



# **Annual Report on Cost Containment**

***Fiscal Year 2023***

**October 20, 2023**

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## I. Introduction

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The General Appropriations Act, HB 1, 88<sup>th</sup> Legislature, Regular Session, 2023 (Article I, Rider 7) requires the State Office of Risk Management (Office) to submit an annual report detailing the effectiveness of cost containment measures undertaken during the fiscal year and proposing additional measures to reduce workers' compensation costs in future years. This is the Fiscal Year 2023 (FY23) Annual Cost Containment Report.

### A. Background

The Office was created in 1997 to streamline the state's risk management and claims processing programs. The objective was to change the organization and management of the state risks and claims payments to reduce injuries, improve loss control and claims handling, and otherwise enhance the quality and effectiveness of the state's risk management and claims processing programs.

The Executive Director of the Office serves as the State Risk Manager and is responsible for supervising the development and administration of a system of risk management for the state. The Office is charged by law to administer the enterprise risk and insurance management programs, self-insured workers' compensation program, and continuity of government operations (COOP) program. Its mission is to enable State of Texas agencies to protect their employees, the general public, and the State's physical and financial assets by reducing and controlling risk in the most efficient and cost-effective manner.

The Office is governed by a five-member Board appointed by the Governor. Members of the board must have demonstrated experience in insurance and insurance regulation, workers' compensation, and risk management administration. Detailed information regarding the qualifications and experience of the Board of Directors is available at the Office's website at <https://www.sorm.state.tx.us/about-us/meet-the-board-of-directors>.

The Office is administratively attached to the Office of the Attorney General, which provides administrative support services and resources.

### B. Workers' Compensation

The Texas Tort Claim Act creates a specific waiver of sovereign immunity for state employee workers' compensation claims. Pursuant to Texas Labor Code Section 412.011(b)(7), the Office administers the workers' compensation insurance program for government employees established under Texas Labor Code Chapter 501. There are also situations in which certain non-state employees are covered by workers' compensation through the Office.

The Executive Director of the Office serves as the administrator of the government employees workers' compensation insurance program pursuant to Texas Labor Code Section 412.041(e). In administering and enforcing Chapter 501, the Executive Director acts in the capacity of insurer. The Office also provides individual state entities with claims administration and comprehensive claims handling services.

#### QUICK FACTS

**The state employee workers' compensation program covers:**

- **134 state agencies and institutions of higher education**
- **123 Community Supervision and Corrections Departments**
- **Windham School District within the Department of Criminal Justice**
- **Encompassing approximately 185,000 individual employees**

The Texas A&M University System, University of Texas System, and the Texas Department of Transportation are exempted from the Office’s workers’ compensation program and operate their own individual workers’ compensation programs.

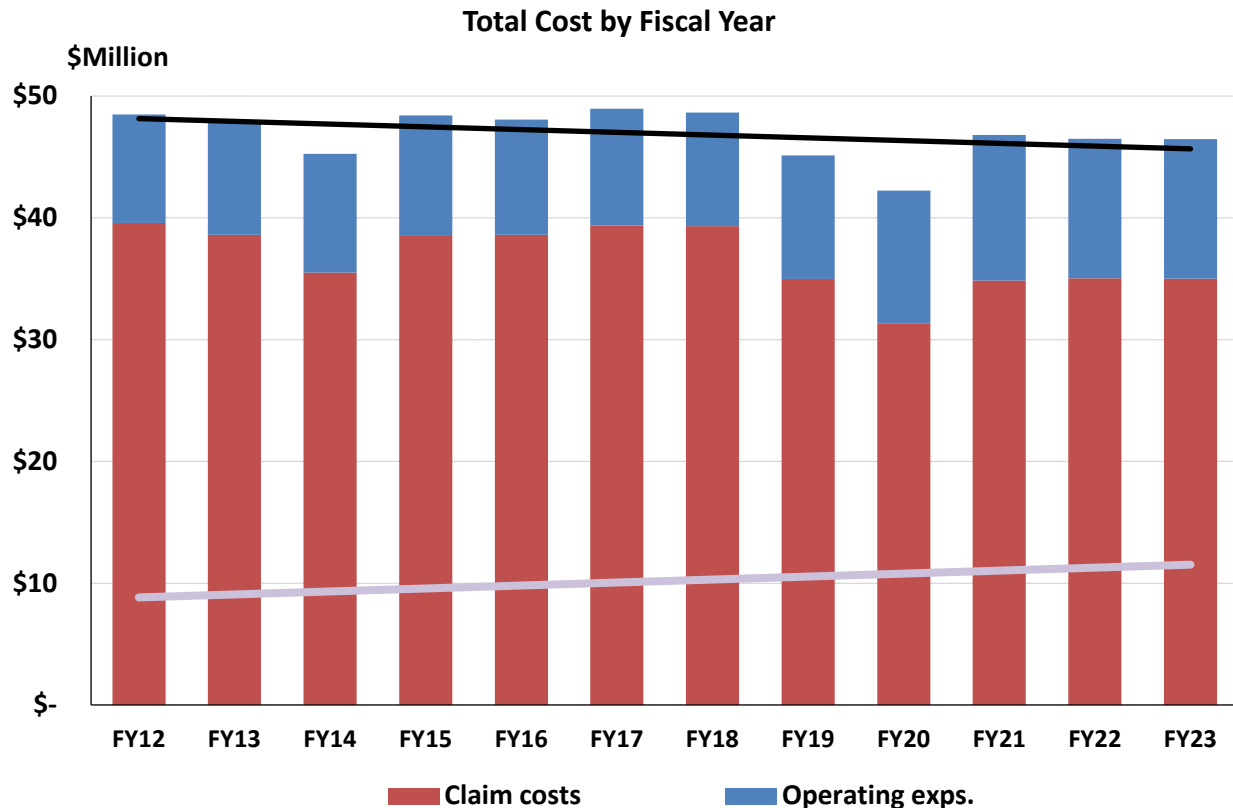
**C. Non-GR Funding**

The Office is administered with legislatively appropriated funding through the allocation program for the financing of state workers’ compensation benefits and risk management costs, as well as authority for collected recoveries. In the allocation program, each state entity must enter into an interagency contract with the Office to pay an allocated share of the Office’s administrative costs, workers’ compensation claims expenditures, and funding for employee benefits.

Texas workers' compensation insurance companies typically set the workers' compensation premium rate per \$100 of payroll using industry classifications that are based on the type of business. The Office does not use classifications in its assessment allocation program. The workers’ assessment allocations are based, in part, on the individual loss experience of the state entity. The fewer accidents a state entity has, the more it potentially saves on its assessment.

Despite actuarial projections that workers' compensation claims costs would continue to increase by several million each year after reaching \$70 million in FY03, by the end of FY04, claims costs had decreased to \$55.8 million. Claims costs have continued to steadily decline.

Since FY12, workers' compensation claims costs have been below \$40 million each fiscal year.



## II. Cost Containment Strategies

One of the Office’s core statutory missions is to provide covered injured state employees with access to prompt, high-quality medical care within the framework established by the Texas Workers’ Compensation Act. The Office must also ensure it provides appropriate income benefits and medical benefits in a manner that is timely and cost-effective.

Developing a strategy to effectively manage and contain workers’ compensation claim costs requires an integrated, holistic approach. The Office’s approach includes cost containment strategies applied before an incident occurs, during disability, and when the worker returns to work.

### A. Accident Prevention

The Enterprise Risk Management Program examines wide-ranging risks and exposures, performs frequency and severity analyses, and recommends mitigation strategies.

The *Incident Rate of Injuries and Illnesses per 100 Covered Full-Time State Employees* provides an objective measure of the results of implementation of covered state entities’ risk management plans and the results of the Office’s risk management program, related specifically to occupational injury. The injury frequency rate is important as it reflects not only the effectiveness of the Office’s risk management program in identifying risks to covered state entities, but also reflects covered state entities actions regarding implementation of recommendations to control and correct the conditions that lead to injured state employees.

Injury Frequency	
•	<b>FY23 – 3.81%</b>
•	<b>FY22 – 4.05%</b>
•	<b>FY21 – 3.03%</b>
•	<b>FY20 – 3.49%</b>
•	<b>FY19 – 3.22%</b>

### B. Risk Management Services

The Office employs risk management specialists who review, verify, monitor, and approve risk management programs developed by state entities. A Risk Management Program Review (RMPR) can help a state entity determine the best methods for avoiding/controlling the costs of on-the-job injuries and minimizing lost productivity. The Office also conducts on-site consultations to state entities’ physical locations and facilities each fiscal year. If risk exposures are identified during a site visit, the Office provides written recommendations on risk prevention and control measures that state entities can implement to prevent or reduce claims and losses and tracks resolution efforts.

The Office’s goal is to focus on hazards or risks that need to be addressed strategically and proactively to reduce the frequency and severity of workers’ compensation claims. Risk factors will vary depending on the geographic location, types of and diversity in the work being performed, and overall risk profile. The effectiveness of the Office’s risk management program can be seen in the low cost per \$100 of state payroll and the low cost per covered employee:

	Cost Per \$100 of State Payroll	Cost Per Covered Employee
<b>FY23</b>	\$0.38	\$249.68
<b>FY22</b>	\$0.48	\$233.58
<b>FY21</b>	\$0.48	\$230.90
<b>FY20</b>	\$0.45	\$211.12
<b>FY19</b>	\$0.50	\$225.11

### C. Workers' Compensation Claims Handling Practices

The state employees’ workers’ compensation program provides individual state entities with claims administration and comprehensive claims handling services. The Office also ensures that an injured

employee, who suffers a compensable injury in the course and scope of employment, has access to medical care and receives wage replacement (income) benefits.

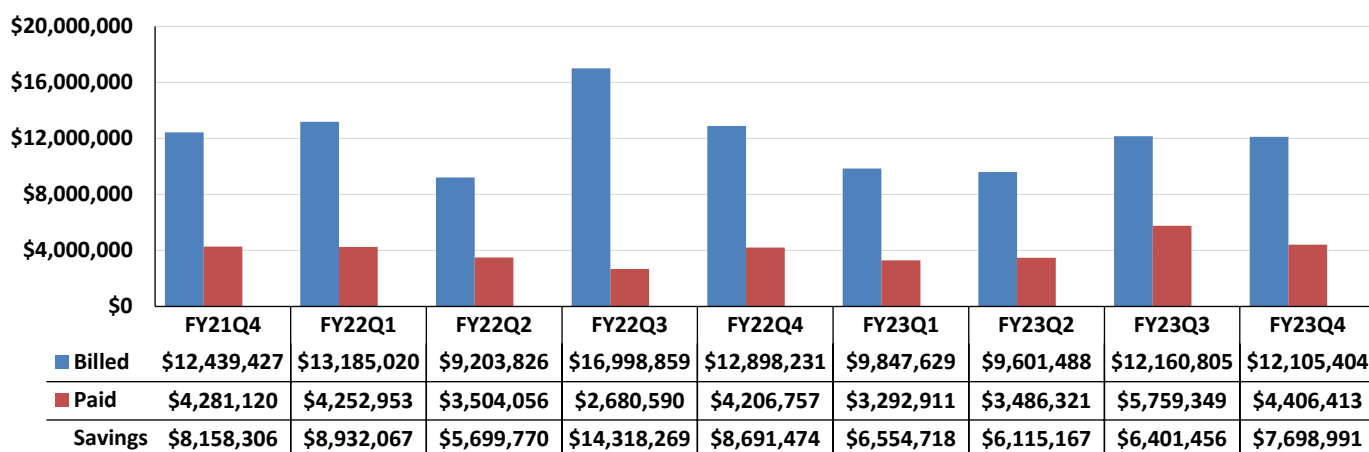
The Office follows best practices for workers' compensation cost containment. Licensed adjusters manage all aspects of a workers' compensation claim. When an injury occurs, an adjuster promptly conducts a thorough investigation to determine whether the injured employee has a compensable work-related injury. The assigned adjuster maintains regular and continued communication with the injured employee, health care provider, and employer. An active call center provides additional access to a live person during the Office's business hours.

The Office works to reduce overall medical and indemnity costs through improved claim handling practices, education, and training. The Office continuously evaluates its policies and processes and implements change as needed to meet internal and external needs.

#### D. Medical Cost Containment Services

Medical cost containment provides fiscal responsibility with state funds, minimizes costs to employer state entities and injured employees, and reduces costs associated with workers' compensation losses and claims administration. The Office is contracted for the following medical cost containment services: (1) medical bill review services, (2) certified workers' compensation health care network, and (3) utilization review services. Cost savings from medical bill review services are shown in the following chart:

**Total Medical Cost Savings FY21Q4 - FY23Q4**



#### E. Workers' Compensation Health Care Network

Texas Insurance Code Chapter 1305 requires a workers' compensation network to develop and maintain an ongoing Quality Improvement Program (QIP) designed to monitor and evaluate the quality and appropriateness of care and services and to pursue opportunities for improvement objectively and systematically. The annual QIP must address both the quality of clinical care and the quality of services using factors such as, type of services provided, populations served by the network in terms of age groups, disease or injury categories, special risk status, medical outcomes, and return-to-work outcomes.

The Centers for Medicare & Medicaid Services<sup>1</sup> and TDI-DWC use value-based measures to evaluate provider and network performance. In its *Workers' Compensation Network Report Card Results*.<sup>2</sup> TDI-DWC concludes that networks tend to perform the same as or better than non-network claims.

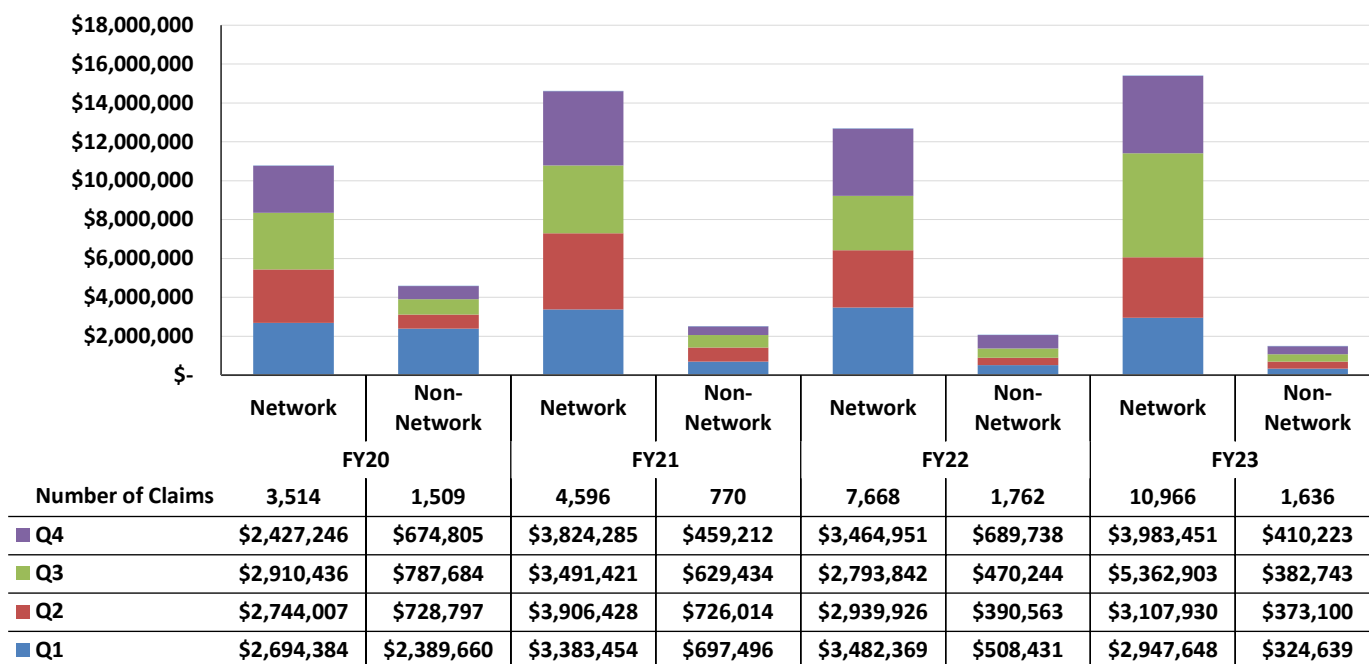
<sup>1</sup> <https://www.cms.gov/newsroom/fact-sheets/value-based-care-state-medicare-directors-letter>

<sup>2</sup> <https://www.tdi.texas.gov/reports/wcreg/documents/netrc2022.pdf>



The following chart demonstrates the network and non-network costs for FY23 and previous fiscal years:

**Network and Non-Network FY20 - FY23**



### F. Medical Treatment Guidelines

TDI-DWC has adopted treatment guidelines that should be used as a framework to develop treatment for injured employees. Health care providers must consider care above or below the guidelines with the unique factors associated with an injury. Health care that is provided in accordance with the treatment guidelines is presumed reasonable and reasonably required.

Similarly, a workers' compensation health care network can adopt treatment guidelines and individual treatment protocols. The treatment guidelines and individual treatment protocols must be evidence-based, scientifically valid, and outcome-focused and be designed to reduce inappropriate or unnecessary health care while safeguarding necessary care.

Treatments and services that exceed, or are not included, in the treatment guidelines may require preauthorization.

### G. Preauthorization of Medical Services

The Texas Workers' Compensation Act and the rules adopted by the TDI-DWC require health care providers to obtain preauthorization of certain medical procedures prior to such services being provided. The health care services must be prospectively reviewed and preauthorized as medically necessary before the service is provided to an injured employee. The preauthorization guidelines can vary between non-network and network claims.

CareWorks performs utilization review services related to preauthorization requests. Preauthorization savings represent the avoidance of expenses related to unreasonable or unnecessary procedures or services prior to being provided and billed. It should be noted that health care that was not preauthorized may be approved later if there is a change in medical diagnoses or documentation is provided to support the request or alternative treatment may be approved. Under these circumstances "savings" attributable to preauthorization will not accurately reflect the true cost of treatment.



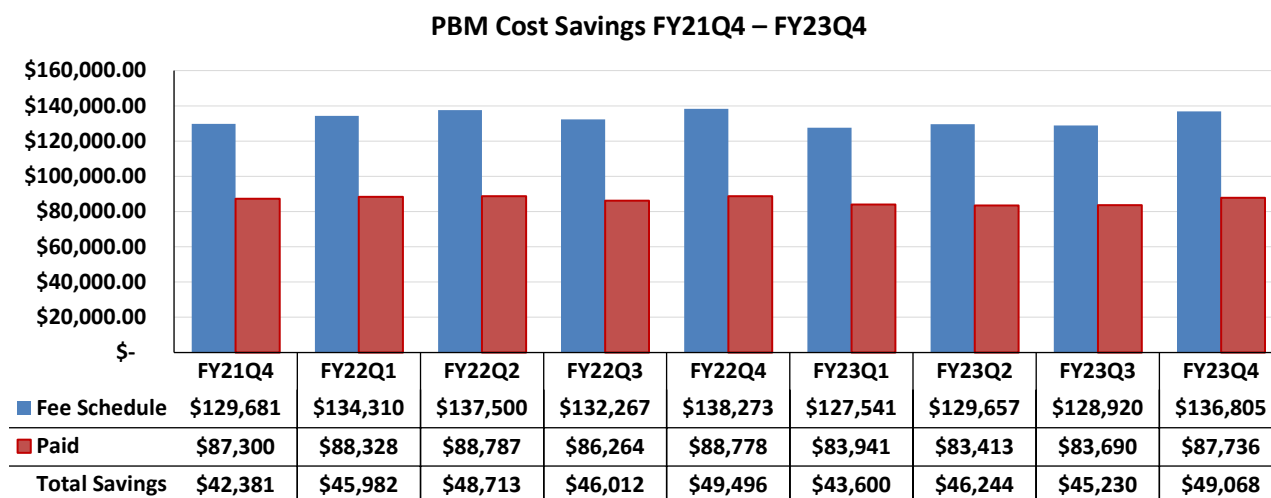
## H. TDI-DWC Fee Schedules

Workers' compensation benefits include medically necessary treatment, prescription drugs, and over-the-counter medication related to the compensable injury. TDI-DWC sets the amount of reimbursement for health care treatment and services and prescription drugs in non-network claims. The fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The amount of reimbursement for health care treatment and services provided by a network provider is determined by the contract between the network and the provider.

## I. Pharmacy Benefit Manager Services

Workers' compensation benefits include medically necessary prescription drugs and over-the-counter medication. The Office has a medical cost containment contract with a pharmacy benefit manager (PBM), to ensure cost-savings and prompt service for medically necessary medications. Participation in this program is entirely voluntary for injured workers. The reimbursement fees for prescription drugs are set by TDI-DWC. The Office receives a discount below the pharmaceutical fee guideline on the medication obtained through the PBM.

The following chart shows savings from the voluntary PBM program:



## J. Telemedicine and Telehealth Services

The Texas Labor Code and TDI-DWC's rules allow for billing and reimbursement of certain telemedicine and telehealth services in workers' compensation claims. Injured employees may receive these services regardless of their geographic location. Telemedicine services are those provided by a physician licensed in Texas. Telehealth services are those provided by health care professionals other than physicians.

Telemedicine and telehealth services must be on the list of covered services and providers must include specific information on the CMS-1500. The reimbursement rates follow TDI-DWC's fee schedules and network reimbursement schedules, which result in savings.

The Office's records indicate there is limited utilization of telemedicine and telehealth services in the workers' compensation program administered by the Office.

## K. Peer Reviews and Required Medical Examinations

The Office utilizes peer reviews of medical services and pharmaceuticals and required medical examinations of injured workers to verify the medical necessity and reasonableness of medical care and pharmaceuticals utilization; to determine whether such treatments and prescriptions are related to

compensable injuries; and to ensure that the injured employee receives quality medical care.

These services can be utilized when a determination requires medical expertise beyond what may be expected of a licensed adjuster. The opinions obtained form the basis of actions taken by the Office and establish the factual and medical evidence necessary to defend the Office’s determinations through the dispute resolution process. As a result of these opinions more appropriate care is provided to injured workers while delivering savings through the elimination of unnecessary care.

#### L. Subrogation and Subsequent Injury Fund Recoveries

Subrogation reduces costs in two distinct ways. First, if a workers’ compensation claim is based on an injury where a third party’s negligence was the primary cause of the injury, the Office can assert a subrogation lien against the third-party’s liability carrier or payer for the amount that has been paid in workers’ compensation benefits on the claim. Any monies recovered through subrogation are used for the payment of workers’ compensation benefits to state employees.

Second, an additional feature of a subrogation lien is the avoidance of future expenses in an amount equal to the injured worker’s direct recovery from the third-party settlement that exceeds the workers’ compensation lien. Workers’ compensation insurance carriers have a statutory right to treat the additional settlement amount as an offset against potential future benefits that may be sought by the injured worker. Consequently, until the injured worker exhausts the third-party settlement, the Office does not have to pay future benefits.

The General Appropriations Act sets the annual target for the Office’s subrogation recoveries. The chart below shows the combined total of recoveries from subrogation, criminal restitution, and the TDI-DWC Subsequent Injury Fund:

	Target	Third-Party Recoveries
<b>FY23</b>	\$567,750	\$766,171
<b>FY22</b>	\$567,750	\$432,643
<b>FY21</b>	\$567,750	\$682,644
<b>FY20</b>	\$567,750	\$813,850
<b>FY19</b>	\$567,750	\$523,058

#### M. COVID-19 Workers’ Compensation Claims

Senate Bill 22 in the 87<sup>th</sup> Legislature R.S., created a presumption that COVID-19 arose out of employment under certain conditions for first responders, such as detention officers, custodial officers, firefighters, peace officers, and emergency medical technicians. This bill expired effective September 1, 2023.

The following information summarizes the COVID-19 data, from December 1, 2019, through March 31, 2023, that the Office provided to the Texas Department of Insurance, Division of Workers’ Compensation (TDI-DWC):

<b>Number of COVID-19 Exposures Reported to the Insurance Carrier as Work-Related</b>	<b>8,734</b>
<b>Number of COVID-19 Claims with Confirmed Positive Test or Diagnosis</b>	<b>3,010</b>
<b>Number of Accepted COVID-19 Claims with Confirmed Positive Test or Diagnosis</b>	<b>1,667</b>
<b>Number of Denied COVID-19 Claims with Confirmed Positive Test or Diagnosis</b>	<b>1,343</b>
<b>Total Amount Paid in Medical Benefits for COVID-19 Claims</b>	<b>\$2,833,364.86</b>
<b>Total Amount Paid in Income Benefits (TIBs, IIBs, SIBs, or LIBs) and Salary Continuation Paid in Lieu of Income Benefits for COVID-19 Claims</b>	<b>\$1,774,265.20</b>
<b>Total Amount Paid in Death Benefits for COVID-19 Claims</b>	<b>\$4,607,630.06</b>
<b>Total Amount Paid in Burial Benefits for COVID-19 Claims</b>	<b>\$250,163.99</b>

## **N. Timely Payment of Medical and Indemnity Benefits**

The Workers' Compensation Act requires the Office to provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective. Income benefits must be initiated within certain time frames and notice requirements apply when benefit changes occur. The timeframes for payment or denial of payments for health care services are also set by TDI-DWC. Compliance with these deadlines is important to avoid unnecessary delay in providing benefits to a claimant. The Office must also pay interest if an income benefit or medical bill payment is late. Failure to comply with payment deadlines also subjects the Office to administrative fines.

## **O. Recoupment of Overpayments**

The Office can recoup an overpayment of indemnity from future indemnity benefits. Indemnity recoupment must comply with the TDI-DWC's statutes and rules. Likewise, the Office may request a refund when an overpayment is made to a health care provider.

## **P. Fraud Detection and Investigation**

The Office's Special Investigations Unit investigates potential fraud and abuse as a part of the Office's workers' compensation fraud detection program. The Office investigates both individual and medical provider fraud. The Office actively pursues administrative and criminal prosecution against those who attempt to receive monies and benefits to which they are not entitled.

# **III. Proposed Additional Cost Containment Measures**

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## **A. Training on Medical Terminology and the Official Disability Guidelines**

The Office plans to coordinate with its medical cost containment vendors to establish regularly occurring training for its workers' compensation claims adjusters on medical terminology, treatment for conditions associated with a body part or disease and limiting treatment to the compensable injury. Early identification of the work-related injury and appropriate management of health care can promote injury healing and improve stay-at-work and return-to-work outcomes and achieve effective medical cost control.

Adjusters can also be trained to use the Official Disability Guidelines (ODG) on medical treatment and return-to-work to identify workers' compensation claims with claims costs that exceed the recognized standards. Actively managing high risk claims as well as claims that fall outside the ODG's treatment guidelines, costs, and return-to-work standards can reduce medical costs.

## **B. Catastrophic Workers' Compensation Claims**

Sudden accidental injuries can cause serious physical damage to the body that is permanent and life-changing. The Office is exploring methods to ensure early detection and intervention in claims with catastrophic injuries. Coordination of services and expediting treatment can lead to cost savings and faster recoveries. Establishing a collaborative relationship with treatment providers can assist the injured worker in achieving the least restrictive, most independent state possible. Once the acute phase of the injury is stabilized, it is also essential to maximize the injured person's quality of life, especially if return to work is not possible.

## **C. Return-to-Work Program**

A basic goal of the Workers' Compensation Act is to provide return to work coordination services to facilitate an injured employee's return to employment as soon as it is considered safe and appropriate by the employee's health care provider. One of the Office's long-term strategic goals is to design an effective internal return to work program that can later be modeled by client entities.