SORM

State Office of Risk Management

Biennial Report

to the

83rd Texas Legislature

THE STATE OF TEXAS

December 28, 2012

SORM

State Office of Risk Management

State Office of Risk Management
300 W. 15TH, AUSTIN, TEXAS 78701 / P.O. BOX 13777, AUSTIN, TEXAS 78711-3777
(512) 475-1440, FAX (512) 370-9025 / WWW.SORM.STATE.TX.US

December 28, 2012

The Honorable Rick Perry
Governor of Texas

The Honorable David Dewhurst
Lieutenant Governor

The Honorable Joe Straus
Texas House of Representatives

Members of the 83rd Texas Legislature

The Board of Directors and Executive Director of the State Office of Risk Management (Office) respectfully submit this Biennial Report to the 83rd Legislature. This report is submitted pursuant to the requirements of Texas Labor Code Sections 412.032 and 412.042, and Executive Order GWB 95-8.

The Office appreciates the opportunity to serve state employees and Texas state agencies, and we look forward to working with the members of the 83rd Legislature during the legislative session. Please feel free to contact me at (512) 936-1502, or Paul Harris, the Office's Government Relations Liaison, at (512) 936-1452, if you have any questions or require any additional information. We are available at your convenience to discuss any of the issues contained in the report and to provide necessary assistance.

Respectfully,

Jonathan D. Bow, J.D.
Executive Director

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1. Methods to reduce exposure of state agencies to the risks of property and liability losses, including workers' compensation losses.

The State Office of Risk Management (Office) is charged by Chapter 412, Texas Labor Code, to administer insurance services obtained by state agencies, including the workers' compensation insurance and the state risk management programs for government employees.

Texas state agencies are exposed to a vast array of risks. To help agencies address those risks, the Office utilizes multiple approaches, including, but not limited to: published guidelines; oversight in the development and maintenance of risk management programs; administration of property and casualty insurance programs; specialized assistance and training; comprehensive data collection, monitoring and analysis; and the workers' compensation program.

Guidelines

The Office publishes *Risk Management for Texas State Agencies* (RMTSA), a comprehensive set of guidelines for risk management programs, accessible to state agencies and the public on the Office's website at http://www.sorm.state.tx.us/RMTSA_Guidelines/volumes.php.

The four volume publication lays out the form, direction, and basis for developing and implementing a comprehensive risk management program to reduce property, liability, and workers' compensation losses. The guidelines are designed to assist in the creation of policies and procedures that address each agency's unique mission and risks.

The Office's Risk Management Specialists work with each client agency to ensure that they have adopted the applicable RMTSA guidelines and other appropriate standards and best practices into their respective risk management programs.

Oversight and Development

The Office's Risk Management Specialists provide direct, consultative assistance and oversight to client agencies via risk management program reviews (RMPRs) and on-site consultations (OSCs), as described below:

- **RMPRs** – Conducted approximately every four years, the RMPR is a comprehensive, cyclical assessment of the client agency's exposure to risk, and a review of its risk management program. Risk Management Specialists conduct walk-through inspections of agency facilities and compile formal reports of findings and recommendations. Inspections take one to four days, depending on variables such as agency size and location of facilities.

- **Scheduled OSCs** – On-site Consultations are scheduled by the Office's Risk Management Specialists and typically focus on a large loss or particular aspect of the client agency's risk management program. Annually scheduled OSCs may supplement RMPRs for very large agencies with multiple facilities. Scheduled OSCs take one to three days.

- **Requested OSCs** – A client agency may request assistance from a risk management specialist regarding a specific issue. Depending on the complexity of the issue, the risk management specialist may work with the client agency for several days or weeks to resolve the issue.

- **Insurance OSCs** – The Office's insurance staff also conduct OSCs. A state agency may choose to transfer risk through the purchase of insurance. The Office's Insurance Specialists may, upon the agency's request, consult with agency staff to guide this process, assist with term changes, or answer specific policy inquiries. Insurance Specialists may spend several days or weeks coordinating issues between insurance carriers and the client agency.

The Office performs a minimum of 29 RMPRs and 229 OSCs each fiscal year. During the past biennium, the Office's Risk Management Specialists conducted 548 onsite visits with client agencies. The Office supports collaborative relationships that empower agencies to voluntarily and proactively address their risk management issues. The Office's Risk Management Specialists are always available to assist client agencies outside of the formal RMPR and OSC processes.

Assistance and Training
Knowledge is key to enabling state agencies to manage their risks and losses. The target audience for training includes client agency risk management staff, claims coordinators, supervisory staff, and employees totaling approximately 186,000 covered state employees. During FY12**,** the Office's trainers taught 245 on-site courses and reached approximately 5,383 students throughout Texas. The majority of these regional training sessions are hosted by client state agencies. Because this training is delivered locally, participation by staff in remote locations is increased at little or no cost to those agencies. By coordinating trainings, the Office was able to dramatically reduce travel expense while maintaining student levels.

During FY12, the Office also improved the accessibility of training to state employees through the production of short, online videos on various risk management topics. These videos account for an additional 44,896 individual training sessions and are available to any covered employee with access to the internet at no incremental cost to the State.

Data Collection and Monitoring
The Office analyzes risk management expenditures and loss data submitted by client agencies and performs baseline trend analysis to monitor emerging exposures and losses. The Office collects this data through an online, interactive Risk Evaluation and Planning System (REPS) tool that leads client agencies through the identification, analysis and mitigation of identified risks.

Other Methods
Through REPS, RMPRs and OSCs, the Office educates client agencies on emerging trends and provides in-depth guidance in risk management. The Office responds to the risks and needs of client agencies as they are identified, and cooperates with other oversight agencies in implementing viable loss control programs for state agencies.

The Office continues its memorandum of understanding with the State Fire Marshal's Office and the Texas Facilities Commission, creating a cooperative framework for the agencies to communicate and work together to address risks from identified fire hazards or losses, and report any actions taken to mitigate the risks to state property.

Workers' Compensation
The Workers' Compensation Program is discussed at length in the following sections.

2. Operation, financing, and management of risks.

Risk exists in every facet of governmental operations. In the normal course of business, the State is exposed to risks that may result in monetary loss, decreased efficiency, loss of resources, and loss of public confidence. Causes of loss include, but are not limited to, workers' compensation costs, fire damage, automobile accidents, lawsuits and natural and man-made disasters. The Office is concerned with reducing the frequency and severity of losses for each client state agency and, by extension, for state government as a whole.

The Office's risk management program is concerned with all categories of risk and provides services to covered agencies and to other entities identified by statute, such as the Community Supervision and Corrections Departments that are included in the State's government employee workers' compensation program.

Responsibility for the operation, financing, and management of risks shown in Chart A are shared between the Office and its client agencies and varies by risk. Client agencies are required to designate a risk manager and a claims coordinator who are responsible for oversight and reporting on agency risk management efforts, injuries, and losses.

CHART A: Statewide Risk Management Costs for FY 2011 and FY 2012

Category	FY '11	FY '12	Difference	% Change
Salary, Wages & Benefits	$ 33,575,163	$ 33,060,081	$ (515,082)	-1.53%
Statewide Risk Management Expense	$ 2,054,983	$ 2,308,089	$ 253,106	12.32%
Cost Containment	$ 1,837,855	$ 1,763,035	$ (74,820)	-4.07%
Settlements & Judgments	$ 3,049,966	$ 2,005,146	$ (1,044,820)	-34.26%
Bonds, Insurance, & Deductibles	$ 14,789,859	$ 16,470,524	$ 1,680,665	11.36%
Actuarial Services	$ 10,000	$ 10,000	$ -	0.00%
Court Costs and Attorney Fees	$ 368,423	$ 737,757	$ 369,334	100.25%
Workers' Compensation Claims Expense	$ 44,668,900	$ 39,585,829	$ (5,083,071)	-11.38%
Workers' Compensation Claims Administration	$ 4,440,469	$ 4,880,221	$ 439,752	9.90%
Total Risk Management Costs	**$ 104,795,618**	**$ 100,820,681**	**$ (3,974,973)**	**-3.79%**

State agency program costs are self-reported and consist of risk management departmental salaries and benefits; staff training; supplies and equipment purchases; and other risk management–related expenditures. Large increases in costs are generally attributable to one-time project costs such as the installation of a fire suppression systems or security cameras. Significant decreases in reported costs are likely attributable to SB 5 (82nd R.S.) that exempts institutions of higher education and district courts from these reporting requirements.

Each state agency develops risk management parameters that are tailored to their unique needs. For example, some state agencies count security personnel and maintenance staff as risk management FTEs, and therefore report the expenses associated with those positions to the Office as risk management expenditures.

Workers' Compensation

New injuries to state employees have been significantly reduced. Injury frequency rates, expressed as a percentage of injuries per number of covered FTEs, have declined from 4.75% in FY02 to 3.73% in FY12 (see IFR chart on page 10). In FY 12, there were approximately 500 fewer injuries per year than in the two previous years (see "Accepted Claims" chart on page 11).

Increased risk management and claims coordination efforts, as well as more effective processes implemented by the Office have improved this loss experience. Changes in the funding structure for workers' compensation have been key in emphasizing the value of effective risk management. Cash payouts for workers' compensation claims payments are shown in Chart B.

CHART B: Workers' Compensation Claims Payments

FY11	FY12	Incr/(Decr)	% Incr/Decr
$44,668,900	**$39,585,829**	**($5,083,071)**	**(11.38)**

As shown in Cart B, in FY12, the State paid $39,585,829 for workers' compensation claims. This figure is the sum of all workers' compensation payments made on behalf of claimants in FY12, including those injured in preceding fiscal years.

When analyzing workers' compensation costs, it's important to note that the numbers represent a snapshot in time. Workers' compensation payments are typically paid out over several years, therefore, changes made to a risk management program or claims administration in a given fiscal year may take several years to realize any financial consequence.

Financing

The Risk Management program, which includes health and safety issues as well as general risk management, and the Pay Workers' Compensation strategy are both funded through annual assessments to state agencies pursuant to Chapter 412, Texas Labor Code. The assessments, similar to annual premiums, are determined by a formula based on historic FTE, payroll, claims, and claims cost data.

The appropriation for Workers' Compensation Claim Payments is also funded by Interagency Contracts (IAC) through these assessments. This funding is used for medical cost containment services and other costs directly related to reducing claim payments and risk.

CHART C: FY 12 Expenditures by Strategy and Method of Finance

Goal/Strategy	GR	IAC	Total
Goal 1.1.1/Risk Management Program	0	2,308,088	2,308,088
Goal 1.2.1/Pay Workers' Compensation	0	6,653,256	6,653,256
SUBTOTAL:	**0**	**8,961,344**	**8,961,344**
Goal 1.1.1/Workers' Compensation Payments (separate appropriation)		39,585,829	39,585,829
GRAND TOTAL:	**0**	**48,547,173**	**48,547,173**

3. Handling of claims brought against the State.

Workers' compensation and other claims against the State, outside of the Office's insurance program, are handled by the Office of the Attorney General. Claims against the State, for which insurance has been purchased through the Insurance Program are handled by the insurance carrier with the Office acting as a liaison between the carrier and state agency.

If the insurance claim results in litigation, the Office of the Attorney General typically handles the matter throughout the litigation process. The Office offers voluntary participation in the statewide insurance program to reduce the cost of risk associated with general liability, employment practices, professional liability and other non-tort related exposures.

The Office processes workers' compensation claims for all state agencies, and other entities identified in Chapter 501 of the Texas Labor Code. The Texas Department of Transportation, University of Texas System, and Texas A&M University System are outside the SORM program as they have established their own programs.

State law provides that employees injured in the course and scope of their employment are entitled to receive benefits for reasonable and necessary medical care and indemnification of wages for time lost from work due to the effects of their compensable injuries. Injured workers are entitled to receive medical treatment to cure and relieve the effects of their work-related injuries or illnesses, without any specific time or cost limits.

The Texas Department of Insurance Division of Workers' Compensation (TDI-DWC) monitors system participants' compliance with the Texas Workers' Compensation Act and Rules and corrects noncompliant behavior. Compliance objectives are measured every two years and are achieved through Performance Based Oversight (PBO) of Carriers. For the second assessment in a row, the Office was placed in the High Tier Performance category. This year's combined weighted measurements equaled 97.2 out of a possible 100 points.

Each state agency designates at least one claims coordinator who provides information about workers' compensation to injured employees and reports workers' compensation claims to the Office. The Office trains claims coordinators on handling claims and provides access to the Office's electronic Claims Management System (CMS). The Office's system automatically creates a claim when agencies report information electronically to the Office. Office staff may also enter information to the system manually.

The Office uses CMS to assign claims, maintain records, monitor deadlines, and coordinate benefits payments. The CMS also interfaces with the Office's medical cost containment vendors, TDI-DWC, the Office of the Attorney General, and the State Comptroller for the processing of state warrants. The Office uses a digital imaging system for record-keeping of claim documents, including medical billing and submitted forms promulgated by TDI-DWC.

The Office devotes a staff of forty-three (43) adjusters, located in Austin, to manage all workers' compensation claims, assess compensability, and authorize payment of wage replacement (indemnity) and medical benefits. The Office processes approximately 600 indemnity payments each week, including direct claimant benefits, attorney's fees and related payments required by law. Adjusters determine the amount of indemnity payments based on each injured worker's average weekly wage, from salary information provided by the employing agency.

In FY12, the Office processed 31,558 indemnity payments, representing a continuing decrease in the number of active, open claims administered from the previous year. Indemnity benefits are payable to injured workers as five types of awards as described in Chart D.

CHART D: Average Total Caseload of Awards to Injured Workers

Benefit Type	Benefit Description	Average Total Caseload
Temporary Income Benefits (TIBs)	Injured employees unable to work are eligible to receive TIBs after the seventh day of lost time for a maximum 104 weeks.	255
Impairment Income Benefits (IIBs)	Workers may be entitled to IIBs on the day after the date the employee reaches maximum medical improvement. Entitlement to IIBs ends the earlier of (1) the date of expiration of a period computed at the rate of three weeks for each percentage of impairment; or (2) the date of the employee's death.	95
Supplemental Income Benefit (SIBs)	Injured workers actively seeking re-employment or participating in a vocational rehabilitation program may receive SIBs monthly if they have an impairment rating greater than 15% and are not earning at least 80% of pre-injury wages because of injury.	30
Lifetime Income Benefits (LIBs)	Injured workers with severe and permanent impairments resulting from a work-related injury may receive LIBs.	12
Death Income Benefits (DIBs)	While not an income benefit, beneficiaries of workers who succumb to fatal injuries may receive DIBs.	57

Claims Operations Division

The Office's Claims Operations Division consists of dedicated claims units, an intake unit, a customer service call center, a quality assurance unit, a disability management unit and a medical cost containment unit. Client agencies are assigned to specified claims units.

Upon receipt of the file, Claims Operations performs the initial investigation of each reported injury and determines compensability. Claims Operations follows all claims until their conclusion to ensure that each state worker receives the medical and income benefits due under the Texas Workers' Compensation Act.

In FY12, Office processed approximately 115,600 medical bills. The Medical Cost Containment unit within Claims Operations is comprised of the Medical Provider Assistance and Medical Audit departments. The Office contracts with two cost-containment vendors to conduct comprehensive audits of submitted medical bills and provide other services.

Forté, Inc. is the contractor primarily responsible for auditing physician and hospital bills. The Office has a contingency contract with Argus Services, which is ready to take over any or all medical cost containment functions should the need arise, ensuring that the Office will maintain compliance with all medical bill processing timelines. The Office contracts with ScripNet, Inc., as its Pharmacy Benefits Manager (PBM). ScripNet processes approximately 25,000 pharmacy prescriptions each year for the State's injured workers.

State law and DWC rules require preauthorization and concurrent review by workers' compensation carriers for specific treatments. The Office may not pay the cost of these medical services unless preauthorization was granted. The Office also contracts with Forté, Inc., to determine the medical necessity of services requiring preauthorization. In FY12, Forté processed 7,512 preauthorization requests. Forté also processes concurrent reviews to determine the medical necessity of extending treatments that were previously preauthorized.

The vendors review bills to ensure that treatment is reasonable, necessary, and related to the compensable injury; identify duplicate bills and billing errors; and adjust bills for payment in accordance with DWC fee schedules or applicable contracts. Payment recommendations are submitted to the Office for review and verification, and may be resubmitted to the vendors for correction. In FY12, the Office was billed $80.7 million for medical services. The cost containment functions provided by the vendors reduced those costs by $56.4 million.

In addition, pursuant to Texas Labor Code §408.028(b), the TDI-DWC adopted rules establishing a pharmacy closed formulary for the Texas workers' compensation system. The closed formulary provisions apply to certified network and non-network outpatient claims made on or after September 1, 2011 for dates of injury which occur on or after September 1, 2011.

CHART E: Summary of Cost Containment Savings

Strategy	**FY 2010**	**FY 2011**	**FY 2012**
Total Medical Bill Audit Savings	$63,929,545	$ 70,109,289	$59,400,918
Medical Bill Audit Savings due to Duplicate Bill Savings	($2,881,201)	($3,279,814)	($3,024,486)
Net Medical Bill Audit Savings	$61,048,345	$66,829,475	$56,376,431
PPO/PBM Savings	$ 2,924,884	$ 1,051,747	$ 1,058,536
Preauthorization of Medical Services*	$ 5,034,394	$ 5,284,605	$ 5,193,853
Total Cost Containment Savings	**$69,007,623**	**$73,165,827**	**$62,628,820**

** Cost of procedures not performed at time of request, as estimated by the cost containment vendor. The Texas Workers' Compensation Act and DWC adopted rules provide that health care providers are required to obtain preauthorization of certain medical procedures (e.g., psychiatric care and non-emergency hospitalizations) from workers' compensation insurance carriers prior to such procedures being performed. Preauthorization savings represent the avoidance of expenses related to unreasonable, unnecessary or non-workers' compensation related procedures prior to a treatment or service being provided and billed. Since a treatment or service was not authorized and no billing was received, the savings reported are cost-avoidance estimates provided by the Office's cost containment vendor.*

Case Management

The Office uses case management to assist injured workers in accessing quality health care in a cost-effective manner and to assist an injured worker to return to work at the earliest time it is safe for the employee to do so.

The Office employs three internal nurse case managers who maintain contact with the injured worker, treating doctor, and employer and provide expertise to the adjuster in developing an appropriate claims handling strategy from a medical perspective and advance the effort to get the injured worker to full productivity.

The case managers also assist in making determinations as to whether further telephonic or field case management is needed. In appropriate cases, the Office utilizes private vendors for field case management services performed by certified case managers, registered nurses, or licensed vocational nurses. Case managers meet with injured workers, consult with doctors about treatment plans, and may visit employers to assess the physical challenges that work may present to the injured worker.

The Texas Workers' Compensation Act grants parties the ability to use medical examinations of the injured worker by an independent physician to resolve questions about the appropriateness of treatments. These required medical exams (RMEs) verify whether ongoing and proposed care is reasonable, necessary, and related to the compensable injury. Peer reviews may also be used to advise whether medical services or prescription drugs are an appropriate course of treatment given an injured worker's diagnoses. These peer reviews involve a medical professional conducting a paper review of medical files. Both RMEs and peer reviews may identify needs for changes in treatment, and may be relevant in the event of a dispute regarding entitlement to certain benefits.

The Office reviews impairment ratings assessed to injured workers, and may, in appropriate circumstances, request an independent doctor review of an impairment rating. Reviewing ratings helps to ensure the accuracy of impairment ratings and to determine the appropriate benefits for injured workers.

Workers' Compensation Health Care Networks

House Bill 7 (79th R.S.) authorized the use of workers' compensation healthcare networks (WCHCNs) certified by the Texas Department of Insurance (TDI) under Chapter 1305, Texas Insurance Code. House Bill 473 (81st R.S.) required that all voluntary or informal networks be certified by TDI by January 1, 2011, or be discontinued.

In February 2011, SORM partnered with Forté, Inc., to provide state employees with access to the Forté certified Workers' Compensation Health Care Network (HCN), known as the CompKey+ HCN. The HCN was rolled out in phases for all our client agencies' new claims, beginning September, 2011. The rollout was completed in December, 2011. Additional claims with earlier dates have been rolled in since.

Based on the Division of Workers' Compensation interpretation of HB 7, claims that occurred between September 1, 2005 and February 1, 2011 cannot be enrolled in the HCN. Additionally, some claims, based on geographic location in Texas will not be covered by the HCN.

The CompKey+ HCN is designed to provide employees who are injured on the job with access to primary and specialty medical providers who are familiar with workers' compensation injuries and will provide high-quality medical care to help facilitate quick recovery and return to work.

The HCN has enrolled approximately 83% of all claims that have occurred since February 2011 and are currently open. The majority of the remaining claims were outside of the geographic service area of the HCN. Of the claims enrolled in the HCN, first treatment with a network physician typically takes place less than two days after the injury.

Both the Office and Compkey+ are assessing the performance of the HCN and its value. While claims costs have gone down noticeably in the last year, there have been other changes to the Workers' Compensation Act and improvements in claims handling that account for some portion of the decline. One positive trend can be found in the reduction of physical therapies, chiropractic and related treatment request and denials. Chiropractors are specifically excluded as primary treatment providers in the HCN, but may provide care with a referral from the primary provider.

Fraud Investigations Activities

The Office employs two staff members to identify suspect billing practices and investigate allegations of fraud. The investigators interview involved parties, conduct surveillance, check wage records with the Texas Workforce Commission, and check for previous personal injury claims.

If investigators find evidence that a person fraudulently obtained benefits, they refer the case to the Texas Department of Insurance's Fraud Unit, or in some cases make referral to law enforcement personnel. The Insurance Fraud Unit reviews the case to determine if it should be referred to a district attorney for prosecution, pursued as an administrative violation, or dropped.

Because cases of provider fraud are more difficult and time-consuming than claimant fraud, the Office's investigators may coordinate with or provide assistance to investigators from other entities. During the biennium, the Office opened approximately 52 fraud cases. Although not all cases resulted in evidence of fraudulent activity, the Office collected nearly $12,000 in restitution during the biennium.

Although avoided costs cannot be precisely calculated, the Office estimates costs avoided when ongoing fraudulent activities are detected and stopped are approximately $100,000 in potential costs for the biennium. The estimate of avoided cost does not include the deterrence value of fraud investigations activity.

Subrogation

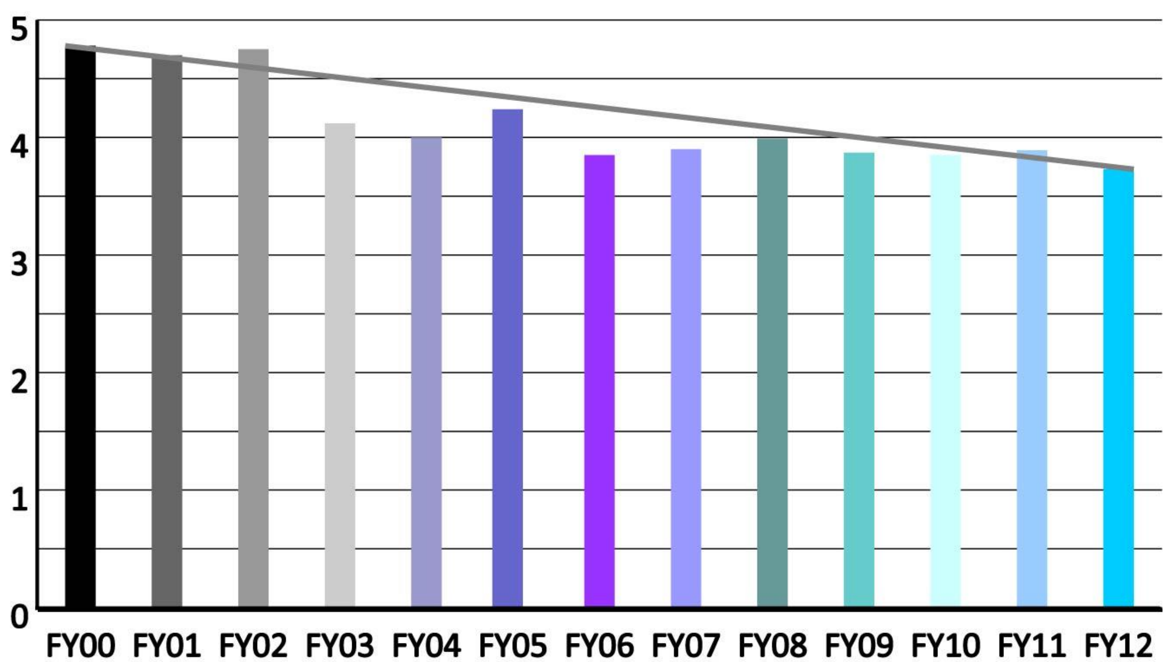
In claims where a state employee's injury is caused by a third party, the Office may be entitled to recover expenses for medical and indemnity benefits through subrogation. When processing claims, adjusters question injured workers and claims coordinators to determine whether any third party is involved.

The Office employs a subrogation specialist who evaluates potential third-party liability, and pursues cases both directly and through referral to the Office of the Attorney General when litigation is necessary. The Office has recovered over $1.38 million through subrogation during the biennium.

4. Frequency, severity, and aggregate amount of open and closed claims in the preceding biennium by category of risk, including final judgments.

The total number of injuries per 100 Full-Time Equivalents (FTEs) has experienced a sustained decline over the past decade.

CHART F: SORM Injury Frequency Rates



There has also been a downward trend in the total number of accepted workers' compensation claims for state employees over the past decade. The number of claims accepted rose during fiscal years 2008 through 2011. During FY12, both the number of claims and the IFR decreased.

CHART G: Accepted Claims

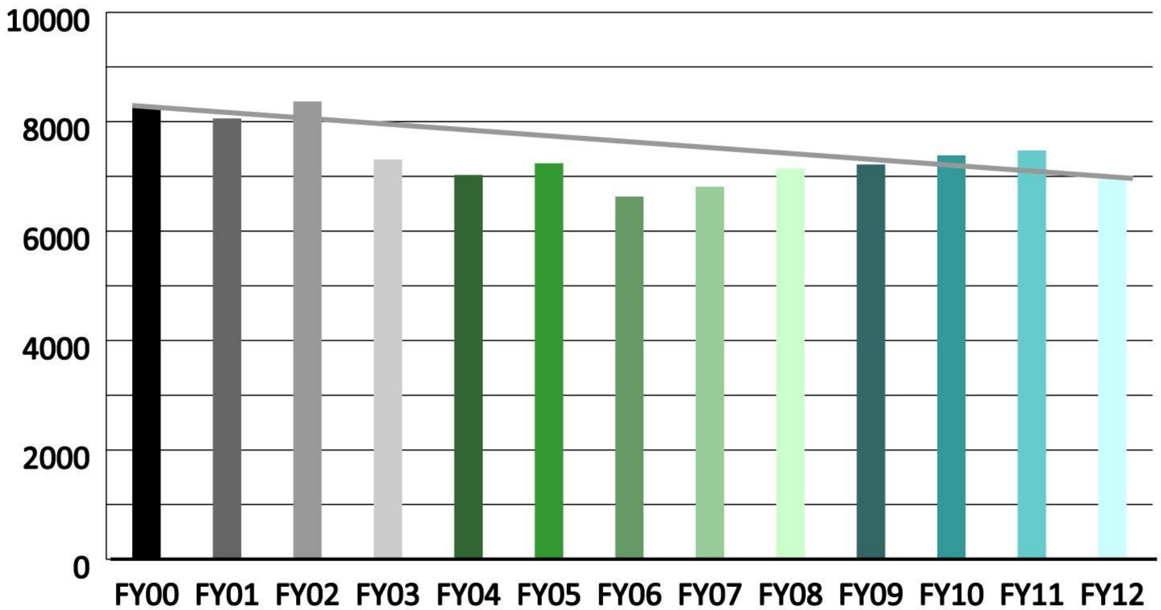
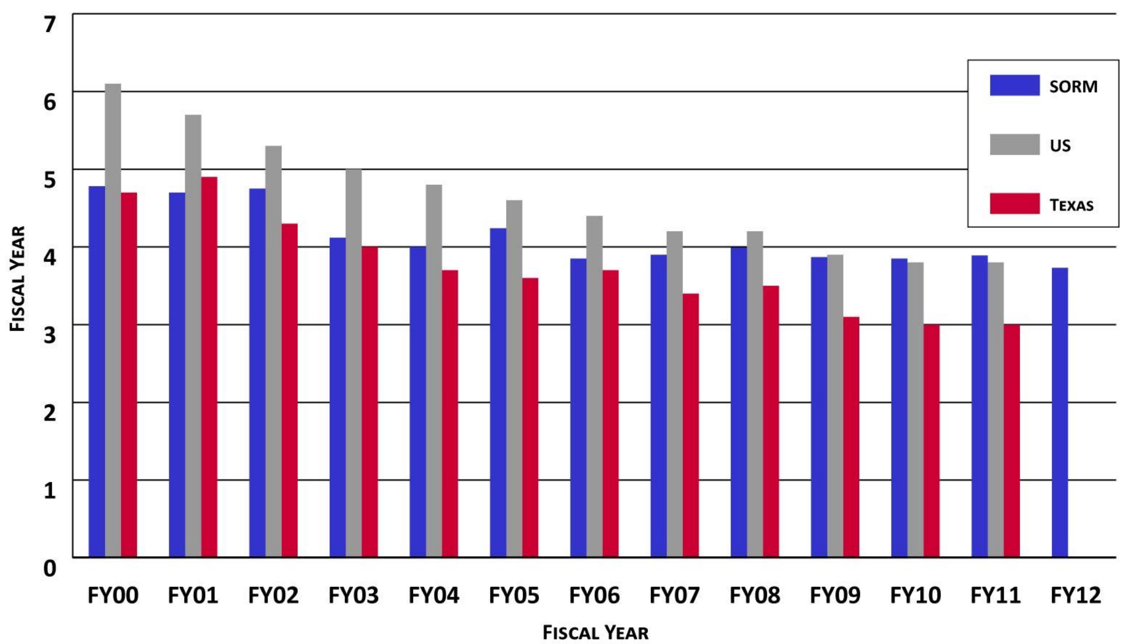


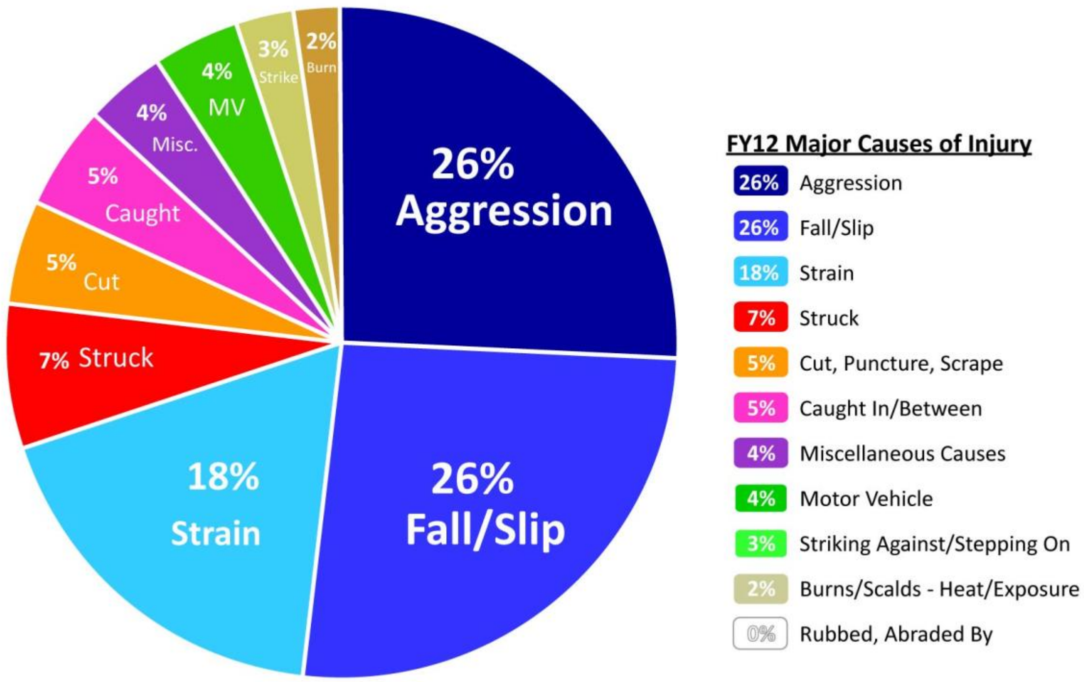
CHART H: SORM, US and Texas Injury Frequency Rates



** FY12 data for Texas and US not available.*

During the past biennium three covered employees died in work related accidents or incidents: one training accident (massive heart attack), one machinery incident and one vehicle related death. Causes of all injuries for the preceding biennium are presented below:

CHART I: FY12 Major Causes of Injury



The leading causes of injury during the biennium remained relatively stable. As would be expected, the agencies concerned with criminal justice, juvenile offenders, law enforcement and mental health account for the vast majority of aggression injuries within the State. It should also be noted that while motor vehicle accidents account for only 4% of all claims, it is the leading cause of work related deaths.

Other losses incurred during the biennium include property and casualty claims, as reported to the Office. Most of these claims made during the biennium remain open and are uninsured. Claims listed may include claims where the State has immunity or has statutory liability caps in place to limit or prevent expenditure of State funds.

CHART J: Client Agency Frequency and Severity Data FY11

Category	Number of Claims	Demand Amount	Loss or Paid Amount
Directors' & Officers', Employment Practices and Civil Liability	109	$48,000.00	$1,419,998.00
Environmental	1	$0	$0
Financial	7	$0	$5,527.00
Motorized Vehicles and Equipment	737	$188,170.00	$592,380.00
Professional	21	$16,232.00	$0
Property	139	$1,496,333.00	$389,378.00
Third Party and General Liability	269	$1,283,011.00	$25,937.00
Totals:	**1174**	**$3,031,746.00**	**$2,433,220.00**

CHART K: Client Agency Frequency and Severity Data FY12

Category	Number of Claims	Demand Amount	Loss or Paid Amount
Directors' & Officer's, Employment Practices and Civil Liabilities	129	$0	$50,001.00
Environmental	0	$0	$0
Financial	5	$0	$0
Motorized Vehicles and Equipment	564	$0	$163.946.00
Professional	3	$0	$116,000.00
Property	42	$22,463.00	$276,000.00
Third Party and General Liability	45	$0	$2,045.00
Totals:	**783**	**$22,463.00**	**$607,992.00**

The significant decrease in reported claims is likely attributable to SB 5 (82nd R.S.), which exempts institutions of higher education and district courts from reporting losses to the Office, Texas Labor Code §412.053(c), effective September 1, 2011.

5. Identification of each state agency that has not complied with the risk management guidelines and reporting requirements of Chapter 412.

CHART L: Non-compliant State Agencies

Agency	Issue
Texas Woman's University	(1) Purchase of insurance coverage outside of the SORM program as required by TLC §412.011(c) FY 11 & FY12 (2) Failure to report the purchase of and losses related to: Property, Automobile, Commercial General Liability, Professional Liability, and Crime insurance purchases. TLC §412.053. FY 11 (No data received from TWU in FY12. The Office presumes TWU is still purchasing insurance.)

6. Recommendations for the coordination and administration of a comprehensive risk management program to serve all state agencies, including recommendations for any necessary statutory change.

Statewide Self-Insurance for Property

It is commonly assumed that the State self-insures its real and personal property. While it would be accurate to say that the State retains the risk of a loss, the absence of a specific insurance policy or funded and reserved program, means that the State's real and personal property is, in practice, uninsured. The State has no funded reserves for losses to real or personal property and each agency makes an individual decision to either insure their property or retain any potential loss.

When uninsured losses occur, the agency must absorb those losses in current budgets or request additional appropriations. In the event of a declared disaster, reimbursement by FEMA does not become an option until agencies purchase insurance on facilities that sustained damage.

The Office has been charged with studying and making a recommendation to the Legislature on methods to manage the risk of the State's insurable assets. The initial results of the Office's study were made available in January of 2011. A follow-up study is being prepared contemporaneously and will be available on our website in January of 2013.

Risk Management Training and Certification

Risk management expertise varies significantly from agency to agency. Despite ever-increasing demands on state agencies to identify and manage risk, many agencies are not familiar with principles of risk management. Lack of experience and training can result in a failure to identify and respond to risk, which leads to increased losses and injuries to employees and the public.

The Office recommends development of a certification program for state agency risk managers similar to the program establishing minimum certification for state purchasing professionals.

Such a program can help ensure that state agency personnel receive training and have proven competency in identification, analysis, mitigation, financing and administration of risk.

The program could potentially generate a noticeable reduction in exposure to significant loss and assist agencies in managing losses should they occur. Requiring certification of risk managers for all agencies with significant risks or losses would benefit agencies and the State.

Business Continuity Plans

The Federal Emergency Management Agency maintains a list of major disasters declared in the 50 states, the District of Columbia, and nine U.S. territories. Texas is at the top of this list, making it the most "disaster-prone" state, with 84 disasters formally declared between the years of 1953 and 2010. The next closest was California with 76.

The events of 9/11 create further concerns regarding continuity of government functions in the event of a terrorist attack and the unique risks associated with the approximately 57 state agencies located within the Capitol Complex.

Currently, the Office is tasked with assisting state agencies in developing business continuity plans; however, these plans generally address only the particular agency's critical business processes, recovery time objectives, and dependence on other agencies or entities. Certain disasters or actions could result in multiple agencies being unable to perform critical functions.

At this time, there is no formal prioritization for restoration of agencies or functions. While the Office emphasizes agency-level business continuity plans, the Office's authority does not extend to mandating high-level government and interoperability issues. The Office recommends that the Legislature consider mandating a functionally-based restoration priority plan to be developed and maintained by designated State leaders, with particular emphasis on restoration of critical statewide functions affecting core business processes and/or multiple agencies.

In the event of a significant natural or man-made disaster affecting core government functions, the existence of such a plan would be absolutely necessary to ensure those functions were restored in the quickest and most efficient manner possible. At a minimum, and ideally in conjunction with the statewide restoration priority plan, the Office recommends that all state agencies be required to develop, maintain and test a business continuity plan that meets minimum pre-established standards.

The Office notes that business continuity plans, whether agency-based or general government-based, may contain sensitive information that could be used to purposefully disrupt continuity efforts in the event of terrorist action. It is further recommended that the Legislature consider limited protection of such information from disclosure pursuant to the Public Information Act.

Statutory Clarification

The Office was created through the merger of two divisions, each split from larger entities, and operates according to provisions from two separate chapters of the Labor Code. The interaction between the two chapters is largely efficient, but some problems have been associated with operating a cohesive program under language inherited from prior statutory chapters.

For example, the definition of "state agency" differs between Chapter 412 and Chapter 501: Chapter 412 defines a state agency as "a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that has five or more employees, was created by the constitution or a statute of this state, and has authority not limited to a specific geographical portion of the state". Chapter 501 defines a state agency as "a department, board, commission, or institution of this state."

This discrepancy has led to questions regarding the access and responsibilities of certain entities covered under Chapter 501 with respect to Chapter 412 services. Since the Office's responsibilities extend only to administering the programs and reporting noncompliance to the Legislature, clarification of the scope of Chapters 412 and 501 may be warranted to avoid future confusion, to specify access and responsibilities of the Office's client agencies, and to clearly delineate the reporting requirements of the Office respecting non-complying agencies.

7. Implementation of Section 412.054, relating to the development of Business Continuity Plans (BCP) by state agencies pursuant to provisions of SB 908 (80th R.S.).

The status of state agencies business continuity plans is based on agency responses collected in the Risk Evaluation Planning System for Business Continuity Management during the fiscal years 2011-2012. Approximately 94% of the agencies identified themselves as having a business continuity plan encompassing all of the agency's critical functions. Of these agencies, 48% acknowledged testing their plans.

Best practices within the industry indicate the need for annual testing, at a minimum. Only 32% of the agencies indicated they conducted annual testing. Of the agencies testing, 23% used tabletop testing while 36% used the more advanced method of component testing, confirming the varying levels of program maturity among agencies**.** Testing is the best validation method as it provides the most realistic information on needed plan updates or changes.

Final reporting requirements and standards are in development to establish uniform review standards for completeness and viability. Training, funding and resources for BCP and implementation may be available from the federal government; however, accessing those funds requires cooperation and coordination with Texas Department of Emergency Management which serves as the State's single point of contact for federal participation.

Current BCP planning documentation is available for review at:
http://www.sorm.state.tx.us/Risk_Management/Business_Continuity/init_overview.php

8. Implementation of Section 412.01215, relating to the development of Return to Work Coordination Services and Case Management pursuant to provisions of SB 908 (80th R.S.).

The Office has Return to Work Guidelines published in Volume III, Section One, Chapter 5, of the *Risk Management Guidelines for Texas State Agencies*, and is focusing its existing Disability Management Team on disability management and Enhanced Return to Work outcomes through use of the Official Disability Guidelines and Medical Disability Advisor (treatment and return to work guidelines adopted by the Division of Workers' Compensation), medical profiling of claims information, and treatment planning. Appropriation for hiring the necessary case management expertise was authorized by the 81st Legislature.

The Office is rewriting rules in an effort to provide greater incentives for agencies to return employees to work as soon as they are medically able, even if in a limited capacity.

Current RTW guidelines are available for review at:
http://www.sorm.state.tx.us/RMTSA_Guidelines/Volume_Three/1Section1/315.php

9. Director's §412.042 report.

The administrative operations for the Office, as well as claims costs, are funded exclusively through interagency contracts. Any collected funding not required for administrative operations or claim expenditures remains in the pool and is used to lower the cash assessment to pool members the following fiscal year.

The Office is administratively attached to the Office of the Attorney General, which provides significant administrative support and functions. The following data addresses the appropriations for administrative operations of the Office.

CHART M: Texas Labor Code §412.042(a)(1) Summary of Administrative Expense

Category	FY 12 Actual	FY 13 Budgeted	Biennium Total	Percent of Total
Salaries	5,283,758	5,542,973	10,826,73	58.16%
Other Personnel	187,865	167,565	355,430	1.91%
Contracted Services	1,827,148	1,926,836	3,753,984	20.17%
Consumable	28,064	30,517	58,581	0.31%
Utilities	612	612	1,224	0.01%
Travel	132,507	135,083	267,590	1.44%
Rent – Building	720	720	1,440	0.01%
Rent – Other	23,792	23,866	47,658	0.26%
Other Operating	1,476,878	1,824,906	3,301,784	17.74%
Capital	0	0	0	0.00%
Total	**$8,961,344**	**$9,653,078**	**$18,614,422**	**100.00%**

Texas Labor Code §412.042(a)(2)(A) Amount of the money appropriated by the preceding legislature that remains unexpended on the date of the report
Of the almost $9.7 million appropriated for FY 13 administrative purposes, cash basis payments as of December 19, 2012 total $2,946,528 and an additional $1,796,370 has been encumbered due to contractual or other obligations. Of the remaining balance of $4,910,180, approximately $300,000 has been incurred but not yet paid.

The Office's Board of Directors exercised $42 million in preliminary collection authority for workers' compensation claim payments, based on recent costs. Approximately $1.8 million was carried forward from FY12 assessments with the remaining amount collected by new assessments to client agencies.

As required by Article IX, Section 15.02, collection of 25% of the total assessments has been deferred until mid-third quarter of the fiscal year and will be adjusted as necessary. As of December 20, 2012, the cash balance remaining was $19,256,099.

Texas Labor Code §412.042(a)(2)(B) Estimated amount of balance necessary to administer Chapter 501 for the remainder of that fiscal year

The Office estimates that the full unexpended, unincurred, unencumbered balance of $4.62 million for the administrative appropriation will be necessary for operations for the remainder of the fiscal year.

The Office estimates that roughly $29.5 million will be necessary for workers' compensation claim payments for the remainder of the fiscal year. The remainder of the final adjusted collected balance will be applied toward the necessary amount for FY 14 or will be returned to agencies as directed by Article IX, Section 15.02.

Texas Labor Code §412.042(a)(3) Estimate, based on experience factors, of the amount of money that will be required to administer Chapter 501 and pay for the compensation and services provided under Chapter 501 during the next succeeding biennium

The Office estimates that $9,744,366 each year for FYs 14 and 15, a biennial total of $19,488,732, will be required to administer the workers' compensation program and provide risk management and insurance services for the succeeding biennium, excluding exceptional items. The Office is requesting no General Revenue.

Exceptional items requested total $1.2 million for the biennium, consisting primarily of a redesign of the dated claims management system, workstation replacements and a voice interactive response system.

The Office requested estimated authority of $41.8 million each year of the next biennium, funded by assessments. The Board of Directors determines the actual amounts to be collected each year based on the most current information available. Authority will be exercised only as necessary to pay statutorily mandated workers' compensation claim costs.

There are several factors which could result in potential increased costs. Decreases in administrative oversight and claims scrutiny due to resource reductions, and the inability to retain trained, experienced staff will likely have the effect of increasing overall costs. Increases to indemnity rates by DWC rule or medical costs due to market forces will increase costs moderately in the short term, with a larger effect in subsequent years.

10. Insurance coverage purchased for state agencies, premium dollars spent to obtain that coverage, and losses incurred under that coverage.

Addressing many of the claims and losses experienced during the past biennium, state agencies acquired insurance coverage for a multitude of exposures. Following is a summary of policies acquired by fiscal year and line of coverage.

CHART J: Client Agency Insurance Purchases and Losses Reported for FY11 & FY12[1,2]

Line of Insurance	FY11 Total Premiums Paid	FY12 Total Premiums Paid	FY11 Reported Losses	FY12 Reported Losses
Directors' & Officer's, Employment Practices and Civil Liabilities	$1,215,709.00	$1,215,709.00	Unknown	Unknown
Environmental	$0.00	$0.00	Unknown	Unknown
Financial	$123,918.00	$94,455.00	Unknown	Unknown
Motorized Vehicles and Equipment	$924,169.00	$794,679.00	$149,324.00	$590,917.00
Professional	$304,541.00	$236,790.00	Unknown	Unknown
Property	$10,126,259.00	$12,639,236.00	$1,741,957.00	$1,950,145.00
Third Party and General Liability	$387,476.00	$313,986.00	Unknown	Unknown
Excess Accident and Medical	$547,593.00	$1,841,528.00	Unknown	Unknown
Total premiums reported to SORM	**$13,629,665.00**	**$17,136,383.00**	$1,891,281.00	$2,541,062.00

1 Leading causes of Motorized Vehicle and Equipment loss are failure to control speed and failure to yield right of way. Leading cause of Property losses are weather related.

2 Due to legislative changes in reporting requirements, not all covered agencies report their losses.

SORM
State Office of Risk Management

300 W. 15th Street, Austin, Texas 78701
PO. Box 13777, Austin, Texas 78711-37877
512-475-1400, Fax 512-370-9025
www.sorm.state.tx.us