



# RISK★TEX

INTERAGENCY COMMUNICATION FROM THE STATE OFFICE of RISK MANAGEMENT ★ JULY 2005



## TIP OF THE QUARTER

SORM's statewide Directors' & Officers' (Public Officials) program was recently renewed. American International Group through Arthur J. Gallagher will continue to underwrite this program. Each state agency can choose its own liability limit and deductible based upon its budget, FTEs, and comfort level. Additional highlights include:

- Professional liability for universities;
- Full prior acts for agencies currently purchasing coverage;
- Prior acts coverage included;
- Employment practices liability coverage;
- All defenses will be handled by the Attorney General's Office;
- Emotional distress and mental anguish coverage included;
- No loss renewal credits; and
- No exclusion for failure to maintain insurance or adequate limits.

## BOARD MEMBERS

Ernest C. Garcia,  
*Chairman*  
Ronald J. Walenta,  
*Vice Chairman*  
Ronald D. Beals, M.D.  
Kenneth N. Mitchell  
Martha A. Rider

# Workers' comp reform passes

By Stephen Vollbrecht

In the last days of the 79th Legislative Session, a compromise was reached on the two competing workers' compensation reform bills, Rep. Solomons' House Bill 7 and Sen. Staples' Senate Bill 5. In the second major overhaul since 1989, the compromise bill, numbering almost 400 pages, was passed by the House and Senate using HB 7 as the vehicle and incorporates numerous changes of interest to those working in the field of workers' compensation. By necessity, this overview is intended to provide only the major shifts in the comprehensive reform legislation.



## Governance

The Texas Workers' Compensation Commission (TWCC) is abolished and a new workers' compensation division is established at the Texas Department of Insurance (TDI). The governor will appoint a commissioner to oversee the division, but the Commissioner of Insurance has ultimate rule-making authority.

All of the prior functions of the former TWCC are transferred to TDI, with the exception of the ombudsman program. That program will be administered by a new state agency, the Office of Injured Employee Counsel (OIEC). The Public Counsel, the administrative (See "Changes," page 7)

# New board leadership

A new chairman and vice chairman now lead the SORM Board of Directors. Ernest Garcia of Austin was named chairman of the board and Ronald Walenta of Dallas was selected vice chairman. Both were appointed in February to serve on the board by Gov. Rick Perry.

Garcia, who is the managing trial attorney of the Law Offices of Ernest C. Garcia and the staff counsel office of the CNA Insurance Companies,

serves on the board for a term to expire Feb. 1, 2009.

Walenta owns a risk management and claims management consulting firm and serves on the board for a term to expire Feb. 1, 2011.

Garcia and Walenta succeed board members Martha Rider and Dr. Ronald Beals, respectfully, as leaders of the Board of Directors. Rider and Beals still serve on the SORM board.

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# Teaching others about safety

*Editor's Note: This Employee Spotlight is an introduction to Bradley Prais, a training specialist in the Agency Outreach and Training section.*

I was born and raised in a northern suburb of Chicago. After graduating from high school and attending Southern Illinois University for a couple of years, I enlisted in the U.S. Air Force.

I started my 21-year military career as a security specialist protecting radar sites in Iceland and satellite delivery systems in California. I then changed jobs to radio communications and forward air controller. This took me to places such as Colorado, South Carolina, and two tours in Germany. I finally landed at Ft. Hood to finish my career. During this time, I held a variety of safety related positions, from safety officer for two organizations and a mishap investigator. I also had the opportunity to spend more than 15 years in the training field. This included training general job and safety topics, job knowledge evaluations, and developing Air Force level training curriculums. I also had several wonderful opportunities to teach students from many NATO countries. My position as a forward air controller exposed me to many unique and dangerous activities. One of which involves working with jet aircraft and coming in close proximity to the weapons they

drop. The other was spending most of my career working side by side with the U.S. Army. There is nothing like driving a jeep amongst tanks on a smoke-filled battlefield to keep your awareness up.

I retired from the Air Force in October 2004 and started working at SORM in December. I started out on the claims side, working in the call center and handling no lost-time injury claims. This helped me gain a great perspective on how the workers' compensation system works. I moved to Agency Outreach and Training in March of this year and also assumed the role as SORM's safety officer. I'll be taking the instructor lead for SORM's Additional Duty Safety Officer Orientation, Workplace Violence Prevention, Accident Investigation, Supervisor Safety, 15 Passenger



**Bradley Prais**

Van Safety, and Training for New Risk Managers.

I have settled down in Georgetown with my wife of 20 years, 15- and 10-year-old daughters, and our dog Bella. I do have another 18-year-old daughter who will be starting school at Tarleton State University this fall. I'm also taking courses at St. Edwards University to complete my organizational communications degree and an active member of Georgetown Toastmasters.

I look forward to meeting the great employees of our many state agencies and providing that extra knowledge to keep us all safe and sound for years to come.

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# Wellness programs beneficial

By **Mary Loza**

The Centers for Disease Control report that 61 percent of adults in the United States are obese. Overweight individuals are at greater risk for heart disease, diabetes, stroke, cancer, and depression. This problem is compounded by the fact that Americans follow unhealthy lifestyle choices. Obese individuals have a 50 percent greater chance of premature death. The financial impact on these unhealthy lifestyles is enormous. In 2000, the total direct and indirect cost was \$117 billion.

One area an employer can protect and maintain the safety and well being of its employees and reduce health care costs is to have a strong wellness program. Employers should encourage their employees to protect and improve their health and well being. Healthy workers are less likely to become injured and more likely to return to work promptly should an injury or illness occur. Preventable illnesses have a direct affect on an employer's cost of health care, disability, workers' compensation, absenteeism, productivity, safety, and morale.

In 1983 the Texas Legislature passed the State Employees Health, Fitness and Education Act which allows state agencies to establish wellness programs and to use public funds and facilities in implementing such programs. Information about the Act can be found in the Government Code, Title 6, Subtitle B, Chapter 664.

A good wellness program focuses on health awareness through education and behavior changes. By focusing on a variety of risk factors, such programs can lead to healthier behaviors. Such areas of focus can be on healthier behaviors with regard to fat and salt consumption, fiber intake, exercise, stress reduction activities, and smoking cessation.

When Motorola implemented its wellness program the company found that for every dollar it invested in the program, it saved \$3.93 in medical expenses. The company also saved \$10.5 million annually in disability expenses.

The Wellness Councils of America has published seven best practices to assist organizations in establishing a successful program.

- Capture Senior Management Support - Determine your organization's short- and long-term priorities and what benefits and potential value can be expected from the wellness program.
- Create a Team - Members of the wellness team should include representatives from senior and mid-management, benefits, human resources, safety, and information resources. The team should meet a least once a quarter to communicate to management and employees on what it's doing.
- Collect Data - Employee interest can be gathered

from surveys, interviews, or focus groups.

Analyze the business needs and what employees want. Provide a written report explaining how you gathered the data, what you found, and what it means.

- Create an Operating Plan - This plan should include a vision statement, goals, objectives, implementation timeline, budget, and a way to evaluate performance.
- Choose Appropriate Interventions - Base your choices for your activities on the risk factors of the employees, management's goals, employee's wishes, money and time restraints, and what is working.
- Create a Supportive Environment - Workers need to feel that their employer provides encouragement, opportunity, and rewards for healthy lifestyles. Make sure employees realize that it is their wellness program.
- Consistently Evaluate Outcomes - Assess the program by measuring knowledge and skills, participant satisfaction, participation rates, lost work days, workers' compensation claims, absenteeism rates, turnover, and productivity.

In most cases, a wellness program pays for itself. Healthy employees are more productive and efficient, less likely to file costly medical claims or go on long-term medical leave, and less likely to leave the employment. Employees who participate in a wellness program suffer fewer workplace injuries. A four-year study at Xerox Corp. found that 5.6 percent of wellness program participants filed workers' compensation claims compared to 8.9 percent of non-participants. The average cost per injury in 1998 was \$6,506 for program participants compared to \$9,482 for non-participants. The reduction in workers' compensation indemnity costs are due to a decrease in lost days because fewer injuries will incur and, when they do, a healthier employee will return to work quicker than a de-conditioned employee.

The Department of State Health Services can provide technical assistance, training, and consultation to state agencies in the development of a strong wellness program. The Cardiovascular Health and Wellness Program section offers a variety of programs and materials that can be used to engage employees in fun and supportive activities that lead to healthier lifestyles. You can view the resource materials at [www.dshs.state.tx.us/wellness](http://www.dshs.state.tx.us/wellness).

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*Mary Loza is a risk management specialist in the Risk Assessment and Loss Prevention division.*

# It's time for the SORM-200

By Jeff Cox

Each fiscal year, state agencies, courts, and institutions of higher education must complete and file a Risk Management Losses report, also referred to as the SORM-200, as mandated by Texas Labor Code §412.053. The SORM-200 is the sole source for collecting statewide information on risk management expenditures, insurance purchases, and non-workers' compensation claims made or settled against a state agency, court, or institution of higher education and must be filed by Oct. 30 of each year. The Comptroller of Public Accounts' "Reports Required by State Agencies and Institutions of Higher Education" lists the SORM-200 as one report required by SORM.

The SORM-200 report is divided into two parts and is available online for agencies to enter data. Information is entered by accessing the Risk Management Information System (RMIS) on SORM's website. Below are brief descriptions of each section of the SORM-200 report.

Part I of the SORM-200, titled Risk Management Expenses, will be available to enter information from Sept. 1 to Oct. 30. The intent of this part is to capture those direct costs associated with an agency's risk management activities. An agency's

cost of risk management includes those expenses typically identified with staffing a risk management department and those funds expended for risk control. Separated into 13 categories, this section uses accounting Comptroller Object Codes to identify specific costs and includes such items as Salary and Wages, Benefits, Travel, Training and Education, etc. Help text, a working example, and a complete listing of Comptroller Object Codes are available online to assist with entering information. Notification of when you may begin entering your agency's information will be made to your risk manager via e-mail prior to Sept. 1.

Part II of the SORM-200 is divided into two sections, the Insurance Loss/Reporting section and the Online Property and Casualty Claims Reporting section.

Section one, Insurance Loss/Reporting, will be available to enter data online from Sept. 1 to Oct. 30. Agencies are required to submit copies of all insurance policies and bonds purchased (excluding life and health) during the year, as well as provide data concerning insurance premium payments, bond payments, number of notaries, and aggregate claim/settlement payments with the report. Just as in Part I, notification of when you may begin entering your agency's

information for this section will be made to your risk manager via e-mail prior to Sept. 1.

Section two, Online Property and Casualty Claims Reporting, is available to enter losses as they happen, year around, in lieu of waiting until the end of the fiscal year. The intent of this section is to capture up-to-date, detailed information on each property and casualty loss at your agency, whether insured or uninsured. Organized by line of insurance, the on-going collection of this data has assisted agency risk managers and SORM's risk management specialists in identifying areas requiring immediate and/or special attention, while allowing agencies to update/enter claims information throughout the year, rather than waiting until the end of the fiscal year when many other reports are also due.

With the end of the fiscal year quickly approaching, state agencies are encouraged to begin structuring and collecting their risk management and insurance information now, so that data submission is facilitated.

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*Jeff Cox is a risk management specialist in the Risk Assessment and Loss Prevention division.*



## Fall in love with the Safety Puzzle

SORM's Safety Puzzle provides important safety information, including a section on slips, trips, and falls. Go to [www.sorm.state.tx.us](http://www.sorm.state.tx.us), navigate to the "Outreach & Training" webpage, and click on the "Safety Puzzle" link.



# Prescription drug formulary

By John F. Aforismo

A drug formulary is a continually updated list of medications that represents the current clinical judgment of physicians, pharmacists, and other experts in the diagnosis and treatment of certain diseases and conditions.

## Formulary Development

Decisions on which drugs are included on a formulary are made by ScripNet's Pharmacy and Therapeutics (P&T) team along with any suggestions from the client. SORM partners with ScripNet, through its cost containment vendor, to provide pharmacy benefit management services to covered employees.

ScripNet's P&T team is responsible for developing, managing, updating, and administering the formulary. ScripNet's P&T team is comprised of primary care and specialty physicians, pharmacists, and other professionals in the health care field.

Due to the array of drugs on the market and the continuous introduction of new drugs into the market, a formulary must be a dynamic and continually revised document. In order to keep a formulary current, ScripNet's P&T team meets regularly to review:

- medical and clinical literature;
- relevant patient utilization and experience;
- current therapeutic guidelines and the need for revised and/or new guidelines;
- economic data; and
- physician recommendations.

The P&T team looks first for medications that are clinically effective. When two or more drugs produce the same clinical results and are in the same therapeutic class, then business elements like cost, supplier services, and ease of delivery are considered when determining which agent to include on the formulary.

Formulary decisions impact all aspects of health care management. In the face of the escalating number and complexity of drug products, rising drug prices, and direct-to-consumer advertising, the formulary management process provides the health care system with the ability to objectively discriminate between superior and marginal drugs. Such efficient and effective use of health care resources can minimize overall medical costs, improve patient access to more affordable care, and provide an improved quality of life.



*John F. Aforismo is a contracted pharmacist with ScripNet and works with R•J Health Systems International, LLC, in Connecticut.*

# Volunteers at state agencies

By Jeff Cox

Volunteering and community service play a vital role in society today, especially in state government. Not only is it rewarding and educational for the individual volunteer, but during tight budget times many state agencies rely on volunteers to meet their staffing needs. Research completed by a graduate student from the University of Texas revealed that more than 200,000 Texans volunteer in state government each year.<sup>1</sup>

Although volunteers are not paid employees of the state, they should be managed as though they are to avoid any additional liability exposures. The majority of volunteers at state agencies have immunities provided by the Federal Volunteer Protection Act of 1997. However, these immunities do not apply when the volunteer is operating motorized equipment and an operator's license is required, and this does not preclude a state agency from being sued by a volunteer or a third party

as a result of a volunteer's actions. Government Code §2109 dictates what state agencies must do, and may do, if they utilize volunteers. Items such as having effective training, evaluation, and monitoring programs must be included. In addition a state agency may purchase insurance for the protection of volunteers in the performance of their duties.

SORM contracts with CIMA Companies, Inc. to provide volunteer insurance for Texas state agencies. Information on this statewide program can be found on SORM's website or by contacting SORM directly. In general, the program provides excess liability, excess accident/medical, and excess automobile liability insurance coverage for registered volunteers of Texas state agencies. This insurance coverage is excess, over and above the volunteer's personal insurance. Only the excess accident and excess liability will become primary if the volunteer does not have his or her own personal insurance.

In the true sense of volunteering, people performing community service should accept the risk of the work they agree to perform. However, in today's litigious society, a good volunteer management program with written policy and procedures along with additional insurance coverage will preserve the incentive of liability protection and enhance volunteerism in Texas state government.

*Jeff Cox is a risk management specialist in the Risk Assessment and Loss Prevention division.*

*<sup>1</sup>"Volunteer Programs in Texas State Government: An Assessment of Risk Management Practices" – Katherine K. Fallon, RGK Center for Philanthropy and Community Service at the University of Texas LBJ School of Public Affairs; 2002; <http://rgkcenter.utexas.edu/index.shtml>*

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To be added to the Risk-Tex e-mail distribution list, please send your name, title, agency name, phone number, and e-mail address to Risk-Tex Editor Sam Lawrence at [samuel.lawrence@sorm.state.tx.us](mailto:samuel.lawrence@sorm.state.tx.us).

*Texas Government Code  
Section 441.1035*

# Changes in workers' compensation

(Continued from page 1)

head of OIEC, is also appointed by the governor.

## Indemnity Benefits

The bill changes two main features in the income benefits arena: the length of the waiting period for payment of the first week of lost time; and the way average weekly wage (AWW) maximum and minimum benefits are calculated. First, the length of the waiting period is reduced by the bill from four weeks to two weeks of lost time. Second, beginning on Oct. 1, 2006, maximum and minimum benefit amounts will be calculated using the Texas Workforce Commission's state average weekly wage for all employment (formerly, manufacturing production only), and multiplies that dollar amount by 88 percent. That figure is the new state average weekly wage and establishes the cap for Temporary Income Benefits, Disability Income Benefits, and Lifetime Income Benefits weekly payment amounts. The cap for Impairment Income Benefits and Supplemental Income Benefits payments remains at 70 percent of the state average weekly wage. Minimum benefit rates continue to be calculated by multiplying the state average weekly wage by 15 percent.

An important provision of the statute provides that the commissioner may increase the percentage calculation from 88 percent, by rule, at any time after Oct. 1, 2006, up to 100 percent.

## Medical Benefits

The largest change in this area is the establishment of workers' compensation health care networks, similar in form and function to the preferred provider organization model currently overseen and administered

### More information

Go to [www.sorm.state.tx.us/Legislative/overview.php](http://www.sorm.state.tx.us/Legislative/overview.php) for a more in-depth summary analysis of HB 7 and the full text of the final bill

by TDI. The bill establishes a new section of the Insurance Code dealing specifically with workers' compensation health care networks. Once established, with some exceptions, treatment of an injured worker within the network is mandatory. This represents a fundamental shift in workers' compensation, bringing it in line with other health care models currently in place. A specific discussion of the features and requirements of the statute respecting the workers' compensation health care network concept is outside the scope of this article, and much of the specifics of implementation and operation will be dependent on the passage of administrative rules by TDI.

A second important change is the expansion of the role of the designated doctor in resolving disputes. Currently, the designated doctor renders an opinion on Maximum Medical Improvement and Impairment Rating, and the designated doctor's opinion is accorded presumptive weight. The bill expands the designated doctor's role to resolving disputes on extent of injury, direct result, ability to return to work, and other "similar" issues. This essentially replaces the former Required Medical Examination process, which is made available by the bill only for determinations of appropriateness of health care. The designated doctor's presumptive weight on these issues may be overcome by a preponderance of the evidence, as opposed to the "great

weight" of other evidence standard previously provided in statute.

Other significant medical provisions in the bill include the removal of rights to appeal Medical Dispute Resolution decisions (fee disputes, reasonableness and necessity of medical treatment, etc.) to the State Office of Administrative Hearings. Such appeals will now be taken directly to district courts. Further, the statute will require specific elements in each Independent Review Organization determination. Treatment guidelines are made mandatory in the statute, although the bill specifies that treatment may not be denied solely because it is not addressed in a treatment guideline, and the bill also mandates a closed formulary for pharmaceuticals. The approved doctors list will be discontinued by Sept. 1, 2007, although the bill does specify that providers who were previously removed from the approved doctors list may not then return after the list is discontinued.

Many aspects of the bill are dependent upon TDI promulgation of administrative rules, including but not limited to the work search standards for Supplemental Income Benefits entitlement, peer review standards, treatment guidelines, electronic billing, and network standards, for example. The highlights above are general descriptions of the major shifts created by the legislation and do not represent a comprehensive analysis of all changes made by the bill.

A more in-depth summary analysis of HB 7 is available on the SORM website at [www.sorm.state.tx.us/Legislative/overview.php](http://www.sorm.state.tx.us/Legislative/overview.php), along with the full text of the final bill.

*Stephen Vollbrecht is SORM's General Counsel.*

# Seminar focuses on air quality

SORM is hosting an indoor air quality seminar in Austin on Aug. 17 at the William B. Travis Building from 9 a.m.-3:45 p.m. Lunch will not be provided. Parking is available at garages or lots near the Travis Building.

The agenda for the IAQ seminar is in the box on the right.

Copies of the presenters' slides will be posted on SORM's website at [www.sorm.state.tx.us](http://www.sorm.state.tx.us) within one week after the seminar for those who cannot attend. As required by state statute, records of attendance at the seminar and those viewing the slides online will be maintained by SORM. Seminar certificates will not be issued.

Seminar Agenda		
9-10:15 a.m.	Senate Bill 599 Overview	SORM
10:15-10:30 a.m.	Break	
10:30-11:45 a.m.	IAQ and the Role of the Dept. of State Health Services (DSHS)	DSHS
11:45 a.m.-1 p.m.	Lunch	On your own
1-2:15 p.m.	Mycology and IAQ Testing	Dr. Chin Yang, P & K Microbiology Services, Inc.
2:15-2:30 p.m.	Break	
2:30-3:45 p.m.	SORM's Role in IAQ	SORM



## Van safety course offered

**By Bradley Prais**

In the early 1970s vehicle manufacturers saw a need to provide a vehicle that could carry small groups of passengers. They took existing cargo vans, stretched the body, and put in seats to hold 15 passengers. These vehicles were a hit with church groups, schools, and government agencies. This was a vehicle to transport small groups without having to rent a bus or arrange for multiple smaller vehicles.

What they didn't know was the inherent danger these vehicles posed, especially when fully loaded. These vehicles were highly susceptible to rolling over when making any type of sudden steering actions. As the popularity of the vans increased in the 1990s, the number of van-related rollover accidents rose with it. In 1999 the National Transportation Safety Board issued its first warning about the vans. The National Highway Traffic Safety Administration studied the van's

propensity to rollover and issued a consumer advisory in April 2001. It also issued an unprecedented second advisory a year later. One of the recommendations is that vans be driven by trained and experienced drivers.

To meet this requirement, SORM has developed a 15 Passenger Van Safety course. This course is recommended for state agencies and their designated drivers operating these vans. The course covers van accident facts and accident mechanisms, van driving tips, a look at a study conducted on a tragic North Texas van accident, and steps for an agency van safety program.

To schedule this course, please contact the Agency Outreach and Training section at [training.registration@sorm.state.tx.us](mailto:training.registration@sorm.state.tx.us).

*Bradley Prais is a training specialist in the Agency Outreach and Training section.*