Biennial Report

to the
82nd Texas
Legislature

December 31, 2010

STATE OFFICE *of* RISK MANAGEMENT

SORM

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THE STATE OF TEXAS

SORM
STATE OFFICE of RISK MANAGEMENT
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December 31, 2010

The Honorable Rick Perry
Governor of Texas

The Honorable David Dewhurst
Lieutenant Governor

The Honorable Joe Straus
Texas House of Representatives

Members of the 82nd Texas Legislature

The Board of Directors and Executive Director of the State Office of Risk Management (Office) respectfully submit this Biennial Report to the 82nd 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 82nd 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 the 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 government employees' workers' compensation insurance and the state risk management programs. 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 developing and maintaining effective risk management programs; specialized assistance and training; comprehensive data collection, monitoring, and analysis; and the workers' compensation program.

Guidelines

The Office publishes comprehensive program elements and methods in its Risk Management for Texas State Agencies (RMTSA) guidelines. The RMTSA guidelines are 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 set of guidelines 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 a detailed program that includes policies and procedures addressing each agency's unique mission and risks. Our risk management specialists work with each client agency to ensure they have adopted the applicable RMTSA guidelines and other applicable 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. The primary mechanism through which the Office's risk management specialists assist client agencies is via on-site visits. There are essentially two types of on-site visits: Risk Management Program Reviews (RMPRs); and On-Site Consultations (OSCs). The Office performs a minimum of 32 RMPRs and 250 OSCs each fiscal year. The types of on-site visits are described below.

- **RMPR –** A RMPR is a comprehensive and recurring review of an agency's risks and exposures and a review of risk management programs addressing an agency's risks and exposures. Walk-through inspections of agency facilities are conducted, as well as staff interviews and substantial general program documentation review. RMPR results are communicated in formal reports of findings and recommendations. RMPRs typically last three or more days depending on the size of the agency and the number of agency locations or facilities.

- **Scheduled OSC –** An OSC is a directed visit scheduled in advance by the Office's risk management specialists and can involve review of an agency's specific risk management policies, procedures, documentation, and implementation. While on site, risk management specialists may also conduct a walk-through of the facility. Scheduled OSCs can take anywhere from one to three days.

- **Requested OSC –** A client state agency may request assistance on a specific issue from a risk management specialist. Depending on the complexity of the issue, the risk management specialists can work with the client agency over the course of several days or weeks to resolve the issue.

- **Insurance OSC –** Agencies choosing to transfer risk through the purchase of insurance, change terms of their insurance, or have specific inquiries about their policies may request to have a bonds and insurance specialist visit with executive staff and guide the agency through the process. The bonds and insurance specialists may spend several days or weeks coordinating insurance issues between the carrier and the client agency.

During the past biennium, the Office's risk management specialists conducted 568 on-site visits with client agencies around the State. The Office encourages all client agencies to work with its risk management specialists outside of the formalized RMPR and OSC processes. The Office makes staff available to assist in the development and implementation of comprehensive risk management programs, working to develop a collaborative relationship that empowers agencies to voluntarily and proactively address their risk management issues.

Assistance and Training

Knowledge is the key to empowering state agencies to manage risks and losses. The target audience for training includes client agency risk management staff, claims coordinators, supervisory staff, and employees, totaling approximately 185,000 covered state employees. The Office's trainers conduct regional on-site classroom training around the State, the majority of which 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. During FY '10, approximately 5,775 students attended 285 courses offered by the Office around the State. By coordinating training requests, the Office was able to dramatically reduce travel expense while maintaining student levels.

To obtain additional savings through technology, during FY '10 the Office improved the accessibility and targeting of training to state employees through the development and introduction of short, targeted video training on risk management topics. The Office replaced two classroom trainers with two media specialists to produce training videos. Online videos account for an additional 8,214 individual training sessions and can be extended 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's web-based interactive Risk Evaluation and Planning System (REPS) leads client agencies through the identification, analysis, and mitigation of identified risks. Through REPS, RMPRs, and OSCs, the Office educates client agencies on emerging trends and provides in-depth guidance in risk management.

Other Methods

The Office seeks to be responsive to the risks and needs of client agencies as they are identified and cooperates with other oversight agencies in implementing viable health and safety programs for state employees. 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 state operations, exposing government to monetary, efficiency, resource, and public confidence losses. Risk managers are concerned with reducing the frequency and severity of losses to individual state agencies and, by extension, to the State as a whole. In the course of its normal business operations, the State is exposed to numerous potential losses, including, but not limited to, workers' compensation costs, fire damage, automobile accidents, lawsuits, and natural and manmade disasters.

Responsibility for the operation, financing, and management of risks shown below are shared between the Office and its client agencies and varies by risk. 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 self-insured workers' compensation program. In addition, covered agencies are required to have designated risk managers and claims coordinators who have responsibility for oversight and reporting on agency risk management efforts, injuries, and losses at each agency.

CHART A

Statewide Risk Management Costs for FY '08, FY '09, and FY '10

	FY '08	*FY '09*	*FY '10*
State Agency Risk Management Programs	$46,130,615	$53,755,025	$67,674,460
Cost Containment	$1,800,138	$1,720,620	$1,874,741
Settlements and Judgments	$3,581,869	$4,146,556	$2,301,749
Bonds, Insurance, & Deductibles	$17,467,288	$18,146,494	$17,783,963
Actuarial Services	$8,500	$10,000	$10,000
Court Costs & Attorney Fees	$4,275,661	$2,278,513	$964,012
Statewide Risk Management & Claims Administration (AY)	$2,058,398	$1,918,483	$1,976,849
Total Risk Management Costs	**$75,322,469**	**$81,975,691**	**$92,575,774**

State agency risk management 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 at individual agencies are generally attributable to one-time project costs, such as the installation of a fire suppression systems or security cameras.

Since each state agency has unique perspectives and different levels of sophistication in risk management, each develops risk management parameters tailored to their needs. For example, some state agencies list security personnel and maintenance staff as risk management full-time equivalents (FTEs) and, therefore, report the expenses associated with those positions to the Office as risk management expenditures. Data indicating a rise in reported risk management expenditures may reflect that agencies are beginning to recognize the risk management potential of what might have once been considered as operational staff. Risk management expenditures are self-reported by each agency and are not verified by the Office.

Workers' Compensation

New injuries to state employees have been significantly reduced. The State has seen relatively small increases in injuries over the past several years, but there are still approximately 1,000 fewer injuries per year than in the first years of the decade (see "Accepted Claims" chart on page 13). This, in spite of the growth in the number of covered lives. Injury frequency rates, expressed as a percentage of injuries per the number of covered FTEs, has generally declined during the same period from 4.24 percent in FY '05 to 3.86 percent in FY '10 (see "Chapter 501 Agencies Injury Frequency Rates" chart on page 12). Significantly increased risk management and claims coordination efforts and more effective processes implemented by the Office have shared in improving 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

Statewide Workers' Compensation Expenses Paid out for FY '08 & FY '09

	FY '08	FY '09	Incr/(Decr)	% Incr/Decr
Workers' Compensation Claims Paid	$44,063,138	$45,157,296	$1,094,158	2.48%

As shown above, the state paid $45,157,296 for workers' compensation claims in FY '09. This figure is the sum of all workers' compensation payments made on behalf of claimants in FY '09, including those injured in preceding fiscal years. When analyzing workers' compensation costs, it is important to note that the numbers reported represent a snapshot in time. Further, workers' compensation payments are typically paid out over several years; therefore, changes made to a risk management program or to 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.

State Office of Risk Management

FY '10 Expenditures by Strategy and Method of Finance

Goal/Strategy	***GR***	***IAC***	***Total***
Goal 1.1/Risk Management Program	$0	$1,951,133	$1,951,133
Goal 2.1/Pay Workers' Compensation	$0	$5,896,921	$5,896,921
SUBTOTAL	$**0**	$**7,848,054**	$**7,848,054**
Goal 1.1/Workers' Compensation Payments (separate appropriation)	$0	$43,264,206	$43,264,206
GRAND TOTAL	$**0**	$**51,112,260**	$**51,112,260**

3. Handling of claims brought against the State

Non-workers' compensation claims against the State are administered by the Office of the Attorney General. The Office gathers data on these claims from each agency for reporting purposes but does not participate in the handling of these claims. The Office offers voluntary participation in the statewide insurance program to reduce 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 except three statutorily exempt agencies (Texas Department of Transportation, University of Texas System, and Texas A&M University System). 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. In most cases, 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.

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 provides claims coordinators with training on handling claims and provides access to the Office's Claims Management System (CMS). The Office's automated CMS automatically creates a claim when information is reported electronically to the Office by the agencies, or the information may be entered manually by Office staff. CMS is the Office's central claims application, enabling assignment of claims, maintenance of records, monitoring of deadlines, and benefits payments. CMS also interfaces with the Office's medical cost containment vendors, the Department of Insurance (TDI), Division of Workers' Compensation (DWC), the Office of the Attorney General, and the State Comptroller for the processing of state warrants. The Office utilizes a digital imaging system for receipt and record keeping of claim documents, including medical billing and submitted forms promulgated by TDI and DWC.

The Office devotes a staff of 40 adjusters located in Austin, which are assigned to manage all workers' compensation claims, assess compensability, and authorize payment of wage replacement (indemnity) and medical benefits and related duties. The Office processes approximately 500 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 FY '10 SORM processed approximately 40,000 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 the following table.

Benefit	*Description*	*SORM's 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.	325
Impairment Income Benefits (IIBs)	Workers may become entitled to IIBs on the day after the date the employee reaches maximum medical improvement and 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 employees death.	160
Supplemental Income Benefit (SIBs)	Injured workers actively seeking re-employment or participating in a vocational rehabilitation program may receive SIBs on a monthly basis if they have an impairment rating greater than 15 percent and are not earning at least 80 percent of pre-injury wages because of the injury.	34
Lifetime Income Benefits (LIBs)	Injured workers with severe and permanent impairments resulting from a work-related injury may receive LIBs.	11
Death Income Benefits (DIBs)	While not an income benefit, beneficiaries of workers who succumb to fatal injuries may receive DIBs.	56

The Claims Operations division is divided into dedicated claims units, 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 staff performs the initial investigation of each reported injury and determines compensability. Claims Operations follows all claims until their conclusion to ensure each state worker receives the medical and income benefits due under the Texas Workers' Compensation Act.

The Medical Cost Containment Unit within Claims Operations is comprised of Medical Provider Assistance, Case Management, and Medical Audit. In FY '10 SORM processed approximately 121,000 medical bills. The Office contracts with two cost containment vendors that conduct comprehensive audits of submitted medical bills and provide other services. Currently, Forté, Inc., is assigned responsibility for auditing physician, hospital, and pharmacy 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 the Office will maintain compliance with all medical bill processing timelines. The Office currently 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 contracts with Forté, Inc., to determine the medical necessity of services requiring preauthorization. In FY '10, Forté processed 7,996 preauthorization requests. Forté also processes concurrent reviews to determine the medical necessity of extending ongoing treatments that were previously preauthorized.

The vendors review bills to: ensure the 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 FY '10 the Office was billed $88.9 million for medical services. The cost containment functions provided by the vendors reduced those costs by $69 million.

Historically additional savings have been realized through the use of a preferred provider organization (PPO). House Bill 473, 81st R.S., disallows voluntary or informal networks such as PPOs as of Jan. 1, 2011. The Office anticipates a loss of discount savings of approximately $2 million due to this legislative change. Similarly, prescription cost savings of $913,864 were realized through the use of the ScripNet PBM in FY '10. After seeking an opinion from the Attorney General regarding whether PBMs were included in the legislation eliminating voluntary PPO networks, the DWC adopted emergency rules allowing the continuation of PBMs at least until the Legislature has the opportunity to take action on this issue.

Summary of Cost Containment Savings

Strategy	*FY '08*	*FY '09*	*FY '10*
Total Medical Bill Audit Savings	$64,899,875	$64,462,103	$63,929,545
Medical Bill Audit Savings Due to Duplicate Bill Savings	($5,448,966)	($6,959,964)	($2,881,201)
Net Medical Bill Audit Savings	$59,450,909	$57,502,138	$61,048,345
PPO Savings	$1,068,546	$1,208,564	$2,924,884
Preauthorization of Medical Services*	$5,663,830	$4,627,442	$5,034,394
Total Cost Containment Savings	**$66,183,285**	**$63,338,145**	**$69,007,623**

** 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.*

The Office utilizes 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 nurse 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 an impairment rating. Reviewing ratings helps to ensure the accuracy of impairment ratings and to determine the appropriate benefits for injured workers.

The Office employs two staff members who 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 a person fraudulently obtained benefits, they refer the case to TDI's Insurance 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.

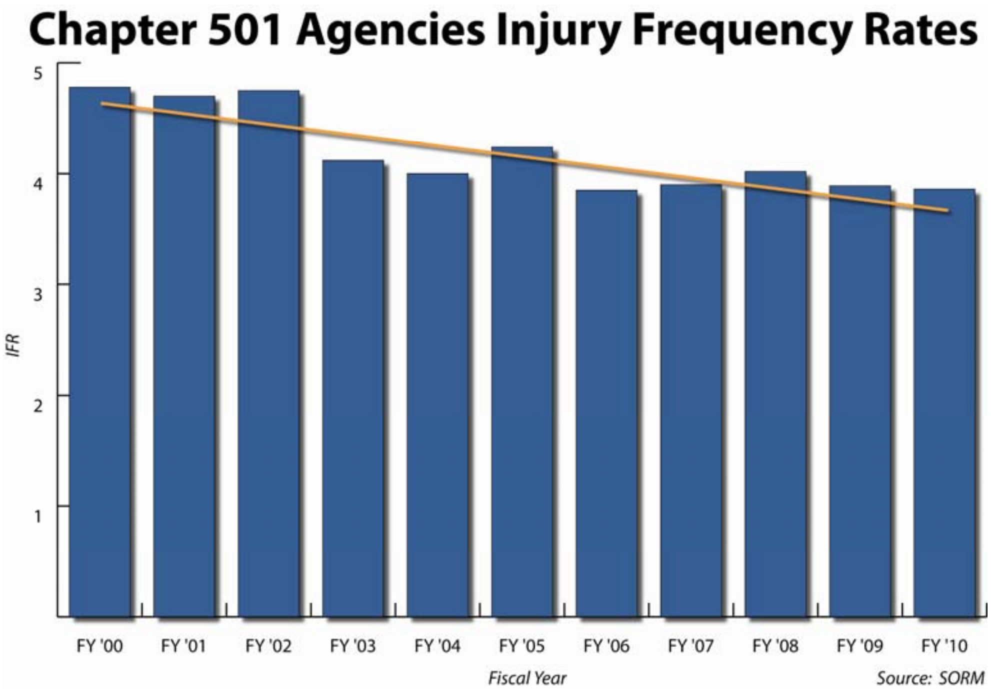
Because cases of provider fraud are more difficult and time-consuming than claimant fraud, the Office's investigators may coordinate with or provide assistance to investigators from other entities. During the biennium, the Office opened approximately 70 fraud cases. Although not all cases resulted in evidence of fraudulent activity, the courts ordered more than $38,800 be paid to the Office in restitution, $30,000 of which has been collected 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.

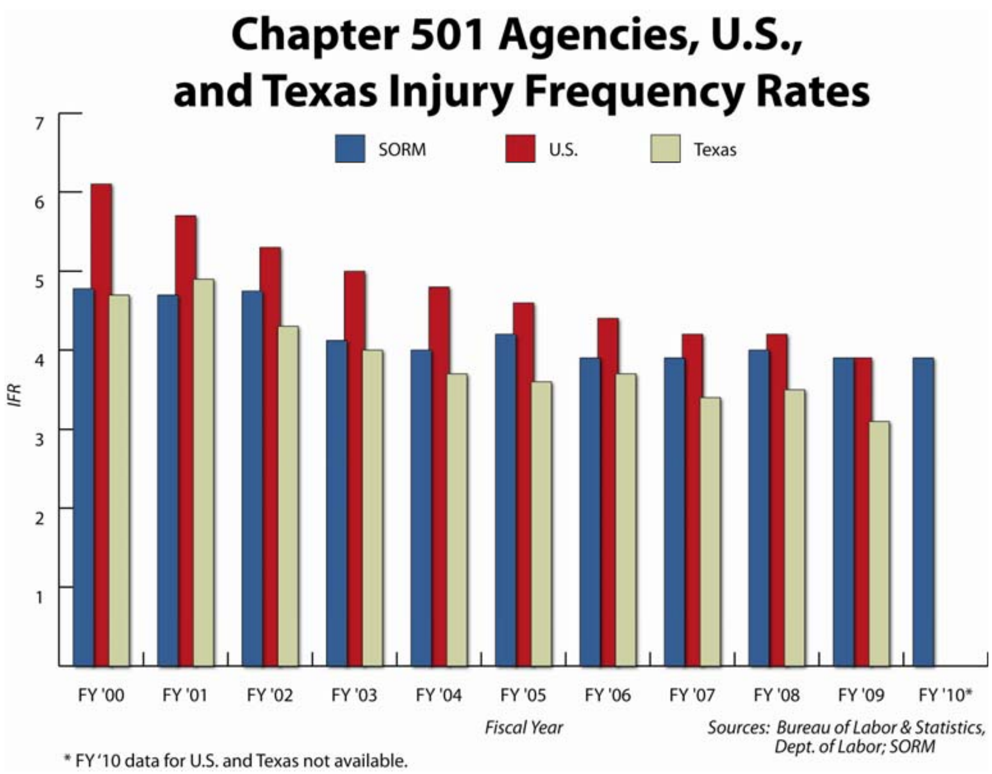
In claims where a state employee's injury is caused by a third party, the Office may be entitled to recover expenses for medical and indemnity benefits through subrogation. When processing claims, adjusters question injured workers and claims coordinators to determine whether any third party is involved. 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 more than $1.2 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

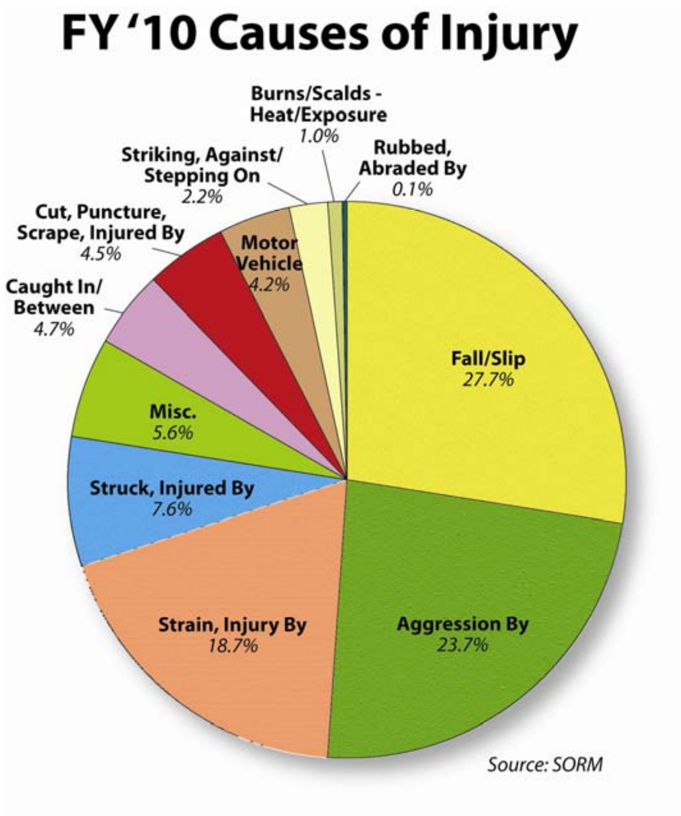
The total number of injuries per 100 FTEs has experienced a sustained decline over the past decade.



There has also been a downward trend in the total number of accepted workers' compensation claims for Texas state employees over the past decade. The number of claims accepted has risen in recent years but, due to an increase in the number of covered employees, the number of claims per 100 FTEs has fallen.



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



The leading causes of injury during the biennium remained relatively stable, except for slip and fall injuries, which increased by 3 percent. As would be expected, the criminal justice, juvenile offenders, law enforcement and mental health agencies 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 percent 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 claims made during the biennium remain open and are uninsured. The 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.

FY '09-'10 Client Agency Frequency and Claims Data

Category	***Number of Claims***	***Demand Amount***	***Loss or Paid Amount***
Aircraft or Boat Damage	21	$0	$0
Automobile Physical Damage	1,259	$0	$1,192,007
Automobile Liability	228	$201,820	$242,685
Crime	7	$0	$1,081
Directors' & Officers'	16	$12,733	$473,491
Electronic Data	9	$11,831	$13,781
Employment Practices	295	$40,000	$557,987
Environmental	3	$5,007,400	$0
Flood	24	$0	$0
General Liability	503	$29,903,973	$647,584
Professional	10	$0	$79,045
Property	256	$75,707,886	$734,493
Totals	**2,631**	**$110,885,643**	**$3,942,154**

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

Agency	*Issue*
Texas Woman's University	(1) Failure to meet statutory deadline for reporting risk management information (SORM-200). FY '09 and FY '10 (2) Purchase of unapproved property, automobile, commercial general liability, professional liability, and crime insurance policies without requesting or obtaining a waiver. FY '10 (3) Failure to report property, automobile, commercial general liability, professional liability, and crime insurance purchases. FY '10
Real Estate Commission	(1) Failure to meet statutory deadline for reporting risk management information (SORM-200). FY '09
Board of Chiropractic Examiners	(1) Failure to meet statutory deadline for reporting risk management information (SORM-200). FY '10
University of Houston - Downtown	(1) Failure to meet statutory deadline for reporting risk management information (SORM-200). FY '10
Department of Assistive and Rehabilitative Services	(1) Failure to meet statutory deadline for reporting risk management information (SORM-200). FY '10

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 the State self-insures its real and personal property. While it would be accurate to say the State retains the risk of a loss, the absence of a specific insurance policy or funded and reserved program means 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 its 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 Federal Emergency Management Agency (FEMA) does not become an option until agencies purchase insurance on facilities that sustain 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 will be available in January 2011.

Workers' Compensation Health Care Networks

House Bill 7, 79th R.S., authorized the use of workers' compensation health care networks (WCHCNs) certified by TDI under Chapter 1305, Texas Insurance Code. House Bill 473, 81st R.S., required all voluntary or informal networks be certified by TDI by Jan. 1, 2011, or be discontinued. The Office designed a Request for Information (RFI) to collect necessary information to design its Request for Proposal (RFP), and during FY '08 the Office published an RFP based on information received during the RFI process. After extensive review, none of the proposals provided sufficient required information to determine that an award would be in the best interest of the State. This decision was not a finding that the State's self-insured workers' compensation program might not benefit from a properly constructed and well-managed WCHCN, but only that it was not possible to determine that such a network, as described in the proposals received, would be in the best interest of the State at that time.

The Office's Board of Directors has expressed interest in exploring all potential alternatives. One such alternative the Legislature may explore is an approach similar to provisions already in place for political subdivisions under Section 504.053, Texas Labor Code. This option is <u>not</u> currently available to state agencies operating statutory workers' compensation programs pursuant to Chapters 501-503 and 505 of the Labor Code (SORM, Texas A&M University System, University of Texas System, and Texas Department of Transportation). According to DWC's report card on health care networks, political subdivisions appear to have been successful in implementing networks under Section 504.053. The one 504 network large enough to be included in the report card showed lower medical costs than non-networks and lower utilization in most categories, higher access and satisfaction with care, higher return-to work rates, and higher physical and mental functioning scores. Networks under Section 504.053 are significantly less cumbersome to create and implement for a governmental body and allow for network access in rural or low population areas where state facilities are frequently located, but specific statutory changes would be required to include these provisions in Chapters 412 and/or 501.

Risk Management Training and Certification

Risk management expertise varies significantly from agency to agency. With 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, 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 state agency personnel receive training and have proven competency in identification, analysis, mitigation, financing, and administration of risk. The program would have the potential to generate a significant 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 could benefit the agencies and the State.

Underperforming State Risk Management Programs

The Office has identified risk exposures to the State when agencies do not comply with statutory reporting requirements or fail to utilize effective risk management. With budgetary pressures agencies may be tempted to sacrifice safety and risk management as a part of cost-cutting. However, without effective safety and risk management programs in place, the cost of resulting injuries and losses can quickly overcome any temporary savings that may have been gained. The legislative appropriations process should carefully scrutinize proposed cuts to agency budgets that would increase the risk of injury and loss to state employees and agencies.

Reporting intended insurance purchases to the Office allows the Office to ensure agencies only purchase necessary coverage, which an off-the-shelf policy may not provide, and ensures coverage is secured at a reasonable cost. A number of agencies listed in this report have failed to properly report insurance and loss data.

The Office has identified agencies having inadequate or ineffective risk management programs. This exposes those agencies and the State to unnecessary financial risk. The Texas School for the Blind and Visually Impaired (TSBVI) has failed to maintain an effective agency risk management program that reduces property and liability losses, including workers' compensation losses. TSBVI has not identified a risk manager and its safety program has not been shown to be adequate.

The Office conducted a formal RMPR in April 2009, noting several deficiencies in the TSBVI program. In two subsequent visits, TSBVI had not made any progress in addressing critical issues, including 16 open recommendations from the April 2009 inspection and includes two findings dating back to June 2006, and six new recommendations. The TSBVI program remains noncompliant.

After review of Texas Woman's University's FY '09 Annual Financial Report, the Office noted the university purchased property, automobile, commercial general liability, professional liability, and crime insurance policies without providing notification, seeking approval, or reporting its insurance purchases to the Office as required by statute. The Office has previously notified the university of its non-compliance and the university remains non-compliant (see Section 5).

Business Continuity and Management Planning

FEMA maintains a list of major disasters declared in the 50 states, the District of Columbia, and nine U.S. territories. The State of 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 Sept. 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 simultaneously 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 leadership, 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 all state agencies be required to develop, maintain, and test a business continuity plan meeting minimum pre-established standards.

The Office notes 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 the Legislature consider limited protection of such information from disclosure pursuant to the Public Information Act.

Statutory Clarification

Because the Office was created through the merger of two divisions, each split from two larger entities, the Office inherited provisions contained in 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 given the retained language of the 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 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 Office and 10 other agencies participated in the Texas Continuity of Operations for (COOP) Pandemic Influenza Project beginning August 2009. The purpose was to ensure these agencies meet or exceed national standards for specific COOP planning elements relating to pandemic influenza. Upon completion of the Office's COOP Pandemic Influenza Project, a tabletop exercise was conducted March 11, 2010, with 11 agencies participating. The Office was directly involved in the tabletop exercise and associated training. The COOP Pandemic Influenza plan is nearing completion and will be available for other agencies to use as a guide in drafting their own plan.

The status of state agencies business continuity plans is based on agency responses collected in REPS for business continuity management during FY '09-'10. Approximately 94 percent of the agencies identified themselves as having a business continuity plan encompassing all of the agency critical functions. Of these agencies, 48 percent acknowledged testing their plans. Best practices within the industry indicate the need for annual testing, at a minimum. Only 32 percent of the agencies indicated they conducted annual testing. Of the agencies testing, 23 percent used tabletop testing while 36 percent 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. The Office has sought to establish an agreement to partner with the Texas Division of Emergency Management (TDEM) on consistent BCP standards for all agencies subject to their respective authority. Training, funding, and resources for BCP and implementation may be available from the federal government. However, accessing those funds requires cooperation and coordination with TDEM, 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 SB908, 80th R.S. (State Office of Risk Management Sunset Legislation)

The Office has return-to-work guidelines published in Volume III, Section One, Chapter 5 of the RMTSA guidelines 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 DWC), medical profiling of claims information, and treatment planning. Appropriation for hiring the necessary case management expertise was authorized by the 81st Legislature. The Office has recently filled the available three FTEs, and implementation of the statutory return-to-work initiative is ongoing.

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

9. Director's Section 412.042 report

The administrative operations for the Office, as well as claims costs, are now funded through IAC. 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 to the Office. The following data addresses the appropriations for administrative operations of the Office.

Texas Labor Code, Section 412.042(a)(1) summary of administrative expenses

Category	*FY '10 Actual*	*FY '11 Budgeted*	*Biennium Total*	*Percent of Total*
Salaries	$5,087,348	$5,616,440	$10,703,788	63.59%
Other Personnel Costs	$241,995	$160,914	$402,909	2.39%
Contracted Services	$1,912,167	$2,376,917	$4,289,084	25.48%
Consumable Supplies	$34,317	$47,086	$81,403	0.48%
Utilities	$2,722	$2,327	$5,049	0.03%
Travel	$116,633	$138,968	$255,601	1.52%
Rent - Building	$720	$720	$1,440	0.01%
Rent - Other	$23,766	$23,821	$47,587	0.28%
Other Operating	$385,387	$410,721	$796,108	4.73%
Capital	$43,000	$207000	$250,000	1.49%
Total	**$7,848,055**	**$8,984,914**	**$16,832,969**	**100.00%**

Texas Labor Code, Section 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 approximately $9 million appropriated for FY '11 administrative purposes, cash basis payments as of Dec. 21, 2010, total $1,759,664 and an additional $1,998,773 has been encumbered due to contractual or other obligations. Of the remaining balance of $5,226,477, approximately $500,000 has been incurred but not yet paid.

The Office's Board of Directors exercised $51 million in preliminary collection authority for workers' compensation claim payments, anticipating increased costs. Approximately $1.4 million was carried forward from FY '10 assessments' with the remaining amount collected by new assessments to client agencies. As required by Article IX, Section 15.02, collection of 25 percent of the total assessments has been deferred until mid-third quarter of the fiscal year and will be adjusted as necessary. As of Dec. 21, 2010, the cash balance remaining was $27,703,144.

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

The Office estimates the full unexpended, unincurred, unencumbered balance of $4.73 million for the administrative appropriation will be necessary for operations for the remainder of the fiscal year.

The Office estimates roughly $33.2 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 '12 or will be returned to agencies as directed by Article IX, Section 15.02.

Texas Labor Code, Section 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 $8,777,914 each year for FY '12 and '13, a biennial total of $17,555,828, will be required to administer the workers' compensation program and provide risk management and insurance services for the succeeding biennium. The Office is requesting no General Revenue and no exceptional items involving increased appropriations.

The Office requested authority of $51 million in FY '12 and $52 million in FY '13 for the appropriation to pay workers' compensation claims, 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 that 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. The loss of PPO discounts as of Jan. 1, 2011, and the possibility of losing PBM discounts, depending on legislation, will result in increases of approximately $2 million-$3 million a year. An immediate effect of implementation of an HB 7 network could increase administrative and medical costs in the short term, with modest overall reductions due to improved treatment and outcomes seen 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. The following is a summary of policies acquired by fiscal year and line of coverage.

Non-Workers' Compensation Claims Frequency By Loss Type

Claim Type	*FY '09*		*FY '10*	
	Number of Claims	*Loss or Paid Amount*	*Number of Claims*	*Loss or Paid Amount*
Aircraft/Boat Physical Damage	5	$0	16	$0
Auto Liability	138	$193,031	90	$49,654
Auto Physical Damage	751	$841,446	508	$350,561
Boiler and Machinery	2	$0	0	$0
Crime	6	$1,081	1	$0
Directors' and Officers'	10	$473,491	6	$0
Electronic Data	9	$13,781	0	$0
Employment Practices	188	$442,698	107	$115,289
Environmental	2	$0	1	$0
Flood	24	$0	0	$0
General Liability	363	$629,898	140	$17,686
Inland Marine	0	$0	0	$0
Professional Liability	9	$79,045	1	$0
Property Insurance	143	$484,521	111	$249,972
Total	**1,650**	**$3,158,992**	**981**	**$783,162**