

THE STATE OF THE MASSACHUSETTS WORKERS'
COMPENSATION SYSTEM

FISCAL YEAR 2007 ANNUAL REPORT

MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL

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- * Robert Banks (*J.A.C. Iron Workers, Local 7*)
- * Jeanne-Marie Boylan (*Boston Sand & Gravel Company*)
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January 9, 2008

His Excellency Deval L. Patrick
Governor of Massachusetts
State House – Room 360
Boston, MA 02133

Dear Governor Patrick:

On behalf of the Massachusetts Workers' Compensation Advisory Council, I am pleased to present you with our Fiscal Year 2007 Annual Report: [The State of the Massachusetts Workers' Compensation System.](#)

The Advisory Council's Annual Report illustrates a detailed analysis of the workers' compensation system in Massachusetts. The report provides summaries in areas such as the workers' compensation insurance market, legislative initiatives, occupational illness and injury statistics, and the operations of the Division of Industrial Accidents (DIA). The Advisory Council also identifies six specific areas of concern and offers conclusive recommendations to enhance the workers' compensation system. Finally, the report recognizes significant achievements within the DIA and other related organizations that play a role in improving the system.

It is important to note that this report and its recommendations are a product of the commitment and contributions made by Council Members who volunteer their time 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.

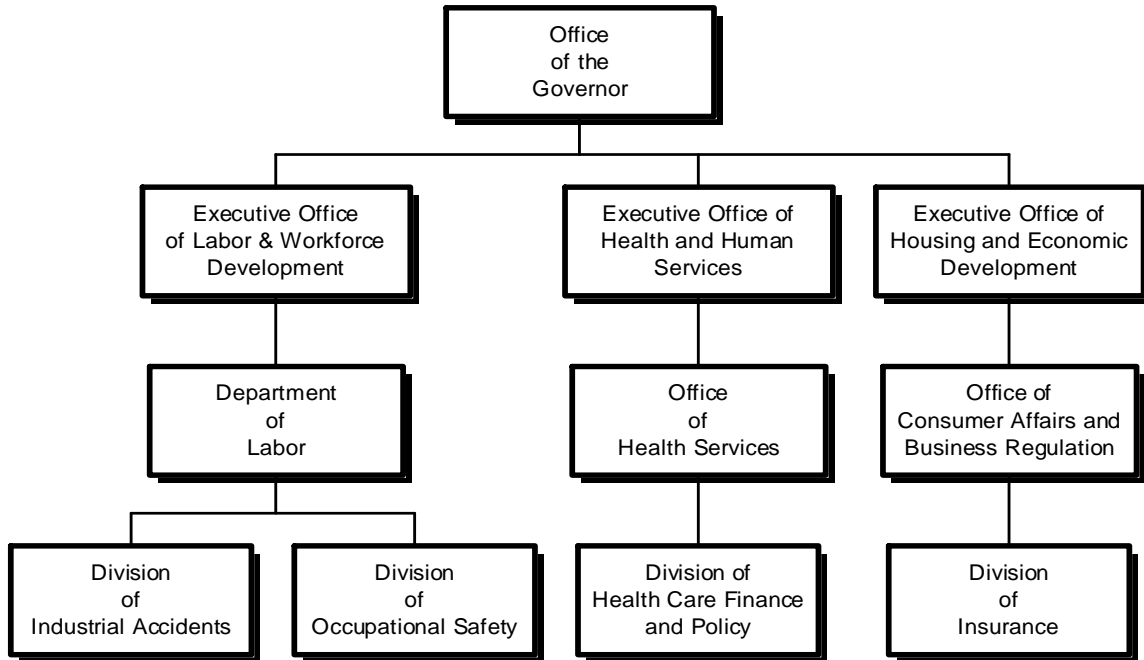
The Advisory Council hopes that this report will serve to highlight the successes of the past year and offer guidance to policymakers looking to improve the system. We look forward to working with you in the future and continuing our shared mission to improve services to injured workers, employers, and all participants in the Commonwealth's workers' compensation system.

Very truly yours,

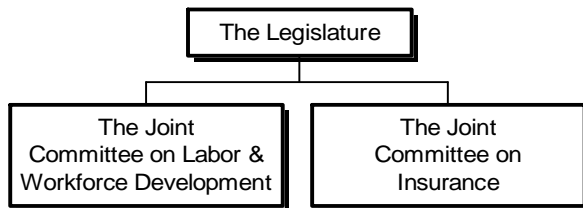
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Executive Director

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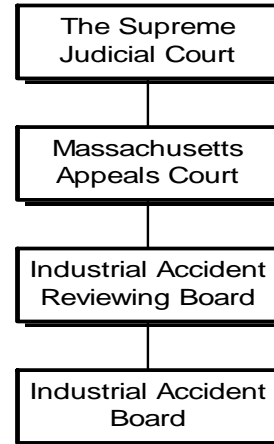
Executive Branch



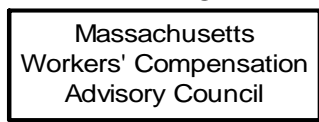
Legislative Branch



Appeals Process



Oversight



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

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ADVISORY COUNCIL

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, 6th 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: 1989-2007

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

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Study of Workers' Compensation Wage Replacement Rates, Tillinghast; Professor Peter Kozel, (1994).

Analysis of the Massachusetts Department of Industrial Accidents' Dispute Resolution System, Endispute, Inc., B.D.O. Seidman, (1991).

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Report to the Legislature on the Mark-up System for Case Scheduling, Massachusetts Workers' Compensation Advisory Council, (1990).

Medical Access Study, Lynch-Ryan, The Boylston Group, (1990).

Report to the Legislature on Public Employees, Massachusetts Workers' Compensation Advisory Council, (1989).

Report to the Legislature on Competitive Rating, Massachusetts Workers' Compensation Advisory Council, (1989).

Report on Competitive Rating, Tillinghast, (1989).

Assessment of the Department of Industrial Accidents & Workers' Compensation System, Peat Marwick Main, (1989).

The Analysis of Friction Costs Associated with the Massachusetts' Workers' Compensation System, Milliman & Robertson, John Lewis, (1989).

FISCAL YEAR 2007 IN REVIEW

During fiscal year 2007, the Department of Industrial Accidents (DIA) experienced a 5% 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 67%. The majority of cases filed at the DIA are employee claims. Since 1991, employee claims have declined by 47%. The number of requests for a discontinuance or modification of benefits by insurers, which account for 15% of the total cases, decreased by only two cases in fiscal year 2007 and have decreased by 78% since the 1991 Reform Act.

On September 7, 2006, representatives from both labor and management formed a subcommittee to examine a recent increase in the caseload of Section 65 Claims (uninsured injuries). Specifically, the objective of the subcommittee was to investigate methods of strengthening the statute to protect the Workers' Compensation Trust Fund and to decrease the financial burden placed on complying employers. The subcommittee was in full agreement that any solution in combating employer fraud must be multifaceted and include both legislative and non-legislative actions. The subcommittee made several recommendations, which included developing a white paper, increasing trust fund and investigative staff, and supporting legislative initiatives that would strengthen criminal penalties and provide for a private right of action.

Also in September of 2006, the Advisory Council met twice in Executive Session to review the qualifications of twelve 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 September 20, 2006, the Advisory Council forwarded all twelve judicial recommendations to the Governor's Chief Legal Counsel and to the members of the Governor's Council for review.

On October 11, 2006, the DIA presented the Advisory Council with a detailed overview of the department's fiscal year 2007 goals. In 2005, goal setting focused on team-building activities for managers to encourage different units to work together. In 2006, goals were developed to enhance enforcement and compliance, increase public awareness on DIA activities, improve the quality of healthcare services to injured workers, bring accountability to the assessment process, and expand e-government solutions. It was explained that the goal setting process for 2007 was refined to include the participation of unit supervisors.

On November 13, 2007, representatives from the Department of Public Health (DPH) addressed the Advisory Council members concerning the problems that teen workers face in Massachusetts and throughout the nation. It was noted that teens have a higher rate of injury than adults that are doing the same type of work. This increased risk for teens is attributed to a lack of safety training as well as the fact that teens are not as fully developed as an adult. At this meeting, DPH urged the Advisory Council and the DIA to seek ways of training teens and their supervisors through the Safety Grant Program.

On January 10, 2007, the DIA presented the Advisory Council with an overview of new data-mapping software being utilized at the agency. The DIA believes this technology will eventually assist the Office of Safety in determining which regions have high injury rates and should be targeted for the Safety Grant Program. Also discussed at this meeting was a progress report on the DIA's Document Management System (DMS) which will be a digital repository for all DIA documents. DMS will allow the DIA to scan, index, and retrieve all documents related to cases filed at the agency. Upon completion of the project, judges will have real-time access, via laptop computers, to relevant information pertaining to each case before them.

On February 1, 2007, the DIA released a public announcement that a former contract employee had accessed and retrieved workers' compensation claimants' personal identifiers (including Social Security numbers) from a DIA database with the apparent intent of committing criminal or fraudulent acts. The DIA was notified of the security breach by law enforcement authorities and fired the contract worker immediately. The individual was subsequently arrested and has been charged by state authorities with identity fraud. Upon learning of the security breach, the DIA promptly sent written notifications directly to the potentially impacted claimants. Shortly after this incident, the DIA began reviewing all security measures in an effort to strengthen the integrity of all housed data.

On February 9, 2007, Governor Deval Patrick filed legislation to reorganize the governor's cabinet and several agencies they oversee in an effort to create a more efficient and unified Executive Office. Under the proposed reorganization plan, the Department of Industrial Accidents would remain within the Department of Labor. However, the Department of Labor would now report to a newly created Executive Office of Labor & Workforce Development. This reorganization was passed into law on February 28, 2007.

In March of 2007, the Advisory Council's Budget Subcommittee reviewed the DIA's line-item contained in the Governor's Fiscal Year 2008 Budget Recommendation (House 1). The Budget Subcommittee made a recommendation to the full Council to endorse the House 1 Budget of \$20,735,488 with two additional concerns. First, the subcommittee recommended that the DIA decrease their reliance upon temporary workers and consultants and replace these positions by cross-training existing staff or adding new full-time employees when appropriate. In addition, the subcommittee encouraged the DIA administration to assess the benefits of increasing investigative staff in both the Office of Investigations and the Trust Fund. Second, the subcommittee recommended continued support of the DIA's Safety Grant Pilot Program that gave preference to grant proposals that address "high-risk" groups.

On April 3, 2007, the Joint Committee on Labor & Workforce Development held an informational hearing on the various agencies and organizations that are relevant to their committee's work. At this hearing, both the Commissioner of the DIA and Executive Director of the Workers' Compensation Advisory Council testified regarding the goals and activities of their respective organizations. The information provided at this hearing assisted both Representative David Torrisi and Senator Thomas McGee who are chairing the committee for the 2007-2008 Legislative Session.

On April 28, 2007, 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 2006, 76 workers in Massachusetts died on the job.

On May 15, 2007, 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 four legislative matters that had been previously endorsed by the Advisory Council. Included in the testimony was the Advisory Council's support for the passage of Senate Bill 1066 (Private Right of Action), House Bill 1777 and Senate Bill 1060 (Scar-Based Disfigurement), Senate Bill 1111 (Criminal Penalties against Uninsured Employers), and increasing the maximum burial allowance (see section of report on "Legislation").

Also on May 15, 2007, Insurance Commissioner Nonnie S. Burnes issued a rate-decision that reduced average workers' compensation rates by 16.9% from 2005-2006 rate levels. The decision was based on an agreement between the Division of Insurance, the Workers' Compensation Rating & Inspection Bureau and the Attorney General's Office. The new rate takes effect on September 1, 2007 and will result in a \$170 million savings in workers' compensation premiums for Massachusetts employers.

On June 13, 2007, the Advisory Council released two Issue Papers on "Uninsured Employers" and "Employee Misclassification," to help educate both policymakers and the public on the growing problem of employer fraud. Both Issue Papers were distributed to the members of the Joint Committee on Labor & Workforce Development. Recommendations made by the Advisory Council on combating employer fraud are included in both Issue Papers.

CONCERNS & RECOMMENDATIONS

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 further improve the workers’ compensation system, the Council has identified the following areas of concern and offers these recommendations to address them.

1. Employee Misclassification - Private Right of Action

In Massachusetts, the overwhelming majority of employers purchase workers’ compensation insurance and properly classify their employees. However, the Advisory Council believes there is an urgent need to address those dishonest employers who are intentionally misclassifying their employees and taking jobs away from legitimate workers who are properly classified. **Senate Bill 1066** will reduce the amount of fraud associated with employee misclassification and help alleviate the financial burden placed on those honest employers who are subsidizing misclassified workers through higher premiums.

Employee misclassification is a form of employer fraud. Classifications were created as a premium calculation tool based on the theory that the nature, extent and likelihood of certain injuries are common to any given industry (see page 100 for a more detailed description of the classification system). When employers misclassify their workers, they misrepresent the true nature or size of their business to their insurance carrier and various government organizations. Although employee misclassification can result from an honest misunderstanding of law or complex classification definitions, it frequently occurs when an employer is looking for ways to cut costs.

While the practice of employee misclassification happens in all industries, it occurs most often in the construction industry, where employers are prone to deliberately misclassify their workers as “independent contractors,” to avoid paying workers’ compensation insurance and other state, federal or Social Security taxes. However, misclassification can be as simple as disguising the high-risk nature of the work being conducted, such as stating that a business employs clerical workers, when in fact they employ roofers. Or it can be as complex as defining certain workers as subcontractors to elude any premium payments and transfer liability to a third party.

Employee misclassification also creates a shortage in collected premiums needed by insurance carriers to pay the benefits of injured workers. When a business chooses to misclassify their workers, compliant employers end up paying millions in higher premium costs to cover this shortfall. Money spent subsidizing fraud takes away resources for worthy initiatives to improve workplace safety and increase job training.

While employee misclassification is an enormous problem both nationally and within Massachusetts, the elusive nature of the underground economy makes it difficult to pinpoint its full extent. According to a recent study conducted by Harvard University and the University of Massachusetts, a conservative estimate projected that one in seven

construction workers (14% or 2,634 employees) in Massachusetts were misclassified as Independent Contractors (ICs) from 2001-2003. A less conservative estimate projected IC misclassification in the construction industry at 24% (4,459 employees). This gross misclassification translates up to \$7 million in unpaid workers' compensation premiums for misclassified ICs in the construction industry and up to \$91 million of lost premiums for misclassified ICs across all industries. These figures are startling considering that they only account for IC misclassification and do not include the array of other premium evasion fraud schemes in existence.

Ensuring that employees are properly classified in Massachusetts comes down to strengthening enforcement and removing the economic incentives that cause dishonest employers to misclassify their workers. While the Fair Labor Division of the Attorney General's Office and the Insurance Fraud Bureau have made strides in addressing workers' compensation fraud, there is still no regulatory organization that can exclusively place resources towards enforcing fraud associated with employee misclassification. The Fair Labor Division of the Attorney General's Office has multiple enforcement responsibilities including monitoring wage violations, child labor laws, and public bidding laws. The Insurance Fraud Bureau investigates automobile, employee workers' compensation, as well as other lines of insurance fraud.

During the 2007-2008 Legislative Session, the Advisory Council testified in support for the passage of **Senate Bill 1066**, filed by Senator Jack Hart. 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. In fiscal year 2007 alone, the Trust Fund paid approximately \$6.9 million in workers' compensation benefits to uninsured claimants.

Council Members commend the Joint Committee on Labor & Workforce Development for recognizing the importance of this legislation and reporting **Senate Bill 1066** favorably to the Senate Ways & Means Committee. The Advisory Council now urges the Senate Ways & Means Committee to promptly act on this bill. The passage of this legislation will help alleviate the competitive disadvantage faced by the vast majority of honest employers who purchase workers' compensation policies and properly classify their employees.

2. Uninsured Employers - Toughening Criminal Penalties

With limited exceptions, every employer in the Commonwealth with one or more employee(s) is required by law to have a valid workers' compensation policy at all times. This "no fault" insurance not only provides injured workers with medical care and partial wage replacement, but also protects policyholders from potentially damaging lawsuits. Although most companies in Massachusetts purchase a traditional commercial insurance policy, there are alternative methods of coverage which include licensing as a self insurer, gaining membership in a self insurance group, or obtaining coverage in the

Assigned Risk Pool. With a broad variety of insurance products and pricing options available, businesses have no excuse not to obtain appropriate coverage.

While the vast majority of the Commonwealth's employers purchase workers' compensation insurance, some employers do not. Some may choose not to do so believing they can save money in the short-term, while others may simply be unaware of the legal requirements of the workers' compensation law.

Workers' compensation insurance is a business cost just like unemployment insurance, health care, electricity and state and local taxes. Although workers' compensation costs have dramatically decreased since the 1991 Reform Act, an individual company's premium can vary significantly depending upon the nature of the industry, past injury experience and the amount of payroll.

In order for Massachusetts to sustain a healthy and vibrant business climate, there must be an economic atmosphere where similar industries can compete on a level playing field. Workers' compensation insurance attempts to accomplish this by creating a premium structure that classifies businesses together with similar exposure to injuries, thereby distributing the overall costs equitably among employers. When a business chooses to operate without coverage, the result is an unfair and burdensome cost to compliant employers in the form of higher premiums to cover this shortfall. This shift in costs is especially detrimental to small businesses and construction companies where the margin of profit is already small.

Employer fraud also negatively affects the competitive bidding process. Law-abiding general contractors in Massachusetts will most likely be able to share stories about their losing a competitive bid to another firm who eluded workers' compensation coverage requirements. At a time when firms are under pressure to reduce costs to maintain competitiveness, the practice of employer fraud makes it nearly impossible for a responsible employer to compete against a business which has lower labor costs because they defraud the system.

Beyond creating an unlevelled playing field for competitors, uninsured employers unnecessarily jeopardize the health of the workers they employ. The central premise behind a workers' compensation insurance policy is that it will create incentives for an employer to provide a safer workplace. When an employer has a higher frequency of injuries, they are charged a higher premium to reflect future risk (Experience Rating). Uninsured employers have few incentives to develop workplace safety programs because there is no tool in place to assess a financial penalty for poor injury experience.

It is well documented that employers who engage in workers' compensation fraud are prone to engage in other illegal or deceptive business activities that can negatively affect unemployment insurance benefits, state income tax collection, Social Security tax collection, and healthcare/pension plans. Sometimes deceitful business decisions can result in tragic consequences. In February of 2003, the Station Night Club fire in Rhode Island took the lives of 100 people, four of whom were club employees. Beyond not having the required workers' compensation insurance, a subsequent investigation found that club owners were engaged in a range of illegal business activities that included paying bartenders under the table, violating fire and building codes, and allowing overcrowding beyond the license capacity. This is a prime example of workers'

compensation fraud which was the tip of the iceberg in terms of other illegal business activity.

When an uninsured business is identified, the DIA's Office of Investigations is limited in the penalties they may assess. Established in 1987, the fine structure allows the DIA to serve a stop work order and issue a flat-fine of \$100 per day until there is proof of coverage. Although this may serve as a sufficient penalty to low-risk businesses with few employees, the fine becomes both smaller in severity and less of a deterrent as the size and risk of the business increase. In extreme cases where there are flagrant violations of the law, the DIA may impose criminal penalties which are capped at \$1,500 or up to one year in prison.

To ensure that workers are provided with safe workplaces and timely access to medical and indemnity benefits, policymakers must strengthen the existing workers' compensation laws. During the 2007-2008 Legislative Session, the Advisory Council testified in support for the passage of **Senate Bill 1111** filed by Senator Susan Tucker. This new legislation would significantly increase the severity of criminal penalties for employers who fail to provide mandatory workers' compensation insurance for their employees. On criminal convictions, this bill would allow a judge to impose sentencing for up to 5 years in state prison and/or fines up to \$10,000.

In Massachusetts, criminal penalties against uninsured employers are severely deficient when compared to most criminal statutes throughout the country. Established in 1987, the present fine structure is outdated and insufficient, capping criminal penalties at \$1,500 or up to one year in prison. The Advisory Council is recommending that the Joint Committee on Labor & Workforce Development report **Senate Bill 1111** favorably and consider amending this bill with a penalty provision that subjects repeat offenders to both minimum mandatory fines and imprisonment. The Advisory Council believes this legislation sends a strong message to uninsured businesses in the Commonwealth that workers' compensation employer fraud is a serious violation of the law and will be met with serious consequences.

3. Increase DIA Trust Fund/Investigative Staffing

The DIA is charged with ensuring that every business in the Commonwealth is carrying the mandatory workers' compensation insurance. This can be a daunting challenge considering that at any given time, there are more than 200,000 businesses operating in Massachusetts, employing in excess of three million workers. With only ten investigators responsible for covering 351 cities and towns, the DIA is placed at a severe disadvantage in the fight against employer fraud.

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 in 1985 as a protective measure to pay for the benefits of injured employees of uninsured employers. The Trust Fund is financed through assessments paid by all employers who purchase workers' compensation insurance. In fiscal year 2007, approximately \$6.9 million was paid in workers' compensation benefits to uninsured claimants and 202 claims were filed. During the last seven years, Trust Fund disbursements have nearly doubled. Although

the DIA aggressively goes after uninsured employers to recoup monies paid out of the Trust Fund, collection efforts are hampered by the sheer nature of the underground economy in which assets are often difficult to locate. Over the last decade, the Trust Fund has distributed over \$52 million to uninsured claimants and collected \$11.6 million in reimbursements for these uninsured injuries.

The Advisory Council is recommending that the DIA assess the benefits of increasing investigative staff in both the Office of Investigations and the Trust Fund. The 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 and Trust Fund staff in Massachusetts will ultimately bring more employers into compliance with the Workers' Compensation Act, providing savings that far outweigh the costs of additional personnel. Upon determining an appropriate level of staffing, the Advisory Council will closely monitor the fiscal year 2009 budget process to ensure that adequate funding is available.

4. Scar-Based Disfigurement Benefits

During the 2007-2008 Legislative Session, the Advisory Council testified before the Joint Committee on Labor & Workforce Development advocating for the passage of **House Bill 1777**, filed by Representative Antonio Cabral, and **Senate Bill 1060**, filed by Senator Jack Hart. These two identical bills would provide compensation for scar-based disfigurement appearing on any part of the body, subject to a \$15,000 maximum benefit. Since the enactment of the Reform Act of 1991, benefits for scarring have been limited to the face, neck or hands.

This past summer, the Advisory Council contracted with Deloitte Consulting to investigate the cost implications of expanding workers' compensation scar-based disfigurement benefits under six proposed amendment scenarios. Specifically, the Advisory Council directed Deloitte Consulting to measure the cost impact for each proposed scenario accounting for historical claim trends and changes in claim frequency and severity. Unfortunately, after conducting interviews with representatives from both the Department of Industrial Accidents and the Workers' Compensation Rating & Inspection Bureau of Massachusetts, it was determined that the available statistical data was not refined to the required level of detail in either organization's databases.

In June of 2000, the Advisory Council conducted a similar scar-based disfigurement study with the actuarial firm Tillinghast - Towers Perrin to estimate the cost-impact of restoring scarring awards to their pre-chapter 398 levels. Again, our contracted actuaries were unable to quantify the impact of such a proposed revision due to incomplete data, though it was suggested that such a change would have a "relatively minimal impact on system costs."

In July of 2007, the Joint Committee on Labor & Workforce Development combined Senate Bill 1060 and House Bill 1777 into one bill (**Senate Bill 2289**) and reported it favorably from their committee. Although past attempts have been unsuccessful at measuring the precise costs associated with scar-based disfigurement benefits, the Advisory Council will continue to advocate for the passage of **Senate Bill 2289**. In this regard, Council Members urge the Senate Ways & Means Committee to promptly act on

this legislation. Advisory Council members strongly believe that the location of scarring on the body is irrelevant and that compensation, with a \$15,000 maximum benefit, should be provided to workers who suffer these traumatic, and at times, horrific injuries.

5. 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. In 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, ranging from 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. During the 2007-2008 Legislative Session, the Advisory Council testified in support for raising the maximum burial allowance and further recommended that the legislature draft a stand-alone bill that increases the maximum burial allowance from \$4,000 to eight times the State Average Weekly Wage (8 x SAWW = \$8,348.32).

Shortly after the May 15, 2007 legislative hearing on workers' compensation, the Joint Committee on Labor & Workforce Development reported out favorably **House Bill 4170**, which would require an insurer to pay for burial expenses when a worker has died, not to exceed \$8,000. Council Members applaud the Joint Committee on Labor & Workforce Development for re-filing this legislation as a stand-alone bill. The Advisory Council now urges the House Ways & Means Committee to promptly act on this bill. The passage of **House Bill 4170** will 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.

6. Medical Fee Schedule Task Force

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. This 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.

There is no question that the rate setting process is an imperfect science. 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. In the past, DHCFP has experienced difficulties with obtaining reliable data to make accurate rate decisions, largely 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, underscores the difficulties that DHCFP experiences when attempting to set an equitable rate.

In September of 2007, the Advisory Council was presented with an overview of Rhode Island's Fee Schedule Task Force. The Task Force was created in 1992 and consists of a diverse group of representatives from that state's Department of Labor & Training, Beacon Mutual Insurance, self insured employers, the Medical Advisory Board, Blue Cross/Blue Shield, third party administrators, the Rhode Island Medical Society, and the Hospital Association of Rhode Island. As a representative body of the Rhode Island workers' compensation system, the Task Force provides all parties a forum to continually fine-tune the fee schedule and expand codes when necessary.

The Advisory Council was impressed how various interests were able to come together in Rhode Island to produce a fee schedule that accurately reflects the costs incurred by health care providers. In Massachusetts, where medical providers receive the lowest payments in the nation yet face the second highest practice expenses associated with providing medical care to injured workers, an effective vehicle is needed to better coordinate dialogue between the medical community, insurance companies, and the Division of Health Care Finance & Policy. The Advisory Council is recommending that the DIA and the DHCFP work together in establishing a Medical Fee Schedule Task Force to provide a mechanism that can promptly react when areas of the fee schedule become unrepresentative of system costs.

LEGISLATION

During the 2007-2008 Legislative Session, approximately forty-four 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 May 15, 2007, 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 four legislative matters that had been previously endorsed by the Advisory Council.

First, the Advisory Council expressed support for the passage of **Senate Bill 1066**, filed by Senator Jack Hart. 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. In fiscal year 2006 alone, the Trust Fund paid approximately \$6.6 million in workers' compensation benefits to uninsured claimants. According to a recent joint study by Harvard and UMass, up to \$91 million in premiums went uncollected for misclassified workers in Massachusetts between 2001 and 2003.

Second, the Advisory Council endorsed **House Bill 1777**, filed by Representative Antonio Cabral, and **Senate Bill 1060**, filed by Senator Jack Hart. These two bills would provide compensation for scar-based disfigurement appearing on any part of the body, subject to a \$15,000 maximum benefit. The eligibility criteria for this benefit was last modified by the 1991 Reform Act, which limited compensation for disfigurement to only the face, neck or hands.

Although there is no stand-alone bill, the Advisory Council also voiced support for raising the **maximum burial allowance**. The current burial allowance of \$4,000 has not been increased in sixteen years and appears to be well below the national average. In 2004, the National Funeral Directors Association reported that the median funeral cost in Massachusetts was nearly six thousand dollars. This figure does not include cemetery, monument or marker costs or miscellaneous charges for flowers and obituaries. 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. In this regard, the Council recommended that the legislature draft a stand-alone bill that increases the maximum burial allowance from \$4,000 to eight times the State Average Weekly Wage (8 x SAWW = \$8,003.44).

Finally, the Advisory Council testified in support for the passage of **Senate Bill 1111** filed by Senator Susan Tucker. This new legislation would significantly increase the severity of criminal penalties for employers who fail to provide mandatory workers' compensation insurance for their employees. On criminal convictions, this bill would allow a judge to impose sentencing for up to 5 years in state prison and/or fines up to \$10,000. Established in 1987, the present fine structure is outdated and insufficient, capping criminal penalties at \$1,500 or up to one year in prison. Council Members further recommend that the Legislature consider amending this bill with a penalty provision that subjects repeat offenders to both minimum mandatory fines and imprisonment.

Legislation with a "Favorable Rating"

As in past legislative sessions, several bills were reported "favorably" by the Joint Committee on Labor & Workforce Development. When a committee deems a bill to be favorably rated, it is the first essential step for a bill to become a law. Bills that are reported out favorably are then sent on to various relevant committees for review. Shortly after the May 15, 2007 legislative hearing on workers' compensation, the legislature rated the following three bills favorably, all of which were endorsed by the Advisory Council.

SENATE BILL 1066

Filed By: Senator John A. Hart, Jr.

Type of Bill: Refile (S.1099)

Endorsed by Advisory Council: YES

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

This refiled bill 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 2289

Filed By: Senator Thomas M. McGee

Type of Bill: Redraft (Senate 1056, Senate 1060, and House 1777)

Endorsed by Advisory Council: YES (2007)

Laws Affected: Benefits for Specific Injuries (c.152, §36(k)) - Scar-Based Disfigurement

This refiled bill would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This bill 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. This redrafted bill would not affect the \$15,000 maximum benefit for scar-based disfigurement currently in the statute.

HOUSE BILL 4170

Filed By: Representative David M. Torrisi

Type of Bill: Redraft (H.1862 - Section 2)

Endorsed by Advisory Council: YES (2007)

Laws Affected: Burial Expenses (§33)

This redrafted bill 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

- 1 -

OVERVIEW

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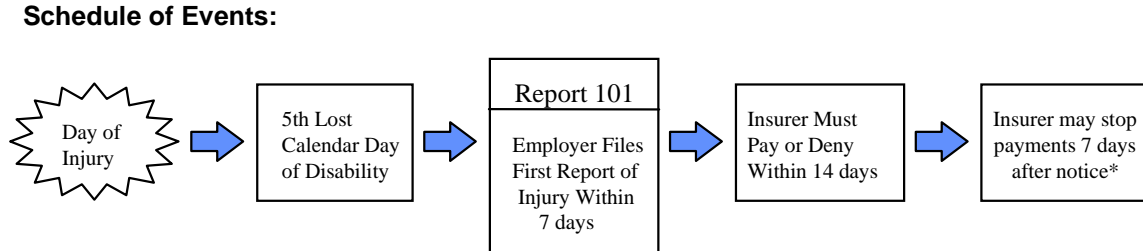
PROVISIONS TO RESOLVE DISPUTES

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.¹ 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.² 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.

¹ 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.

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

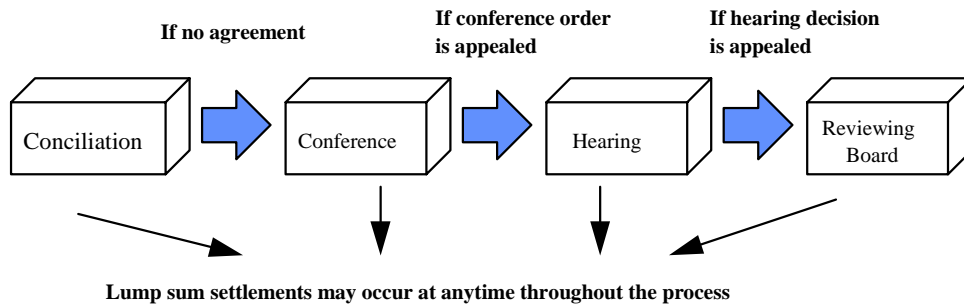
Dispute Resolution Process

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 costs 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.³ 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 2007, the SAWW increased by \$43.11 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
10/1/06	\$1,000.43	\$200.09
10/1/07	\$1,043.54	\$208.71

Source: DIA Circular Letter No. 323 - Table I (October 1, 2007)

³The 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, 2007, the SAWW is \$1,043.54.

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 (\$1,043.54), while the minimum is 20% of the SAWW (\$208.71), if claims involve injuries occurring on or after October 1, 2007. 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 (\$1,043.54), while the minimum is 20% of the SAWW (\$208.71), if claims involve injuries that occurred on or after October 1, 2007. 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, 2007, 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 **\$1,020.62** plus necessary expenses. If the employee's attorney fails to appear at a scheduled conciliation, the amount paid is **\$510.30**.
- (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 **\$1,458.01**. 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 **\$729.00**.
- (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 **\$729.00** plus necessary expenses. This fee can be reduced to **\$364.51** 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 **\$1,020.62** 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 **\$510.30** 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 **\$5,103.04** 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 **\$1,458.01**. 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.

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WORKPLACE INJURY & CLAIM STATISTICS

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OCCUPATIONAL INJURIES AND ILLNESSES

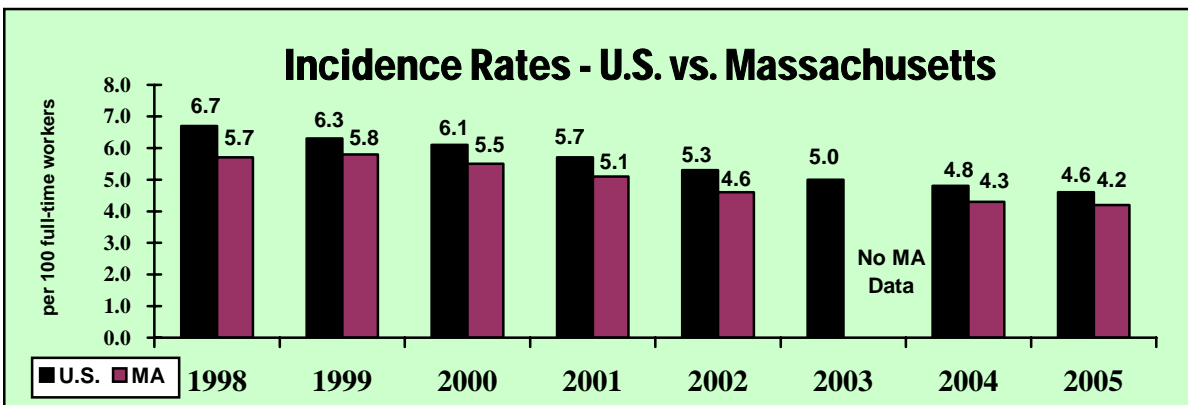
Since 1992, the Division of Occupational Safety (DOS) has been in a partnership with the U.S. Department of Labor, Bureau of Labor Statistics (BLS), in an effort to collect injury and illness data in a uniform format. Throughout the country, surveys are collected from over 184,400 private industry establishments 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 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 2005, Massachusetts had a population of 6,398,743 people with a private sector employment of 2,729,500 workers.

During 2005, the private sector workforce in the United States experienced approximately 4.2 million non-fatal injuries and illnesses, resulting in an incidence rate of 4.6 cases per 100 full-time workers. In Massachusetts alone, there were 93,000 occupational injuries and illnesses, resulting in an incidence rate of 4.2. The graph below shows how occupational injury and illness rates have steadily declined at both the national level and within Massachusetts from 1998 to 2005. The graph also displays how incidence rates in Massachusetts have consistently remained lower than 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. Historically, Massachusetts has led all other New England states with the lowest incident rate of work-related injuries or illnesses (resulting in lost work-time).

Table 2: Injury and Illness Incidence Rates - U.S. and New England 1998-2005 (Private Industry)

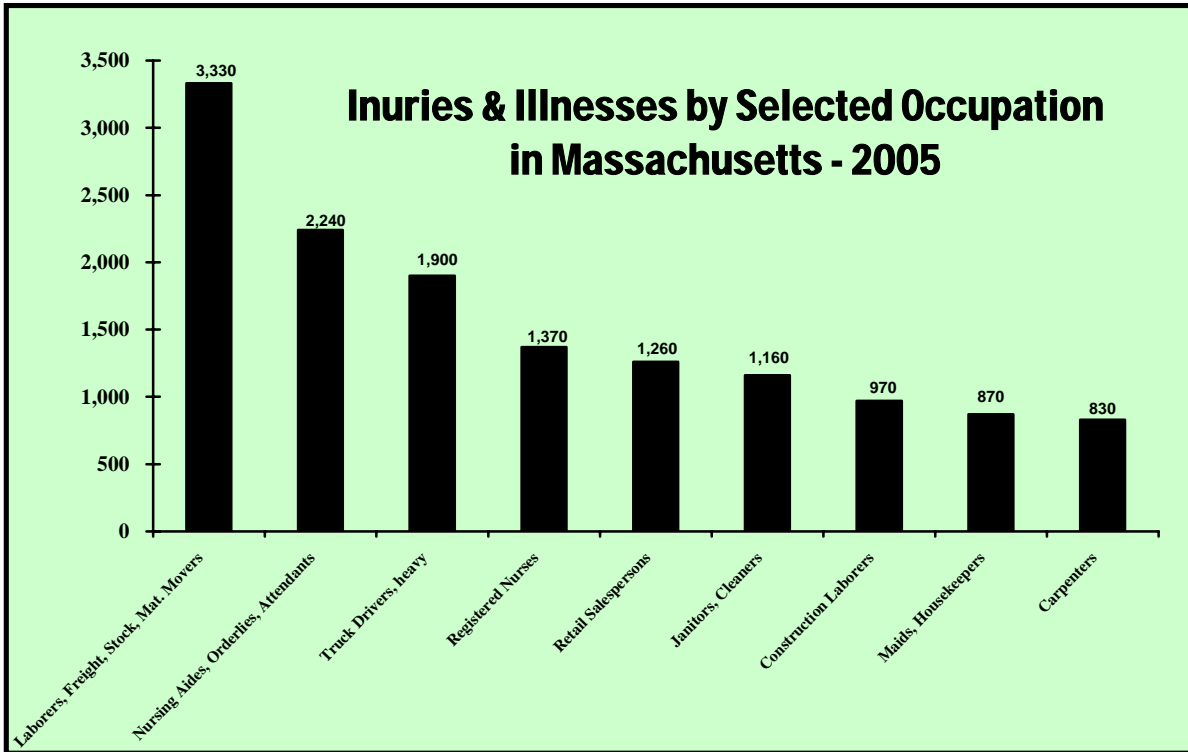
Region	2005	2004	2003	2002	2001	2000	1999	1998
United States.....	4.6	4.8	5.0	5.3	5.7	6.1	6.3	6.7
Massachusetts.....	4.2	4.3	no data	4.6	5.1	5.5	5.8	5.7
Connecticut.....	5.5	5.2	5.1	5.4	6.3	6.7	6.8	7.1
Maine.....	7.1	6.6	7.7	8.1	8.7	9.0	9.3	9.2
Rhode Island.....	5.5	5.2	5.4	5.3	6.8	no data	7.0	6.7
Vermont.....	6.1	5.6	5.2	6.7	7.0	6.9	7.6	6.9
New Hampshire...	no data	no data	no data	no data	no data	no data	no data	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 2005, laborers (non-construction) and nursing aides, orderlies and attendants had the highest number of injuries and illnesses involving days away from work in Massachusetts.

Figure 3: Injuries & Illnesses by Selected Occupation in Massachusetts - 2005



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 construction industry had the highest overall incidence rate in 2005, with 6.5 injuries for every 100 full-time workers. Finance, insurance and real estate had the lowest incidence rates, with 1.2 injuries per 100 workers.

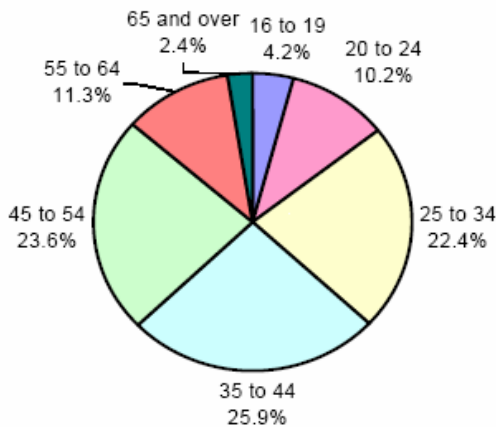
Table 3: Nonfatal Injury & Illness Incidence Rates by Industry - Massachusetts 1998-2005

MASSACHUSETTS (Selected Industry Division)	2005	2004	2003	2002	2001	2000	1999	1998
Private Industry:	4.2	4.3	no data	4.6	5.1	5.5	5.8	5.7
Construction:	6.5	6.9	no data	6.8	9.0	9.4	9.5	9.0
Trade, Transportation & Utilities:	5.4	5.2	no data	7.4	8.2	8.2	8.1	9.3
Retail trade:	5.2	4.7	no data	5.3	5.7	6.6	6.8	5.8
Agriculture, forestry, and fishing:	5.0	4.5	no data	7.8	8.1	7.7	11.6	10.8
Wholesale trade:	4.5	4.2	no data	5.5	5.4	7.6	6.1	6.2
Manufacturing:	4.2	4.5	no data	5.3	5.4	6.0	6.3	6.6
Finance Activities:	1.2	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, 2005

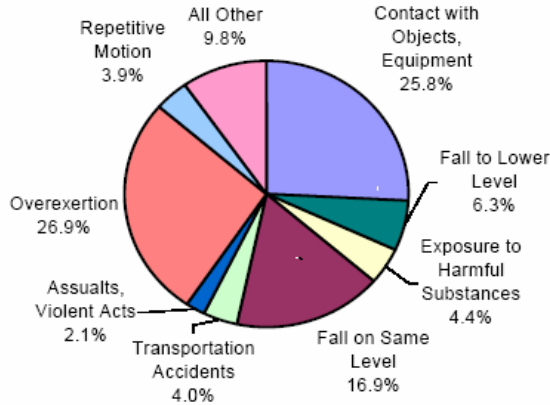


Age

In 2005, workers aged 35 to 44 had the highest number of nonfatal occupational injuries and illnesses in Massachusetts (26%). Following close behind were workers aged 45 to 54 (24%) and workers aged 25 to 34 (22%).

Source: MA 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, 2005

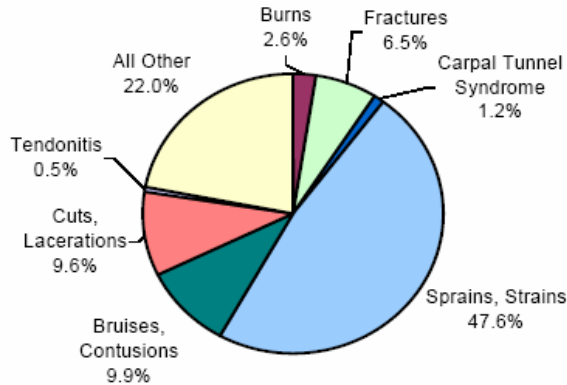


Event or Exposure

In 2005, most nonfatal injuries in Massachusetts were caused by overexertion (27%) or contact with objects or equipment (26%). Falls on the same level accounted for 17% of the injuries, whereas, falls to a lower level accounted for 6% of the injuries.

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

Pie-Chart 3: Percent distribution of nonfatal injuries and illnesses involving days away from work by nature of injury, all private industries, 2005

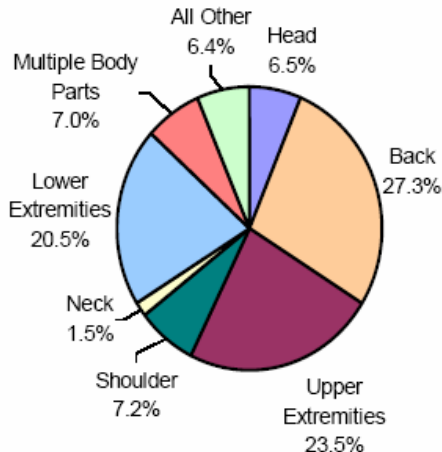


Nature of Injury

In 2005, sprains and strains accounted for 48% of all nonfatal injuries and illnesses in Massachusetts.

Source: MA 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, 2005



Part of Body

In 2005, the back and upper extremities (arm, wrist, hand, finger, and/or elbow) were the parts of the body most commonly affected by injuries and illnesses.

Source: MA 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 2006, a total of 5,703 work-related fatalities were recorded nationally by the program, representing a small decrease from the revised total of 5,734 fatalities in 2005. The rate of fatal work injuries in 2006 was 3.9 per 100,000 workers, down from a rate of 4.0 per 100,000 workers in 2005. The overall fatal work injury rate for the U.S. in 2006 was lower than the rate for any year since the fatality census was first conducted in 1992.

Workplace Fatalities in Massachusetts

In 2006, Massachusetts experienced 66 workplace fatalities, nine fewer fatalities than 2005. The leading cause of workplace death in Massachusetts came from transportation incidents (16) and falls (16) in which 32 workers were killed. Nationally, transportation incidents were the leading cause of on-the-job fatalities, accounting for 42% of the fatal work injuries in 2006. Following transportation incidents and falls in Massachusetts, workers were killed by exposure to harmful substances and equipment (13), contact with objects and equipment (10), and assaults and violent acts (10).

Figure 4: Fatal Occupational Injuries by State and Event or Exposure, 2006 (Northeast Region)

State of Injury	Total Fatalities		Event or Exposure (state total for 2006)					
	2005	2006	Transportation Incidents	Assaults & Violent Acts	Contact with Objects & Equipment	Falls	Exposure to Harmful Substances	Fires & Explosions
U.S. Total.....	5,702	5,703	2,413	754	983	809	525	201
Northeast.....	740	722	255	118	121	119	62	26
Massachusetts....	75	66	16	10	10	16	13	--
Connecticut.....	46	38	15	10	6	4	--	--
Maine.....	15	20	12	--	3	--	--	--
New Hampshire..	18	13	4	3	3	--	--	--
New Jersey.....	111	88	39	18	9	13	3	6
New York.....	239	233	71	37	43	46	24	12
Pennsylvania.....	223	240	89	40	44	37	22	8
Rhode Island.....	6	10	3	--	--	3	--	--
Vermont.....	7	14	6	--	3	--	--	--

Source: Bureau of Labor Statistics, News-USDL-07-1202

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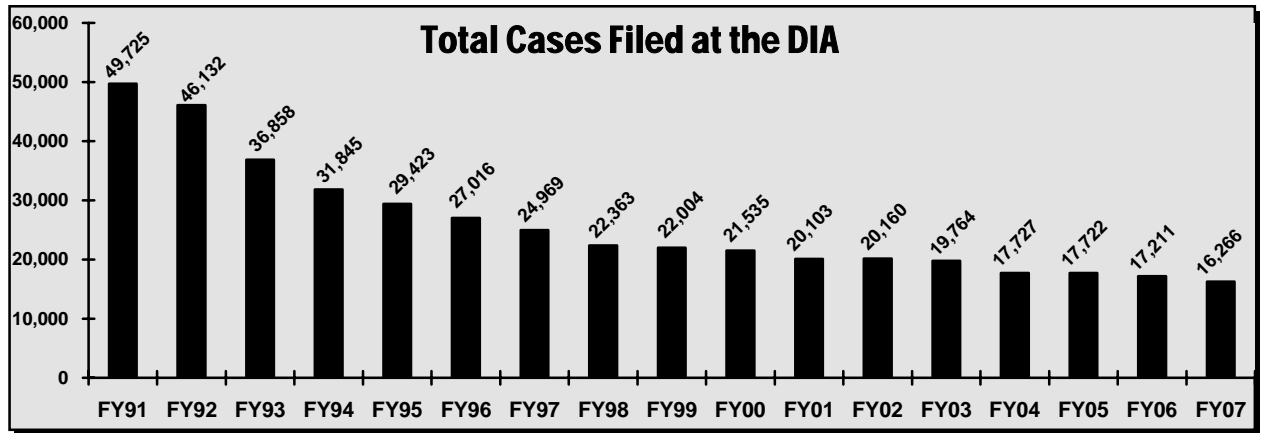
DISPUTE RESOLUTION

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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 (-67%) in the DIA caseload since the implementation of the 1991 Reform Act. In FY'07, the total number of cases filed at the DIA was 16,266, a decrease of 5% from the previous fiscal year.

Figure 5: Total Cases Filed at the DIA, FY'91 - FY'07



Source: CMS Report 28

Employee claims, which account for 76% of the total cases filed at the DIA, decreased by 582 cases (-4.5%) in FY'07. In 1991, employee claims reached an all time high of 23,240 cases filed. Employee claims have decreased by 47% since 1991. Insurers who request for discontinuance or modification of benefits, which account for 15% of the total cases, decreased by only 2 cases in FY'07. 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 2007 and Fiscal Year 2006

Total Cases Filed at the DIA FY'07 and FY'06	Number of Cases		Percentage	
	FY'07	FY'06	FY'07	FY'06
Employee Claims	12,413	12,995	76.3%	75.5%
Insurer's Request for Discontinuance	2,466	2,468	15.2%	14.3%
Lump Sum Conference Request	789	997	4.9%	5.8%
Third Party Claims	270	414	1.7%	2.4%
Section 37/37A Request	328	337	2.0%	2.0%
TOTALS:	16,266	17,211	100%	100%

Source: CMS Report 28

CONCILIATION

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 46% 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 54% of cases are referred from conciliation to a conference to be heard before an Administrative Judge.

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 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.

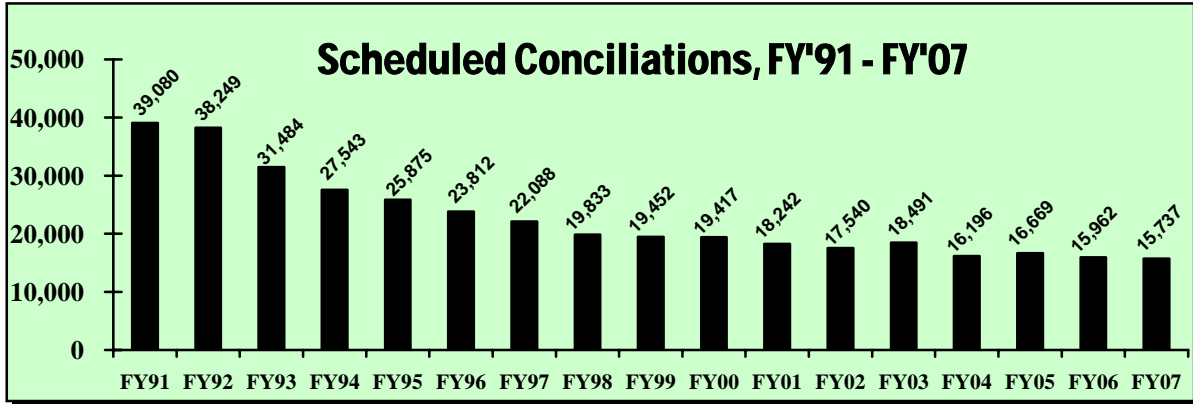
A conciliator’s recommendation is written into the case file and the disposition is recorded in the DIA’s Case Management System (CMS).

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’07, there were 15,737 cases scheduled for conciliation, which represents a 60% 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 2007, the volume of cases scheduled for conciliation decreased by only 1% (225 cases) from the previous year. It is important to note that many cases scheduled for 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'07



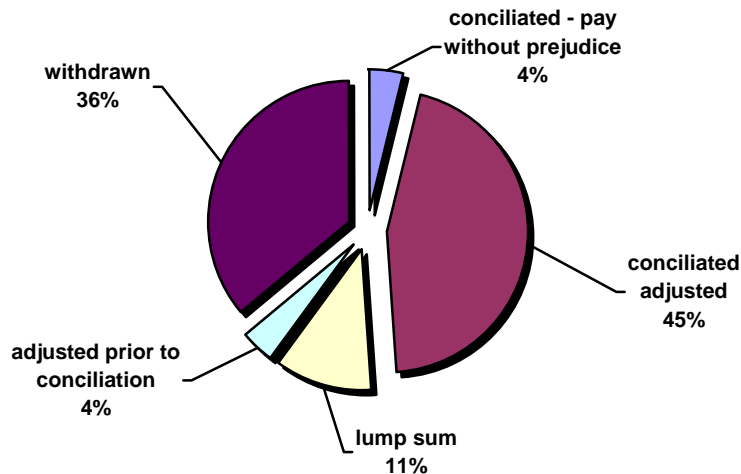
Source: CMS Report 17

Resolved at Conciliation

Disputed cases that are scheduled for conciliation can be divided into two distinct outcomes: “referred to conference,” or “resolved.” In FY’07, 7,167 cases were resolved (they were not referred on to a conference) and exited the dispute resolution system. Approximately 46% of cases that are scheduled for conciliation are resolved while the remaining 54% 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 2007

Resolved at Conciliation, Fiscal Year 2007



Source: CMS Report 17

Table 5: Resolved at Conciliation, Fiscal Year 2007 and Fiscal Year 2006

Resolved at Conciliation FY'07 and FY'06	Number of Cases		Percentage	
	FY'07	FY'06	FY'07	FY'06
Conciliated - Pay Without Prejudice	278	214	3.9%	3.1%
Conciliated Adjusted	3,219	3,078	44.9%	44.9%
Lump Sum	774	640	10.8%	9.3%
Adjusted Prior to Conciliation	287	356	4.0%	5.2%
Withdrawn	2,609	2,565	36.4%	37.4%
TOTALS:	7,167	6,853	100%	100%

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” (4% of resolved cases in FY'07), 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 (2,609 cases in FY'07). 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 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 11% 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 the conference stage and the hearing stage.

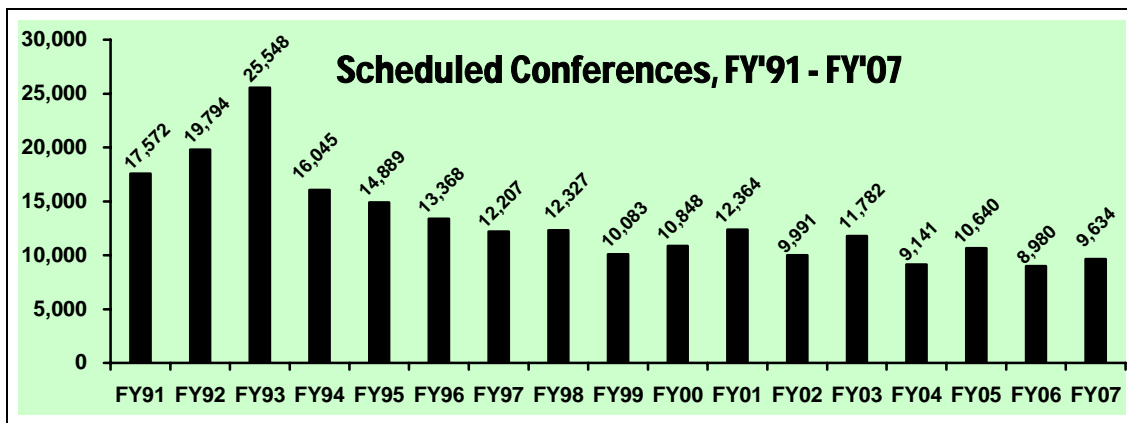
CONFERENCE

The second stage of the dispute resolution process is known as the conference. Each case referred to a conference is assigned to 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 87% of all conference orders in a given fiscal year are appealed to the hearing level of dispute resolution. In the remaining 13% 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 Central 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'07 increased by 7% (8,980 in FY'06 to 9,634 in FY'07) from last fiscal year.⁴ 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'07



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

⁴ In an effort to avoid duplication, the number of "scheduled conferences" does not include cases that were "rescheduled for a conference." In FY'07, 1,722 cases were "rescheduled for a conference."

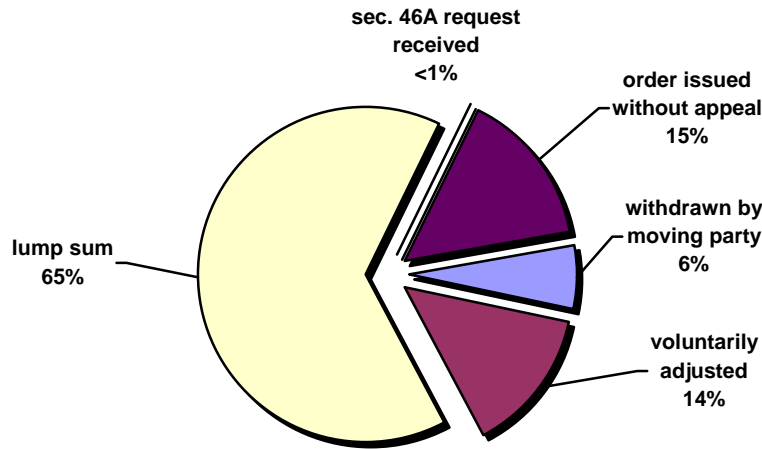
Cases Resolved at Conference

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 2007, 6,209 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 2007

Resolved at Conference, Fiscal Year 2007



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

Table 6: Cases Resolved at Conference, Fiscal Year 2007 and Fiscal Year 2006

Resolved at Conference FY'07 and FY'06	Number of Cases		Percentage	
	FY'07	FY'06	FY'07	FY'06
Withdrawn by Moving Party	400	449	6.4%	10.1%
Voluntarily Adjusted	865	741	13.9%	16.7%
Lump Sum	4,044	2,417	65.1%	54.5%
Section 46A Request Received	1	7	<1%	<1%
Order Issued Without Appeal	899	823	14.5%	18.5%
Total	6,209	4,437	100%	100%

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 2007, 400 cases (6% 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 2007, 865 cases (14% 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 2007, 4,044 cases (65% 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 2007, only 1 of these requests has 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 2007, 899 conference orders (15% 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 2007, 6,149 conference orders (87% of all conference orders) were appealed to a hearing.⁵

Table 7: Conference Orders, FY'07 - FY'01

Conference Orders FY'07 - FY'01	Total Orders	Appealed	Without Appeal
Fiscal Year 2007	7,048	6,149 (87.2%)	899 (12.8%)
Fiscal Year 2006	6,591	5,768 (87.5%)	823 (12.5%)
Fiscal Year 2005	7,494	6,457 (86.2%)	1,037 (13.8%)
Fiscal Year 2004	6,448	5,609 (87.0%)	839 (13.0%)
Fiscal Year 2003	7,899	6,680 (84.6%)	1,219 (15.4%)
Fiscal Year 2002	6,802	5,841 (85.9%)	961 (14.1%)
Fiscal Year 2001	8,486	7,361 (86.7%)	1,125 (13.2%)

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

⁵ 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 an AJ's normal cycle. If the queue increases beyond 2,000 cases, adjustments in scheduling and assignments would need to occur.

As presented in *Figure 11*, the conference queue during fiscal year 2007 remained well below the benchmark of 1,500 cases, thereby allowing cases to be efficiently scheduled. In FY'07 the conference queue ended 643 cases lower than the start of the year (881 on 7/5/06 and 238 on 6/27/07). The conference queue reached a high of 891 on 7/12/06 and a low of 60 on 3/28/07.

Figure 10: Conference and Hearing Queues; Fiscal Years 1991 - 2007

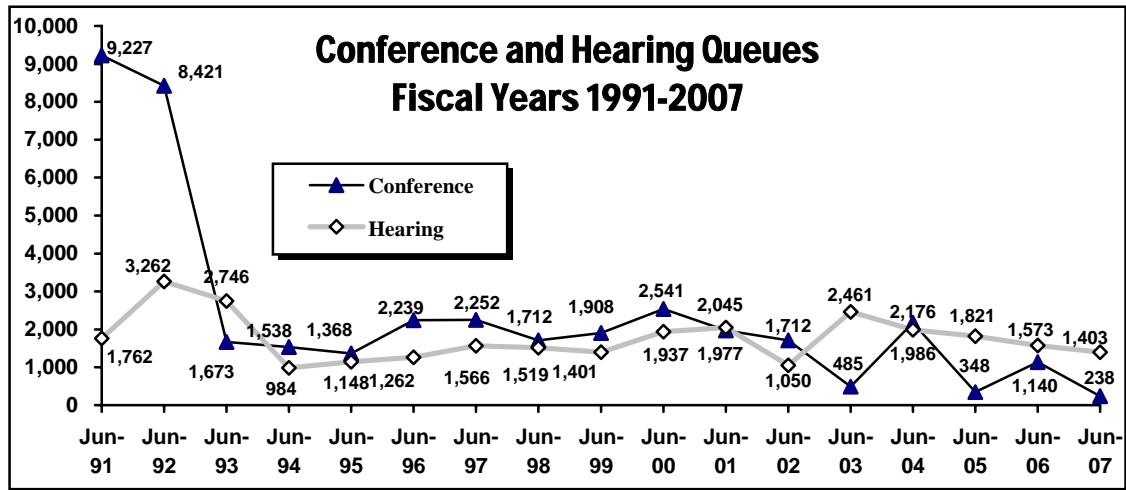
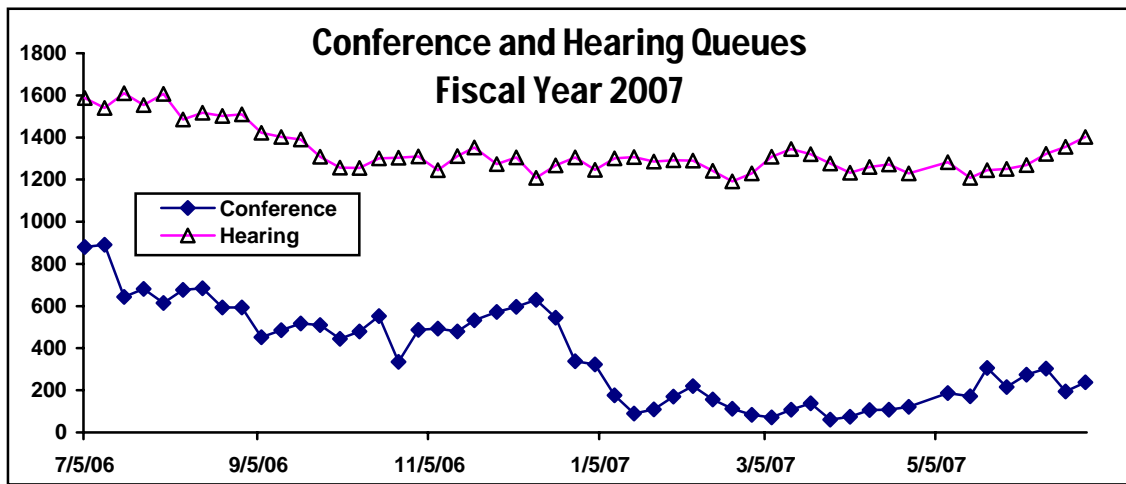


Figure 11: Conference and Hearing Queue; Fiscal Year 2007



Source: CMS Report 404

HEARINGS

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 Central 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 because 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 2007 began with a hearing queue of 1,587 and remained relatively flat throughout the year ending at 1,403 (see page 44, Conference & Hearing Queues, Fiscal Year 2007). In the last eighteen years, the hearing queue has been as low as 409 cases in September 1989 and as high as 4,046 in November 1992.

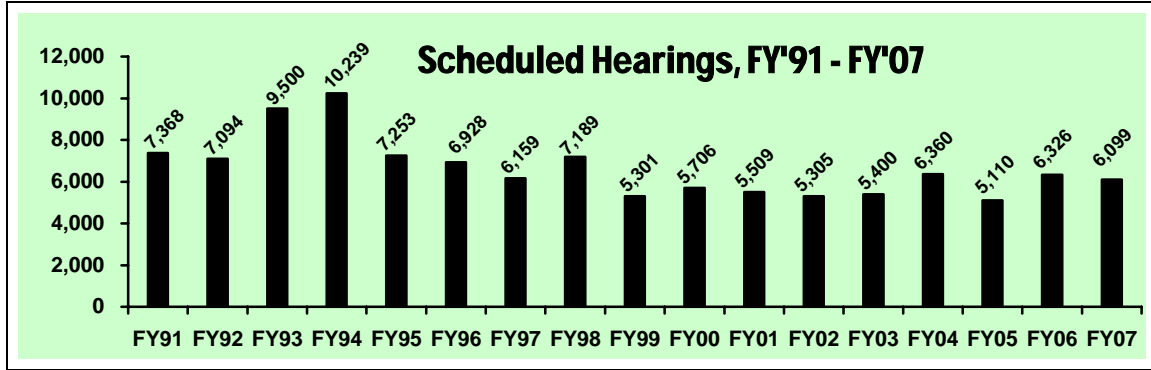
Volume of Scheduled Hearings

The number of hearings scheduled in FY'07 decreased by 227 cases (6,326 in FY'06 to 6,099 in FY'07) from last fiscal year.⁶ Each year, the number of hearings scheduled is greater than the number of hearings that will actually take place before an Administrative

⁶ In an effort to avoid duplication, the number of "scheduled hearings" does not include cases that were "rescheduled for a hearing." In FY'07, 3,686 cases were "rescheduled for a hearing."

Judge since many cases are withdrawn or resolved before ever reaching a hearing. The figure below shows that the number of "scheduled hearings" in fiscal year 2007 decreased by 4% from the previous fiscal year.

Figure 12: Scheduled Hearings, FY'91 - FY'07



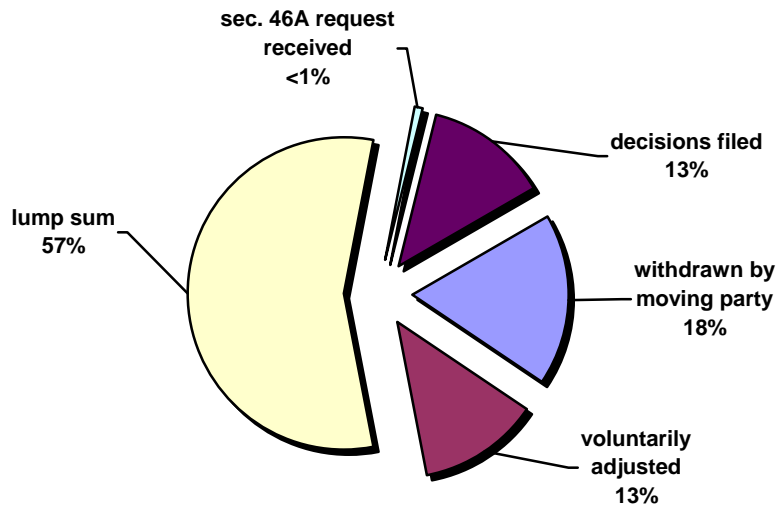
Source: CMS Report 46 (Hearing Statistics - For Scheduled Dates)

Cases Resolved at Hearing

In fiscal year 2007, 5,720 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 2007

Resolved at Hearing, Fiscal Year 2007



Source: CMS Report 431

Table 8: Cases Resolved at Hearing, Fiscal Year 2007 and Fiscal Year 2006

Resolved at Hearing FY'07 and FY'06	Number of Cases		Percentage	
	FY'07	FY'06	FY'07	FY'06
Withdrawn by Moving Party	1,019	922	17.8%	16.5%
Voluntarily Adjusted	692	651	12.1%	11.7%
Lump Sum	3,272	3,229	57.2%	57.9%
Section 46A Request Received	17	35	<1%	<1%
Decisions Filed	720	742	12.6%	13.3%
Total	5,720	5,579	100%	100%

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 2007, 1,019 cases (18% 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 2007, 692 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 2007, 3,272 cases (57% 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 2007, only 17 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 2007, 720 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).

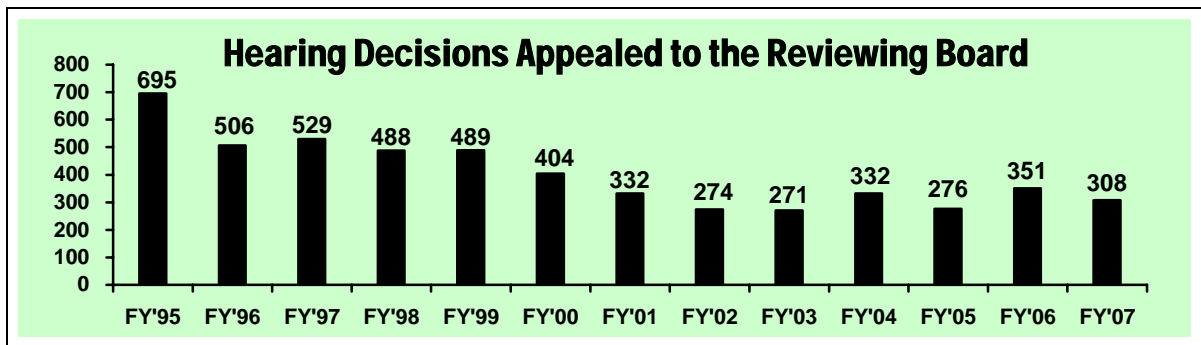
Volume of Hearing Decisions Appealed to the Reviewing Board

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 takes place, the parties are entitled to a verbatim transcript from 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 2007 was 308.

Figure 14: Hearing Decisions Appealed to the Reviewing Board, FY'95 - FY'07



Source: DIA Reviewing Board

In fiscal year 2007, the Reviewing Board resolved 226 cases (some from the prior year), representing a 32% decrease from cases resolved in fiscal year 2006 (331 cases).

Figure 15: Appeals Resolved at the Reviewing Board, Fiscal Year 2007

Resolved at the Reviewing Board, Fiscal Year 2007

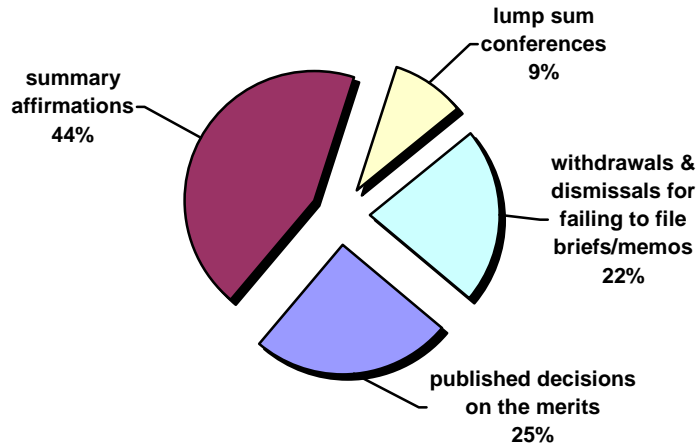


Table 9: Appeals Resolved at the Reviewing Board, Fiscal Year 2007

Appeals Resolved at the Reviewing Board, FY'07	Number of Cases
Published Decision on the Merits (Full Panel):	57 (25.2%)
Summary Affirmations (After Full Panel Deliberation):	99 (43.8%)
Lump Sum Conferences:	21 (9.3%)
Withdrawals/Dismissals for Failing to File Briefs/Memos:	49 (21.7%)
Total Number of Appeals Resolved by the Reviewing Board:	226 (100%)

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 2007 was 1,187.

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'07, Administrative Law Judges heard 1,169 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 2007 was 35.

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'07-FY'91

<i>Fiscal Year</i>	<i>Total lump sum conferences scheduled</i>	<i>Lump sum settlements approved</i>
FY'07	7,532	6,901 (91.6%)
FY'06	7,416	6,830 (92.1%)
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'07, only 9 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 lump sum settlements, however, 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 settlements have historically become increasingly prevalent at the later stages of the dispute resolution process.

Table 11: Lump Sum Settlements Pursued at Each Level of Dispute Resolution - FY'07

Fiscal Year 2007	<i>Lump Sum Pursued⁷</i>	<i>% Total Cases Resolved (at each level of dispute)</i>
Conciliation	774	10.8%
Conference	4,044	65.1%
Hearing	3,272	57.2%

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

⁷ 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

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.⁸ 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.⁹

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.

⁸ M.G.L. c.152, §8(4).

⁹ 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

\$450	Impartial medical examination and report
\$500	For deposition lasting up to 2 hours
\$100	Additional fee when deposition exceeds 2 hours
\$225	Review of medical records only
\$125	Supplemental medical report
\$100	When worker fails to keep appointment (maximum of 2)
\$100	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'07, approximately \$978,812 was collected in filing fees.

As of 6/30/07, there were 252 physicians on the roster consisting of 26 specialties.¹⁰ 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'07 the impartial unit scheduled 5,710 examinations. Of these, 4,032 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).¹¹ Medical reports are required to be submitted to the DIA and to each party within 21 calendar days after completion of the examination. Last year (FY'06), the impartial unit scheduled 6,201 examinations. Of these, 4,368 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.

¹⁰ Including contracts pending renewal.

¹¹ Additional reports may be entered upon FY'07 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 DIA 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 DIA 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, 2007

2007 HHS Poverty Guidelines	
Size of Family Unit	Amount*
1	\$10,210
2	\$13,690
3	\$17,170
4	\$20,650
5	\$24,130
6	\$27,610
7	\$31,090
8	\$34,570

For family units with more than eight members, add \$3,480 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. 72, No. 15, January 24, 2007, pp. 3147-3148.

*48 Contiguous States and the District of Columbia.

ADMINISTRATIVE JUDGES

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 or a replacement is made. This enables the off-line 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 by 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 -

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OFFICE OF CLAIMS ADMINISTRATION

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 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.¹² 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 Case Management System (CMS) 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 and 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 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'07, the OCA received 33,476 First Report of Injury Forms, a decrease of 8.5% from FY'06 (36,590). The number of First Report of Injury Forms filed online during FY'07 was 8,910, (27% of the total received) and 495 less than FY'06 (9,405). The number of claims, discontinuances and third party claims received by the office decreased in FY'07 by 917 to 16,289 (prior to review and CMS processing). The total number of referrals to conciliation for the FY'07 was 15,149, (including 674 filed online) which represents a decrease of 808 from FY'06 (15,957).

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,

¹² 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 approximately 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 the 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 record requests continues to rise and 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, the 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 of Injury or a late First Report of Injury 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 2007, the First Report Compliance Office collected \$182,696 in fines, a decrease of \$187,131 collected in FY'06. 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 2007, the Office of Claims Administration received fourteen (14) 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. Each year, the Office of Claims Administration assists investigators from the Insurance Fraud Bureau by providing them with workers' compensation files on suspected fraudulent cases. A total of 21 such inquiries were processed during FY'07.

OFFICE OF EDUCATION AND VOC. REHAB

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 Workers' Compensation 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.”¹³

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/].

Credentials for a vocational rehabilitation specialist must include at least a master's degree, rehabilitation certification, or a minimum of 10 years of experience. A list of certified providers can be obtained directly from OEVR or from the department's website. In FY'07, OEVR approved 51 VR providers. It is the responsibility of each provider to submit progress reports on a regular basis so that OEVR's Rehabilitation Review Officers (RROs) can have a clear understanding of each 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);

¹³ 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.¹⁴ 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 an OEVR-approved provider so that an IRWP 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.

¹⁴ 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 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.¹⁵ 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.

¹⁵ 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 2007, OEVR was headed by a Director and staffed by 9 Rehabilitation Review Officers, 1 Disability Analyst, and 4 Clerks. Out of the 2,839 cases referred to OEVR in FY'07, 81% (2,292) proceeded to a "mandatory meeting" for a determination of suitability for vocational rehabilitation services. The remaining 19% exited the system for reasons that include the non-establishment of liability or the employee was not on compensation. Of those cases that received a "mandatory meeting," 31% (705) were referred to the insurer/self-insurer with a request to initiate vocational rehabilitation services by an OEVR certified provider. In FY'07, there was a 41% success ratio of injured workers who completed plans and returned to work.

Table 14: Utilization of Vocational Rehabilitation Services, FY'02 - FY'07

<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'07	2,839	2,292/46	705	428	176	41%
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 Workers' Compensation Trust Fund to finance the rehabilitation services. In fiscal year 2007, the Trust Fund paid \$30,627 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

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 696 preventive training programs, which have trained approximately a half-million 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 audiences 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'07, proposals could be submitted up to a maximum of \$25,000. During the fiscal year, 2,200 announcement letters were mailed to various industries throughout the state. As a result of these announcement letters and advertisements published in regional newspapers, the Office of Safety received 63 Grant Applications in fiscal year 2007.

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'07, the Office of Safety was able to fund a total of 43 grants, which resulted in the training of 23,537 employees (see Appendix L for a list of proposals recommended for funding in FY'08). During the fiscal year, over 95% of the participants rated the program they attended as "excellent" or "good."

Changes to the Grant Application Process

During the last three years, the Office of Safety reconfigured 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 the 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. In the near future, 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:

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

OFFICE OF INSURANCE

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.¹⁶ 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.¹⁷ 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'07, two (2) new licenses were issued to bring the total number of "parent-licensed" companies to 116, covering a total of 400 subsidiaries. Each self insurance license provides approval for a parent company and its subsidiaries to self insure. This amounts to approximately \$291,554,675 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).¹⁸

¹⁶ 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.

¹⁷ M.G.L. 452 C.M.R. 5:00.

¹⁸ 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'07, an estimated 4,227 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

In Massachusetts, employers with one or more employees are required to have a valid workers' compensation policy at all times.¹⁹ 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, and 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

¹⁹ A law passed in 2002 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.

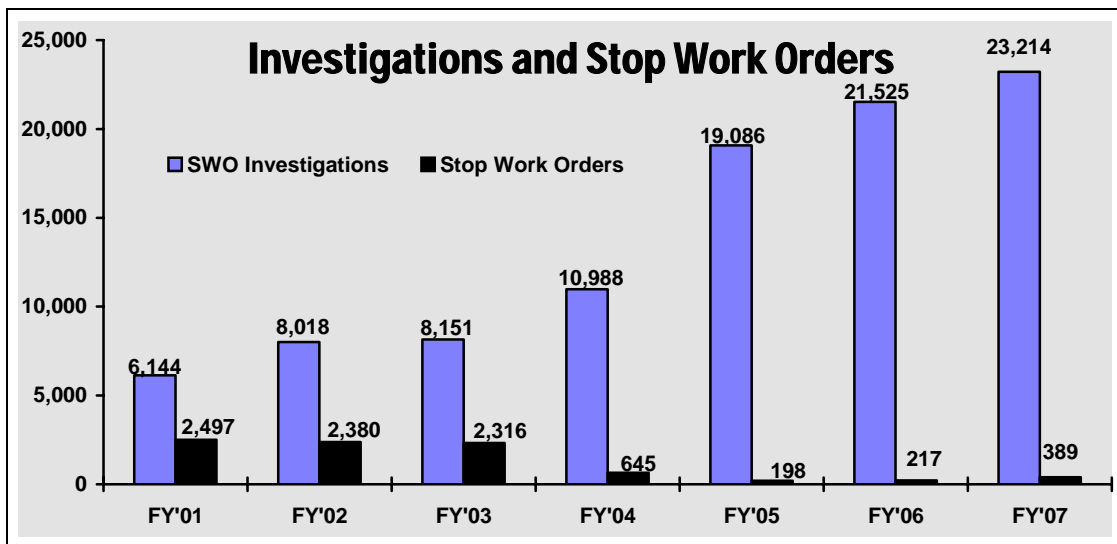
"On-Site" Investigations - Stop Work Orders

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.

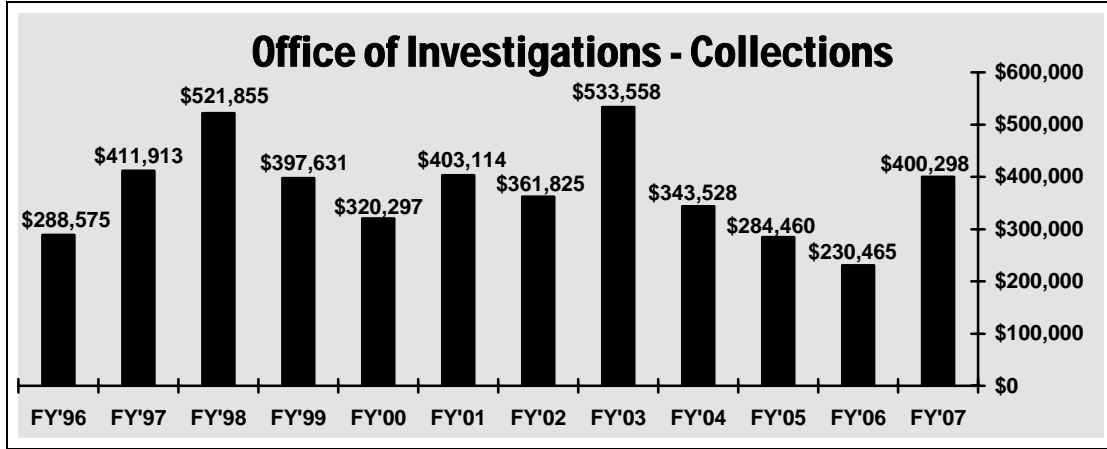
Figure 16: MA SWO's & Investigations, FY'01 - FY'07



Source: Office of Investigations

In fiscal year 2007, 389 stop work orders were issued as a result of 23,214 investigations conducted. Of the 389 stop work orders issued, 386 (96%) were issued to "small" companies (1-10 employees), 3 were issued to "medium" companies (11-75 employees) and no stop work orders were issued to "large" companies (76+ employees).

Figure 17: Office of Investigations - Collections, FY'96 - FY'07



Source: Office of Investigations

In fiscal year 2007, the Office of Investigations collected \$400,298 in fines from employers who violated the workers' compensation insurance mandate.²⁰ The total amount the Office of Investigations billed in fiscal year 2007 is \$394,250. 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.

Regional / Industry Sweeps

In fiscal year 2007, the Office of Investigations utilized both regional and industry sweeps as a tool to combat uninsured employers in Massachusetts. During mid-June of 2007, the DIA Investigation Unit traveled to Nantucket and performed 291 on-site visits to determine if employers were carrying workers' compensation insurance for their employees. Of the 291 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). Also during the fiscal year, the DIA Investigation Unit conducted regional sweeps in Berkshire County, performing 179 on-site visits and issuing 18 stop work orders (all 18 have since come into compliance as a result of the DIA's post investigation follow-up). The Office of Investigations has future plans to continue both regional and industry sweeps throughout the Commonwealth.

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

WORKERS' COMPENSATION TRUST FUND

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.²¹ In FY'07, \$6,831,832 was paid to uninsured claimants and 202 claims were filed. The DIA aggressively goes after uninsured employers to recoup monies paid out from the Trust Fund. During Fiscal Year 2007, the DIA collected \$1,167,465 in recovery efforts.

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.²² 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 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.

²¹ 452 C.M.R. 3.00

²² 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.

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 2007, 314 §37 claims were filed and settled. The total amount of §37 payments in FY'07 was \$26,575,359 (includes quarterly payments under §37.

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'07, 3 new cases were accepted for §30H benefits and the Trust Fund paid \$56,447 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'07, approximately \$365,199 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'07 totaled \$9,117,832 for the Private Trust Fund.

OFFICE OF HEALTH POLICY

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 2007, 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.

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 2007, 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.

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 2007.

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 and knee injuries 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 2007, the OHP focused on claims related to Treatment Guidelines #20 & #21 for back injuries. In 2007, 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 oversee data received from self-insurers, Third-Party Administrators (TPAs) and Bill Review companies from across the state.

The OHP Compensation Review 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 4-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.

OFFICE OF ASSESSMENTS & COMPLIANCE

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.²³ 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 1st 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.²⁴ 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 2007, 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.

²³ Regulated by M.G.L. c.152, §65(4).

²⁴ 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

Assessment Recovery Project		
<u>Fiscal Year</u>	<u>Amount Collected</u>	<u>Cumulative Amount</u>
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
Fiscal Year 2007	\$92,685*	\$9,574,384

* The amount collected in FY'07 represent amounts received solely as a result of the insurance assessment reviews performed by the CPA firms. From FY'07 forward, this table will contain only amounts collected as a result of such reviews. Any additional amounts collected by the Office of Assessments and Compliance will be noted in the accompanying narrative.

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. Because of the size and complexity of many of the insurance groups selected for evaluation during Phase II, the reviews have continued through FY'07. The DIA's clarification of the definition of standard premium has effectively decreased confusion in the insurance industry regarding assessment calculation, thus resulting in the increased accuracy of assessment payment by insurance companies on a quarterly basis.

In addition to the amount reflected in Table 15, above, the Office of Assessments and Compliance collected an additional \$4,045,201.87 from insurance companies during FY'07 by instituting improvements in the quarterly assessment collection process. The Office of Assessments and Compliance is committed to ensuring that all insurance companies remit the proper assessments on a quarterly basis and will continue its efforts in the coming fiscal year.

Assessment Audit - Phase III

In FY'08, Phase III of assessment reviews will be initiated. In Phase III, the focus will be on assessments calculated and remitted during a 3-year review period between January 1, 2004 and December 31, 2006. The project will begin with the selection of five insurers (and their subsidiaries) licensed to write workers' compensation insurance in Massachusetts. The project will be managed by a newly hired Assessment Manager that started in September of 2007.

DIA REGIONAL OFFICES

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 and hearing 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 Case Management System (CMS).

Cases are assigned to Administrative Judges by CMS 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 cost 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 ten 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
Henry Mastey, Manager

Lawrence

160 Winthrop Avenue
Lawrence, MA 01840
(978) 683-6420
www.mass.gov/dia/Lawrence1.htm
Marcos Devers, Manager

Springfield

436 Dwight Street, Room 105
Springfield, MA 01103
(413) 784-1133
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
Walter Weekes, Manager

SECTION

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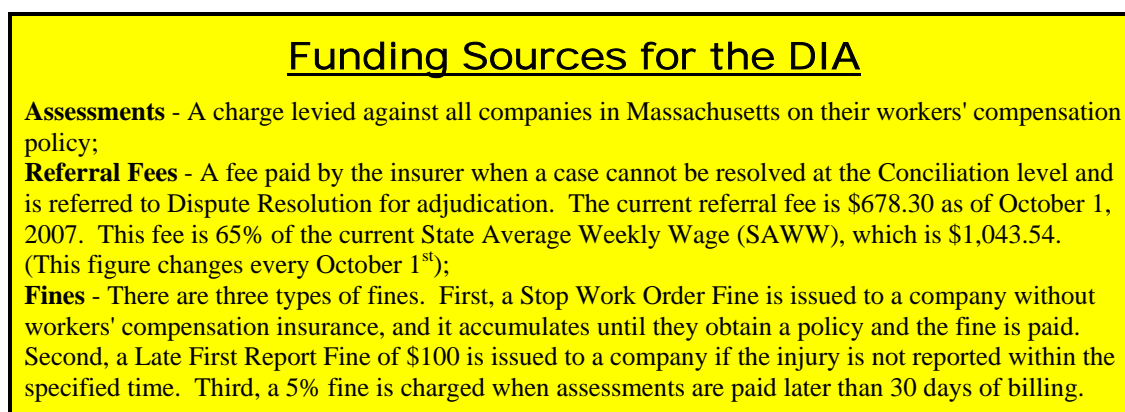
DIA FUNDING

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DIA FUNDING

To ensure that the Department of Industrial Accidents had adequate funding, the Legislature in 1985 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/

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.²⁵ The assessment rate for both private and public sector employers in FY'08 is 5.538% of standard premium. This represents a 32.1% increase from the FY'07 assessment rate of 4.192%.

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.

²⁵ For employers that are self insured or are members of self insured groups, an "imputed" premium is determined, whereby the WCRI 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 cannot seek reimbursement for benefits paid under sections 34B, 35C, 37, 30H, 26, and 37A. Separate opt out assessment rates are determined.

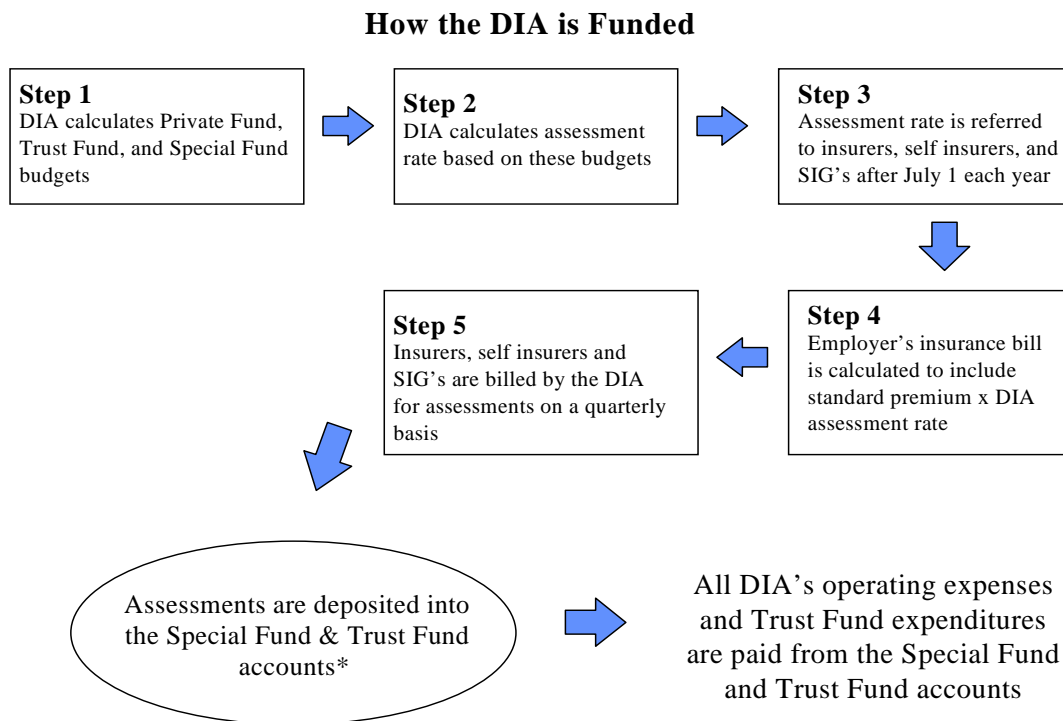
The Trust Fund - The Trust Fund was established so the DIA can make payments to uninsured injured employees and employees denied vocational rehabilitation services by their insurers. In addition, the Trust Fund must reimburse insurers for benefits for second and latent injuries, injuries involving veterans, and for specified cost of living adjustments.²⁶ 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 1st 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.

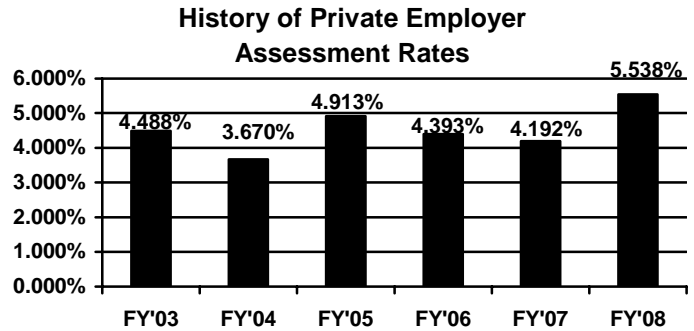
²⁶ M.G.L. c.152, §65(2).

PRIVATE & PUBLIC EMPLOYER ASSESSMENTS

On June 15, 2007, Deloitte Consulting released an analysis of the DIA's FY'08 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'08, beginning July 1, 2007. 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 **5.538%**

of standard premium, an increase of 32.1% from last year's assessment (4.192%). This increase in the assessment rate is primarily driven by the 16.9% average decrease in workers' compensation insurance rates approved by the Division of Insurance.

Figure 20: History of Private Employer Assessment Rates



Overview of Assessment Rate Calculations

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

1. Project the Fiscal Year 2008 Expenditures;
2. Project the Fiscal Year 2008 Income (excluding assessments);
3. Estimate Fiscal Year 2008 Balance Adjustments, if any;
4. Convert Above Items to Ratios by comparing them to the Assessment Base ('06 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 2008 PROJECTED EXPENDITURES: \$80.1M

The first step in the assessment process is the calculation of the expected FY'08 expenditures. Private employers are assessed for the sum of the Private Trust Fund budget and the Special Fund budgets.

<u>PRIVATE TRUST FUND BUDGET</u>	<u>Projected FY'08 Expenditures (06/07)</u>
Section 37 (2nd Injuries)	\$30,126,186
Uninsured Employers	\$ 8,807,185
Section 30H (Rehabilitation)	\$ 66,279
Section 35C (Latency)	\$ 402,125
Section 34B (COLA's)	\$15,946,099
Defense of the Fund	\$ 4,040,502
Total:	<u>\$59,388,376</u>

<u>SPECIAL FUND BUDGET</u>	<u>Projected FY'08 Expenditures (06/07)</u>
Total:	<u>\$20,735,488</u>

<u>PRIV. EMPLOY. EXPENDITURES</u>	<u>Projected FY'08 Expenditures (06/07)</u>
Total:	<u>\$80,123,864</u>

2. PROJECTED FISCAL YEAR 2008 INCOME: \$6.55M

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'08 Fines and Fees (Special Fund) = \$4,393,795
FY'08 Income Due to Reimbursements = \$1,305,537
Estimated Investment Income (FY'07) = \$ 850,907 (Private Fund: \$374,987/Special Fund: \$475,920)

Total Projected FY'08 Income: \$6,550,239

3. ADJUSTMENTS TO FUND BUDGETS: \$2.7M (Special Fund)/\$0.5M (Public Fund)

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'06 expenditures in a particular fund must be used to reduce amounts assessed for that fund in FY'08. The balances of both the Special Fund and Private Trust Fund at the end of FY'07 will have a surplus exceeding 35% of FY'06 disbursements. Therefore, the assessment was calculated with a \$3.2 million reduction to the Special Fund Budget, and no reduction to the Private Trust Fund Budget.

<i>SPECIAL FUND:</i>	<u>FY'07 Estimated Year End Balance</u>	<u>35% of FY'06 Expenditures</u>	<u>Amount of Reduction Required</u>
	\$10,663,748	\$7,983,206	\$2,680,542
<i>PRIVATE TRUST FUND:</i>	<u>FY'07 Estimated Year End Balance</u>	<u>35% of FY'06 Expenditures</u>	<u>Amount of Reduction Required</u>
	\$8,402,182	\$18,565,585	\$0
<i>PUBLIC FUND:</i>	<u>FY'07 Estimated Year End Balance</u>	<u>35% of FY'06 Expenditures</u>	<u>Amount of Reduction Required</u>
	\$775,984	\$262,767	\$513,217

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 2006. For the Private Fund, the assessment base is \$710.0M.

<i>Private Expenditure Ratio:</i>	11.286%	(\$80.1 million/\$710.0 million)
<i>Projected Income Ratio:</i>	0.923%	(\$ 6.55 million/\$710.0 million)
<i>Balance Adjustment Ratio:</i>	0.378%	(\$ 2.7 million/\$710.0 million)

5. CALCULATION OF THE ASSESSMENT RATIO: 9.985%

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.

Projected expenditures -	Projected income -	Balance adjustment -	Assessment Ratio
11.286%	0.923%	0.378%	9.985%

6. CALCULATION OF THE ASSESSMENT RATE: 5.54%

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 WCRIB). The 2008 assessment base factor is .555.

Assessment Ratio x	Assessment Base Factor =	Assessment Rate
9.985%	.555	5.54%

DIA OPERATING BUDGET

Legislative Appropriations, Fiscal Year 2008

The Department of Industrial Accidents initially requested a budget of \$20,733,538 for fiscal year 2008. In House 1, the Governor's recommendation for the DIA's budget was \$20,735,488 (\$1,950 less than the DIA's original request). The Massachusetts House of Representatives, Senate, and Conference Committee all approved appropriations totaling \$20,735,488 (the identical amount as proposed in the Governor's recommendation).

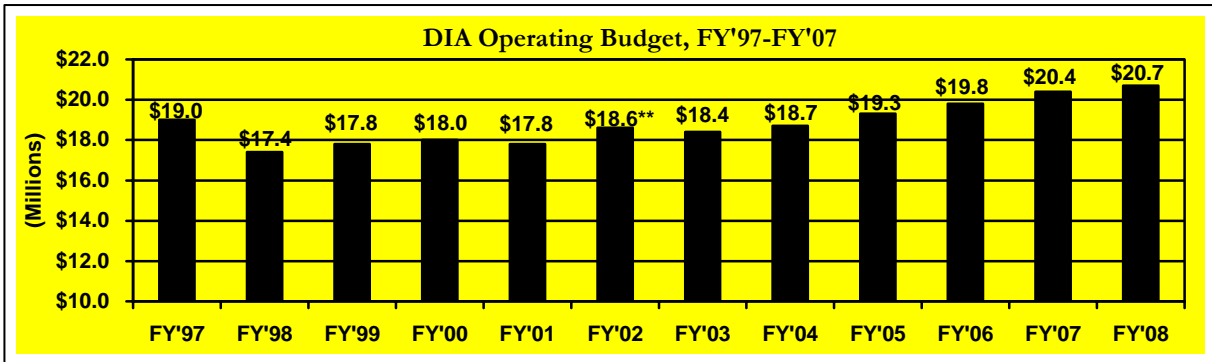
Table 16: Legislative Budget Process for DIA Line-Item, Fiscal Year 2007 - Fiscal Year 2008

Fiscal Year 2007 Budget Process		Fiscal Year 2008 Budget Process	
DIA Request	\$20,492,953	DIA Request	\$20,733,538
Governor's Rec.	\$20,406,316	Governor's Rec.	\$20,735,488*
Full House	\$20,406,316	Full House	\$20,735,488
Full Senate	\$20,406,316	Full Senate	\$20,735,488
Conference Committee	\$20,406,316	Conference Committee	\$20,735,488
Gen. Appropriations Act	\$20,406,316	Gen. Appropriations Act	\$20,735,488

*Endorsed by the Advisory Council's Budget Subcommittee on 4/11/07.

General Appropriations Act

On July 12, 2007, Governor Patrick signed the FY'08 General Appropriations Act, which allocated the DIA a \$20,735,488 operating budget. The FY'08 appropriation is equal to the Governor's Recommendation (House 1) which was endorsed by the Advisory Council's Budget Subcommittee in April of 2007. This appropriation represents a 1.6% 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.



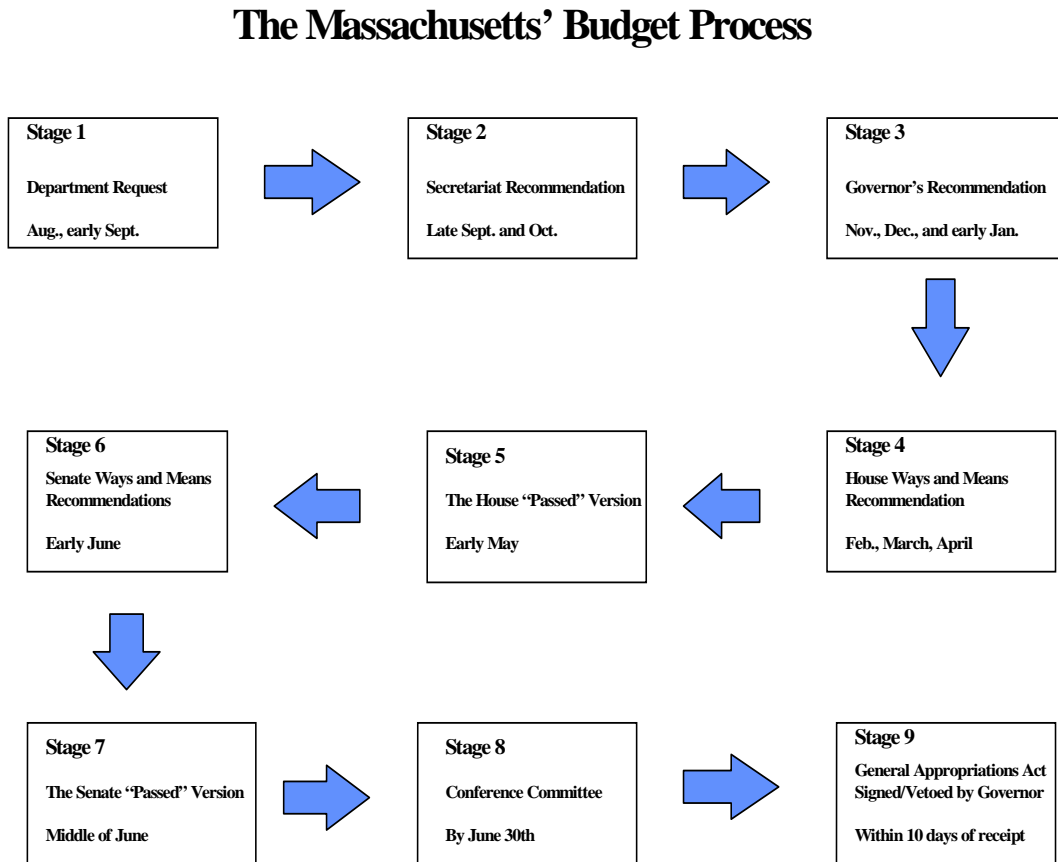
**Note: The FY'02 appropriation reflects the combination of the General Appropriation Act (\$17,270,401) and the Supplemental Budget figures (\$1,327,147).

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.²⁷

The following is a brief description of the process:

Figure 21: The Massachusetts' Budget Process



²⁷ 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 First 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 their 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

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INSURANCE COVERAGE

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MANDATORY INSURANCE COVERAGE

Every private sector employer in the Commonwealth is required to maintain workers' compensation insurance.²⁸ 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.²⁹

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).³⁰

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.³¹ If an employee is injured while working for a company without coverage, a claim may be filed with the DIA's Trust Fund.³²

Exemption of Corporate Officers

On July 25, 2002, a new law 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.³³ 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.

²⁸ 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.

²⁹ 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.

³⁰ For more information of the coverage of public employees see [Report to the Legislature on Public Employees](#), Massachusetts Workers' Compensation Advisory Council, 1989.

³¹ See section covering Office of Investigations.

³² See section covering Trust Fund.

³³ Form 153 - "Affidavit of Exemption for Certain Corporate Officers."

COMMERCIAL INSURANCE

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 (WCRIB) 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 WCRIB'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'07, the DOI approved a total of 14 new licenses to carriers to write workers' compensation insurance in Massachusetts. In addition, four existing licenses were amended to include workers' compensation. During the fiscal year there were eight companies that merged into other companies and gave up their license to write workers' compensation insurance.

In Massachusetts, workers' compensation insurance rates are determined through an administered pricing system.³⁴ Insurance rates are proposed by the Workers' Compensation Rating and Inspection Bureau of Massachusetts (WCRIB) on behalf of the insurance industry, and set by the Commissioner of Insurance. The WCRIB submits to the Commissioner a classification of risks and premiums, referred to as the rate filing,

³⁴ 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.

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.³⁵

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."³⁶

On Monday, May 14, 2007, Insurance Commissioner Nonnie S. Burnes issued a rate decision, which reduced average rates for workers' compensation insurance by 14.6% from 2006-2007 rate levels, resulting in a \$170 million savings in workers' compensation premiums for Massachusetts employers. 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, 2008. 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, 1987-2007

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
2006	No Change	\$79.56
2007	- 14.6%	\$67.94

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.³⁷ 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

³⁵ 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.

³⁶ M.G.L. c.152, §53A(2).

³⁷ M.G.L. c.152, §53A(9).

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.

As of September 1, 2007, approximately 41 insurers were offering deviations or scheduled credits to their customers in Massachusetts. 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 (WCRIB) 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."³⁸

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

³⁸ M.G.L. c.152, §53A.

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 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 WCRIB 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 WCRIB's Governing Committee (for those insured in the Voluntary Market) or the Residual Market Committee (for those insured in the Assigned Risk Pool). The WCRIB 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 the company's 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 WCRIB 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: WCRIB 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

PER CLAIM DEDUCTIBLE³⁹ <i>Effective September 1, 2005</i>	
Medical and Indemnity Deductible Amount	Premium Reduction Percentage
\$ 500	3.0%
\$1,000	4.2%
\$2,000	6.2%
\$2,500	7.1%
\$5,000	10.6%

Source: WCRIB

Table 20: Massachusetts Benefits Claim and Aggregate Deductible Program

MASSACHUSETTS BENEFITS CLAIM AND AGGREGATE DEDUCTIBLE PROGRAM⁴⁰ <i>Effective September 1, 2005</i>			
Estimated Annual Standard Premium	Claim Deductible Amount	Aggregate Deductible Amount	Premium Reduction Percentage
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: WCRIB

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.⁴¹ A basic premium is necessary to defray the expenses that do not vary with losses and to provide the insurance company with a

³⁹ Massachusetts Workers' Compensation and Employer's Liability Insurance Manual.

⁴⁰ Massachusetts Workers' Compensation and Employer's Liability Insurance Manual.

⁴¹ "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 \$75,000.⁴² 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.⁴³ 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.⁴⁴

⁴² Workers' Compensation: Exposures, Coverage, Claims, Levick, Dwight E. Standard Publishing Corp., page 11-4.

⁴³ "Risk Management-Life, Health, and Income Exposures," Life Insurance, Part 4: 406.

⁴⁴ "Thinking About the Work Comp Crisis," Merrit Risk Management Review, December 1991: 3.

ASSIGNED RISK POOL

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 (WCRIB), 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, 2007 is 14.5%.⁴⁵ During the last two years this percentage has trended downward from 18%. Today the residual market remains far below the 1992 policy year level of 64.7%.

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 decreased over the past two 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 the first quarter of 2007) residual market loss ratio for Policy Year 2006 is 62.0% with a resulting residual market burden of -1.10%.⁴⁶

⁴⁵ WCRIB Special Bulletin No. 10-07 (August 21, 2007).

⁴⁶ WCRIB Special Bulletin No. 11-07 (August 31, 2007).

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.⁴⁷

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

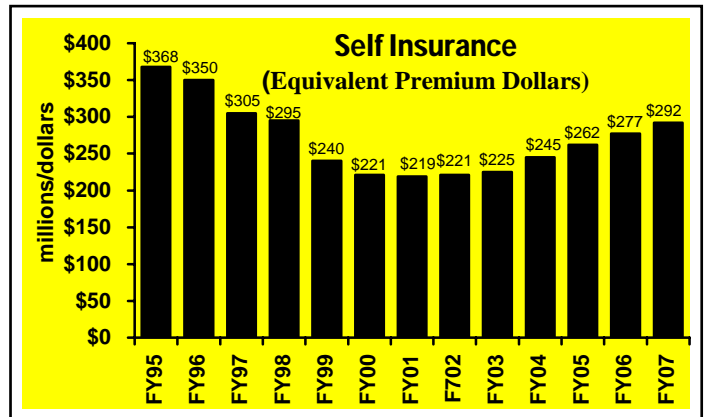


Table 21: Total Self-Insured Licenses in Massachusetts

	<u>New Licenses</u>	<u>Total Licenses</u>	<u>Companies Covered</u>
FY'07	2	116	400
FY'06	2	114	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

Source: DIA Office of Insurance

⁴⁷ 452 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.⁴⁸

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).⁴⁹ 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, 2007, Massachusetts had 25 SIGs with 5,086 members.

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

Membership in Workers' Compensation Self-Insurance Groups as of Jan. 1st		
<u>Year</u>	<u>Number of Groups</u>	<u>Number of Members</u>
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
2007	25	5,086

Source: Division of Insurance

⁴⁸ 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).

⁴⁹ 211 CMR 67.09.

INSURANCE FRAUD BUREAU

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.⁵⁰ The IFB was created in 1990 to investigate auto insurance fraud and expanded in 1991 to include workers' compensation fraud.⁵¹ 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 2006, each of these bureaus separately contributed a total of \$3,539,311 to fund the IFB. The 2006 operating expenses for the IFB totaled \$7,185,394, representing a \$916,966 increase (+14.6%) over 2005 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 2006, the IFB received 275 referrals regarding workers' compensation fraud. Workers' compensation fraud referrals only represent 7% of all IFB referrals. The vast majority of referrals (88%) received by IFB are for automobile insurance fraud (3,348 in calendar year 2006).

⁵⁰ 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.

⁵¹ M.G.L. St. 1990, c.338 as amended by St. 1991, c.398, §9

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 2006, a total of 95 "new" cases were assigned to investigators dealing with workers' compensation fraud. 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.

Indictments & Convictions

In 2006, there were 7 indictments involving workers' compensation fraud as a result of the work of the Insurance Fraud Bureau. Much like the cases referred to the Insurance Fraud Bureau, the vast majority of indictments are for cases involving automobile insurance fraud (253 indictments in 2006, 94% of the total indictments for all lines of insurance).

In calendar year 2006 there were 15 convictions for workers' compensation fraud and 37 convictions involving automobile insurance fraud.

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

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HEARING - MAY 15, 2007
- APPENDIX I:** WCAC TESTIMONY - DOI RATE HEARING - APRIL 5, 2007
- APPENDIX J:** GUIDELINES FOR REVIEWING THE QUALIFICATIONS OF JUDICIAL
CANDIDATES
- APPENDIX K:** WORKERS' COMPENSATION ORGANIZATIONS
- APPENDIX L:** OFFICE OF SAFETY PROPOSALS RECOMMENDED FOR FUNDING -
FY'08
- APPENDIX M:** BUDGET SUBSIDIARIES
- APPENDIX N:** COLLECTIONS AND EXPENDITURES REPORT - FY'07
- APPENDIX O:** WORKERS' COMPENSATION LEGISLATION, 2007-2008 SESSION

APPENDIX A

ADVISORY COUNCIL MEMBERS – FY'07

BUSINESS		LABOR
<p>EDMUND C. CORCORAN, JR. Raytheon, Director of Integrated Disability Programs 235 Wyman Street Waltham, MA 02451-1219 Tel: (781) 768-5115 FAX: (781) 768-5126</p> <p>JEANNE-MARIE BOYLAN Boston Sand and Gravel Company 100 North Washington Street, 2nd Floor Boston, MA 02114 Tel: (617) 227-9000 FAX: (617) 523-7947</p> <p>ANTONIO FRIAS S & F Concrete Contractors, Inc. 166 Central Street, P.O. Box 427 Hudson, MA 01749-0427 Tel: (978) 562-3495 FAX: (978) 562-9461</p> <p>JOHN REGAN Vice President for Government Affairs, AIM 222 Berkeley Street, P.O. Box 763 Boston, MA 02117-0763 Tel: (617)262-1180 FAX: (617) 536-6785</p> <p>JOHN D. BOYLE Boyle, Morrisey & Campo, P.C. 695 Atlantic Avenue Boston, MA 02111 Tel: (617) 451-2000 FAX: (617) 451-5775</p>		<p>MICKEY LONG AFL-CIO 193 Old Colony Avenue, P.O. Box E-1 Boston, MA 02127 Tel: (617) 269-0229 FAX: (617) 269-0567</p> <p>ROBERT BANKS 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>JOHN A. PULGINI Pulgini & Norton, LLP 10 Forbes Road West, Suite 240 Braintree, MA 02184 Tel: (781) 843-2200 FAX: (781) 843-4900</p>
EX-OFFICIO		EX-OFFICIO
<p>GEORGE NOEL Director, Department of Labor One Ashburton Place, Suite 2112 Boston, MA 02108 Tel: (617) 626-7100 FAX: (617) 727-9725</p>		<p>GREG BIALECKI Undersecretary, Department of Business Development One Ashburton Place, Suite 2101 Boston, MA 02108 Tel: (617) 727-8380 FAX: (617) 727-4426</p>
CLAIMANT'S BAR	INSURANCE	VOCATIONAL REHAB.
<p>KENNETH J. PARADIS, JR. Crowe, Paradis, & Albren, LLP 607 North Avenue, Suite 18 Wakefield, MA 01880 Tel: (781) 246-8975 FAX: (617) 246-9322</p>	<p>PETER A. COOK, SR. Cook & Co. Insurance Agency, Inc. 1025 Plain Street – P.O. Box 1068 Marshfield, MA 02050 Tel: (781) 837-7300 x 611 FAX: (781) 837-5668</p>	<p>JILL S. BROWN Jill Brown Case Management P.O. Box 1052 Acton, MA 01720 Tel: (978) 635-0652 FAX: (978) 263-6171</p>
STAFF		
<p>ANDREW S. BURTON, EXECUTIVE DIRECTOR EVELYN N. FLANAGAN, CHIEF RESEARCHER</p>		

APPENDIX B

Agenda of Advisory Council Meetings - FY'07

September 13, 2006

DIA Update

Action Items

- Minutes - June 14, 2006

Uninsured Employer Subcommittee

Executive Director Update

Miscellaneous

October 11, 2006

DIA Update

Action Items

- Minutes - September 13, 2006

DIA FY'07 Goals Presentation

Executive Director Update

Miscellaneous

November 13, 2006

DIA Update

Action Items

- Minutes - October 11, 2006

Changes & Accomplishments – Office of Safety

Young Worker Health and Safety in Massachusetts

Executive Director Update

Miscellaneous

December 13, 2006

DIA Update

Action Items

- Minutes - October 11, 2006
- Minutes - November 11, 2006

Fiscal Year 2006 – Concerns & Recommendations

Executive Director Update

Miscellaneous

January 10, 2007

DIA Update

Action Items

- Minutes - December 13, 2006

Data Mapping Technology Presentation

Advisory council Appointment Status

Executive Director Update

Miscellaneous

April 11, 2007

DIA Update

Action Items

DIA Security Breach - Unauthorized use of Claimant Data

Budge Subcommittee Update

Executive Director Update

Miscellaneous

May 4, 2007

DIA Update

Action Items

- Minutes - January 10, 2007

- Minutes - April 11, 2007

Workers' Compensation Legislation Discussion

Executive Director Update

Miscellaneous

June 13, 2007

DIA Update

Action Items

- Minutes - May 4, 2007

Issue Paper - Workers' Compensation Fraud

Scar-Based Disfigurement Study - Scope of Services

Executive Director Update

Miscellaneous

APPENDIX C

Joint Committee on Labor & Workforce Development - FY'07

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

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

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

Rep. David M. Torrissi (Chair)
State House - Room 39
Boston, MA 02133-1053
(617) 722-2014

Representative Colleen M. Garry
State House - Room 238
Boston, MA 02133-1053
(617) 722-2380

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

Representative John W. Scibak
State House - Room 39
Boston, MA 02133-1053
(617) 722-2220

Representative Sean Curran
State House - Room 473B
Boston, MA 02133-1053
(617) 722-2263

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 Thomas J. Calter
State House - Room 237
Boston, MA 02133-1053
(617) 722-2425

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

Representative Karyn E. Polito
State House - Room 167
Boston, MA 02133-1053
(617) 722-2230

Representative Martha M. Walz
State House - Room 443
Boston, MA 02133-1053
(617) 722-2460

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

APPENDIX D

Industrial Accident Nominating Panel

Paul V. Buckley, Commissioner (Chair)
Division of Industrial Accidents
600 Washington Street
Boston, MA 02111
Tel: 617-727-4900 x356
Email: pbuckley@dia.state.ma.us

Joseph Bonfiglio, Bus. Mgr. & Sec. Treasurer
Laborer's International Union - Local 151
298 Main Street
Cambridge, MA 02141
Tel: 617-876-8081
Email: joebonfiglio@hotmail.com

Suzanne Bump, Secretary
Executive Office of Labor & Workforce Dev.
1 Ashburton Place, Suite 2122
Boston, MA 02108
Tel: 617-626-7100
Email: suzanne.bump@state.ma.us

Dennis Hines
11 Black Pond Hill Road
Norwell, MA 02061
Tel: 781-659-7608
Email: dennis_hines@sshosp.org

Michael A. Torrisi
Torrisi & Torrisi, L.L.C.
555 Turnpike Street, Suite 44
North Andover, MA 01845
Tel: 978-683-4440
Email: torrisilaw@yahoo.com

Ben Clements, Gov. Chief Legal Counsel
State House, Room 271
Boston, MA 02133
Tel: 617-725-4030
Email: ben.clement@state.ma.us

Jeffrey E. Poindexter
Bulkley, Richardson and Gelinas
1500 Main Street - P.O. Box 15507-5507
Springfield, MA 01115
Tel: 413-781-2820
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Martine Carroll, Senior Judge
Division of Industrial Accidents
600 Washington Street
Boston, MA 02111
Tel: 617-727-4900 x340
Email: martinec@dia.state.ma.us

Stephen Marley
Director of Human Resources
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Cambridge, MA 02138
Tel: 617-384-5503
Email: steve_marley@harvard.edu

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389 Main Street, Suite 101
Malden, MA 02148
Tel: 781-324-8230
Email: bbower@massaflcio.org

Vincent M. Tentindo
C3 Shipway Place
Boston, MA 02129
Tel: 617-242-9600
Email: vmt@tkcklaw.com

George Ramirez, General Counsel
Housing & Economic Development
1 Ashburton Place, Suite 2101
Boston, MA 02108
Tel: 617-788-3610
Email: george.ramirez@state.ma.us

Donald F. Baldini
10 Hawthorne Street
Winchester, MA 01890
Tel: 617-574-5867
Email: donald.baldini@libertymutual.com

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)674-9200
Fax: (508)674-9201

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

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

Thomas J. Foley - District 7

27 Ridgewood Road
Worcester, MA 01606-2506
GC: (617)725-4015 x 7

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

Thomas T. Merrigan - District 8

23 Plum Tree Lane
Greenfield, MA 01301-9687
GC: (617)725-4016 x 8
Bus: (413)774-5300
Fax: (413)773-3388

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:

Diane Neelon, RN, BS, JD	<i>Executive Director</i>
Judith A. Atkinson, Esq.	<i>Counsel</i>
Hella Dalton	<i>Research Analyst</i>

All members can be reached c/o:

Department of Industrial Accidents
Health Care Services Board
600 Washington Street, 7th Floor
Boston, MA 02111
Tel: (617) 727-4900 x 310
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>	

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.	<VACANT>	<N/A>	
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>	
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 A-2
May 15, 2007

Good afternoon. My name is Andrew Burton and I serve as the Executive Director of the Massachusetts Workers' Compensation Advisory Council.

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 volunteer their time 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 sixteen years since the enactment of the workers' compensation reform act of 1991 and the Massachusetts Workers' Compensation System continues to benefit. Today, the Commonwealth's workforce is 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 costs to employers. However, as a labor/management coalition, the Advisory Council believes that to maintain the present vitality of the workers' compensation system, several bills should be passed.

First, the Advisory Council supports the passage of **Senate Bill 1066**, filed by Senator Jack Hart. 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. In fiscal year 2006 alone, the Trust Fund paid approximately \$6.6 million in workers' compensation benefits to uninsured claimants. According to a recent joint study by Harvard and UMass, up to \$91 million in premiums went uncollected for misclassified workers in Massachusetts between 2001 and 2003. 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 and properly classify their employees.

The Advisory Council also supports the passage of **House Bill 1777**, filed by Representative Antonio Cabral, and **Senate Bill 1060**, filed by Senator Jack Hart. These two bills would rightfully provide compensation for scar-based disfigurement appearing on any part of the body, subject to a \$15,000 maximum benefit. The eligibility criteria for this benefit was last modified by the 1991 Reform Act, which limited compensation for disfigurement to only the face, neck or hands. Later this year, the Advisory Council plans to conduct a cost analysis study to determine an appropriate maximum benefit level for these traumatic, and at times, horrific injuries.

The Advisory Council has also voiced support for raising the **maximum burial allowance**. The current burial allowance of \$4,000 has not been increased in sixteen years and appears to be well below the national average. In 2004, the National Funeral Directors Association reported that the median funeral cost in Massachusetts was nearly six thousand dollars. This figure does not include cemetery, monument or marker costs or miscellaneous charges for flowers and obituaries. 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. In this regard, the Council is recommending that the legislature draft a stand-alone bill that increases the maximum burial allowance from \$4,000 to eight times the State Average Weekly Wage (8 x SAWW = \$8,003.44).

Finally, the Advisory Council supports **Senate Bill 1111** filed by Senator Susan Tucker. This new legislation would significantly increase the severity of criminal penalties for employers who fail to provide mandatory workers' compensation insurance for their employees. On criminal convictions, this bill would allow a judge to impose sentencing for up to 5 years in state prison and/or fines up to \$10,000. Established in 1987, the present fine structure is outdated and insufficient, capping criminal penalties at \$1,500 or up to one year in prison. Council Members further recommend that the Legislature consider amending this bill with a penalty provision that subjects repeat offenders to both minimum mandatory fines and imprisonment. In Massachusetts, criminal prosecutions against uninsured employers are reserved for the most extreme and flagrant cases. The Advisory Council believes this legislation sends a strong message to uninsured businesses in the Commonwealth that workers' compensation employer fraud is a serious violation of the law and will be met with serious consequences.

Throughout the year, the Advisory Council will continue to review workers' compensation legislation to ensure that any changes to the statute will build upon the successful aspects of the system, benefiting both injured workers and employers. Should you have any questions, members of the Advisory Council and staff are available as resource to meet with any Committee Members to discuss the workers' compensation system. On behalf of the Advisory Council, I would like to thank the Joint Committee on Labor & Workforce Development for holding this hearing and allowing us the opportunity to share our recommendations.

Testimony:
Workers' Compensation Advisory Council

Division of Insurance - Rate Hearing
April 5, 2007

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. R2007-01

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)].

Historically, the Advisory Council has contracted with a consultant to perform 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. Presently, the Advisory Council has been unable to retain an actuarial firm to conduct such an analysis. As a result, the Council will carefully listen to the issues presented at today's hearing and will determine at a later date the extent of our involvement in the rate setting process. If there is any way we can be of assistance to the Commissioner of Insurance in resolving any issues pertaining to the filing, we respectfully request that you contact us.

The possibility for a double digit decrease as proposed by the WCRB is great news for both business and labor. The savings to employers from reduced insurance costs can be reinvested back into the workforce to enhance safety training and employee benefits.

On behalf of the Advisory Council, I 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 39, 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

One Ashburton Place, Suite 2112, Boston, MA 02108

Phone: 617-626-7100 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

19 Staniford Street, 2nd Floor, Boston, MA 02114

Phone: 617-626-6975 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 2112, Boston, MA 02108

Phone: 617-626-7100 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)

27 Wormwood Street, Boston, MA 02210-1616

Phone: 617-204-3600 / 1-800-245-6543 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: 617-788-3610 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, 5th 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, 5th 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)

901 Peninsula Corporate Circle, Boca Raton, FL 38487

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: 617-727-3074

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

101 Arch Street, Suite 1741, Boston, MA 02109

Phone: 617-367-9667

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

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

167 Washington Street, Norwell, MA 02161

Phone: 781-982-8899

E-Mail: info@massortho.org

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

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

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

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 02110-1131

Phone: 617-439-0439 (1-800-32FRAUD) Web Page: <http://www.ifb.org>

E-Mail: 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

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, 4th 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.

APPENDIX L

Office of Safety Proposals Recommended for Funding - FY 2008

RECOMMENDED FOR FUNDING

1. Justice Resource Institute, Inc.
545 Boylston Street, Suite F17
Boston, MA 01226
617-450-0500
Title: Preventing Restraint-Related Injuries at Justice Resource Institute
Category of Applicant: Non-Profit Organization
Geographic Target: Statewide
Program Administrator: Kate McDermott
Total Funds Requested: \$25,000.00 **Approved:** \$25,000.00 **Score:** 115.0

2. The Arc of the South Shore
371 River Street
North Weymouth, MA 02191
781-335-3023
Title: Train the Trainer
Category of Applicant: Private Employer/Non-Profit
Geographic Target: South Shore
Program Administrator: Debra Santon
Total Funds Requested: \$2,626.85 **Approved:** \$2,626.85 **Score:** 113.5

3. The Arc of Middlesex
20 Gould Street
Reading, MA 01867
781-942-4888
Title: Safety Training for Employees Supporting People with Disabilities
Category of Applicant: Non-Profit
Geographic Target: North Shore/Metro Boston
Program Administrator: Susan Ring Brown
Total Funds Requested: \$12,090.00 **Approved:** \$12,090.00 **Score:** 113.5

4. Feeney Brothers Excavation Corp.
15 Bay Street
Dorchester, MA 02125
617-287-1004
Title: Preventing OSHA Violations and Work Related Injuries
Category of Applicant: Private Employer
Geographic Target: Metro Boston
Program Administrator: Gerard Keane
Total Funds Requested: \$25,000.00 **Approved:** \$25,000.00 **Score:** 110.0

5. OMG, Inc.
153 Bowles Road
Agawam, MA 01001
413-789-0252
Title: 10-Hour OSHA General Industry Safety Certificate and Awareness Training
Category of Applicant: Private Employer
Geographic Target: Western Massachusetts
Program Administrator: Matt Fuller
Total Funds Requested: \$13,107.50 **Approved:** \$13,107.50 **Score:** 107.0

6. R.H. White Construction
41 Central Street
Auburn, MA 01501
508-832-3295
Title: Preventing Accidents and Increasing Safety Awareness at RHW Jobsites
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: Heather White
Total Funds Requested: \$11,895.00 **Approved:** \$11,895.73 **Score:** 105.75

7. Five Star Quality Care (EORM)
400 Centre Street
Newton, MA 02458
617-796-8270
Title: Ergonomic Training and Education Program
Category of Applicant: Private Employer
Geographic Target: Boston
Program Administrator: Christine Fenderson
Total Funds Requested: \$15,702.00 **Approved:** \$15,702.00 **Score:** 105.0

8. Worcester Joint Apprenticeship Training Committee (JATC)
51 Union Street
Worcester, MA 01608
508-753-8635
Title: Safe Work Practices of Electricians
Category of Applicant: Labor Organizations/Federations
Geographic Target: Worcester
Program Administrator: Dave Delagorgendiere
Total Funds Requested: \$18,794.84 **Approved:** \$16,543.50 **Score:** 104.5

9. Clariant Corporation (EORM)
85 Industrial Drive
Holden, MA 01520
800-225-7490
Title: Ergonomics Training and Education Program
Category of Applicant: Private Employer
Geographic Target: Worcester
Program Administrator: Ted Desilets
Total Funds Requested: \$9,885.00 **Approved:** \$9,884.50 **Score:** 101.5

10. City of New Bedford
133 William Street
New Bedford, MA 02740
508-979-1410
Title: City of New Bedford Injury Prevention Project
Category of Applicant: Public Employer
Geographic Target: South Shore/South Coast
Program Administrator: Carl Alves
Total Funds Requested: \$12,599.85 **Approved:** \$10,191.75 **Score:** 101.25
11. Hyaluron, Inc.
20 Blanchard Road
Burlington, MA 01803
781-270-7900
Title: Hyaluron Safety Training Program
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: Rebecca Butler
Total Funds Requested: \$21,988.00 **Approved:** \$21,988.00 **Score:** 101.25
12. Rule Industries, Inc.
1 Kondelin Road
Gloucester, MA 01930
978-281-0440
Title: Occupational Safety & Health Education and Training Program
Safety in the Workplace through Ergonomics, CPR and First Aid
Category of Applicant: Private Employer
Geographic Target: North Shore
Program Administrator: Kim Pelletier
Total Funds Requested: \$16,038.50 **Approved:** \$16,038.50 **Score:** 101.0
13. Boston Parks and Recreation
Park Ranger Division
1010 Massachusetts Avenue
Boston, MA 02118
617-635-7383
Title: Boston Park Rangers Safety Training Program
Category of Applicant: Public Employer
Geographic Target: Metro Boston
Program Administrator: Gene Survillo
Total Funds Requested: \$24,727.70 **Approved:** \$24,727.70 **Score:** 100.75
14. City of Lawrence
200 Common Street
Lawrence, MA 01840
978-794-1344
Title: Occupational Safety and Health Education and Training Program
Category of Applicant: Public Employer
Geographic Target: North Shore
Program Administrator: Judith Perkins
Total Funds Requested: \$13,562.25 **Approved:** \$11,957.25 **Score:** 100.5

15. Mass Pile Drivers
22 Drydock Avenue, Suite 304
Boston, MA 02210
617-443-1988
Title: Safety & Health in Construction for Pile Drives
Category of Applicant: Trade Association
Geographic Target: Statewide
Program Administrator: Dan Kuhs
Total Funds Requested: \$15,531.00 **Approved:** \$15,087.00 **Score:** 100.0
16. 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: Linda Cocino
Total Funds Requested: \$24,605.00 **Approved:** \$24,605.00 **Score:** 99.25
17. Western MassCOSH
640 Page Blvd., Suite 104
Springfield, MA 01104
413-731-0760
Title: A Training Program to protect the Health and Safety of Employees of the
Town of Belchertown
Category of Applicant: Non-Profit Organization
Geographic Target: Springfield
Program Administrator: Mike Florio
Total Funds Requested: \$1,332.50 **Approved:** \$1,332.50 **Score:** 98.25
18. Analog Devices
1 Technology Way
Norwood, MA 02062
781-461-3444
Title: Ergonomic Training and Education Program
Category of Applicant: Private Employer
Geographic Target: Boston
Program Administrator: Bernadette S. Heath
Total Funds Requested: \$20,223.00 **Approved:** \$20,223.00 **Score:** 97.0
19. Irwin Industrial Tool DBA Lenox
301 Chestnut Street
East Longmeadow, MA 02108
413-526-5855
Title: Occupational Safety and Health Education and Training Program
Safety in the Workplace through Ergonomics
Category of Applicant: Private Employer
Geographic Target: Western Massachusetts
Program Administrator: Tim O'Brien
Total Funds Requested: \$24,950.00 **Approved:** \$24,950.80 **Score:** 96.25

20. Laboratory Safety Institute
192 Worcester Road
Natick, MA 01760
508-647-1900
Title: Safety in School Science, Art, Vocational Classrooms & Laboratories
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: Christina Dillard
Total Funds Requested: \$24,897.00 **Approved:** \$24,690.00 **Score:** 95.25
21. The Construction Institute
256 Freeport Street
Boston, MA 02122
617-436-4159
Title: OSHA Safety and Health Education Program for the Construction Industry
Category of Applicant: Non-profit/Joint Labor/Management Committee
Geographic Target: Statewide
Program Administrator: Mary Vogel
Total Funds Requested: \$7,950.00 **Approved:** \$7,954.50 **Score:** 95.25
22. Caritas Good Samaritan Medical Center (Safe Patient Moves)
235 North Pearl Street
Brockton, MA 01915
508-427-3753
Title: Occupational Safety and Health Education and Training Program
Category of Applicant: Public Employer
Geographic Target: Statewide
Program Administrator: Sue Higgins
Total Funds Requested: \$16,171.00 **Approved:** \$16,170.50 **Score:** 94.75
23. Springfield Joint Apprenticeship Training Committee (JATC)
187 Industry Avenue
Springfield, MA 01104
413-737-2253
Title: Safe Work Practices for Electricians
Category of Applicant: Labor Organization / Federation
Geographic Target: Springfield
Program Administrator: Gary Courtney
Total Funds Requested: \$22,374.75 **Approved:** \$22,374.75 **Score:** 93.25
24. Hasbro North American
443 Shaker Road
East Longmeadow, MA 01028
413-526-2000
Title: Injury Prevention through Ergonomic Training for the Aging Workforce
Category of Applicant: Private Employer
Geographic Target: Western Massachusetts
Program Administrator: Elaine Eldridge
Total Funds Requested: \$24,652.80 **Approved:** \$24,652.80 **Score:** 93.0

25. Kids Terrain, Inc.
34 Salem Street
P.O. Box 560
Wilmington, MA 01887
978-988-8832
Title: Occupational Safety & Health Education and Training Program
Category of Applicant: Private Employer
Geographic Target: North Shore / Metro Boston
Program Administrator: Rena Hannaford
Total Funds Requested: \$23,655.00 **Approved:** \$23,655.00 **Score:** 92.75
26. Massachusetts College of Liberal Arts (MCLA)
375 Church Street
North Adams, MA 01247
413-662-5106
Title: MCLA Facility Management Safety Training Program
Category of Applicant: Public Employer
Geographic Target: Western Massachusetts
Program Administrator: George Galli
Total Funds Requested: \$21,616.00 **Approved:** \$21,616.00 **Score:** 91.25
27. Boston Carpenters Apprenticeship
385 Market Street
Brighton, MA 02135
617-782-4314
Title: Safety in Construction Training
Category of Applicant: Trade Association
Geographic Target: Statewide
Program Administrator: Ben Tilton
Total Funds Requested: \$24,978.25 **Approved:** \$24,978.25 **Score:** 89.78
28. Northeast MA Carpenters A&T
350 Fordham Road, Suite 201
Wilmington, MA 01887
978-752-1197
Title: Safety in Construction Training
Category of Applicant: Trade Association / Joint Labor/Management Committee
Geographic Target: Statewide
Program Administrator: Jeff Marcoux
Total Funds Requested: \$24,990.70 **Approved:** \$24,990.70 **Score:** 89.75
29. Mass Compliance, L.L.C.
P.O. Box 609
West Falmouth, MA 02574
978-857-9552
Title: Occupational Safety & Health Training and Education Program
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: Beth Comeau-DiPietro
Total Funds Requested: \$24,920.83 **Approved:** \$24,920.83 **Score:** 89.0

30. Southeastern MA Carpenters
21 Mazzeo Drive, Suite 201
Randolph, MA 02368
781-963-0200
Title: Safety in Construction Training
Category of Applicant: Trade Association / Joint Labor/Management Committee
Geographic Target: Statewide
Program Administrator: Richard Anderson
Total Funds Requested: \$24,954.50 **Approved:** \$24,954.20 **Score:** 88.75
31. Quadrant Health Strategies, Inc.
27A Centennial Drive
Peabody, MA 01960
978-532-2428
Title: Occupational Safety & Health Education Training Program
Safety in the Workplace through Ergonomics
Category of Applicant: Non-Profit Organization
Geographic Target: South Shore
Program Administrator: Mary Riley
Total Funds Requested: \$24,034.88 **Approved:** \$24,034.88 **Score:** 88.75
32. Advanced Therapeutic Resources, Inc.,
100 Main Street
Amesbury, MA 01913
978-388-6775
Title: Ergonomics Intervention Training
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: Trish Going
Total Funds Requested: \$23,914.50 **Approved:** \$23,914.50 **Score:** 88.75
33. Boston Scientific
1 Boston Scientific Way
Natick, MA 01760
508-652-5656
Title: Creating a Safe Workplace through Ergonomic Awareness and Material
Handling Training at Boston Scientific
Category of Applicant: Non-Profit
Geographic Target: Statewide
Program Administrator: Karen Nielson
Total Funds Requested: \$24,075.00 **Approved:** \$24,075.00 **Score:** 88.0
34. Greater Lawrence Technical School
57 River Road
Andover, MA 01810
978-686-0194
Title: Safety First for Maintenance Employees at GLTS
Category of Applicant: Public Employer
Geographic Target: North Shore
Program Administrator: Barbara Parente/Rob Charest
Total Funds Requested: \$11,309.00 **Approved:** \$8,553.05 **Score:** 86.625

35. Mabbett & Associates
5 Alfred Circle
Bedford, MA 01730
781-275-6050
Title: Hazwopper Health and Safety Training
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: Thomas Cronin
Total Funds Requested: \$24,957.75 **Approved:** \$24,957.75 **Score:** 85.75
36. Bormann Brothers.
30 Lamar Park Drive
Pepperell, MA 01463
978-433-8661
Title: OSHA 10 Certification Training
Category of Applicant: Private Employer
Geographic Target: Central Massachusetts
Program Administrator: Shirley Dupras
Total Funds Requested: \$6,687.50 **Approved:** \$3,370.50 **Score:** 84.0
37. City of Westfield
59 Court Street
Westfield, MA 01085
413-572-6200
Title: Occupational Safety and Health Education and Training Program
Category of Applicant: Public Employer
Geographic Target: Western Massachusetts
Program Administrator: Hilda Colon
Total Funds Requested: \$15,872.50 **Approved:** \$ 15,872.50 **Score:** 84.0
38. Odwalla
60 Olympia Avenue
Woburn, MA 01801
781-376-0547
Title: Preventing all Work Related Injuries from Slips and Falls to Educating Employees on
Stretching and Hazardous Conditions
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: Sam Kenton
Total Funds Requested: \$6,608.00 **Approved:** \$6,608.00 **Score:** 83.25
39. Axcelis Technologies
108 Cherry Hill Drive
Beverly, MA 01915
978-787-4000
Title: Preventing Injuries through Behavior Safety Training at Axcelis Technologies
Category of Applicant: Public Employer
Geographic Target: Lawrence
Program Administrator: Jennifer Chittick
Total Funds Requested: \$24,075.00 **Approved:** \$24,075.00 **Score:** 83.0

40. DCU Center
50 Foster Street
Worcester, MA 01608
508-929-0114
Title: Event Safety Training
Category of Applicant: Public Employer
Geographic Target: Boston/Worcester
Program Administrator: Stacey Reidy
Total Funds Requested: \$16,563.60 **Approved:** \$16,563.60 **Score:** 81.5
41. Rohm and Haas Electronic Materials
455 Forest Street
Marlborough, MA 02492
508-229-7304
Title: Advanced Ergonomics for Production
Category of Applicant: Public Employer
Geographic Target: Worcester
Program Administrator: Michael Lombardi
Total Funds Requested: \$24,075.00 **Approved:** \$24,075.00 **Score:** 79.25
42. American Red Cross
180 Rustcraft Road, Suite 115
Dedham, MA 02029
800-462-9400
Title: Health & Safety Needs of Various on-site Donor Locations
Category of Applicant: Non-profit Organization
Geographic Target: Statewide
Program Administrator: Debra Giguere
Total Funds Requested: \$24,797.25 **Approved:** \$24,797.25 **Score:** 78.25
43. Medical Training Associates
3 Worcester Place
P.O. Box 2353
Rockport, MA 01966
800-822-0550
Title: Occupational Safety & Health Education and Training Program
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: Craig Morrill
Total Funds Requested: \$23,962.50 **Approved:** \$23,962.50 **Score:** 73.75

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 2007

<i>SPECIAL FUND</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>	<i>FY'03</i>
<u>COLLECTIONS</u>					
INTEREST	785,884	670,515	350,529	194,200	209,426
ASSESSMENT	15,301,449	18,005,869	16,404,375	12,805,486	23,213,608
LESS RET. CHECKS	0	(10,806)	0	0	0
LESS REFUNDS	(457)	0	(8,658)	0	(20,171)
SUB-TOTAL	15,300,992	17,995,063	16,395,717	12,805,486	23,193,437
FILING FEES	4,362,429	4,162,760	4,336,826	4,166,153	5,264,175
COLLECTION FEE	(15,534)	(17,889)	(36,577)	(32,357)	(21,944)
LESS RET. CHECKS	(10,536)	(4,497)	(6,908)	(3,140)	(6,610)
LESS REFUNDS	(3,094)	(7,129)	(7,119)	(4,837)	(7,480)
SUB-TOTAL	4,333,265	4,133,245	4,286,222	4,125,819	5,228,141
1ST REPORT FINES	206,904	198,008	315,125	241,890	179,750
LESS COLLECTION FEE	(7,368)	(11,077)	(10,318)	(4,642)	(5,798)
LESS RET. CHECKS	(2,700)	0	(2,100)	0	0
LESS REFUNDS	(700)	0	0	(100)	(200)
SUB-TOTAL	196,136	186,931	302,707	237,148	173,752
STOP WORK ORDERS	391,328	250,299	303,030	394,207	637,426
LESS REFUNDS	0	(3,537)	0	(600)	(1,750)
EDS FEE	(71)	(105)	0	0	0
LESS BAD CHECKS	(300)	0	(1,300)	(10,638)	(29,962)
COLLECTION FEE	(1,091)	0	(17,270)	(39,441)	(72,156)
SUB-TOTAL	389,867	246,657	284,460	343,528	533,558
LATE ASSESS. FINES	20,400	28,050	14,074	20,428	19,574
SEC. 7 & 14 FINES	0	0	2,000	6,500	5,700
MISCELLANEOUS	37,044	32,945	37,823	21,685	43,800
SUB-TOTAL	57,444	60,995	53,897	48,613	69,074
TOTAL COLLECTIONS	21,063,588	23,293,406	21,673,532	17,754,794	29,407,388
BALANCE BRGT FWD	9,201,123	9,148,914	10,090,768	14,728,736	7,638,265
TOTAL	30,264,710	32,442,320	31,764,300	32,483,530	37,045,653
LESS EXPENDITURES	(24,630,590)	(23,250,818)	(22,615,386)	(22,392,762)	(22,316,917)
ADJUSTMENT		9,621			
BALANCE	5,634,121	9,201,123	9,148,914	10,090,768	14,728,736
<u>EXPENDITURES</u>					
ORACLE START-UP	0	0	0	1,227,305	936,853
TOTAL COMPUTER	1,020,176	438,890	0	1,227,305	936,853
<u>REPAYMENT</u>					
REPAYMENT - SALARIES	13,698,054	13,535,090	13,552,369	13,148,258	13,788,158
FRINGE BENEFITS	4,227,282	3,614,974	3,606,371	2,989,091	2,969,507
INDIRECT COSTS	255,506	230,155	232,262	223,937	405,376
NON-PERSONNEL COSTS	5,418,795	5,428,939	5,200,563	4,772,185	4,171,404
OTHER INDIRECT COSTS	9,534	0			
IP INDIRECT-EXPENSE	1,243	0	23,821	31,986	45,619
COMPROLLER ADJUSTMENT	0	2,770			
TOTAL EXPENDITURES	24,630,590	23,250,818	22,615,386	21,165,457	21,380,064

COLLECTIONS AND EXPENDITURES REPORT - FISCAL YEAR 2007

<i>PUBLIC TRUST</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>	<i>FY'03</i>
<u>COLLECTIONS</u>					
INTEREST	9,718	7,324	3,604	1,691	2,924
ASSESSMENTS	39,415	62,936	173,786	1,078,719	2,094,687
TOTAL ASSESSMENTS	39,415	62,936	173,786	1,078,719	2,094,687
TOTAL COLLECTIONS	49,133	70,260	177,390	1,080,410	2,097,611
BALANCE BRGT FWD	750,763	680,503	503,112	13,010	37,945
TOTAL	799,896	750,763	680,502	1,093,420	2,135,556
LESS EXPENDITURES	0	0	0	(590,308)	(2,122,546)
BALANCE	799,896	750,763	680,502	503,112	13,010
<u>EXPENDITURES</u>					
RR COLAS	0	0	0	584,916	2,106,371
RR SEC. 37	0	0	0	5,392	16,175
TOTAL EXPENDITURES	0	0	0	590,308	2,122,546

<i>PRIVATE TRUST</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>	<i>FY'03</i>
<u>COLLECTIONS</u>					
INTEREST	308,118	232,217	126,512	107,041	266,311
ASSESSMENTS	53,365,665	46,686,859	50,919,285	41,932,779	41,155,377
LESS RET. CHECKS	(2,500)	(2,584)	0	0	0
LESS REFUNDS	(196)	0	(26,906)	0	(45,402)
SUB-TOTAL	53,362,969	46,684,275	50,892,379	41,932,779	41,109,975
REIMBURSEMENTS	1,205,800	1,444,681	885,811	639,484	698,536
LESS COLLECTION FEE	0	0			(220)
RET. CHECK	(28,053)	(1,161)	(2,225)	(11,650)	(1,000)
REFUNDS	(10,282)	0	0	0	(15,000)
SUB-TOTAL	1,167,465	1,443,520	883,586	627,834	682,316
SEC. 30 H	3,393	728	0	39,322	3,630
TOTAL COLLECTIONS	54,841,945	48,360,740	51,902,477	42,706,976	42,062,232
BALANCE BRGT FWD	8,934,528	13,618,318	11,685,006	16,304,121	22,394,085
TOTAL	63,776,473	61,979,058	63,587,483	59,011,097	64,456,317
LESS EXPENDITURES	(48,493,764)	(53,044,529)	(49,969,164)	(47,324,567)	(48,152,196)
ADJUSTMENT		1,500			
BALANCE	15,282,709	8,936,029	13,618,319	11,686,530	16,304,121

COLLECTION AND EXPENDITURE REPORT - FISCAL YEAR 2007

<i>PRIVATE TRUST</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>	<i>FY'03</i>
<u>EXPENDITURES</u>					
RR SEC. 34	1,248,883	1,183,723	1,078,481	880,289	696,301
RR SEC. 35	474,278	465,122	301,736	235,072	243,633
RR LUMP SUM	1,242,755	1,635,402	1,651,369	877,951	749,968
RR SEC. 36	176,065	119,966	247,314	363,636	184,359
RR SEC. 31	78,508	91,434	100,386	106,257	69,226
RR SEC. 34, PERM. TOTAL	356,338	306,009	290,558	287,762	311,716
RR COLA ADJ	275,751	154,612	152,639	149,555	175,618
RR EE MEDICAL	75,111	98,387	104,327	63,848	38,453
RR EE TRAVEL	6,045	3,500	3,920	673	84
RR EE MISC. EXPENSE	0	637	0	0	550
RR BURIAL BENEFITS	4,575	0	0	0	1,969
RR LEGAL FEES	606,698	643,260	471,698	310,903	296,840
RR VOC. REHAB SERVICES	9,956	6,236	1,400	2,149	6,927
RR REHAB. SERV. TRAVEL	0	0	0	26	0
RR LABOR MARKET STUDY	0	0	0	0	7,000
RR REHAB (PRIOR YEAR)	63	397	1,768	0	406
RR MEDICAL	2,272,265	1,941,114	1,328,010	1,097,087	994,132
SUB-TOTAL RR	6,827,291	6,649,799	5,733,606	4,375,208	3,777,182
MM TUITION	4,541	21,862	0	0	2,085
TOTAL CLAIMANTS	6,831,832	6,671,661	5,733,606	4,375,208	3,779,267
<u>INSURERS - EXP.</u>					
RR COLAS	8,032,750	21,914,829	14,948,170	18,110,397	17,809,263
RR SEC. 19 COLA LUMP SUM	1,085,082	1,452,130	1,094,044	1,111,415	1,021,639
RR LATENCY SEC. 35C	388,100	280,751	293,542	899,231	1,377,046
RR LEGAL FEE SEC. 35	0	0		141,588	266,943
RR SEC. 37	19,389,653	7,543,763	19,836,350	19,733,766	19,863,605
RR SEC. 37 QUARTERLY	8,537,194	10,996,194	5,421,404		
RR SEC. 37 INTEREST	198,285	0		0	0
TOTAL PAY TO INSURERS	37,631,064	42,187,667	41,593,510	39,996,397	40,338,496
TOTAL LEGAL EXP.	44,462,896	48,859,328	47,327,116	44,371,605	44,117,763
<u>OEVR - EXPENDITURES</u>					
MM TUITION	40,070	63,834	36,694	24,071	16,848
RR PRIOR YEAR REHAB	0	0	1,645		
RR REHAB-30H	7,708	12,022	13,173	12,670	4,879
RR TRAVEL REHAB	0	0	0	290	151
RR HEALTHSOUTH HLDS	0	780			
RR FCE REIMBURSEMENT	0	625			
RR CRAWFORD & CO.	0	462			
EE OTHER	896				
RR EE TRAVEL	2,282	2,886	2,015	1,708	1,226
RR EE BOOKS & SUPPLIES	5,491	6,874	3,483	1,331	1,788
SUB-TOTAL OEVR EXP.	56,447	87,483	57,010	40,070	24,892
TOTAL PRIVATE TRUST EXP.	48,493,764	53,044,529	49,969,164	47,324,567	48,152,196

COLLECTION AND EXPENDITURE REPORT - FISCAL YEAR 2007

<i>EXPENDITURES DEFENSE OF THE FUND</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>	<i>FY'03</i>
AA PERSONNEL	1,661,496	1,833,394	1,018,958	1,418,182	1,569,972
AA OVERTIME	26,798	11,803	4,067	3,899	2,386
AA SICK LEAVE BUY BACK	293	0	0	0	0
SUB-TOTAL	1,688,587	1,845,197	1,023,025	1,422,081	1,572,358
BB TRAVEL	23,291	18,578	5,504	5,796	7,384
BB TRAINING/TUITION	1,074	437	0	2,455	2,200
BB EE REIMBURSEMENT	23	448			
BB EMPLOYEE REIMBURS	1,774	1,696	341	532	55
BB PRIDE & PERFORMANCE	0	0	0	0	201
SUB-TOTAL	26,162	21,159	5,845	8,783	9,840
DD FRINGE	542,343	493,193	273,755	325,898	338,370
DD UNIVERSAL HEALTH	0	269	269	243	304
DD MEDICARE	0	9,653	10,144	8,881	10,956
DD UNEMPLOYMENT INS.	0	1,914	3,118	2,774	2,060
DD BOND	0	356		0	0
DD WORKERS' COMP CHR.G.	18,842	39,141	23,411	0	335
SUB-TOTAL	561,185	544,526	310,697	337,796	352,025
EE RENTAL/MV CHR.G-BACK	3,629	3,629	681	1,431	2,173
EE DEST. OLD RECORDS	5,875	5,786	0	5,541	5,293
EE ADVERTISING	990	474		0	54
EE BOOKS/SUPPLIES	29,220	28,400	19,678	66,147	32,881
EE IMPARTIAL APPEALS	13,950	20,375	13,175	5,625	11,650
EE CENTRAL REPRO.	1,170	0	0	0	0
EE POSTAGE	3,317	14,101	21,334	3,235	23,375
EE REFRESHMENTS		0	0	673	0
EE WATER		0	0	930	864
EE MCAD SEMINAR		0	0	1,400	
EE TRAINING / TUITION	(50)	12,190	3,654		
EE JUDGEMENT (E54)	0	0	43,836		
EE TEMP USE SPACE	0	815			
EE PRINTING	83				
EE CONFERENCE, INCIDEN.	3,795				
EE MCKENZIE	93,983				
EE INDIRECT COSTS	44,578	39,875	25,952	31,435	89,017
SUB-TOTAL	200,540	172,443	164,407	136,789	188,570
GG BOSTON LEASE	507,823	495,209	470,156	348,342	322,676
GG ELECTRICITY - BOSTON	13,409	9,084	10,268	5,484	2,859
SUB-TOTAL	521,232	504,293	480,424	353,826	325,535

(CON TINUED ON NEXT PAGE)

COLLECTION AND EXPENDITURE REPORT - FISCAL YEAR 2007

<i>EXPENDITURES DEFENSE OF THE FUND</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>	<i>FY'03</i>
HH CONSULTANTS	422,850	412,422	276,713	425,783	1,449,826
SUB-TOTAL	422,850	412,422	276,713	425,783	1,449,826
JJ OPERATIONAL SERV.	391,137	438,802	292,525	174,137	76,237
SUB-TOTAL	391,137	438,802	292,525	174,137	76,237
KK EQUIPMENT	1,650	1,225	5,580	23,813	294
SUB-TOTAL	1,650	1,225	5,580	23,813	294
LL CBE HOLDINGS	4,536	29,017			
LL XEROX	0	1,685	7,187	3,799	3,024
LL ORACLE	13,692	16,538	13,335	13,336	8,891
LL ASAP SOFTWARE EXPRS	0	10,593			
LL SIMPLEX	0	0	245	245	0
LL SHARED TECHNOLOGY	0	1,883	2,138	3,256	2,153
LL PITNEY BOWES	1,272	1,331	1,272	625	101
LL IKON	0	0	0	465	493
LL SUN MICROSYSTEMS	3,601	4,748	0	2,100	0
LL RETROFIT	2,527	2,837	903	6,058	3,514
LL MILLENNIUM MECHAN	0	191	742		
LL FIRE EQUIPMENT	0	168			
LL JEWEL PROTECTIVE SYS.	0	125			
LL ENTERPR. RENT-A-CAR	3,808	3,639			
LL OFFICE EQUIPMENT	0	204			
LL NTIRETY	3,371	11,556			
LL RONCO COMM & ELEC	21,233	6,865			
LL MMARS ACCT SYST	1,872	1,499			
LL KEANE	0	874			
LL KFORCE	0	2,340			
LL COMPUTER EQUIPMENT	0	1,239			
LL TSG HEALTHCARE RESR	0	18,763			
LL DELL MARKETING	43,038	35,996			
LL QWEST COMM.	376	27	0	0	264
LL ITT COMPUTER SERV.	16,327	17,918	14,004	9,552	10,341
LL VERIZON SERVICES	17,918	18,808	17,110	8,066	4,904
LL AMS IMAGINING	116	0		0	
LL TELEPHONE LEASE	4,753	3,692	0	2,754	2,224
LL NEXTELL	2,702	6,353	4,983		
LL EGI BUSINESS	18,826				
SUB-TOTAL	159,968	152,091	25,822	29,884	34,856
NN NON-MAJOR INFRA MAIN	725	0	0	0	0
NN DOC DESTRUCTION	385	0	0	0	0
SUB-TOTAL	1,110	0	0	0	0
RR PENALTIES SEC. 8	0	5,560	0	0	
SUB-TOTAL	0	5,560	0	0	
TOTAL DEF. OF FUND EXP.	3,974,421	4,097,718	2,585,038	2,912,892	
TOTAL EXPENDITURES	52,468,185	57,142,247	52,554,202	50,237,459	

Workers' Compensation Legislation

*Before the Joint Committee on Labor & Workforce Development
2007-2008 Legislative Session*

HOUSE BILLS:

HOUSE BILL 1069

Filed By: Representative Michael J. Rodrigues / Representative Matthew C. Patrick

Type of Bill: Similar (H.3123)

Endorsed by Advisory Council: No

Laws Affected: Third Party Lawsuits (§15) - Protecting Employee Leasing Companies (§14A)

Section 1 of this bill (similar to H.1817 filed in this legislative session) 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." 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 1776

Filed By: Representative Antonio Cabral

Type of Bill: Refile (H.1607)

Endorsed by Advisory Council: No

Laws Affected: Lump Sum Settlements (c.152, §48) - Approval

This refiled bill would remove the requirement that an employer, with an experience modified policy, must sign-off on any lump sum agreement between the insurer and employee. Experience rating is a system of comparing the claims history of each employer against the claims experience of all employers within the same classification. A company's experience modification factor is determined annually and is based on the insured's losses for the last three completed years. Although this proposed legislation removes the employer's written consent as a requirement for a lump sum agreement, the employer would have the right to attend the proceeding and provide comments to the department concerning the proposed settlement.

HOUSE BILL 1777**Filed By:** Representative Antonio Cabral / Rep. Robert Koczera / Rep. Thomas Kennedy**Type of Bill:** Refile (H.1606)**Endorsed by Advisory Council:** YES (2003-2006)**Laws Affected:** Benefits for Specific Injuries (c.152, §36(k)) - Scar-Based Disfigurement

This refiled bill would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This bill 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 1777 would not affect the \$15,000 maximum benefit for scar-based disfigurement currently in the statute.

HOUSE BILL 1796**Filed By:** Representative Bradley H. Jones, *et al.***Type of Bill:** Refile (H.3800)**Endorsed by Advisory Council:** No**Laws Affected:** Serious and Willful Misconduct (c.152, §27) - Intoxication, Unlawful Use of a Controlled Substance

This refiled bill would amend §27 and deny workers' compensation benefits to employees who are injured while intoxicated or unlawfully using a 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," but does not elaborate specifically what constitutes "serious and willful misconduct." This bill would not bar compensation to dependents if the injury resulted in death.

HOUSE BILL 1807**Filed By:** Chester P. Ostrowski**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Rehear Appeal of Chester Ostrowski

This bill would require the Department of Industrial Accidents to rehear the appeal of Chester Ostrowski in the matter of Ostrowski v. Cows Building Supply Inc.

HOUSE BILL 1816**Filed By:** Representative Ronald Mariano**Type of Bill:** Refile (S.1097)**Endorsed by Advisory Council:** No**Laws Affected:** Widow's Benefits (c.152, §35C, §32, §31)

This refiled bill would significantly alter the definition of the "average weekly wage" exclusively for Section 35C cases (latency claims). 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. 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 was not entitled to receive compensation

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HOUSE BILL 1816 CONTINUED

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."

Last legislative session, the Advisory Council voiced opposition to this bill 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.

HOUSE BILL 1817

Filed By: Representative Ronald Mariano

Type of Bill: Refile (H.3123)

Endorsed by Advisory Council: No

Laws Affected: Third Party Lawsuits (§15) - Protecting Employee Leasing Companies (§14A)

Section 1 of this bill (similar to H.1069 filed this legislative session) 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 1825

Filed By: Representative Eugene L. O'Flaherty

Type of Bill: Refile (H.1599)

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 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. In Massachusetts, the attorney fees specified in §13A are the only fees payable for any services provided to employees.

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HOUSE BILL 1825 CONTINUED

Section 2 of this bill adds two new subsections to §19. The first subsection would allow any administrative judge, administrative law judge or conciliator to approve any agreement to pay benefits authorized by §19. The second subsection would allow an agreement to include a pay without prejudice clause.

Section 3 of this bill attempts to amend §34 benefits for injuries that are total. However, due to mistakes in drafting, the proposed language is unclear.

Section 4 of this bill would attempt to amend §34A benefits for injuries that are both permanent and total. This section would remove the minimum weekly compensation rate for injuries under §34A, thereby reducing an employee's benefit to their Average Weekly Wage. This section of the bill also has ambiguous language.

HOUSE BILL 1826

Filed By: Representative Eugene L. O'Flaherty

Type of Bill: Refile (H.1600)

Endorsed by Advisory Council: No

Laws Affected: Appointment of Impartial Physicians (c.152, §9C), Impartial Exams (§11A).

Section 1 of this refiled bill 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.]

Section 2 of this bill 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 also 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 1827**Filed By:** Representative Eugene L. O'Flaherty**Type of Bill:** Refile (H.1601)**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 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 1828**Filed By:** Representative Eugene L. O'Flaherty**Type of Bill:** Similar (S.1103)**Endorsed by Advisory Council:** No**Laws Affected:** Comprehensive Bill (c.152, §13, §30)

Section 1 of this bill attempts to amend §13 by replacing the Division of Health Care Finance & Policy with the Rate Setting Commission (which was repealed in 1996) as the sole regulator of the workers' compensation medical fee schedule. This bill would also delete all provisions regarding treatment protocols, utilization review and the Health Care Services' Board.

Section 2 of this bill would amend §30. However, due to mistakes in drafting, the proposed language is unclear.

HOUSE BILL 1833**Filed By:** Representative Kathi-Anne Reinstein**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Benefits for Environmental Police Officers (c.30, §58A)

This bill would compensate environmental police officers who receive bodily injuries while in the performance of their duties. 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. Current law allows this benefit to state employees who receive bodily injuries resulting from acts of violence from patients or prisoners.

HOUSE BILL 1839**Filed By:** Representative Michael J. Rodrigues**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Workers' Compensation Insurance Premiums

This bill, filed on behalf of the Massachusetts Insurance Federation, serves as a "placeholder" for future legislation that would create a "true up" provision concerning workers' compensation insurance premiums. Language in this bill states that productive audits conducted by insurance companies in order to clarify discrepancies between actual premiums and estimated premiums would encourage the cooperation and disclosure of the insured.

HOUSE BILL 1840**Filed By:** Rep. Michael J. Rodrigues / Jim Harrington / Rep. Robert P. Spellane**Type of Bill:** Refile (H.1603)**Endorsed by Advisory Council:** No**Laws Affected:** Insurance Rates – Loss Cost - Competition (c.152, §53A)

This refiled bill 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 1840, 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 (LAE), 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 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.

$$\text{RATE} = \text{LOSS COST} \times \text{LCM}$$

[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 1856**Filed By:** Representative Patricia A. Walrath / Senator Stephen M. Brewer**Type of Bill:** Refile (H.1596)**Endorsed by Advisory Council:** No**Laws Affected:** Exemption of Non-Profit Entities (c.152, §1)

This refiled bill would make the workers' compensation insurance requirement elective for non-profit entities that are staffed by "volunteers, board members, directors, and paid employees." The current law exempts non-profits only when they are exclusively staffed by volunteers.

HOUSE BILL 1857**Filed By:** Representative Martin J. Walsh**Type of Bill:** Refile (S.1099)**Endorsed by Advisory Council:** No (see S.1066)**Laws Affected:** Private Right of Action to Recover WC Coverage Payments (c.152, §25C)

House Bill 1857 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 Commissioner of Insurance, 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 Special 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.

HOUSE BILL 1861**Filed By:** Representative Martin J. Walsh / AFL-CIO, *et al.***Type of Bill:** Refile (H.1594)**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 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.

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HOUSE BILL 1861 CONTINUED

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 (AWW).

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 bill 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.

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 1862

Filed By: Representative Martin J. Walsh, *et al.*

Type of Bill: Refile (H.1595)

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 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

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HOUSE BILL 1862 CONTINUED

injury) multiplied by 29 (\$1,000.43 x 29 = \$29,012.47). 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 1864

Filed By: Representative Martin J. Walsh

Type of Bill: Refile (H.3776)

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 1865

Filed By: Representative Martin J. Walsh

Type of Bill: Refile (H.3777)

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 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 1865 would eliminate the "impartial medical examiner report" from these specific circumstances.

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HOUSE BILL 1865 CONTINUED

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 1865 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 1866

Filed By: Representative Martin J. Washl, *et al.*

Type of Bill: Similar (H.4451)

Endorsed by Advisory Council: No

Laws Affected: Safe Workplaces for Employees of the Commonwealth (c.149, §40)

This legislation would require the Division of Occupational Safety (DOS) to apply federal occupational and health standards to public sector employees (state, city/town, and county) and its independent authorities. 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. This proposed legislation would not apply to the fire services of the Commonwealth.

HOUSE BILL 2407

Filed By: Representative Martin J. Walsh, *et al.*

Type of Bill: NEW

Endorsed by Advisory Council: No

Laws Affected: Prohibiting Sale of Highly Flammable Floor Finishing Products (c.94)

This bill would prohibit the sale of any flammable floor finishing product with a flashpoint below 100 degrees Fahrenheit. Since 2004, highly flammable lacquer sealers (oil-based) have been responsible for the deaths of three workers killed in combustion accidents. The alternative to oil-based sealants is water-based products that dry faster than oil-based sealers, are more durable, reduce solvent exposure, allow occupants to return to the premises faster, and do not cause fires. The main reason that floor finishing workers are using such dangerous lacquer sealers is due to price (lacquer sealers are about \$9 per can, whereas, oil-based sealers are about \$40 per can). This bill is one of several bills (see S.185) developed by a multi-stakeholder task force comprised of labor, industry, community and safety representatives. The task force was created in May of 2006 to address the hazards of the wood floor sanding and finishing industry.

HOUSE BILL 3195**Filed By:** Representative John P. Fresolo**Type of Bill:** Similar (H.4563)**Endorsed by Advisory Council:** No**Laws Affected:** Public Records Exemption - Home Addresses of Injured Employees (c.4, §7)

This bill would exempt from the Public Records Law the name and home addresses of any injured employee that has been reported to any agency of the Commonwealth. In June of 2006, the Advisory Council formed a subcommittee to address the solicitation practices of a select group of law firms who were using the Massachusetts Public Records Law to obtain the names and addresses of employees who have been injured on the job ("Form 101 - First Report of Injury"). Several years ago, a public records lawsuit was filed against the DIA when the agency redacted the names and addresses on public record requests to protect the privacy of the injured worker. Presently this case is before the Massachusetts Superior Court.

HOUSE BILL 3460**Filed By:** Representative Brian S. Dempsey / Representative Bradley H. Jones, Jr.**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Election to Receive WC Benefits or Pension (c.152, §73)

This bill would prevent any present or former MBTA employee from simultaneously collecting benefits due from a workplace injury and receiving payment from a pension (by reason of same injury). Section 73 of Chapter 152 specifically prohibits the collection of "dual benefits" for all Commonwealth employees including, the Massachusetts Turnpike Authority, the Massachusetts Port Authority, the Blue Hills Regional School system, the Greater Lawrence Sanitary District, the Minuteman Regional Vocational Technical School District, the Massachusetts Water Resources Authority or any police officer of the Massachusetts Bay Transportation Authority.

HOUSE BILL 3795**Filed By:** Representative Lewis G. Evangelidis**Type of Bill:** Refile (H.1597)**Endorsed by Advisory Council:** No**Laws Affected:** Extension of Temporary Total Benefits (c.152, §34)

This refiled bill 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 3795 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 3796**Filed By:** Representative Lewis G. Evangelidis**Type of Bill:** Refile (H.1598)**Endorsed by Advisory Council:** No**Laws Affected:** Workers' Compensation Dependency Benefits - Increase (c.152, §35A)

This refiled bill 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 3796 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 4170**Filed By:** Representative David M. Torrasi**Type of Bill:** Redraft (H.1862 - Section 2)**Endorsed by Advisory Council:** YES (2007)**Laws Affected:** Burial Expenses (§33)

This redrafted bill 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.

SENATE BILLS:

SENATE BILL 185**Filed By:** Senator Patricia D. Jehlen**Type of Bill:** Refile (H.3375)**Endorsed by Advisory Council:** No**Laws Affected:** Regulations for the Licensing of Floor Finishers, Sanders & Installers (c.111)

This bill would require all workers who engage in floor finishing, sanding, and installing operations to be licensed by the Department of Labor & Workforce Development. Under this bill, private retailers who distribute floor finishing, sanding, and installation products would have to be certified by the Department of Public Health and follow storage protocols. Violators of either licensing or certification requirements would be punished by a fine of not less than \$500 nor more than \$1,500 for each offense. The Department of Labor would have the authority to issue a "cease work order" to any violator of either licensing or certification requirements.

SENATE BILL 1056**Filed By:** Senator Robert S. Creedon, Jr. / Senator Michael W. Morrissey / Benjamin Brackett**Type of Bill:** Refile (S.1089)**Endorsed by Advisory Council:** No**Laws Affected:** Scar-Based Disfigurement (c.152, §36(k))

This refiled bill 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 scarring currently in the statute.

SENATE BILL 1060**Filed By:** Senator John A. Hart**Type of Bill:** Refile (S.1095)**Endorsed by Advisory Council:** YES (2003-2004)**Laws Affected:** Scar-Based Disfigurement (c.152, §36(k))

This refiled bill 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 1061**Filed By:** Senator John A. Hart, Jr.**Type of Bill:** Refile (S.1097)**Endorsed by Advisory Council:** No**Laws Affected:** Widow's Benefits (c.152, §35C, §32, §31)

This refiled bill would significantly alter the definition of the "average weekly wage" exclusively for Section 35C cases (latency claims). 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. 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 was 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."

Last legislative session, the Advisory Council voiced opposition to this bill 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.

SENATE BILL 1066**Filed By:** Senator John A. Hart, Jr.**Type of Bill:** Refile (S.1099)**Endorsed by Advisory Council:** YES**Laws Affected:** Private Right of Action to Recover WC Coverage Payments (c.152, §25C)

This refiled bill 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 1076**Filed By:** Senator Thomas M. McGee**Type of Bill:** Refile (S.1111)**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 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

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SENATE BILL 1076 CONTINUED

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 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 addresses 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 decreases the 21-day period to *5 days or more*.

Section 11 of this bill would amend §30, which requires the insurer to furnish medical and

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SENATE BILL 1076 CONTINUED

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. 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. The duration 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 S.1076 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 increases the maximum benefit period to 442 weeks and could be extended at "the discretion of an AJ."

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

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the compensation due under §34, §34A, and §35. This section of Senate 1076 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) regarding the computation of a weekly wage. This section would disallow an employee's compensation rate to be decreased in any proceeding on the fact that an employee had enrolled or is participating in a vocational rehabilitation program, whether or not it is paid for by the insurer or the department.

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 1079

Filed By: Senator Michael W. Morrissey / William Salisbury

Type of Bill: Refile (S.2168)

Endorsed by Advisory Council: No

Laws Affected: Benefits for Members of the Armed Services or National Guard (c.1, §7A)

This refiled bill 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 1080**Filed By:** Senator Michael W. Morrissey**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Definition of "Proceeding" for Purposes of Chapter 152 (c.152, §1)

This bill would define the word "proceeding" as used in Chapter 152. Under the proposed definition, a proceeding would include conciliations, conferences, hearings and presentations to appellate courts. The definition would also include any actions by a party (including attorneys and medical experts acting on behalf of a party), at any time during and after the filing of a claim.

SENATE BILL 1081**Filed By:** Senator Michael W. Morrissey**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Definition of "Proceeding" for the Purpose of Fraudulent Acts (c.152, §14(2))

This new bill would define the word "proceeding" as used in Chapter 152, section 14(2). Under the proposed definition, a proceeding would include all actions by a party (including attorneys and medical experts acting on behalf of a party), at any time during and after the filing of a claim. Section 14(2) specifies the costs and penalties for illegal or fraudulent conduct at any 'proceeding.' Minimum penalties under this section include an amount not less than the average weekly wage multiplied by six ($\$1,000.43 \times 6 = \$6,002.58$).

SENATE BILL 1082**Filed By:** Senator Michael W. Morrissey**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Authority for AJs to Determine Fraudulent Acts by Parties (c.152, §14)

This new bill would give an administrative judge the authority to determine whether a party defrauded or attempted to defraud another party. According to this legislation, the defrauding party would be assessed the whole costs of the proceedings, including attorney fees and a penalty (SAWW x 6) to the aggrieved party. Any employee, who received payments for compensation from a fraudulent claim, would be required to reimburse the insurer or self-insurer.

SENATE BILL 1088**Filed By:** Senator Marc R. Pacheco**Type of Bill:** Similar (H.4451)**Endorsed by Advisory Council:** No**Laws Affected:** Safe Workplaces for Employees of the Commonwealth (c.149, §40)

This legislation would require the Division of Occupational Safety (DOS) to apply federal occupational and health standards to public sector employees (state, city/town, and county) and its independent authorities. 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. This proposed legislation would not apply to the fire services of the Commonwealth.

SENATE BILL 1097**Filed By:** Senator Bruce E. Tarr**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Actions Not Based on Reasonable Grounds (c.152, §14)

This new bill attempts to prevent insurers from repeatedly contesting total and permanent disability claims after a decision has already been made in favor of an employee. Such actions would be based on "unreasonable grounds" when an insurer contests such claims more than once in a five-year period:

- without evidence of the employee's improvement;
- without evidence that the employee has been working or behaving in a manner inconsistent with a total and permanent disability;
- without evidence of a significant advancement in medical science that has substantial likelihood of affecting the total and permanent disability of the employee.

SENATE BILL 1100**Filed By:** Sen. Richard Tisei / Sen. Bruce Tarr / Sen. Michael Knapik / Sen. Robert Hedlund**Type of Bill:** Refile (S.1107)**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 would amend §25C(2) regarding fines for failing to secure workers' compensation insurance. This bill would add a provision 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) by making workers' compensation coverage elective for all corporate officers, regardless of their duties. Current law allows elective coverage to corporate officers who "own at least 25 per cent of the issued and outstanding stock of the corporation."

SENATE BILL 1103**Filed By:** Senator Steven A. Tolman**Type of Bill:** Refile (S.1123)**Endorsed by Advisory Council:** No**Laws Affected:** Benefits for State Social Workers Resulting from Acts of Violence (c.30, §58)

This refiled bill would compensate state employees who receive bodily injuries resulting from acts of violence by children in their caseload 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 1111**Filed By:** Senator Susan C. Tucker**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Increasing Criminal Penalties for Failing to Provide WC Insurance (c.152, §25C)

This new bill would increase the severity of criminal penalties for employers who fail to provide workers' compensation coverage for their employees. Under this bill, employers convicted of criminal offenses, would be subject to minimum mandatory fines, imprisonment, or both. The maximum imprisonment sentence would be 5 years in state prison with a minimum imprisonment in the house of correction for not less than 6 months nor more than 2.5 years. The maximum criminal fine would increase to \$10,000 with a minimum fine of \$1,000. Current law limits criminal penalties at no more than \$1,500 or by imprisonment for not more than 1 year, or both.

SENATE BILL 1112**Filed By:** Senator Susan C. Tucker**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Falsifying or Forging WC Certificates & Declarations (c.267, §1)

Chapter 267, section 1, sets the punishment for any person who intends to injure or defraud by falsifying or forging specific public and legal documents. Senate Bill 1112 would add two new documents to this list: "certificate of insurance" and "insurance declarations page." The current penalty for falsifying or forging documents is imprisonment in state prison for not more than ten years or jail for not more than two years.

SENATE BILL 2289

Filed By: Senator Thomas M. McGee

Type of Bill: Redraft (Senate 1056, Senate 1060, and House 1777)

Endorsed by Advisory Council: YES (2007)

Laws Affected: Benefits for Specific Injuries (c.152, §36(k)) - Scar-Based Disfigurement

This refiled bill would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This bill 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. This redrafted bill would not affect the \$15,000 maximum benefit for scar-based disfigurement currently in the statute.