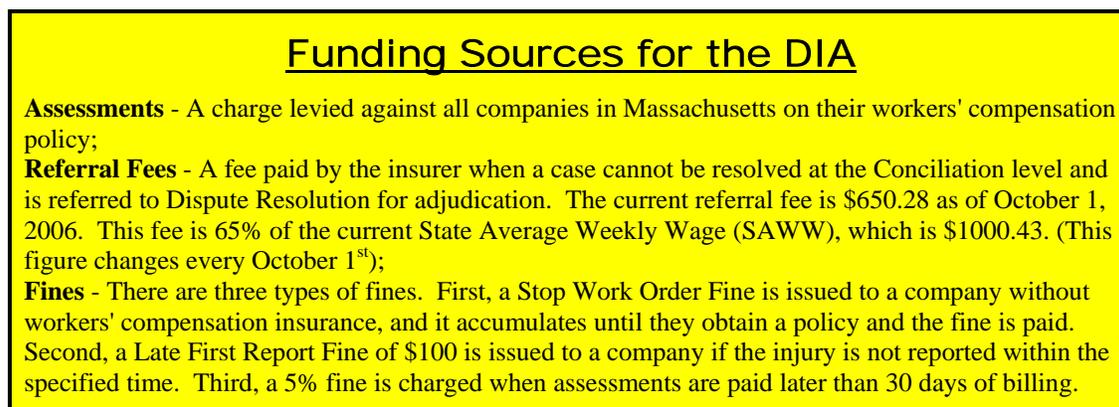
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## DIA FUNDING

To ensure that the Department of Industrial Accidents has adequate funds, the Legislature required the employers of Massachusetts, both public and private, to pay assessments covering the expenses of operating the agency and for the payment of trust fund benefits. In addition to these assessments, the DIA also derives revenue from the collection of fees (for various filing costs) and fines (for violations of the Act). There are no tax dollars used to fund the Department of Industrial Accidents or any of its activities.

**Figure 18: Funding Sources for the Department of Industrial Accidents**



**Source:** Department of Industrial Accidents' Website: [www.mass.gov/dia/](http://www.mass.gov/dia/)

Each year, the DIA determines an assessment rate that will yield revenues sufficient to pay the obligations of the Workers' Compensation Trust Fund and the operating costs for the DIA. This assessment rate, multiplied by the employer's standard premium, is the DIA assessment, and is paid as part of an employer's insurance premium.<sup>26</sup> The assessment rate for both private and public sector employers in FY'07 is 4.192% of standard premium. This represents a 4.6% decrease from the FY'06 assessment rate of 4.393%.

**The Special Fund** - The DIA's operating expenses are paid from a Special Fund, funded entirely by assessments charged to private sector employers. Operating expenses must be appropriated by the Legislature each year through the General Appropriations Act. The DIA reimburses the General Fund the full amount of its budget appropriations plus fringe benefits and indirect costs from the assessments, fines, and fees collected. Payments are made quarterly. Chapter 23E of the Massachusetts General Laws directs the Advisory Council to review the DIA's operating budget as well as the Workers' Compensation Trust Fund budgets. With the affirmative vote of seven members, the Council may submit an alternative budget to the Director of Labor.

<sup>26</sup> For employers that are self insured or are members of self insured groups, an "imputed" premium is determined, whereby the WCRB will estimate what their premium would have been had they obtained insurance in the traditional indemnity market. Some employers are entitled to "opt out" from paying a full assessment. By opting out, the employer agrees that it can not seek reimbursement for benefits paid under sections 34B, 35C, 37, 30H, 26, and 37A. Separate opt out assessment rates are determined.

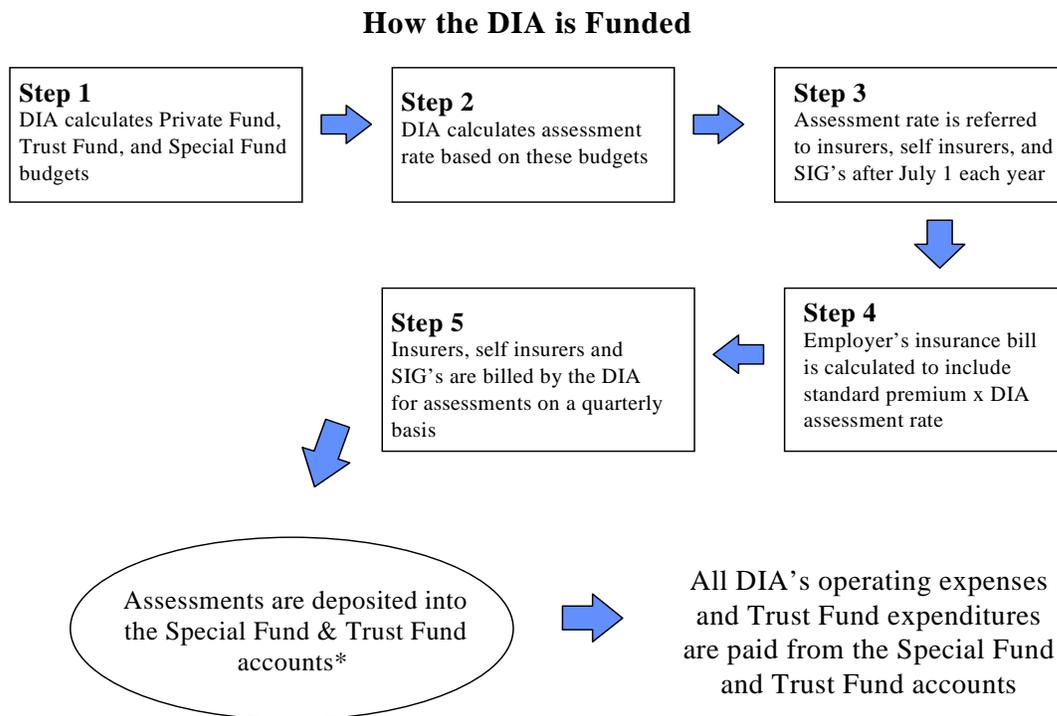
**The Trust Fund** - The Trust Fund was established so the DIA can make payments to uninsured, injured employees and employees denied vocational rehabilitation services by their insurers. In addition, the Trust Fund must reimburse insurers for benefits for second and latent injuries, injuries involving veterans, and for specified cost of living adjustments.<sup>27</sup> One account is reserved for payments to private sector employers (Private Trust Fund); the other is for payments to public sector employers (Public Trust Fund).

## The Funding Process

At the beginning of each fiscal year, the DIA estimates the amount of money needed to maintain its operations in the next fiscal year. This amount is refined by December, when it is submitted to the Governor's Office for inclusion in the Governor's budget (House 1), and submitted for legislative action.

In May and June, the DIA uses consulting actuaries to estimate future expenses and determine the assessments necessary to fund the Special Fund and the Trust Fund. The budgets and the corresponding assessments must be submitted to the Director of Labor by July 1<sup>st</sup> annually. By July, the Legislature appropriates the DIA's operating expenses. At that time, insurance carriers are notified of the assessment rates paid quarterly directly to the DIA. Collected assessments are deposited into the DIA's accounts, which are managed by the Commonwealth's Treasurer.

**Figure 19: DIA Funding Process**



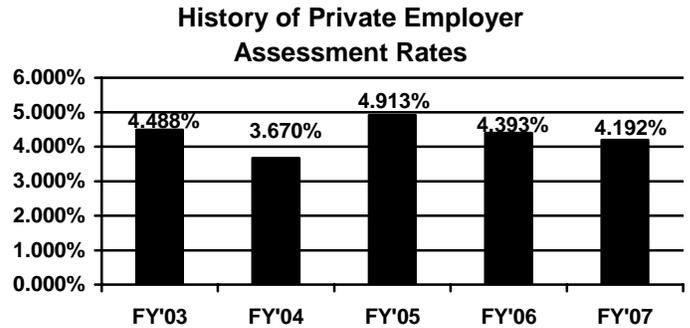
\*Note: Maintained by the State Treasurer.

<sup>27</sup> M.G.L. c.152, §65(2).

# PRIVATE & PUBLIC EMPLOYER ASSESSMENTS

On June 28, 2006, KPMG released an analysis of the DIA's FY'07 assessment rates as mandated under M.G.L. c.152, Section 65. Specifically, the report detailed the estimated amount required by the Special Fund and Trust Funds for FY'07, beginning July 1, 2006. Included in the report are the assessment rates to be applied to public and private employer insurance premiums. Both the private and public employer assessment rates have been calculated to be **4.192%** of standard premium, a decrease of 4.6% from last year's assessment (4.393%).

**Figure 20: History of Private Employer Assessment Rates**



Again this year, the public employer assessment rate was set equal to the private employer assessment rate due to the low credibility of public fund data.

## Overview of Assessment Rate Calculations

KPMG uses the following six steps in determining the assessment rates for both private and public employers:

1. Project the Fiscal Year 2007 Expenditures;
2. Project the Fiscal Year 2007 Income (excluding assessments);
3. Estimate Fiscal Year 2007 Balance Adjustments, if any;
4. Convert Above Items to Ratios by comparing them to the Assessment Base ('05 Paid Losses);
5. Calculate the Assessment Ratio by Subtracting the Projected Income and Balance Adjustment Ratios from the Projected Expenditure Ratio; and
6. Calculate the Assessment Rate by multiplying the Assessment Ratio by the Assessment Base Factor.

**1. FISCAL YEAR 2007 PROJECTED EXPENDITURES: \$78.1M**

The first step in the assessment process is the calculation of the expected FY'07 expenditures. Private employers are assessed for the sum of the Private Trust Fund budget and the Special Fund budgets.

<b><u>PRIVATE TRUST FUND BUDGET</u></b>	<b><u>Projected FY'07 Expenditures (06/06)</u></b>
Section 37 (2nd Injuries)	\$23,425,325
Uninsured Employers	\$ 7,324,363
Section 30H (Rehabilitation)	\$ 45,000
Section 35C (Latency)	\$ 400,000
Section 34B (COLA's)	\$20,616,540
Defense of the Fund	\$ 4,133,341
<b>Total:</b>	<b><u>\$55,944,569</u></b>

<b><u>SPECIAL FUND BUDGET</u></b>	<b><u>Projected FY'07 Expenditures (06/06)</u></b>
<b>Total:</b>	<b><u>\$22,188,675</u></b>

<b><u>PRIV. EMPLOY. EXPENDITURES</u></b>	<b><u>Projected FY'07 Expenditures (06/06)</u></b>
<b>Total:</b>	<b><u>\$78,133,244</u></b>

**2. PROJECTED FISCAL YEAR 2007 INCOME: \$6.4M**

Any income derived by the funds is used to offset assessments. An amount is projected for the collection of fees and fines for deposit in the Special Fund, reimbursements from uninsured employers for deposit in the Private Trust Fund, and an amount estimated for interest earned on the Private Fund and the Special Fund balances.

*FY'07 Fines and Fees (Special Fund)* = \$4,454,012  
*FY'07 Income Due to Reimbursements* = \$1,301,330  
*Estimated Investment Income (FY'06)* = \$ 662,220 (Private Fund: \$278,017/Special Fund: \$384,203)

**Total Projected FY'07 Income: \$6,417,562**

**3. ADJUSTMENTS TO FUND BUDGETS: \$9.4M**

According to M.G.L. c.152, §65(4)(c), the amount assessed employers for any fund must be reduced by a certain percentage of moneys held over from the previous year. Any amount greater than 35% of FY'05 expenditures in a particular fund must be used to reduce amounts assessed for that fund in FY'07. The balances of both the Special Fund and Private Trust Fund at the end of FY'06 will have a surplus exceeding 35% of FY'05 disbursements. Therefore, the assessment was calculated with a \$9.4 million reduction to the Special Fund Budget, and no reduction to the Private Trust Fund Budget.

<b><i>SPECIAL FUND:</i></b>	<b><u>FY'06 Estimated Year End Balance</u></b>	<b><u>35% of FY'05 Expenditures</u></b>	<b><u>Amount of Reduction Required</u></b>
	\$17,278,654	\$7,915,385	\$9,363,269
<b><i>PRIVATE TRUST FUND:</i></b>	<b><u>FY'06 Estimated Year End Balance</u></b>	<b><u>35% of FY'05 Expenditures</u></b>	<b><u>Amount of Reduction Required</u></b>
	\$12,503,209	\$17,489,207	\$0

**4. CONVERSION TO RATIO:**

Expenditures, income, and any balance adjustment, must be converted to a ratio. This is calculated by dividing each of the first three steps by the assessment base, which represents losses paid during Calendar Year 2005. For the Private Fund, the assessment base is \$693.8M.

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<b><i>Private Expenditure Ratio:</i></b>	11.262%	(\$78.1 million/\$693.8 million)
<b><i>Projected Income Ratio:</i></b>	0.925%	(\$ 6.4 million/\$693.8 million)
<b><i>Balance Adjustment Ratio:</i></b>	1.349%	(\$ 9.4 million/\$693.8 million)

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**5. CALCULATION OF THE ASSESSMENT RATIO: 8.988%**

After the projected expenditures, income and balance adjustments are converted to ratios, the last two items are subtracted from the expected expenditure ratio to calculate an assessment ratio.

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Projected expenditures -	Projected income -	Balance adjustment =	<b>Assessment Ratio</b>
11.262%	0.925%	1.349%	<b>8.988%</b>

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**6. CALCULATION OF THE ASSESSMENT RATE: 4.192%**

Since the assessment ratio is relative to paid losses, the ratio must be converted into a rate that is relative to projected premiums. This is done by multiplying the assessment ratio by an assessment base factor which represents a ratio of losses to premiums (based on information provided by the WCRIBM). The 2007 assessment base factor is .466.

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Assessment Ratio x	Assessment Base Factor =	<b>Assessment Rate</b>
8.988%	.466	<b>4.192%</b>

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# DIA OPERATING BUDGET

## Legislative Appropriations, Fiscal Year 2007

The Department of Industrial Accidents initially requested a budget of \$20,492,953 for fiscal year 2007. In House 2, the Governor's recommendation for the DIA's budget was \$20,406,316 (\$86,637 less than the DIA's original request). The Massachusetts House of Representatives, Senate, and Conference Committee all approved appropriations totaling \$20,406,316 (the identical amount as proposed in the Governor's recommendation).

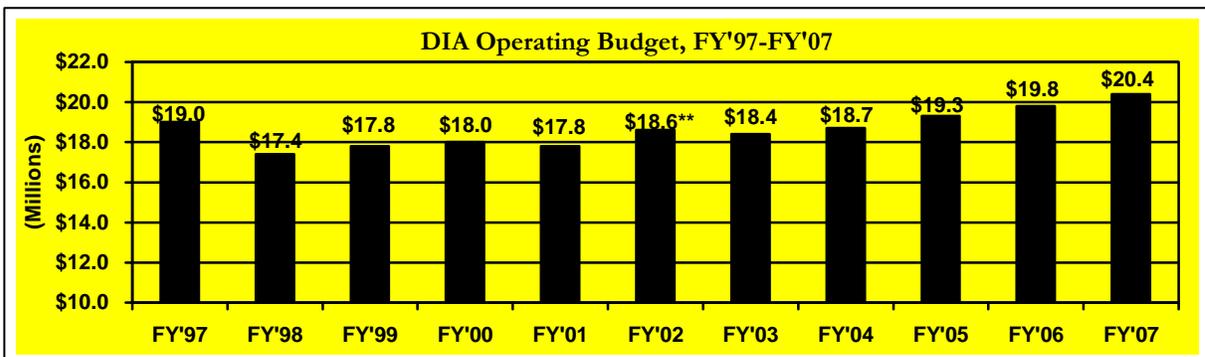
Table 16: Legislative Budget Process for DIA Line-Item, Fiscal Year 2006 - Fiscal Year 2007

Fiscal Year 2006 Budget Process		Fiscal Year 2007 Budget Process	
DIA Request	\$19,788,445	DIA Request	\$20,492,953
Governor's Rec.	\$19,788,445	Governor's Rec.	\$20,406,316*
Full House	\$19,411,568	Full House	\$20,406,316
Full Senate	\$19,788,445	Full Senate	\$20,406,316
Conference Committee	\$19,788,445	Conference Committee	\$20,406,316
<b>Gen. Appropriations Act</b>	<b>\$19,788,445</b>	<b>Gen. Appropriations Act</b>	<b>\$20,406,316</b>

\*Endorsed by the Advisory Council on 3/8/06.

## General Appropriations Act

On July 8, 2006, Governor Romney signed the FY'07 General Appropriations Act, which allocated the DIA a \$20,406,316 operating budget. The FY'07 appropriation is equal to the Governor's Recommendation (House 2) which was endorsed by the Advisory Council in March of 2006. This appropriation represents a 3.1% increase from last year's final appropriation. Provisions contained within the DIA's appropriation require that "not less than" \$800,000 be expended for occupational safety grants and that a judge be assigned to hear cases in Berkshire County "not less than once a month." Furthermore, the line-item contains a provision that allows for the Advisory Council to release sufficient funds from the Special Reserve Account to pay for the continued expansion of the agency's Oracle conversion project.



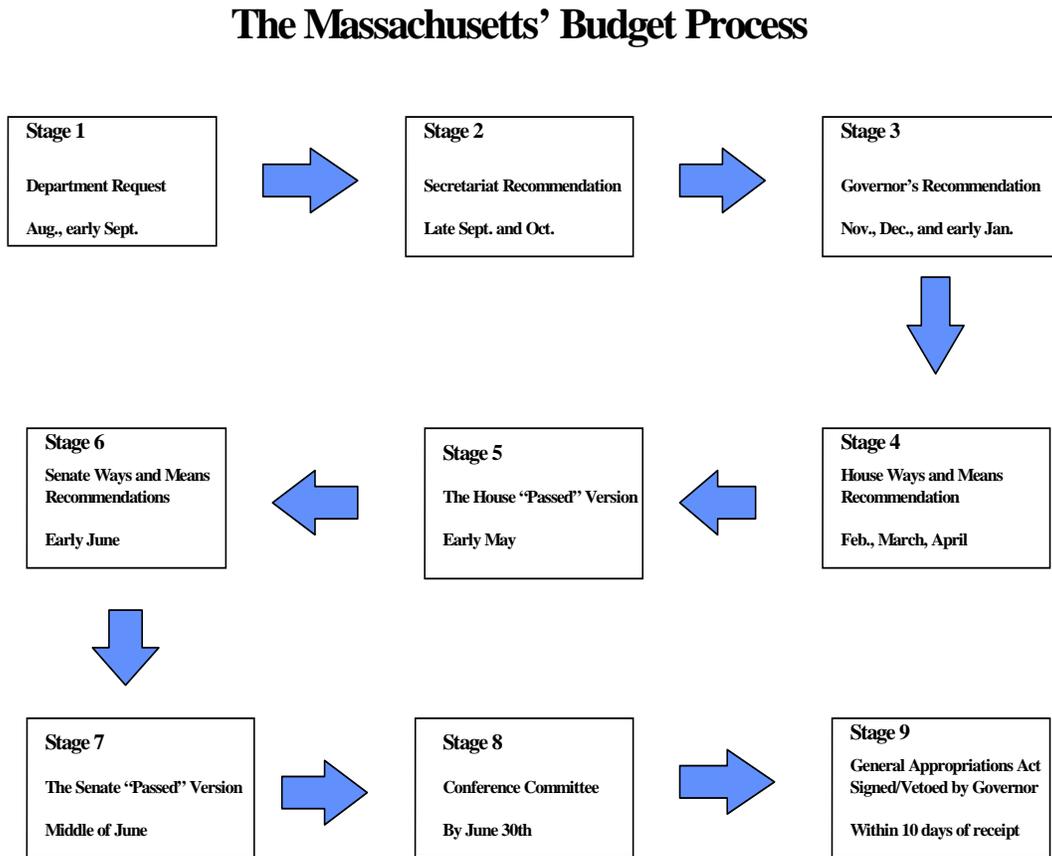
\*\*Note: The FY'02 appropriation reflects the combination of the General Appropriation Act (\$17,270,401) and the Supplemental Budget figures (\$1,327,147).

## The Budget Process

The operating budget of the DIA must be appropriated by the Legislature even though employer assessments fund the agency. The Division, therefore, must abide by the budget process in the same manner as most other government agencies. It is helpful to view this process in nine distinct phases.<sup>28</sup>

The following is a brief description of the process:

Figure 21: The Massachusetts' Budget Process



<sup>28</sup> Making and Managing the Budget in the Commonwealth of Massachusetts, Donahue Institute for Government Services, University of Massachusetts.

**STAGE #1: Department Request**

**Time Frame:** August and Early September

Each department submits a budget for the next fiscal year and a spending plan for the current fiscal year to the Budget Bureau.

**STAGE #2: Secretariat Recommendation**

**Time Frame:** Late September and October

The Secretariats analyze each department's requests and meet with department heads to further review respective budgets. Each Secretary will then make their recommendations for the budget.

**STAGE #3: Governor's Recommendation (House 1)**

**Time Frame:** November, December, and 1st weeks of January

The Governor's recommendation must be the first bill submitted to the House of Representatives each calendar year. On the fourth Wednesday in January, copies of House 1 are distributed to members of the House and Senate, the Executive Secretaries and department heads, the media, and to any other interested parties. The Governor's recommended budget must be balanced and include all revenue accounts and all expenditure accounts.

**STAGE #4: House Ways and Means Committee Recommendations**

**Time Frame:** February, March, and April

House 1 is referred to the House Ways and Means Committee where each line item is analyzed. Public hearings are held in which testimony is taken from the Governor's staff, executive secretariats, departments, and any other interested parties. In April, a new version of the budget replaces House 1 and is traditionally given the label of House 5600.

**STAGE #5: The House "Passed" Version**

**Time Frame:** Early May

The members of the House of Representatives take over by subjecting each line item in the budget to debate and amendments. The full House votes to pass a new version of the budget, traditionally known as House 5700.

**STAGE #6: Senate Ways and Means Committee Recommendations**

**Time Frame:** Early June

House 5700 is referred to the Senate Ways and Means Committee where hearings and testimony are held. Typically by early June, a recommendation will be published and given to members of the Senate and interested parties. The Chairperson and members of the Committee will hold a press conference to address concerns with this new version of the budget.

**STAGE #7: The Senate "Passed" Version**

**Time Frame:** Middle of June

The full Senate reviews each line item and section and subjects them to debate and amendment. Members of the Senate will then vote to pass the new, updated budget.

**STAGE #8: Conference Committee**

**Time Frame:** By June 30th

A Conference Committee is created in an effort to resolve differences between the House passed version of the budget and the Senate version. Members of this committee include the chair of both Ways and Means Committees and ranking minority party members from both committees. The only budget information the Conference Committee can analyze is what survived from the House and Senate debates. Compromises are made on each line item by selecting either the budget amount from the House version, the Senate version, or a number in between the two versions. Finally, a new draft is created that both the House and Senate must ratify. If one branch does not ratify the budget, it is sent back to Conference Committee for more work. Once the budget is ratified, it is signed by the Speaker of the House and the President of the Senate. (An interim budget can be enacted by the legislature if the budget is late to allow the government to continue spending while the General Appropriation Act is being finished.)

**STAGE #9: General Appropriations Act**

**Time Frame:** Within 10 days of receipt

The Governor has 10 calendar days to decide his position on the budget. During this period, the Governor may both sign the budget and approve as complete; veto selected line items (reduce to zero) but approve and sign the rest; or partially veto (reduce to a lower number) selected line items and approve and sign the rest. The Legislature has the power to override a Governor's veto by a 2/3 vote in both chambers.



# SECTION

## - 6 -

### *INSURANCE COVERAGE*

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## **MANDATORY INSURANCE COVERAGE**

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Every private sector employer in the Commonwealth is required to maintain workers' compensation insurance.<sup>29</sup> Coverage may consist of purchasing a commercial insurance policy, membership in a self-insurance group, participation in a reciprocal insurance exchange, or maintaining a license as a self-insured employer.<sup>30</sup>

All Commonwealth of Massachusetts employees are covered under the Workers' Compensation Act, with claims paid directly from the General Fund. The Executive Office of Administration & Finance, Human Resources Division administers workers' compensation claims, with individual agencies paying a yearly "charge-back" based on losses paid in the prior year. This charge-back comes directly from each agency's operating budget.

When enacted in 1911, the Workers' Compensation Act was elective for counties, cities, towns, and school districts. The majority of municipal employees are covered, with only a few communities having never adopted coverage for certain employee groups. Municipalities attain insurance coverage in a manner identical to private employers (commercial insurance, self-insurance, or membership in a self-insurance group).<sup>31</sup>

The Office of Investigations at the DIA monitors employers in the state to ensure no employer operates without insurance. The office may issue fines and close any business operating without coverage.<sup>32</sup> If an employee is injured while working for a company without coverage, a claim may be filed with the DIA's Trust Fund.<sup>33</sup>

### **Exemption of Corporate Officers**

On July 25, 2002, a new law went into effect that made the requirement of obtaining workers' compensation insurance elective for corporate officers (or the director of a corporation) who own at least 25% of the issued and outstanding stock of that corporation. Said corporate officer must provide the Commissioner of the DIA with a written waiver of their rights should they choose to opt-out from the workers' compensation system.<sup>34</sup> The policies and procedures surrounding the exemption of a corporate officer or director are governed by 452 CMR 8.06 et. seq. The new law also amended the definition of an employee by giving a sole-proprietor or a partnership the ability to be considered an "employee" so they can obtain coverage under a workers' compensation insurance policy.

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<sup>29</sup> This mandate includes sole proprietors that are incorporated, domestics and seasonal workers that average over 16 hours of work a week, and family businesses employing family members. There are certain categories of workers for whom insurance is not required. Seamen, some professional athletes, and unincorporated sole proprietors are exempt.

<sup>30</sup> A reciprocal exchange is a group of employers from diverse industries who pool their funds to insure themselves. An exchange is not self insurance or a self insurance group, but a way to provide commercial insurance to small and medium sized companies without resorting to the residual market.

<sup>31</sup> For more information of the coverage of public employees see [Report to the Legislature on Public Employees](#), Massachusetts Workers' Compensation Advisory Council, 1989.

<sup>32</sup> See section covering Office of Investigations.

<sup>33</sup> See section covering Trust Fund.

<sup>34</sup> Form 153 - "Affidavit of Exemption for Certain Corporate Officers."

## COMMERCIAL INSURANCE

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Purchasing a commercial insurance policy is the most common method of complying with the workers' compensation mandate. These policies are governed by the provisions of M.G.L. c.152, and are regulated by the Division of Insurance (DOI). The Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIBM) has delegated authority to determine standard policy terms, classifications, and manual rates, in addition to maintaining statistics on behalf of the Commissioner of Insurance.

While commercial insurance policies are available that provide for varying degrees of risk retention (such as small and large deductibles), the most common type is first dollar coverage, whereby all losses are paid from the first dollar incurred for medical care and indemnity payments. A variety of pricing mechanisms are also available (including retrospective rating and dividend plans), with the most common being guaranteed cost. In exchange for payment of an annual premium based on rates approved each year by the Commissioner of Insurance, an employer is guaranteed that work related injuries and illnesses will be paid in full by the insurer.

The WCRIBM's Massachusetts Workers' Compensation and Employers Liability Insurance Manual sets forth the methods to determine the classification of insureds as well as terms of policies, premium calculations, credits and deductibles.

### The Insurance Market

The commercial insurance market is the primary source of funding for workers' compensation benefits in Massachusetts. A healthy insurance market, therefore, is essential to the welfare of both employees and employers.

Commercial insurance carriers are regulated by the DOI, which provides licensing, monitors solvency, determines rates, approves the terms of policies, and adjudicates unfair claims handling practices. In FY'06, the DOI approved a total of 9 new licenses to carriers to write workers' compensation insurance in Massachusetts. In addition, two existing licenses were amended to include workers' compensation. There were no companies that deleted workers' compensation from their license or surrendered their license during the fiscal year.

In Massachusetts, workers' compensation insurance rates are determined through an administered pricing system.<sup>35</sup> Insurance rates are proposed by the Workers' Compensation Rating and Inspection Bureau of Massachusetts (WCRIBM) on behalf of the insurance industry, and set by the Commissioner of Insurance. The WCRIBM submits to the Commissioner a classification of risks and premiums, referred to as the

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<sup>35</sup> In the United States, workers' compensation insurance rates are regulated one of three ways: through administered pricing, competitive rating, or a monopolistic state fund. Administered pricing involves strict regulation of rates by the state. Competitive rating allows carriers to set rates individually, usually based on market-wide losses developed by a rating organization and approved by the state. Monopolistic state funds require that workers' compensation insurance be purchased exclusively through a program run by the state. Some states have competitive state funds that allow employers to purchase insurance from either a private carrier or the state.

rate filing, which is reviewed by the State Rating Bureau. By law, a rate filing must be submitted at least every two years, and no classifications or premiums may take effect until approved by the Commissioner.<sup>36</sup>

According to the Workers' Compensation Act, the Commissioner of Insurance must conduct a hearing within 60 days of receiving the rate filing, to determine whether the classifications and rates are "not excessive, inadequate or unfairly discriminatory" and that "they fall within a range of reasonableness."<sup>37</sup>

On Thursday, May 19, 2005, Insurance Commissioner Julianne Bowler issued a rate decision, which reduced average rates for workers' compensation insurance by 3% from 2003-2004 rate levels. The Commissioner's decision was based on an agreement reached between the State Rating Bureau, the Workers' Compensation Rating & Inspection Bureau, and the Attorney General's Office. This rate reduction became effective for policies taking effect on or after September 1, 2005. The only rate increase since 1994 occurred in 2001 when the Insurance Commissioner allowed a 1 percent increase.

The table to the right illustrates the fluctuations in workers' compensation insurance rates since 1987 and how each year's rate would effect a company's premium, assuming their premium was \$100 in 1987 (with all other factors remaining the same - experience rating, discounts, etc.).

**Table 17: Impact of Rate Changes, 1987-2006**

YEAR	Percent Change from Previous Year's Rate	Assuming a Manual Rate of \$100 in 1987
1987	No Change	\$100.00
1988	+ 19.9%	\$119.90
1989	+ 14.2%	\$136.93
1990	+ 26.2%	\$172.81
1991	+ 11.3%	\$192.34
1992	No Change	\$192.34
1993	+ 6.24%	\$204.34
1994	- 10.2%	\$183.50
1995	- 16.5%	\$153.22
1996	- 12.2%	\$134.53
1997	No Change	\$134.53
1998	- 21.1%	\$106.14
1999	- 20.3%	\$84.59
2000	No Change	\$84.59
2001	+ 1%	\$85.44
2002	No Change	\$85.44
2003	- 4%	\$82.02
2004	No Change	\$82.02
2005	-3%	\$79.56
<b>2006</b>	<b>No Change</b>	<b>\$79.56</b>

Source: Division of Insurance WC Rate Decisions

## Deviations & Scheduled Credits

The Workers' Compensation Act allows individual carriers to seek permission from the Commissioner to use a percentage decrease from approved rates within certain classifications.<sup>38</sup> These percentage decreases are called "downward deviations." Scheduled credits are also used in Massachusetts as a tool for competitive pricing, by allowing insurers to reward policyholders for good experience. These discounting techniques have become an important part of the Massachusetts insurance market. While open competition is not permitted, the use of deviations (and other alternatively priced policies) has encouraged carriers to compete for business on the basis of pricing.

<sup>36</sup> If the Commissioner takes no action on a rate filing within six months, the rates are then deemed to be approved. If the Commissioner disapproves the rates, a new rate filing may be submitted. Finally, the Commissioner may order a specific rate reduction, if after a hearing it is determined that the current rates are excessive. Determinations by the Commissioner are subject to review by the Supreme Judicial Court.

<sup>37</sup> M.G.L. c.152, §53A(2).

<sup>38</sup> M.G.L. c.152, §53A(9).

In Massachusetts, approximately 37 insurers are currently offering deviations or scheduled credits to their customers. These discounts (some as high as -25% on certain classes) will remain in effect until the next rate filing.

## **The Classification System**

Workers' compensation insurance rates are calculated and charged to employers, according to industry categories called classifications. Every employer purchasing workers' compensation insurance is assigned a basic classification determined by the nature of its operations. Standard exception classifications may then be assigned for low risk tasks performed within most companies (i.e. clerical work).

Classifications were developed on the theory that the nature, extent and likelihood of certain injuries are common to any given industry. Each classification groups together employers that have a similar exposure to injuries which distributes the overall costs of workers' compensation equitably among employers. Without a classification system, employers in low risk industries would be forced to subsidize high-risk employers through higher insurance costs.

**Regulation of Classifications** - Classifications in Massachusetts are established by the Workers' Compensation Rating & Inspection Bureau (WCRIBM) subject to approval by the Commissioner of Insurance. Hearings are conducted at the Division of Insurance to determine whether classifications and rates are not excessive, inadequate or unfairly discriminatory and that they fall within a "range of reasonableness."<sup>39</sup>

**Basic Classifications** - Each business in the Commonwealth is assigned one "basic" classification that best describes the business of the employer. Once a basic classification has been selected, it becomes the company's "governing" classification, the basis for determination of premium.

Although most companies are assigned one governing classification, the following conditions determine when more than one basic classification should be used:

- the basic classification specifically states certain operations to be separately rated;
- the company is engaged in construction or erection operations, farm operations, repair operations, or operates a mercantile business, under which certain conditions allow for additional classifications to be assigned; or
- the company operates more than one business in a state.

**Standard Exception Classifications** - In addition to the 600 basic classification codes that exist in Massachusetts, there are 4 "standard exception classifications" for those occupations, which are common to virtually every business and pose a decreased risk to worker injury. Employees who fall within the definition of a standard exception classification are not generally included in the basic classification. These low cost

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<sup>39</sup> M.G.L. c.152, §53A.

standard exception classifications are: Clerical Office Employees (Code 8810), Drafting Employees (Code 8810), Drivers, Chauffeurs and their Helpers (Code 7380), and Salespersons, Collectors or Messengers-Outside (Code 8742).

**General Inclusions and Exclusions** - Sometimes certain operations within a company appear to be a separate business. Most are included, however, within the scope of the governing classification. These operations are called *general inclusions* and are:

- Employee cafeteria operations;
- Manufacture of packing containers;
- Hospital or medical facilities for employees;
- Printing departments; and
- Maintenance or repair work.

Some operations of a business are so unusual that they are separately classified. These operations are called *general exclusions* and are usually classified separately. General exclusions are:

- Aircraft operation - operations involved with flying and ground crews;
- New construction or alterations;
- Stevedoring, including tallying and checking incidental to stevedoring;
- Sawmill operations; and
- Employer-operated day care service.

**Manual Rate** - Every classification has a corresponding manual rate that is representative of losses sustained by the industry. An employers' base rate is based on manual rate per \$100 of payroll, for each governing and standard exception classification.

<u>Class Code</u>	<u>Governing Classification</u>	<u>Manual Rate</u>	<u>Payroll</u>	<u>Base Rate</u>
5188	Automatic Sprinkler Installation & Drivers	\$2.50	\$200,000	\$5,000
<u>Class Code</u>	<u>Standard Exception</u>	<u>Manual Rate</u>	<u>Payroll</u>	<u>Base Rate</u>
8810	Clerical Employees	\$.25	\$50,000	\$125

**Appealing a Classification** - When a new company applies for insurance, the broker or agent assigns a classification, which is audited by the insurance carrier at the end of the policy year. If the carrier determines the employer or their employees were misclassified, the employer is charged additional premium or receives a credit for the correct class. The WCRIBM is responsible for determining the proper classification for all insureds in Massachusetts. If an employer disagrees with its assigned classification, or believes a separate classification should be created, there is an appeal process made available by M.G.L. c.152, §52D. A formal appeal must be held with the WCRIBM's Governing Committee (for those insured in the Voluntary Market) or the Residual Market Committee (for those insured in the Assigned Risk Pool). The WCRIBM will send an auditor to the worksite and proceed to make a ruling on the classification in question. If reclassification is denied, an appeal can be made to the Commissioner of Insurance. A hearing officer will then be selected by the Commissioner to conduct an evidentiary hearing on the classification issue.

**Construction Industry** - In the construction industry alone, there are over 67 different classifications for the various types of construction or erection operations. Often, multiple classifications must be assigned to large general contractors who use different trades during the many phases of construction projects. Separate payrolls must be maintained for separate classifications or else a construction company can be assigned to the highest rated classification that applies to the job or location where the operation is performed. The Massachusetts Construction Classification Premium Adjustment Program is a program that provides for a manual premium credit ranging from 5% to 25%, depending on average hourly wages paid to employees. Because a disparity exists between high and low wage construction employers (largely determined by the existence of a collective bargaining agreement), this program is designed to offset the higher premiums associated with larger payrolls and equalize workers' compensation costs.

## **Premium Calculation**

Premiums charged to employers in Massachusetts are dependent on several factors that are designed to measure each company's exposure to loss. Premium is based on uniform rates that are developed for each classification and modified according to the attributes of each employer. In return for payment of premiums, the insurance company will administer all workers' compensation claims and pay all medical, indemnity (weekly compensation), rehabilitation, and supplemental benefits due under the Workers' Compensation Act. The following is an overview of the premium calculation process.

**Manual Premium** - The first step in the premium calculation process is determination of manual premium. The manual premium is reflective of both the industry (manual rate) and size (payroll) of a company. The manual premium is calculated by multiplying the employer's manual rate by its annual payroll per \$100.

$$\text{Manual Premium} = (\text{Manual Rate} \times \text{Payroll}) / 100$$

An employer's manual rate is assigned according to its classification. As explained in the prior section, every classification has a corresponding manual rate that reflects the industry's exposure to loss.

Once a corresponding manual rate has been established, exposure to loss for the particular employer must then be considered. In Massachusetts, this is determined by payroll. Payroll is a factor of an employer's wage rate, the number of employees employed, and the number of hours worked. All other factors being equal, a firm with a large payroll has a greater exposure to loss than a firm with a smaller payroll. Furthermore, since indemnity benefits are calculated as a percentage of wages earned, payroll also reflects severity of potential loss.

**Standard Premium** - Once a manual premium has been determined, it is then multiplied by an experience modification factor to determine the standard premium.

$$\text{Standard Premium} = \text{Manual Premium} \times \text{Experience Modification Factor}$$

Experience rating is a system of comparing the claims history of each employer against the average claims experience of all employers within the same classification. An experience modification factor is calculated, which provides either a premium reduction (credit) or a premium increase (debit) to an insured's premium. For example, a modification of .75 results in a 25% credit or savings to the premium, while a modification of 1.10 produces a 10% debit or additional charge to the premium. When a modification of 1.00 (unity) is applied, no change to premium results.

The experience modification factor is determined on an annual basis, which is based on an insured's losses for the last three completed years. For instance, two similar employers may have a manual rate of \$25 per \$100 of payroll, but the safety conscious employer (with fewer past claims) may have an experience modification factor of .80, thus adjusting his rate to \$20 per \$100 of payroll. The other employer, who is not as safety conscious, may have an experience modification factor of 1.20, which adjusts the company's rate to \$30 per \$100 of payroll.

**All Risk Adjustment Program** - In January of 1990, the WCRIBM instituted the All Risk Adjustment Program (ARAP), calculated in addition to the experience modification factor. Its original purpose was to establish adequate premiums to encourage more insurers to write voluntary business. ARAP measures actual losses against expected losses, but it differs from the experience modification in that it measures severity and not frequency of claims. ARAP can add a surcharge up to 49% of an employer's experience modified standard premium.

## Premium Discounting

Insurance companies that provide workers' compensation coverage must factor in the various expenses involved with servicing insureds to determine appropriate premium levels. However, a problem occurs when pricing premiums for large policies because as the premium increases, the proportion required to pay expenses decreases. In an effort to compensate for these differences, insurers must provide a premium discount to large policy holders. The premium discount increases as the size of the policy premium increases, resulting in a premium that better reflects costs. In most states, policy holders are entitled to a premium discount if they are paying over \$10,000 in premiums.

**Table 18: Percent of Premium Discount for Type A & B Companies in Massachusetts**

TYPE "A" COMPANIES			TYPE "B" COMPANIES		
Layer of Standard Premium	Percent of Premium Discount		Layer of Standard Premium	Percent of Premium Discount	
First	\$10,000	0.0%	First	\$10,000	0.0%
Next	\$190,000	9.1%	Next	\$190,000	5.1%
Next	\$1,550,000	11.3%	Next	\$1,550,000	6.5%
Over	\$1,750,000	12.3%	Over	\$1,750,000	7.5%

Source: WCRIBM Website [www.wcribma.org], Premium Discount Table.

## Deductible Policies

Since 1991, deductible policies can provide the advantages of a retrospective policy and self-insurance. Employers are responsible for paying from the first dollar incurred up to the deductible limit, either on a per claim basis or on an aggregate basis for claims in the policy year. The insurer pays all benefits and then seeks reimbursement from the employer up to the amount of the deductible.

**Table 19: Premium Reduction % per Claim Deductible**

<b>PER CLAIM DEDUCTIBLE<sup>40</sup></b> <i>Effective September 1, 2005</i>	
<b>Medical and Indemnity Deductible Amount</b>	<b>Premium Reduction Percentage</b>
\$ 500	3.0%
\$1,000	4.2%
\$2,000	6.2%
\$2,500	7.1%
\$5,000	10.6%

Source: WCRIBM

**Table 20: Massachusetts Benefits Claim and Aggregate Deductible Program**

<b>MASSACHUSETTS BENEFITS CLAIM AND AGGREGATE DEDUCTIBLE PROGRAM<sup>41</sup></b> <i>Effective September 1, 2005</i>			
<b>Estimated Annual Standard Premium</b>	<b>Claim Deductible Amount</b>	<b>Aggregate Deductible Amount</b>	<b>Premium Reduction Percentage</b>
0 to \$75,000	\$2,500	\$10,000	7.0%
\$75,001 to \$100,000	\$2,500	\$10,000	6.5%
\$100,001 to 125,000	\$2,500	\$10,000	5.9%
\$125,001 to \$150,000	\$2,500	\$10,000	5.4%
\$150,001 to \$200,000	\$2,500	\$10,000	4.5%
over \$200,000	\$2,500	5% of Estimated Annual Standard Premium	4.3%

Source: WCRIBM

## Retrospective Rating Plans

Retrospective rating bases premium on an insured's actual losses calculated at the conclusion of the policy period. Therefore, the insured has greater control over its insurance costs by monitoring and controlling its own losses. Retrospective rating should not be confused with "experience rating." Both adjust premium based on an employer's loss history. Experience rating, however, adjusts premiums at the start of the policy period (to predict future losses), whereas retrospective rating adjusts premiums at the end of the policy period to reflect losses that actually occurred.

**The Formula** - Although retrospective premiums are determined by a complex formula, they are generally based on three factors: losses the employer incurs during a policy period; expenses that are related to the losses incurred; and basic premium. Incurred losses have historically included medical and indemnity losses, interest on judgments, and expenses incurred in third-party recoveries.<sup>42</sup> A basic premium is necessary to defray the expenses that do not vary with losses and to provide the insurance company with a

<sup>40</sup> Massachusetts Workers' Compensation and Employer's Liability Insurance Manual.

<sup>41</sup> Massachusetts Workers' Compensation and Employer's Liability Insurance Manual.

<sup>42</sup> "Retrospective Rating," Risk Financing, Supplement No. 46, May 1995: III.D.7.

profit. To control the cost of the premium in extreme cases, the policies state that the premium cannot be less than a specific minimum and cannot exceed a stated maximum.

**Eligibility Requirements** - Eligibility for a retrospective rating plan is based upon a minimum standard premium. Eligibility for a one-year plan is an estimated standard premium of at least \$25,000 per year, and for a three-year plan the estimated standard premium must be at least \$75,000.<sup>43</sup> Although these eligibility standards exclude many small businesses, one of the biggest misconceptions is that retrospective plans are only for large employers and high-risk groups. In Massachusetts, more smaller employers are purchasing retrospective plans to lower premiums by controlling company losses.

**Benefits and Disadvantages** - Under the right circumstances, retrospective rating can benefit both the insurer and the policyholder. The policyholder benefits by paying a smaller premium at the beginning of the policy year. Because premium is determined by losses, retrospective plans reward those businesses that maintain effective loss control programs. If losses are low, the insured will pay less than standard premium. However, there is a significant uncertainty regarding the final premium amount, since it is impossible to be precise in predicting the volume or severity of workplace accidents. An unexpected claim towards the end of a policy period can be detrimental to a company, if funds have not been set aside for the retro-premium. Furthermore, there is little incentive for the insurance company to limit settlement costs, when they are able to recover payments made on claims brought against the policyholder.

## **Dividend Plans**

Offered as another means of reducing an employers insurance costs, dividend plans can provide the policy-owner with a partial return on a previously paid premium. This payment from the insurer takes into account investment income, expenses, and the insured's overall loss-experience in a given year. The dividend is usually paid to the insured directly or by applying it to future premiums due. Regardless of how the payment is issued, dividends are non-taxable, since they are considered a return of premium.<sup>44</sup> Dividend plans may seem attractive to policy holders, but sometimes promise more than can be delivered. Insurer's are not legally bound to pay what they may have estimated a policy holder's return to be. Moreover, many insurers strategically calculate a dividend only once between 18 and 24 months after a policy's inception, and not always to the advantage of the insured.<sup>45</sup>

<sup>43</sup> Workers' Compensation: Exposures, Coverage, Claims, Levick, Dwight E. Standard Publishing Corp., page 11-4.

<sup>44</sup> "Risk Management-Life, Health, and Income Exposures," Life Insurance, Part 4: 406.

<sup>45</sup> "Thinking About the Work Comp Crisis," Merrit Risk Management Review, December 1991: 3.

## ASSIGNED RISK POOL

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Any employer rejected for workers' compensation insurance can obtain coverage through the residual market, known as the Assigned Risk Pool. Administered by the Workers' Compensation Rating and Inspection Bureau (WCRIBM), the Assigned Risk Pool is the "insurer of last resort" and is required by law to provide coverage when an employer is rejected by at least two carriers within five business days. Very small employers and companies in high-risk classifications or having poor experience ratings often cannot obtain insurance in the voluntary market. This occurs when a carrier determines that the cost of providing insurance to a particular company is greater than the premium it can collect.

The estimated ultimate residual market share for the 12-months ending June, 2006 is 17%.<sup>46</sup> Although this percentage has trended upward since 1999, it remains far below the 64.7% of workers' compensation premium share that was in the residual market during the 1992 policy year.

Employers insured through the pool pay standard premium and are not offered premium discounts, dividend plans, etc. The Commissioner of Insurance chooses the carriers that will administer the policies, called "servicing carriers." The servicing carriers are paid a commission for servicing these policies, and are subject to performance standards and a paid loss incentive program. These programs are designed to provide servicing carriers with incentives to provide loss control services to those insured.

**Residual Market Loads** - Every insurance carrier licensed to write workers' compensation policies is required to be a member of the Assigned Risk Pool. Members are collectively responsible for underwriting pool policies, for bearing the risk of all losses, and are entitled to any profits generated. When the pool operates at a deficit, the members are subject to an assessment. Assessments are calculated in direct proportion to the amount of premium written in the voluntary market. This is called the Residual Market Load.

The Residual Market Load is incorporated into rates and can be a significant factor for employers to search out alternative risk financing options. Self insurance and self-insurance groups are not subject to residual market assessments. The Residual Market Load is incorporated into manual rates. This residual market burden (percentage of each voluntary market dollar used to pay for the assigned risk pool) has significantly increased over the past five years. The residual market loss ratio measures the amount of losses and expenses to the premiums written (roughly money out divided by money in). A loss ratio greater than 100% indicates that losses are greater than revenues (premiums). The estimated (as of 9/05) residual market loss ratio for Policy Year 2004 is 82.0% with a resulting residual market burden of 4.2%.<sup>47</sup>

<sup>46</sup> WCRIBM Special Bulletin No. 09-06 (September 21, 2006).

<sup>47</sup> WCRIBM Special Bulletin No. 03-06 (March 6, 2006).

## ALTERNATIVE RISK FINANCING METHODS

Self insurance and self insurance groups (SIGs) became an extremely popular device to control rising workers' compensation costs, when insurance rates rose dramatically in the late 1980's and early 1990's. Much of the cost savings derived from avoidance of residual market loads incorporated into commercial insurance premiums to pay for the large assigned risk pool. Since 1993, insurance rates have decreased dramatically, making alternative risk financing measures less attractive. In recent years, employers have re-assessed cost savings associated with these programs, and many have turned to commercial insurance plans, most noticeably large deductible policies and retrospective rating plans.

### Self Insurance

The DIA strictly regulates self insured employers through its annual licensing procedures. For an employer to qualify to become self insured, it must post a surety bond of at least \$100,000 to cover for losses that may occur (452 C.M.R. 5:00). This amount varies for every company depending on their previous reported losses and predicted future losses. The average bond, however, is usually over \$1 million. Self insurance is generally available to larger employers with at least 300 employees and \$750,000 in annual standard premium.<sup>48</sup>

These regulations may be waived by the Commissioner of the DIA for employers that have strong safety records and can produce the necessary bond to cover incurred losses. In addition, employers who are self insured must purchase reinsurance of at least \$500,000. Each self-insured employer may administer its own claims or engage the services of a law firm or a third party administrator (TPA) to handle claims administration. The Office of Insurance evaluates employers every year to determine their continued eligibility and to set bond amounts.

Figure 22: Self Insurance in MA - Premium Dollars

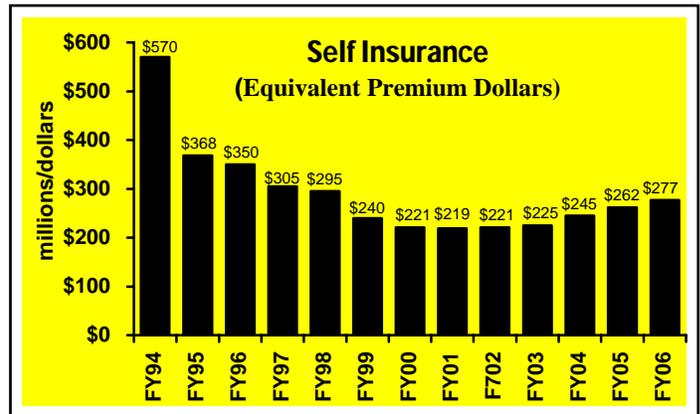


Table 21: Total Self-Insured Licenses in Massachusetts

	<u>New Licenses</u>	<u>Total Licenses</u>	<u>Companies Covered</u>
FY'06	2	131	434
FY'05	2	129	409
FY'04	1	129	380
FY'03	2	143	445
FY'02	2	139	478
FY'01	3	151	419
FY'00	5	173	437
FY'99	6	174	464
FY'98	5	186	503
FY'97	5	206	417
FY'96	5	226	734
FY'95	11	227	734
FY'94	23	224	688

Source: DIA Office of Insurance

<sup>48</sup> 452 C.M.R. 5.00: Code of Massachusetts Regulations concerning insurers and self insurers.

## Self Insurance Groups

Companies in related industries may join forces to form a self insurance group (SIG). Regulated by the Division of Insurance, SIGs may include public employers, non-profit groups, and private employers in the same industry or trade association.<sup>49</sup>

As part of the workers' compensation reform package of 1985, SIGs were permitted in Massachusetts to provide an alternative to coverage in the assigned risk pool. Since that time, membership has been a popular alternative to commercial insurance because of the ability for members to manage their own claims. In addition, SIGs are generally able to reduce administrative costs from a fully insured plan. These savings result from reduced or eliminated commissions, premium taxes, etc.

Members of a self insurance group are assigned a classification and are charged manual rates approved by the Commissioner of Insurance for commercial insurance policies. Premium is calculated in the same manner, with manual rates adjusted by an experience modification factor and the All Risk Adjustment Program (ARAP).<sup>50</sup> Cost savings arise through dividends returned to members and deviated rates.

Companies who join self insurance groups rely heavily on the solvency and safety records of fellow members, since the insurance risks are spread amongst the group. If one of the employers in a group declares bankruptcy or suffers a catastrophic accident, the whole group must absorb the losses. In addition, all members share joint and several liability for losses incurred.

The first group was approved in 1987. After a few years of modest interest, eight SIGs were formed in 1991 and 21 in 1992. As of January 1, 2006, Massachusetts had 25 SIGs with 4,696 members.

**Table 22: Membership in W/C SIGs as of Jan. 1st**

<b>Membership in Workers' Compensation Self-Insurance Groups as of Jan. 1<sup>st</sup></b>		
<b>Year</b>	<b>Number of Groups</b>	<b>Number of Members</b>
1991	8	N/A
1992	21	N/A
1993	28	N/A
1994	27	2,300
1995	31	2,550
1996	32	2,700
1997	30	2,830
1998	26	2,880
1999	25	2,821
2000	24	Unavailable
2001	25	Unavailable
2002	25	3,000
2003	24	3,456
2004	24	3,768
2005	25	4,472
2006	25	4,696

**Source:** Division of Insurance

<sup>49</sup> According to Division of Insurance regulations, a SIG must have "five or more employers who are engaged in the same or similar type of business, who are members of the same bona fide industry, trade or professional association which has been in existence for not less than two years, or who are parties to the same or related collective bargaining agreements. (Div. of Insurance Regulations, 211 CMR 67.02).

<sup>50</sup> 211 CMR 67.09.

## INSURANCE FRAUD BUREAU

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The Insurance Fraud Bureau (IFB) is an insurance industry supported agency authorized by the Commonwealth to detect, prevent and refer for criminal prosecution suspected fraudulent insurance transactions involving all lines of insurance.<sup>51</sup> The IFB was created in 1990 to investigate auto insurance fraud and expanded in 1991 to include workers' compensation fraud.<sup>52</sup> While its mission statement is to include all lines of insurance, the focus is on automobile and workers' compensation insurance.

### IFB Funding

The IFB receives half of its annually budgeted operating revenues from the Automobile Insurers Bureau (AIB) and half from the Workers' Compensation Rating and Inspection Bureau (WCRIB). In 2005, each of these bureaus separately contributed a total of \$3,013,344 to fund the IFB. The 2005 operating expenses for the IFB totaled \$6,268,428, representing a \$395,936 increase (+6.7%) over 2004 expense levels.

### The Investigative Process

The types of workers' compensation cases that are investigated vary greatly. Fraud can be perpetrated by the employee, employer, medical provider, attorney, and in some cases the insurance agent. The majority of IFB investigations, however, involve employee misconduct. IFB personnel primarily investigate the following types of workers' compensation fraud:

- *Claimants with duplicate identities who worked while receiving workers' compensation benefits or who earned income from one or more employers and failed to disclose it;*
- *Cases in which the subject staged an on-the-job accident;*
- *Cases where subjects participated in physical activities wholly inconsistent with the disability claimed or whose injuries were fraudulently attributed to the workplace;*
- *Premium evasion fraud and phony death claims.*

**Referrals** - Cases of suspected fraud for all types of insurance are generally referred to the IFB, either through an insurance carrier or through a toll-free hotline, which can be reached at: 800-32-FRAUD. In calendar year 2005, the IFB received 259 referrals regarding workers' compensation fraud. Of these referrals, 84 (32%) were accepted for investigation.<sup>53</sup> Workers' compensation fraud referrals only represent 8% of all IFB

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<sup>51</sup> The Insurance Fraud Bureau has its own Internet web site which can be found at <http://www.ifb.org>. The site is designed to inform the public on the activities and accomplishments of the IFB. The site also allows the general public to submit anonymous tips on suspected insurance fraud.

<sup>52</sup> M.G.L. St. 1990, c.338 as amended by St. 1991, c.398, §9

<sup>53</sup> Solicited referrals are included in this number.

referrals. The vast majority of referrals received by IFB are for automobile insurance fraud (88%).

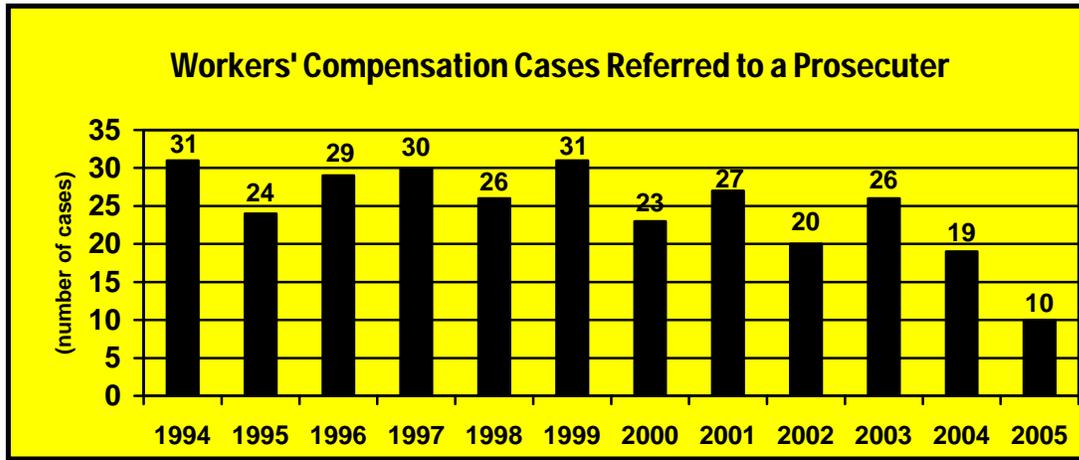
**Evaluation** - Once a referral is received by the IFB, an investigative staff must evaluate each case within 20 working days. During this time, status letters are sent to the insurance companies indicating whether the case was referred to another agency or accepted for further investigation. A backlog has historically existed in investigations at this initial stage.

**Assigned Cases** - Once resources become available, a referral is assigned to an investigator and officially becomes a “case.” In calendar year 2004, a total of 49 "new" cases were assigned to investigators dealing with workers' compensation fraud and 91 cases were investigated during the year.

## Prosecution

After an investigator has completed their work on a case, it is either referred to a prosecutor (primarily the Massachusetts Attorney General’s Office), transferred to another agency, or closed due to lack of evidence. In calendar year 2005, a total of 10 cases were referred to a prosecutor dealing with workers' compensation fraud.

Figure 23: Workers' Compensation Cases Referred to a Prosecutor



Source: 2004 Insurance Fraud Bureau Annual Report

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

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- APPENDIX D:** INDUSTRIAL ACCIDENT NOMINATING PANEL
- APPENDIX E:** THE GOVERNOR'S COUNCIL
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- APPENDIX G:** ROSTER OF JUDICIAL EXPIRATION DATES
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- APPENDIX I:** ADVISORY COUNCIL TESTIMONY - DOI RATE HEARING
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## APPENDIX A

## ADVISORY COUNCIL MEMBERS – FY'06

<b>BUSINESS</b>		<b>LABOR</b>
<p><b>TOM JONES</b> Vice President of Employer Services, AIM 222 Berkeley Street, P.O. Box 763 Boston, MA 02117-0763 Tel: (617) 262-1180 FAX: (617) 536-6785</p> <p><b>JEANNE-MARIE BOYLAN</b> Boston Sand and Gravel Company 169 Portland Street Boston, MA 02114-1712 Tel: (617) 227-9000 FAX: (617) 523-7947</p> <p><b>ANTONIO FRIAS</b> S &amp; F Concrete Contractors, Inc. 1266 Central Street, P.O. Box 427 Hudson, MA 01749 Tel: (978) 562-3495 FAX: (978) 562-9461</p> <p><b>EDMUND C. CORCORAN, JR.</b> Raytheon, Director of Integrated Disability Programs 235 Wyman Street Waltham, MA 02451-1219 Tel: (781) 768-5115 FAX: (781) 768-5126</p> <p><b>JOHN D. BOYLE</b> Boyle, Morrisey &amp; Campo, P.C. 695 Atlantic Avenue Boston, MA 02111 Tel: (617) 451-2000 FAX: (617) 451-5775</p>		<p><b>PAUL BYRNE</b> MBTA Police Association P.O. Box 1618 N. Falmouth, MA 02556 Tel: (617) 201-3820 FAX: (617) 268-4401</p> <p><b>ROBERT BANKS</b> J.A.C. Iron Workers, Local 7 195 Old Colony Avenue South Boston, MA 02127 Tel: (617) 268-4200 FAX: (617) 268-0330</p> <p><b>MICKEY LONG</b> AFL-CIO 193 Old Colony Avenue, P.O. Box E-1 Boston, MA 02127 Tel: (617) 269-0229 FAX: (617) 269-0567</p> <p><b>JOHN A. PULGINI</b> Pulgini &amp; Norton, LLP 10 Forbes Road West, Suite 240 Braintree, MA 02184 Tel: (781) 843-2200 FAX: (781) 843-4900</p> <p><b>ROBERT T. FITZSIMMONS</b> 19 2<sup>nd</sup> Street, Apt. #5 Dover, NH 03820 Tel: (617) 921-9380 FAX: (617) 222-1035</p>
<b>EX-OFFICIO</b>		<b>EX-OFFICIO</b>
<p><b>GAYL MILESZKO</b> Director, Department of Labor 600 Washington Street, 7th Floor Boston, MA 02111 Tel: (617) 727-4900 x356 FAX: (617) 727-7470</p>		<p><b>DEBORAH SHUFRIN</b> Director, Department of Business &amp; Technology One Ashburton Place, Suite 2101 Boston, MA 02108 Tel: (617) 727-8380 FAX: (617) 727-4426</p>
<b>CLAIMANT'S BAR</b>	<b>INSURANCE</b>	<b>VOCATIONAL REHAB.</b>
<p><b>KENNETH J. PARADIS, JR.</b> Crowe, Paradis, &amp; Albren, LLP 607 North Avenue, Suite 18 Wakefield, MA 01880 Tel: (781) 246-8975 FAX: (617) 246-9322</p>	<p><b>J. BRUCE COCHRANE</b> Cochrane and Porter 981 Worcester St. Wellesley, MA 02482 Tel: (781) 431-9800 FAX: (781) 431-0222</p>	<p><b>JILL S. BROWN</b> Jill Brown Case Management P.O. Box 1052 Acton, MA 01720 Tel: (978) 635-0652 FAX: (978) 263-6171</p>
<b>STAFF</b>		
<p><b>ANDREW S. BURTON, EXECUTIVE DIRECTOR</b> <b>EVELYN N. FLANAGAN, PROGRAM COORDINATOR</b></p>		

## APPENDIX B

# Agenda of Advisory Council Meetings - FY'06

### **August 10, 2005**

DIA Update

Action Items

- Minutes – June 8, 2005

Oracle – Phase III

Executive Director Update

Miscellaneous

### **September 14, 2005**

DIA Update

Action Items

- Minutes - August 10, 2005

Industrial Accident Board Medical Rates

Executive Director Update

Miscellaneous

### **October 12, 2005**

DIA Update

Action Items

- Minutes - September 14, 2005

Wood Floor-Finishing Hazards In Massachusetts

- Marcy Goldstein-Gelb, Executive Director – MassCOSH

Changes & Accomplishments – Office of Safety

Executive Director Update

Miscellaneous

### **November 9, 2005**

DIA Update

Action Items

- Minutes - October 12, 2005

2005 Concerns & Recommendations Discussion

Executive Director Update

Miscellaneous

### **December 14, 2005**

DIA Update

Action Items

- Minutes – November 9, 2005

FY'05 Annual Report – Concerns & Recommendations

Executive Director Update

Miscellaneous

**March 8, 2006**

DIA Update

Action Items

- Minutes – February 15, 2005

Executive Director Update

Miscellaneous

**April 12, 2006**

DIA Update

Action Items

- Minutes – March 8, 2006

Information Technology Project Update

Executive Director Update

Miscellaneous

**May 10, 2006**

DIA Update

Action Items

- Minutes - April 12, 2006

Safety Grant Subcommittee Update

Executive Director Update

Miscellaneous

**June 14, 2006**

DIA Update

Action Items

- Minutes - May 10, 2006

Public Records Subcommittee Update

WCRI Benchmarks Report on the MA Medical Fee Schedule

- Stacey Eccleston, Report Author (WCRI)

Executive Director Update

Miscellaneous

## APPENDIX C

### Joint Committee on Labor & Workforce Development - FY'06

**Senator Thomas M. McGee (Chair)**  
State House - Room 112  
Boston, MA 02133-1053  
(617) 722-1350

**Senator Robert A. Antonioni**  
State House - Room 109-E  
Boston, MA 02133-1053  
(617) 722-1230

**Senator Steven A. Tolman**  
State House - Room 511-B  
Boston, MA 02133-1053  
(617) 722-1280

**Senator Patricia D. Jehlen**  
State House - Room 213  
Boston, MA 02133-1053  
(617) 722-1578

**Rep. Michael J. Rodrigues (Chair)**  
State House - Room 43  
Boston, MA 02133-1053  
(617) 722-2030

**Representative Demetrius J. Atsalis**  
State House - Room 26  
Boston, MA 02133-1053  
(617) 722-2080

**Representative Garrett J. Bradley**  
State House - Room 136  
Boston, MA 02133-1053  
(617) 722-2396

**Representative Sean Curran**  
State House - Room 43  
Boston, MA 02133-1053  
(617) 722-2030

**Representative Barbara A. L'Italien**  
State House - Room 26  
Boston, MA 02133-1053  
(617) 722-2080

**Senator Pamela P. Resor**  
State House - Room 410  
Boston, MA 02133-1053  
(617) 722-1120

**Senator Edward M. Augustus, Jr.**  
State House - Room 413-D  
Boston, MA 02133-1053  
(617) 722-1485

**Senator Robert L. Hedland**  
State House - Room 413-F  
Boston, MA 02133-1053  
(617) 722-1646

**Representative James B. Leary**  
State House - Room 43  
Boston, MA 02133-1053  
(617) 722-2030

**Representative Paul C. Casey**  
State House - Room 238  
Boston, MA 02133-1053  
(617) 722-2380

**Representative Barry R. Finegold**  
State House - Room 275  
Boston, MA 02133-1053  
(617) 722-2676

**Representative Lewis G. Evangelidis**  
State House - Room 473B  
Boston, MA 02133-1053  
(617) 722-2263

**Representative Paul J. Loscocco**  
State House - Room 254  
Boston, MA 02133-1053  
(617) 722-2220

## APPENDIX D

### Industrial Accident Nominating Panel

**Henry J. Swiniarski**, Commissioner (Chair)  
Division of Industrial Accidents  
600 Washington Street  
Boston, MA 02111  
Tel: (617) 727-4900 x 356  
Fax: (617) 727-6477

**Joseph Bonfiglio**, Bus. Mgr. & Secretary Treasurer  
Laborer's International Union - Local 151  
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Cambridge, MA 02142  
Tel: (617) 876-8081  
Fax: (617) 492-0490

**Gayl Mileszko**, Director  
Department of Labor  
600 Washington Street  
Boston, MA 02111  
Tel: (617) 727-4900  
Fax: (617) 727-6477

**James C. Cronin**, Esq.  
Raytheon  
870 Winter Avenue  
Waltham, MA 02451  
Tel: (781) 522-3000  
Fax: (781) 642-4194

**Mr. Robert J. Haynes**, President  
Mass. AFL-CIO  
389 Main Street, Suite 101  
Malden, MA 02148  
Tel: (781) 324-8230  
Fax: (781) 324-8225

**Brian J. Leske**, Chief Legal Counsel  
Room 271 – State House  
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Fax: (617) 727-8290

**Stephen Marley**  
22 Gavin Circle  
Andover, MA 01810  
Tel: (617) 495-3721  
Fax: (617) 496-8672

**James L. LaMothe, Jr.**, Senior Judge  
Division of Industrial Accidents  
600 Washington Street  
Boston, MA 02111  
Tel: (617) 727-4900 x 354  
Fax: (617) 727-7122

**Henry E. Bratcher**, Esq.  
Kenner, Engelberg, Bratcher & Whalen  
60 State Street, Suite 600  
Boston, MA 02109  
Tel: (617) 371-4141  
Fax: (617) 439-8881

**Terence McCourt**, Esq.  
Greenberg Traurig, LLP  
One International Place, 20<sup>th</sup> Floor  
Boston, MA 02110  
Tel: (617) 310-6246  
Fax: (617) 310-6001

**Dr. Grant Rodkey**  
VA Boston Surgical Services  
150 So. Huntington Avenue  
Boston, MA 02139  
V.A.# (617) 232-9500 x 4836  
Fax: (617) 278-4543  
Or V.A. Hospital  
Dept. of Surgery (112)  
1400 VFW Parkway  
West Roxbury, MA 02132  
Tel: (617) 323-7700 x 6200

**Deborah Shufrin**, Director  
Dept. of Business & Technology  
One Ashburton Pl., Room 2101  
Boston, MA 02108  
Tel: (617) 727-8380 x 326  
Fax: (617) 727-4426

**Michael A. Torrisi**, Esq.  
Torrisi & Torrisi, L.L.C.  
555 Turnpike Street, Suite 44  
North Andover, MA 01845  
Tel: (978) 683-4440  
Fax: (978) 682-3330

## APPENDIX E

### The Governor's Council

Room 184, State House  
Boston, MA 02133  
(617) 725-4015

The Massachusetts Governor's Council, also known as the Executive Council, is comprised of eight individuals elected from districts, and the Lt. Governor who serves ex officio. The eight councilors are elected from their respective districts every two years. Each councilor is paid \$15,000 annually plus certain expenses.

The Council generally meets at noon on Wednesdays in the State House Chamber, next to the Governor's Office, to act on such issues as payments from the state treasury, criminal pardons and commutations, and approval of gubernatorial appointments; such as judges, notaries, and justices of the peace.

The Governor's Council is responsible for approving all Administrative Judges and Administrative Law Judges at the Division of Industrial Accidents.

**Carol A. Fiola - District 1**

307 Archer Street  
Fall River, MA 02720  
GC: (617)725-4015 x 1  
Res: (508)678-4172  
Fax: (508)673-0310

**Mary-Ellen Manning - District 5**

P.O Box 3528  
Peabody, MA 01961-3528  
GC: (617)725-4015 x 5  
Bus: (978)531-6363  
Fax: (978)531-5432

**Kelly A. Timilty - District 2**

52 Murray Hill Road  
Roslindale, MA 02131  
GC: (617)725-4015 x 2  
Res: (617)325-6569  
Bus: (781)828-6363

**Michael J. Callahan - District 6**

500 Salem Street  
Medford, MA 02155  
GC: (617)725-4015 x 6  
Res: (781)393-9890

**Mary M. Petitto Devaney - District 3**

98 Westminster Avenue  
Watertown, MA 02472  
GC: (617)725-4015 x 3  
Res: (617)923-0778  
Fax: (617)727-6610

**Dennis P. McManus - District 7**

78 Burncoat Street  
Worcester, MA 01605  
GC: (617)725-4015 x 7  
Bus: (508)856-9800  
Fax: (508)267-5850

**Christopher A. Iannella - District 4**

263 Pond Street  
Boston, MA 02130  
GC: (617)725-4015 x 4  
Bus: (617)227-1538  
Fax: (617)742-1424

**Peter Vickery - District 8**

P.O Box 300  
Amherst, MA 01004-0300  
Bus: (413)549-9933

## APPENDIX F

### Health Care Services Board

#### **Current Members (2007):**

Dean M. Hashimoto, MD, JD (Chair)	<i>Ex-Officio Member</i>
Henry W. DiCarlo, MM (Vice-Chair)	<i>Employers' Representative</i>
David S. Babin, MD	<i>Physician Representative</i>
Robert A. Gundersen	<i>Hospital Administrative Representative</i>
Peter A. Hyatt, DC	<i>Chiropractic Representative</i>
Robert P. Naperstek, MD	<i>Physician Representative</i>
Barbara C. Mackey, MS, APRN	<i>Public Representative</i>
David C. Deitz, MD, Ph.D.	<i>Physician Representative</i>
Cynthia M. Page, PT	<i>Physical Therapist Representative</i>
Janet D. Pearl, MD, MSC	<i>Physician Representative</i>
Nancy Lessin	<i>Employee Representative</i>
Richard F. Struzziero, D.M.D.	<i>Dentist Representative</i>
Richard P. Zimon, MD, FACP	<i>Physician Representative</i>

#### **Staff:**

Catherine R. Rogerson, RN, MS, CS	<i>Executive Director</i>
Judith A. Atkinson, Esq.	<i>Counsel</i>
Hella Dalton	<i>Research Analyst</i>

#### **All members can be reached c/o:**

Division of Industrial Accidents  
*Health Care Services Board*  
600 Washington Street, 7th Floor  
Boston, MA 02111  
Tel: (617) 727-4900 x310 or x574  
Fax: (617) 348-2176

## APPENDIX G

### Roster of Judicial Expiration Dates

#### ***INDUSTRIAL ACCIDENT REVIEWING BOARD - SIX YEAR TERMS***

1.	Martine Carroll	Unenrolled	05/28/10
2.	Bernard Fabricant	Republican	05/28/10
3.	Mark Horan	Democrat	06/10/10
4.	William McCarthy	Democrat	05/21/10
5.	Patricia Costigan	Unenrolled	06/03/10
6.	<VACANT>	<N/A>	05/28/04

#### ***INDUSTRIAL ACCIDENT BOARD - SIX YEAR TERMS***

1.	Douglas Bean	Republican	06/26/11
2.	Michael Chadinha	Republican	05/28/10
3.	David Chivers	Republican	05/21/10
4.	William Constantino	Republican	06/13/07
5.	Lynn Brendemuehl	Unenrolled	07/06/12
6.	David Sullivan	Democrat	05/21/10
7.	Steven Rose	Republican	05/28/10
8.	Richard Heffernan	Democrat	09/04/09
9.	John Preston	Republican	07/29/12
10.	<VACANT>	<N/A>	01/31/09
11.	Roger Lewenberg	Republican	06/26/10
12.	Fred Taub	Democrat	08/03/12
13.	Douglas McDonald	Democrat	07/06/12
14.	Bridget Murphy	Republican	07/27/12
15.	Maureen McManus	Republican	05/28/10
16.	Herbert Dike	Republican	07/05/08
17.	Dianne Solomon	Unenrolled	08/10/12
18.	Catherine Koziol	Democrat	04/11/11
19.	Omar Hernandez	Democrat	12/29/11
20.	Richard Tirrell	Democrat	05/14/10
21.	Frederick Levine	Unenrolled	09/18/10

## Testimony: Workers' Compensation Advisory Council

Joint Committee on Labor & Workforce Development  
State House – Hearing Room B-1  
June 29, 2005

Good morning. My name is Andrew Burton and I serve as Executive Director for the Massachusetts Workers' Compensation Advisory Council. I am joined today by Council Member Mickey Long who represents the interests of labor and Council Member John Boyle who represents the interests of business.

The Advisory Council is a Governor-appointed board comprised of leaders from business and labor, as well as representatives from the legal, medical, insurance and vocational rehabilitation communities. Each month, Council Members come together to discuss a variety of workers' compensation issues with the ultimate goal of identifying problems and developing solutions. When the affirmative vote of at least seven members can be reached between business and labor, these positions are reflected in our recommendations.

It has been fourteen years since the enactment of the workers' compensation reform act of 1991 and the Massachusetts Workers' Compensation System continues to benefit. However, as a labor/management coalition, the Advisory Council believes that the passage of several bills would further complement the system for injured workers, employers and insurers.

The Advisory Council supports **Senate Bill 1099**, filed by Senator Hart and Representative Walsh. This bill would provide a vehicle for both private citizens and insurers to bring forth a civil action against employers who illegally fail to carry workers' compensation insurance or misclassify their workers for the purpose of avoiding premiums. On suits brought forth by private citizens, the majority of the damages would be deposited into the DIA's Trust Fund to help off-set payments made to injured workers of uninsured employers. Insurance carriers would be able to recover the full amount of the award in situations where they obtain court approval to replace the private citizens in a lawsuit. The Advisory Council believes that the passage of this legislation will help alleviate the competitive disadvantage faced by the vast majority of honest employers who purchase workers' compensation policies, when their competitors may not.

The Advisory Council also endorses **House Bill 1606**, filed by Representative Cabral, and **Senate Bill 1095**, filed by Senator Hart and Representative Walsh. These two bills would rightfully provide compensation for scar-based disfigurement appearing on any part of the body. Currently, scarring is only compensable if it appears on the face, neck or hands. Although both bills are subject to a \$15,000 maximum benefit, the Advisory Council encourages the Legislature to consider increasing this amount to an appropriate level.

The Advisory Council has also voiced support for raising the maximum burial allowance from \$4,000 to \$8,000. The current burial allowance of \$4,000 has not been increased in fourteen years and appears to be well below the national average. In 2001, the National Funeral Directors Association estimated that the average funeral and burial cost in Massachusetts was \$6,177. The Advisory Council believes that the Commonwealth has an obligation to ensure there is sufficient compensation available to the families of those workers killed on the job so that they may be honored with a respectful burial.

Along with these endorsements, the Advisory Council would also like to express opposition on two bills. First, Council Members are opposed to **Senate Bill 1097**, filed by Senator Hart, Representative Walsh and Representative Galvin. Under this bill, the surviving dependent of a worker that had died from an occupational illness or disease would receive compensation based upon the earnings of the last full time employment, regardless of whether that worker was earning wages at the time of death. This bill troubles Council Members because workers' compensation was designed as a wage-replacement mechanism and not as a life insurance policy. Furthermore, language contained within this bill would expand benefit eligibility requirements to include workers who are not even subject to the Workers' Compensation Act. The Advisory Council has been informed that the passage of this bill could financially jeopardize the DIA's Trust Fund, which makes reimbursement payments to insurers for latency injuries.

Second, the Advisory Council is opposed to **House Bill 1604**, filed by Representative Rogers. This bill would require the Workers' Compensation Rating & Inspection Bureau to initiate a cost containment pilot project during 2006 whereby Third Party Administrators (TPAs) would service claims for policies within the Assigned Risk Pool. Specifically, the Advisory Council is opposed to this bill because TPAs have no vested interest in the costs or health of the Pool and could thereby place injured workers at risk for receiving poor claim service. Carriers in Massachusetts already have built-in incentives to provide quality service since they must collectively participate in the Pool burden, pay premium taxes, and pay assessments to support the state's Insolvency Fund, the Insurance Fraud Bureau, the State Rating Bureau, and the Attorney General's Office.

Finally, there are two bills that directly affect the rate of payment by insurers for health care services: **House Bill 3776** and **House Bill 3778**. Although the Advisory Council has not taken a position on either of these bills, members have unanimously acknowledged the fact that medical reimbursement rates set by the Division of Health Care Finance & Policy are inadequate and, where appropriate, need to be adjusted. Council Members recognize that there will be a cost-impact with any adjustment to medical rates. However, they also acknowledge the positive impact that adequate rates could generate from allowing injured workers faster access to medical care to decreasing friction costs associated with litigation.

On behalf of the Advisory Council, we would like to thank the Joint Committee on Labor & Workforce Development for holding this hearing and allowing us the opportunity to share our recommendations. Any effort to amend the workers' compensation system must be carefully scrutinized to ensure that changes to the statute will build upon the successful aspects of the system, benefiting both injured workers and employers.

Thank you for the consideration of our recommendations.

Testimony:  
Workers' Compensation Advisory Council

Division of Insurance - Rate Hearing  
March 30, 2005

Request of the Workers' Compensation  
Rating & Inspection Bureau of Massachusetts (WCRB)  
for a General Revision to Workers' Compensation  
Insurance Rates and Rating Values

Commonwealth of Massachusetts, Division of Insurance  
Docket No. R2005-06

**Testimony of the Massachusetts Workers' Compensation Advisory Council**

Good morning. My name is Andrew Burton, and I serve as the Executive Director for the Massachusetts Workers' Compensation Advisory Council. The Advisory Council is a labor-management council that monitors and makes recommendations on all aspects of the workers' compensation system in the Commonwealth. The Council members are appointed by the Governor and are comprised of leaders from business and labor, as well as representatives from the legal, medical, insurance, and vocational rehabilitation communities.

Although the Advisory Council's involvement in the rate hearing process is limited by statute, we are empowered to gather loss data from "any insurance company or rating organization" and to "present a written statement and oral testimony relating to any issues which may arise during the course of the hearing" [M.G.L. c.152, §53A(6)].

The Advisory Council has recently contracted with KPMG LLP ("KPMG") to provide an independent actuarial analysis of the WCRB's rate filing to ensure that any adjustment to rates is not excessive, inadequate or unfairly discriminatory and falls within a range of reasonableness. Specifically, the objective of KPMG will be to identify key elements within the filing that appear to be erroneous or unsound, or based on unreasonable analysis or assumptions. KPMG will be presenting their preliminary findings to the Advisory Council on April 13, 2005.

On behalf of the Advisory Council, I respectfully request that we be granted the opportunity to fulfill our statutory duty and assist you in your evaluations by presenting to you our actuarial report upon its completion.

Thank you for the opportunity to present testimony at this time.

## Guidelines for Reviewing the Qualifications of Judicial Candidates

(Revised: August, 2004)

As the Massachusetts Workers' Compensation Advisory Council is charged with reviewing the qualifications of candidates for the position of administrative judge and administrative law judge at the Division of Industrial Accidents, the following guidelines are adopted to assist the Council in evaluating and rating candidates.

**A. Information Distribution:** Any information regarding a candidate, compiled by the Industrial Accident Nominating Panel, that is transmitted to the Advisory Council will be mailed, faxed, or delivered to the Advisory Council members. In the event this information cannot be provided to the Advisory Council members before an interview takes place, it will be provided at the interview.

**B. Paper Review - Sitting Judges:** Sitting Judges, seeking reappointment or appointment to a new position, who receive a favorable recommendation from the Senior Judge, will not be required to formally interview before the Council. The Advisory Council will vote on the qualifications of these Judges by reviewing any information provided by the Industrial Accident Nominating Panel. However, the Chair may, in his discretion or upon a vote of the majority of the Council members, require a sitting Judge to appear before the Council for an interview.

**C. Paper Review - Nomination Pool Candidates:** Any candidate who is currently serving in the Nomination Pool and reapplies for a judgeship will not be required to formally interview before the Council. The Advisory Council will vote on the qualifications of these candidates by reviewing any information provided by the Industrial Accident Nominating Panel. However, the Chair may, in his discretion or upon a vote of the majority of the Council members, require a Nomination Pool candidate to appear before the Council for an interview.

**D. Interview Notification to Candidates:** All other candidates, not mentioned in (B) or (C), will be formally interviewed by the Advisory Council. Said candidates will be notified by the Executive Director by telephone regarding the date, time, and location of the interviews.

**E. Advisory Council Interviews:** The Council will convene in Executive Session for the interview process. Each candidate must be prompt for their scheduled interview time. Each candidate will be allotted no more than 15 minutes for their interview. Council members will use nameplates for identification purposes and will forego introducing themselves to each candidate. The Chair will ask the candidates to briefly introduce themselves, state their qualifications, and their reasons for seeking the position. Upon

recognition of the Chair, both voting and non-voting members may ask questions of the candidates. Council members will use discretion in limiting questioning to the most pertinent concerns.

**F. Voting Procedure:** Upon determining a candidate's qualifications, pursuant to section 9 of chapter 23E, council members shall make a clear distinction of those candidates who have never served on the Industrial Accident Board, from those who are Sitting Judges, seeking reappointment or appointment to a new position. In conjunction with the Advisory Council's findings, it shall be noted that the judicial ratings of new candidates cannot and should not be compared to the judicial ratings of Sitting Judges.

Upon the completion of all interviews for each meeting, the Chair will ask for a motion on each candidate in the order in which they were interviewed. The Chair will first recognize only motions that rate the candidate as either "Qualified" or "Unqualified." If a motion for "Unqualified" passes, the Chair may recognize a "Motion to Reconsider" or shall move to the next candidate. If a motion for "Qualified" passes, a Council member may motion that the candidate be rated "Highly Qualified." A candidate must receive 7 affirmative votes for any motion to pass.

**G. Proxy Votes:** Voting by proxy is permitted. The Executive Director will contact each voting member prior to the interviews to obtain a proxy in the event said member is unable to attend. Voting members may direct their proxy how to vote on any candidate.

**H. Transmission of Findings:** After each meeting, the Chair shall address letters in alphabetical order to the Governor's Chief Legal Counsel advising him/her of the findings of the Council regarding each candidate. Each letter shall state that the qualifications of the candidate were reviewed, that an interview was conducted if necessary, and shall state the rating of the Council. In the event information was lacking on a particular candidate, this will be stated in the letter. In the event Council members could not agree as to "Qualified," "Unqualified," or "Highly Qualified" for any candidate, then the letter shall state that the Council could not reach a consensus on the qualifications for that candidate.

**I. Request for Additional Time:** In circumstances where the Advisory Council believes it has "good cause" to request additional time to review the candidates, beyond the one week time limit allotted in Executive Order No. 456, the Chair may contact the Governor's Chief Legal Counsel stating such reasons. The Chair will contact the Governor's Chief Legal Counsel by letter, phone, or fax, depending upon the urgency of the request.

## APPENDIX K

### Workers' Compensation Organizations

The following are government, private, and non-profit organizations that have a role in the Massachusetts workers' compensation system. Many of the organizations below are advocacy groups funded by a specific group to represent and promote their particular view.

This is meant to be informative only, and is by no means an exhaustive list of all groups involved with workers' compensation. Inclusion of an organization's name does not indicate an endorsement of any particular viewpoint or organization, nor does it relate to their effectiveness or reliability in advocating a particular view.

The categories are Massachusetts State Government, Insurance, Medical, Public Policy/Research, Fraud, Safety, Legal, and Federal Government/National Organizations.

#### *Massachusetts State Government*

##### **Massachusetts Workers' Compensation Advisory Council (WCAC)**

600 Washington Street, Boston, MA 02111

Phone: 617-727-4900 x378 Web Page: <http://www.mass.gov/wcac>

The Advisory Council is a labor-management committee appointed by the Governor to monitor, make recommendations, give testimony, and report on all aspects of the workers' compensation system, except the adjudication of particular claims or complaints, and to improve the workers' compensation system in the Commonwealth.

##### **Division of Industrial Accidents (DIA)**

600 Washington Street, Boston, MA 02111 (Boston Office)

Phone: 617-727-4900 Info: 800-323-3249 x470 Web Page: <http://www.mass.gov/dia>

The Division of Industrial Accidents administers the Commonwealth's workers' compensation system. The DIA provides prompt and rational compensation to victims of occupational injuries and illness. The DIA also ensure that medical treatment is provided in a timely manner to the injured worker while balancing the needs of employers to contain workers' compensation insurance costs.

##### **Joint Committee on Labor & Workforce Development**

State House, Room 43, Boston, MA 02133

Phone: 617-722-2030 Web Page: <http://www.mass.gov/legis/comm/j43.htm>

The Joint Committee on Labor and Workforce Development consists of elected state representatives and senators. It is their duty to consider all matters concerning commercial, industrial and mercantile establishments, industrial development, consumer protection, and discrimination with respect to employment, labor laws and other such matters.

### **Office of the Governor**

State House, Room 360, Boston, MA 02133

Phone: 617-727-7238 Web Page: <http://www.mass.gov/gov>

The Governor appoints the Director of Labor, the Director of Workforce Development, the Director of Business and Technology, the Commissioner of the DIA, Administrative Judges and Administrative Law Judges of the DIA, as well as the members of the Workers' Compensation Advisory Council.

### **Department of Labor**

600 Washington Street, 7<sup>th</sup> Floor, Boston, MA 02111

Phone: 617-727-4900 Web Page: <http://www.mass.gov/dol>

The Department of Labor consists of five state agencies: the Division of Industrial Accidents; the Division of Occupational Safety; the Board of Conciliation and Arbitration; the Labor Relations Commission; and the Joint Labor Management Committee. The Department of Labor's mission is to promote harmonious relations between employers and employees and the general welfare of the workers. The Director of Labor is an ex-officio member of the Massachusetts Workers' Compensation Advisory Council.

### **Division of Occupational Safety**

399 Washington Street, 5th floor, Boston, MA 02108

Phone: 617-727-7047 Web Page: <http://www.mass.gov/dos>

The Division of Occupational Safety administers several workplace safety and health programs, all focused on the goal of having every worker return home from work safe and healthy each day. Part of the Division of Occupational Safety's mission is to effectively administer and enforce the laws of employment agencies in Massachusetts. This includes the issuance of the prevailing wage schedules for many public works projects; the promulgation and interpretation of the state's minimum wage regulations; and the issuance of minimum wage, seasonal business overtime, and uniform deposit waivers.

### **Governor's Council**

State House, Room 184, Boston, MA 02133

Phone: 617-725-4015 Web Page: <http://www.mass.gov/gov/govco.htm>

The Massachusetts Governor's Council, also known as the Executive Council, is composed of eight individuals elected from districts, and the Lt. Governor who serves ex officio. The eight councilors are elected from their respective districts every two years. The Council generally meets at noon every Wednesday in the State House Chamber, next to the Governor's Office, to act upon such issues as payments from the state treasury, criminal pardons and commutations, and approval of gubernatorial appointments; such as judges, notaries, and justices of the peace. All DIA judges are appointed by the Governor subject to the consent and approval of the Governor's Council.

### **Department of Workforce Development**

One Ashburton Place, Room 212, Boston, MA 02108

Phone: 617-727-6573 Web Page: <http://www.mass.gov/dlwd>

The Department of Workforce Development is dedicated to enhancing the quality, diversity, and stability of the Commonwealth's workforce by making available new opportunities and training for workers, job seekers, and employers; to preventing workplace injuries and illnesses; to providing temporary assistance when employment is interrupted; to ensuring that businesses are informed of all employment laws impacting them and their employees; and to promoting labor-management harmony.

### **Massachusetts Rehabilitation Commission (MRC)**

59 Temple Place, Boston, MA 02111

Phone: 617-201-3600 Web Page: <http://www.mass.gov/mrc>

The mission of the MRC is to provide comprehensive services with and for persons with disabilities that maximize their quality of life and economic self-sufficiency in the community. In cooperation with other public and private human service organizations, the MRC promotes its ultimate vision of equality, empowerment and productive independence of individuals with disabilities.

### **Department of Business and Technology**

One Ashburton Place, Boston, MA 02108

Phone: 617-727-8380 Web Page: <http://www.mass.gov/dbt>

The Department of Business & Technology seeks to promote job creation and long-term economic growth in Massachusetts. The Department of Business & Technology seeks to attract new businesses to the state, helps existing businesses expand, assist emerging firms in obtaining the human, financial, and technological resources necessary to prosper and grow, and provide assistance and training to the unemployed and underemployed. The Director of Business & Technology is an ex-officio member of the Workers' Compensation Advisory Council.

### **Office of the Attorney General**

One Ashburton Place, Boston, MA 02108

Phone: 617-727-2200 Web Page: <http://www.mass.gov/ago>

The Attorney General's office prosecutes workers' compensation fraud and enforces state labor laws. It also held a series of meetings for its task force on waste, fraud, and abuse in the workers' compensation system. A series of "White Papers" are available from the office on issues brought up at those meetings.

## **Insurance**

### **Division of Insurance (DOI)**

One South Station, 5<sup>th</sup> floor, Boston, MA 02110-2208

Phone: 617-521-7794 Web Page: <http://www.mass.gov/doi>

The DOI regulates all insurance programs and monitors and licenses self-insurance groups. The **State Rating Bureau** is an office within the DOI that testifies at rate hearings with respect to insurance rates. The Commissioner of DOI holds hearings on rate filings and issues a decision.

### **DIA - Office of Insurance**

600 Washington Street, Boston, MA 02111

Phone: 617-727-4900 x371 Web Page: <http://www.mass.gov/dia>

Issues annual licenses for self-insurance; monitors insurance complaints; maintains the insurer register.

### **DIA - Office of Investigations**

600 Washington Street, Boston, MA 02111

Phone: 617-727-4900 x406 Web Page: <http://www.mass.gov/dia/investigation/index.htm>

Hot Line: 1-877-MASSAFE (877-627-7233 ext. 214)

Issues stop work orders and fines to employers operating in the Commonwealth without workers' compensation insurance. In June 2004, the Investigation Unit established a "Tipsters Hotline" for citizens to anonymously report persons or businesses in violation with the law.

**The Workers' Compensation Rating and Inspection Bureau of Massachusetts (WCRIB)**

101 Arch Street, 5<sup>th</sup> floor, Boston, MA 02110

Phone: 617-439-9030 Web Page: <https://www.wcribma.org/mass>

Private non profit body funded by insurers;

- Licensed rating organization for workers' compensation; WCRIB submits workers' compensation insurance rates, rating plans, and forms for approval (rates are subject to approval by the Commissioner of Insurance);
- WCRIB is the statistical agent for workers' compensation for the Commissioner of Insurance;
- Administers assigned risk pool; designates insurance carriers for employers who cannot obtain policy in voluntary market;
- Collects statistical data from insurers;
- NCCI handles some of the accounting procedures for the pool.

**National Council on Compensation Insurance (NCCI)**

750 Park of Commerce Drive, Boca Raton, FL 33487

Phone: 800-622-4123 Web Page: <http://www.ncci.com>

NCCI is a national organization devoted to workers' compensation insurance. It has a somewhat limited role in Massachusetts:

- Does some of the accounting for the assigned risk pool under contract with the WCRIB;
- Determines residual market loss reserves.
- In 34 other states, NCCI is the organization that files for insurance rates or loss costs (in Massachusetts, it is the WCRIB that files for rate changes);
- NCCI also administers various state funds where the state acts as an insurance carrier for workers' compensation.

**Medical**

**Division of Health Care Finance and Policy**

2 Boylston Street, Boston, MA 02116-4737

Phone: 617-988-3100 Web Page: <http://www.mass.gov/dhcfp>

The Division of Health Care Finance and Policy (formerly the Rate Setting Commission) sets reimbursement rates for medical services in workers' compensation.

**DIA - The Health Care Services Board (HCSB)**

Phone: 617-727-4900 x310 Web Page: <http://www.mass.gov/dia/hcsb>

The Health Care Services Board (HCSB) is a medical advisory body consisting of 14 members. The HCSB reviews and develops medical treatment guidelines, in addition to developing criteria by which qualified health care providers are selected for the DIA's impartial physician roster. The Board also receives, reviews and investigates complaints against health care practitioners providing services to the injured worker. This office coordinates the utilization review program, the Medical Consultant Consortium, and the Health Care Services Board at the DIA.

**DIA – The Office of Health Policy (OHP)**

Phone: 617-727-4900 x438 Web Page: <http://www.mass.gov/dia/hcsb/OHP>

The Office of Health Policy approves and monitors workers' compensation utilization programs in Massachusetts to ensure compliance with the requirements of the regulations.

**Massachusetts Board of Allied Health – Division of Registration**

239 Causeway Street, Suite 500, Boston, MA 02114

Phone: 617-727-3033

The Massachusetts Board of Allied Health, Division of Registration consists of health professionals who use occupational activities with specific goals in helping people of all ages to prevent, lessen or overcome physical, psychological or developmental disabilities.

**Massachusetts Medical Society**

860 Winter Street, Waltham Woods Corporate Center, Waltham, MA 02451-1411

Phone: 781-893-4610 / 800-322-2303 Web Page: <http://www.massmed.org>

E-Mail: [info@massmed.org](mailto:info@massmed.org)

Private, non-profit professional association represents the Massachusetts physician community. Physician members share the common goal of making a difference in the lives of their patients and the practice of medicine.

**Massachusetts Hospital Association**

5 New England Executive Park, Burlington, MA 01803

Phone: 781-272-8000 Web Page: <http://www.mhalink.org>

E-Mail: [info@mhalink.org](mailto:info@mhalink.org)

The Massachusetts Hospital Association (MHA) is a voluntary, non-profit organization comprised of hospitals and health systems, related organizations, and other members with a common interest in promoting the health of the people in the Commonwealth.

**Massachusetts Orthopedic Association**

45 Broad Street, Boston, MA 02109

Phone: 617-451-9663

Private, non-profit professional association representing physicians practicing in the specialty area of orthopedic surgery.

**Massachusetts Chiropractic Society**

76 Woodland Street, Methuen, MA 01844-4295

Phone: 978-682-8242 / 800-442-6155 Web Page: <http://www.masschiro.org>

E-Mail: [mcs@masschiro.org](mailto:mcs@masschiro.org)

The Massachusetts Chiropractic Society is a non-profit membership service organization representing the chiropractic profession in Massachusetts. The Society's principle function is to maintain the standards in education, ethics, and professional competency necessary to meet the requirements of the profession and the expectations of the general public.

**American Physical Therapy Association of Massachusetts**

34 Atlantic Street, Gloucester, MA 01930-1625

Phone: 617-429-1325 National Chapter: 800-999-2782 Web Page: <http://aptaofmass.org>

E-Mail: [aptaofma@aptaofma.org](mailto:aptaofma@aptaofma.org)

The American Physical Therapy Association of Massachusetts Inc., with more than 2200 members, is a component of the American Physical Therapy Association. APTA's goal is to foster advancement in physical therapy practice, education, and research.

**American Occupational Therapy Association (AOTA)**

4270 Montgomery Lane, P.O. Box 31220, Bethesda, MD 20824-1220

Phone: 301-652-2682 Web Page: <http://www.aota.org>

The American Occupational Therapy Association (AOTA) supports the professional community for occupational therapists and develops and preserves the viability and relevance of the profession. The organization serves the interests of its members, represents the profession to the public, and promotes access to occupational therapy services.

**Massachusetts Occupational Therapy Association (MAOT)**

57 Madison Road, Waltham, MA 02453-6718

E-Mail: [info@maot.org](mailto:info@maot.org)

Phone: 781-647-5556 Web Page: <http://www.maot.org>

The Massachusetts Association for Occupational Therapy provides a professional network for its members and develops and preserves the profession. MAOT serves the interests of its members, represents the profession to the public and promotes access to occupational therapy.

**Public Policy / Research**

**Workers' Compensation Research Institute (WCRI)**

955 Massachusetts Avenue, Cambridge, MA 02139

Phone: 617-661-9274(WCRI) Web Page: <http://www.wcrinet.org>

WCRI is a nonpartisan, non-profit public policy research organization funded primarily by employers and insurers. The WCRI research takes several forms, according to their statement of purpose: "original research studies of major issues confronting workers' compensation systems; original studies of individual state systems where policy makers have shown an interest in reform and where there is an unmet need for that objective information; source book that brings together information from a variety of sources to provide unique, convenient reference works on specific issues; periodic research briefs on significant new research, data, and issues in the field." (WCRI Annual Report/Research Review, 1992).

**Associated Industries of Massachusetts (AIM)**

Workers' Compensation Oversight Committee

222 Berkeley Street, P.O. Box 763, Boston, MA 02117-0763

Phone: 617-262-1180 Hot Line: 800-470-6277 Web Page: <http://www.aimnet.org>

The Associated Industries of Massachusetts is a dues-supported, non-profit, nonpartisan employers' association dedicated to improving the Commonwealth's economic climate.

**Massachusetts AFL-CIO**

389 Main Street, Malden, MA 02148

Phone: 781-324-8230 Web Page: <http://www.massaficio.org>

The AFL-CIO is the umbrella organization representing more than 750 local unions and intermediate bodies in Massachusetts. The AFL-CIO is dedicated to empowering the worker by improving the standard of living and the quality of life for all working people.

**International Association of Industrial Accident Boards and Commissions (IAIABC)**

5610 Medical Circle, Suite 24, Madison, WI 53719

Phone: 608-663-6355 Web Page: <http://www.iaiabc.org>

The International Association of Industrial Accident Boards and Commissions serves the needs of the workers compensation system through promoting efficient and farsighted regulation and administration of the law.

## *Fraud*

### **Insurance Fraud Bureau of Massachusetts (IFB)**

101 Arch Street, Boston, MA 02110

Phone: 617-439-0439 (1-800-32FRAUD) Web Page: <http://www.ifb.org>

E-Mail: [webmaster@ifb.org](mailto:webmaster@ifb.org)

The Insurance Fraud Bureau of Massachusetts is a multifaceted investigative agency dedicated to the systematic elimination of fraudulent insurance transactions. Authorized by an Act of the Massachusetts Legislature and signed into law in 1990, the Insurance Fraud Bureau undertakes cases for investigation and preparation for criminal prosecution. The Bureau is wholly funded by the insurance industry in Massachusetts.

## *Safety*

### **Office of the Attorney General - Business and Labor Protection Bureau**

Fair Labor and Business Practices Division, One Ashburton Place, Boston, MA 02108

Phone: 617-727-2200 Web Page: <http://www.ago.state.ma.us>

Fair Labor and Business Practices Branch Office, 184 North St., Pittsfield, MA 01201

Phone: 413-7324 ext. 218

The Business and Labor Protection Bureau investigates and prosecutes violations of child labor laws and work-related injuries to minors, grants workplace procedure waivers, inspects workplace safety on construction sites, industrial sites and in the manufacturing industry. They also prosecute egregious cases of violations of industrial workplace safety and may shut down a job site in cases of imminent danger to the safety of employees or the public.

### **DIA - Office of Safety**

600 Washington Street, Boston, MA 02111

Phone: 617-727-4900 x387 / 978-683-6420 x138 Web Page: <http://www.mass.gov/dia/Safety>

The function of the Office of Safety is to reduce work related injury and illnesses by “establishing and supervising programs for data collection on workplace injuries and for the education and training of employees and employers in the recognition, avoidance and prevention of unsafe or unhealthy working conditions in employment and advising employees and employers on these issues.” (M.G.L. c. 23E, 3(6)).

### **Massachusetts Coalition of Occupational Safety and Health (MassCOSH)**

42 Charles Street, Dorchester, MA 02122

Phone: 617-825-7233(SAFE) Web Page: <http://www.masscosh.org>

E-Mail: [info@masscosh.org](mailto:info@masscosh.org)

The following safety councils provide publications, videos, training programs, speakers and other information for a fee.

- *Safety Council of Western Massachusetts* (Springfield) 413-731-0760
- *National Safety Council, Central MA Chapter* (West Boylston) 508-835-2333
- *Massachusetts Safety Council* (Braintree) (Serves Eastern MA) 781-356-1633
- *American Society of Safety Engineers* (ASSE) is a non profit association that provides monthly educational seminars and training. It can be reached through the local safety councils 847-699-2929.

## Legal

### **Massachusetts Bar Association**

Workers' Compensation Committee

20 West Street, Boston, MA 02111-1204

Phone: 617-542-3602 Web Site: <http://www.massbar.org>

The Massachusetts Bar Association is the statewide voluntary professional association for all lawyers, in all types of practice, in all areas of law.

### **Massachusetts Academy of Trial Attorneys**

15 Broad Street, Suite 415, Boston, MA 02109

Phone: 617-248-5858 Web Site: <http://www.massacademy.com>

Private, non-profit professional association represents the plaintiff's attorneys in Massachusetts.

## Federal Government / National Organizations

While most programs for workers' compensation are administered at the state level, there are various safety, labor, and workers' compensation programs administered by the federal government.

### **U.S. Department of Labor**

Employment Standards Administration

Office of Workers' Compensation Programs

Division of Planning, Policy and Standards

Francis Perkins Boulevard

200 Constitution Avenue, N.W., Washington, D.C. 20210

Phone: 1-866-4-USA-DOL Web Site: <http://www.dol.gov>

The Division of Planning, Policy and Standards at the Office of Workers' Compensation Programs serves as a liaison to the states regarding state workers' compensation matters. They produce two major publications: State Workers' Compensation Administration Profiles and State Workers' Compensation Laws.

The Office of Workers' Compensation Programs also administers four other divisions: Division of Longshore and Harbor Workers' Compensation (202-693-0038); Division of Energy Employee's Compensation (866-888-3322\*); Division of Federal Employee's Compensation (866-962-7487\*); and the Division of Coal Mine Workers' Compensation (800-638-7072\*).

**\*Toll Free Numbers**

### **Occupational Safety and Health Administration (OSHA)**

200 Constitution Avenue, N.W.

Washington, D.C. 20210

Phone: 617-565-9860 Web Site: <http://www.osha.org>

OSHA's mission is to assure safety and health of America's workers by setting and enforcing standards; providing training, outreach and education; establishing partnerships; and encouraging continual improvement in workplace safety and health.

### **OSHA Massachusetts Regional Offices**

#### **North Boston Area Office**

Valley Office Park, 13 Branch Street, Methuen, MA 01844

Phone: (617) 565-8110

**South Boston Area Office**

639 Granite Street, 4<sup>th</sup> Floor, Braintree, MA 02184  
Phone: (617) 565-6924

**Springfield Area Office**

1441 Main Street, Room 550, Springfield, MA 01103-1493  
Phone: (413) 785-0123

**National Institute for Occupational Safety and Health (NIOSH)**

1095 Willowdale Road  
Morgantown, WV 26505-2888  
Phone: 304-285-5894 / 800-356-4674 Web Site: <http://www.cdc.gov/niosh>  
Federal agency under the Department of Health and Human Service. Clearinghouse information on workplace safety, health, and illness.

**National Institute for Occupational Safety and Health (NIOSH)**

200 Independence Avenue, Room 715H  
Washington, DC 20201  
Phone: 202-401-6997 / 800-356-4674 Web Site: <http://www.cdc.gov/niosh>  
Federal agency under the Department of Health and Human Service. Clearinghouse information on workplace safety, health, and illness.

**National Institute for Occupational Safety and Health (NIOSH)**

New England Field Office  
P.O. Box 87040, South Dartmouth, MA 02748-0701  
Phone: 508-997-6126 Web Site: <http://www.cdc.gov/niosh>  
Federal agency under the Department of Health and Human Service. Clearinghouse information on workplace safety, health, and illness.

**Occupational Health Foundation (OHF)**

815 16th Street, N.W. Suite 312  
Washington, D.C. 20006  
Phone: 202-842-7840  
The OHF is a labor-sponsored, non-profit organization delivering service to the American labor movement and individual members of the workforce. OHF's mission is to improve occupational safety and health conditions for workers. (OHF 1993 Annual Program Report)

**United States Chamber of Commerce**

1615 H Street, N.W.  
Washington, D.C. 20062-2000  
Phone: 202-659-6000 / 800-638-6582 Web Site: <http://www.uschamber.com>  
Publishes an analysis of state workers' compensation statutes.

Office of Safety Proposals  
Recommended for Funding - FY 2007

**FIRST ROUND  
RECOMMENDED FOR FUNDING**

1. Western Massachusetts Electric Company  
P.O. Box 2010  
West Springfield, MA 01090  
413-787-9303  
**Title:** Developing the Ergonomic Eye  
**Category of Applicant:** Public Employer  
**Geographic Target:** Western MA  
**Program Administrator:** Michael Smith  
**Total Funds Requested:** \$24,655.00      **Approved:** \$24,655.00      **Score:** 96.3
  
2. J. Polep  
703 Meadow St.  
Chicopee, MA 01013-1893  
413-592-4141  
**Title:** Developing the Ergonomic Eye  
**Category of Applicant:** Private Employer  
**Geographic Target:** Western MA  
**Program Administrator:** Kimberley Counter  
**Total Funds Requested:** \$24,655.00      **Approved:** \$24,655.00      **Score:** 96.3
  
3. Caritas Good Samaritan Medical Center  
235 North Pearl Street  
Brockton, MA 02301  
508-427-3753  
**Title:** Occupational Safety and Health Education and Training Program  
**Category of Applicant:** Private Employer  
**Geographic Target:** Statewide  
**Program Administrator:** Gina Aureilo  
**Total Funds Requested:** \$16,171.00      **Approved:** \$16,170.50      **Score:** 93.7
  
4. Deluxe Corporation  
12 South Street  
Townsend, MA 01469  
978-597-8715  
**Title:** Minimizing Risks and Improving the Safety Environment at Deluxe Through  
Ergonomic Intervention  
**Category of Applicant:** Private Employer  
**Geographic Target:** Central MA  
**Program Administrator:** Sandra Leach  
**Total Funds Requested:** \$19,881.25      **Approved:** \$19,881.25      **Score:** 92.3

5. Associated General Contractors of Massachusetts, Inc.  
 888 Worcester Street, Suite 40  
 Wellesley, MA 02482  
 781-235-2680  
**Title:** OSHA Hazard Awareness Training for the Construction Industry  
**Category of Applicant:** Trade Association  
**Geographic Target:** Statewide  
**Program Administrator:** David Powell  
**Total Funds Requested:** \$6,255.00      **Approved:** \$6,255.00      **Score:** 91.7
  
6. Boston Public Health Commission  
 1010 Mass Ave  
 Boston, MA 02118  
 617-534-3805  
**Title:** Safe Shops  
**Category of Applicant:** Public Employer  
**Geographic Target:** Boston  
**Program Administrator:** Paul Shoemaker  
**Total Funds Requested:** \$14,961.00      **Approved:** \$14,961.00      **Score:** 91
  
7. Windham Injury Management Group  
 500 North Commercial Street, Suite 301  
 Manchester, N.H. 03101  
 800-898-0386  
**Title:** Developing the Ergonomic Eye  
**Category of Applicant:** Private Employer  
**Geographic Target:** Statewide  
**Program Administrator:** Michael Grasso  
**Total Funds Requested:** \$24,915.00      **Approved:** \$24,915.00      **Score:** 89.7
  
8. American Red Cross  
 180 Rustcraft Road, Suite 115  
 Dedham, MA 02029  
 800-462-9400  
**Title:** Creating a Safe Workplace through Behavioral Safety and  
 General Awareness Training at American Red Cross  
**Category of Applicant:** Non-profit Organization  
**Geographic Target:** Statewide  
**Program Administrator:** Debra Giguere  
**Total Funds Requested:** \$24,075.00      **Approved:** \$24,075.00      **Score:** 89.3
  
9. SunBridge Healthcare Corporation  
 134 North Street  
 North Reading, MA 10864  
 978-276-2000  
**Title:** Occupational Safety and Health Education and Training Program  
**Category of Applicant:** Public Employer  
**Geographic Target:** Central MA  
**Program Administrator:** Donna Howie  
**Total Funds Requested:** \$24,963.75      **Approved:** \$24,963.75      **Score:** 88.7

10. D&B Tree Service, Inc  
35 Federal Ave  
Quincy, MA 02169  
617-471-4777  
**Title:** Increasing Safety and Compliance in Arboriculture Through Education and Training  
**Category of Applicant:** Private Employer  
**Geographic Target:** South Shore  
**Program Administrator:** Robert Young  
**Total Funds Requested:** \$24,974.25      **Approved:** \$24,934.25      **Score:** 88.3
11. Joseph's Gourmet Pasta and Sauces  
133 Hale Street  
Haverhill, MA 01830  
978-772-3248  
**Title:** Occupational Safety & Health Education Program  
**Category of Applicant:** Private Employer  
**Geographic Target:** North Shore  
**Program Administrator:** Anarosa Munoz  
**Total Funds Requested:** \$22,935.00      **Approved:** \$22,935.00      **Score:** 88
12. Analog Devices  
840 Woburn Street MS-424  
Wilmington, MA 01887  
781-937-2164  
**Title:** Improving Safety Through Ergonomic Behavior Safety Training at Analog Devices, Inc.  
**Category of Applicant:** Private Employer  
**Geographic Target:** Boston  
**Program Administrator:** Elizabeth Tshudy  
**Total Funds Requested:** \$24,917.50      **Approved:** \$24,877.50      **Score:** 87.7
13. Cardinal Health  
11 Centennial Drive  
Peabody, MA 01960  
978-532-8289  
**Title:** Ergonomic Training to Prevent Musculo-Skeletal Injuries  
**Category of Applicant:** Private Employer  
**Geographic Target:** North Shore  
**Program Administrator:** Paul Martel  
**Total Funds Requested:** \$14,002.00      **Approved:** \$14,002.10      **Score:** 86.7
14. Massachusetts College of Liberal Arts  
375 Church Street  
North Adams, MA 01247  
413-662-5544  
**Title:** Facility Management Safety Training Program  
**Category of Applicant:** Public Employer  
**Geographic Target:** Western MA  
**Program Administrator:** George Galli  
**Total Funds Requested:** \$24,290.60      **Approved:** \$24,290.60      **Score:** 83.3

15. GM Consulting  
35 Boucher Road  
Lunenburg, MA 01462  
508-566-5739  
**Title:** 10 OSHA Construction Outreach Training  
**Category of Applicant:** Private Employer  
**Geographic Target:** Central MA  
**Program Administrator:** Greg Menafo  
**Total Funds Requested:** \$3,290.25      **Approved:** \$3,290.25      **Score:** 83
16. Springfield Joint Apprenticeship Training Committee  
187 Industry Ave  
Springfield, MA 01104  
413-737-2253  
**Title:** Safe Work Practices for Electricians  
**Category of Applicant:** Trade Association  
**Geographic Target:** Western MA  
**Program Administrator:** Gary Courtney  
**Total Funds Requested:** \$17,840.00      **Approved:** \$17,649.65      **Score:** 82
17. BAMSI  
10 Christy's Drive  
Brockton, MA 02301  
508-580-8700  
**Title:** Occupational Safety and Health Training and Education Program  
**Category of Applicant:** Non-profit Organization  
**Geographic Target:** Statewide  
**Program Administrator:** Kathleen Berry  
**Total Funds Requested:** \$8,748.21      **Approved:** \$8,748.21      **Score:** 81.7
18. Harbor Schools and Family Services  
26 Rolfes Lane  
Newbury, MA 01951  
978-462-3151  
**Title:** Occupational Safety and Health Training and Education Program  
**Category of Applicant:** Non-profit Organization  
**Geographic Target:** North Shore  
**Program Administrator:** Ted Stedman  
**Total Funds Requested:** \$24,100.00      **Approved:** \$16,960.00      **Score:** 80
19. City of Westfield  
59 Court Street  
Westfield, MA 01085  
413-572-6200  
**Title:** Occupational Safety and Health Training and Education Program for FY 2007  
**Category of Applicant:** Public Employer  
**Geographic Target:** Western MA  
**Program Administrator:** Helen Bowler  
**Total Funds Requested:** \$21,451.00      **Approved:** \$21,450.50      **Score:** 79.7

20. Youville Hospital & Rehabilitation Center, Inc.  
 1575 Cambridge Street  
 Cambridge, MA 02138  
 617-876-4344  
**Title:** Occupational Safety and Health Training and Education Program  
**Category of Applicant:** Non-profit Organization  
**Geographic Target:** Boston  
**Program Administrator:** Phyliss Inman  
**Total Funds Requested:** \$16,171.00      **Approved:** \$16,170.50      **Score:** 78.3
21. Universal Plastics Corporation  
 75 Whiting Farms Road  
 Holyoke, MA 01040  
 413-592-4791  
**Title:** Ongoing Employee Training in the Areas of Safety  
**Category of Applicant:** Private Employer  
**Geographic Target:** Western MA  
**Program Administrator:** Joseph Peters  
**Total Funds Requested:** \$5,625.00      **Approved:** \$3,771.75      **Score:** 75
22. Executive Office of Environmental Affairs  
 100 Cambridge Street, 9<sup>th</sup> Floor  
 Boston, MA 02114  
 617-626-1000  
**Title:** Safety Skills Training Program  
**Category of Applicant:** Public Employer  
**Geographic Target:** Statewide  
**Program Administrator:** Andrew Yee  
**Total Funds Requested:** \$24,787.25      **Approved:** \$24,883.50      **Score:** 72.7
23. Harbor Health Services, Inc.  
 398 Neponset Avenue  
 Dorchester, MA 02122  
 617-282-3200  
**Title:** Employee training and retraining on occupational safety and health education  
**Category of Applicant:** Non-profit Organization  
**Geographic Target:** Boston  
**Program Administrator:** Mardi Esquivel  
**Total Funds Requested:** \$2,773.00      **Approved:** \$2,656.44      **Score:** 71.7
24. Health Resources  
 600 West Cummings Park, Suite 3400  
 Woburn, MA 01801  
 781-935-8581  
**Title:** Occupational Safety and Health Education Training  
**Category of Applicant:** Private Employer  
**Geographic Target:** Boston  
**Program Administrator:** Kerri Starratt  
**Total Funds Requested:** \$13,040.50      **Approved:** \$13,040.50      **Score:** 71.3

25. Self-Insured Lumber Business Association  
 10 N.E. Business Center, Suite 301  
 Andover, MA 01810  
 978-933-4143  
**Title:** Safety and Health Training Program  
**Category of Applicant:** Private Employer  
**Geographic Target:** Statewide  
**Program Administrator:** Terry Buckhout  
**Total Funds Requested:** \$4,815.00      **Approved:** \$4,815.00      **Score:** 71.3
26. Project COPE  
 181 Union Street, Suite B  
 Lynn, MA 01901  
 781-581-9270  
**Title:** Site Safety Training Program  
**Category of Applicant:** Private Employer  
**Geographic Target:** Boston  
**Program Administrator:** Mark Kennard  
**Total Funds Requested:** \$22,442.00      **Approved:** \$14,680.30      **Score:** 70.0
27. Stone Technologies, Inc.  
 5 Draper Street  
 Woburn, MA 01801  
 781-358-6500  
**Title:** Occupational Safety and Health Education Training Program  
**Category of Applicant:** Private Employer  
**Geographic Target:** Metro Region  
**Program Administrator:** Lachelle Winter  
**Total Funds Requested:** \$4,340.00      **Approved:** \$2,637.55      **Score:** 69.7
28. The Laboratory Safety Institute  
 192 Worcester Road  
 Natick, MA 01760  
 508-647-1900  
**Title:** Safety in school science, art, and vocational classrooms and laboratories  
**Category of Applicant:** Private Employer  
**Geographic Target:** Statewide  
**Program Administrator:** Mark Iorio  
**Total Funds Requested:** \$24,897.00      **Approved:** \$23,338.31      **Score:** 66.7
29. Mount Wachusett Community College  
 444 Green Street  
 Gardner, MA 01440  
 978-632-6600  
**Title:** Moduform Workforce Hazard Assessment and Process Hazard Analysis Training  
**Category of Applicant:** Private Employer  
**Geographic Target:** Central MA  
**Program Administrator:** Kenneth Hanson  
**Total Funds Requested:** \$13,915.00      **Approved:** \$6,431.65      **Score:** 59.7

30. Massachusetts Lodging Association Education Foundation, Inc.  
7 Liberty Square  
Boston, MA 02109  
617-721-1776  
**Title:** Accommodation and Foodservice Safety Training Program  
**Category of Applicant:** Non-profit Organization  
**Geographic Target:** Statewide  
**Program Administrator:** Deborah Andrews  
**Total Funds Requested:** \$24,688.00      **Approved:** \$6,431.65      **Score:** 59.7

**SECOND ROUND  
RECOMMENDED FOR FUNDING**

31. DCU Center  
50 Foster Street  
Worcester, MA 01608  
508-929-0114  
**Title:** Convention Center and Arena Safety  
**Category of Applicant:** Private Employer  
**Geographic Target:** Central MA  
**Program Administrator:** Stacey Reidy  
**Total Funds Requested:** \$19,072.75      **Approved:** \$19,072.75      **Score:** 118.5
32. MA Pile Drivers Joint Apprenticeship Training  
22 Drydock Avenue, 3<sup>rd</sup> Floor  
Boston, MA 02210-2368  
617-443-1988  
**Title:** Safety and Health in Construction  
**Category of Applicant:** Trade Association  
**Geographic Target:** Statewide  
**Program Administrator:** Dan Kuhs  
**Total Funds Requested:** \$20,621.68      **Approved:** \$20,621.68      **Score:** 114
33. New England Aquarium  
Central Wharf  
Boston, MA 02110  
617-973-5215  
**Title:** OSHA Training  
**Category of Applicant:** Non-profit  
**Geographic Target:** Metro Boston  
**Program Administrator:** Amy La Hait  
**Total Funds Requested:** \$5,628.20      **Approved:** \$5,628.20      **Score:** 111.8

34. Graphic Arts Institute of New England  
5 Crystal Pond Road  
Southborough, MA 01772  
508-804-4100  
**Title:** OSHA Outreach Training for the Printing Industry  
**Category of Applicant:** Trade Association  
**Geographic Target:** Statewide  
**Program Administrator:** Mark Flannery  
**Total Funds Requested:** \$17,638.00      **Approved:** \$17,572.82      **Score:** 111
35. Commonwealth HRD  
1 Ashburton Place, 2<sup>nd</sup> Floor  
Boston, MA 02108  
617-878-9822  
**Title:** Workplace and Domestic Violence Prevention  
**Category of Applicant:** Public Employer  
**Geographic Target:** Statewide  
**Program Administrator:** Jean Haertl  
**Total Funds Requested:** \$21,656.80      **Approved:** \$21,656.80      **Score:** 109.6
36. Industrial Piping and Certified Welding Co.  
271 Salem Street, Suite K  
Woburn, MA 01801  
781-932-0877  
**Title:** FY 2007 Occupational Safety and Health Education and Training Grant  
**Category of Applicant:** Private Employer  
**Geographic Target:** North Shore  
**Program Administrator:** Elke Doherty  
**Total Funds Requested:** \$946.95      **Approved:** \$946.95      **Score:** 109.2
37. The New England Consortium/UMASS Lowell  
1 University Avenue  
Lowell, MA 01854  
978-934-4742  
**Title:** Work and Construction Zone Safety  
**Category of Applicant:** Public Employer  
**Geographic Target:** Statewide  
**Program Administrator:** Debra Thiboutout  
**Total Funds Requested:** \$14,846.00      **Approved:** \$14,846.00      **Score:** 108.8
38. Clariant Corporation  
85 Industrial Drive  
Holden, MA 01520  
800-225-7490  
**Title:** Ergonomic Training and Education Program  
**Category of Applicant:** Private Employer  
**Geographic Target:** Central MA  
**Program Administrator:** Ted Desilets  
**Total Funds Requested:** \$9,885.00      **Approved:** \$9,884.50      **Score:** 108.4

39. Southern Worcester County Rehabilitation Center  
44 Morris Street  
Webster, MA 01570  
508-943-0700  
**Title:** Reducing Workplace Injuries  
**Category of Applicant:** Non-profit  
**Geographic Target:** Central MA  
**Program Administrator:** David Kline  
**Total Funds Requested:** \$9,383.74      **Approved:** \$9,383.74      **Score:** 108.2
40. Life Links  
145 Lexington Avenue  
Lowell, MA 01854  
978-459-6179  
**Title:** Direct Support Safety Training Program  
**Category of Applicant:** Private Employer/Non-profit  
**Geographic Target:** North Shore  
**Program Administrator:** Yvonne LaGarde  
**Total Funds Requested:** \$8,867.50      **Approved:** \$7,583.63      **Score:** 106.8
41. 7 Generations  
PO Box 713  
Pepperell, MA 01463  
978-808-6990  
**Title:** Safety for Young Workers  
**Category of Applicant:** Private Employer  
**Geographic Target:** Statewide  
**Program Administrator:** Loretta Marino Sanford  
**Total Funds Requested:** \$24,995.20      **Approved:** \$24,995.20      **Score:** 104.8
42. Houghton Mifflin  
222 Berkley Street  
Boston, MA 02116  
617-351-1000  
**Title:** Occupational Safety and Health Education Program  
**Category of Applicant:** Private Employer  
**Geographic Target:** Metro Boston  
**Program Administrator:** Robyn Sennott  
**Total Funds Requested:** \$24,888.00      **Approved:** \$24,888.00      **Score:** 103.8
43. MA Division of Occupational Safety  
1001 Watertown Street  
West Newton, MA 02465  
617-969-7177  
**Title:** Confined Space Training for State and Municipal Workers.  
**Category of Applicant:** Public Employer  
**Geographic Target:** Statewide  
**Program Administrator:** Robert Kenrick  
**Total Funds Requested:** \$24,966.10      **Approved:** \$24,966.10      **Score:** 101.2

44. R.H. White Construction Co.,  
41 Central Street  
Auburn, MA 01501  
508-832-3295  
**Title:** Preventing Accidents and Increasing Safety Awareness at RHW Job Sites  
**Category of Applicant:** Private Employer  
**Geographic Target:** Statewide  
**Program Administrator:** Olga Flory  
**Total Funds Requested:** \$11,606.00      **Approved:** \$11,606.00      **Score:** 99.4
45. Nova Biomedical Corporation  
200 Prospect Street  
Waltham, MA 02454  
781-894-0800  
**Title:** Safety in the workplace through Ergonomic and CPR/First Aid Training  
**Category of Applicant:** Private Employer  
**Geographic Target:** North Shore  
**Program Administrator:** Christine Budd  
**Total Funds Requested:** \$19,550.25      **Approved:** \$19,550.25      **Score:** 99.4
46. The Trustees of Reservations  
572 Essex Street  
Beverly, MA 01915  
978-921-1944  
**Title:** The Trustees Train-the-Trainer Program  
**Category of Applicant:** Non-profit  
**Geographic Target:** Statewide  
**Program Administrator:** Kerry Smith  
**Total Funds Requested:** \$14,798.00      **Approved:** \$14,798.00      **Score:** 97.2
47. Sagamore Plumbing & Heating  
90 Libbey Industrial Parkway,  
Weymouth, MA 02189  
781-331-1600  
**Title:** Occupational Safety and Health Education and Training Program  
**Category of Applicant:** Private Employer  
**Geographic Target:** Statewide  
**Program Administrator:** Gerald Fusco  
**Total Funds Requested:** \$21,379.00      **Approved:** \$21,379.00      **Score:** 97
48. Boston Plasters & Cement Masons Joint Apprenticeship & Training Committee  
7 Fredrika Street  
Dorchester, MA 02124  
617-825-7472  
**Title:** OSHA Construction Outreach Program: 10 Hour and 30 Hour  
**Category of Applicant:** Joint Labor/Management Committee  
**Geographic Target:** Metro Boston  
**Program Administrator:** David Ferron  
**Total Funds Requested:** \$18,694.00      **Approved:** \$18,694.00      **Score:** 96.4

49. The Construction Institute  
 256 Freeport Street  
 Boston, MA 02122  
 617-436-4159  
**Title:** Improving Safety Performance in Construction  
**Category of Applicant:** Non-profit/Joint Labor/Management Committee  
**Geographic Target:** Statewide  
**Program Administrator:** Mary Vogel  
**Total Funds Requested:** \$3,443.00      **Approved:** \$3,443.00      **Score:** 96
50. Town of West Springfield  
 26 Central Street  
 West Springfield, MA 01089  
 413-263-3232  
**Title:** Addressing the Workplace of an Aging Workforce  
**Category of Applicant:** Public Employer  
**Geographic Target:** Western MA  
**Program Administrator:** Sandra A. MacFaden  
**Total Funds Requested:** \$4,435.70      **Approved:** \$3,558.50      **Score:** 94.8
51. Analog Devices, Inc.  
 One Technology Way  
 Norwood, MA 02062-9106  
 781-461-3444  
**Title:** Ergonomic Training and Education Program  
**Category of Applicant:** Private Employer  
**Geographic Target:** Boston  
**Program Administrator:** Bernadette S. Health  
**Total Funds Requested:** \$20,223.00      **Approved:** \$20,223.00      **Score:** 94.6
52. Northeast MA Carpenters  
 350 Fordham Road, Suite 201  
 Wilmington, MA 01887  
 978-752-1197  
**Title:** DIA-Safety 2007  
**Category of Applicant:** Trade Association  
**Geographic Target:** North Shore  
**Program Administrator:** Jeff Marcoux  
**Total Funds Requested:** \$19,945.44      **Approved:** \$19,287.58      **Score:** 93.75
53. HCC Aegis  
 50 Welby Road  
 New Bedford, MA 02745  
 508-998-4383  
**Title:** Safety in the workplace through Ergonomic and CPR/First Aid Training  
**Category of Applicant:** Private Employer  
**Geographic Target:** South Shore  
**Program Administrator:** Alan Apperson  
**Total Funds Requested:** \$6,650.05      **Approved:** \$6,650.05      **Score:** 93.4

54. Southeastern MA Carpenters  
21 Mazzeo Drive, Suite 201  
Randolph, MA 02368  
781-963-0200  
**Title:** DIA-Safety 2007  
**Category of Applicant:** Trade Association  
**Geographic Target:** South Shore  
**Program Administrator:** Richard Anderson  
**Total Funds Requested:** \$24,969.10      **Approved:** \$24,441.60      **Score:** 93.25
55. Western MassCOSH  
640 Page Blvd., Suite 104  
Springfield, MA 01104  
413-731-0760  
**Title:** A Training Program to Protect the Health and Safety of the Employees of the  
Towns of Belchertown and Wilbraham  
**Category of Applicant:** Public Employer/Non-profit  
**Geographic Target:** Western MA  
**Program Administrator:** Aaron Wilson  
**Total Funds Requested:** \$6,910.00      **Approved:** \$6,910.00      **Score:** 92.25
56. Advanced Therapeutic Resources, Inc.,  
100 Main Street  
Amesbury, MA 01913  
978-388-6775  
**Title:** General Awareness Training for Musculoskeletal Injury Prevention at Two  
Companies  
**Category of Applicant:** Private Employer  
**Geographic Target:** North Shore  
**Program Administrator:** Trish Going  
**Total Funds Requested:** \$24,075.00      **Approved:** \$24,075.00      **Score:** 91.8
57. Caritas Good Samaritan Occupational Health  
75 Stockwell Drive  
Avon, MA 02322  
508-427-3900  
**Title:** Principles and Practice of Safe Lifting Techniques at Work  
**Category of Applicant:** Non-profit  
**Geographic Target:** Statewide  
**Program Administrator:** Kathleen Pacheco  
**Total Funds Requested:** \$24,140.00      **Approved:** \$24,140.00      **Score:** 91.6
58. Brazilian Immigrant Center  
9 Gardner Street #7  
Allston, MA 02134  
**Title:** Brazilian Construction Worker Injury Prevention Program  
**Category of Applicant:** Non-profit  
**Geographic Target:** Statewide  
**Program Administrator:** Claudia Tamsky  
**Total Funds Requested:** \$19,260.00      **Approved:** \$8,691.50      **Score:** 90.2

59. Ames Safety Envelope  
12 Tyler Street  
Somerville, MA 02143  
617-684-1260  
**Title:** Preventing Hand and Upper Extremity Injuries for Ames Safety Envelope  
**Category of Applicant:** Private Employer  
**Geographic Target:** Metro Boston  
**Program Administrator:** Joanne Sargent  
**Total Funds Requested:** \$5,229.00      **Approved:** \$5,228.50      **Score:** 90
60. Axcelis Technologies, Inc  
18 Cherry Hill Drive  
Beverly, MA 01915  
978-787-4000  
**Title:** Preventing Injuries through Behavioral Safety Training at Axcelis Technologies  
**Category of Applicant:** Private Employer  
**Geographic Target:** North Shore  
**Program Administrator:** Jennifer Chittick  
**Total Funds Requested:** \$24,075.00      **Approved:** \$24,075.00      **Score:** 88.2
61. City of Newton  
1000 Commonwealth Avenue  
Newton Centre, MA 02459  
617-796-1260  
**Title:** A Proactive Training in Workstation Set-up and Injury Prevention  
**Category of Applicant:** Public Employer  
**Geographic Target:** Metro Boston  
**Program Administrator:** Lori Burke  
**Total Funds Requested:** \$5,336.63      **Approved:** \$5,015.50      **Score:** 87
62. Stephen Soreff, MD  
Dolloff Dam Road  
Nottingham, N.H. 03290  
603-895-6120  
**Title:** Staff Development Train-the-Trainer for Resident Aggression in Nursing Facilities  
**Category of Applicant:** Sole Proprietor  
**Geographic Target:** Statewide  
**Program Administrator:** Stephen Soreff  
**Total Funds Requested:** \$24,875.00      **Approved:** \$24,875.00      **Score:** 86.8
63. Boston Carpenters  
385 Market Street  
Brighton, MA 02135  
617-782-4314  
**Title:** DIA-Safety 2007  
**Category of Applicant:** Trade Association  
**Geographic Target:** Metro Boston  
**Program Administrator:** Ben Tilton  
**Total Funds Requested:** \$24,937.00      **Approved:** \$23,678.00      **Score:** 85.5

64. Mabbett & Associates  
5 Alfred Circle  
Bedford, MA 01730  
781-275-6050

**Title:** OSHA Hazardous Waste Operations and Emergency Response Health and Safety Training

**Category of Applicant:** Private Employer

**Geographic Target:** Statewide

**Program Administrator:** Susan Smits

**Total Funds Requested:** \$24,989.25

**Approved:** \$24,871.25

**Score:** 75

## Budget Subsidiaries

### **Subsidiary AA: Regular Employee Compensation**

Includes regular compensation for employees in authorized positions including regular salary, overtime, and other financial benefits. All expenditures for this subsidiary must be made through the payroll system.

### **Subsidiary BB: Regular Employee Related Expenses**

This subsidiary includes reimbursements to employees and payments on behalf of employees with the exception of pension and insurance related payments. This includes out of state travel (airfare, lodging, other); in state travel; overtime meals; tuition; conference, training, and registration; membership dues, etc.

### **Subsidiary CC: Special Employees / Contracted Services**

Payments to individuals employed on a temporary basis through contracts as opposed to authorized positions paid through subsidiary AA. Includes contracted faculty; contracted advisory board/commission members; seasonal; student interns, etc. (These employees are generally not eligible for benefits.)

### **Subsidiary DD: Pension and Insurance-Related Expenditures**

Pension and insurance related expenditure for former and current employees and beneficiaries. Includes retirement, health and life insurance, workers' compensation benefits; medical expenses; universal health insurance charge-back; universal health insurance payments, etc.

### **Subsidiary EE: Administrative Expenses**

Expenses associated with divisional operations. Includes office and administrative supplies; printing expenses and supplies; micrographic supplies; central reprographic charge-back; postage, telephone, software, data processing; subscriptions and memberships; advertising; exhibits/displays; bottled water.

### **Subsidiary GG: Energy Costs and Space and Rental Expenses**

Plant operations, space rentals, utilities, and vehicle fuel. Includes fuel for buildings; heating and air conditioning; sewage and water bills, etc.

### **Subsidiary HH: Consultant Services**

Outside professional services for specific projects for defined time periods, incurred when services are not provided by, or available from state employees. Consultants advise and assist departments but do not provide direct services to clients. Includes accountants; actuaries/statisticians; information technology professionals; advertising agency; arbitrators; architects; attorneys; economists; engineers; health/safety experts; honoraria for visiting speakers; researchers; labor negotiators; management consultants; medical consultants, etc.

### **Subsidiary JJ: Operational Services**

Expenditures for the routine functioning of the Division. Services are provided by non-employees (individuals or firms) generally by contractual arrangements, except when authorized by statute or regulation. Includes movers; snow removal services; messenger services; law enforcement (detail officer).

### **Subsidiary KK: Equipment Purchase**

Purchase and installation of equipment. (See LL for equipment lease, repair.) Includes information technology equipment (computers, software); educational equipment (overhead projectors, tape recorders); photocopying equipment, office equipment, etc.

### **Subsidiary LL: Equipment Lease-Purchase, Lease and Rental, Maintenance and Repair**

Includes expenditures for the lease-purchase, lease, rental, maintenance and repair of equipment. Includes information technology equipment (computers, software); educational equipment (overhead projectors, tape recorders); photocopying equipment, office equipment, etc.

## APPENDIX N

### COLLECTIONS AND EXPENDITURES REPORT - FISCAL YEAR 2006

<i>SPECIAL FUND</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>	<i>FY'03</i>	<i>FY'02</i>
<b><u>COLLECTIONS</u></b>					
<b>INTEREST</b>	<b>670,515</b>	<b>350,529</b>	<b>194,200</b>	<b>209,426</b>	<b>342,449</b>
ASSESSMENT	18,005,869	16,404,375	12,805,486	23,213,608	16,031,304
LESS RET. CHECKS	(10,806)	0	0	0	(2,789)
LESS REFUNDS	0	(8,658)	0	(20,171)	(258,971)
<b>SUB-TOTAL</b>	<b>17,995,063</b>	<b>16,395,717</b>	<b>12,805,486</b>	<b>23,193,437</b>	<b>15,769,544</b>
FILING FEES	4,162,760	4,336,826	4,166,153	5,264,175	4,254,978
COLLECTION FEE	(17,889)	(36,577)	(32,357)	(21,944)	(23,705)
LESS RET. CHECKS	(4,497)	(6,908)	(3,140)	(6,610)	(2,739)
LESS REFUNDS	(7,129)	(7,119)	(4,837)	(7,480)	(7,325)
<b>SUB-TOTAL</b>	<b>4,133,245</b>	<b>4,286,222</b>	<b>4,125,819</b>	<b>5,228,141</b>	<b>4,221,209</b>
1ST REPORT FINES	198,008	315,125	241,890	179,750	333,515
LESS COLLECTION FEE	(11,077)	(10,318)	(4,642)	(5,798)	(12,460)
LESS RET. CHECKS	0	(2,100)	0	0	(1,640)
LESS REFUNDS	0	0	(100)	(200)	(700)
<b>SUB-TOTAL</b>	<b>186,931</b>	<b>302,707</b>	<b>237,148</b>	<b>173,752</b>	<b>318,715</b>
STOP WORK ORDERS	250,299	303,030	394,207	637,426	393,340
LESS REFUNDS	(3,537)	0	(600)	(1,750)	(423)
EDS FEE	(105)	0	0	0	0
LESS BAD CHECKS	0	(1,300)	(10,638)	(29,962)	(5,250)
COLLECTION FEE	0	(17,270)	(39,441)	(72,156)	(25,842)
<b>SUB-TOTAL</b>	<b>246,657</b>	<b>284,460</b>	<b>343,528</b>	<b>533,558</b>	<b>361,825</b>
LATE ASSESS. FINES	28,050	14,074	20,428	19,574	28,124
SEC. 7 & 14 FINES	0	2,000	6,500	5,700	0
MISCELLANEOUS	32,945	37,823	21,685	43,800	56,120
<b>SUB-TOTAL</b>	<b>60,995</b>	<b>53,897</b>	<b>48,613</b>	<b>69,074</b>	<b>84,244</b>
<b>TOTAL COLLECTIONS</b>	<b>23,293,406</b>	<b>21,673,532</b>	<b>17,754,794</b>	<b>29,407,388</b>	<b>21,097,986</b>
BALANCE BRGT FWD	9,148,914	10,090,768	14,728,736	7,638,265	10,065,860
<b>TOTAL</b>	<b>32,442,320</b>	<b>31,764,300</b>	<b>32,483,530</b>	<b>37,045,653</b>	<b>31,163,846</b>
LESS EXPENDITURES	(23,250,818)	(22,615,386)	(22,392,762)	(22,316,917)	(23,525,582)
ADJUSTMENT	9,621				
<b>BALANCE</b>	<b>9,201,123</b>	<b>9,148,914</b>	<b>10,090,768</b>	<b>14,728,736</b>	<b>7,638,264</b>
<b><u>EXPENDITURES</u></b>					
ORACLE START-UP	0	0	1,227,305	936,853	2,731,097
<b>TOTAL COMPUTER</b>	<b>438,890</b>	<b>0</b>	<b>1,227,305</b>	<b>936,853</b>	<b>2,731,097</b>
<b><u>REPAYMENT</u></b>					
REPAYMENT - SALARIES	13,535,090	13,552,369	13,148,258	13,788,158	13,644,820
FRINGE BENEFITS	3,614,974	3,606,371	2,989,091	2,969,507	2,965,931
INDIRECT COSTS	230,155	232,262	223,937	405,376	285,004
NON-PERSONNEL COSTS	5,428,939	5,200,563	4,772,185	4,171,404	3,872,690
OTHER INDIRECT COSTS	0				
IP INDIRECT-EXPENSE	0	23,821	31,986	45,619	29,528
COMPTROLLER ADJUSTMENT	2,770				(3,488)
<b>TOTAL EXPENDITURES</b>	<b>23,250,818</b>	<b>22,615,386</b>	<b>21,165,457</b>	<b>21,380,064</b>	<b>20,794,485</b>

**COLLECTIONS AND EXPENDITURES REPORT - FISCAL YEAR 2006**

<i>PUBLIC TRUST</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>	<i>FY'03</i>	<i>FY'02</i>
<b><u>COLLECTIONS</u></b>					
INTEREST	7,324	3,604	1,691	2,924	5,376
ASSESSMENTS	62,936	173,786	1,078,719	2,094,687	3,376,503
REFUNDS	0	0	0	0	(39,494)
<b>TOTAL ASSESSMENTS</b>	<b>62,936</b>	<b>173,786</b>	<b>1,078,719</b>	<b>2,094,687</b>	<b>3,337,009</b>
<b>TOTAL COLLECTIONS</b>	<b>70,260</b>	<b>177,390</b>	<b>1,080,410</b>	<b>2,097,611</b>	<b>3,342,385</b>
BALANCE BRGT FWD	680,503	503,112	13,010	37,945	56,716
<b>TOTAL</b>	<b>750,763</b>	<b>680,502</b>	<b>1,093,420</b>	<b>2,135,556</b>	<b>3,399,101</b>
LESS EXPENDITURES	0	0	(590,308)	(2,122,546)	(3,361,156)
<b>BALANCE</b>	<b>750,763</b>	<b>680,502</b>	<b>503,112</b>	<b>13,010</b>	<b>37,945</b>
<b><u>EXPENDITURES</u></b>					
RR COLAS	0	0	584,916	2,106,371	3,249,773
RR SEC. 37	0	0	5,392	16,175	111,383
<b>TOTAL EXPENDITURES</b>	<b>0</b>	<b>0</b>	<b>590,308</b>	<b>2,122,546</b>	<b>3,361,156</b>

<i>PRIVATE TRUST</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>	<i>FY'03</i>	<i>FY'02</i>
<b><u>COLLECTIONS</u></b>					
INTEREST	232,217	126,512	107,041	266,311	511,003
ASSESSMENTS	46,686,859	50,919,285	41,932,779	41,155,377	41,651,141
LESS RET. CHECKS	(2,584)	0	0	0	(6,533)
LESS REFUNDS	0	(26,906)	0	(45,402)	(820,175)
<b>SUB-TOTAL</b>	<b>46,684,275</b>	<b>50,892,379</b>	<b>41,932,779</b>	<b>41,109,975</b>	<b>40,824,433</b>
REIMBURSEMENTS	1,444,681	885,811	639,484	698,536	922,936
LESS COLLECTION FEE	0			(220)	(783)
RET. CHECK	(1,161)	(2,225)	(11,650)	(1,000)	(5,290)
REFUNDS	0	0	0	(15,000)	(519)
<b>SUB-TOTAL</b>	<b>1,443,520</b>	<b>883,586</b>	<b>627,834</b>	<b>682,316</b>	<b>916,344</b>
<b>SEC. 30 H</b>	<b>728</b>	<b>0</b>	<b>39,322</b>	<b>3,630</b>	<b>3,471</b>
<b>TOTAL COLLECTIONS</b>	<b>48,360,740</b>	<b>51,902,477</b>	<b>42,706,976</b>	<b>42,062,232</b>	<b>42,255,251</b>
BALANCE BRGT FWD	13,618,318	11,685,006	16,304,121	22,394,085	23,172,956
<b>TOTAL</b>	<b>61,979,058</b>	<b>63,587,483</b>	<b>59,011,097</b>	<b>64,456,317</b>	<b>65,428,207</b>
LESS EXPENDITURES	(53,044,529)	(49,969,164)	(47,324,567)	(48,152,196)	(43,034,125)
ADJUSTMENT	1,500				
<b>BALANCE</b>	<b>8,936,029</b>	<b>13,618,319</b>	<b>11,686,530</b>	<b>16,304,121</b>	<b>22,394,082</b>

**COLLECTION AND EXPENDITURE REPORT - FISCAL YEAR 2006**

<i>PRIVATE TRUST</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>	<i>FY'03</i>	<i>FY'02</i>
<b><u>EXPENDITURES</u></b>					
RR SEC. 34	1,183,723	1,078,481	880,289	696,301	496,677
RR SEC. 35	465,122	301,736	235,072	243,633	291,047
RR LUMP SUM	1,635,402	1,651,369	877,951	749,968	1,462,143
RR SEC. 36	119,966	247,314	363,636	184,359	184,054
RR SEC. 31	91,434	100,386	106,257	69,226	71,502
RR SEC. 34, PERM. TOTAL	306,009	290,558	287,762	311,716	305,627
RR COLA ADJ	154,612	152,639	149,555	175,618	167,841
RR EE MEDICAL	98,387	104,327	63,848	38,453	48,593
RR EE TRAVEL	3,500	3,920	673	84	0
RR EE MISC. EXPENSE	637	0	0	550	0
RR BURIAL BENEFITS	0	0	0	1,969	4,000
RR LEGAL FEES	643,260	471,698	310,903	296,840	408,008
RR LEGAL EXPENSES	0				23,815
RR LEGAL MISC. / OTHER	0				6,384
RR VOC. REHAB SERVICES	6,236	1,400	2,149	6,927	4,442
RR REHAB. SERV. TRAVEL	0	0	26	0	64
RR LABOR MARKET STUDY	0	0	0	7,000	7,000
RR REHAB (PRIOR YEAR)	397	1,768	0	406	6
RR MEDICAL	1,941,114	1,328,010	1,097,087	994,132	1,222,572
RR MEDICAL RECORDS	0				567
RR WELFARE LIENS	0	0	0	0	93,728
<b>SUB-TOTAL RR</b>	<b>6,649,799</b>	<b>5,733,606</b>	<b>4,375,208</b>	<b>3,777,182</b>	<b>4,798,070</b>
<b>MM TUITION</b>	<b>21,862</b>	<b>0</b>	<b>0</b>	<b>2,085</b>	<b>1,140</b>
<b>SUB-TOTAL CLAIMANTS</b>	<b>6,671,661</b>	<b>5,733,606</b>	<b>4,375,208</b>	<b>3,779,267</b>	<b>4,799,210</b>
<b><u>INSURERS - EXP.</u></b>					
RR COLAS	21,914,829	14,948,170	18,110,397	17,809,263	15,835,070
RR SEC. 19 COLA LUMP SUM	1,452,130	1,094,044	1,111,415	1,021,639	1,203,306
RR LATENCY SEC. 35C	280,751	293,542	899,231	1,377,046	1,173,347
RR LEGAL FEE SEC. 35	0		141,588	266,943	186,357
RR LEGAL EXP. SEC. 35	0				1,800
RR SEC. 37	7,543,763	19,836,350	19,733,766	19,863,605	16,719,602
RR SEC. 37 QUARTERLY	10,996,194	5,421,404			
<b>SUB-TOTAL INSURERS</b>	<b>42,187,667</b>	<b>41,593,510</b>	<b>39,996,397</b>	<b>40,338,496</b>	<b>35,119,482</b>
<b>TOTAL LEGAL EXP.</b>	<b>48,859,328</b>	<b>47,327,116</b>	<b>44,371,605</b>	<b>44,117,763</b>	<b>39,918,692</b>
<b><u>OEVR - EXPENDITURES</u></b>					
MM TUITION	63,834	36,694	24,071	16,848	15,448
RR PRIOR YEAR REHAB	0	1,645			
RR REHAB-30H	12,022	13,173	12,670	4,879	12,989
RR TRAVEL REHAB	0	0	290	151	0
RR HEALTHSOUTH HLDS	780				
RR FCE REIMBURSEMENT	625				
RR CRAWFORD & CO.	462				
RR EE TRAVEL	2,886	2,015	1,708	1,226	2,620
RR EE BOOKS & SUPPLIES	6,874	3,483	1,331	1,788	1,742
<b>SUB-TOTAL OEVR EXP.</b>	<b>87,483</b>	<b>57,010</b>	<b>40,070</b>	<b>24,892</b>	<b>32,799</b>
<b>TOTAL PRIVATE TRUST EXP.</b>	<b>53,044,529</b>	<b>49,969,164</b>	<b>47,324,567</b>	<b>48,152,196</b>	<b>43,034,125</b>

**COLLECTION AND EXPENDITURE REPORT - FISCAL YEAR 2006**

<i>EXPENDITURES DEFENSE OF THE FUND</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>	<i>FY'03</i>	<i>FY'02</i>
AA PERSONNEL	1,833,394	1,018,958	1,418,182	1,569,972	1,405,120
AA OVERTIME	11,803	4,067	3,899	2,386	0
<b>SUB-TOTAL</b>	<b>1,845,197</b>	<b>1,023,025</b>	<b>1,422,081</b>	<b>1,572,358</b>	<b>1,405,120</b>
BB TRAVEL	18,578	5,504	5,796	7,384	7,252
BB TRAINING/TUITION	437	0	2,455	2,200	3,009
BB EE REIMBURSEMENT	448				
BB EMPLOYEE REIMBURS	1,696	341	532	55	0
BB PRIDE & PERFORMANCE	0	0	0	201	0
BB MANAGER TRAINING	0	0	0	0	1,000
<b>SUB-TOTAL</b>	<b>21,159</b>	<b>5,845</b>	<b>8,783</b>	<b>9,840</b>	<b>11,261</b>
DD FRINGE	493,193	273,755	325,898	338,370	303,759
DD UNIVERSAL HEALTH	269	269	243	304	8,079
DD MEDICARE	9,653	10,144	8,881	10,956	293
DD UNEMPLOYMENT INS.	1,914	3,118	2,774	2,060	1,260
DD BOND	356		0	0	310
DD WORKERS' COMP CHR.G.	39,141	23,411	0	335	19,234
<b>SUB-TOTAL</b>	<b>544,526</b>	<b>310,697</b>	<b>337,796</b>	<b>352,025</b>	<b>332,935</b>
EE RENTAL/MV CHR.G-BACK	3,629	681	1,431	2,173	1,703
EE DEST. OLD RECORDS	5,786	0	5,541	5,293	
EE ADVERTISING	474		0	54	0
EE BOOKS/SUPPLIES	28,400	19,678	66,147	32,881	36,887
EE IMPARTIAL APPEALS	20,375	13,175	5,625	11,650	5,600
EE CENTRAL REPRO.	0	0	0	0	222
EE OMIS CHARGEBACK	0	0	0		6,648
EE SEC. 37 INTEREST	0		0	0	0
EE VERIZON SERVICES	18,808	17,110	8,066	4,904	
EE BELL ATLANTIC	0		0	2,700	
EE NEW ENG. TEL.	0		0	2,830	
EE MOBILE PHONES	0				3,712
EE TELEPHONE LEASE	3,692	0	2,754	2,224	4,577
EE POSTAGE	14,101	21,334	3,235	23,375	3,039
EE QWEST COMM.	27	0	0	0	810
EE STATE BOOK STORE	0	0	0	264	
EE REFRESHMENTS	0	0	673	0	594
EE ITT COMPUTER SERV.	17,918	14,004	9,552	10,341	0
EE WATER	0	0	930	864	1,367
EE MCAD SEMINAR	0	0	1,400		
EE NEXTELL	6,353	4,983			
EE TRAINING / TUITION	12,190	3,654			
EE JUDGEMENT (E54)	0	43,836			
EE TEMP USE SPACE	815				
EE INDIRECT COSTS	39,875	25,952	31,435	89,017	42,493
<b>SUB-TOTAL</b>	<b>172,443</b>	<b>164,407</b>	<b>136,789</b>	<b>188,570</b>	<b>107,652</b>

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**COLLECTION AND EXPENDITURE REPORT - FISCAL YEAR 2006**

<i>EXPENDITURES DEFENSE OF THE FUND</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>	<i>FY'03</i>	<i>FY'02</i>
GG BOSTON LEASE	495,209	470,156	348,342	322,676	293,687
GG ELECTRICITY - BOSTON	9,084	10,268	5,484	2,859	5,432
<b>SUB-TOTAL</b>	<b>504,293</b>	<b>480,424</b>	<b>353,826</b>	<b>325,535</b>	<b>299,119</b>
HH CONSULTANTS	412,422	276,713	425,783	1,449,826	798,586
<b>SUB-TOTAL</b>	<b>412,422</b>	<b>276,713</b>	<b>425,783</b>	<b>1,449,826</b>	<b>798,586</b>
JJ OPERATIONAL SERV.	438,802	292,525	174,137	76,237	87,584
<b>SUB-TOTAL</b>	<b>438,802</b>	<b>292,525</b>	<b>174,137</b>	<b>76,237</b>	<b>87,584</b>
KK EQUIPMENT	1,225	5,580	23,813	294	3,036
<b>SUB-TOTAL</b>	<b>1,225</b>	<b>5,580</b>	<b>23,813</b>	<b>294</b>	<b>3,036</b>
LL CBE HOLDINGS	29,017				
LL XEROX	1,685	7,187	3,799	3,024	4,524
LL ORACLE	16,538	13,335	13,336	8,891	0
LL ASAP SOFTWARE EXPRS	10,593				
LL SIMPLEX	0	245	245	0	0
LL SHARED TECHNOLOGY	1,883	2,138	3,256	2,153	2,870
LL PITNEY BOWES	1,331	1,272	625	101	912
LL IKON	0	0	465	493	778
LL SUN MICROSYSTEMS	4,748	0	2,100	0	6,853
LL RETROFIT	2,837	903	6,058	3,514	4,037
LL COMMAIR	0		0	348	
LL CAM OFFICE SERV	0	0	0	74	
LL PYRAMID	0			16,164	16,164
LL CONGRESS ALARM	0	0		94	140
LL MILLENNIUM MECHAN	191	742			
LL FIRE EQUIPMENT	168				
LL JEWEL PROTECTIVE SYS.	125				
LL ENTERPR. RENT-A-CAR	3,639				
LL OFFICE EQUIPMENT	204				
LL NTIRETY	11,556				
LL RONCO COMM & ELEC	6,865				
LL MMARS ACCT SYST	1,499				
LL KEANE	874				
LL KFORCE	2,340				
LL COMPUTER EQUIPMENT	1,239				
LL TSG HEALTHCARE RESR	18,763				
LL DELL MARKETING	35,996				
LL RICOH	0	0	0	0	63
<b>SUB-TOTAL</b>	<b>152,091</b>	<b>25,822</b>	<b>29,884</b>	<b>34,856</b>	<b>36,341</b>
RR PENALTIES SEC. 8	5,560	0	0	0	1,000
<b>SUB-TOTAL</b>	<b>5,560</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,000</b>
<b>TOTAL DEF. OF FUND EXP.</b>	<b>4,097,718</b>	<b>2,585,038</b>	<b>2,912,892</b>	<b>4,009,541</b>	<b>3,082,634</b>
<b>TOTAL EXPENDITURES</b>	<b>57,142,247</b>	<b>52,554,202</b>	<b>50,237,459</b>	<b>52,161,737</b>	<b>46,116,759</b>

## Workers' Compensation Legislation

*Before the Joint Committee on Labor & Workforce Development  
2005-2006 Legislative Session*

### HOUSE BILLS:

**HOUSE BILL 1594**

**Filed By:** Rep. Martin J. Walsh, AFL-CIO

**Type of Bill:** Refile

**Endorsed by Advisory Council:** No

**Laws Affected:** Comprehensive Bill (c.152, §1(7A), §13, §14, §30, §34, §35, §36, §46A)

Section 1 of this refiled bill (formerly H.498) would amend Section 1(7A) by allowing administrative judges to consider the employee's pre-injury employment when determining predominant cause of disability.

Section 2 would amend Section 13 setting the medical payment rate at no less than 80% of the usual and customary fee for any such health care service.

Section 3 would clarify Section 14(1) providing penalties against an insurer who refuses to pay medical benefits without reasonable grounds.

Section 4 would amend Section 30 allowing an emergency conference before an administrative judge to determine if an injured worker is entitled to medical treatment.

Sections 5 and 6 would amend Section 30 by limiting utilization review to five of "the most common industrial injury or illnesses." This change would limit the utilization review process to the most frequent care given to injured workers. Failure for an insurance company to comply with utilization review time guidelines would result in said treatments to "be deemed approved."

Section 7 would increase wage benefits for injured workers under §34 by restoring the amount to 2/3 of an employee's average weekly wage.

Section 8 would amend Section 35 by adding additional circumstances under which an administrative judge may extend the number of weeks under §35 (partial disability) benefits. These additional conditions are that the injured worker has returned to employment pursuant to an Individual Written Rehabilitation Plan under Section 30(H), has been found unsuitable for vocational rehabilitation by the OEVR, has returned to work at less than their pre-injury AWW, or has a permanent partial incapacity.

Section 9 would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This would require compensation for all disfigurement, whether or not scar-based, regardless of its location on the body. Section 36(k) was amended by Chapter 398 to limit payments for purely scar-based disfigurement by requiring benefits only when the disfigurement is on the face, neck, or hands.

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Section 10 would amend Section 46A by requiring an injured workers general health insurance carrier (if they have one) to cover all medical expenses of the injured worker until the workers' compensation insurer is ordered to pay a disputed claim. Currently, there is no language requiring a health insurance provider to cover these costs.

**HOUSE BILL 1595**

**Filed By:** Rep. Martin J. Walsh

**Type of Bill:** Refile

**Endorsed by Advisory Council:** No

**Laws Affected:** Scar-Based Disfigurement (c.152, §36(k)), Burial Expenses (§33), Extension of Partial Incapacity Benefits (§35).

Section 1 of this refiled bill (formerly H.1241) would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This would require compensation for all disfigurement, whether or not scar-based, regardless of its location on the body. Section 36(k) was amended by Chapter 398 to limit payments for purely scar-based disfigurement by requiring benefits only when the disfigurement is on the face, neck, or hands. Under this bill, compensation could not exceed the average weekly wage in the Commonwealth (at time of injury) multiplied by 29 ( $\$918.78 \times 29 = \$26,644.62$ ). Currently, the statute states that scar-based disfigurement compensation cannot exceed \$15,000.

Section 2 would require an insurer to pay for burial expenses when a worker has died, not to exceed eight thousand dollars. Currently, the statute requires the insurer to pay reasonable expenses of burial, not to exceed four thousand dollars.

Section 3 would amend Section 35 by adding additional select circumstances under which an administrative judge may extend the number of weeks under §35 (partial disability) benefits from 260 weeks to 520 weeks. These additional conditions are that the injured worker has returned to employment pursuant to an Individual Written Rehabilitation Plan, has been found unsuitable for vocational rehabilitation, has returned to employment at less than his pre-injury average weekly wage, or has a permanent partial incapacity.

**HOUSE BILL 1596**

**Filed By:** Rep. Patricia A. Walrath

**Type of Bill:** Refile

**Endorsed by Advisory Council:** No

**Laws Affected:** Exemption of Non-Profit Entities (c.152, §1)

This refiled bill (formerly H.305) would amend the word “employer” as not including: “nonprofit entities, as defined by the Internal Revenue Code, that are staffed by volunteers, board members, directors, and paid employees.” This would make the requirement of obtaining workers’ compensation insurance elective for said employers. Current law only exempts nonprofit entities that are exclusively staffed by volunteers.

**HOUSE BILL 1597****Filed By:** Rep. Lewis G. Evangelidis**Type of Bill:** Refile**Endorsed by Advisory Council:** No**Laws Affected:** Continuation of Temporary Total Benefits (c.152, §34)

This refiled bill (formerly S.28) would extend the benefits for injuries compensable under section 34 (temporary total) assuming there has been no discontinuance or modification order of an administrative judge. Currently, §34 benefits are equal to 60% of the injured worker's average weekly wage and are limited in duration to 156 weeks. House 1597 would allow an injured worker to receive additional benefits upon the exhaustion of their §34 benefits. This additional compensation would be equal to 45% of their average weekly wage "pursuant to section 35." The maximum benefits period for §35 injuries is 260 weeks, but may be extended to 520 weeks.

**HOUSE BILL 1598****Filed By:** Rep. Lewis G. Evangelidis**Type of Bill:** Refile**Endorsed by Advisory Council:** No**Laws Affected:** Workers' Compensation Dependency Benefits (c.152, §35A)

This refiled bill (formerly S.29) would amend §35A, which provides additional compensation to injured workers who have dependents. Currently, §35A provides additional compensation of \$6 per/week to injured workers who have persons dependent upon them for injuries occurring under §34, §34A, and §35. No weekly payments under this section can be greater than \$150 per week when combined with the compensation due under §34, §34A, and §35. House 1598 would provide injured workers additional compensation of \$15 per/week to injured workers who had persons dependent upon them. This bill would also cap weekly payments at \$300 when combined with the compensation due under §34, §34A, and §35.

The amount of \$6 per dependent per week has not increased since a 1959 amendment to the Act. The current cap of \$150 per week has not been increased since 1979.

**HOUSE BILL 1599****Filed By:** Rep. Eugene L. O'Flaherty**Type of Bill:** Refile**Endorsed by Advisory Council:** No**Laws Affected:** Attorney's Fees (c.152, §13A(10)), Agreements to Pay Benefits (§19), Temporary Total Disability (§34), Permanent and Total Incapacity (§34A)

Section 1 of this refiled bill (formerly H.670 and S.47) would allow attorneys to collect fees for advancing an employee's rights under §75A (preferential hiring of injured workers) and §75B (protections against handicap discrimination), in addition to any attorney's fees owed under §13A.

Section 2 of this bill adds two new subsections to §19. It would allow any administrative judge, administrative law judge or conciliator to approve any agreement to pay benefits authorized by §19. It would also allow an agreement to include a pay without prejudice clause.

Section 3 of this bill would amend §34 and require the insurer to pay the injured employee 60% of his average weekly wage (AWW) before the injury, but not more or less than the maximum or minimum weekly compensation rate, if the injury is considered total. If the AWW were found to

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be less than the minimum weekly compensation rate, it would then be increased to equal the AWW.

Section 4 of this bill would amend §34A and require the insurer to pay the injured employee two-thirds of his AWW before the injury, but not more or less than the maximum or minimum weekly compensation rate if the injury is considered permanent and total. If the AWW were found to be less than the minimum weekly compensation rate, it would then be increased to equal the AWW.

**HOUSE BILL 1600**

**Filed By:** Rep. Eugene L. O'Flaherty

**Type of Bill:** Refile

**Endorsed by Advisory Council:** No

**Laws Affected:** Appointment of Impartial Physicians (c.152, §9C), Impartial Exams (§11A).

Section 1 of this refiled bill (formerly H.673) would create a new section (§9C) to allow an AJ or ALJ to appoint an impartial physician to examine and report on a claimant's condition prior to a conference or hearing. [Currently, under §8(4), an impartial physician can be requested at the conference stage only at the request of the insurer after the 180-day pay without prejudice period has expired.]

This bill also replaces language for §11A on impartial exams. It would remove the c.398 requirement that an impartial exam be conducted whenever "a dispute over medical issues is the subject of a conference order." Under this bill, appointment of an impartial physician would be at the discretion of the AJ or ALJ. It also requires that the report indicate whether employment is the predominant contributing cause for mental or emotional disability.

This bill would expand the role of the impartial physician by requiring that the physician make a determination about causation, whether or not the determination can be made with a reasonable degree of medical certainty. Moreover, the causation standard would change from whether the work-related injury was the "major or predominant contributing cause" of the disability, to whether the work-related injury was "probably caused or was contributing cause" of the disability. The standard would therefore be eased.

The report from §9C must be entered into evidence at the hearing, and the current requirement that it be treated as prima facie evidence is eliminated. This means that the impartial report must not be the only medical evidence presented to the AJ, but that medical evidence from the employee's treating physician and insurer reports may be entered as well. The deposing party would pay the fee for any deposition. However, if the decision of the AJ is in favor of the employee, the cost of the deposition would be added to the amount awarded to the employee.

**HOUSE BILL 1601****Filed By:** Rep. Eugene L. O'Flaherty**Type of Bill:** Refile**Endorsed by Advisory Council:** No**Laws Affected:** Definition of Average Weekly Wage (c.152, §1(1)), Return to Work - Attorney Fees (§13A(4)), Eliminate Consideration of Offers at Conciliation (§13A(4))

Section 1 of this refiled bill (formerly H.671) addresses injured employees who return to work (without a lump sum settlement) and receive wages that are less than the pre-injury wages. This bill would apply the prior average weekly wage to any subsequent period of incapacity, whether or not such incapacity was the result of a new injury, or subsequent injury as set forth in §35B.

Section 2 of this bill would eliminate consideration of the last best offer in awarding attorney's fees when the insurer files for discontinuance of benefits or refuses initial payment. Currently, the claimant's attorney is only entitled to payment if the administrative judge accepts the offer of the claimant or the amount submitted by the conciliator.

**HOUSE BILL 1602****Filed By:** Rep. Robert P. Spellane**Type of Bill:** Refile**Endorsed by Advisory Council:** No**Laws Affected:** Serious and Willful Misconduct (c.152, §27) - Intoxication, Unlawful Use of a Controlled Substance

This refiled bill (formerly H.2930) would amend §27 by barring workers' compensation benefits to employees who are injured while intoxicated or while using an illegal controlled substance as defined in §1 of Chapter 94C. Currently, §27 bars workers' compensation benefits to employees injured as a result of "serious and willful misconduct."

**HOUSE BILL 1603****Filed By:** Rep. Robert P. Spellane**Type of Bill:** Similar**Endorsed by Advisory Council:** No**Laws Affected:** Insurance Rates – Loss Cost - Competition (c.152, §53A)

This bill (similar to H.3293 filed last session) would change how workers' compensation rates are determined in Massachusetts. Currently, the Commonwealth uses a system of "Administered Pricing" in which the Commissioner of Insurance makes the final determination in establishing workers' compensation rates per job classification.

Under House Bill 1603, workers' compensation insurance rates would be determined under a "Loss-Cost System." Similar to the current law, insurers would submit all their loss data to a designated rating organization (WCRIB) and would adhere to a uniform classification system. Instead of a rate hearing, the Commissioner of Insurance would hold a loss-cost hearing in which the WCRIB would submit a loss cost filing for each classification (e.g. roofers, clerical workers). "Loss Costs" are the historical aggregate data and loss adjustment expenses, developed and trended for each classification and is expressed as a dollar amount per \$100 of payroll. For example, the loss cost for a "roofer" might be \$6.00 and for a "clerical worker" \$.90.

Following the Commissioner's approval of a loss-cost filing, each carrier would submit to the

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State Rating Bureau a "loss cost multiplier (LCM)" filing. This LCM takes into account the carriers expenses other than LAE, such as overhead, acquisition, marketing, profit, etc. Upon approval of this filing, LCM's would be multiplied by the loss cost to determine the final rate.

**RATE = LOSS COST x LCM**

[Example: If the loss cost for a roofer is \$6 and the carrier's LCM for roofers is 1.4 then the rate will be \$6 x 1.4 or \$8.40 per \$100 of payroll. If the loss cost for a clerical worker was \$.90 and the LCM for clerical workers was .90, the rate will be \$.90 x .90 or \$.81 per \$100 of payroll.]

The Advisory Council's involvement in the rate process would remain limited in scope, allowing for the presentation of written and oral testimony relating to any issues which may arise during the course of the hearing.

A safety mechanism has been included in this legislation which would allow the Commissioner of Insurance to hold a "Market Competition Hearing" if the market were deemed unhealthy or non-competitive. In this event the Commissioner would have the authority to revert the market to a temporary system of administered pricing.

#### **HOUSE BILL 1604**

**Filed By:** Rep. John H. Rogers

**Type of Bill:** Similar

**Endorsed by Advisory Council:** No

**Laws Affected:** Workers' Compensation Reinsurance Pool (c.152, §65C)

House Bill 1604 (similar to H.3482 and H.4552) would require the Workers' Compensation Rating & Inspection Bureau (WCRIBM) to initiate a cost containment pilot project during 2006 whereby Third Party Administrators (TPAs) would service claims for policies within the Assigned Risk Pool. The bill states that the pilot project would attempt to reduce losses and introduce competition and innovation into the Assigned Risk Pool.

Currently, employers in Massachusetts who are unable to obtain workers' compensation insurance in the voluntary market can obtain coverage through a reinsurance pool known as the "Assigned Risk Pool." Nearly 60% of the total written Pool premium is assigned to 10 Voluntary Direct Assignment Carriers (VDAC). The VDACS handle the claims administration and are personally responsible for any losses on these policies. The remaining 40% of Pool premium is issued among three designated servicing carriers whereby losses are distributed among the remaining members of the Pool.

Last Legislative Session, the Governing Committee of the WCRIBM unanimously opposed a similar bill. Specifically, the Governing Committee believed that because TPAs have no vested interest in the costs or health of the Pool, injured employees could be put at risk for receiving poor claim service, thereby increasing an employer's premium. The Governing Committee stated that carriers in Massachusetts already have built-in incentives to provide quality service since they must collectively participate in the Pool burden, pay premium taxes, pay assessments to support the state's Insolvency Fund, the Insurance Fraud Bureau, the State Rating Bureau, and the Attorney General's Office.

**HOUSE BILL 1605****Filed By:** Rep. Peter J. Larkin**Type of Bill:** Refile**Endorsed by Advisory Council:** No**Laws Affected:** Lump Sum Settlements (c.152, §48) - Limits on Agreements

This refiled bill (formerly H.2388) would limit when a lump sum agreement can discharge an employee's right to payment of future benefits. Under this proposed legislation, no lump sum agreement could be entered into or approved unless:

1. the employee has returned to work for at least 6 months, earning at least 75% of his/her pre-injury wage;
2. survivor benefits are claimed under §31;
3. the employee is determined by the AJ to be permanently and totally disabled;
4. or the employee becomes a domiciliary of another state.

**HOUSE BILL 1606****Filed By:** Rep. Antonio Cabral**Type of Bill:** Refile**Endorsed by Advisory Council:** YES (2003-2004)**Laws Affected:** Benefits for Specific Injuries (c.152, §36(k)) - Scar-Based Disfigurement

This refiled bill (formerly H.2382) would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This would require compensation for all disfigurement, whether or not scar-based, regardless of its location on the body. Section 36(k) was amended by Chapter 398 to limit payments for purely scar-based disfigurement by requiring benefits only when the disfigurement is on the face, neck, or hands. House Bill 1606 would not affect the \$15,000 maximum benefit for scar-based disfigurement currently in the statute.

**HOUSE BILL 1607****Filed By:** Rep. Antonio Cabral**Type of Bill:** Refile**Endorsed by Advisory Council:** No**Laws Affected:** Lump Sum Settlements (c.152, §48) - Approval

This refiled bill (formerly H.2381) would require the insurer to notify an employer, with an experience modified policy, of any lump sum agreement, allowing the employer to attend any proceeding in which a lump sum is being presented for approval before their employee. Currently, insurance companies are not required to notify the employer of lump sum activity.

**HOUSE BILL 3123****Filed By:** Rep. Ronald Mariano**Type of Bill:** Similar**Endorsed by Advisory Council:** No**Laws Affected:** Third Party Lawsuits (§15) - Protecting Employee Leasing Companies (§14A)

Section 1 of this bill (similar to S.72 and S.88) would clarify that an injured worker is barred from filing a third party lawsuit against an insured Employee Leasing Company or its client company if both are in compliance with Chapter 152. Currently, under §15, injured employees may sue third parties if a compensable injury was "caused under circumstances creating a legal liability in some person other than the insured to pay damages." This protection of Employee Leasing Companies and their client companies under the "exclusive remedy" provision would not apply to temporary staffing agencies. A recent Superior Court Case held that a client company was not protected by the exclusive remedy provision from a leased employee who brought a suit against them [*Margolis v. Charles Precourt & Sons, Inc.* - 6/7/99].

Section 2 of this bill would require the Commissioner of Insurance to establish regulations requiring Employee Leasing Companies to be the workers' compensation policyholder of employees leased to client companies. This section of the bill is unnecessary as the Commissioner of Insurance has already established regulations requiring Employee Leasing Companies to insure its employees leased to other entities [211 CMR 111.00].

**HOUSE BILL 3757****Filed By:** Rep. Martin J. Walsh**Type of Bill:** Refile**Endorsed by Advisory Council:** YES (2003-2004: "in concept")**Laws Affected:** Private Right of Action to Recover WC Coverage Payments (c.152, §25C)

This refiled bill (formerly H.2205) would allow a minimum of 10 people to bring a civil action against an employer to recover amounts which should have been paid in securing proper workers' compensation insurance as mandated by Chapter 152. Such a person seeking civil action could petition either the Attorney General's Office, the Commissioner of Insurance, or a superior court to hold a "probable cause hearing." At the hearing, it shall be *prima facie* evidence that such probable cause exists if it is shown that:

- an employee was paid any portion of wages in cash with no deductions or taxes withheld;
- no accompanying pay slip showing the wage payment and deductions as required by law;
- an individual was misclassified as an independent contractor when actually an employee;
- wages were not timely paid;
- the employer failed to withhold from the employee's wages all related state taxes; or
- employees have not been properly reported on certified payroll records as required by law.

On suits brought forth by private citizens, the majority of the damages would be deposited into the DIA's Trust Fund. Insurance carriers would be able to recover the full amount of the award in situations where they obtain court approval to replace the private citizens in the lawsuit.

**HOUSE BILL 3776****Filed By:** Rep. Martin J. Walsh**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Rate of Payment by Insurers for Health Care Services (c.152, §13)

This new bill would empower Administrative Judges to determine the rate of payment for health care services "if the insurer, employer and health care service provider cannot agree or if equity of justice requires a rate other than so provided."

Currently, the Division of Health Care Finance and Policy (DHCFP) regulates the rates of payment (fee schedule) for hospitals and health care providers rendering services covered by insurers under the Workers' Compensation Act. The fee schedule is subject to a regulatory proceeding ensuring a public process through which rate setting is established. Although rate negotiation is common, the rates that are set by the DHCFP are the only amount that an insurer is required to pay.

**HOUSE BILL 3777****Filed By:** Rep. Martin J. Walsh**Type of Bill:** Similar**Endorsed by Advisory Council:** No**Laws Affected:** Termination or Modification of Payments (c.152, §8,) - Impartial Medical Exams (c.152, §11A,)

Section 1 of this bill (similar to S.76) would amend an insurer's right to modify or terminate the payment of benefits. Under current law, an insurer paying benefits can only modify or discontinue payments under specific circumstances. One of these circumstances is when the insurer has possession of a medical report from either the treating or impartial medical examiner indicating that the employee is capable of returning to the job held at the time of injury or another suitable job. House Bill 3777 would eliminate the "impartial medical examiner report" from these specific circumstances.

Section 2 of this bill would amend §8(4) involving the insurer's right to request an Impartial Medical Exam (IME) when the dispute is over medical issues. Under current law, when an insurer requests an IME, the Senior Judge is responsible for appointing an impartial physician. House Bill 3777 would require the Administrative Judge, to which the case has been assigned, to appoint the impartial physician. This section of the bill would also diminish the weight given to the IME report thereby allowing the parties to submit other medical evidence at a hearing.

Section 3 of this bill would amend §11A involving the necessity to obtain an IME when a conference order is appealed. Under current law, the parties may agree upon an impartial physician, or the Senior Judge will assign one. This bill requires the Administrative Judge to appoint the impartial physician. This section of the bill would also diminish the weight given to the IME report thereby allowing the parties to submit other medical evidence at a hearing. Under current law, once a case is brought before an Administrative Judge at a hearing, the impartial physician's report is the only medical evidence that can be presented. Any additional medical testimony is inadmissible, unless the judge determines the report to be "inadequate" or that there is considerable "complexity" of the medical issues that could not be fully addressed by the report. The 1991 reforms were designed to solve the problem of "dueling doctors," which frequently resulted in the submission of conflicting evidence by employees and insurers.

**HOUSE BILL 3778****Filed By:** Rep. Eugene L. O'Flaherty**Type of Bill:** Similar**Endorsed by Advisory Council:** No**Laws Affected:** Rate of Reimbursement - Health Care Services (c.152, §13)

This bill (similar to H.672) deletes the current language in §13 and replaces it with simpler language. This legislation states that the Rate Setting Commission (now called Division of Health Care Finance & Policy) must establish the maximum reimbursement rates for hospitalization and all other health care services, and that no insurer may be held liable for any charge greater than those established rates. This proposed legislation would eliminate the ability for insurers and medical providers to negotiate rates. It would also remove the "regardless of setting" provision thereby allowing hospitals to set rates higher than non-hospital facilities. Furthermore, it would remove the requirement that providers sign bills with their license numbers, and the removal of the adherence to federal "safe harbor" regulations. All provisions regarding treatment protocols, utilization review and the establishment of the Health Care Services' Board would be deleted.

**HOUSE BILL 3800****Filed By:** Rep. Bradley H. Jones**Type of Bill:** Refile**Endorsed by Advisory Council:** No**Laws Affected:** Serious and Willful Misconduct (c.152, §27) - Intoxication, Unlawful Use of a Controlled Substance

This refiled bill (previously H.2930) would amend §27 by barring workers' compensation benefits to employees who are injured while intoxicated or while using an illegal controlled substance as defined in §1 of Chapter 94C. Currently, §27 bars workers' compensation benefits to employees injured as a result of "serious and willful misconduct."

**HOUSE BILL 4451****Filed By:** Rep. Michael J. Rodrigues**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Safe Workplaces for Employees of the Commonwealth (c.149, §40)

This new legislation would require the Division of Occupational Safety (DOS) to apply federal occupational and health standards to public employees (state, city/town, and county). Under this legislation, DOS would be given the authority to conduct investigations and the power to establish regulations and corrective action where it has found a violation.

**HOUSE BILL 4637****Filed By:** Rep. Michael J. Rodrigues**Type of Bill:** REDRAFT - Multiple Bills**Endorsed by Advisory Council:** No**Laws Affected:** Multiple Sections of Chapter 152 Affected

This legislative redraft bundles the following bills:

H.1595 - Scar Based Disfigurement - Burial - Partial Benefits  
H.1602 - Intoxication - Serious and Willful Misconduct  
H.1606 - Benefits for Scar Based Disfigurement  
H.3123 - Third Party Lawsuits - Employee Leasing Companies  
H.3757 - Private Right of Action to Recover WC Payments  
H.3800 - Serious & Willful Misconduct - Intoxication  
S.1089 - Scar Based Disfigurement  
S.1095 - Scar Based Disfigurement  
S.1099 - Private Right of Action  
S.1109 - Employee Leasing Companies - Exclusive Remedy

## **SENATE BILLS:**

**SENATE BILL 1087****Filed By:** Senator Robert S. Creedon, Jr.**Type of Bill:** New**Endorsed by Advisory Council:** No**Laws Affected:** Temporary Total Benefits (c.152, §34) - Increase

This new bill would increase the weekly compensation rate for total incapacity (§34) benefits. Compensation would increase from the current 60% to 2/3 of their average weekly wage. If the recipient of §34 benefits earned less than the minimum weekly compensation rate, their benefit would be increased to the minimum weekly compensation rate. Senate 1087 would also extend the duration of §34 benefits from the current 156 weeks to 208 weeks.

**SENATE BILL 1088****Filed By:** Senator Robert S. Creedon, Jr.**Type of Bill:** Similar**Endorsed by Advisory Council:** No**Laws Affected:** Lump Sum Agreements (c.152, §48)

This bill (similar to H.2650 filed in the 2001-2002 legislative session) would remove the requirement for an experienced modified employer to provide written consent of a lump sum settlement. Under this bill, an employer would have the right to appear and be heard if they object to the proposed lump sum settlement.

**SENATE BILL 1089****Filed By:** Senator Robert S. Creedon, Jr.**Type of Bill:** Similar**Endorsed by Advisory Council:** No**Laws Affected:** Scar-Based Disfigurement (c.152, §36(k))

This bill (similar to H.2382) would eliminate the requirement that scarring appear on the face, neck or hands to be compensable. However, if the scarring resulted from a surgical or medical procedure, no amount would be payable unless such disfigurement occurred on the face, neck or hands. This bill would not affect the \$15,000 maximum benefit for scar-based disfigurement currently in the statute.

**SENATE BILL 1095****Filed By:** Senator John A. Hart, Jr. and Rep. Martin J. Walsh**Type of Bill:** Refile**Endorsed by Advisory Council:** YES (2003-2004)**Laws Affected:** Scar-Based Disfigurement (c.152, §36(k))

This refiled bill (formerly S.49) would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. Compensation would be required for all disfigurement, whether or not scar-based, regardless of its location on the body. This bill would not affect the \$15,000 maximum benefit for scar-based disfigurement currently in the statute. In 1991, section 36(k) was amended by chapter 398 to limit payments for purely scar-based disfigurement by requiring benefits only when the disfigurement is on the face, neck, or hands.

**SENATE BILL 1097****Filed By:** Senator John A. Hart, Jr., Rep. Martin J. Walsh, Rep. William C. Galvin**Type of Bill:** Refile**Endorsed by Advisory Council:** No**Laws Affected:** Widow's Benefits (c.152, §35C, 32, 31)

This refiled bill (formerly a Senate amendment to the FY'05 Budget) would significantly alter the definition of the "average weekly wage" exclusively for Section 35C cases (latency claims). If passed, this legislation would directly affect a recent decision by the State Supreme Judicial Court (Joseph V. McDonough's Case).

According to the SJC's decision in the *McDonough's Case*, the widow of an employee who died as a result of past asbestos exposure is not entitled to receive compensation under Section 35C since the deceased had voluntarily retired in 1991 and was not receiving wages on the date of his death. Section 35C clearly states that "[w]hen there is a difference of five years or more between the date of injury and the initial date [of] eligib[ility] for benefits under section thirty-one...the applicable benefits shall be those in effect on the first date of eligibility for benefits."

The Workers' Compensation Trust Fund is responsible for reimbursing insurers for certain payments made for Section 35C latency claims. In Fiscal Year 2003, the Trust Fund reimbursed insurers for approximately **\$1,189,898** in latency claims.

**SENATE BILL 1098****Filed By:** Senator John A. Hart, Jr.**Type of Bill:** Refile**Endorsed by Advisory Council:** No**Laws Affected:** Attorney's Fees (c.152, §13A(10)), Agreements to Pay Benefits (§19), Temporary Total Disability (§34), Permanent and Total Incapacity (§34A)

Section 1 of this refiled bill (formerly H.670 and S.47) would allow attorneys to collect fees for advancing an employee's rights under §75A (preferential hiring of injured workers) and §75B (protections against handicap discrimination), in addition to any attorney's fees owed under §13A.

Section 2 of this bill adds two new subsections to §19 allowing any administrative judge, administrative law judge or conciliator to approve any agreement to pay benefits authorized by §19. It would also allow an agreement to include a pay without prejudice clause.

Section 3 of this bill would amend §34 and require the insurer to pay the injured employee 60% of his average weekly wage (AWW) before the injury, but not more or less than the maximum or minimum weekly compensation rate, if the injury is considered total. If the AWW were found to be less than the minimum weekly compensation rate, it would then be increased to equal the AWW.

Section 4 of this bill would amend §34A and require the insurer to pay the injured employee two-thirds of his AWW before the injury, but not more or less than the maximum or minimum weekly compensation rate if the injury is considered permanent and total. If the AWW were found to be less than the minimum weekly compensation rate, it would then be increased to equal the AWW.

**SENATE BILL 1099****Filed By:** Senator John A. Hart, Jr. and Rep. Martin J. Walsh**Type of Bill:** Similar**Endorsed by Advisory Council:** YES (2003-2004: "in concept")**Laws Affected:** Private Right of Action to Recover WC Coverage Payments (c.152, §25C)

Senate Bill 1099 (similar to H.2205 filed last session) would allow "any 10 persons" to bring a civil action against an employer to recover amounts which should have been paid in securing proper workers' compensation insurance as mandated by chapter 152. Such persons seeking civil action must first petition either the Attorney General's Office or a superior court to hold a "probable cause hearing." At the hearing, it shall be *prima facie* evidence that such probable cause exists if it is shown that:

- an employee was paid any portion of wages in cash with no deductions or taxes withheld;
- no accompanying pay slip showing the wage payment and deductions as required by law;
- an individual was misclassified as an independent contractor when actually an employee;
- wages were not timely paid;
- the employer failed to withhold from the employee's wages all related state taxes; or
- employees have not been properly reported on certified payroll records as required by law.

When probable cause exists, such persons seeking civil action against a non-compliant business may seek damages of up to \$25,000 (or 25% of the premium that has been avoided - whichever is less). The remainder of damages would be deposited into the DIA's Workers' Compensation Trust Fund. Insurance carriers would be able to recover the full amount of the award in situations where they obtain court approval to replace the private citizens in a lawsuit.

**SENATE BILL 1100****Filed By:** Senator John A. Hart, Jr.**Type of Bill:** Refile**Endorsed by Advisory Council:** No**Laws Affected:** Definition of Average Weekly Wage (c.152, §1(1)), Eliminate Consideration of Last Best Offer in Awarding Attorney's Fees (§13A(4))

Section 1 of this refiled bill (formerly S.51) addresses injured employees who return to work (without a lump sum settlement) and receive wages that are less than the pre-injury wages. This bill would apply the prior average weekly wage to any subsequent period of incapacity, whether or not such incapacity was the result of a new injury, or subsequent injury as set forth in §35B.

Section 2 of this bill would eliminate consideration of the last best offer in awarding attorney's fees when the insurer files for discontinuance of benefits or refuses initial payment. Currently, the claimant's attorney is only entitled to payment if the administrative judge accepts the offer of the claimant or the amount submitted by the conciliator.

**SENATE BILL 1103****Filed By:** Senator John A. Hart, Jr. and Rep. Martin J. Walsh**Type of Bill:** Similar**Endorsed by Advisory Council:** No**Laws Affected:** Comprehensive Bill (c.152, §13, §30, §35, §48)

Section 1 of this bill would amend §13 of chapter 152 by replacing the Division of Health Care Finance and Policy with the Rate Setting Commission under the provision of chapter six A and allowing them to establish the rate of payment for health care services. This bill would ensure that no insurer be liable for any cost in excess of the rate set by the rate setting commission nor shall any employee be liable for services compensable under this chapter.

Section 2 creates a new section 30. The bill would eliminate authorization for preferred provider arrangements (PPA's), as well as all language pertaining to utilization review guidelines.

Section 3 would amend §35 by eliminating the requirement that partial disability benefits cannot exceed 75% of what the injured employee would receive if they were eligible for total incapacity benefits under §34. This section also deletes the limits on duration for employees eligible for partial incapacity benefits (§35).

Section 4 of this bill would require the insurer to notify an employer, with an experience modified policy, of any lump sum agreement. Currently, insurance companies are not required to notify the employer of lump sum activity.

**SENATE BILL 1106****Filed By:** Senator Brian P. Lees**Type of Bill:** Similar**Endorsed by Advisory Council:** No**Laws Affected:** Def. of Employee (c.152, §1(4)), Elective Coverage - Sole Executive Officers

This refiled bill (formerly S.60) would amend the definition of an employee by making coverage elective for the sole executive officer of a corporation and employees who are immediate family members that are sole executive officers of that corporation. Language contained in this bill states that this exemption can not apply to more than two employees or to corporations engaged in high-risk work activity such as construction, trucking, or the building trades.

During the 2001-2002 Legislative Session, a bill was passed that made coverage elective for an officer or director of a corporation that owned at least 25% of the issued and outstanding stock. Senate Bill 1106 would delete this provision.

**SENATE BILL 1107****Filed By:** Senator Brian P. Lees**Type of Bill:** Refile**Endorsed by Advisory Council:** No**Laws Affected:** Employer Fines Reduction (c.152, §25C), Preferential Hiring (§75A), Employee Definition - Elective Coverage of Corporate Officers (§1(4))

Section 1 of this refiled bill (formerly S.61) would amend §25C(2) regarding fines for failing to secure workers' compensation insurance. It would add provisions allowing the DIA Commissioner to reduce employer fines to an amount no lower than \$250 following a hearing in which there is a finding that:

- (a) the fine would have a severe negative impact on the cash flow or financial stability of the business;
- (b) weekends and holidays interrupted the employer's ability to secure coverage in a more timely fashion;
- (c) the business was unable to secure voluntary coverage, thus delaying their application to the Massachusetts Workers' Compensation Assigned Risk Pool for coverage; or
- (d) the amount of annual premium for worker's compensation coverage is less than the amount of fines imposed by the DIA under the stop work order.

Section 2 of the bill, would amend §75A, which requires employers to give preference in hiring to injured employees applying for re-employment. This bill would relieve the rehiring requirement if the injured employee has been employed by another employer for more than six months since the date of injury.

Section 3 of the bill would amend §1(4). It would make the coverage of corporate officers elective.

**SENATE BILL 1109**

**Filed By:** Senator Brian P. Lees

**Type of Bill:** Refile

**Endorsed by Advisory Council:** No

**Laws Affected:** Employee Leasing Companies - Exclusive Remedy (c.152, §15)

This refiled bill (formerly S.72 and S.88) would clarify that an injured worker is barred from filing a third party lawsuit against an Employee Leasing Company or its client company if both are in compliance with Chapter 152. Currently, under §15, injured employees may sue third parties if a compensable injury was "caused under circumstances creating a legal liability in some person other than the insured to pay damages." A recent Superior Court Case held that a client company was not protected by the exclusive remedy provision from a leased employee who brought a suit against them [*Margolis v. Charles Precourt & Sons, Inc.* - 6/7/99].

The Commissioner of Insurance has already established regulations that require Employee Leasing Companies to insure its employees leased to other entities [211 CMR 111.00].

**SENATE BILL 1111**

**Filed By:** Senator Thomas M. McGee

**Type of Bill:** Refile

**Endorsed by Advisory Council:** No

**Laws Affected:** Comprehensive Bill (c.152, §1, §6, §7, §8, §13A, §28, §29, §30, §31, §33, §34, §34A, §34B, §35, §35D, §35E, §36, §50)

This refiled bill (formerly S.76) seeks to amend many aspects of Chapter 152.

Section 1 of this bill would amend the definition of "Average Weekly Wage" by specifying that if an injured employee is employed by more than one *employer*, the total earnings from the several *employers* should be considered in determining average weekly wage. Currently, the law is more specific in stating that if the injured employee is employed by more than *one insured employer or self-insurer* rather than "employer" as proposed by this legislation. Section 1 of this bill also states that weeks in which an employee received less than *four hours* in wages is considered lost time for determining average weekly wage. Currently, the law considers lost time as weeks when an employee receives *less than five dollars in wages*.

Section 2 of this bill would amend §1(7A) regarding the definition of "Personal Injury" in dealing with mental or emotional disabilities. Currently, "Personal Injuries" include mental or emotional disabilities only where the *predominant contributing cause* of such disability is an event or series of events occurring within any employment. This bill would replace "the predominant contributing cause" with "a significant contributing cause."

Section 3 of this bill would substantially increase the fines for employers who violate the provisions of §6 with regard to the reporting of the notice of injury to the DIA, the employee, or insurer. Currently, if an employer violates this provision three or more times they are required to pay a fine of \$100 for each violation. This bill would eliminate the necessity that a violation occurs three or more times before a penalty is issued. Fines would be issued as follows:

\$100 for first violation; Subsequent violations within a year are increased \$100 for each subsequent violation; If employer fails to make notice to the DIA, employee, and insurer, it must pay additional penalty to the DIA of \$1,000 into the Special Fund and \$1,000 to the employee; If employer fails to make notice to the DIA, employee, and insurer, within 90 days, an additional

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penalty of \$10,000 will be assessed.

Section 4 would amend §7(2) by increasing the penalty placed on insurers who fail to begin payment of weekly benefits or notify parties of refusal to pay benefits within 14 days of receipt of the employer's First Report of Injury. This bill would require the insurer to pay the employee an amount of \$200 or their compensation rate (whichever is higher). If the insurer still fails to begin payments or make such notification within 60 days, they must pay a penalty of \$1,000 to both the Special Fund and to the employee.

Section 5 and 6 of this bill would amend §8 by decreasing the "pay without prejudice" period to 90 days. Currently, when an insurer pays a claim, it may do so without accepting liability for period of 180 days. This pay without prejudice period establishes a window where the insurer may refuse a claim and stop payments at its will. Up to 180 days, the insurer can unilaterally terminate or modify any claim as long as it specifies the grounds and factual basis for so doing. The purpose of the pay without prejudice period is to encourage the insurer to begin payments to the employee instead of outright denying the claim.

Section 7 of this bill would allow the pay without prejudice period to be extended upon agreement by the parties in 90-day increments not to exceed one year. Currently, pay without prejudice extensions are not required to be set at 90-day increments.

Section 8 of this bill would amend §13A(5). This section assesses an insurer a penalty of \$3,500 (plus necessary expenses) whenever an insurer files a complaint or contests a claim for benefits and then later accepts the claim or withdraws the complaint within 5 days. This section of the proposed legislation would increase the number to 10 days.

Section 9 of this bill would amend §28, paragraph 1, which address injuries caused by serious and willful misconduct of the employer. This section of the proposed legislation would further define "willful misconduct" as a "knowing and willful violation of the Federal and/or State O.S.H.A. standards." Currently, if an employee is injured by serious and willful misconduct by the employer, they will receive double compensation for their injuries.

Section 10 of this bill would amend §29 dealing with the required period of incapacitation. Current law states that no compensation pursuant to §34 and §35 shall be paid for any injury which does not incapacitate the employee from earning full wages for a period of 5 or more calendar days. If incapacity extends for a period of 21 days or more, compensation is paid from the date of the onset of the incapacity. This bill would decrease this 21-day period to *5 days or more*.

Section 11 of this bill would amend §30, which requires the insurer to furnish medical and hospital services, and medicines if needed. Except for the first appointment, the injured worker may select a treating physician and may switch to another such professional *once*. This bill would allow the injured worker the option of switching physicians *twice*.

Section 12 would amend §31 covering death benefits for dependants. Current law provides the widow or widower, that remains unmarried, 2/3 of the average weekly wage (AWW), but not more than the state's AWW or less than \$110 per week. They shall also receive \$6 per week for each child (this is not to exceed \$150 in additional compensation) of the deceased employee.

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This bill would increase the minimum amount a widower is entitled, to \$200 per week and \$12 more a week for each child of the deceased employee.

Section 13 would amend §33 regarding burial expenses for deceased employees. Currently, the insurer is required to pay reasonable expenses of burial, not exceeding \$4,000. This bill would increase the amount the insurer is required to pay for burial expenses to not exceed \$6,000.

Section 14 would increase the weekly compensation for total incapacity (§34) benefits. Compensation would increase from the current 60% to 2/3 of their average weekly wage. Durations would increase from the current 156 weeks to 208 weeks.

Section 15 would amend §34A pertaining to permanent and total incapacity. When the incapacity for work resulting from the injury is both permanent and total, an insurer is required to pay an injured employee a weekly compensation equal to 2/3 of their average weekly wage before injury, but not more than the maximum weekly compensation rate nor less than the minimum compensation rate. Current law requires that this payment be made "following payment of compensation in §34 and §35." This section of H.2854 would delete this requirement.

Sections 16 and 17 would amend §34B pertaining to supplemental benefits for §31 or §34A. This bill would expand supplemental benefits to include both §34 and §35.

Section 18 would amend §35 pertaining to partial incapacity benefits, by raising the wage benefits for injured workers to 2/3 AWW of the difference between their AWW before the injury and the weekly wage they are capable of earning after the injury, *but not more than the maximum weekly compensation rate*. Currently, under §35, compensation is 60% of the difference between the employee's AWW before the injury and the weekly wage earning capacity after the injury. This amount cannot exceed 75% of temporary benefits under §34 if they were to receive those benefits.

Section 19 would amend the durations allowed for §35 benefits. Currently, the maximum benefit period for partial disability is 260 weeks, but may be extended to 520 weeks. This bill would increase the maximum benefit period to 442 weeks and could be extended at "the discretion of an administrative judge."

Section 20 would amend §35A, which provides additional compensation to injured workers who have dependents. Currently, §35A provides additional compensation of \$6 per/week to injured workers who have persons dependent upon them for injuries occurring under §34, §34A, and §35. No weekly payments under this section can be greater than \$150 per week when combined with the compensation due under §34, §34A, and §35. This section of Senate 76 would provide injured workers additional compensation of \$12 per/week to injured workers who had persons dependent upon them. This bill would also cap weekly payments at \$250 when combined with the compensation due under §34, §34A, and §35.

Section 21 of this bill would amend §35D(5) and require that implementation of this section be subject to §8. Employment would be defined as a job that the employee is physically and mentally capable of performing, as long as it relates to the employee's work experience, education, or training either before or after the injury.

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Section 22 of this bill would amend §35E. It would require that any person receiving old age benefits pursuant to federal social security law or receiving pension benefits paid by an employer should not be entitled to benefits under §35. This is unless the employee can establish that they would have remained active in the labor market.

Section 23 of this bill would amend §36(k). It would require that for bodily disfigurement, compensation will not exceed \$20,000 and will be payable in addition to other sums outlined in this legislation.

Section 24 of this bill would amend §50. Payments required by order that are not made within 60 days of being claimed by employee, dependent or other party would accrue interest at a rate of 12% per year. If sums include weekly payments, then interest will accrue on each unpaid weekly payment.

**SENATE BILL 1123**

**Filed By:** Senator Steven A. Tolman

**Type of Bill:** Refile

**Endorsed by Advisory Council:** No

**Laws Affected:** Benefits for State Social Workers Resulting from Acts of Violence (c.30, §58)

This refiled bill (formerly S.123) would compensate state employees who receive bodily injuries resulting from acts of violence by children in their custody or parents of said children. If eligible for workers' compensation benefits, these injured state employees would receive the difference between the weekly cash benefits entitled under Chapter 152 and their regular salary. The affected employee's absence would not be charged against their available sick leave credits. Current law allows this benefit to state employees who receive bodily injuries resulting from acts of violence from patients or prisoners only.

**SENATE BILL 2168**

**Filed By:** Senator Michael W. Morrissey

**Type of Bill:** NEW

**Endorsed by Advisory Council:** No

**Laws Affected:** Benefits for Members of the Armed Services or National Guard (c.1, §7A)

This new legislation would provide workers' compensation benefits to employees who previously sustained an emotional or physical injury in the U.S. Armed Forces or National Guard and subsequently receive a workplace injury which combines with, or is aggravated or prolonged by their injury in the military, "regardless of the extent to which the services related disability contributes." Current law requires that when an on-the-job injury or disease combines with a pre-existing condition (not compensable under Chapter 152), the resulting condition is only compensable to the extent such on-the-job injury or disease remains a major but not necessarily predominant cause of disability or need for treatment.

**SENATE BILL 2449****Filed By:** Senator Steven A. Tolman**Type of Bill:** Revision to Senate 1123**Endorsed by Advisory Council:** No**Laws Affected:** Benefits for State Social Workers Resulting from Acts of Violence (c.30, §58)

This revision to Senate 1123 would compensate state employees who receive bodily injuries resulting from acts of violence from "patients or prisoners" in their custody or "Department of Social Services involved children, relatives or household members of said children." If eligible for workers' compensation benefits, these injured state employees would receive the difference between the weekly cash benefits entitled under Chapter 152 and their regular salary. The affected employee's absence would not be charged against their available sick leave credits. Current law allows this benefit to state employees who receive bodily injuries resulting from acts of violence from patients or prisoners only.