



TESTIMONY

TxDOT WORKERS' COMPENSATION AND RISK MANAGEMENT PROGRAMS

**Testimony Before the
Senate Select Interim Committee on Workers' Compensation**

**Edwin M. Sims
Division Director, Occupational Safety
Texas Department of Transportation
February 26, 2004**

TxDOT WORKERS' COMPENSATION AND RISK MANAGEMENT PROGRAMS

Edwin M. Sims

Testimony before the Senate Select Interim Committee on Workers' Compensation

INTRODUCTION

My name is Ed Sims and I am the Director of Occupational Safety Division for the Texas Department of Transportation. I have with me Ron Schroeder, Director of our Workers' Compensation Section.

We have provided a report containing detailed answers addressing the requested information in Chairman Staples letter dated February 6, 2004.

The Texas Department of Transportation has been self-insured for workers' compensation since 1938 and has evolved through the years to incorporate a very effective workers' compensation and risk management program. The department has a unique incident and injury exposure due to its work. TxDOT has 14,715 employees of which 6,500 are routine roadway maintenance workers. These employees must work on or near the roadways that frequently involve high speed traffic, and perform manual labor, making them a high risk for injury. The department operates over 9,000 vehicles, several thousand pieces of heavy equipment that are out on the state's highways in all types of weather and traffic conditions. No other state agency is faced with this kind of exposure.

The ability of TxDOT to maintain an efficient workers' compensation program that works in conjunction with a highly skilled risk management program is, illustrated by the fact that in the last ten years, the department's overall workers' compensation cost has remained virtually constant, while other private and some governmental workers' compensation programs have seen large increases in cost.

WORKERS' COMPENSATION SECTION

The Department is authorized to provide workers' compensation coverage to its employees under the *Texas Labor Code, Title 5, Chapter 505*.

The Workers' Compensation Section has 17 employees who are responsible for the management of all TxDOT workers' compensation claims. Seven employees are field representatives, who live throughout the State investigating and handling workers' compensation claims, tort claims and any special studies or investigations required on safety issues.

The field representative is responsible for contacting the injured employee within 24 hours of being assigned the claim. The field representative works closely with a regional adjuster in the Workers' Compensation Section. Together they determine compensability, cost evaluation, and are responsible for seeing that proper actions are taken on the claim.

Our field representatives attend all benefit review conferences and contested case hearings on behalf of the department. On specific cases, the Transportation Division of the Attorney General's Office provides an attorney to represent TxDOT at the benefit review conference before the Workers' Compensation Commission. The Attorney General's office represents TxDOT at all contested case hearings, appeals, and in all lawsuits.

During periods when the injured employees are incurring lost time, the field representatives are required to personally visit these claimants at least once every 30 days. During these visits, the supervisor or someone in the line of authority must be present. These visits provide an update on the employee's condition, questions can be answered, and they help to assure the claimant that he/she is not forgotten.

RETURN TO WORK

TxDOT believes in returning injured employees to work as soon as possible. When the treating doctor releases an injured employee to anything less than full duty, the supervisor is encouraged to work with the doctor to determine what restrictions are applicable. The supervisor should provide a list of the employee's duties and the doctor indicates which duties the employee is capable of performing. If the supervisor is able to accommodate the restrictions, the employee is allowed to return to work for selected duty.

CHARTS DESCRIBING FUNDING AND COSTS

Detailed charts are located in the report concerning our workers' compensation funding and costs.

HNAC PROJECT

TxDOT has provided information and addressed the Healthcare Network Advisory Committee. That is the extent of our participation in the project. We see certain benefits to using healthcare networks.

The desirable features of the network as mandated by HB 2600 and proposed by MedFx are:

- ◆ An outcome and evidence-based approach to case, disability and utilization management
- ◆ Report card input from the various workers' compensation stakeholders
- ◆ Provider recruitment, selection, discipline and termination provisions
- ◆ Provider billing and reimbursement provisions, and
- ◆ Dispute resolution. MedFx's proposed dispute resolution process seems workable to resolve disputes regarding fees and the reasonableness and medical necessity of treatment and services

However, we have reservations about disputes that have a direct bearing on indemnity benefits.

Some of the undesirable features of the network are:

- ◆ Resolution of medical disputes that have a direct bearing on indemnity benefits

These disputes usually involve defining the extent and duration of compensable injuries. For example, if a claimant has a pre-existing condition and then sustains a new injury to the same body part, a question usually arises as to whether the current injury aggravated the pre-existing condition. The answer to this question goes directly to the claimant's entitlement to one or more income benefits. Many things must be investigated to

make this determination that cannot be addressed on a strict medical basis. TxDOT believes that such disputes cannot be resolved satisfactorily when addressed only within the confines of the network, but must remain within the purview of the carrier, the injured employee and TWCC's indemnity dispute resolution process.

◆ Elective participation in the network by injured employees

TxDOT believes that employee participation should be mandatory. It would be burdensome to operate two separate medical benefit delivery systems.

TxDOT does not believe the pilot program will provide statistically valid data that could be meaningfully applied to the entire workers' compensation system. As proposed by MedFx, the geographical area is too restrictive. TxDOT estimates that fewer than 20 injured department employees would be affected. The incentives to participate in the pilot would affect very few TxDOT employees because of their relatively low wages and because most employees elect to use their paid sick leave and vacation instead of being paid temporary income benefits.

UNIQUE ASPECTS

We went into detail describing the unique aspects of TxDOT's workers' compensation and risk management programs in our report. I will summarize the aspects that make our system cost effective.

Accountability is clear because all expenditures come from the Highway Fund. Any amount of money that can be saved through safety and cost effective claims management means more money for the construction and maintenance of our state highways.

The ability to effectively manage the department's workers' compensation program is the result of several different factors. One of the main factors is personnel that are knowledgeable about the special hazards and difficulties faced by TxDOT workers. The Workers' Compensation and Risk Management Program are both located within the same division. This relationship produces continual improvements enabling supervisors to take immediate action to improve the safety of TxDOT employees. Another

factor is the presence of our field representatives who provide prompt, face-to-face personal attention to our injured employees. This results in efficient, cost effective claims management. It is through all of these parties working together that have allowed TxDOT to reduce injuries by over 60% in the last 10 years, thereby keeping our cost at a constant level.

We believe our system works. It has been tailored to meet the needs of this department's high risk operations and it serves the citizens of the state. I thank you for affording me the opportunity to testify today. I am now available for any questions.