



An Audit Report on

# **The Ombudsman Program at the Office of Injured Employee Counsel**

October 2019

Report No. 20-004



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## Overall Conclusion

The Office of Injured Employee Counsel (Office) had processes and related controls for its Ombudsman Program; however, it did not always ensure that it administered the program in accordance with applicable requirements. While the Office has implemented an ombudsman training program, the lack of consistent and accurate (1) monitoring and (2) documentation of activities performed increases the risk that the Office is not effectively providing assistance to injured employees to help them protect their rights within the workers' compensation system. Specifically, the Office did not:

- Monitor its Ombudsman Program in accordance with Office policies. The Office did not ensure that regional managers conducted required technical observations of ombudsmen or that the Quality Assurance team accurately completed and compiled the results of the workers' compensation case reviews that it performed.
- Ensure that staff accurately and completely captured information about the assistance provided to injured employees in the Dispute Resolution Information System (DRIS). Auditors identified inaccurate and missing information in DRIS.
- Maintain consistent documentation supporting that it provided assistance to injured employees in accordance with statutes, rules, and policies. For example, the Office frequently did not have documentation that staff exchanged documentary evidence for administrative proceedings with other parties to the dispute on injured employees' behalf or scheduled or held required preparation appointments as required.

### Background Information

The Office of Injured Employee Counsel's (Office) mission is to assist, educate, and advocate on behalf of the injured employees of Texas. Injured employees have the right to free assistance from the Office if they do not have an attorney. The goal of the Office's Ombudsman Program is to assist unrepresented injured employees in the workers' compensation system, which includes assisting them throughout the dispute resolution proceedings and appeals before the Department of Insurance, Division of Workers' Compensation (Division). In fiscal years 2017 and 2018, ombudsmen assisted injured employees in 51 percent of the Division's concluded dispute resolution proceedings.

The Office is administratively attached to the Department of Insurance, which provides administrative assistance and services for the Office, but it is independent of direction. The Office and the Division share office space in 20 locations throughout the state.

Sources: Texas Administrative Code, Chapter 276, the Office's *Biennial Report to the 86th Legislature*, and other Office documents.

This audit was conducted in accordance with Texas Government Code, Sections 321.0132.

For more information regarding this report, please contact Cesar Saldivar, Audit Manager, or Lisa Collier, First Assistant State Auditor, at (512) 936-9500.

The Office complied with requirements for handling complaints and training ombudsmen. Specifically, the Office:

- Implemented a process for tracking and acting on complaints and followed its process for most complaints tested.
- Implemented an ombudsman training program that includes the key elements required by Texas Labor Code. It also ensured that participants completed most key elements of the program.

Table 1 presents a summary of the findings in this report and the related issue ratings. (See Appendix 2 for more information about the issue rating classifications and descriptions.)

Table 1

Summary of Chapters/Subchapters and Related Issue Ratings		
Chapter/ Subchapter	Title	Issue Rating <sup>a</sup>
1-A	The Office Had Monitoring Processes for Its Ombudsman Program; However, It Did Not Ensure That Policies Were Followed	High
1-B	The Office Had a Process for Handling Complaints, and It Followed That Process for Most Complaints	Low
2-A	The Office Did Not Accurately and Completely Capture Information in DRIS About the Assistance It Provided to Injured Employees	High
2-B	The Office Did Not Always Have Documentation to Support That It Provided Certain Types of Assistance to Injured Employees as Required	High
3	The Office Has Implemented an Ombudsman Training Program and Ensured That New Ombudsmen Completed Most Key Requirements	Low
<p><sup>a</sup> A chapter/subchapter is rated <b>Priority</b> if the issues identified present risks or effects that if not addressed could critically affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern and reduce risks to the audited entity.</p> <p>A chapter/subchapter is rated <b>High</b> if the issues identified present risks or effects that if not addressed could substantially affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.</p> <p>A chapter/subchapter is rated <b>Medium</b> if the issues identified present risks or effects that if not addressed could moderately affect the audited entity’s ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.</p> <p>A chapter/subchapter is rated <b>Low</b> if the audit identified strengths that support the audited entity’s ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity’s ability to effectively administer the program(s)/function(s) audited.</p>		

Auditors communicated other, less significant issues separately in writing to Office management.

## ***Summary of Management's Response***

At the end of certain chapters in this report, auditors made recommendations to address the issues identified during this audit. The Office agreed with the recommendations in this report.

## ***Audit Objective and Scope***

The objective of this audit was to determine whether the Office has processes and related controls to help ensure it administers its Ombudsman Program in accordance with applicable requirements.

The scope of this audit covered Ombudsman Program controls and activities performed during fiscal year 2018 (September 1, 2017, through August 31, 2018) and the first seven months of fiscal year 2019 (September 1, 2018, to March 31, 2019).

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# Detailed Results

Chapter 1

## ***While the Office Had Processes for Monitoring Its Ombudsman Program and Handling Complaints, It Did Not Always Ensure That Those Processes Were Performed in Accordance With Its Policies***

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The Office had processes in place for evaluating ombudsmen’s performance and compliance with Office policies. However, the Office did not always ensure that those processes were performed in accordance with Office policies. Specifically, the Office did not ensure (1) that regional managers conducted required technical observations of ombudsmen or (2) that the Quality Assurance (QA) team accurately completed and compiled the results of the workers’ compensation case reviews that it performed. By not ensuring that technical observations and QA reviews are performed as required, there is an increased risk that the Office is not providing assistance to injured employees as required.

In addition, the Office had a process for handling complaints received, and it followed that process for most complaints tested.

Chapter 1-A

**Chapter 1-A  
Rating:  
High <sup>1</sup>**

### **The Office Had Monitoring Processes for Its Ombudsman Program; However, It Did Not Ensure That Policies Were Followed**

**The Office did not ensure that regional managers conducted semiannual technical observations of ombudsmen as required by Office policy.**

**Frequency of Technical Observations.** The Office did not ensure that regional managers performed semiannual technical observations of ombudsmen as required for 17 (100 percent) of 17 ombudsmen tested. Office policy requires regional managers to conduct technical observations of the ombudsmen in their regions every six months, beginning when ombudsmen complete the Office’s ombudsman training program. However, from September 1, 2017, through March 31, 2019, regional managers did not complete any technical observations for 8 (47 percent) ombudsmen tested and did not complete them at the frequency required for the other 9 (53 percent) ombudsmen tested.

**Number and Type of Technical Observations and Associated Case File Reviews.** Prior to October 2018, Office policy required regional managers to conduct a single

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<sup>1</sup> The risk related to the issues discussed in Chapter 1-A is rated as High because the issues identified present risks or effects that if not addressed could substantially affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

observation of each ombudsman. Beginning in October 2018, the policy was expanded to include a minimum of three observations (consisting of three types) and a new requirement that regional managers perform a review of the workers' compensation case files associated with those observations. Of the six technical observations that regional managers completed after October 2018, regional managers did not complete the required number or types of observations for four (67 percent) of them and did not review the workers' compensation case files associated with any (100 percent) of them.

The issues discussed above occurred, at least in part, because the Office was not monitoring regional managers to ensure that they completed the required technical observations. It is important that technical observations are completed because the Office implemented them as a method to evaluate the proficiency and competency of ombudsmen and to identify areas for professional development.

**The Office did not ensure that the QA team accurately completed and compiled the results of the workers' compensation case reviews it performed.**

Auditors tested the biennial quality assurance reviews that the QA team completed at 4 of the 17 field offices that it scheduled for review between November 2017 and March 2019. The QA team did not accurately complete or compile the results of those four reviews (see text box for more information on the Office's quality assurance process).

#### Quality Assurance

The Office conducts quality assurance reviews to assess the quality of work performed by ombudsmen and other staff. The Quality Assurance (QA) team is responsible for performing the reviews at each of the Office's 20 field offices at least once every two years.

At each field office, the QA team uses a worksheet to review a selection of workers' compensation cases for each ombudsman. The review is designed to determine an ombudsman's compliance with selected key requirements for assisting injured employees and capturing information about the assistance provided in the Dispute Resolution Information System (DRIS). The QA team uses information from the completed worksheets to develop reports for management and staff.

In addition, if a field office's rate of compliance is less than 80 percent for any requirements reviewed, the QA team's process requires a follow-up review on those areas of deficiency.

Source: The Office's quality assurance review policy and instructions.

**Accuracy of Workers' Compensation Case Reviews.** For 21 (55 percent) of 38 QA worksheets that auditors reviewed from those 4 field offices, the QA team did not accurately determine ombudsmen's compliance with Office policies for providing assistance to injured employees and capturing information about that assistance in the Dispute Resolution Information System (DRIS). While the QA team had some instructions for completing its worksheets, those instructions were not sufficient to ensure that the QA team completed its worksheets consistently or that it accurately determined compliance because they were incomplete.

**Accuracy of Summary Reports.** The QA team made manual and mathematical errors when it created reports summarizing the workers' compensation case reviews that it performed at the four field offices. Those errors occurred primarily because when the QA team calculated the rates at which (1) individual ombudsmen and (2) the field office complied with

requirements, it included workers' compensation cases for which the requirements assessed were not applicable.

Because of those report errors, the QA team did not correctly identify all requirements with less than an 80 percent compliance rate that required follow-up reviews at three of four field offices tested. For example, for the Lubbock field office review, the QA team did not correctly calculate the field office’s compliance rate for 9 (53 percent) of 17 requirements when it compiled the review results. As a result, two of those requirements with a less than 80 percent compliance rate that required a follow-up review were not identified (see requirements 4 and 17 in Table 2 below for calculation details). To show some of the calculation errors described, Table 2 presents the results of the QA team’s June 2018 review of 14 workers’ compensation cases at the Lubbock field office in comparison to auditors’ analysis.

Table 2

Comparison of the QA Team’s and Auditors’ Calculations of Compliance Results for the June 2018 Lubbock Field Office Review						
Compliance Requirement Reviewed by the QA Team	Number of Worksheets Showing Compliance With Requirement	Number of Worksheets Showing Noncompliance With Requirement	Number of Worksheets Not Applicable to Requirement	Requirement Compliance Rate as Calculated by the QA Team	Requirement Compliance Rate as Calculated by Auditors	Requirement Compliance Rate Difference
1	13	1	0	93%	93%	0%
2	12	2	0	86%	86%	0%
3	14	0	0	100%	100%	0%
4	7	2	5	86%	78%	-8%
5	10	0	4	100%	100%	0%
6	4	6	4	53%	40%	-13%
7	1	10	3	29%	9%	-20%
8	1	8	5	38%	11%	-27%
9	0	9	5	29%	0%	-29%
10	2	9	3	38%	18%	-20%
11	10	1	3	93%	91%	-2%
12	10	0	4	100%	100%	0%
13	3	6	5	50%	33%	-17%
14	9	0	5	100%	100%	0%
15	4	0	10	100%	100%	0%
16	3	0	11	100%	100%	0%
17	1	1	12	93%	50%	-43%

Source: Based on the Office’s quality assurance review documentation and associated reports.

As a result of the issues discussed above, the QA team’s worksheets and summary reports did not accurately reflect the quality of work performed by ombudsmen or rates of compliance with Office policies. It is important that



the results of the Office's quality assurance reviews are accurate because the Office asserted that it uses that information to evaluate ombudsmen and identify opportunities for continual improvement. Without accurate quality assurance data, management may not be able to evaluate whether ombudsmen are effectively assisting injured employees.

### **Recommendations**

The Office should:

- Follow its policies for performing technical observations of ombudsmen.
- Strengthen its guidance and processes for performing quality assurance reviews to help ensure that the QA team accurately completes and compiles the results of its workers' compensation case reviews.

### **Management's Response**

#### ***Recommendation***

*Follow its policies for performing technical observations of ombudsmen.*

#### ***Management's Response***

*Management agrees. Management implemented a tracking system to ensure policy is followed.*

***Responsible Party:***                      ***Deputy Public Counsel***

***Implementation Date:***                ***September 2019***

#### ***Recommendation***

*Strengthen its guidance and processes for performing quality assurance reviews to help ensure that the QA team accurately completes and compiles the results of its workers' compensation case reviews.*

#### ***Management Response***

*Management agrees that the guidance and processes for performing workers' compensation case reviews should be strengthened. Management has identified several refinements and clarifications that need to be made and is working with agency staff to implement these changes.*

**Responsible Party:** *General Counsel*

**Implementation Date:** *January 2020*

**Chapter 1-B  
Rating:**

Low<sup>2</sup>

Chapter 1-B

### **The Office Had a Process for Handling Complaints, and It Followed That Process for Most Complaints**

The Office has implemented a process for tracking and acting on complaints that it receives as required by Texas Labor Code, Section 404.008. The Office responded to 12 (100 percent) of 12 complaints tested within 30 business days as required by its policies. The Office also correctly determined whether or not those 12 complaints were justified and with merit.<sup>3</sup>

In addition, for all but one of six justified complaints with merit tested, the Office followed its policy for debriefing employees who were the subject of those complaints. For that complaint, which involved two employees, the Office only debriefed one employee and did not document how it determined that the other employee did not need to be debriefed. Office policy requires employees subject to a complaint with merit to be debriefed.

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<sup>2</sup> The risk related to the issues discussed in Chapter 1-B is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

<sup>3</sup> The Office defines justified complaints as complaints regarding Office policies, procedures, or personnel that are within the Office's jurisdiction to resolve. A complaint is determined to be with merit if the Office determines that staff failed to comply with Office policy, procedures, or performance expectations.

***The Office Did Not Accurately and Completely Capture Information About the Assistance It Provided to Injured Employees or Have Documentation to Support That It Consistently Provided Assistance in Accordance With Applicable Requirements***

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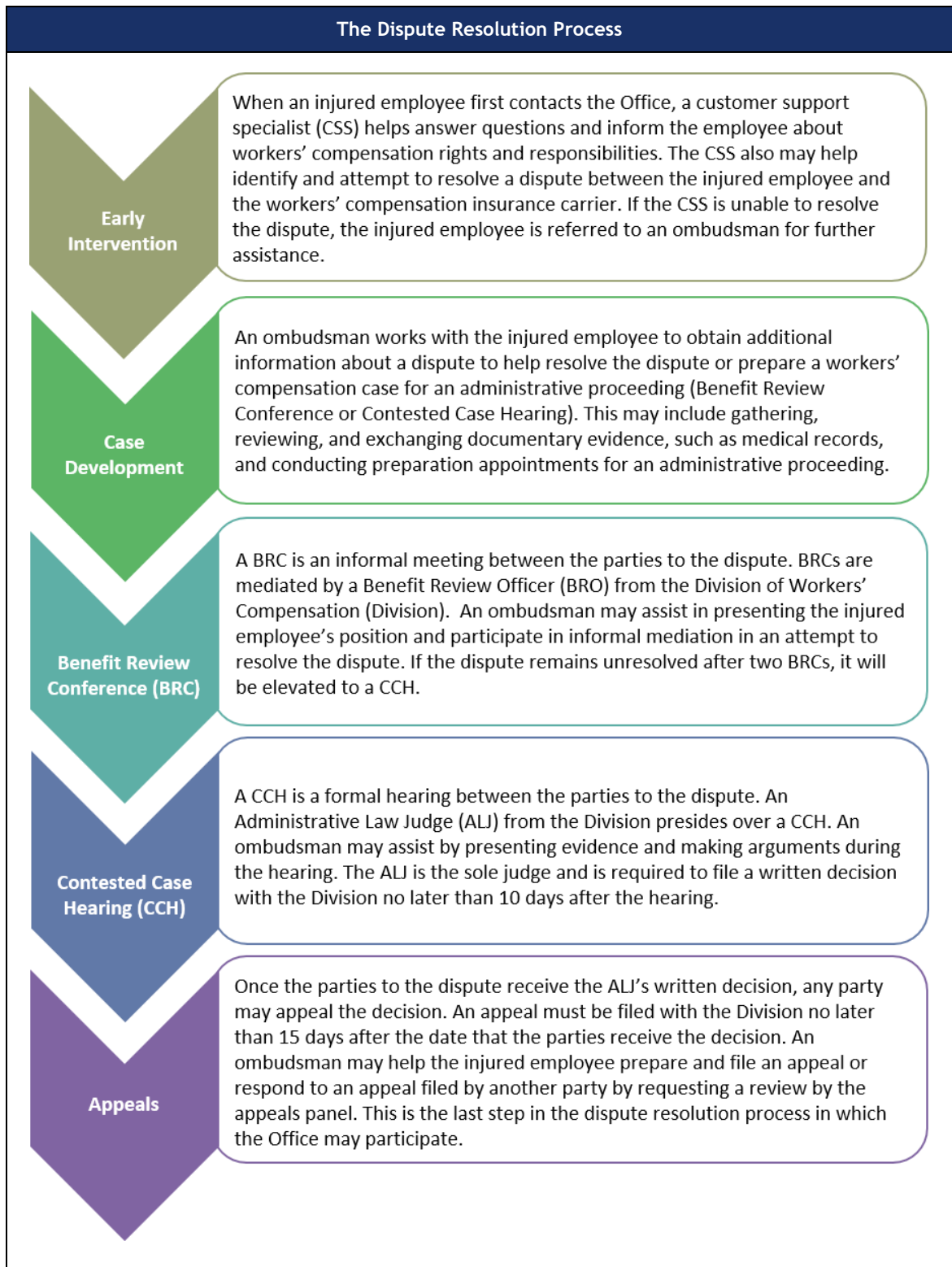
The Office did not ensure that the information it captured in the Dispute Resolution Information System (DRIS), which it uses to document the assistance provided to injured employees, was accurate or complete. Specifically, auditors identified inaccurate and missing information, such as staff activities that were not captured, duplicate records, records entered in error, and staff activities that were not coded correctly.

In addition, the Office did not always have documentation in DRIS or workers' compensation case files to support that it provided certain types of assistance to injured employees as required.

It is important that the Office consistently maintains accurate and complete documentation of its activities because the Office uses that information to manage and monitor the Ombudsman Program. Additionally, that documentation can help the Office ensure that it is effectively providing assistance to injured employees to help them protect their rights in the workers' compensation system.

Figure 1 on the next page describes the administrative dispute resolution process and the types of assistance that Office staff may provide to unrepresented injured employees.

Figure 1



Source: Based on information from the Office.

## The Office Did Not Accurately and Completely Capture Information in DRIS About the Assistance It Provided to Injured Employees

Auditors identified inaccurate and missing information in DRIS (see text box for more information on DRIS). Specifically:

- Auditors compared information in workers' compensation case files to information in DRIS and found inconsistencies in 12 (50 percent) of 24 applicable case files tested. For example, for 3 of those 12 case files, staff activities that were documented or supported by information in workers' compensation case files were not captured in DRIS.
- Auditors analyzed information in DRIS and identified duplicate records; records that were entered in error or entered late; and staff activities that were not coded correctly.

### Dispute Resolution Information System (DRIS)

The Office uses the Division of Workers' Compensation's DRIS to capture information about injured employees' disputes with workers' compensation insurance carriers and the assistance that Office staff provides. Specific codes are assigned to the Office to record staff activities, such as contacting an injured employee or attending an administrative proceeding. Staff are required to capture all of their activities in DRIS within 24 hours.

Source: The Office.

Those errors occurred for several reasons, including data entry errors and the Office inconsistently or inaccurately performing monitoring processes (as discussed in Chapter 1) designed to ensure that staff accurately and completely captured their activities in DRIS.

Ensuring the accuracy and completeness of the data captured in DRIS is important because the Office uses it to monitor staff, develop reports for the Legislature, and calculate its performance measures. In addition, because injured employees may receive assistance from multiple Office staff, capturing accurate and complete information helps staff understand the history of workers' compensation case activity so they can provide appropriate assistance.

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<sup>4</sup> The risk related to the issues discussed in Chapter 2-A is rated as High because the issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

## Recommendations

The Office should:

- Monitor staff and implement other controls as necessary to help ensure that staff accurately and completely capture their activities in DRIS.
- Identify and provide any training and guidance necessary for staff on entering and reviewing information in DRIS to help ensure accuracy and completeness.

## Management's Response

*Management agrees. Management has increased monitoring processes designed to help ensure staff accurately and completely capture their activities in DRIS. Additional training on DRIS will be provided to all employees.*

**Responsible Party:** Deputy Public Counsel

**Implementation Date:** In Process - December 2020

Chapter 2-B  
Rating:  
High <sup>5</sup>

Chapter 2-B

## The Office Did Not Always Have Documentation to Support That It Provided Certain Types of Assistance to Injured Employees as Required

Based on review of a sample of workers' compensation case files and a targeted analysis of selected workers' compensation cases (cases) in DRIS,<sup>6</sup> auditors determined that the Office did not always have documentation to support that it provided certain types of assistance to injured employees as required by statutes, rules, and Office policies. Specifically, based on the testing performed, staff did not always request and frequently did not exchange documentary evidence timely or at all, and staff did not consistently schedule or hold required preparation appointments within required time frames. In addition, while there was documentation that

<sup>5</sup> The risk related to the issues discussed in Chapter 2-B is rated as High because the issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

<sup>6</sup> To select the sample of case files and perform data analysis, auditors used the population of 10,721 workers' compensation cases for which injured employees requested assistance from the Office between September 1, 2017, and February 28, 2019. To select the sample, auditors further limited the population to the 7,615 cases for which the case files had not yet been disposed according to Office policy.

ombudsmen helped injured employees develop their cases timely and held required preparation appointments with them for most cases analyzed, compliance with those requirements could be improved.

**The Office frequently did not have documentation to support that staff helped injured employees request documentary evidence or make exchanges on their behalf timely or at all.**

The Ombudsman Program is responsible for helping injured employees identify and gather documentary evidence and for exchanging that evidence with workers' compensation insurance carriers on the injured employees' behalf. Specifically, staff are responsible for requesting medical records from medical providers that treated injured employees for their workers' compensation injury. Office policy requires that staff make a minimum of two follow-up attempts to obtain requested medical records that have not been received. However, DRIS and workers' compensation case files frequently lacked documentation to support that staff helped injured employees request and exchange documentary evidence.

**Requesting documentary evidence.** In a sample of 25 workers' compensation case files tested, 5 (20 percent) cases did not have adequate documentation to support both (1) how staff determined relevant medical providers and (2) that staff made the required number of attempts to obtain all pertinent medical records from all of the medical providers identified by injured employees. Medical records are important documentary evidence to help resolve disputes for many reasons, including that they can help establish that an injury occurred and that the injury was work related.

**Exchanging documentary evidence.** Auditors analyzed cases with at least one Benefit Review Conference (BRC) or Contested Case Hearing (CCH) attended after June 4, 2018. The codes that staff are required to enter in DRIS when they exchange documentary evidence were not present for the following:

- 1,654 (52 percent) of 3,174 cases with BRCs.
- 605 (42 percent) of 1,457 cases with CCHs.

In addition, 7 (47 percent) of 15 applicable workers' compensation case files tested did not have any documentation, such as required exhibit lists or exchange forms, to demonstrate that staff helped injured employees with evidence exchanges before administrative proceedings for those cases.

**Timeliness of Evidence Exchanges.** When staff made evidence exchanges, they did not make them timely (see text box for information on evidence exchange time frames). Staff did not exchange documentary evidence at least 14 days before the BRC for 418 (50 percent) of 835 BRCs analyzed. On average, staff did not make those exchanges until five days before the BRC. Staff also did not exchange documentary evidence for CCHs within 15 days of the BRC for 124 (46 percent) of 268 CCHs analyzed. On average, staff did not make those exchanges until 64 days after the BRC.

Ensuring that all parties to a dispute receive all pertinent documentary evidence timely can help facilitate and expedite the dispute resolution process. Failure to make exchanges timely or at all may result in injured employees not being able to introduce evidence needed to resolve their dispute or support their position on a dispute during administrative proceedings.

**While ombudsmen held preparation appointments with injured employees before administrative proceedings for most cases analyzed, they did not hold those preparation appointments timely.**

Auditors analyzed cases for which ombudsmen attended administrative proceedings after October 31, 2017, to determine whether preparation appointments were held as required. Texas Labor Code, Section 404.151, requires ombudsmen to meet with injured employees for a minimum of 15 minutes prior to any administrative proceeding. For most cases analyzed, there was documentation to support that ombudsmen met with injured employees before each administrative proceeding as required. Specifically, for cases with at least one BRC or CCH, ombudsmen held the required preparation appointments for the following:

- 3,702 (90 percent) of 4,116 cases with BRCs.
- 1,853 (92 percent) of 2,008 cases with CCHs.

However, ombudsmen did not hold preparation appointments within the required time frame for 711 (51 percent) of 1,399 cases analyzed with a single BRC and preparation appointment. To coincide with the Division of Workers' Compensation's (Division) rules for exchanging documentary evidence for BRCs (discussed in text box above), Office policy also requires

#### **Time Frames for Exchanging Evidence**

The Division has developed Texas Administrative Code rules related to the required time frames for exchanging documentary evidence for administrative proceedings. Specifically:

- Parties to a dispute exchange documentary evidence for BRCs no later than 14 days before the BRC.
- Parties to a dispute exchange documentary evidence for CCHs no later than 15 days after the BRC. Thereafter, parties shall exchange additional documentary evidence as it becomes available.

When additional pertinent information subsequently becomes available, that information should be brought to the administrative proceeding. For a CCH, which is a formal hearing, the Administrative Law Judge will determine whether that information can be introduced at the hearing.

Source: Title 28, Texas Administrative Code, Part 2.



ombudsmen to conduct BRC preparation appointments as soon as possible, but no later than 14 days before the BRC. On average, the preparation appointments for the cases analyzed were not held until 8 days before the BRC.

Holding required preparation appointments consistently and timely can help ensure that injured employees and ombudsmen are prepared for administrative proceedings and that documentary evidence for those proceedings is exchanged within required time frames.

**Ombudsmen did not consistently schedule appeal preparation appointments as required by Office policy.**

Of 55 CCHs analyzed, ombudsmen did not schedule the required appeal preparation appointments for 38 (69 percent) and did not schedule appeal preparation appointments within required time frames for another 6 (11 percent). Office policy requires that on the day a CCH is concluded, the ombudsman is responsible for scheduling an appeal preparation appointment to be held within 15 to 21 days. Because injured employees must file an appeal within 15 days of receiving a written decision from the Division, not scheduling appeal preparation appointments timely or at all increases the risk that an injured employee may not have sufficient time to meet with an ombudsman if they need additional assistance with an appeal.

**While ombudsmen completed case development timely for a majority of cases, timeliness could be improved.**

For 1,853 (85 percent) of 2,179 cases with a single dispute analyzed, ombudsmen completed case development within 45 days of referral as required by Office policy. However, for cases that were not completed within 45 days of referral, completion of case development averaged 51 days (ranging from 46 days to 128 days). Ensuring that ombudsmen consistently complete case development within required time frames can facilitate timely resolution of injured employees' disputes.

While the testing and analysis results discussed above indicate that staff did not always perform certain activities timely or at all, it is important to note that the data integrity issues discussed in Chapter 2-A and other factors may have affected the apparent rates of noncompliance identified by auditors. For example, staff may have performed required activities but failed to capture them accurately or completely in DRIS.

## Recommendations

To help injured employees protect their rights within the workers' compensation system and facilitate timely resolution of their disputes, the Office should ensure that its Ombudsman Program:

- Completes all steps in the dispute resolution process within required time frames.
- Requests and exchanges documentary evidence for administrative proceedings as required and documents the completion of those procedures.
- Captures required information in DRIS and maintains the associated documentary evidence in case files, both of which are needed to assist injured employees.
- Schedules and conducts required preparation appointments with injured employees within required time frames.

## Management's Response

*Management agrees that required preparation appointments and steps in the dispute resolution process, under OIEC's control, should be completed within required time frames. Management also agrees that staff should help injured employees request and exchange documentary evidence for administrative proceedings and document the completion of those procedures. Management has implemented a tracking system to ensure codes are entered documenting the completion of those procedures.*

*Management agrees staff should capture required information in DRIS and maintain the associated documentary evidence required by policy in case files when assisting injured employees.*

*It is important to point out that OIEC must provide assistance to all workers' compensation claimants upon their request, as such OIEC staff may receive a request at any point in the dispute resolution process. In many instances, the request does not allow sufficient time to schedule a BRC preparation appointment and prepare an exchange prior to the 14 day deadline. The Division of Workers' Compensation rule and OIEC policy does not distinguish a timeframe for a BRC that is scheduled prior to OIEC involvement or without sufficient notice to meet deadlines. In an internal review of 20 case files, that were identified as not having BRC preparation appointments held within the required time frame, 80% were for reasons outside of OIEC's control. The most common reasons are attorney drops and sub claimant BRC requests.*

*Management wants to highlight that in an internal sample of 10, of the appeal appointments not coded as scheduled, 80% of appeal appointments were conducted or an agreement was reached at the contested case hearing and there was no need for an appeal appointment.*

*An injured employee will provide medical providers information but through further discussion and case development the relevancy of the original list may change and the determination of which medical providers' records are relevant and should be requested is not required to be documented by policy.*

*The Ombudsman Program is responsible for helping injured employees identify and request documentary evidence. However, OIEC cannot control the contents or completeness of what, if any, documents medical providers send OIEC.*

**Responsible Party:** Deputy Public Counsel

**Implementation Date:** In Process - December 2020

## ***The Office Has Implemented an Ombudsman Training Program and Ensured That New Ombudsmen Completed Most Key Requirements***

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**Chapter 3  
Rating:**

Low <sup>7</sup>

The Office has adopted training guidelines for ombudsmen and implemented an ombudsman training program (program) that includes the key elements required by Texas Labor Code, Section 404.152, and Texas Administrative Code, Chapter 276. For example, the program includes education on the Texas Workers' Compensation Act and rules adopted under that Act, and regional staff attorneys are assigned to train and monitor program participants (see text box for more information on the Office's ombudsman training program).

In addition, the five participants in the program scheduled for November 2018 through March 2019 completed most required key elements of the program. Four of the five participants completed the program by the end of March 2019. The fifth participant was appropriately granted an extension.

While the Office ensured that participants observed the minimum number of proceedings and appointments, it did not consistently evaluate participants on all required skills related to the dispute resolution process and providing assistance to injured employees. The Office's training guidelines require that participants "meet expectations" on 30 of those skills. However, the Office did not ensure that 3 of the 5 participants had an opportunity to demonstrate and be evaluated on all 30 skills.

### **Recommendation**

The Office should ensure that program participants are evaluated and meet expectations on all required skills.

#### **Ombudsman Training Program**

Newly hired ombudsmen are required to complete an ombudsman training program, which includes classroom and practical training. For example, participants are required to:

- Pass the Texas Department of Insurance's workers' compensation adjuster license exam.
- Observe a minimum of 15 administrative proceedings and 18 appointments with injured employees.
- Complete a mock contested case hearing.
- Meet expectations for 30 skills related to the dispute resolution process and providing assistance to injured employees.

Sources: The Office's Ombudsman Program training schedule and Texas Administrative Code, Chapter 276.

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<sup>7</sup> The risk related to the issues discussed in Chapter 3 is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

## **Management's Response**

*Management agrees. Trainees are evaluated to determine whether they meet minimum performance standards. Required trainee knowledge, skills (KSAs), and abilities are listed on the Trainee Release Form not the Ombudsman Technical Observation form. The ten KSAs on the Trainee Release Form are evaluated by the trainee's direct supervisor and submitted at the conclusion of the training program.*

*We will make our guidance more precise to convey our intended meaning. We will also develop a form that is specifically tailored to ombudsman trainees.*

**Responsible Party:**            *General Counsel*

**Implementation Date:**        *December 2020*

# Appendices

Appendix 1

## **Objective, Scope, and Methodology**

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### **Objective**

The objective of this audit was to determine whether the Office of Injured Employee Counsel (Office) has processes and related controls to help ensure it administers its Ombudsman Program in accordance with applicable requirements.

### **Scope**

The scope of this audit covered Ombudsman Program controls and activities performed during fiscal year 2018 (September 1, 2017, through August 31, 2018) and the first seven months of fiscal year 2019 (September 1, 2018, through March 31, 2019).

### **Methodology**

The audit methodology included reviewing criteria relevant to the Ombudsman Program; interviewing Office staff; evaluating training program materials; analyzing workers' compensation case information in the Dispute Resolution Information System (DRIS); and testing training program records, workers' compensation case files, quality assurance reviews, technical observations, and complaints.

### **Data Reliability and Completeness**

Auditors obtained information from (1) the Division of Workers' Compensation's Dispute Resolution Information System (DRIS); (2) spreadsheets that the Office used to administer the Ombudsman Program; and (3) three state personnel systems: Human Resource Information System (HRIS), Standardized Payroll/Personnel Reporting System (SPRS), and Uniform Statewide Payroll/Personnel System (USPS).

To assess the information from DRIS, auditors reviewed the query that was used to extract the data, analyzed the data for reasonableness and completeness, and compared information from DRIS to information in the Office's workers' compensation case files. In addition, auditors performed analytical procedures on information from DRIS to test compliance with key requirements. Based on the inaccurate and missing information identified during those procedures (see Chapter 2-A for discussion of those issues), auditors determined that the data from DRIS was not sufficiently reliable. Although the issues with DRIS data were potentially significant, auditors used

that data because DRIS is the system the Office uses to capture its workers' compensation data. Auditors based conclusions and recommendations on that data and other documentation, when available.

For the spreadsheets that the Office used to track complaints, auditors analyzed the data for reasonableness and completeness. Additionally, auditors compared complaint information in those spreadsheets to the Office's complaint files. For the spreadsheet that the Office used to track quality assurance reviews, auditors compared the number of field office locations in the spreadsheet and DRIS to determine completeness. Auditors determined that the Office's tracking spreadsheets were sufficiently reliable for the purposes of the audit.

To identify ombudsmen, auditors extracted employee information from three state personnel systems and determined that the information from those systems was sufficiently reliable for purposes of the audit.

#### **Sampling Methodology**

To test compliance with technical observation requirements, auditors selected a nonstatistical random sample of 17 ombudsmen from the population of 83 ombudsmen who were subject to the requirements during the audit scope. The sample was designed to be representative of the population. Test results may be projected to the population, but the accuracy of the projections cannot be measured.

Auditors also selected the following risk-based samples:

- To determine whether quality assurance reviews of workers' compensation cases were completed accurately, auditors selected a sample of 4 field offices (San Antonio, Lubbock, Houston East, and El Paso) from the 17 field offices that were scheduled for quality assurance reviews between November 2017 and March 2019. From those field offices, auditors then selected a sample of workers' compensation case reviews. Specifically, auditors selected 2 of the workers' compensation case reviews that the Quality Assurance (QA) team completed for each of the 19 ombudsmen at those field offices, for a total of 38 workers' compensation case reviews selected.
- To test compliance with requirements for processing complaints, auditors selected a sample of 12 complaints from the 43 complaints that the Office processed between September 1, 2017, and March 20, 2019.

The risk-based samples described above were generally not representative of the populations; therefore, it would not be appropriate to project the test results to the populations.

To determine whether ombudsmen provided certain types of assistance to injured employees as required, auditors selected a nonstatistical sample of workers' compensation cases for which injured employees requested assistance from the Office between September 1, 2017 and February 28, 2019, and that had not yet been disposed of according to Office policy. That selection was made primarily through random selection. In some cases, auditors' selected additional cases for testing based on risk. The sample items were not necessarily representative of the population; therefore, it would not be appropriate to project the test results to the population.

Information collected and reviewed included the following:

- Statutes, rules, policies, and other guidance relevant to the Office's Ombudsman Program.
- Ombudsman training program materials and records.
- The QA team's review documentation and associated reports.
- Technical observation forms completed by regional managers.
- Ombudsmen's workers' compensation case files.
- The Office's complaint files.
- Workers' compensation case data from DRIS.

Procedures and tests conducted included the following:

- Interviewed Office staff to gain an understanding of the Ombudsman Program and the Office's processes.
- Observed proceedings during which an ombudsman assisted injured employees.
- To determine whether ombudsmen completed key elements of the Office's ombudsman training program, auditors tested training records for the five new ombudsmen who participated in the training program scheduled for November 2018 through March 2019.
- Tested samples of quality assurance reviews, technical observations, and complaints received by the Office for compliance with program requirements.
- Analyzed workers' compensation case data from DRIS and tested a sample of workers' compensation cases files to determine whether the



Office provided assistance to injured employees in accordance with program requirements.

- Evaluated the Office’s training materials, technical observation form, and quality assurance review worksheet.

Criteria used included the following:

- Texas Labor Code, Title 5, Subtitle A.
- Title 28, Texas Administrative Code, Parts 2 and 6.
- The Office’s administrative and field operation policies.
- The Office’s forms, worksheets, and checklists.
- The Office’s ombudsman training program schedule.
- The Office’s guidance for using DRIS.

### **Project Information**

Audit fieldwork was conducted from January 2019 through August 2019. We conducted this performance audit in accordance with generally accepted government auditing standards<sup>8</sup>. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

The following members of the State Auditor’s staff performed the audit:

- Tessa Mlynar, CFE (Project Manager)
- Mohammad Bawany
- Aaron Paul Daigle, CPA
- Arnton Gray
- Nate Stein
- Mary Ann Wise, CPA, CFE (Quality Control Reviewer)
- Cesar Saldivar, CFE, CGAP (Audit Manager)

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<sup>8</sup> United States Government Accountability Office’s *Government Auditing Standards*, 2011 Revision.

## Issue Rating Classifications and Descriptions

Auditors used professional judgment and rated the audit findings identified in this report. Those issue ratings are summarized in the report chapters/sub-chapters. The issue ratings were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

In determining the ratings of audit findings, auditors considered factors such as financial impact; potential failure to meet program/function objectives; noncompliance with state statute(s), rules, regulations, and other requirements or criteria; and the inadequacy of the design and/or operating effectiveness of internal controls. In addition, evidence of potential fraud, waste, or abuse; significant control environment issues; and little to no corrective action for issues previously identified could increase the ratings for audit findings. Auditors also identified and considered other factors when appropriate.

Table 3 provides a description of the issue ratings presented in this report.

Table 3

Summary of Issue Ratings	
Issue Rating	Description of Rating
Low	The audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited <u>or</u> the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.
Medium	Issues identified present risks or effects that if not addressed could <u>moderately affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.
High	Issues identified present risks or effects that if not addressed could <u>substantially affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.
Priority	Issues identified present risks or effects that if not addressed could <u>critically affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.

Copies of this report have been distributed to the following:

### **Legislative Audit Committee**

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair

The Honorable Dennis Bonnen, Speaker of the House, Joint Chair

The Honorable Jane Nelson, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable Dustin Burrows, House Ways and Means Committee

### **Office of the Governor**

The Honorable Greg Abbott, Governor

### **Office of Injured Employee Counsel**

Ms. Jessica Barta, Public Counsel



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