

QUARTERLY ACTIVITY REPORT

January 1, 2000 - March 31, 2000

Walter W. Turner, Commissioner
KY Department of Workers Claims

KENTUCKY WORKERS' COMPENSATION 2000 SEMINAR

The International Association of Accident Boards and Commissions, in association with the Kentucky Department of Workers Claims and the Kentucky Workers' Compensation Education Association will be hosting a KENTUCKY WORKERS' COMPENSATION 2000 seminar, June 8-9, 2000, in Covington, Kentucky.

The cost of registration is \$275 per person and includes all meetings and breakout sessions, two lunches, refreshments, an Icebreaker Reception at the Embassy Suites Hotel on June 7th, and all educational materials. Anyone with a keen interest in workers' compensation issues is encouraged to attend.

For more information on lodging and agenda items, please see DWC's web site at: www.state.ky.us/agencies/labor/dwc

MANAGED CARE

In the first quarter of 2000, there were a total of 38 managed care plans approved to operate in the Commonwealth, with four applications in varying stages of review or revision.

Based on the numbers reported by the managed care plans, approximately 34% of Kentucky's workers were covered by a managed care plan as of the end of 1999.

DWC is in the process of providing managed care reporting requirements, forms, instructions and FAQ's via our website.

CLAIMS ACTIVITY

INJURIES REPORTED	9985
CLAIMS FILED	871
PRELITS	1009
AGREEMENTS	860
AWARDS	871
DISMISSALS	300
REOPENINGS	303
TRANSFERS TO ALJs	197
APPEALS TO ALJs	434
APPEALS TO BOARD	152
APPEALS TO CT. OF APPEALS	91
APPEALS TO SUPREME CT.	39

MARCH 2000 UTILIZATION REVIEW AUDIT

Departmental efforts at analyzing and improving the mandatory utilization review process (KRS 342.035; 803 KAR 25:190) continued into the first quarter of 2000. In late February, the Commissioner requested a compilation of audit data from each approved utilization review entity for the 1999 calendar year. Initial summary data has been reviewed while more in depth analysis will continue during the second quarter of 2000.

Audit letters were sent to each of the fifty-five entities approved to conduct utilization review (UR) of medical treatment delivered under the workers compensation program.

Response/compliance with the audit request was excellent.

ENFORCEMENT BRANCH

The Enforcement Branch continues its efforts to encourage the timely, voluntary compliance with the Kentucky Workers' Compensation Act by all Kentucky employers. During January through March, 2000, DWC officers conducted 2,400 investigations of Kentucky businesses verifying compliance with the Workers' Compensation Act. One hundred and seventy (170) citations were issued this quarter and collections of current and previously assessed penalties totaled \$79,338.

With the advent of March came full deployment of the HP Palmtop Computers for use by compliance officers in field investigations. The process previously has evolved from paper and clipboards to a paperless environment using email and touch-sensitive computer screens. Add the convenience of recording a message via the built-in microphone and you have a powerful enforcement tool providing greater detail with increased efficiency and accuracy.

EDI- PROOF OF COVERAGE

The POC reporting process continued to improve during the first quarter of 2000. Although there have been intermittent temporary delays in processing some information submitted by the carriers, on the whole, the percentage of accepted filings to total filings has remained high with minimal rejections. Furthermore, the end of the NCCI backlog is in sight. When NCCI's authority to submit POC data on behalf of the carriers was terminated on October 1, 1999 they had built a significant backlog of more than 450,000 records. During the last three months, the Department has identified those records representing valid carrier

submissions and initiated a process to mass reject those records that failed reporting edits. At the conclusion of this rejection process, there were less than 14,000 records requiring additional processing. This represented a ninety-seven percent (97%) failure rate for NCCI reported submissions. Processing of the valid submissions may be completed as early as June 1, 2000 with acknowledgements returned to carriers for accepted and rejected policies.

SELF-INSURANCE

During the first quarter of 2000 a significant amount of time was devoted to processing information submitted by the individually self-insured employers for the simulated premium calculation. This process includes comparisons with previously filed employer information maintained by the Department and databases residing with other governmental agencies. The Self-Insurance Branch also performed various research and analysis responding to legislative inquiries during the past three months.

Group self-insurance is also available to employers through heterogeneous and homogeneous group self-insurance funds. The Self-Insurance Branch, pursuant to additional oversight requirements per HB 1, monitors the financial conditions and operations of the group self-insurance funds. Audits are conducted on each group fund at least once every four (4) years utilizing Certified Financial Examiners under contract with the Department of Insurance coupled with DWC's own self-insurance auditors. Audits conducted during calendar year 2000 will complete the first round of group fund examinations.

OMBUDSMAN BRANCH

NUMBER OF REQUESTS RECEIVED:	2145
COMPLETED	1973
PRIOR MONTH COMPLETED	316
PENDING	282

TYPE OF CALL:

CLAIMANT	1097
CARRIER	231
EMPLOYER	197
ATTORNEY	245
MEDICAL PROVIDER	173
GOVERNMENT OFFICIAL	42
MEDICAL REVIEW	20
OTHER	140
TOTAL:	2145

SUBJECT BREAKDOWN OF CALLS:

MEDICAL FEE SCHEDULE	108
RIGHTS & PROCEDURES	1348
INTERVENTION	211
MEDICAL FEE DISPUTE	11
CLAIMS STATUS INQUIRY	223
FRAUD	9
COVERAGE	273
FIRST REPORT INQUIRY	72
MANAGED CARE	29
REHABILITATION	2
UTILIZATION REVIEW	25
OTHER	224
TOTAL:	2535

OTHER OMBUDSMAN ACTIVITIES:

MEDIATION CONFERENCES	0
FRAUD REFERRALS	3
ENFORCEMENT REFERRALS	11
SPEAKING ENGAGEMENTS	4
LETTERS/FAXED REQUESTS	231
REFERRALS TO OFFICE OF CONSTITUENT SERVICES	5
REFERRALS TO OUTSIDE AGENCIES	27
FORM REQUESTS	354
TOTAL:	635

ADMINISTRATIVE LAW JUDGES

During the first quarter of 2000, thirteen administrative law judges held 556 informal conferences. During these informal conferences, they presided over settlement negotiations, ruled on evidentiary disputes, and identified contested issues.

During this period, the ALJs also held 390 formal hearings in claims transferred from the arbitration level or in which *de novo* review of an arbitrator's decision was requested. The ALJs issued 320 opinions in these claims. They also issued 41 decisions in claims on remand from the Workers Compensation Board, the Court of Appeals, and the Supreme Court of Kentucky.

In addition, six of the administrative law judges were designated to serve as acting arbitrators during this quarter. They held 375 benefit review conferences and issued 247 benefit review determinations.

WORKERS COMPENSATION SPECIALISTS

Requests for assistance: 1757

Requests for assistance completed: 1560

Intervention requests: 320

Intervention requests completed: 175

Assisted claims filed: 36

Other forms of assistance: 39

EDI MEDICAL BILL REPORTING

Medical Bill Reporting through EDI was mandated effective January 1, 2000. Approximately 30 trading partners began testing on that date, transmitting medical bills to DWC and receiving acknowledgements of acceptance or rejection. As of publication, nine trading partners, including EDI vendors, claims administrators, and self-insureds, have been approved for production status.

HOUSE BILL 1 REFORMS

WHAT THE RESEARCH REVEALS ...

PRO SE CLAIMS HISTORY

<u>Yr. Filed</u>	<u># Claims</u>	<u># Pro Se</u>	<u>% Pro Se</u>
2000	535	16	3%
1999	4,003	165	4%
1998	4,483	176	4%
1997	4,939	226	5%
1996	10,851	169	2%
1995	8,527	129	2%

NOTE: Based on date of claim filing and no PA1 in the party code field. Run date: 3/6/2000

DOES ARBITRATION CLOSE CLAIMS?

In 1996, House Bill 1 created arbitration as a new stage in the workers' compensation claims resolution process in an attempt to expedite claim closure and thus lower litigation cost for both injured workers and employers while expediting the delivery of statutory benefits. The arbitration process is fairly informal, fast and economical, at least insofar as the 54% of all claims which reach closure at the arbitration level.

Claims are closed by arbitrators either through approval of a settlement or entry of an award within 90 mean days of assignment. Claims which proceed to the ALJ level of determination are closed on average within an additional 171 days.

The key indicator of whether a claim will close at the arbitration level is return to work status.

To the contrary, 75% of those claims

which proceed to the written determination by an arbitrator involve workers who have not returned to the job performed at the time of injury and nearly 70% of arbitrator benefit review determinations are appealed.

Seventy-six percent of the claimants who enter into settlement agreements before an arbitrator have returned to work at the same wages earned as of the incident.

Permanent Total Injury Award/Agreement Age Comparison

House Bill 928 (1994)

04/04/94 to 04/04/96

<u>Age Group</u>	<u>Percent</u>
18 - 29	6.66
30 - 39	26.66
40 - 49	29.77
50 - 59	27.11
60 +	9.77
*Number of PT Cases	221
PT Cases as of 3/21/00	509
Average Age	46
Youngest	19
Oldest	74

House Bill 1 (1996)

12/12/96 to 12/12/98

<u>Age Group</u>	<u>Percent</u>
18 - 29	11.93
30 - 39	19.75
40 - 49	32.51
50 - 59	30.04
60 +	5.76
*Number of Cases	243
Average Age	45
Youngest	18
Oldest	75

*PT Award/Agreement dates limited to 3 years 2 months from law change effective dates. Counts represent decision at highest level. Based on Injury Date; excludes consolidated claims.

UTILIZATION REVIEW AUDIT

Utilization review was enacted as part of a design to control escalating medical costs. (HB 928; April, 1994) Mandatory review of medical treatment by medically trained personnel was to insure delivery of appropriate medical treatment to injured workers. Statistics do not support anecdotal commentary that UR entities are simply an arm of the insurance carrier - utilized to deny service

Summary results from UR entities indicate that the system processed 56,633 utilization reviews at the initial utilization review level (nurse review/approval or physician review resulting in approval or denial). Care was approved in 51,947 of those cases. These statistics indicate an overall approval rate of 92%. Meaning that 92% of proposed treatment is approved as reasonable or necessary by the UR review process. This statistic comes as a surprise to many. A criticism of the UR process has been that the process is biased in favor of denying treatment to meet expectations of short-term dollar savings for insurance carriers and self-insured employers.

IS KENTUCKY UNIQUE IN PROVIDING FOR UNFAIR CLAIMS SETTLEMENT PRACTICES WITHIN ITS WORKERS' COMPENSATION SYSTEM?

To determine the status of unfair claims actions in the area of workers' compensation, case law in all 50 states was researched.

The research revealed that a minority of fifteen jurisdictions allow a workers' compensation claimant to maintain a civil action for allegations of what Kentucky considers unfair violations.

CWP CLAIMS ANALYSIS

Summary of Old Law CWP Claims

Filings	713
Withdrawn	2
Pending	103

Concluded:

Settlements	214
Awards	108
Dismissed	278

Concluded Claims Disposition

<u>Type</u>	<u># of Claims</u>	<u>Percent</u>
Dismissals	278	46%
Settlements	214	36%
Awards	108	18%
TOTAL	600	100%

NOTE: Average years exposure = 22
Average age of claimant = 51

Summary of New Law CWP Claims

Filings	87
Withdrawn	1
Pending	29

Concluded:

Settlements	15
Awards	6
Dismissed	36

Concluded Claims Disposition

<u>Type</u>	<u># of Claims</u>	<u>Percent</u>
Dismissals	37	64%
Settlements	15	26%
Awards	6	10%
TOTAL	58	100%

Methodology: Concluded non-consolidated claim status determined by selecting the last instance of status codes. Claims are pending wherein appeal time for final status has not elapsed. Consolidated claims included and finality of such verified by workers' compensation specialists.

THE IMPACT OF HB 992

OFFICE OF COMMISSIONER HB 992 CLAIMS PROCEDURES IMPLEMENTATION PLAN

On April 21, 2000 Governor Paul E. Patton signed into law House Bill 992 which becomes effective July 15, 2000 and amends the Workers Compensation Act [KRS Chapter 342] in several areas. Significant changes include:

- Increased Permanent Partial Disability Benefits
- Enhanced Payments for Fatalities
- Greater Penalties for Safety Violations Causing Injury
- More Frequent Reopening Opportunity
- Reduction in the level of Adjudication

Changes in *benefit levels* are largely self-implementing and require little activity by the Department of Workers Claims, other than revision of printed resource materials and reprogramming of information system functions. To the contrary, *legislative alteration* of the workers compensation claims adjudication mechanism necessitates immediate and multi-faceted action by the Department.

HB 992 eliminates arbitration as the initial step in the claims resolution process and essentially restores the adjudication mechanism existing prior to the adoption of HB 1 in December 1996. Arbitration personnel are eliminated while the number of administrative law judges has been increased.

HB 992 necessitates revamping of the regulations governing practice and procedure on an emergency basis. Obviously,

the legislative goal is to remove what it views as a cumbersome, time-consuming step in the claims resolution process. DWC is immediately charged with the responsibility of initiating changes which indeed streamline, rather than delay, the resolution of workers' compensation claims.

This implementation plan addresses the elimination of arbitration and outlines the policies and practices to be utilized to facilitate an orderly and expeditious transfer of first level claims adjudication responsibility from arbitrators to administrative law judges.

The plan has been developed with cognizance of the fact that the arbitration process on average involves the passage of ninety days from assignment of claims to an arbitrator to rendition of an arbitrator's benefit review determination. Given the additional facts that arbitrators will have no authority after July 14, 2000 and that it is most desirable that arbitrators conclude their work on pending claims before July 1, 2000, beginning immediately, no new claims assignments will be made to arbitrators.

NEW CLAIMS ASSIGNMENT

In all recently filed new and reopened claims which have not been assigned for arbitration, an order will be issued transferring the claim immediately to an ALJ. The Commissioner will issue an order designating the ALJ, setting the time of the benefit review conference under HB 992 (synonymous with pre-hearing conference) and establishing the time frame for proof taking. All parties will be granted 45 days to take proof, defendants only 30 days thereafter, followed by 15 days for claimant's rebuttal. Generally, benefit review conferences will be held during the second week of the month, approximately 90

days after claim filing. Hearings will be held during the fourth week of the month. In July 2000, a period of transition will occur and ALJs will be conducting pre-hearing conferences during both the first and second weeks of the month.

TRANSFER OF PENDING ARBITRATOR CLAIMS

Arbitrators and ALJ's acting as arbitrators will not conduct benefit review conferences (BRC) under existing law after June 1, 2000. Claims in which the BRC would have otherwise been held after June 1, 2000 shall be transferred by the arbitrator to an ALJ. The Commissioner will assign these claims to an ALJ and issue the scheduling order described above.

Claims presently pending before an ALJ acting as arbitrator upon which a BRC would otherwise be conducted subsequent to June 1, 2000 shall be transferred from the present ALJ acting as an arbitrator to the same ALJ acting in that capacity for ultimate resolution. That ALJ shall issue in a timely manner orders as necessary to resolution, including the transfer order, a proof taking schedule and designation of the time and place of the benefit review conference (i.e. pre-hearing conference).

ARBITRATION CLAIMS IN ABEYANCE

Claims which are in abeyance before an arbitrator as of June 15, 2000 shall be transferred to an ALJ. Claims abated before an ALJ acting as an arbitrator shall be transferred by the ALJ acting as an arbitrator to him/herself in the ALJ capacity.

MISCELLANEOUS MATTERS

Arbitrators are expected to continue with disposition of claims, but should issue no benefit review determinations after June 15, 2000. They will address all petitions for reconsideration before July 14, 2000.

HB 992 recreates the Workers' Compensation Board as of July 15, 2000. There will be an interval of 15 days commencing July 1, 2000 when the Workers' Compensation Board is no longer in existence. However, the absence of the WCB for 15 days should not impact procedure for filing appeals from ALJ decisions. DWC does not presently anticipate the need to revise practice rules relating to appeals to the WCB.

A committee representative of workers' compensation practitioners and adjudicators has met to consider rule changes and to make recommendations to the Commissioner. In the near future, the Commissioner expects to have practice rules fully implementing the provisions of HB 992 in place on an emergency basis.

Actuaries have projected that greater income benefits, greater attorneys' fees, and wider opportunities for reopening provided by HB 992 will give rise to greater utilization of the workers' compensation program and increase claims filings. The General Assembly took increased utilization into account by authorizing in HB 992 as many as six additional ALJ's. Claims projections are being analyzed by the Commissioner and he will certify the number of ALJ vacancies to be filled in order to meet the needs of the program. That determination will be made in time for the Workers' Compensation Nominating Commission to meet and make recommendations in regard to the ALJ vacancies, as well as for three Workers' Compensation Board members.

DEPARTMENT OF WORKERS CLAIMS

	<u>BUDGET</u>	<u>SPENT TO DATE</u>	<u>% SPENT</u>
Total	\$15,637,000	9,094,031.32,	58.2%
Personnel	\$12,192,000	7,568,483.31	62.1%
Operating	\$3,365,000	1,485,116.01	44.1%
Capital Equipment	\$80,000	40,432.00	50.5%

% Of Year Lapsed.....75%
% Of Budget Expended - 56.3%

1999 FATALITY REPORT CARDS

In January, DWC issued report cards concerning timely filing of fatalities to 46 carriers, TPAs, and self-insureds reporting approximately 59 work related fatalities in 1999. An estimated 27 fatalities were reported in an untimely manner. The most often used explanations for the delays in reporting concerned computer errors, clerical errors, or communication problems. Carriers, TPAs, and self insureds alike were encouraged to renew their efforts to provide death benefits and services promptly to the families of Kentucky's deceased workers.

MEDICAL EVALUATIONS

As of March 2000, a total of 1,144 medical evaluations had been scheduled at the University of Kentucky, with 998 completed and 1,076 medical evaluations had been scheduled at the University of Louisville, with 932 completed.

Scheduled:

RIB 1313
Black Lung 379
Hearing Loss 506
Injury 772
Other O.D.65

Completed:

RIB 461
Black Lung 354
Hearing Loss 454
Injury 604
Other O.D. 57



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