

# **Part I Report of Program Activities**

**This section of the Texas Department of Insurance's *134th Annual Report* gives a brief summary of major activity of agency programs and divisions during Fiscal Year 2009. This report reflects the agency structure as it existed on August 31, 2009.**

*issued by the*

**Texas Department of Insurance**

## **Preface**

### **2009: A Year of Storms**

FY 2009 was an eventful year for the Texas Department of Insurance. Just two weeks into the new fiscal year, on September 13, 2008, Hurricane Ike made landfall on Galveston Island, the largest storm in Texas history (see article on page 5 for an overview of TDI's response). This was the second hurricane to hit Texas in the 2009 storm season; Hurricane Dolly struck South Padre Island on July 23, 2009.

The same week that Ike made landfall, a different kind of storm required a concerted agency effort. On September 16, 2009, amid a worsening national financial crisis, the Federal Reserve Board authorized an \$85 billion loan to the American International Group (AIG), which was in danger of being unable to meet its obligations. While AIG's problems were at the holding company level in New York, AIG affiliates, including several life insurance companies in Texas, found their assets at risk. TDI worked with AIG and federal authorities to develop plans to address liquidity and capital concerns that posed a serious threat to the national financial sector as a whole.

### **81st Texas Legislature (2009)**

2009 was also the year for TDI's review by the Sunset Advisory Commission, a periodic assessment required by statute to determine the ongoing necessity for each state agency. While TDI received a favorable evaluation from the Commission, the regular session ended without a vote on its Sunset bill. Action was finally taken during a special session of the legislature called by Governor Rick Perry. Over a two-day period, legislators accomplished the passage of SB 2 (81st Texas Legislature, First Called Session), which extended the Sunset dates of several agencies, including TDI and the Office of Public Insurance Counsel, to September 1, 2011, enabling the agencies to continue operations.

Other notable insurance legislation passed by the 81st Texas Legislature included bills addressing Texas Windstorm Insurance Association (TWIA) funding and operations, and an innovative health insurance initiative called Healthy Texas.

HB 4409 addressed the goal of sustaining TWIA funding for the future by providing for post-event issuance of public securities (bonds) with re-payment not dependent on the State's general revenue. Other key changes to TWIA's operation include a new Board of Directors composition, evidence of one declination to obtain coverage, evidence of flood coverage in certain flood zones to obtain coverage, mandatory compliance with the windstorm building code with a surcharge for certain non-compliant structures, and a file-and-use rating provision with certain limitations on rate increases.

SB 78 created the Healthy Texas Program to assist small employers in purchasing affordable health insurance. The bill also created the TexLink to Health Coverage Program at TDI to promote awareness and education about the purchase and availability of health coverage.

### **TDI Excellence Program**

In order to advance the agency mission in its service to Texans and provide employees the opportunity to serve outside of their routine duties, the TDI Excellence Program was launched in FY 2009. Assignments to the Excellence Team were for six months, and members participated in an array of projects, including: Insurance Economic Reporting; the TDI Academy program, aligning the insurance industry and higher education in Texas; and the TDI Symposium, a two-day exchange of ideas examining the Texas economy, the environment, demography and generations in the workplace, the future of insurance regulation, customer service, social networking technologies, and other key insurance topics. In addition, the Excellence Program included a Summer Intern Honors program as well as several group and individual projects.

## Insurance in Texas: By the Numbers, 2009

### Homeowners Insurance

Number of companies:	106
Number of company groups:	63
Number of new companies (since 2003):	55
Policies in Force (2008):	
Homeowners	4,035,930
Dwelling	650,585
Tenants	704,899
2008 Written Premium:	\$5,254,767,387

### Top Writers

	2008 WRITTEN PREMIUM	MARKET SHARE
State Farm Lloyds	\$1,544,451,734	29.1%
Texas Farmers Ins Co	310,948,059	5.9%
Travelers Lloyds of TX Ins Co	243,950,945	4.6%
United Services Automobile Assoc.	222,138,641	4.2%
Farmers Ins Exchange	196,425,431	3.7%
USAA Texas Lloyds Co	181,909,261	3.4%
Allstate Fire & Casualty Ins Co	134,923,205	2.5%
Nationwide Prop & Casualty Ins Co	125,203,518	2.4%
Texas Farm Bureau Underwriters	114,389,355	2.2%

### Personal Auto

Number of companies	175
Number of company groups	76
Number of new companies (since 2003)	57
Vehicles in Force (Liability)	15,446,870
2008 Direct Written Premium	\$12,748,303,000

### Top Writers

	2008 WRITTEN PREMIUM	MARKET SHARE
State Farm Mutual Auto Ins Co	\$2,295,448,817	18.01%
Farmers TX County Mutual Ins Co	1,336,276,037	10.48%
Progressive County Mutual Ins Co	947,420,893	7.43%
Allstate Indemnity Co	552,999,414	4.34%
Government Employees Ins Co	502,133,030	3.94%
Allstate Fire & Casualty Ins Co	445,757,876	3.50%
Allstate County Mutual Ins Co	413,124,583	3.24%
USAA County Mutual Ins Co	377,872,023	2.96%
USAA	341,301,331	2.68%
Southern Farm Bureau Casualty Ins Co	307,774,520	2.41%

### Health Insurance

Number of companies	75
Number of company groups	37
Number of new companies	4
Texas Population estimate	24,194,000
Texans with Health Insurance	18,110,000
Uninsured Population (25%)	6,084,000
2008 Total Premium	\$17,950,126,018

### Top Writers

	2008 WRITTEN PREMIUM	MARKET SHARE
Health Care Service Corp. Group	\$5,980,867,588	33.32%
Unitedhealth Group	2,495,568,369	13.90%
Amerigroup Group	1,204,063,971	6.71%
Aetna Group	916,159,924	5.10%
Centene Corp Group	802,543,953	4.47%
Humana Group	742,541,353	4.14%
Scott & White Group	580,299,179	3.23%
Universal Amer Fin Corp Group	531,283,439	2.96%
Newquest Group	510,855,585	2.85%
Firstcare Group	398,728,621	2.22%

### Life Insurance

Number of companies	369
Number of company groups	154
Number of new companies	21
2008 Total Premium	\$14,195,994,042

### Top Writers

	2008 WRITTEN PREMIUM	MARKET SHARE
1 Unitedhealth Group	\$3,336,072,867	23.50%
2 Humana Group P	1,673,727,653	11.79%
3 Aetna Group	1,593,377,072	11.22%
4 Wellpoint Inc Group	671,258,245	4.73%
5 Cigna Health Group	578,093,188	4.07%
6 Principal Financial Group	458,705,578	3.23%
7 Metropolitan Group	411,020,525	2.90%
8 Unumprovident Corp Group	410,249,508	2.89%
9 Universal Amer FinCorp Group	334,285,048	2.35%
10 Assurant Inc Group	326,902,967	2.30%

# Hurricane Ike: TDI's Response

HURRICANE IKE struck the Texas coast at Galveston Island on September 13, 2008. The largest storm in Texas history affected millions of citizens. More than a year later, the far-reaching impact of the storm is still being felt, with property losses estimated at \$12-13 billion in losses to date.

The longer term impact of Hurricane Ike has been seen in public policy decisions by the state's leadership in the areas of disaster response and windstorm insurance reforms. State lawmakers addressed many of these issues in the 81st Legislature concluded in May 2009. HB 4409 changed several operational aspects of the Texas Windstorm Insurance Association (TWIA) and fundamentally altered its funding structure to allow for post-event bonding.

## Resolving Claims and Disputes

In the aftermath of Hurricane Ike, TDI has monitored the actions of the insurance industry in handling an estimated 800,000+ insurance claims related to the storm. TDI fielded close to 5000 consumer complaints about insurers and returned almost \$35 million to consumers in the cases where complaints were justified. TDI also initiated ongoing investigations of alleged fraud and administrative violations by agents and companies related to Hurricane Ike insurance claims.

To help resolve the more difficult cases, TDI launched a pilot mediation program with three participating insurance companies. The mediation process involves the consumer, the insurance company, and an independent third-party mediator meeting together to reach a mutually agreeable resolution.

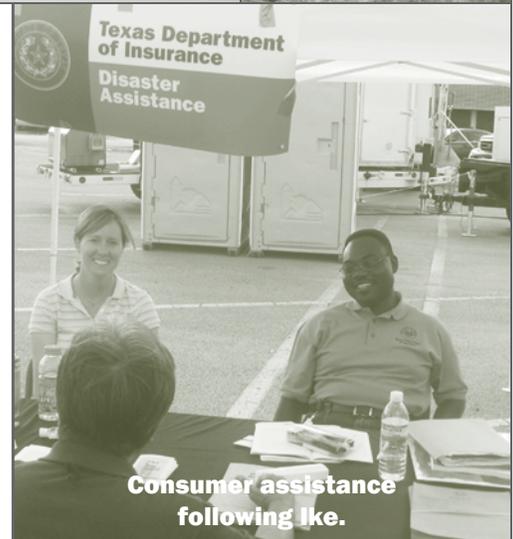
## Regulatory Issues

Regulatory oversight of the insurance industry response to Ike has also included surveillance and monitoring of the financial condition of companies to identify any that were potentially at risk. Consistent with TDI's routine oversight efforts, the agency brought sharper focus to early identification of companies under stress due to increased claims resulting from the storm.



## Ike At-A-Glance

- 600 miles wide at peak
- Landfall at Galveston **September 13, 2008**
- Estimated **\$12-13** billion in property losses
- Estimated **800,000+** insurance claims
- Approximately **5,000** consumer complaints to TDI
- Close to **\$35 million** returned to consumers by TDI
- **250** TDI employees assisted more than **8,000** storm victims with insurance questions at multiple field locations.



Insurance Commissioner Mike Geeslin and Division of Workers' Compensation Commissioner Rod Bordelon issued numerous bulletins to guide industry response to storm victims who were relocated and needed to fill prescriptions, file workers' compensation claims or have more time to pay an insurance policy premium. The bulletins also advised insurance carriers on various provisions of Texas Insurance Code related to business practices in a state of emergency.

## Field Response

As the storm approached Texas – and for days after landfall – TDI staffed the Governor's Division of Emergency Management (GDEM)'s State Operations Center and participated in frequent conference calls with the GDEM. TDI's participation in disaster response started September 15, 2008, when the first team of volunteers from the agency went into affected areas to begin to offer assistance to consumers.

Texas property and casualty, life and health insurers participated in the Hurricane Ike disaster response efforts through initiatives at the company level and through coordination with TDI and the Texas State Disaster Coalition (TSDC). Besides representatives from insurers, the TSDC includes representatives from industry trade associations, TDI and other state agencies,

the GDEM, American Red Cross, Federal Emergency Management Agency (FEMA) and volunteer organizations.

TDI offered insurance information assistance to storm victims at disaster shelters, including 60 Disaster Recovery Centers (DRCs) established by FEMA in the 33 counties affected by the storm. Several insurance carriers set up temporary offices in Home Depot parking lots, distributed water and ice to consumers as a community relief gesture, and publicized claims information through radio and television spots.

More than 250 TDI employees volunteered to serve in the Hurricane Ike recovery effort which was ongoing until April 10, 2009. During that time, assistance with insurance questions, claims and complaints was offered to more than 8,000 consumers.

The TDI Consumer Help Line was staffed during evenings and weekends to match the hours of the DRCs. In the year since the storm, phone line staff handled an estimated 12,000 calls related to Hurricane Ike. A Hurricane Ike Consumer Help Page in English and Spanish is available on the agency website at: [www.tdi.state.tx.us/consumer/storms/cpmhurrike.html](http://www.tdi.state.tx.us/consumer/storms/cpmhurrike.html).

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## **Commissioner's Office**

THE COMMISSIONER OF INSURANCE, appointed by the Governor with the advice and consent of the Senate, is the agency's chief executive and administrative officer.

As the agency's chief administrator, the Commissioner oversees agency regulatory functions, establishes agency operating procedures and enforces state insurance laws. Enforcement includes disciplinary and legal actions against violators.

As part of his regulatory duties, the Commissioner issues presumptive rates for credit life and credit disability insurance. He also reviews and regulates all residential property rates and can order reductions when appropriate. The Commissioner also promulgates rates for title insurance and Texas Automobile Insurance Plan Association (TAIPA) coverages. The Texas Windstorm Insurance Association (TWIA) must submit its proposed rates for the Commissioner's approval.

The Commissioner reviews rates submitted to TDI under "file-and-use" provisions for such lines as boiler and machinery, business owners, commercial multi-peril, credit and involuntary unemployment, crime, fire and allied lines, commercial general liability, glass, miscellaneous liability, mortgage guaranty, medical malpractice, other professional liability and commercial umbrella.

The Commissioner adopts rules, implements new laws and addresses problems in regulating companies and agents. In addition, the Commissioner appoints individuals to advisory boards and committees and oversees their operation.

In FY 2009, the Commissioner's Office included the Chief of Staff and five activities.

**Chief of Staff** oversees the Administrative Operations Division, which includes the agency's financial services, information technology services, human resources, purchasing and contract administration and staff services. The Chief of Staff also coordinates executive communications and assists the agency ombudsman and ethics advisor in matters not requiring the Commissioner's action.

**General Counsel/Chief Clerk** serves as the Commissioner's legal adviser on both contested and non-contested cases and assists in developing rules, setting rates and handling various appeals to the Commissioner, including appeals from decisions of Boards and Associations supervised by the Commissioner. In addition, the office coordinates matters involving contested case proceedings including, coordinating hearing notices, scheduling of hearings with the State Office of Administrative Hearings (SOAH), along with providing a required court reporter, policy issues, and rule-making; performs legal research; certifies rules for the agency; approves all bulletins issued by the agency and the Commissioner; and maintains records of proceedings involving the Commissioner and Commissioner actions.

**Executive Services** provides executive support services to the Commissioner and staff.

**Internal Audit** supports the agency's overall mission by providing independent, objective assurance and consulting activities designed to add value and improve the agency's operations. Internal Audit helps the agency accomplish its goals and objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, controls, and governance throughout TDI.

**Government Relations** serves as TDI's liaison with the Legislature and other governmental entities. Major responsibilities include helping the Commissioner of Insurance and the Commissioner of Workers' Compensation develop legislative recommendations for improving insurance regulation in Texas; reporting information regarding TDI activities and the insurance market to the Legislature; coordinating and tracking agency-wide responses to legislative and constituent inquiries, including responding to inquiries related to workers' compensation or coordinating responses with the Division of Workers' Compensation (DWC); monitoring, tracking and analyzing legislation affecting the agency; updating agency staff on the status of legislation; selecting, training, and coordinating the availability and presence of appropriate agency staff for resource testimony before various legislative

committees; overseeing implementation of legislation; compiling and indexing all insurance, workers' compensation, and other agency-related legislation for inclusion on TDI's website; distributing requested information to legislators, committees, and other governmental entities; and researching and reviewing possible appointments to various boards and committees required to assist the Department, which includes on-going monitoring of such appointments.

**Public Information Office** serves as the agency's primary contact with the news media. The office also responds to information requests from consumers, the insurance industry and other regulators and government agencies. Major communication responsibilities include:

- Researching, writing, editing and distributing news releases announcing agency actions; conducting and coordinating interviews with the news media; assisting the Commissioner in drafting articles and consumer columns for various publications; and responding to information requests from the media.
- Managing content of TDI's websites, with assistance from Information Services and other divisions.
- Coordinating electronic mail among TDI, other state insurance departments and the National Association of Insurance Commissioners (NAIC), and coordinating general information e-mails via TDI's website.
- Coordinating the writing and editing of the Annual Report to the Governor and Legislature.
- Writing and editing the agency's regulatory newsletter (TDInSight).
- Designing, illustrating and producing agency publications and related print materials.
- Writing and overseeing production of radio and television public service announcements and advising agency programs on public awareness campaigns.
- Producing the agency's Bulletin Board@TDINet, an in-house electronic bulletin board for TDI information.
- Preparing information and fact sheets for speeches and helping edit various agency reports and documents.

## Highlights

In FY 2009, the Commissioner's Office:

### General Counsel/Chief Clerk

- Reviewed, briefed and advised the Commissioner of Insurance on 153 contested cases heard by SOAH, and 15 hearings and public meetings conducted by the Commissioner. Also reviewed, briefed and advised the Commissioner on other rate matters including title insurance, the TWIA interim filing requesting modification of the annual commercial rate filing, and TWIA manual rates.
- Briefed and advised the Commissioner on 121 appeals of TWIA decisions.
- Provided legal and technical review in connection with the adoption of six new Texas Administrative Code (TAC) rules, the repeal of three TAC rules, and the amendment of seven TAC rules, including the adoption of one TAC rule adopted on an emergency basis.
- Provided legal and technical review in connection with the adoption of three manual rule proposals under Article 5.96 of the Texas Insurance Code. Two proposals to adopt new or amended manual rules were pending at the end of FY 2009.
- Reviewed and advised the Commissioner regarding orders in connection with agents and insurers, including 133 consent orders, 103 default orders, 7 contested, and 4 Cease and Desist orders; also reviewed and advised the Commissioner on 29 appointment or reappointment orders, 4 TDI Activity orders (approval of TDI Manuals), and 5 Rate Matter orders.
- Continued work on streamlining the agency's internal rulemaking process.
- Continued work on updating and revising portions of TDI's database of Commissioner orders and bulletins. The database now includes 46 years of orders by insurance commissioners and the former State Board of Insurance.
- Maintained the Commissioner's agendas, bulletins, TAC and manual rules posted on the agency website.
- Approved and processed 55 Commissioner's bulletins.
- Maintained and prepared for archiving all contested-case hearing files (Official Administrative Record) and all other administrative hearing files of the Commissioner of Insurance or his delegate, as well as assisted the Office of the Attorney General with actions filed against the Department, including related appeals of administrative appeals filed with the District Court.
- Briefed and advised the Commissioner and TDI staff in hearings concerning rules and other regulatory matters.

## **Executive Services**

- Assisted the Commissioner and staff in responding to all inquiries directed to the Commissioner of Insurance.
- Coordinated the activities of the Commissioner and agency staff as directed by the Commissioner.

## **Internal Audit**

- Successfully completed an external (State Agency Internal Audit Forum) Peer Review with a “Fully Complies” certification.
- Conducted six financial or performance related audits. In addition, five other financial/performance-related audits were ongoing at fiscal year-end.
- Conducted one agency-wide Ethics Review project.
- Conducted two information system audit projects.
- Conducted two follow-ups with management on outstanding recommendations from prior audits. These were reported in our Annual Report in October and mid-year in March to the Commissioners.
- Conducted four advisory projects resulting in final reports to the Commissioners and agency management.
- Conducted one investigation as authorized under Section §2102.003 (3) (E) of the Government Code.
- Served as TDI’s liaison to external auditors on two State Auditor’s Office (SAO) projects that were completed by fiscal year-end.
- Served as TDI’s liaison to external auditors on two SAO projects still ongoing at fiscal year-end.
- Served as TDI’s liaison to external auditors on one Comptroller Recovery Audit completed by fiscal year-end.
- Served as TDI’s liaison to external auditors on two Federal audits of OSHA completed by fiscal year-end; program review and financial review.
- The Internal Audit Director serves on TDI’s Fraud Panel, which receives and determines appropriate handling of internal fraud-related allegations.
- Audit staff served in an advisory or monitoring role on eight other agency-wide project committee teams.

## **Government Relations**

- Assisted the Commissioner of Insurance and the Commissioner of Workers’ Compensation in developing legislative recommendations for improving insurance and workers’ compensation regulation in Texas and compiling the information for reporting to the Legislature in the “Biennial Report of the Texas Department of Insurance to the 81st Texas Legislature,” which was published in December, 2008.
- Worked with the Sunset Advisory Commission and provided resource information to the TDI-Sunset bill sponsors in the 81st Legislative Session for legislative hearings and post-hearing follow-up.
- Tracked approximately 1,272 insurance-related bills filed during the 81st Legislative Session, and coordinated testimony, assisted with presentations, and communicated with authors/sponsors of those bills as they progressed through the legislative process.
- Tracked, coordinated, and reported to the Legislature the implementation activities of the 222 insurance-related bills passed during the 81st Legislative Session (2009), 217 of which became law, resulting in approximately 207 implementation items for the TDI and the DWC.
- Published bill implementation information on the agency’s website.
- Worked with bill authors and sponsors of legislation and kept them advised of implementation developments, including stakeholder and working group meetings in the development of rules.
- Monitored and attended meetings of various boards and committees, including legislative interim committees, for the Commissioner of Insurance and the Commissioner of Workers’ Compensation.
- Coordinated and prepared presentations by the Commissioner of Insurance, the Commissioner of Workers’ Compensation, and agency staff for interim and regular session legislative committees charged with studying insurance- and workers’ compensation-related issues.
- Continued to maintain a consumer liaison for insurance inquiries.
- Assisted TDI staff with appointment and re-appointment of members to advisory committees and boards, including: the re-establishment and monitoring of the Utilization Review Advisory

Committee and several committees that assist the State Fire Marshal's Office; the appointment of a TDI representative to serve on an advisory committee established by the Texas Commissioner of Banking regarding the regulation of prepaid funeral benefits in accord with HB 3762, 81st Legislative Session.

- Monitored the continuing implementation of Senate Bill (SB) 1670, 79th Legislature, Regular Session, among various implementing agencies and working group members. SB 1670 added Subchapter N to Chapter 601 of the Transportation Code, which requires TDI, in consultation with the Texas Department of Public Safety (DPS), the Texas Department of Transportation (TxDOT), and the Texas Department of Information Resources (DIR) to establish a program for verification of whether owners of motor vehicles have established financial responsibility. The program, now known as TexasSure, was made available to all law enforcement agencies statewide on October 1, 2008. Assistance was also provided in the public relations efforts for the program, which consisted of press conferences and media events and the development of a website: [www.texassure.com](http://www.texassure.com).
- Continued monitoring and updating the implementation of SB 611, 80th Legislature, Regular Session, which required TDI, in conjunction with the Office of Public Insurance Counsel to establish and maintain a single internet website that provides information to enable consumers to make informed decisions relating to the purchase of residential property insurance and personal automobile insurance. The website was launched on August 28, 2008 as [www.helpinsure.com](http://www.helpinsure.com), which allows consumers to view sample homeowners or auto insurance rates from the top 25 insurer groups, based on a personal profile submitted by the consumer. The service is free to use and no confidential information is required to be submitted. In addition to cost estimates, the website also provides financial ratings, complaint ratios, and recent rate changes for each insurance company listed. Summaries and explanations of what each policy covers, as well as available discounts, are also provided.
- Assisted TDI staff with initiating implementation of the Healthy Texas Program as established by SB 78, 81st Legislative Session, through which small employer health insurance would be offered to eligible persons.

#### **Public Information Office**

##### **PIO**

- Published four issues of TDInSight in FY 2009. TDInSight provides industry stakeholders and policymakers with timely information on key issues and regulatory actions, in a readable, visually interesting format.
- Produced six issues of the employee newsletter Bulletin Board as an electronic publication on the TDI intranet.
- Wrote and coordinated dissemination of 73 press releases to statewide Texas media in FY 2009.
- Provided presentation assistance for the Commissioner at 14 events statewide during the fiscal year.
- Responded to 442 media calls and interview requests.
- Continued to provide daily news clipping service, monitoring all major Texas newspapers for insurance-related news.

##### **Graphics**

- Produced 11 newsletters for various TDI program areas
- Designed and produced 98 booklets, brochures, and fliers
- Designed 21 web enterable forms
- Furnished print materials for three conferences
- Created 30 stationery items
- Created and produced 10 posters
- Designed 14 advertisements
- Produced 22 optimal web images for the TDI website

##### **Web**

- Added a web designer to our staff.
- Provided a number of design improvements to TDI's main agency website, including adding a new search engine.
- Started design work on a new Kids section that was finished early in FY 2010.
- Provided a redesign of major portions of the agency's Helpinsure website, including the addition of a new Market Connection section.

- Transferred TexasSure website to TDI's web servers and Collage web content management system and provided administration, design and accessibility updates to website owned by three state agencies.
- Provided administration and set up of Commissioner's Team SharePoint website project.
- Distributed 46 e-mail updates to as many as 3,600 TDI eNews subscribers.
- Provided live and archived Internet audio of 14 public hearings/meetings in FY 2009.
- Continued work with Web Team members throughout the agency to improve website accessibility.

**Figure 1 Summary of Activity: Commissioner's Office**

	FY 2006	FY 2007	FY 2008	FY 2009
Commissioner's Hearings/Meetings	31	25	13	15
Commissioner's Orders*	1,319	1,225	1,221	1,050

\* Commissioner's Orders in FY 2009 included 323 disciplinary orders (including contested, consent, Cease & Desist and default orders), 27 TAC rules, 3 Manual orders, 548 company activities orders, 49 orders for temporary acting commissioner, 9 delegation orders for routine actions, 4 TDI Activity actions, 29 Appointment or Reappointment orders, and 55 other orders regarding rate filings, disapproval of rates, motions for rehearing, supervision and other matters regarding TWIA appeals.

**Figure 2 Commissioner's Contested Cases by Type**

	FY 2006	FY 2007	FY 2008	FY 2009
Total Hearings Conducted for Commissioner*	53	90	50	153
Disciplinary†	27	55	29	21
License Applications	13	19	14	11
Appeals/Other‡	13	16	9	121

\* Total number of actual hearings conducted for the Commissioner by the State Office of Administrative Hearings (SOAH). The count excludes prehearing conferences and additional days of extended hearings.

† Includes State Fire Marshal Office

‡ Appeals/Other includes appeals of actions taken by the Texas Windstorm Insurance Association (TWIA) and the Texas FAIR Plan Association (TFPA).

## **Legal & Regulatory Affairs**

LEGAL & REGULATORY AFFAIRS counsels the agency on all matters, including operations, personnel, contracts, open records, and policymaking. The program interprets statutes; drafts rules, opinions, orders, and bulletins; and assists the Financial Program with financial and receivership matters. As the agency continues to look for ways to improve efficiencies and to integrate the Division of Workers' Compensation (DWC) with the other parts of TDI, the Workers' Compensation Counsel, previously DWC Legal Services, became a section within Legal & Regulatory Affairs on November 6, 2008. The division now has four sections: Agency Counsel, Financial Counsel, Policy Development Counsel, and Workers' Compensation Counsel. The major activities of each section follow.

**Agency Counsel** provides legal services to the Commissioner of Insurance, the Commissioner of Workers' Compensation, and agency staff. These services include:

- interpreting statutes, rules, and case law
- preparing, drafting, and/or reviewing commissioner's orders for appointments to advisory committees
- advising the agency on applicable state and federal employment laws
- preparing, drafting, and/or reviewing for approval agency bid documents, contracts, and memoranda of understanding and related documents
- assisting with contract administration for agency contracts
- advising the agency on applicable state procurement laws
- overseeing the agency's open records process, which includes advising on requests for information received by TDI, processing billing for open records requests, and providing training on the Public Information Act and the Open Records Tracking System
- preparing, drafting, and/or reviewing agency information sharing agreements and confidentiality agreements
- drafting rules for the Administrative Operations Division
- preparing, drafting, and/or reviewing TDI's policies and procedures manuals
- drafting potential legislation
- issuing legal opinions
- managing the library serving the agency

**Financial Counsel** provides legal services to the Financial Program and other agency programs. The section generally works on specific company transactions or problems. Services include:

- interpreting statutes, rules, and case law
- drafting and reviewing orders
- commenting on bills proposed by the Legislature related to insurer financial condition
- advising on issues concerning company licensing, financial examinations, market conduct examinations, financial monitoring, and holding company transactions, as well as supervisions, conservatorships, and other issues related to oversight of troubled companies, including title agencies
- handling denials of applications for Certificates of Authority, Form A applications to acquire control of a company, holding company transactions, and other transactions that require TDI approval
- drafting rules, bulletins, and potential legislation
- drafting receivership pleadings and coordinating with the Office of Attorney General
- representing the receiver before the district court and the receivership special master
- assisting in the establishment of maintenance tax and assessments rates

**Policy Development Counsel** provides legal services to TDI's Life, Health, and Licensing; Property and Casualty; Consumer Protection, and State Fire Marshal programs. The section assists in setting policy for all licensees, rather than specific companies. Assistance provided includes:

- interpreting statutes, rules, and case law
- drafting rules, bulletins, orders, and potential legislation
- issuing legal opinions
- responding to legislative and stakeholder inquiries

- reviewing agency publications for legal accuracy
- commenting on insurance-related bills proposed by the Legislature.

**Workers' Compensation Counsel** provides legal support for TDI-DWC. This includes:

- interpreting statutes, rules, and case law
- drafting rules, bulletins, and potential legislation
- drafting and reviewing of DWC contracts, memoranda of understanding, memoranda of agreement, and related documents for review by Agency Counsel Section
- advising on requests for information received by DWC pursuant to the Public Information Act and other laws in coordination with the Agency Counsel Section.

**General Management** coordinates delivery of legal services to the agency and continuing legal education training classes for agency attorneys. This area also serves as the agency's liaison to the National Association of Insurance Commissioners. This function involves coordinating coverage of various committee meetings and communicating the agency's position on issues.

## Highlights

In FY 2009, Legal & Regulatory Affairs:

- Sponsored the Legal In-House Training Seminar and coordinated Continuing Legal Education (CLE) training classes for agency attorneys.
- Volunteered to assist victims of Hurricane Ike by staffing disaster recovery centers, assisting with the telephone Help Line and Hurricane Ike "mini-phone" bank, and administrative duties.
- Reviewed and/or prepared 292 contracts or agreements for the agency.
- Processed 409 citations and 185 subpoenas.
- Published Agency Counsel Open Records Newsletter (ACORN).
- Drafted 15 bulletins and provided legal advice to TDI divisions on coverage and claims payment issues related to hurricane and other weather-related issues affecting Texas.
- Assisted with Healthy Texas and Texas Windstorm Insurance Association (TWIA) legislative and legal issues.
- Drafted emergency rules relating to TWIA; Sections 28 TAC §§5.4901 - 5.4908 implement HB 4409, passed during the 81st Texas Legislature, Regular Session. The adopted emergency rules establish a period for interested persons to file written requests with the Commissioner for additional supporting information concerning TWIA's 2009 annual proposed rate filing and revise the TWIA Plan of Operation to affect a person's ability to obtain TWIA windstorm and hail insurance coverage.
- Drafted rules on Fire Standard Compliant Cigarettes; Sections 28 TAC §§34.1201 - 34.1214 implement HB 2935, passed by the 80th Texas Legislature, which requires that all cigarettes sold in Texas after January 1, 2010 be fire standard compliant. The adopted rules specify requirements relating to cigarette testing, record retention, package marking, and manufacturer submission procedures.
- Drafted rules on Requirements for Submission of Information and Data to Facilitate Study by the Advisory Committee on Health Network Adequacy. Sections 28 TAC §§21.4601 - 21.4605 implement Section 20 of SB 1731 passed by the 80th Texas Legislature. The adopted rules specify requirements for a data call for the purpose of providing information to the Legislature concerning network adequacy, balance billing, and related contracting issues.
- Drafted a Memorandum of Understanding among the Financial Program, the Property & Casualty Program, Legal & Regulatory Affairs, and Enforcement, setting protocols for addressing title agencies in hazardous condition and creating the Troubled Title Agent Planning Team.
- Provided input on legislation expanding the Commissioner's authority to deny an incomplete or insufficient application for a certificate of authority prior to hearing.
- Provided input on legislation requiring increased monitoring of title agents and an expanded role for the Texas Title Insurance Guaranty Association.

## Figure 3 Summary of Activity: Legal & Regulatory Affairs

	FY 2008	FY 2009
Cases received	212	191
Cases closed	187	148
Open records requests received	13,504	13,409
Open records requests completed	13,603	13,522
AG referrals for opinions	161	58

## Enforcement

THE ENFORCEMENT DIVISION investigates allegations of illegal activities by insurance agents, companies, HMOs, and other entities (both licensed and unlicensed) engaged in the business of insurance, and by system participants subject to Workers' Compensation enforcement and monitoring activities. Enforcement attorneys bring disciplinary actions that may result in:

- cease and desist orders,
- license application denials,
- license revocations and suspensions,
- monitored agent probations,
- administrative penalties,
- restitution to harmed consumers, or
- any combination of these remedies.

Enforcement also brings actions against companies for excessive rates, and participates in hearings to set title insurance rates. The relief sought in these cases may include rate reductions and refunds of excessive premiums paid.

Enforcement refers cases to the Fraud Unit for criminal prosecution and can assist prosecutors in criminal cases. Enforcement works with the Office of the Attorney General (OAG) on appeals of disciplinary actions and on enforcement actions conducted by the OAG's Consumer Protection Division.

During FY 2009, the Division of Workers' Compensation, under the direction of Commissioner Rod Bordelon, underwent a significant reorganization. This restructuring included the placement of the enforcement function within TDI's Enforcement Division. A new team was formed to handle cases for disciplinary action against participants in the workers' compensation system.

Enforcement's Compliance Intake Unit (CIU) provides data and file management and public assistance telephone support to the program. CIU also receives, reviews and analyzes all complaints referred to the Enforcement Division to identify problem industry practices that need further investigation by the Enforcement Division and/or other areas of the TDI.

## Highlights

In FY 2009, Enforcement:

- Ordered \$17,710,703 in restitution for consumers and assessed \$8,455,377 in administrative penalties, fines and forfeitures. Cases contributing to these assessed amounts include the following:
  - United Healthcare Insurance Company and United Healthcare of Texas agreed to pay a \$3 million penalty, offset by restitution to providers, for failure to fully comply with Texas utilization review requirements, advertising issues, and claims payment issues.
  - National Western Insurance Company agreed to pay a \$75,000 penalty for failing to properly send out annuity replacement notices and for failure to properly calculate surrender values on certain approved annuities.
  - The Escrow Officer License of Sandra Flores was revoked and she was ordered to pay \$831,245.24 in restitution based on violations of the Texas Insurance Code. Flores misappropriated escrow funds over several years, primarily by making false statements on settlement statements and misdirecting the distribution of escrow funds.
  - Richmond Title Services agreed to a \$140,000 administrative penalty based on several violations of the Texas Insurance Code, including improper payments for the referral of business, using a name for which they were not licensed, failure to maintain a sufficient bond, failure to file complete escrow audit reports, fraudulent acts performed by affiliated attorneys, failure to maintain guaranty fees in escrow accounts, improper commingling of escrow and operating funds, failure to complete continuing education, charging unauthorized fees, failure to maintain financial solvency, and allowing an attorney to operate an unlicensed office.

- Zurich American was ordered to pay a \$299,800 administrative penalty for failure to timely pay orders for Independent Review Organization fees (3 instances), failure to timely pay Temporary Income Benefits (3 instances), failure to comply with Workers' Compensation Division or Commissioner Orders (12 instances), failure to take action on medical bills within 45 days of receipt (10 instances), failure to timely respond to a request for preauthorization (1 instance), failure to timely respond to a Request for Reconsideration (1 instance), failure to sufficiently explain its reason for denying or reducing payment on a medical bill (8 instances), and improperly denying payment for medical services that had been preauthorized (24 instances).
- American Home was ordered to pay a \$200,000 administrative penalty for failure to timely comply with Division decisions and orders, failure to pay for services that were preauthorized, failure to timely respond to medical bills and failure to give sufficient explanation for a reduction or denial of a medical bill. This omnibus case involved 40 such violations.
- Dr. Charles Murphy was ordered to pay a \$45,500 administrative penalty for failing to file the Report of Medical Evaluation in a timely manner (106 instances), failing to file the Report of Medical Evaluation before the seven-day deadline expired (106 instances), and failing to meet the compliance standard of 95 percent.
- Other major cases for Enforcement in FY 2009 include the following:
  - TDI revoked the insurance licenses held by several insurance agents who sold “universal leases,” which were frequently targeted at senior citizens and their savings. During the time these agents were selling the “universal lease” product, regulators in at least nine different states had entered cease and desist orders against at least one of the main principals.
  - An Emergency Cease and Desist Order was issued against USPA, L.L.C. (USPA) et al because it was engaging in the acts of a public insurance adjusting firm without holding a license. Through a consent order, USPA agreed to obtain a license and pay an administrative penalty for its unlicensed activities.
  - Former Agent Darryl Golter confessed that on the night Hurricane Ike made landfall, he had failed to secure wind and flood coverage for approximately 75 insurance clients. Golter consented to permanent revocation of his insurance licenses. American National Insurance Company (ANICO) agreed to pay claims from Hurricane Ike that would have been payable under the TWIA policies if they had been in force. For individuals with no claims, ANICO offered to refund the premiums.
  - Revocation orders were obtained against William A. Osborne, Anthony Osborne and Casey VanLoon, who were operating a business known as “Senior Estate Services.” Osborne et al and several unlicensed individuals were selling and reviewing “Living Trusts,” which got them into the homes of seniors and access to their financial assets. As a common practice, misleading and deceptive acts and practices were used to sell the trusts and then sell the annuities. Osborne also shared commissions with unlicensed persons.
  - The State Farm Lloyds Homeowners Insurance rate case continued. In May 2008, the Third Court of Appeals issued an opinion in the 2003 State Farm rate case. The court remanded the case back to the Department for further proceedings consistent with its opinion. Enforcement Division staff issued Notice of Public Appeal Re-Hearing for Residential Property Insurance Rates Filed by State Farm Lloyds. The appeal re-hearing began on March 29, 2009 and continued on April 1, 2, 15 and concluded on May 2, 2009. As of August 31, 2009 an order is pending.
  - Emergency Cease and Desist Order issued against Wellness International Network (a.k.a. W.I.N. Association, formerly known as Healthshare America and Chamberhealth USA) for engaging in the unauthorized business of health insurance. On April 3, 2009, the Travis County District Court entered a Default Order of Liquidation and Permanent Injunction against W.I.N. Association, Healthshare America LLC, Chamberhealth USA, and Healthshare Marketing LLC finding them to be insolvent.
  - Enforcement Division staff participated in the 2008 Biennial Title Rate Insurance Proceeding. This case was transferred to the State Office of Administrative Hearings (SOAH). The hearing in this case was conducted in September 2009.

- **Race-based Pricing** - TDI began its investigation into race-based pricing practices in June 2000. Originally, 186 companies were surveyed to determine if non-white policyholders had been charged more for small face amount life insurance policies than similarly situated white policyholders. Survey responses and targeted examinations revealed that race-based pricing did exist in the Texas marketplace, but had ceased in the early 1970s. The Department, in cooperation with sister agencies from other states, has negotiated multiple settlements as a result of these findings. Pursuant to SB 698, the Department maintains a Registry, published on the Agency's website, designed to assist affected policyholders and beneficiaries in the claims process.

The Department continues to combat the effects of discrimination; however, the investigation against race-based pricing is drawing to a close. Only three examinations are pending, at this time, and five examination reports have been completed. The Department is negotiating settlements in the completed company exams and expects to finalize any disciplinary actions by mid-2010.

- **Military Sales** - Texas Insurance Commissioner Mike Geeslin and Georgia Insurance Commissioner John Oxendine co-chair the NAIC Military Sales Working Group. The Group was formed to ensure states' compliance with the Military Personnel Financial Services Protection Act (Public Law 109-290) signed into law on September 29, 2006. Several members of Enforcement staff were appointed to the Working Group, whose charge is to analyze and address the problems of abusive and misleading sales practices and the sale of inappropriate life insurance products to members of the US Armed Forces. The Working Group drafted the NAIC Military Sales Practices Model Regulation, which was unanimously adopted by the NAIC Executive Committee on June 4, 2007. Texas adopted the Model Regulation on August 15, 2007 to be effective January 1, 2008.

Currently, the Enforcement Division has active investigations of three life insurers who sell to this market.

#### **Figure 4 Summary of Activity**

	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>
Cases received	1,001	1,239	814	1031	1393
Cases closed	1,111	1,119	819	776	1283
License revocations	88	89	90	76	116
License denials	32	26	24	29	30
License suspensions/ suspensions of writing*	20	19	41	18	16
Cease and desist orders	19	16	14	12	9
Monetary forfeitures/ restitution orders†	281	248	285	223	211
Forfeitures/assessments/ Restitution	\$30,452,285	\$25,393,582	\$34,647,832.22	\$51,050,935.00	\$26,166,080

\* This includes actions against financially hazardous companies under Article 1.32, Texas Insurance Code and license suspensions with probation.

† This number includes Commissioner and State Fire Marshal orders.

## **Insurance Fraud Unit**

THE INSURANCE FRAUD UNIT protects the public from economic harm by investigating allegations of criminal insurance fraud. The unit's responsibilities include receiving and reviewing reports of fraud, initiating inquiries, and conducting investigations when TDI has reason to suspect criminal insurance fraud has occurred (Texas Insurance Code Chapter 701). In addition, the unit actively seeks criminal indictments, makes arrests, and assists in prosecutions to deter insurance fraud in Texas.

The unit maintains a toll-free Insurance Fraud Hotline and an online fraud reporting system on the TDI website. Investigations may occur inside or outside of Texas and typically involve one of the following types of fraud:

Claim fraud committed by consumers or providers against insurance companies, including:

- staged accidents/paper accidents
- fake burglary and auto theft claims
- arson for profit
- claims for medical services not provided or inflated
- personal injury schemes
- exaggerated/padded claims
- organized fraud schemes
- workers' compensation claimant and/or provider fraud

Deceptive agent practices including:

- issuing fictitious policies
- conversion of premium payments
- insurance application fraud

Insurance company officers and directors fraudulent activities including:

- false financial statements to TDI
- misuse of company funds

Unauthorized insurance schemes including:

- insurance products not authorized by TDI
- individuals not licensed to do the business of insurance in Texas
- fraudulent group/individual health plans

Workers' Compensation Premium Fraud

Mortgage Fraud

- fraud by escrow officers, title insurance agents and title insurance companies

The Fraud Unit is comprised of four investigative sections with commissioned peace officers and civilian investigators, an administrative section and an intake section. Unit management includes the Associate Commissioner/Chief Investigator and three section managers. Additionally, the Fraud Unit has two attorneys on staff, the Fraud Counsel and the Special Prosecutor. The Fraud Counsel provides legal advice and investigative support to the unit. The Special Prosecutor, through a cooperative agreement with the Dallas County District Attorney's Office, is appointed as an assistant district attorney to prosecute cases referred by the Fraud Unit.

### **Highlights**

In FY 2009, the Insurance Fraud Unit:

- Hosted the 11th Annual Fraud Conference in February 2009 with 266 fraud investigators from state government, law enforcement and the insurance industry in attendance.
- Made 16 public presentations on insurance fraud.
- Made 57 liaison contacts with law enforcement throughout the state.
- Participated in statewide task forces in several metropolitan areas.
- Participated in the Texas Committee on Insurance Fraud to address insurance fraud on a united front with industry, law enforcement, other state agencies, legislators and citizen advocate groups.

### **Figure 5 Summary of Activity: Insurance Fraud Unit**

Reports of Fraud Received	11,048
Cases Opened	637
Persons Referred to Prosecutors	206
Criminal Indictments	148
Criminal Convictions	125
Assessments (Fines & Penalties)	\$86,200
Restitution Ordered	\$7,449,147.72
Arrests by Fraud Unit Peace Officers*	13

*\* This figure represents only arrests executed directly by Fraud Unit Peace Officers or in which Fraud Unit Peace Officers participated.*

## Financial

The Financial Program serves as the primary solvency guardian of the Texas insurance industry. The Program enforces solvency standards for insurance companies and related entities from their initial formation and licensure through subsequent surveillance activities to implementing regulatory interventions when appropriate. The Program's goal is to protect consumers by detecting financial or hazardous concerns and taking action promptly to mitigate problems caused by troubled insurers and/or prevent carrier insolvencies. Financial seeks to rehabilitate companies that fall short of solvency standards, and through a court-sanctioned receivership process, liquidates the few companies that are not able to be rehabilitated.

Financial monitors the solvency and market conduct of over 1,950 licensed risk-bearing insurance companies and related entities; this number exceeds 2,200 carriers when other entities with other forms of registration/eligibility are included. Annual statements filed by insurers and HMOs for calendar year 2008 reflected \$102 billion in Texas premiums and \$74 billion in claim payments to Texas claimants. These companies reported aggregate assets of \$6 trillion, liabilities of \$5.2 trillion and capital and surplus of \$806 billion.

The Financial Program consists of the following divisions:

The **Company Licensing & Registration Division** licenses insurance companies that desire to enter the Texas market. The Division also processes license and registration applications received from other entities such as HMOs, surplus lines insurers, risk retention groups, and purchasing groups, among others. The Division maintains company charter files and processes various transactions, including mergers, withdrawals and dissolutions. Other functions include processing statutory deposits of licensed companies and certain agencies and maintaining TDI's database of licensed and registered companies.

The **Financial Analysis Division** determines the financial condition of insurance companies, HMOs and other entities by reviewing annual and interim financial statements, CPA audit reports, examination reports, reinsurance arrangements, and SEC filings, among other information sources. The Division initiates recommendations for solvency interventions, when appropriate, such as supervision, conservation and receivership. The Division also reviews changes of control, mergers, affiliated transactions and holding company registration statements of companies that are domiciled, or commercially domiciled, in Texas. The Division reviews all applications for HMO admission and expansion applications, as well as other HMO agreements.

The **Financial Examination Division** performs statutory examinations of a variety of licensed/authorized entities, including insurance carriers, HMOs, premium finance companies, managing general agents, Multiple Employer Welfare Associations (MEWAs), and workers' compensation self-insurance groups. Examinations occur at company locations primarily in Texas but may also occur throughout the United States. These examinations may last from a few days to several months. The examination process evaluates a company's financial condition and compliance with statutory requirements, including treatment of policyholders. Examiners initiate referrals for regulatory action when serious violations and concerns about carrier solvency are uncovered. Regional offices are maintained in Dallas, Houston, and San Antonio to hold down travel expenses and provide localized oversight of the examination process.

The **Actuarial Division** performs actuarial examinations of insurance companies, HMOs and other entities in conjunction with the Financial Examination Division. Actuarial examinations focus on the adequacy of a carrier's reserves that support policyholder obligations, which typically represent the largest liability for a carrier. Actuarial works to keep reserve requirements current in Texas through promulgation of rules and works towards uniformity of reserve requirements on a national basis through contributions at the National Association of Insurance Commissioners (NAIC) and in professional actuarial working groups such as those within the American Academy of Actuaries.

Actuarial staff also review actuarial opinions, process certificates of valuations and provide actuarial analysis to other divisions as needed. While primarily providing input on solvency matters, the Division may also address issues relating to policy values, disclosures and consumer equity.

**Rehabilitation and Liquidation Oversight Division (RLO)** – exercises oversight of troubled companies, Special Deputy Receivers (SDRs), and guaranty associations. Texas has statutory administrative authority and court-ordered procedures to authorize the Department to intervene in the operations of an insurer that is operating in a manner that is hazardous to policy holders that may include:

- the ability to order an insurer to take corrective action,
- the ability to take regulatory intervention actions such as placing a financially troubled insurer in supervision or conservation, and
- the ability to place a troubled insurer in court-ordered rehabilitation or liquidation.

The goal of rehabilitation is to protect company assets for the benefit of policyholders and the guaranty funds, and to facilitate strategies that allow for effective rehabilitation.

The goal of liquidation oversight, which is an allocated program, is to oversee the contracts of SDRs to assure maximization of distribution of assets to claimants; administers low asset receiverships in house, monitor the state's guaranty associations' processing of receivership-related claims, and administer receiverships after closing.

## Highlights

In FY 2009, the Financial Program:

### Company Licensing

- Made significant progress with implementing an imaging project to reduce paper-intensive processes. A high-speed scanner and three VisiFlow licenses were procured. The Division expects to utilize the new technology for back-end electronic storage/retrieval of documents in the near future.
- Completed a feasibility study to provide the industry the ability to update additional information online.
- Consistently received high ratings on customer response survey forms. The average rating for the last two years was 4.46, where "5" is superior/extremely satisfied, and "4" is very good/very satisfied.
- Assisted with drafting various rules relating to continuing care retirement communities, third party administrators, self-insurance groups and workers' compensation networks, and agent reporting requirements for purchasing groups and risk retention groups.
- Assumed duties and responsibilities related to the registration of viatical and life settlements.

### Financial Analysis

- Navigated through the worst financial crisis since the Great Depression, leading to significantly increased workloads to monitor constantly evolving developments in the financial and credit markets to evaluate impacts upon insurers operating in Texas.
- Led efforts to evaluate Hurricane Ike's potential impact, both financially and operationally, to Texas insurers before Ike's landfall. Contacted insurers for estimates of financial impact from Ike. Coordinated industry data calls over the fiscal year to monitor Ike's ultimate impact to industry.
- Served as a national leader in monitoring and coordinating state and federal regulators efforts directed at American International Group (AIG).
- Acquired Teammate software and began implementation efforts to use it in conducting financial analysis. Teammate will allow for a more effective, efficient and consistent approach to conducting analysis and will allow for easier flow of information between the Financial Analysis and Financial Examinations.
- Initiated coordination with Financial Examinations to implement new NAIC Risk Surveillance Solvency Monitoring process, which becomes a requirement of NAIC Accreditation in 2010.
- Developed a team of Senior Financial Analysts charged with developing analysis processes and procedures and coordinating effort among teams to provide greater consistency across teams.

### Financial Examinations

- Conducted three market conduct examinations in response to Hurricane Ike-related complaints.
- Participated in six coordinated examinations in which examination staff interacted with other state insurance regulators, which increased the efficiency and effectiveness of the examination process.

- Met all key performance targets despite challenges attracting and retaining examination staff.
- Assisted in the implementation of HB 472, relating to the regulation of third party administrators.
- Completed 153 examinations of insurers and related entities.

#### **Actuarial**

- Participated in actuarial working groups and NAIC efforts to develop principle-based reserves (PBR) for life and annuity products and a related valuation manual containing reserve requirements for anticipated changes to the Standard Valuation Law. These efforts are expected to eliminate certain redundant reserves and benefit consumers through greater availability and lower costs, as well as provide other efficiencies benefiting all stakeholders.
- Worked with the industry and provided input to the legislative process for HB 1761 relating to reserve requirements for credit life and credit accident and health insurance. Drafted rule amendments to implement HB 1761 to be adopted prior to year end 2009.
- Drafted rule amendments to update reserve requirements for pre-need life insurance.
- Represented Texas on the NAIC Life and Health Actuarial Task Force in the development of two model rule changes to reduce redundant reserves to help alleviate some of the challenges faced by the industry during the ongoing credit crisis. Actuarial will work towards adoption of these model rule changes in Texas for year end 2009.
- Provided contributions to an Academy of Actuaries' working group and represented Texas on an NAIC Life and Health Actuarial Task Force to update reserve requirements to address certain deferred annuities that include benefits known as "guaranteed living income benefits."

#### **Rehabilitation and Liquidation Oversight Division**

- Oversaw net asset recoveries of approximately \$97 million through the receivership process and payments of over \$130 million to policyholders and/or guaranty associations.
- Oversaw the transition of more than \$23 million in escrow funds from title agents under regulatory intervention.
- Assisted with the creation of the new Troubled Title Agency Participation Team, which was created to improve TDI and guaranty association responses after a significant number of title agents were put into receivership. To date, approximately 80 title agencies have been cited as troubled title agents with actions including continued monitoring, management conferences, and stronger forms of regulatory interventions including receivership actions.
- Initiated negotiations on a proposed cost sharing agreement with the Texas Title Insurance Guaranty Association.
- Hosted annual forums for Historically Underutilized Businesses designed to enhance HUB participation and expand the pool of potential Special Deputy Receiver contractors and subcontractors.

**Figure 6 Number of Company Licenses Under Commissioner's Jurisdiction Fiscal Years 2005-2009**

<b>License Type</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>
Insurance Companies	1,912	1,909	1,891	1,885	1,863
Health Maintenance Organizations	55	52	54	54	55
Premium Finance Companies	293	270	264	250	257
Continuing Care Retirement Communities	23	24	25	29	29
Third Party Administrators	750	747	730	748	770
<b>Total</b>	<b>3,033</b>	<b>3,002</b>	<b>2,964</b>	<b>2,966</b>	<b>2,974</b>

*Note: Does not include 110 foreign risk-retention groups 196 foreign surplus lines carriers.*

**Figure 7 Texas Policyholder Premiums,  
Claim Payments Calendar Years 2004–2008**

CALENDAR YEAR	PREMIUMS	CLAIM PAYMENTS	PAYMENTS AS A % OF PREMIUM
2004	80.3 billion	47.0 billion	58.5%
2005	78.7 billion	55.3 billion	70.3%
2006	87.3 billion	61.9 billion	70.9%
2007	99.2 billion	64.1 billion	64.6%
2008	101.9 billion	74.5 billion	73.1%

**Figure 8 Total Capital/Surplus of Insurance Companies  
Operating in Texas Calendar Years 2004-2008**

CALENDAR YEAR	TOTAL CAPITAL/ SURPLUS
2004	703.5 billion
2005	747.1 billion
2006	812.6 billion
2007	867.6 billion
2008	806.2 billion

**Figure 9 Number of Financial Analysis Reviews  
Fiscal Years 2005–2009**

FISCAL YEAR	NUMBER OF REVIEWS
2005	2,032
2006	1,891
2007	1,900
2008	1,881
2009	1,855

**Figure 10 Number of Holding Company Transactions  
Processed Fiscal Years 2005–2009**

FISCAL YEAR	NUMBER OF TRANSACTIONS
2005	755
2006	804
2007	843
2008	806
2009	884

**Figure 11 Number of Financial and Market Conduct  
Examinations Fiscal Years 2005–2009**

FISCAL YEAR	NUMBER OF EXAMINATIONS
2005	160
2006	157
2007	146
2008	153
2009	153

**Figure 12 Number of Actuarial Examinations Performed  
Fiscal Years 2005–2009**

FISCAL YEAR	NUMBER OF EXAMS
2005	84
2006	79
2007	78
2008	77
2009	78

**Figure 13 Texas Guaranty Association Assessments  
Calendar Years 2004–2008**

CALENDAR YEAR	LIFE & HEALTH	PROPERTY & CASUALTY	TITLE	TSIG	TOTAL
2004	1,726,797	30,274,649	0		32,001,446
2005	22,493,470	0	0		22,493,470
2006	0	50,000,000	0	0	50,000,000
2007	12,500,005	0	0	100,000	12,600,005
2008	0	0	0	100,000	100,000

## Property and Casualty

PROPERTY AND CASUALTY monitors a wide range of property and casualty insurance lines from auto to workers' compensation; reviews form and rate filings; explores ways of cutting insurance costs by providing consumers with ways to prevent and mitigate losses; reviews and analyzes statistical data; and prepares reports on insurance rates and markets to assist policymakers and consumers with insurance-related decisions. Property and Casualty consists of a General Management section and six divisions.

**General Management Section** provides program-wide management and operational support, including strategic and budget planning; responses to legislative requests; research assistance, including Geographic Information System (GIS) mapping and demographic analysis; project management; and administrative support including report and presentation preparation for the program and agency. Additionally, General Management oversees the implementation and operation of TexasSure Vehicle Insurance Verification, the Motor Vehicle Financial Responsibility Verification Program required by Texas Transportation Code §601.452.

**Personal and Commercial Lines Division** consists of the Personal Lines Section and the Commercial Property/Casualty Section, and is responsible for the regulation of various lines of insurance including automobile, homeowners, commercial property, and general liability. The division performs the following major activities:

- Reviews individual insurer filings of forms, endorsements, and rules for compliance with statutory and/or rule requirements and verifies that they do not contain provisions, titles, or headings that are unjust, encourage misrepresentation, are deceptive, or violate public policy.
- Drafts administrative rules as necessary to implement legislation or to address statutory as well as market concerns related to property and casualty lines of insurance.
- Oversees the Plan of Operation, manual rules, forms, and endorsements of the Texas Windstorm Insurance Association (TWIA), the Texas Fair Access to Insurance Requirements (FAIR) Plan Association, the Texas Medical Liability Insurance Underwriting Association (JUA), and the Texas Automobile Insurance Plan Association (TAIPA).
- Processes inquiries from agents, consumers, legislators, insurers and other regulatory entities and resolves complaints as necessary to ensure consumers and businesses are being treated fairly on insurance related matters, and that insurers and agents are complying with statutes, administrative rules and policy provisions.
- Assists consumers in finding homeowners insurance via the HelpInsure.com online bulletin board.
- Works closely with the Property & Casualty Actuarial Division to monitor the marketplace and propose changes due to changing public needs, including establishing market assistance programs.

**Inspections Division** performs the following major activities: inspects and certifies construction in the Designated Catastrophe Area along the Texas Gulf Coast in accordance with the TDI Building Code for Windstorm Resistant Construction; drafts and presents proposed rules affecting property and casualty insurance and the TWIA Plan of Operation (building code); provides oversight of Texas licensed engineers appointed as qualified windstorm inspectors; provides oversight of established commercial fire rates by outside entities; ensures loss control compliance of insurers; administers the amusement ride safety program; assists the state fire marshal's office with establishment of public protection classifications by outside entities; and conducts windstorm inspections for compliance with building codes.

The Inspections Division consists of four sections: Commercial Property Oversight Inspections, Windstorm Inspections, Engineering Services, and Loss Control.

**Title Division** regulates policy forms and rates for title insurance and oversees licensing and financial examination of title agents. The Title Division consists of two sections:

**Title Insurance Section** oversees licensing of title agents, direct operations, and escrow officers; responds to consumer complaints and inquiries; and assists with rule and rate hearings.

**Title Examinations Section** conducts comprehensive, limited scope, and restricted compliance audits of title agents licensed in Texas. Title Examinations is an allocated area – all of the expenses are reimbursed by the Texas Title Insurance Guaranty Association (TTIGA).

**Workers' Compensation Classification/Premium Calculation Division** regulates insurance companies licensed to write workers' compensation insurance in Texas. The division performs the following major activities: assists employers, agents and insurance companies in determining the proper workers' compensation classification for policyholders; responds to verbal and written inquiries pertaining to workers' compensation insurance; resolves complaints; oversees the calculation of experience modifiers; reviews workers' compensation policies to ensure that insurers have issued the policies and calculated the premium in accordance with the rules and statutes governing Texas workers' compensation; reviews endorsement and form filings that require prior approval from the Commissioner of Insurance pursuant to Texas Insurance Code, Chapter 2052; reviews the plan of operations and issues a certification for groups formed pursuant to Texas Insurance Code, Chapter 2055; administers loss incentive programs; and participates in reviewing the rules, classifications, endorsements and forms contained in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance.

This division is composed of the Classification Section, the WC Oversight Section and General Management.

**Property and Casualty Actuarial Division** provides actuarial review of rate and rating plan filings to ensure rates and premiums are just, fair, reasonable, adequate, not confiscatory, not excessive and not unfairly discriminatory for the risks to which they apply; reviews credit models for compliance with Texas Insurance Code, Chapter 559; conducts in-depth analyses of the Texas insurance market; performs special studies to assist the agency and policy makers; assures that file and use rates meet the applicable rate standards; makes recommendations on prior-approval rate filings; and calculates workers' compensation classification relativities and rating values.

**Data Services Division** provides data analysis; collects information through statistical plans, special calls and surveys; produces data compilations, including data for use by the Property and Casualty Actuarial Division for review of rate filings; collects and maintains statistical data; produces statistical reports for the Legislature, the agency, the public and the insurance industry; oversees TDI's workers' compensation, residential property, private passenger automobile and commercial lines designated statistical data collection agents; collects data via the Title Statistical Plan; and manages the collection of and assists in the review of underwriting guidelines.

## Highlights

In FY 2009, Property and Casualty highlights include:

- Loss Control revised its Amusement Ride Safety brochure to include continuous air flow inflatable devices, and added information to its TDI webpage regarding owner/operators' required insurance policies and individual amusement ride inspection compliance.
- Staff participated in the drafting of emergency rules to implement certain provisions contained in HB 4409 (81st Legislature) relating to required declinations, flood insurance requirements, and minimum retained premium requirements for obtaining insurance through TWIA. On August 31, 2009, the emergency rules were sent to the Texas Register for adoption.
- In November 2008 Windstorm Inspections implemented the WPI-1 Online Application in an effort to reduce the numbers of applications entered manually. It provides a streamlined and efficient application entry process for receipt of a WPI-8. To date, there have been 11,293 submissions accepted online.
- On September 13, 2008, Hurricane Ike made landfall on the Texas Gulf Coast. Due to the significant increase in inspection requests, TWIA assisted TDI with windstorm inspections and certifications of structures damaged by Hurricane Ike. TDI trained and monitored the performance of the TWIA inspectors. TDI inspectors have performed a total of 11,333 inspections and TWIA inspectors have performed a total of 25,007 inspections related to Hurricane Ike.
- On May 22, 2008, the Third Court of Appeals issued an opinion in the 2003 State Farm rate case, finding the "proof provision" in TEX. INS. CODE ART. 5.26-1 unconstitutional on its face.

and unconstitutional as applied by the Commissioner in upholding the Department's 2003 rate reduction order. The court remanded the case back to the Department for further proceedings consistent with its opinion. The appeal re-hearing concluded on May 2, 2009. As of August 31, 2009 an order has not yet been issued but is expected in the near future.

- The Commissioner adopted forms, rules, and rates concerning title minerals coverage.
- Staff worked with stakeholders to develop early warning indicators and streamlined procedures for dealing with financially troubled agents.
- Staff participated in or made presentations to various consumer, charity, civic and trade groups on topics such as homeowners, renters, commercial insurance for business owners, disaster preparedness, and windstorm insurance.
- Staff volunteered for deployment to various Disaster Recovery Centers (DRCs) along the Texas Coast to assist residents impacted by Hurricanes Dolly and Ike. Staff also assisted TDI's Consumer Protection Program with phone calls related to Hurricanes Dolly and Ike.
- The Department held its first biennial rate hearing on workers' compensation insurance as required by HB 7 (79th Legislature, Regular Session). Information regarding profitability, rates, premiums, and certified health care networks was provided. Rate filings received in advance of the hearing suggested that average premium levels for the industry could be reduced by approximately 11 percent. The Commissioner facilitated such by reducing the classification relativities by 10 percent, effective May 1, 2009.
- In December 2008, the second biennial report on the impact of HB 7 (79th Legislature, Regular Session) regarding the affordability and availability of workers' compensation insurance for Texas employers was submitted to the Governor, Lt. Governor and Speaker of the House.
- TexasSure Vehicle Insurance Verification successfully completed the first full year of operation. TexasSure is used by all 254 county Tax Assessor-Collector offices and is available to law enforcement agencies statewide. The average number of insurance verification queries to the system in FY 2009 was 3.2 million per month. In conjunction with DPS, TxDOT and DIR, the Department is moving forward with the next phase of TexasSure, which involves sending notices to the owners of registered vehicles that appear to be uninsured.

**Figure 14 Rate and Form Filings Completed**

TYPE OF INSURANCE	FY 2008 FORMS	FY 2008 RATES	FY 2008 TOTAL	FY 2009 FORMS	FY 2009 RATES	FY 2009 TOTAL
Personal Liability/Umbrella	117	49	166	64	36	100
Bond and Misc. Lines	691	489	1,180	601	321	922
Commercial Automobile	897	838	1,735	978	542	1,520
General Liability	3,069	720	3,789	2,816	790	3,606
Homeowners	339	199	538	310	301	611
Interline Filing	406	18	424	490	44	534
Inland Marine	744	147	891	617	195	812
Identity Theft	1	4	5	3	3	6
Intake Unit	0	0	0	3	0	3
Commercial Multi-Peril	3,384	733	4,117	3,547	769	4,316
Personal Automobile	669	714	1,383	562	652	1,214
Personal Casualty	1	0	1	11	6	17
Professional Liability	569	162	731	693	98	791
Commercial Property	983	381	1,364	1,238	358	1,596
Workers' Compensation	386	157	543	227	658	885
<b>Total</b>	<b>12,256</b>	<b>4,611</b>	<b>16,867</b>	<b>12,160</b>	<b>4,773</b>	<b>16,933</b>

### Figure 15 Summary of Complaints Closed

	FY 2008	FY 2009
Professional Liability	9	11
General Liability	8	4
Bond, Miscellaneous Casualty	10	17
Commercial Property	7	7
Commercial Multi-Peril	3	5
Commercial Automobile	0	1
Homeowners	301	270
Personal Auto	3	0
Title	344	261
Workers' Compensation	45	40

### Figure 16 Summary of Title Insurance Activity

	FY 2008	FY 2009
Annual Escrow Audits Reviewed	627	657
Field Examinations/Audits Conducted	254	367
Rates, Rules and Policy Forms	131	8
Licenses Issued (includes renewals)	6,592	5,062
Licenses Cancelled	2,448	2,680

### Figure 17 Number of Agents/Licenses Under Commissioner's Jurisdiction (Title Insurance)

Agents/Licenses	FY 2008	FY 2009
Title Agents	637	598
Title Agent Licenses	1,698	1,631
Direct Operations	17	14
Direct Operation Licenses	17	14
Escrow Officers	6,701	5,961
Escrow Officer Licenses	7,711	6,921
Underwriters	33 (24 active)	31 (23 active)
Escrow Accounts	\$251 Billion	\$240 Billion

### Figure 18 Summary of Activity: Commercial Property Oversight Inspections

	FY 2008	FY 2009
Property Inspections Conducted	1,175	1,199
Residential/Special Inspections	0	2
VIP Licenses/Certificates Issued	163	189

### Figure 19 Summary of Activity: Windstorm Operations

	FY 2008	FY 2009
Applications	30,856	77,499
Inspections	11,038	*39,988
Certificates of Compliance	31,212	66,831
Windstorm Fees Received	\$10,596.28	\$6,335.00

\* This is a combined total of both TDI (14,981) and TWIA (25,007) inspections.

**Figure 20 Summary of Activity: Engineering Services**

	FY 2008	FY 2009
Building Code Interpretations	2,135	5,902
Product Evaluations	1,331	2,100

**Figure 21 Summary of Activity: Loss Control**

	FY 2008	FY 2009
Total Evaluations Completed	201	208
Companies Rated Adequate	201	204
Companies Rated Less Than Adequate	0	1
Companies Evaluated for Licensure	2	10
Loss Control Representative Applications Reviewed	203	129
Field Safety Representatives with a Specialty in Hospitals	11	8

**Figure 22 Summary of Activity: Amusement Ride Safety and Insurance Act**

	FY 2008	FY 2009
Policies Reviewed	331	443
Inspection Certificates Approved	1,818	2,405
Injuries	128	78
Owners Under Compliance Monitoring	413	559

**Figure 23 Summary of Activity: Workers' Compensation Classification/Premium Calculation Division (formerly the Workers' Compensation Division)**

	FY 2008	FY 2009
Experience Rating Modifiers Reviewed	532	624
Responses to Written CIS Inquiries (Non Complaints)	1,267	1,379
Groups Certified	63	70

**Figure 24 Other Statistical Reports Collected**

	FY 2008	FY 2009
Title insurance agents	629	634
Title insurance underwriters	23	21

## **Life, Health and Licensing Program (LHL)**

The Life, Health and Licensing (LHL) program consists of a General Management section and four divisions: Filing and Operations, Licensing, Life/Health (L/H), and Health and Workers' Compensation Network Certification and Quality Assurance (HWCN). LHL regulates a wide range of insurance products, and related coverages offered by insurance companies. LHL also licenses insurance agents, adjusters, workers' compensation health care networks, viatical and life settlement providers, provider representatives and brokers, utilization review agents (URAs) and independent review organizations (IROs). In addition, LHL resolves Health Maintenance Organization (HMO) complaints, conducts quality of care examinations of HMOs, conducts examinations of IROs, and accepts applications for certification of workers' compensation health care networks.

### **General Management Section (GM)**

General Management, led by a Senior Associate Commissioner, provides management and operational direction for the program. Staff responds to appropriations requests, monitors the LHL budget and handles ad hoc special projects.

GM provides technical assistance to other programs in the Department, as well as to the Texas Health and Human Services Commission (HHSC), Texas Department of State Health Services (DSHS), Office of Attorney General (OAG), the Texas Health Insurance Pool (THIP), the Texas Health Reinsurance System (THRS), and the federal Centers for Medicare and Medicaid Services (CMS) of the United States Department of Health and Human Services.

GM monitors federal requirements associated with the Health Insurance Portability and Availability Act (HIPAA) administrative simplification (electronic claims filing) requirements, the Medicare Prescription Drug Improvement, Modernization Act of 2003 and the Deficit Reduction Act of 2005. GM staff are also monitoring the federal health reform legislation closely.

**Filing and Operations Division** receives all rule, rate and policy form filings and conducts an initial screening of the filings for compliance with basic filing requirements. The division is also responsible for planning operations for the program. It consists of the following sections:

- Life/Health and HMO Intake Section
- Property & Casualty Intake Section
- Micrographics Section
- Operations Section

**Licensing Division** oversees the licensing and regulation of insurance agents, adjusters, Public Insurance Adjusters (PIAs), risk managers, life insurance counselors, reinsurance intermediaries, and persons involved in selling insurance products in travel agencies, self-service storage facilities, retail establishments and rental car companies. It is comprised of the following sections:

- Applications Section
- Customer Service Section
- Renewals, Appointments and Continuing Education Section
- Administrative Review and Data Management Section

**Life/Health (L/H) Division** reviews and processes policies and/or contracts and related forms pertaining to life, annuity, accident and health, nonprofit prepaid legal, credit life, credit accident and health policies, certificates, applications, endorsements, riders, and rates for credit life, credit accident and health, Medicare supplement, Medicare SELECT, long-term care, THIP, small employer changes in rating methodology, and individual accident and health, to ensure compliance with state and federal statutes and regulations. The L/H Division also reviews contractual forms related to viatical and life settlements, and collects data pertaining to long-term care, Medicare supplement, credit life, credit accident and health and the employer market. It consists of the following sections:

- Accident and Health Section
- Life, Annuity and Credit Section
- Actuarial Section

- Filings Support and Open Records Team
- Technical Team

**Health and Workers' Compensation Network Certification & Quality Assurance (HWCN) Division**

conducts examinations to regulate HMOs and IROs; certify and regulate Workers' Compensation Networks and Utilization Review Agents (URAs); and certify Independent Review Organizations (IROs). HWCN investigates complaints against these licensed entities, and reviews HMO and URA form filings. It consists of the following sections:

- Certification and Compliance
- Complaints
- Examinations
- IRO Assignment

**Highlights**

LHL completed and/or assisted with the following in 2009:

SB 1731 (80th Texas Legislature):

- The Department directed activities of the Advisory Committee on Health Network Adequacy created under SB 1731 to study issues related to the availability of certain in-network providers at in-network hospitals and subsequent balance-billing of consumers who receive care from non-network providers; and
- Met with various stakeholder groups and drafted rules related to the collection of data required under SB 1731 to improve consumer access to cost information for services covered under managed care benefit plans.

SB 78 (81st Texas Legislature):

- Worked with members of legislative offices to develop new legislation for the Healthy Texas program, which will provide affordable coverage for small employers.

81st Legislature activity:

- Reviewed 630 separate bills and prepared detailed comments on 522 different versions of selected bills.
- Of the bills commented on, 106 were ultimately enacted into law.
- Participated heavily in the legislative process and participated in the drafting of proposed bill language based upon the Agency's biennial report.
- Worked closely with legislative offices, responding to numerous information and assistance requests, drafting or commenting on proposed language, and testifying at legislative hearings.
- Rulemaking has commenced on 24 bills passed during session and on 11 different studies and reports required by new legislation.

Developed the following rules adopted by the Commissioner:

- Standards for Long-Term Care Insurance Regulations, Non-Partnership and Partnership
- Coverage Requirements for Acquired Brain Injury and Autism Spectrum Disorder
- Marketing Regulations for Medicare Advantage Plans, Medicare Advantage Prescription Drug Plans, and Prescription Drug Plans
- Requirements for the submission of information and data relating to the use of non-network providers by health benefit plan insureds to support the study of facility-based provider network adequacy by the Advisory Committee on Health Network Adequacy
- Requirements for insurance discounts related to wellness programs designed to promote disease prevention, wellness and health
- Minimum standards for Medicare supplement insurance policies in conformance with national standards.

Drafted the following Commissioner's Bulletins:

- B-0058-08, September 14, 2008: Hurricane Ike - An Extraordinary Event Claims Adjusting for Hurricane Victims or Evacuees;
- B-0059-08, September 14, 2008: Hurricane Ike – State of Emergency – An Extraordinary Event – Out-of-Network Services Claim Filing Deadlines & Catastrophic Events Preauthorized Health Care, Referrals, Notification of Hospital Admissions, Medical Necessity Reviews;
- B-0061-08, September 14, 2008: Hurricane Ike – State of Emergency – Natural Disaster - Prescription Medication Coverages for Disaster Victims or Evacuees;

- B-0072-08, October 21, 2008: Call for Reports Regarding Provider Claims Processing and Related Functions;
- B-0074-08, November 7, 2008: Commissioner's Order No. 08-0922, concerning the adoption of new Subchapter B, §§19.101 – 19.103, Medicare Advantage Plans, Medicare Advantage Prescription Drug Plans, and Medicare Part D Plans;
- B-0002-09, January 15, 2009: Call for Reports Regarding Provider Claims Processing and Related Functions;
- B-0003-09, January 16, 2009: Parity Required For Group Outpatient Serious Mental Illness Coverage;
- B-0004-09, January 28, 2009: Medicare Supplement Insurance Rate Guide;
- B-0005-09, January 29, 2009: Submission Of Information And Data to Facilitate Study By Advisory Committee On Health Network Adequacy;
- B-0006-09, January 30, 2009: Colorectal Cancer Screening Tests;
- B-0017-09, April 9, 2009: Call for Reports Regarding Provider Claims Processing and Related Functions;
- B-0023-09, May 11, 2009: Commissioner's Order No. 09-0335 Granting a Limited Waiver of the Filing Requirements of the Texas Insurance Code §1701.051 for a Previously Approved or Exempted Form in Which the Only Alteration is an Address Change for the MIB, Inc.; the Addition of the MIB, Inc. Internet Address; or the Revision of the Name of the Medical Information Bureau to the MIB, Inc.;
- B-0031-09, July 14, 2009: Call for Reports Regarding Provider Claims Processing and Related Functions and additional information regarding the Migration of the Provider Claims Data Reports; and
- B-0033-09, August 13, 2009: Mandatory Coverage of Diagnosis and Treatment Affecting the Temporomandibular Joint.

#### **General Management Section**

- Created and oversaw TDI's Legislative Implementation Plan for LHL;
- Represented TDI at THIP and THRS board meetings and worked with THIP and THRS on issues as they arose;
- Directed activities of the Advisory Committee on Health Network Adequacy created under SB 1731;
- Directed activities of the Committee on Electronic Data Exchange pursuant to HB 522 (80th Texas Legislature, Regular Session), and prepared and published the final report of the Committee;
- Worked extensively with the Consumer Protection and Enforcement Programs on significant complaints and investigations;
- Assisted the Consumer Protection Program on disaster relief efforts related to hurricanes;
- Administered the three-share premium assistance grant program;
- Completed a joint study with the Texas Health and Human Services Commission that provided information and options related to health insurance premium assistance for uninsured Texans (required under SB 10, 80th Legislature);
- Conducted and published results of a statewide small employer survey to evaluate health insurance affordability and accessibility options and limitations within the Texas insurance market;
- Evaluated options for expanding access to the Texas Health Insurance Pool for certain individuals who have access to limited group health insurance benefits, and issued the report to the Legislature; and
- Completed a variety of surveys and annual data calls, including: an enrollment survey of preferred provider benefit plans; a managed care survey of provider directory maintenance practices; a statewide survey of hospitals to obtain information on health plan contracting practices and concerns; mandated health insurance benefits experience report; and consumer choice of benefit plans experience report.

#### **Filing and Operations Division**

- Received 24,831 Life/Health rate and form filings;
- Received 1,527 HMO rate and form filings;
- Processed 4,898 Exempt Life/Health rate and form filings;
- Received 17,203 Property and Casualty rate and form filings;
- Processed 197 Property and Casualty rate and form filings;
- Processed \$394,018 in filing fees for Life and Health rate and form filings;

- Processed \$60,700 in filing fees for HMO rate and form filings;
- Processed \$17,350 in filing fees for form filings from SERFF;
- Scanned 902,262 images for Property and Casualty Program;
- Scanned 251,321 images for Life/Health and HWCN Divisions;
- Scanned 44,397 images for DWC;
- Scanned 1,369 non-VisiFLOW images; and
- Represented Texas on the NAIC Product Steering Committee and Working Groups

#### **Licensing Division**

- Developed and implemented an internal Performance Process Audit for the Applications Section of Licensing allowing management to effectively monitor the quality and quantity of staff performance in processing agent and adjuster applications;
- Continues to remain efficient in the average processing time for the over 700,000 filings received each year;
- Successfully issued a continuing education compliance system Request for Proposal (RFP) and entered into a contract with a vendor. Implemented the new electronic roster reporting continuing education monitoring system on February 17, 2009 which allows the Department to compel, monitor, and enforce 100% compliance of agent and adjuster continuing education requirements. This system will replace the current system of random audits of approximately one percent of licensees;
- Developed and implemented an automatic fine tracking process for maintenance of the continuing education fines charged to and collected from licensees who fail to complete continuing education requirements. The in-house collection of the statutorily permissible automatic fines by the Licensing Division reduces the workload on the Enforcement Program and compels enforcement of minor violations which are not of a sufficient dollar amount to justify invoking the time of an Enforcement investigator and attorney;
- Developed and implemented an administrative probated licensing process in the Licensing Division. The new probated licensing process in the Licensing Division reduces the workload on the Enforcement Program allowing an administrative resolution for applicants with a minor or remote criminal history who are clear candidates for a probated license and can reasonably be handled without requiring the time of an Enforcement investigator and attorney. Deputy Commissioner (DC) testified on the behalf of the Department in agent application and revocation hearings serving as experts in the licensing laws, rules and procedures; and
- DC served as an Advisory Board Member of the Securities and Insurance Licensing Association, which serves over 1,800 members from the insurance industry who are involved in the licensing of insurance agents and adjusters.

#### **Life/Health Division**

- Received and completed in FY09 22,721 policies, contracts, related forms, rates, certifications, applications for registrations, risk assuming applications, rating methodologies and reports as appropriate for life, annuity, various accident and health products, nonprofit prepaid legal, credit life, credit accident and health, viatical and life settlement, accident and health small and large employer, long-term care, life illustration and Medicare supplement;
- Received and completed 25 filings, representing 130 forms, under the MSR through ongoing meetings and conference calls with Florida, California, Georgia and Nevada departments of insurance staff;
- Accepting SERFF filings for all product lines, as of September 1, 2008, including the 2-way API (Application Programming Interface) which updates SERFF with actions made in TDI's form/filing tracking system, the transfer of images of the form/filings into the VisiFlow document retrieval system, creation of reports to ensure accuracy of the data transfer process, implementation of the Uniform Product Coding Matrix and training staff to review filings using the SERFF system;
- Received and completed 3,070 filings, representing 9,443 forms, through SERFF;
- Processed 615 Annual Reports for existing entities;
- Contributed to the following Commissioner's Bulletins:
  - B-0031-09, Call for Reports Regarding Provider Claims Processing and Related Functions and additional information regarding the Migration of the Provider Claims Data Reports;
  - B-0023-09, Commissioner's Order No. 09-0335 Granting a Limited Waiver of the Filing Requirements of the Texas Insurance Code §1701.051 for a Previously Approved or Exempted Form in

Which the Only Alteration is an Address Change for the MIB, Inc.; the Addition of the MIB, Inc. Internet Address; or the Revision of the Name of the Medical Information Bureau to the MIB, Inc.;

– B-0017-09, Call for Reports Regarding Provider Claims Processing and Related Functions;

- Tracked 876 bills assigned to the Life/Health Division during the 81st Legislative Session; and
- Developed 176 Fiscal Notes assigned to the Life/Health Division during the 81st Legislative Session;

Assisted implementation process on the following adopted bills:

- HB 1290—Relating to health benefit coverage for certain tests for the early detection of cardiovascular disease;
- HB 1357—Regulation of freestanding emergency medical care facilities;
- HB 1364—Relating to coverage of preexisting conditions by certain group health benefit coverage programs for active school employees;
- HB 1919—Relating to the maturity date of certain annuities;
- HB 2000—Coverage for certain amino acid-based elemental formulas;
- HB 2064—Relating to premium discounts for certain participants in the Texas Health Insurance Risk Pool and to related tax credits for health benefits plan issuers;
- HB 3480—Relating to annuities and investments for certain public employees;
- HB 3762—Regulation of prepaid funeral benefits;
- HB 4290—Relating to retrospective UR and UR to determine the experimental or investigational nature of a health care service;
- HB 4420—Relating to a study regarding insurance coverage of prescription drugs provided under a health benefit plan;
- HB 4492—Relating to annuities registered under the Securities Act of 1933;
- HB 4519—Standards for independent review organizations;
- SB 0039—Coverage for routine patient care costs for enrollees participating in certain clinical trials;
- SB 0079—Relating to specialty certification for insurance agents serving certain employer groups;
- SB 0080—Relating to employer contributions under small employer health benefit plans;
- SB 0963—Relating to rates for long-term care insurance premiums;
- SB 1291—Relating to access to certain licensed mental health practitioners;
- SB 1403—Relating to changing the Texas Health Insurance Risk Pool to the Texas Health Insurance Pool, and to the operation of that pool;
- SB 1479—Benefits payable under certain health coverages; and
- SB 1967—Relating to the safe operation of motorcycles;
- Responded to a Government Accountability Office survey regarding long-term care regulation;
- Responded numerous inquires related to the FY 2009 TDI Sunset Audit;
- Responded to the Internal Audit on Access Rights for LAN and Oracle involving ITS and the LHL program;
- Responded to numerous legislative, consumer, and agent inquiries and inquiries related to private purchasing cooperatives;
- Assisted in the update of registered private purchasing cooperatives;
- Updated checklists on TDI's website to comply with new legislation;
- Participated in the Agent Licensing Exam Focus Group;
- Participated in THIPRP Board meetings;
- Participated in discussions with the HHSC and DADS in the implementation of implementation of the Long-Term Care Partnership program in Texas;
- Participated with HHSC, DADS, ERS, TRS and TWC in the development of the Long-Term Care educational, awareness and website development;
- DC chaired and participated in conference calls and meetings of the NAIC Standards Working Group;
- Participated in the development of life, annuity, disability and long-term care NAIC standards;
- DC participated in the following NAIC Working Groups: Senior Issues, Long-Term Care Working Group, Speed to Market and Operational Efficiencies;
- Provided insurance training to the Attorney General's employees assisting family members required to provide child medical support in connection with the Niños Sanos Grant project;
- Participated in IIPRC activities;
- Assisted the Consumer Protection Program on disaster relief efforts related to hurricanes;

- L/H Division staff initiated various stakeholder meetings on Long-Term Care;
- The DC participated in the long-term care hearing to implement SB 22;
- Served as members of the Advertising Workgroup;
- Participated in the Life, Health and Licensing Compliance Conference;
- Participated in the development of various bulletins and rules; and
- Responded to numerous legislative, consumer and agent inquires/complaints related to rating issues.

#### **HWCN Division**

- Completed review of 1,438 HMO forms filings;
- Conducted 23 quality of care examinations of HMOs;
- Completed 668 complaints regarding HMOs;
- Completed 3,024 IRO case reviews;
- Certified/Registered 201 URAs;
- Renewed 75 URAs;
- Certified 41 IROs;
- Renewed 35 IROs;
- Certified 1 WC health care network;
- Approved 13 service area expansions for WC health care networks;
- Assisted HHSC with operation of the CHIP and Medicaid Programs;
- Participated in TACCP meetings;
- Participated in WC Working Group meetings;
- Participated in the Pharmacy Outreach Initiative;
- Represented the Commissioner on the Interagency Council on Genetic Services ;
- Represented TDI on the Traumatic Brain Injury Advisory Council;
- Represented TDI on the Diabetic Advisory Council;
- Participated in the development of various bulletins; and
- Participated in the development of various rules for health and workers' compensation.

### **Figure 25: Summary of Activity: Filing & Operations Division Filings Received/Processed**

	<b>FY 2008</b>	<b>FY 2009</b>
<b>Personal Lines Rate Filings</b>		
Auto Home (Personal Liability and Personal Umbrella)	64	40
Personal Automobile	769	602
Personal Property	236	268
PC (Other Personal Lines)***	2	See Note Below
<b>Total</b>	<b>1,071</b>	<b>910</b>
<b>Commercial Lines Rate Filings</b>		
Bond, Burglary, Title	401	251
Commercial Automobile	774	489
Commercial Property	343	319
General Liability	743	830
Identity Theft	2	1
Inland Marine**	178	160
Intake	0	0
Interline	18	45
Multi-Peril	708	699
PC (Other Commercial Lines)***	0	5
Professional Liability	197	217
Workers' Compensation	594	471
<b>Total</b>	<b>3,958</b>	<b>3,487</b>

\* Total Includes 14,687 SERFF Filings. (FY 08 total includes 14,300 SERFF filings.)

\*\* Effective 09/02/2008, PC Category was added. It will have its own totals.

\*\*\* Effective 09/03/2009, PC Category will show combined totals.

**Figure 25: Summary of Activity: Filing & Operations  
Division Filings Received/Processed (continued)**

	FY 2008	FY 2009
<b>Policy Form, Endorsement and Rule Filings</b>		
Auto Home (Personal Liability and Personal Umbrella)	111	67
Personal Automobile	697	540
Personal Property	342	310
PC (Other Personal Lines)***	2 See Note Below	
Bond, Burglary, Title	691	593
Commercial Automobile	1,002	925
Commercial Property	1,062	1,171
General Liability	3,258	2,759
Identity Theft	3	1
Inland Marine**	772	586
Intake Unit	0	3
Interline	444	483
Multi-Peril	3,507	3,238
PC (Other Commercial Lines)***	0	9
Professional Liability	599	764
Workers' Compensation	399	187
<b>Total</b>	<b>12,889</b>	<b>12,806</b>
<b>Total P &amp; C Filings Received</b>	<b>17,918*</b>	<b>17,203*</b>
Intake Unit Filings Processed	114	197

\* Total Includes 14,687 SERFF Filings. (FY 08 total includes 14,300 SERFF filings.)

\*\* Effective 09/02/2008, PC Category was added. It will have its own totals.

\*\*\* Effective 09/03/2009, PC Category will show combined totals.

**Figure 26: Number of Licenses, Certificates and Registrations Under Commissioner's Jurisdiction**

LICENSE TYPE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Agents (1)	259,743	273,502	289,813	306,036	319,640
Adjusters	54,810	66,244	72,012	72,061	80,919
Full-Time Home Office Salaried Employees	1,292	1,259	1,256	1,041	496*
Specialty - Credit	2,888	2,908	2,993	3,013	3,021
Specialty - Travel	699	721	812	896	1,000
Specialty - Rental Car Company	72	68	64	65	66
Specialty - Self Service Storage Facility	74	74	83	94	127
Specialty - Telecommunication	11	13	12	11	12
Equipment Vendor					
Life Counselors	235	273	372	429	485
Public Insurance Adjusters	115	167	205	234	762
Risk Managers	1,100	1,098	1,123	1,114	1,133
Re-insurance Intermediary	1,441	1,503	1,473	909	1,245
Premium Finance Companies	293	323	325	271	N/A
Third-Party Administrators	750	747	730	748	N/A
<b>Grand Total of Lines Regulated</b>	<b>323,523</b>	<b>348,900</b>	<b>371,273</b>	<b>386,922</b>	<b>408,906</b>

1. An agent may hold more than one type of license; these statistics do not represent numbers of individual agents.

\* Reduced number reflects trend in industry of moving away from the use of the Full-Time Home Office Salaried Employee registration in lieu of a Property and Casualty license. Carriers are finding it is better to have their sales staff acquire a Property Casualty license so that reciprocal licenses can be obtained in other states and the employees/agents can be utilized to handle multiple states.

**Figure 27: Summary of Activity: Licensing Division**

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Total Filings Processed by Licensing Division	747,271	734,141	744,844	781,659	875,772
Telephone Inquiries Answered*	128,784	149,198	132,170	138,877	152,024

\* Licensing uses an Interactive Voice Response (IVR) to improve the Division's ability to respond to calls from companies, agents and the public. The IVR is 24-hour, non-stop source of licensing information.

**Figure 28: Summary of Agents License Statistics**

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Issued	58,059	68,693	62,748	63,642	72,828
Renewed	84,984	101,767	98,820	118,739	116,022
Total Appointment Transactions	496,117	515,260	508,048	511,754	604,158
Total Current Agents & Adjusters Licenses	314,668	339,913	360,975	378,333	401,321
Other Licenses	8,855	8,897	9,243	7,572	7,585
Grand Total of Licenses Regulated	323,523	348,900	371,273	386,922	408,906

**Figure 29: Numbers and Types of Agents Licenses**

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
County Mutual	3,462	3,481	3,320	3,263	3,424
General Lines - Life, Accident, Health and HMO	150,348	158,373	167,501	172,461	174,328
General Lines - Property and Casualty	87,684	95,298	102,759	105,326	105,391
Life Only Agent*				5,913	13,340
Personal Lines Agent*				2,987	6,142
Insurance Service Representative	2,069	1,832	1,654	1,568	1,467
Life not to Exceed \$15,000	1,026	973	944	915	861
Limited Lines	7,622	5,876	5,441	5,024	4,672
Managing General Agent	1,643	1,596	1,625	1,583	1,598
Pre-Need	2,504	2,376	2,331	2,328	2,625
Surplus Lines	3,385	3,697	4,238	4,670	5,017
Total	259,743	273,502	289,813	306,036	319,640

\* Licenses added beginning FY08

**Figure 30 Summary of Activity: Life/Health Filings**

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Filed	30,945	27,184	25,855	26,234	24,831
Accepted	29,914	26,591	25,156	25,600	23,858
Approved	9,655	9,432	7,596	9,081	8,161
Disapproved	2,993	1,977	2,497	2,455	2,993
Exempt	6,324	7,559	7,353	5,625	4,898

**Figure 31: Summary of Activity: Health Maintenance Organization Filings**

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Actual Performance	1,538	1,577	1,763	1,423	1,438
Annual Target	2,446	1,300	1,100	1,500	1,500
Percentage of Target	62.88%	121.31%	160.27%	94.87%	95.87%

**Figure 32: Summary of Activity: Utilization Review Filings**

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Applications Received	16	12	19	20	5
Registered Utilization Review Agents Approved	2	1	2	2	0
Certified Utilization Review Agents Approved	17	11	7	14	9
Certified URAs Renewed	81	78	85	79	75

**Figure 33 Summary of Activity: HMO Complaints  
Number of complaints against HMOs resolved**

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Actual Performance	2,422	1,329	872	905	668
Annual Target	7,000	2,240	2,240	1,000	1,000
Percentage of Target	34.60%	59.33%	38.93%	90.50%	66.80%

**Figure 34 Number of HMO quality assurance examinations conducted**

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Actual Performance	16	22	18	16	23
Annual Target	12	12	12	14	14
Percentage of Target	133.33%	183.33%	150.00%	114.29%	164.29%

**Figure 35 Summary of Activity: HWCN Inquiries**

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Inquiries Received	119	169	608	479	607
Inquiries Completed	117	171	585	469	591

**Figure 36 Summary of Activity: IRO Applications**

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
IRO Applications Received	4	8	8	7	10
IRO Applications Approved	3	6	10	7	9
IRO Renewals Approved	10	10	16	27	35

## Consumer Protection

CONSUMER PROTECTION (CP) assists Texans by helping resolve insurance complaints; providing insurance information to the public through a Consumer Help Line, publications and the Internet; and reviewing insurance advertising.

The Consumer Protection Program consists of five activities:

**Complaints Resolution** reviews consumer disputes with insurance companies, agents and other regulated entities. Insurance specialists examine complaints for violations of the Texas Insurance Code and Texas Administrative Code and recommend enforcement action when appropriate. Each year, TDI's intervention in complaints results in millions of dollars of additional claims payments and premium refunds to consumers. CP's Complaints Resolution staff handle complaints involving home, auto, life, annuities and health insurance.

**Information Assistance** responds to calls to the agency's toll-free Consumer Help Line, 1-800-252-3439. The Help Line is open from 8 a.m. to 5 p.m. Central time, Monday through Friday. Hours may be extended to assist consumers at night and on weekends following a disaster or a major change in the insurance market. Information Assistance staff answer questions regarding most lines of insurance; provide information about companies and agents, including license status and complaint histories; and help consumers file insurance-related complaints. Information Assistance also maintains and updates TDI.nfo, an electronic information database to ensure accurate and consistent responses to consumer questions. The section helps non-English speakers through its bilingual Spanish-speaking staff and use of Language Line interpreter services. Service for hearing- or speech-impaired consumers is provided through Relay Texas at 1-800-735-2989 (TDD/TTY).

**Public Education** develops and distributes information to increase consumers' understanding of insurance and to help consumers shop wisely for the insurance products they need. Publications are distributed at outreach events, by request and through the agency's website. Consumers may order complaint forms and publications 24 hours a day, seven days a week, by calling a toll-free automated telephone line, 1-800-599-SHOP (7467). Public Education also coordinates a Speakers Bureau that provides presentations for civic and community organizations, consumer groups and the insurance industry. In partnership with other state and federal agencies, Public Education operates the federally funded Health Information, Counseling and Advocacy Program (HICAP), which provides statewide training to volunteer benefits counselors who assist senior citizens in their local communities.

**Advertising** reviews industry marketing materials to evaluate compliance with statutes and rules governing solicitation and trade practices. Those materials include brochures, phone and sales scripts, agent presentations, newspaper, magazine, radio and TV ads, form letters, illustrations, Web pages and other materials. Significant violations are referred to TDI's Enforcement Division for possible enforcement action.

**Special Work Assignments Team (SWAT)** enhances CP's business processes by developing means of improving efficiency and effectiveness. SWAT coordinates the program's business planning activities and oversees production of program information published on the agency's website.

### Highlights

In FY 2009, Consumer Protection:

Assisted Texans impacted by natural disasters:

- CP coordinated the agency's response following Hurricane Ike, which struck the Texas Gulf Coast on September 13, 2008. TDI staff assisted consumers in the field, answered inquiries during extended hours via TDI's toll-free Consumer Help Line, developed Internet resource pages, resolved disaster-related insurance complaints, conducted educational outreach events, and joined staff from state and federal agencies at the State Operations Center and Disaster Recovery Centers. Staff were in the field assisting consumers impacted by the hurricane from September 15, 2008, to April 10, 2009. CP also worked with the Texas State Disaster Coalition to ensure timely

and efficient disaster response by government and the insurance industry. Through the end of fiscal year 2009, TDI had received 5,549 Ike-related insurance complaints. Complaint Resolution staff helped consumers affected by Ike gain an additional \$34.9 million in claim payments through the complaint resolution process.

Protected consumers through complaint resolution and advertising reviews:

- returned nearly \$75 million to consumers in additional claim payments and refunds as a result of complaints resolution.
- helped resolve more than 25,000 consumer complaints.
- reviewed more than 6,100 insurance advertisements to ensure compliance with state laws and TDI rules.

Provided information to consumers:

- responded to more than 674,000 consumer inquiries, including nearly 238,000 calls to the Consumer Help Line.
- maintained TexasHealthOptions.com, which provides information to help Texans find health coverage, including lists of agents and companies offering various types of health plans
- expanded Helpinsure.com, a comprehensive Web resource to help Texans shop for auto and residential property insurance. The expanded website was developed in conjunction with the Office of Public Insurance Counsel. In addition to sample rate estimates for various driver and homeowner profiles, the site has detailed policy coverage comparisons, company complaint indexes and financial ratings, percentage rate increases for each company over the past 12 months, and information about discounts and which companies use insurance credit scoring. Consumers can also find worksheets to help them compare companies and policies, shopping tips and publications and FAQs to learn more about insurance. Helpinsure.com is available in English and Spanish.
- maintained consumer information on TDI's website. Items accessed most frequently were company profiles, publications, the online complaint form and the Internet Complaint Information System.
- conducted 934 Speakers Bureau presentations throughout Texas on insurance issues.
- distributed more than 6.2 million publications, including more than 1.3 million rate guides. Rate guides provide information to help Texans save money on their insurance. TDI publishes rate guides for automobile, homeowners, Medicare supplement, long-term care, small employer health benefit plans and workers' compensation insurance.

Participated in key agency initiatives:

- continued the agency's telecommuting efforts. In FY 2009, approximately 15 CP staff telecommuted at least one day a week. During the year, the program also began laying the groundwork to expand telecommuting to its Consumer Help Line staff. Implementation of new telephone software will allow Help Line staff to assist callers from remote locations.
- led the agency's first Excellence Program, a strategic planning and projects initiative. The program's projects included an insurance market conditions report, a summer internship program for college students, and planning for a TDI Academy, a collaborative effort between TDI, the insurance industry and Texas colleges and universities to provide enhanced insurance education. In addition, the group sponsored a health fair for the uninsured and developed a "kids' page" on the TDI website.
- planned and conducted the annual TDI Symposium, which educates agency executives on state and national trends in demography, the economy, insurance and financial regulation, technology, and human resources and employee relations.

Facilitated partnerships and cooperative programs:

- distributed information and enhanced regulation through regular meetings of the Advertising Workgroup and Complaints Stakeholders Group.
- participated, along with other TDI programs, in a "memorandum of understanding" with the Centers for Medicare and Medicaid Services to investigate violations of Medicare Advantage and Medicare prescription drug plan marketing rules. CP staff also assisted seniors who were victims of fraudulent or misleading marketing of Medicare products.

- initiated or continued partnerships to promote TDI services and enhance outreach activities, including partnerships with:
  - Children’s Hospital of Austin, the Seton Healthcare Network, the City of Austin and the Travis County Health and Human Services Department to provide information to parents of uninsured children and to people utilizing services provided at mobile health clinics;
  - county tax assessor-collector offices statewide to distribute rate guides and other insurance information;
  - the Texas Workforce Commission to provide information about insurance to employers attending Texas Business Conferences across the state;
  - the Texas Department of Aging and Disability Services, the Texas Legal Services Center, and local Area Agencies on Aging statewide to assist older Texans and to offer training to benefits counselors in local communities;
  - chiropractor and pharmacy groups to distribute information to their members about claims filing;
  - the Texas Apartment Association to distribute renters insurance publications to residents of the association’s member communities;
  - the Texas Division of Emergency Management and representatives of the insurance industry in the Texas State Disaster Coalition, which facilitates coordinated responses to disasters.

**Figure 37 Total Number of Complaint Cases Closed, FYs 05–09**

<b>YEAR</b>	<b>CASES CLOSED</b>
2005	24,132
2006	24,122
2007	21,676
2008	20,375
2009	25,014

**Figure 38 Additional Claim Payments to Consumers, FYs 05–09**

<b>YEAR</b>	<b>CLAIM PAYMENTS</b>
2005	\$37.6 million
2006	54.6 million
2007	31.3 million
2008	29.7 million
2009	72.1 million

**Figure 39 Restitutions/Refunds to Consumers, FYs 05–09**

<b>YEAR</b>	<b>RESTITUTION OR REFUNDS</b>
2005	\$1.8 million
2006	1.6 million
2007	2.2 million
2008	2.2 million
2009	2.5 million

## **State Fire Marshal's Office**

THE STATE FIRE MARSHAL'S OFFICE (SFMO) develops and promotes methods of preventing and reducing fire losses. This responsibility is carried out through fire cause and origin investigations, building inspections, code enforcement, the regulation of fire service industries, and the development and promotion of fire prevention programs. In collaboration with private sector entities, the regulated fire service industry, the Texas fire service, local and state agencies, and the public, the SFMO seeks to create communities well prepared to protect themselves against fire. The SFMO consists of three divisions:

- Fire Prevention and Outreach Services
- Field Services
- Fire Industry Licensing Services and Investigations

### **Fire Prevention and Outreach Services Division**

- Texas Fire Incident Reporting System (TEXFIRS) collects data reported from fire departments and summarizes the reported data each year in the SFMO's annual publication entitled Fires in Texas.
- Community Based Partnerships assist in establishing, implementing, and maintaining community based fire prevention education programs, including the Juvenile Firesetter Intervention Program, the Fire Safety House, and "Have an Exit Strategy" campaign.
- Public Protection Classification (PPC) Survey and Grading Oversight assists local fire departments, upon request, with PPC surveys and the Insurance Services Office (ISO) Fire Suppression Rating Schedule. Through the authority of the Commissioner of Insurance, the State Fire Marshal is responsible for approving or disapproving proposed PPC ratings for communities.

### **Field Services Division**

- Fire Safety Inspection Services conducts fire safety inspections of public buildings, daycare centers, hotels and motels. This division also conducts fire safety inspections of all Texas state-supported institutions of higher education. Inspections are conducted based on need or in response to a request or complaint. Upon complaint, inspections of storage, handling and use of flammable liquids are conducted at retail service stations throughout the state.
- Fire/Arson Investigations staff investigate fire scenes, upon request, throughout the state and provide assistance to local law enforcement authorities. SFMO investigators travel to fire scenes and assist local officials with determining origin and cause, and with criminal investigations when appropriate.
- Canine Teams consist of a handler, who is a certified fire investigator, and a canine that has been certified and trained to detect hydrocarbons. The canines' keen sense of smell helps them identify areas for evidence collection at fire scenes.
- Forensic Arson Laboratory provides accelerant testing services and analysis of fire scene debris to law enforcement and public safety organizations. The lab is accredited by the American Society of Crime Laboratories Directors.

### **Fire Industry Licensing Services and Investigations Division**

- Licensing Administration issues registrations, licenses and permits to those working in the fire alarm, extinguisher, sprinkler, and fireworks industries.
- Investigations staff respond to complaints concerning the illegal, improper, and unsafe installation of fire alarm, extinguisher, and sprinkler systems by licensed entities. The Division provides daily assistance to local fire marshals and building officials with respect to code interpretation issues. They also inspect fireworks retail sites to ensure compliance with adopted laws.
- Fire Standard Compliant (FSC) Cigarette Program ensures that only FSC cigarettes are sold in the state, as of January 1, 2010. This program registers manufacturers and distributors, obtains requisite certifications and test data to ensure compliance with the law, in addition to the periodic inspection of distribution centers and retail outlets.

In addition, the SFMO is statutorily responsible for the investigation of firefighter fatalities occurring in connection with a firefighting incident in this state. Chapter 417.0075, Texas Government Code, requires the State Fire Marshal's Office to investigate the circumstances surrounding the death of a firefighter, including the cause and origin of the fire, the condition of the structure, and the suppression operation. The purpose of the investigation is to determine the factors that may have contributed to the death of the firefighter.

## **Highlights**

State Fire Marshal's Office in FY 2009 include the following:

### **Administration:**

- The 78th Texas Legislature amended SFMO statute to allow for acceptance of gifts, grants, and donations.
- Held an all staff meeting on August 13, 2009. SFMO staff discussed topics, such as, legislative updates, fire standard compliant cigarettes, modes of new communication, telecommuting, and future initiatives to build local capacity for fire prevention.
- State Fire Marshal Paul Maldonado met with superintendent, Dennis O'neill, Ph.D, of FEMA's National Fire Academy (NFA), on recommendation by the National Association of Hispanic Firefighters, in preparation for participation on a subcommittee to revise the NFA's outreach to potential applicants, especially minorities and women.
- Commented on recommendations made to the Texas Commission on Fire Protection (TCFP), as requested by the Sunset Advisory Commission, which would require TCFP to review firefighter injury data and forward recommendations on reducing firefighter injuries to the SFMO for inclusion in the SFMO's annual report on firefighter fatalities (FFF). After review of the recommendations, Commissioner Geeslin and Fire Marshal Maldonado submitted a letter to The Sunset Advisory Commission stating that TDI and the SFMO concur with the Commission's recommendations and look forward to working with TCFP.
- Tracked 27 pieces of legislation affecting the fire service that were signed into law by the governor. Additional bills were tracked that did not become law.
- Re-election of State Fire Marshal Paul Maldonado to the National Association of State Fire Marshals' Board of Directors.
- Developed a bi-weekly newsletter, distributed to all SFMO staff, to improve communication.

### **Fire Prevention and Outreach Services Division:**

- Applied for and was awarded a FEMA Assistance to Firefighters – Fire Prevention and Safety Grant in the amount of \$566,500. This grant will incorporate the Have an Exit Strategy (HAES) program on all public university campuses in Texas. The HAES program will also help universities meet the requirements of Texas SB 1138, relating to risk management programs for members and advisors of student organizations at public and private postsecondary educational institutions to provide at least one risk management program per academic year, and U.S. House Bill 4137, Higher Education Campus Fire Safety Standards and Measures.
- Hosted the 10th Annual Fire Marshal's Conference in Austin, with more than 180 state, county, and municipal fire marshals and firefighters in attendance. The conference provided continuing education topics for attendees, including common enforcement issues, code interpretations, emerging fire prevention models, and liability and funding issues. The conference increases cooperation and coordination among fire marshals statewide.
- Sponsored five Juvenile Firesetter Intervention classes throughout the state.
- Updated Risk Watch, a multi-hazard education and awareness curriculum for children from pre-kindergarten to eighth grade, and correlated it to new Texas Essential Knowledge and Skills (TEKS) requirements.
- Expanded the development of a statewide network of fire and life safety educators in response to the Sunset Advisory Commission's recommendation directing the SFMO to "work with local communities to help build capacity to more effectively assess and implement local fire prevention efforts."
- Produced a series of web pages dedicated to public fire and life safety educators. These pages were created to serve as a central resource or clearinghouse for information and materials.
- Provided PPC Oversight assistance to local communities through on-site visits, phone calls, and responses to emails. Processed new PPC rating submissions by the Insurance Services Office for approval prior to the use of the ratings in Texas communities.

- Teamed with the National Fire Protection Association (NFPA) for Fire Prevention Week 2009 – October 4-10 – to urge everyone in Texas to “Stay Fire Smart! Don’t Get Burned.” This year’s campaign focuses on ways to keep homes fire safe and prevent painful burns.
- Coordinated and participated in classes at the TEEX Annual Municipal Fire School. The State Fire Marshal attended the week long training to observe content and recommend improvements for future curricula. The SFMO PPC Oversight Officer assisted with incorporating content related to the ISO process in the training.
- Partnered with the Shriners of North America, Austin Chapter, and the Central Texas Blood Center to host a blood drive, benefiting the Shriners’ Hospitals for Children and Burn Hospital in Galveston.
- Submitted an article regarding the SFMO’s commitment to building local capacity to the State Firemen’s and Fire Marshals’ Association newsletter and an article regarding firefighter safety to the Texas Fire Chief Association magazine.
- Continued the “We’re out to Alarm Texas” campaign in partnership with the Insurance Council of Texas and fire departments around the state. Through this program, smoke alarms are provided to fire departments to install, free of charge, to the needy and elderly upon request. In 2008, six Texas cities received a total of 1,150 smoke alarms. In Jefferson, Texas 150 smoke alarms were given to an Eagle Scout who initiated the delivery of smoke alarms to every Meals on Wheels Home in Marion County.
- TEXFIRS received 1,370,307 fire and non-fire incident reports for 2008 incidents from 1,057 fire departments.
- During the 2009 fiscal year, TEXFIRS staff handled 4,438,514 incoming incidents for various years’ data. Staff work with reporting departments to correct any validation errors and help them resubmit their corrected incidents.
- Reviewed a new curriculum prepared by the Texas Bar Association at the request of the project lead of the Governor’s Mansion Restoration Team. The curriculum includes a mock trial, which is based on the Governor’s Mansion fire. The SFMO also provided a fire prevention message, targeted towards high school students, which will be used as an extension of the mock trial curriculum.

**Field Services Division:**

- Completed a series of state-owned building inspections to assess conditions and take necessary action to secure fire safety to protect state employees, visitors, and resources in buildings under the purview of the Texas Facilities Commission, as required by Chapter 417.081, Texas Government Code.
- Met with Emergency Service District (ESD) fire officials, city of El Paso officials, county commissioners, and ESD commissioners, in El Paso, Texas, to answer questions regarding the qualifications for the appointment of local fire marshals and the interaction between cities, counties and the ESDs.
- Presented at the TDI symposium regarding protecting state assets.
- Worked with a fire protection engineer to discuss the development of a risk assessment (a provision of the Sunset Report), which will help the SFMO prioritize inspections of state facilities.

**Fire Industry Licensing Services and Investigations Division:**

- Implemented a new license for fire sprinkler system inspectors requiring the verification by examination of the inspector’s knowledge, and experience, ensuring that these fire protection systems, upon which property owners rely to save lives and property, are inspected by qualified individuals.
- Continued the development of the new Fire Standard Compliant Cigarette program in preparation for the January 1, 2010 deadline, after which, only cigarettes certified as compliant with a certain national standard for self extinguishment can be sold. A database tracking program was developed and most of the cigarette distributors and wholesalers in Texas were inspected. 1358 different cigarette brand/styles were certified generating \$354,750 in revenue.
- Provided occupational licensing administration by issuing 12,527 licenses, registrations and permits to the fire alarm, extinguisher, sprinkler and fireworks industries, an increase of over 1.9% from last year, resulting in over \$2.3 million in revenue.

- Issued 38 Fire Marshal Orders relating to enforcement of fire extinguisher, alarm, sprinkler, and fireworks safety, generating over \$32,000 in fines and penalties and ordering firms to return and correct their services saving the property owners over \$38,000
- Worked with the Plumbers Board to draft rules for Plumbers to install residential sprinklers per legislation, Senate Bill 1410.

**Figure 40 Summary of Activity: Fire Marshal’s Office**

	<b>FY 2008</b>	<b>FY 2009</b>
Fire investigations completed	510	513
Reported structure value of fires investigated	\$442,104,967	\$759,218,730
Percent of SFMO fire investigations found to be incendiary	35%	46%
Number of suspects referred for prosecution	111	124
Percent of referred suspects indicted	78%	61%
Conviction rate of indicted suspects	59%	72%
Samples analyzed in arson laboratory	3,093	2,776
Companies and personnel licensed for Fireworks, Extinguisher, Alarm and Sprinklers	12,965	12,352
Investigations/inspections of complaints against Fire protection equipment/ fireworks industries	1,122	1,085
Buildings inspected/re-inspected for fire safety hazards	5,230	4,662
Number of children participating in a Fire Safety House demonstration	20,251	10,714
Number of individuals attending fire prevention and fire safety presentations coordinated by the SFMO*	24,154	19,204
Number of communities or community partners accepting an SFMO fire prevention program or initiative	29	42

\* Note: The number of individuals attending fire prevention and fire safety presentations coordinated by the SFMO is inclusive of the number of children participating in a fire Safety House demonstration.

## **Administrative Operations**

ADMINISTRATIVE OPERATIONS is headed by the agency's Chief of Staff. It performs the agency's internal financial functions and provides operational support ranging from computer and database services to professional development and training. It also provides administrative support to the Office of Injured Employee Counsel (OIEC) and monitors TDI's compliance with oversight requirements set for state agencies by the Legislature. The program consists of six activities.

**Financial Services**, led by the Chief Financial Officer, maintains the agency's financial records, prepares supporting documents required for a proper audit trail, establishes internal financial controls to detect errors and irregularities, prepares the agency's annual financial report and develops and recommends rates for maintenance taxes and assessments. The division manages budget and planning functions, including the preparation of the agency's Legislative Appropriations Request (LAR), Strategic Plan, annual operating budget, and performance measure reports. In addition, the division monitors expenditures, develops projections to help programs stay within budget, monitors performance against targets in the Strategic Plan, conducts business planning and disaster recovery activities, and monitors compliance with certain Article IX provisions of the General Appropriations Act.

**Staff Services** manages all facility-related services, including space planning and management, security, employee parking, asset inventory and warehousing. The division is also responsible for maintaining the agency's records retention schedule and administering the agency's Safety and Risk Management Program. Finally, Staff Services handles, tracks and delivers all mail, coordinates a courier service, and operates the agency's copy center.

**Purchasing and Contract Administration** is responsible for procuring all goods and services for the agency and managing the agency's Historically Underutilized Business (HUB) and Contract Management Programs. The division's primary goals are to meet the needs of its customers by ensuring that they receive the right product or service, at the right price, at the right time and to ensure that agency staff and contractors adhere to contract requirements.

**Information Technology Services (ITS)** under the direction of the agency's Information Resource Manager (IRM), provides automation and computer support for all agency programs and activities and for OIEC. The primary goals of ITS are to ensure that automation applications and technology are of good quality, are maintainable and available, and meet agency and state standards. ITS supports agency programs by providing advice and assistance in applying technological solutions to business problems; building and maintaining applications or purchasing applications and systems to meet agency needs; monitoring emerging technologies and support issues, including legislative directives and mandates; working to manage agency data efficiently and effectively, including establishing appropriate access; supplying appropriate and timely technical training to employees; planning and implementing agency-wide information technology projects; managing access to agency hardware, software, and telecommunications resources; and providing Help Desk, desktop, and telecommunication technical service on request from agency staff.

**Human Resources** provides service and support to the agency and to the OIEC regarding personnel matters, employee benefits, compensation and professional development. The division monitors and ensures compliance with state and federal employment laws, including compliance with various anti-discrimination laws, such as the Civil Rights Act of 1964, the Family Medical Leave Act (FMLA) and the American's with Disabilities Amendments Act (ADA). It reviews and implements legislation and updates agency policies to reflect new rules, regulations and legislation; conducts workforce planning and reporting as an integral part of the agency strategic plan; and provides guidance to address employee disciplinary issues. This division oversees the administration of the agency's employee assistance program and Survey of Organizational Excellence, which measures employee satisfaction and morale. It also administers the selection and hiring process; processes payroll and leave accounting; maintains employment records—personnel, benefit, FMLA, ADA and Workers' Compensation and

administers employee benefits. Human Resources is also responsible for providing a variety of training, including new employee orientation, business writing, presentation skills, management training, conflict resolution, and a comprehensive technical insurance training program.

**Employee Ombudsman and Ethics Advisor** gives employees an outlet to discuss their concerns and problems in private. The ombudsman also is charged with helping encourage positive communication between agency managers and employees, helping resolve workplace complaints, grievances or disputes and helping agency employees with ethics questions.

## Highlights

In FY 2009, Administrative Operations:

### Financial Services

- Developed and produced the agency's 2010 Operating Budget.
- Coordinated more than 460 fiscal notes to the Legislative Budget Board during the 81st Legislative Session.
- Coordinated projects and prepared documents in support of the agency's FY 2010/2011 Legislative Appropriations Request and FY 2009-2013 Strategic Plan as requested by Commissioners, Legislative Budget Board and Governor's Office of Budget and Planning during the 81st Legislative Session.
- Provided administrative support to OIEC, such as bill paying, processing travel reimbursements, and development of FY 2010 operating budget.
- Provided monitoring and oversight of the agency's and OIEC's expenditures by strategy, object of expense and organizational structure.
- Monitored monthly performance measures and provided quarterly performance measure reports to the Legislative Budget Board.
- Developed maintenance tax rates, examination/overhead assessment and premium finance assessment.
- Coordinated self-audits and reviewed performance measure calculation methodologies to improve internal controls.
- Assisted agency programs with the implementation of the FY 2008-2009 business plan projects by monitoring progress and coordinating agency involvement on projects affecting multiple program areas.
- Redesigned TDI's FY 2010-2011 business planning process to streamline plan development and reporting and enhance programs' enterprise risk management processes.
- Monitored costs and provided administrative support for agency response efforts following Hurricane Ike.
- Prepared the FY 2008 Annual Financial Report, Binding Encumbrance and Accounts Payable, and the Non-Tax Collected Revenue reports on behalf of TDI and OIEC.
- Restructured TDI's program-level disaster recovery plans and incorporated federal requirements including pandemic planning, devolution planning and delegation of authority.
- Maintained and tested the viability of agency and program disaster recovery plans.
- Cooperated with TDI's Internal Audit Division on an audit of seven performance measures; five of the seven measures were certified or certified with qualification.

### Staff Services

- Handled 1,406,898 pieces of agency mail and processed 2,281,963 workers' compensation claim related documents for carrier representatives.
- Microfilmed 126,656 documents and stored 2,501 cubic feet of records through the Texas State Library for record retention.
- Processed 1,796 work orders through the Texas Facilities Commission (TFC) and the Metro Center Lessor.
- Coordinated 17 building improvement projects and modular furniture installations and renovations in the Hobby Building.
- Facilitated the safety program that resulted in six of 14 program areas achieving accident/injury free status in FY 2009.
- Negotiated three branch office lease renewals.

### **Purchasing and Contract Administration**

- Processed 3,190 purchase requisitions and 3,617 purchase orders.
- Posted 28 procurement opportunities on the Electronic State Business Daily.
- Tracked and administered 483 contracts.
- Attended four HUB forums.
- Sponsored one agency HUB forum.
- Achieved 45.6 % HUB participation during the first six months of FY 2009.
- Revised the agency's contract management program.
- Developed a comprehensive contract management training program and an on-line contract management system.
- Hosted eight purchasing and contract administration related training webinars.
- Established an online procurement manual for purchasing staff.
- Developed online purchasing & procurement card training videos for purchasing liaisons and procurement card holders.

### **Information Technology Services**

- Partnered with Team for Texas in the transformation of TDI's high volume print and mail services and a portion of TDI's servers to the state data centers.
- Established a team of technical staff to monitor essential data center functions and to coordinate all service requests with Team for Texas.
- Replaced telecommunications hardware and software for the Division of Workers' Compensation at the Metro location and in 25 field offices. This project brought all telecommunications systems to current releases and networked the call queues to allow faster response to any phone call.
- Provided technical assistance in support of the agency-wide implementation of 157 multifunction devices.
- Developed an application, referred to as 'eDisaster,' in preparation for the workload associated with Hurricane Ike damage. The application allows for a real-time exchange of information between TDI and all companies, eliminating manual transfer of information.
- Assisted in the implementation of the SIRCON Continuing Education module for the agency's Licensing division.
- Developed a web-based application that allows the general public to enter and submit Windstorm-related Applications for Certification of Compliance.
- Enhanced the Division of Workers' Compensation applications to stabilize and expand the functions of TXCOMP, the workers' compensation claims and coverage tracking application.

In addition to the major initiatives described above, ITS also:

- Reinforced information security at TDI by:
  - Implementing password synchronization software to impose frequent password updates by all users.
  - Updating antivirus, e mail filtering, and firewall software.
  - Cooperating with the Department of Information Resources to allow controlled penetration testing of TDI's network to assess security levels. The results demonstrated that TDI's network has effective controls in place.
  - Providing information security training classes for new employees and refresher training courses for current agency staff.
  - Providing informational articles and material to agency staff regarding recommended security practices and employee responsibilities.
- Deployed 330 laptop computers, 350 desktop computers, and 400 monitors as part of the agency's Hardware and Software Obsolescence Plan.
- Supported agency staff and external customers by responding to 19,529 Help Desk calls. This included providing technology support for staff who moved within the agency or who needed assistance as a result of weather, building condition problems, or emergency situations.
- Provided instructor-led automation and security training to 1,184 students.
- Supported TDI's ongoing movement to web-based data and forms.

### **Human Resources**

- Processed and tracked 1,898 personnel actions including merit raises, promotions, new hires, transfers, and separations of employment. In addition to this number, 339 personnel actions were processed for OIEC.
- Met 100% of all payroll reporting deadlines.

- Processed 7,051 job applications.
- Answered 38,097 switchboard calls.
- Delivered 693.75 hours of traditional classroom training and 150.5 hours of training provided on-line through video-streaming, video or CD-Rom. Training included new employee orientation and courses on teambuilding, communication, customer service, defensive driving, insurance training and management training.
- Delivered 13 wellness events.
- Provided assistance to TDI Honors Program allowing for interns to work with TDI staff on special insurance-related projects.
- Moved from Telecommuting Pilot project to implementation of telecommuting program for all program areas that submitted plans to Human Resources.
- Contributed information to the agency's Strategic Plan and Workforce planning activities, specifically a succession planning initiative, by researching and gathering statistical information.
- Participated in audits with Comptroller's Office and TDI Internal Audit to review payroll, Human Resources Information System (HRIS) and workforce planning. Implemented audit recommendations.

**Employee Ombudsman and Ethics Advisor**

- Addressed a wide variety of personnel issues and concerns through coaching and counseling of agency employees.
- Designed a new sexual harassment / discrimination course and began presenting it to agency employees headquartered in Austin.
- Created and presented a variety of workshops to agency employees regarding a variety of topics, including Dealing With Difficult People, Managing Workplace Stress and Conflict Management.
- Responded to requests to provide training courses for other state agencies.

**Figure 41 Comparison of Maintenance Tax Rates FY 2002–FY 2009**

Type	max legal rate	FY02	FY03	FY04	FY05	FY06	FY 07	FY 08	FY 09
Motor Vehicle	0.2	0.060	0.053	0.035	0.036	0.062	0.058	0.070	0.063
Fire	1.25	0.401	0.330	0.188	0.184	0.291	0.236	0.280	0.237
Workers' Compensation	0.6	.069	.051	.030	0.027	0.051	0.059	0.069	0.072
Casualty	0.4	0.210	0.180	0.091	0.073	0.119	0.117	0.129	0.112
Title	1.0	0.111	0.073	0.045	0.037	0.107	0.100	0.127	0.115
Life, Accident and Health	0.04	0.040	0.040	0.026	0.026	0.040	0.040	0.040	0.040
Third-Party Administrators	1.0	0.330	0.265	0.150	0.125	0.149	0.110	0.149	0.104
*HMO Multi-Service	\$2.00	\$1.10	\$1.32	\$0.89	\$1.02	\$1.53	\$1.23	\$1.23	\$1.08
*HMO Single Service	\$2.00	\$0.37	\$0.44	\$0.30	\$0.34	\$0.51	\$0.41	\$0.41	\$0.36
*HMO Limited Service	\$2.00	\$0.37	\$0.44	\$0.30	\$0.34	\$0.51	\$0.41	\$0.41	\$0.36
Prepaid Legal	1.000	0.030	0.022	0.022	0.022	0.044	0.036	0.042	0.036
Workers' Compensation Evaluation	0.1	.039	0.00	0.00	0.00	0.00	0.00	0.00	0.009
Division of Workers' Comp.	N/A	1.51	.01125	.9200	1.051	1.051	1.128	1.003	1.232

\* HMO rates reflect an amount per enrollee. Other rates are given as a percentage.

## **Division of Workers' Compensation (TDI-DWC)**

The primary duties of TDI-DWC are to regulate and administer the business of workers' compensation in Texas; and ensure that the Texas Workers' Compensation Act, Texas Labor Code, and other laws regarding workers' compensation are implemented and enforced. The basic goals of the Texas workers' compensation system are:

- Each employee shall be treated with dignity and respect when injured on the job;
- Each injured employee shall have access to a fair and accessible dispute resolution process;
- Each injured employee shall have access to prompt, high-quality medical care within the framework established by the Texas Labor Code; and
- Each injured employee shall receive services to facilitate the employee's return to employment as soon as it is considered safe and appropriate by the employee's health care provider.

The Commissioner of Workers' Compensation is appointed by the Governor, with the advice and consent of the Senate, to administer TDI-DWC. The Commissioner of Workers' Compensation oversees TDI-DWC regulatory functions and has the authority to sanction system participants and to adopt rules to implement and enforce the Texas Workers' Compensation Act and the Texas Labor Code. The Commissioner of Workers' Compensation makes recommendations to the Legislature regarding changes to state workers' compensation laws, appoints individuals to advisory committees and serves as a member of the Texas Certified Self-Insurer Guaranty Association. The Commissioner of Workers' Compensation has the authority to approve Certificates of Authority to Self-Insure for workers' compensation claims for certain eligible employers with employees in Texas.

Governor Rick Perry appointed Rod Bordelon as Commissioner of Workers' Compensation and he assumed those duties in September 2008. Since his appointment, Commissioner Bordelon has made several changes to the organization of the TDI-DWC to further enhance the agency's operation. In October 2008, Commissioner Bordelon and Insurance Commissioner Geeslin agreed to consolidate their Enforcement staff, resulting in five enforcement teams, one of which is located at TDI-DWC. In addition, the Commissioners consolidated their Legal staff and created the Workers' Compensation Counsel. The TDI-DWC Enforcement team operates under the direction of the Commissioner of Workers' Compensation and the TDI Associate Commissioner for Enforcement. Workers' Compensation Counsel operates under the direction of the Commissioner of Workers' Compensation and the TDI Senior Associate Commissioner for Legal and Regulatory Affairs. Commissioner Bordelon has also added a Special Deputy Commissioner for Policy and Research who provides guidance and drives the rulemaking process which implements legislative changes.

TDI-DWC consists of a Commissioner's Administration area and three major programs: Operations, Hearings, and Health Care Management and System Monitoring. The Commissioner's Administration includes the Office of the General Counsel and the Office of the Medical Advisor, along with the Special Deputy Commissioner for Policy and Research. The General Counsel advises the Commissioner of Workers' Compensation on legal matters affecting TDI-DWC, reviews litigation, provides support for compliance efforts, and coordinates policy issues. The Office of the Medical Advisor is specifically charged with reviewing health care providers practicing in the workers' compensation system. The medical advisor also serves as a resource for agency staff regarding the adoption of rules and policies related to medical care and medical delivery systems for injured employees in the workers' compensation system.

### **Operations**

The Executive Deputy Commissioner for Operations provides operational support in the areas of Business Process Improvement, Self-Insurance Regulation, Field Operations, and Records Management and Support for the TDI-DWC.

**Business Process Improvement** supports the mission of TDI-DWC by finding process-oriented solutions to streamline and increase the effectiveness of service delivery. This area also provides coordination for TDI-DWC performance measures, agency policy, and administrative support functions.

**Self-Insurance Regulation** administers the certified self-insurance program for private employers with operations and employees in Texas. The Self-Insurance Regulation program receives and processes applications from private employers that request to self-insure their workers' compensation liabilities in Texas and monitors the withdrawn certified self-insurers. The program evaluates the applicant companies' financial strength and liquidity, calculates and accepts security deposits, reviews claims administration plans and excess insurance, conducts safety program plan inspections, performs on-site benefit delivery examinations as needed, and oversees the billing of required self-insurance regulatory fees and workers' compensation maintenance taxes. Approval as a Certified Self-Insurer affords the applicant company protection under the Texas Workers' Compensation Act.

**Field Operations** delivers customer assistance and claims service in 24 field offices located throughout the state. Field offices assist system participants by:

- Providing information about the Texas workers' compensation system.
- Providing injured employees with a single point of contact at TDI-DWC for claims assistance and return-to-work information.
- Setting proceedings, and maintaining and providing local venues in which benefit review conferences and contested case hearings are conducted.
- Processing official actions such as requests for change of treating doctor, requests for required medical exam, and requests for supplemental income benefit first quarter entitlements.
- Engaging in community outreach and education through the quarterly seminars on workers' compensation topics.

Injured employees and other system participants who need information and assistance can contact field offices via a toll-free telephone number that routes calls to the local field offices. Injured employees may also visit the field offices for face-to-face assistance; however, certain rural area field offices only offer face-to-face assistance by appointment.

**Records Management and Support** maintains records associated with injured employee claim files and insurance coverage information. This section provides:

- Storage and maintenance of injured employee claim files and employer insurance coverage files according to the TDI-DWC Records Retention Schedule and established quality standards.
- Claims document processing services, including receiving, creating, and updating claims information from data source documents.
- Electronic Data Interchange (EDI) claims services, including processing claims information received from EDI transactions and providing customer service to insurance carriers/trading partners.
- Updates to the insurance coverage database with information received from insurance carriers and employers, and customer service for public inquiries regarding employers' insurance coverage.

## Hearings

The Deputy Commissioner for Hearings oversees various income benefit dispute resolution processes. Hearings staff consists of benefit review officers, hearing officers, appeals panel judges, and proceedings support employees located both at the TDI-DWC central office in Austin and in field offices around the state. The Hearings program area provides indemnity dispute resolution for benefit disputes regarding compensability or eligibility for, or the amount of, income, death, or burial benefits. The three-tier administrative system for indemnity benefit dispute resolution consists of a benefit review conference, benefit contested case hearing, and appeal to the Appeals Panel. Spinal surgery disputes also proceed through a benefit contested case hearing and appeal to the Appeals Panel. Benefit review conferences and contested case hearings are held at TDI-DWC field offices throughout the state. As of September 1, 2007, the Hearings program area also began conducting medical contested case hearings as an appeal process for resolving certain medical fee disputes and medical necessity disputes. An appeal to a medical contested case hearing is allowed for retrospective medical necessity disputes where the amount billed does not exceed \$3,000, or for medical fee disputes in which the amount of reimbursement sought does not exceed \$2,000. Additionally, all prospective and concurrent medical necessity disputes may be appealed through the medical contested case hearing dispute process. All other medical fee and medical necessity dispute appeals are appealed through the State Office of Administrative Hearings.

## Health Care Management and System Monitoring

The Executive Deputy Commissioner for Health Care Management and System Monitoring provides guidance and support in the areas of Health Care Policy and Implementation, Health Care Business Management, System Monitoring and Oversight, and Outreach and Workplace Safety.

**Health Care Policy and Implementation** monitors and regulates the delivery of medical benefits to control medical costs and to ensure that injured employees receive reasonable, necessary, and quality health care. This program also makes recommendations regarding fee guidelines and health care administration policies and procedures.

**Health Care Business Management** provides support and regulates and facilitates activities in the areas of Information Management Services, Health Care Quality Review, and Medical Fee Dispute Resolution.

- **Information Management Services** oversees the management of electronic data that is reported to TDI-DWC by system participants, and maintains the processes for retrieval of the data into useable formats for various reports based on requests from internal and external customers.
- **Health Care Quality Review** supports the functional operation of the Medical Quality Review Panel (MQRP). The MQRP reviews the actions of doctors, other health care providers, insurance carriers, utilization review agents, and independent review organizations in the workers' compensation system.
- **Medical Fee Dispute Resolution (MFDR)** processes and resolves disputes related primarily to the reimbursement of non-network health care services. MFDR staff are the point of intake for all requests, calls, and documentation regarding non-network medical fee disputes as well as auditing and resolving medical fee disputes.

**System Monitoring and Oversight** is responsible for monitoring compliance of system participants, identifying non-compliance, and making referrals to Enforcement. The Complaint Resolution section processes complaints and reports of violations of the Texas Workers' Compensation Act and TDI-DWC rules, as well as complaints about quality of care. System Monitoring and Oversight is responsible for the Performance Based Oversight (PBO) program. PBO assesses the performance of insurance carriers and health care providers with key regulatory goals, ranks assessed entities, and places them into performance tiers.

**Outreach and Workplace Safety** combines two formerly separate program areas, Communications and Outreach and Workplace Safety.

- **Outreach** provides support for TDI-DWC internal and external written communications, web-based information, forms management, coordination of speaking engagements, and translation services. This program area also provides internal and external training on such subjects as return-to-work and medical benefits as well as outreach efforts to encourage non-participating health care providers to become involved in the Texas workers' compensation system.

The Outreach program area provides TDI-DWC with the ability to communicate with system participants regarding general or specifically targeted information on an appropriate level using a variety of delivery methods specifically tailored to the message. Outreach coordinates TDI-DWC educational and safety conferences. Outreach also administers the Return-to-Work program for Small Employers, including the intake and processing of applications for reimbursement for workplace modifications that facilitate an employee's return to work. In addition, Outreach maintains the list of private providers of vocational rehabilitation, a resource for insurance carriers and injured employees.

- **Workplace Safety** provides Texas employers and employees with health and safety resources and services to prevent occupational injuries and illnesses through the activities of three main program areas: Federal Data Collection, Occupational Safety and Health Consultation (OSHCON), and Safety Training & Inspections. Services administered by Workplace Safety include:
  - **Federal Data Collection Program** collects, analyzes, and distributes occupational injury, illness, and fatality information for the state of Texas. Data collection programs include the Bureau of Labor Statistics (BLS) Survey of Occupational Injuries and Illnesses, the BLS Census of Fatal Occupational Injuries, and the annual Occupational Safety and Health Administration (OSHA) Data Initiative. These collection programs are funded in part or wholly through grants from BLS and OSHA. This program also analyzes workers' compensation claims data to determine causes of injury and illness.

- **Occupational Safety and Health Consultation (OSHCON)** Program provides free assistance to smaller employers (employers with 250 or fewer employees on site and no more than 500 nationwide) in high-hazard industries to help them understand and comply with federal OSHA safety regulations. Limited assistance is available to larger employers. The program is largely funded by a grant from OSHA, but is non-regulatory in nature. The program also maintains a free safety and health training video/DVD loan library which houses over 3,000 titles.
- **Safety Training and Inspections**
  - The Safety Training and Inspections Program educates employees and employers across the state about safe and healthy work practices through on-site company training, regional seminars, an annual statewide safety conference, safety and health publications, and other forms of outreach.
  - Accident Prevention Services Program inspects insurance companies that write workers' compensation in Texas to ensure that they are providing required accident prevention and return-to-work coordination services to their policyholders.
  - Rejected Risk (RR) Program works with companies needing safety and health assistance as identified by the Texas Mutual Insurance Company. Inspections of these employers are conducted to confirm implementation of effective accident prevention plans.
  - Safety Violations Hotline is a tool for Texans to report violations of occupational safety and health laws. This 24-hour, bilingual, toll-free hotline (800-452-9595) can be used by anyone wishing to report suspected violations.

**Workers' Compensation Counsel** provides services to the TDI-DWC in the areas of rulemaking, open records, and specific legal issue support to the program areas. Workers' Compensation Counsel operates at the direction of the Commissioner of Workers' Compensation and the TDI Senior Associate Commissioner for Legal and Regulatory Affairs.

**Enforcement** investigates alleged violations of the Texas Labor Code and agency rules; issues notices of violation; and pursues enforcement actions according to priorities set by the Commissioner of Workers' Compensation. The Enforcement team operates under the direction of the Commissioner of Workers' Compensation and the TDI Associate Commissioner for Enforcement.

**The Workers' Compensation Research and Evaluation Group (REG)** conducts research projects on system-wide issues such as medical costs and utilization and care trends in Texas, return-to-work outcomes for injured Texas employees and employer participation in the Texas workers' compensation system. The REG also presents findings and provides testimony for various legislative committees and produces an annual report card for certified workers' compensation health care networks and political subdivisions. In December 2008, the REG was attached organizationally to TDI-DWC. The Director of the REG now reports to the Special Deputy Commissioner for Policy and Research; however, the Commissioner of Insurance still reviews and adopts the REG's annual research agenda in accordance with Section 405.0026, Labor Code.

## Highlights

Major workers' compensation legislation passed by the 81st Texas Legislature (2009).

HB 1058

Extends death benefits to non-dependent parents who do not receive burial benefits, and clarifies that a failure to file a claim for death benefits in the time required bars the claim unless "good cause" exists for the failure to file a claim under this section. Previously, the standard for failing to file for these benefits within the statutory timeframe required a "compelling reason." Effective September 1, 2009.

HB 2547

Allows a treating doctor to request job description information from an injured employee's employer and requires the Commissioner of Workers' Compensation to prescribe a form to be used to identify the scope and functions the employee performed prior to the injury as well as a contact person for the employer. Effective September 1, 2009.

HB 3625

Changes the timeframe for an insurance carrier to respond to a request for preauthorization from three calendar days to three working days. Applies to a request for preauthorization that occurs on or after September 1, 2009.

#### HB 4290

Makes conforming changes to the definition of “retrospective review” in the Labor Code and Chapter 1305, Insurance Code. Clarifies that an Independent Review Organization (IRO) may review disputes regarding retrospective medical necessity denials for group health plans the same way that IROs review these disputes currently for workers’ compensation. Also clarifies that IROs may review issues relating to whether a health care procedure is “investigational” or “experimental” in nature. Effective September 1, 2009.

#### HB 4545

Changes the timeframe for a party to dispute a decision by the TDI-DWC Appeals Panel to district court from 40 days to 50 days from the date the decision was filed with the TDI-DWC. Applies to a request for judicial review that occurs on or after September 1, 2009.

#### SB 1814

Contains several provisions relating to return-to-work reimbursements for Texas employers and return-to-work coordination services, including:

- Makes permanent a pilot program that was created by HB 7, 79th Legislature, Regular Session, 2005, that allowed small employers to be reimbursed up to \$2,500 annually for making workplace modifications to help return an injured employee to work. SB 1814 increases those reimbursements to up to \$5,000 annually and allows the Commissioner of Workers’ Compensation to extend these reimbursements to other categories of employers and authorizes advances as needed.
- Clarifies an insurance carrier’s statutory responsibility to provide return-to-work coordination services on an ongoing basis when an employer’s injured employee begins to lose time away from work, and requires insurance carriers to notify their policyholders regarding the availability of the TDI-DWC employer return-to-work reimbursement program. Effective immediately upon signature of the Governor on June 19, 2009.

#### HB 673

Contains several provisions relating to the operations of the Office of Injured Employee Counsel (OIEC):

- Allows OIEC staff to refuse to provide services or to terminate services to injured employees who are abusive or violent or threaten an employee of OIEC.
- Clarifies OIEC’s authority to assist injured employees before TDI-DWC or the State Office of Administrative Hearings (SOAH) in administrative dispute proceedings and in enforcement actions against injured employees.
- Authorizes the OIEC Public Counsel to adopt, after consultation with the Commissioner of Workers’ Compensation, the injured employee rights and responsibilities, which will continue to be distributed by TDI-DWC.
- Clarifies OIEC’s access to confidential information for the performance of their statutory duties. It restricts OIEC’s access to TDI-DWC investigation files and any other information which injured employees would otherwise not be entitled to obtain on their own while assisting injured employees in an enforcement action against the injured employee. Effective September 1, 2009.

#### **Rulemaking**

- **Death and Burial Benefits:** Adopted amendments for rules to address HB 724, 80th Legislature, Regular Session, 2007, requirements to include death benefits for eligible parents, a new distribution calculation, and new timeframes. Adopted September 22, 2008 (28 Texas Administrative Code (TAC) §§122.100, 132.6, 132.9, 132.11 and Texas Labor Code §§408.182, 408.183), effective October 12, 2008.
- **Billing Timeframes for Health Care Providers:** Adopted amendments as required by HB 1005, 80th Legislature, Regular Session, 2007, to clarify health care providers’ billing process timeframes. Adopted January 8, 2009 (28 TAC § 133.20 and Tex. Lab. Code § 408.0272), effective January 29, 2009.
- **Supplemental Income Benefits (SIBs):** Adopted amendments conform rules to HB 7, 79th Legislature, Regular Session, 2005 standards that eliminate the “good faith effort” test and mandate compliance standards in accordance with statute. Adopted March 13, 2009, (28 TAC §§ 130.101-109 and Tex. Lab. Code §§ 408.1415, 408.142, 408.143) effective July 1, 2009. Rules define “work search” that injured employees must perform regularly to receive benefits. The revised rules align the work search requirements for injured employees applying for SIBs with the work search requirements for people applying for unemployment insurance benefits. The rules were effective for SIBs qualifying periods beginning on or after July 1, 2009.

- Subsequent Injury Fund: Administrative changes to implement SB 1169, 80th Legislature, Regular Session, 2007. Addresses the issue of reimbursement to workers' compensation insurance carriers if a Designated Doctor opinion is reversed and for death benefits based on multiple employment. The formal proposal was sent to Texas Register July 20, 2009; the public comment period ended August 31, 2009. Possible adoption as early as November, 2009.
- Appeals Panel: Rule changes to implement HB 7, 79th Legislature, Regular Session, 2005 and HB 4545, 81st Legislature, Regular Session, 2009 which relate to the timeline for filing a judicial review of a panel decision. Extends the time for issuing an Appeals Panel decision by 15 days. Extends the time for filing an appeal to 45 days after an Appeals Panel decision is mailed to the party. The formal proposal was sent to Texas Register July 20, 2009; the public comment period ended August 31, 2009. Possible adoption as early as November, 2009.
- Repeal of Hazardous Employer and Drug Free Workplace Program rules: This rule action would remove rules related to programs for which statutory authority was repealed by HB 7, 79th Legislature, Regular Session, 2005. The formal proposal was sent to Texas Register July 10, 2009; the public comment period ended August 24, 2009. Possible adoption as early as October, 2009.
- Pharmacy Closed Formulary: The Pharmacy closed formulary rule implements the requirements of HB 7, 79th Legislature, Regular Session, 2005. A stakeholder meeting for review of comments from the latest informal working draft was held on August 20, 2009.
- Update of the TDI-DWC rules related to monitoring and enforcement to implement the provisions of HB 7, 79th Legislature, Regular Session, 2005; and HB 34, HB 1003, HB 1006, and HB 2004, 80th Legislature, Regular Session, 2007: Eliminates the Approved Doctors List and related licensing requirements for doctors treating injured employees to implement HB 7 and other subsequent legislation. Additionally, the informal working draft posted for informal comment on June 15, 2009 updates many enforcement rules. Stakeholder meeting was held August 27, 2009 to discuss the informal draft rules.
- Electronic medical billing (eBill) Rules: These rules would be proposed in order to more fully implement the provisions of HB 7, 79th Legislature, Regular Session, 2005. These rules would clarify and limit the documentation the health care provider must submit with the initial bill while providing a process for the workers' compensation insurance carriers to request additional documentation if necessary to process a bill. The rules would also provide for paper medical billing, medical documentation, and electronic medical billing requirements. A second informal working draft of the rules was posted for comment on July 17, 2009.

#### **Return-to-Work (RTW)**

- The legislatively required report on results of the pilot program was published in October 2008.
- In FY 2009, TDI-DWC received one employer application for reimbursement from the RTW Reimbursement Pilot program. The applicant was eligible and received reimbursement. TDI-DWC anticipates that the changes made to expand the program by SB 1814 will result in an increased volume of applications in FY 2010.
- Continued to distribute the brochure titled *Working Works*, which contains information about the value of injured employees' early and medically appropriate return-to-work. It also includes contact information for the Department of Assistive and Rehabilitative Services (DARS), the Texas Workforce Commission, OIEC, 2-1-1 Texas, and TDI-DWC. The brochure is available in English and Spanish.
- Distributed 10,116 copies in FY 2009 of the RTW guide for employers entitled *Making Return-to-Work Work for Your Business and Your Employees*. The guides were distributed to employers at RTW speaking engagements and as a follow-up to small employers receiving OSHCON consultations. The guide and other RTW information on the TDI-DWC website were accessed 77,782 times in FY 2009. Forty-six RTW presentations were made to employers during FY 2009 reaching approximately 7,000 people.
- Provided training to DARS counselors on a variety of subjects including workers' compensation and RTW. These counselors provide vocational rehabilitation services to injured employees.
- RTW was a featured item on the agenda for all Texas Business Conferences sponsored by the Texas Workforce Commission in their locations across Texas.
- Participated in training of staff for new DARS employer education program about retaining jobs and trained employees.

## Medical Care

- Communicated with medical associations and local societies to recruit treating and referral doctors, and resolve health care provider issues.
- Completed initial phases of training on the Medical, Hospital, and Ambulatory Surgical Center (ASC) Fee Guidelines. Medical Fee Guideline training is currently included in the Workers' Compensation for Medical Office Employee courses that are conducted across the state and through detailed resources on the agency website.
- Completed a report on the outcome of a treatment planning pilot project that has been posted to the TDI-DWC website. Several workers' compensation insurance carriers volunteered to participate in a six-month pilot program with the goal of defining a process for initiating, creating, submitting, reviewing, and implementing evidence-based and functionally oriented treatment plans. The purpose of the pilot program was to examine whether treatment planning could be functionally implemented and to identify any barriers (e.g., conflicts with existing TDI-DWC rules or statutory requirements, lack of system participant interest, cost of creating and reviewing a treatment plan) that would inhibit implementation or reduce the benefit of treatment planning.
- Conducted extensive data analysis of pharmaceutical usage in the Texas workers' compensation system with a particular focus on legacy claims from initial data sets used by the TDI Workers' Compensation Research and Evaluation Group (WCREG). The analysis was needed for determining fiscal note and system-wide impact of adopting rules for a pharmacy closed formulary.
- Developed a Request for Proposal for a Pharmaceutical Reimbursement Comparison Report that indexes Texas workers' compensation pharmaceutical reimbursement to a standard benchmark and to other health care pharmaceutical reimbursements.
- Released Commissioner's Bulletin #B-0075-08 on November 20, 2008 to inform system participants of the annual change to Texas Workers' Compensation Medical Fee Guideline conversion factors as established in 28 TAC §134.203. In order to provide predictability of and reflect changes in medical service delivery costs to system participants, the TDI-DWC conversion factors update annually based on the Medicare Economic Index, which reflects price changes for goods and services used to deliver physicians services.
- Amended fee guideline training tools to reflect annual changes in the TDI-DWC fee guidelines for medical services' reimbursement.
- WCREG issued a peer review data call in February, 2008 to update the results of the 2006 peer review analysis and to monitor insurance carrier compliance with HB 1003 and HB 1006, 80th Legislature, Regular Session, 2007. The Office of the Medical Advisor will analyze the data to select review subjects for 2010 Peer Review Medical Quality Reviews.
- Reviewed quality of care complaints and performance of specific health care providers, including spine surgeons, physical medicine providers, Designated Doctors, peer review doctors, Independent Review Organization (IRO) doctors, and insurance carriers. Completed reviews of three peer reviewers, thirty-one Designated Doctors, five spine surgeons, eleven physical medicine providers, fourteen pain management providers, six insurance carriers, twenty-eight IROs and four miscellaneous treating doctor issues between September 1, 2008 and August 31, 2009.
- Reviewed 440 quality of care complaints. Sixteen resulted in closure with *Letters of Concern* between September 1, 2008 and August 31, 2009. Forty-six of the complainants were also referred to the OIEC. Sixteen resulted in medical quality reviews of the subject health care provider. Twelve were referred to the TDI-DWC Enforcement program. Three were referred to the TDI Insurance Fraud Unit. Four were referred to the TDI Health and Workers' Compensation Network (HWCN) Division. Two quality of care complaints were referred to the Texas Medical Board. The remaining complaints were closed with no further action required.
- Completed the review of Designated Doctor specialty matrices as they relate to the doctors' education, training, and experience to evaluate specific injuries.

## Designated Doctor Selection Process

- Processed approximately 54,000 requests for Designated Doctor exams.
- Redesigned the DWC Form-032 to reduce the number of *Letters of Clarification*, and to improve communication between parties with the goal of improving the quality of examinations.
- Enhanced coordination between Enforcement and the Designated Doctor Scheduling section to ensure Designated Doctors comply with requisite statutory and regulatory duties.
- Centralized out-of-state Designated Doctor scheduling to establish consistency in processes and streamline the selection of doctors.
- Revised policies and procedures for scheduling Designated Doctor appointments.

- Enhanced communication between field office and Designated Doctor Scheduling (DDS) staff by implementing field office visits for DDS staff to improve their understanding of claim processes.
- Hosted stakeholder meeting for Designated Doctors and scheduling companies.

#### **Medical Fee Dispute Resolution (MFDR)**

- Audit staff education focused on customer service, communication, Ambulatory Surgical Center (ASC) Fee Guidelines (effective Sept 1, 2008), new Professional and Hospital Fee Guidelines (effective March 1, 2008), and the addition of a training program for new auditors.
- Audit staff continued to provide education on rules and statutes to both the requestors and respondents involved in a fee dispute. Providing education allows MFDR to resolve the dispute without a decision and order, and prevents future disputes being filed as a result of a misunderstanding of the workers' compensation system. This type of low-level dispute resolution resulted in requestor withdrawal in nearly 70% of disputes closed between Sept 1, 2008 and August 7, 2009.
- Prior to December 1, 2008, disputes received that did not meet the minimum requirements of 28 TAC §133.307 were being automatically closed by administrative staff with a letter to the requestor. After December 1, 2008, these incomplete submissions are being reviewed by auditors, and the auditor contacts the requesting party to provide information and education about the MFDR rules and procedures. This educational outreach generally results in a withdrawal by the requestor and prevents future incomplete disputes. The requestor may re-file a corrected or complete dispute if they do so within appropriate timeframes.
- Administrative processes such as mail, docketing, redacting, and posting decisions to the TDI-DWC web site, and accounts receivable billing were streamlined and distributed among five administrative staff. Four administrative positions were eliminated through attrition as a result of these process changes.
- Audit staff continues to work with other program areas such as HWCN, Hearings and System Monitoring and Oversight to refer disputes received in MFDR that have unresolved medical necessity, compensability, and certified health care network issues. Education provided to system participants has significantly decreased the number of referrals to other program areas.
- MFDR started to work with System Monitoring and Oversight in February 2009 to assist in the review of inappropriate denials and to provide complainants with education on the dispute resolution process, as appropriate. MFDR has assisted with over 100 complaints.
- MFDR continues to work with hearings to address inquiries associated with medical fee dispute contested case hearing appeals.
- The District Court in Cause No. D-1-GN-07-002475 upheld the application of the TDI-DWC "fair and reasonable" rationale to decisions on disputes falling under 28 TAC §134.1. TDI-DWC is now issuing decisions based on this District Court decision. The first such decisions were released on July 28, 2009.

#### **Workers' Compensation Research and Evaluation Group**

- Completed four research projects and posted results to the TDI website.
- Provided expert testimony at the first workers' compensation insurance rate hearing in November 2008.
- Assisted the Health and Workers' Compensation Network Certification and Quality Assurance Division with its outreach efforts to educate Texas employers on network issues.
- Measured the participation of employers and injured employees in workers' compensation networks.
- Updated annual return-to-work rates using employee wage data obtained from the Texas Workforce Commission.
- Published the second workers' compensation network report card and began work on the third report card due in September 2009.
- Completed the first biennial report on the impact of the 2005 legislative reforms entitled *Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System, 2008 Results*.
- Assisted TDI-DWC with the review of proposed rules; monitoring and validation of TDI-DWC's data collection activities; and assistance with the compilation of data for TDI-DWC's doctor monitoring activities and pharmacy formulary development.

### **Workers' Compensation Health Care Networks**

- There are 34 active certified workers' compensation health care networks as of August 31, 2009.
- Networks are available in 234 counties in the state as of August 31, 2009.
- Network report cards were completed by the WCREG in September, 2007 and 2008. The report card results are available the TDI website.
- Quality of care examinations by the Health and Workers' Compensation Network Certification and Quality Assurance (HWCN) program area began in January 2008, and will continue on an ongoing basis. The networks were initially selected for examinations based on the number of injured employees being treated within the network; however, HWCN plans to re-review certain networks that were initially examined in 2008 in addition to conducting some examinations of new networks.
- Section 504.053, Labor Code allows political subdivisions the option to use certified health care networks, provide medical care as non-network claims, or choose to directly contract with health care providers. As of August 31, 2009, five political subdivisions have chosen to directly contract with health care providers.

### **Compliance and Enforcement**

- Posted enforcement actions and complaint statistics on the agency website.
- Enforcement opened 548 cases and closed 412 cases in FY 2009. These cases have resulted in issuing 212 warning letters, fifty-five consent orders and assessed fines of \$1,041,650.
- Concentrated enforcement actions based on the following priorities established by the Commissioner of Workers' Compensation:
  - Failure to comply with Commissioner's Orders;
  - Failure to respond to TWI-DWC inquiries;
  - Failure to respond to data calls;
  - Failure to provide an IRO with all the documentation the carrier used in making a determination to be reviewed by that IRO;
  - Failure of Designated Doctors to comply with requisite statutory and regulatory duties;
  - Cases involving the provision of unreasonable health care or substandard care to injured employees and the inappropriate denial of health care by insurance carriers; and
  - Improper denial of claims.
- Developed a process for monitoring compliance for data submission.
- Conducted quarterly insurance carrier meetings to discuss emergent and ongoing compliance concerns.
- Focused audits primarily on the insurance carriers and health care providers identified as "poor performers" by the PBO tier system. TDI-DWC also initiated income benefit data accuracy audits.
- In February 2009, 104 letters were sent to potential non-subscribing employers that failed to file the DWC Form-005, *Employer's Notice of No Coverage or Termination of Coverage*, inquiring about their coverage status. Twenty-nine non-subscribing employers came into compliance and filed the required form.
- In August, 2009, 300 letters were sent to non-subscribing employers that had not filed the DWC Form-007, *Non-Covered Employers Report of Occupational Injury and Illness*, inquiring about whether they had reportable occupational injuries or illnesses. No results from this recent round of letters are available as of the date of this report.
- Issued a data call on 130 insurance carriers to study compliance with e-Billing regulatory requirements by insurance carriers and health care providers.

### **Hearings**

- Hosted quarterly attorney focus group meetings with attorney system participants to improve processes for dispute resolution.
- Continued to update the *Appeals Panel Decision Manual* with current legal precedents. The *Appeals Panel Decision Manual* is posted on the TDI-DWC website.
- Continued to develop the *Medical Contested Case Hearing Precedent Manual* for TDI-DWC hearing officers and system participants.
- Developed a paperless docketing system for SOAH cases which also eliminated the need for a daily courier.
- Docketed medical contested case hearings in half the time allowed by rule.
- Improved docketing practices have led to benefit review conferences and contested case hearings being scheduled in less time than that provided by rule and statute.

- Continued to receive referrals from MFDR of fee disputes that also have compensability/liability disputes. Benefit review officers have processed over 1,000 of these disputes.
- Continued to assist field office staff in addressing customer questions and the Letter of Clarification process.
- Provided monthly training to field office staff on a variety of topics.
- Updated Old Law Reference Manual and created an old law complaint tracking database.
- Improved performance in timely filing of Decisions and Orders.
- Adopted rules for Supplemental Income Benefits and sub-claimant/health care insurer claims.

### **Self-Insurance Regulation**

- Certified Self-Insurers account for approximately 14.16% of the market share based on total written premium for workers' compensation in Texas.
- As of August 31, 2009, there are forty-five active Certified Self-Insurers covering 220 companies that employ 297,761 employees.
- Security deposits total \$578,413,484 (includes both active and withdrawn companies) and consists of \$252,560,000 in Letters of Credit, \$254,303,484 in Surety Bonds, \$9,550,000 in cash, and \$62,000,000 in negotiable securities.
- There are forty-nine withdrawn Certified Self-Insurers which includes two impaired employers and one non-renewal. All of these companies continue to be monitored by TDI-DWC.

### **Workplace Safety**

- Published CY 2007 Bureau of Labor Statistics (BLS) nonfatal occupational injury and illness incidence rates through the Survey of Occupational Injuries and Illnesses in October 2008.
- Met CY 2008 grant requirements for data collection and survey response rates.
- Published CY 2008 BLS fatality data through the Census of Fatal Occupational Injuries (CFOI) in August 2009.
- Streamlined CFOI data collection processes which allowed Regional and National BLS staff to perform review much earlier in the collection cycle than in previous years.
- Published the *Safety by the Numbers* quarterly newsletter.
- Exceeded the grant requirements and milestones for the Occupational Safety and Health Administration (OSHA) Data Initiative data collection.
- Continued participation on national OSHA workgroup for FY 2009 to develop the new national data system for consultation programs, and provided training to new consultation program systems administrators in other states on the existing data system.
- The Texas Occupational Safety and Health Consultation (OSHCON) Program was awarded an Onsite Consultation Achievement Recognition (OSCAR) Award by OSHA during the national Annual Onsite Consultation Conference in April 2009. Texas was recognized for its contributions to the new OSHA Information System (OIS), which will provide OSHA consultation and enforcement programs with a web-based data application.
- The Texas Consultation Program expanded participation with several regional oil and gas safety networks which began in Corpus Christi with the South Texas Exploration and Production Safety (STEPS) Network in 2004. In addition to this chapter, participation included Ark-La-Tex STEPS, North Texas Exploration and Production Safety, South Texas Exploration and Production Safety, the Greater Houston STEPS Network and the Permian Basin STEPS Network.
- Conducted 2,365 OSHCON consultations with employers from September 1, 2008 to August 31, 2009.
- Audited twenty-three insurance groups representing 115 insurance companies for compliance with provision of required loss control services from September 1, 2008 to August 31, 2009. Conducted onsite safety visits with 274 policyholders during the course of these audits.
- Processed 185 cases through the Safety Violations Hotline, eliminating 421 safety and health hazards in 162 workplaces.
- Provided safety and health educational products and services to 10,500 employers and 161,700 employees from September 1, 2008 to August 31, 2009.
- Conducted seven Regional Safety Summits across the state to provide information to target industries on preventing the leading types of non-fatal occupational injuries (sprain and strain) and the leading causes of fatal injuries (transportation-related incidents).
- Provided customized on-site training to seventy-four employers and 1,081 employees.
- Hosted the 13th Annual Health and Safety Conference, the *Texas Safety Summit* in May 2009 in Austin.

- Provided safety education products/services (including seminar training, on-site training, safety video check-outs/viewings, and TDI-DWC Resource Center reference assistance) to 98,877 Texas employees and 7,265 Texas employers from September 1, 2008 to July 31, 2009.
- Sent monthly *Safety & Health Update* e-newsletter to 97,487 recipients between September 1, 2008 and July 31, 2009.
- Maintained and updated TDI-DWC safety resource web pages that categorize safety and health training and educational materials by target industry, occupation and demographic. These pages were accessed 11,386 times between September 1, 2008 and July 31, 2009.
- Maintained and updated the “Helpful Safety & Health Links” web page which provides governmental and university safety resource training and educational materials by subject. This page was accessed 3,141 times between September 1, 2008 and July 31, 2009.
- Maintained an online library of over 200 safety and health publications, which were accessed from the website 1,790,800 times between September 1, 2008 and July 31, 2009.

#### **Communication with System Participants**

- Held Workers’ Compensation Educational Conferences:
  - September 14, 15, 16, 2009 – Austin.
  - October 26, 27, 28, 2009 – Dallas.
- Provided direction to stakeholders, employers, and other system participants regarding TDI-DWC subscriber and non-subscriber reporting requirements through presentations and distribution of information via the TDI website and non-subscriber associations.
- Provided information at educational events and seminars that were held in partnership with several Small Business Development Centers.
- Received calls for customer assistance from 17,603 injured employees to their Single Point of Contact in the field offices from January 1, 2009 to July 31, 2009.
- TDI-DWC field offices and the central office hosted 72 Brown Bag seminars for stakeholders during FY2009. These seminars covered topics such as: Required Medical Exams (RMEs), changes to the Supplemental Income Benefits rules, and an overview of workers’ compensation legislation passed by the 81st Texas Legislature. The seminars were attended by 812 people.
- Customer Service provided face-to-face service to 11,174 injured employees as walk-in customers at 24 field office locations across the state.
- Provided volunteer staffing for disaster recovery centers to assist Texas homeowners and insurance policyholders following hurricanes and other natural disasters.
- Conducted seven workplace safety training sessions in Spanish covering construction, lockout/tagout, machine guarding, and other topics. The sessions were attended by 185 employees.
- TDI-DWC led the International Association of Industrial Accident Boards and Commissions (IAIABC) Electronic Data Interchange (EDI) Medical Committee’s efforts to develop and publish two new implementation guides. The *LAIABC Workers’ Compensation Electronic Billing and Payment National Companion Guides*, Release 1.0, was published on June 1, 2009. The *LAIABC EDI Implementation Guide for Medical Bill Payment Records*, Release 1.1, was published on July 1, 2009.
- Conducted Ambulatory Surgical Center Fee Guideline training in Houston, Dallas and San Antonio.
- The Medical Outreach program provided updates to medical associations regarding rule development, public information announcements, and notification of training and other events. The goal is to keep health care providers in the system and remove some of the “hassle factors” by providing prompt resolution of questions about such subjects as billing and reimbursement.
- Developed and launched the Comp Connection for Health Care Providers program. Comp Connection is a customer service telephone line staffed by TDI-DWC employees who provide information and assistance to health care providers. Data collected from these calls allows the TDI-DWC to identify trends and training needs for health care providers. Over the last five months, the Comp Connection staff have concentrated on refining processes and identifying the best practices for assisting health care providers and medical office staff with navigating the workers’ compensation system. Staff has participated in ongoing training regarding the variety of issues that the health care providers experience. Comp Connection has worked closely with other program areas and agency management to ensure accurate direction of the program. This section has provided answers and resources for over 1400 questions or issues related to billing, fee disputes, compensability, extent of injury, pre-authorization, fee guidelines, denials, workers’ compensation rules, policies, and compliance.

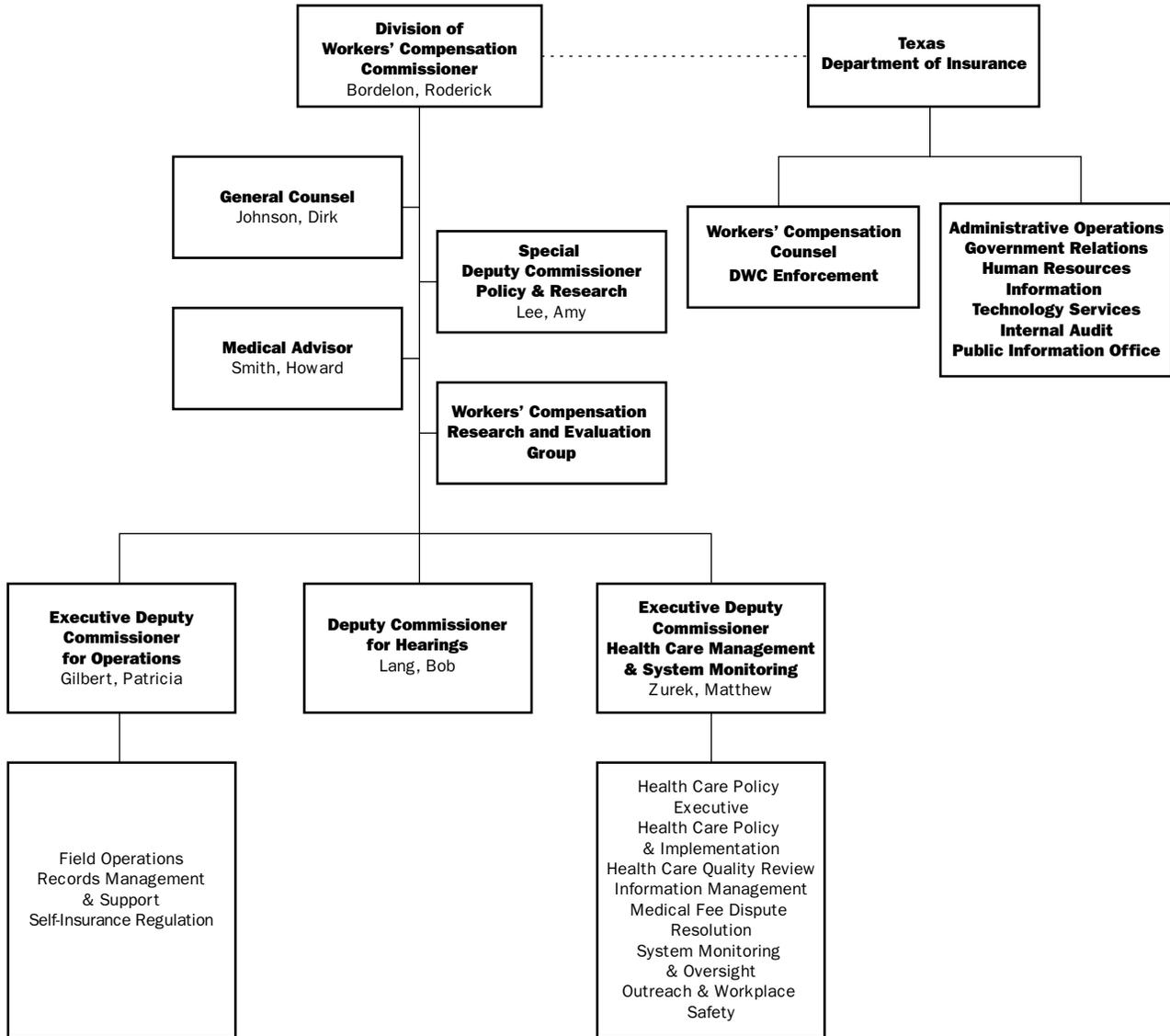
- Evaluated three webinar software vendor products. Internal testing has been successfully conducted, and Outreach staff is currently searching for external stakeholders for testing. The benefit of the webinar format is that it allows customers to attend educational seminars without having to incur the time and travel costs associated with more traditional training options. Customers can attend a webinar from an office desk, conference room, or a home office. Webinars also provide a technological solution for TDI-DWC to reach remote areas of the state while avoiding the cost of staff travel.
- Held two workplace safety seminars for public sector employees. These seminars were attended by fifty-five employees and thirty-six employers. Four seminars are planned for fiscal year 2010.
- Held one eBill and one Medical State Reporting stakeholder meeting in fiscal year 2009 to gather feedback and monitor implementation of the processes.

#### **Organizational Efficiency and Process Improvement**

- Integrated DWC Enforcement and Legal Services staff with TDI's Enforcement and Legal Services Staff. This change aligned DWC's rule making and enforcement activities with the rest of TDI, in an effort to improve agency efficiency and enhance communication among agency legal staff.
- Selected a new General Counsel in October, 2008. Expanded the DWC General Counsel's office with the appointment of an Assistant General Counsel and responsibilities for administering the Subsequent Injury Fund.
- Created four part-time Associate Medical Director positions to provide additional expertise in the Office of the Medical Advisor. These Associate Medical Directors may also perform Medical Quality Reviews.
- Created a new position of Special Deputy Commissioner for Policy and Research, in December 2008. This position was created to enhance policy analysis for legislative and rulemaking activities and to provide oversight for the research activities of the WCREG.
- Selected the National Council on Compensation Insurance (NCCI) as the sole statistical agent for collecting proof of coverage (POC) information.
- Implemented a more secure electronic data exchange process for claims reporting. Currently twenty-four percent of all claims EDI transactions are being received through this new method.
- Initiated an automation project to rewrite the COMPASS claims system in the TXCOMP environment. The agency also issued a Request for Information for possible technical solutions that could contribute to the success of the project.
- Completed upgrade of the telephone systems for all TDI-DWC field offices.

# The Texas Department of Insurance Division Of Workers' Compensation

August 31, 2009



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