



MEMORANDUM

TO: Ken Levine
Interim Director
Sunset Advisory Commission

CC: Texas Sunset Commission Members

FROM: Cathy DeWitt
Vice President, Governmental Affairs

RE: **Sunset Advisory Commission Staff Report, Division of Workers' Compensation of TDI**

The Texas Association of Business (TAB) is a broad-based business group representing 3,000 large and small businesses, as well as over 200 local chambers of commerce. The TAB is committed to strengthening our economy so businesses of all sizes can create more, good-paying jobs for more Texans.

Texas employers are the ultimate payors for the workers' compensation system and, therefore, have a huge stake in the functioning of the system. Employers have seen positive effects of the 2005 reforms. Medical costs per claim are significantly lower and the use of networks has allowed employers to receive premium discounts. At the same time, injured workers have received increases in income benefits and return-to-work rates are improving. One of the few negatives that has resulted due to the 2005 reforms is that, according to the Workers' Compensation Research Institute, medical cost containment expenses per claim in Texas are the highest among the 14 study states, and 45 percent higher than in the typical median state. Simply put, the regulations that were necessary in reforming the system in 2005 have come with a large price tag. We believe that it is critical that functions be streamlined for all system participants wherever possible, and that additional regulatory burdens on the system be avoided.

Before commenting on the specific recommendations of the Sunset Staff Report, we would like to thank the Sunset Advisory Commission and the staff for their excellent work in developing the Sunset Report. The TAB applauds the diligence of the Sunset Staff in keeping the focus of their recommendations on the function of the agency.

While we do not agree with all of the recommendations of the report, we do believe that the issues discussed are all issues for the Sunset Commission to consider.

First and foremost, we agree that Texas has a continuing need for the Division of Workers' Compensation. However, several issues exist that concern TAB and its membership.

ISSUE 1

The Division's Complicated Dispute Resolution Process Often Fails to Provide a Quicker, More Accessible Alternative to the Courts.

1.1 *Require parties to a dispute to prove preparedness as a prerequisite to a Benefit Review Conference. OPPOSE.*

To reduce Benefit Review Conference (BRC) cancellations, TAB believes that any granted hearing request should count against the canceller's entitlement to a maximum of two BRCs. The goal should be to streamline these processes. The recommendation to create a Division-approved system for rescheduling involves additional paperwork, more regulatory burdens and increased administrative costs without improving the process.

1.4 *Streamline the process for resolving non-network medical disputes, by removing SOAH'S Involvement in conducting Contested Case Hearings. OPPOSE.*

SOAH has more expertise than the Division in dealing with sophisticated medical fee disputes. SOAH hearings provide parties with adequate due process and an opportunity to be heard in cases where the standard on judicial review is substantial evidence. DWC has no procedural rules governing how medical contested case hearings would take place at DWC field offices. The parties must be allowed to develop a meaningful record in these types of cases and there is doubt that a record could be established through a DWC field office.

Issue 2

The Division's Medical Quality Review Process Needs Improvement to Ensure Thorough and Fair Oversight of Workers' Compensation Medical Care.

2.1 *Require Division staff, rather than the Medical Advisor, to manage and oversee the medical quality review process. DISAGREE*

TAB questions the use of Division staff that does not have the medical expertise and qualifications to manage and oversee the medical quality

review process. TAB feels that this would dilute the ability of the Division to effectively evaluate the quality of care for injured workers if there is no Medical Advisor to lead this effort.

2.2 *Require the Division to develop guidelines to strengthen the medical quality review process. OPPOSE*

Currently, guidelines are already in place, but there has been no follow through by the agency to impose sanctions on medical providers who are providing inappropriate care. Much focus has been placed on providers' administrative violations with fines being frequently levied on providers for paperwork violations. While paperwork is important, patient care should be a priority and abusers should be penalized promptly after a proper investigation.

2.3 *Establish a more streamlined medical review process by removing the Quality Assurance Panel's involvement. OPPOSE*

The Quality Assurance Panel provides great expertise to the medical review process by reviewing recommendations of the Medical Quality Review Panel.

2.5 *Require the Division to work with health licensing boards to expand the pool of Medical Quality Review Panel members. OPPOSE.*

This is unnecessary. The Division already receives input from health licensing boards.

ISSUE 3

The Division Cannot Always Take Timely and Efficient Enforcement Actions to Protect Workers' Compensation System Participants.

3.5 *Authorize the Commissioner to make final decisions on enforcement cases involving monetary penalties. OPPOSE.*

The Commissioner is a party to an enforcement hearing and monetary penalties collected are a funding source for the DWC. It is inappropriate to require the Commissioner to investigate misconduct and prosecute violations at a contested case hearing and then allow the Commissioner to have the final say on the outcome. The Sunset recommendation would give the DWC blanket authority to take action without an adequate assurance of due process of law or adequate safeguards.

ISSUE 6

Employers Outside the Workers' Compensation System Are Failing to Report Information that the Legislature Needs to Evaluate the Health of the System.

6.1 *The Division should closely coordinate with other state agencies to include nonsubscription reporting requirements in their print and electronic publications. SUPPORT.*

TAB has worked closely with the Division to help educate employers on nonsubscription reporting. Allowing employers to file DWC-5 forms electronically will greatly improve the compliance statistics instead of having an employer send the form by certified mail.

Thank you for your consideration.