



WYOMING LEGISLATIVE SERVICE OFFICE

Research Memorandum

DATE August 26, 2021

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SUBJECT Injured Worker Ombudsman Programs in Texas and Washington

INTRODUCTION

As a follow-up to the June 10-11, 2021, Joint Labor Health & Social Services Interim Committee meeting discussion regarding injured worker advocate/ombudsman programs in other states, the Committee requested the Legislative Service Office (LSO) provide additional research on the Texas and Washington ombudsman programs for the Committee's September 2021 meeting. This memorandum provides an overview of each program and a summary of the statutory language creating each program.

EXECUTIVE SUMMARY

Texas and Washington have each established ombudsman programs to advocate for the interest of injured workers, but the programs differ in the scope of their authority and administrative organization. Under Texas law, workers' compensation is voluntary for all employers except public employers. Texas does not administer a state workers' compensation fund, but rather allows employers who choose to insure their workers to purchase private insurance policies or qualify as a self-insurer. The Texas Department of Insurance, Division of Workers' Compensation oversees and regulates both private insurers and self-insurers. The Texas Office of Injured Employee Counsel was established as a separate agency from the Texas Department of Insurance and manages an ombudsman program to assist unrepresented workers' compensation claimants. The Injured Employee Public Counsel is appointed by the Governor for a term of two years. The Office of Injured Employee Counsel is funded by an insurance maintenance tax assessed by the Texas Department of Insurance on all self-insurers and self-insured groups certified by the Department.

In contrast to Texas, Washington state law mandates workers' compensation (aka industrial insurance) coverage for all employers in the state, with limited exceptions. Employers may choose to participate in the state industrial insurance fund or qualify as a self-insurer. Like Texas, the state of Washington certifies and regulates self-insured employers under the state's Department of Labor and Industry and assesses an administrative tax on self-insurers. The administrative tax levied upon

self-insurers funds the Washington Office of the Ombuds, which acts as an advocate for workers of self-insured employers only. The Director of the Office is appointed by the governor for a term of six years and reports to the Director of the Department of Labor and Industry.

TEXAS

Texas Workers' Compensation Act¹

Under the Texas Workers' Compensation Act workers compensation insurance coverage is voluntary for all employers except public employers.² Texas employers who choose to insure workers may: (a) purchase workers compensation policies from private insurance companies; or (b) qualify as self-insurers.³ Both private insurers and self-insurers are regulated by the Texas Department of Insurance, Division of Workers' Compensation. Self-insurance regulation is addressed by Chapter 407 of the Texas Workers' Compensation Act.

Texas Office of Injured Employee Counsel⁴

In 2005, the Texas Legislature enacted House Bill 7. The law abolished the Texas Workers' Compensation Commission, designated the Texas Department of Insurance to oversee the workers' compensation system, established the Division of Workers' Compensation within the Department of Insurance to administer and operate the state workers' compensation system, and established the Office of Injured Employee Counsel (OIEC) "to represent the interests of workers' compensation claimants in this state."⁵ Although the OIEC is administratively attached to the Department of Insurance, it is independent of the Commissioner of Workers' Compensation, the Commissioner of Insurance, and the Department.⁶

Chapter 404 of the Texas Workers' Compensation Act specifies the OIEC shall:

- Provide assistance to workers compensation claimants;
- Advocate on behalf of injured employees as a class regarding rulemaking by the Commissioner of Workers' Compensation and the Commissioner of Insurance relating to workers' compensation;
- Assist injured employees with contacting appropriate licensing boards for complaints against a health care provider;
- Assist injured employees with referral to local, state, and federal financial assistance, rehabilitation, work placement programs, and other social services as appropriate;
- Monitor the performance and operation of the workers' compensation system, with a focus on the system's effect on injured employees' return to work;

¹ Texas Labor Code Title 5, Subtitle A, Chapters 401-450.

² Tex. Lab. Code 406.002.

³ Tex. Lab. Code 406.003.

⁴ Tex. Lab. Code Title 5, Subtitle A, Chapter 404.

⁵ Tex. Lab. Code 404.002.

⁶ Tex. Lab. Code 404.002.

- Assist injured employees, through the ombudsman program, with the resolution of complaints pending at the Division of Workers' Compensation or Department of Insurance;
- Assist injured employees, through the ombudsman program, in the Division of Workers' Compensation administrative dispute resolution system; and
- Advocate in the OIEC's own name positions determined by the Public Counsel to be most advantageous to a substantial number of injured employees.

In addition to the above required duties, the OIEC may:

- Assess the impact of workers' compensation laws, rules, procedures, and forms on injured employees in the state; and
- Seek and accept grant funding to enable the OIEC to perform its duties. However, the OIEC is not authorized to seek or accept payment from an injured employee. [Services are provided at no cost.]⁷

Chapter 404 requires the governor, with the advice and consent of the state senate, to appoint the Injured Employee Public Counsel (Public Counsel) for a two-year term. To be eligible to serve as Public Counsel, a person must:

- Be a resident of Texas;
- Be licensed to practice law in the state;
- Have demonstrated a strong commitment to and involvement in efforts to safeguard the rights of the working public;
- Have management experience;
- Possess knowledge and experience with the workers' compensation system; and
- Have experience with legislative procedures and administrative law.

A person is ineligible to be Public Counsel if:

- Engaged in specified business interests;
- Required to register as a lobbyist; or
- An officer, employee, paid consultant or spouse of an officer, manager, or paid consultant of a trade association in the field of workers' compensation.

Texas Division of Workers' Compensation Ombudsman Program⁸

Chapter 404 requires the OIEC to maintain an ombudsman program. OIEC ombudsman program staff are located in each of the 20 Division of Workers' Compensation offices around the state and include:

- A call center agent who helps answer questions and educates the injured employees about their rights and responsibilities in the workers' compensation system.

⁷ [OIEC website](#).

⁸ Tex. Lab. Code Title 5 Chapter 404 and [Texas OIEC Biennial Report to the 87th Legislature, December 2020](#).

- Customer service support specialists (CSS) who identify issues and attempt to resolve disputes between the injured employee and the insurance carrier. If the dispute is not resolved by the CSS, the injured employee is referred to an OIEC ombudsman.
- Ombudsmen who are licensed insurance adjusters trained in workers' compensation law.

Chapter 404 requires each ombudsman to:

- Meet with or otherwise provide information to injured employees;
- Investigate complaints;
- Communicate with employers, insurance carriers, and health care providers on behalf of injured employees;
- Assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system; and
- Meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any informal or formal hearing.

Chapter 404 also requires the Public Counsel by rule to adopt training guidelines and continuing education requirements for ombudsmen.

The OIEC is funded by an insurance maintenance tax assessed by the Department of Insurance on all certified self-insurers and self-insured groups.⁹ The 2020 tax rate was 0.02 percent.¹⁰

See **Appendix A** for the Texas Chapter 404 OIEC statutes.

WASHINGTON

Washington Industrial Insurance Act¹¹

The Washington Industrial Insurance Act abolishes court jurisdiction over civil actions regarding work-related injuries and establishes state police powers over the remedy of work-related injuries.¹² The Director of the Washington Department of Labor and Industries is charged with responsibility to supervise the providing of prompt and efficient care and treatment to workers injured during the course of their employment at the lowest cost consistent with promptness and efficiency.¹³ The Act applies to all types of employment within the legislative jurisdiction of the state,¹⁴ with certain exceptions.¹⁵ Employers may secure payment of compensation by: (a) insuring

⁹ Tex. Lab. Code 407.103 and 407A.301.

¹⁰ [Texas Comptroller of Public Accounts Insurance Maintenance Tax Rates and Assessments on 2020 Premiums](#)

¹¹ Revised Code of Washington Title 51.

¹² Rev. Code Wash. 51.04.010.

¹³ Rev. Code Wash. 51.04.030.

¹⁴ Rev. Code Wash. 51.12.010.

¹⁵ Employment exceptions include but are not limited to domestic servants, maintenance and repair persons employed in a private home, persons performing services in return for aid from religious or charitable organizations, children

with the state industrial insurance fund; or (b) qualifying as a self-insurer.¹⁶ The Act provides the Department of Labor and Industries with the authority to qualify, certify and regulate self-insured employers.¹⁷

Washington Office of the Ombuds

In 2007 the Washington Legislature enacted Senate Bill 5053 creating the Office of the Ombuds "for workers of industrial insurance self-insured employers."¹⁸ Chapter 51.14 of the Industrial Insurance Act requires the governor to appoint the Ombuds for a term of six years.¹⁹ The appointed Ombuds is required to have training or experience in Washington industrial insurance including self-insurance programs, the Washington legal system, and dispute or problem resolution techniques, including investigation, mediation, and negotiation.²⁰ Chapter 51.14 requires the Ombuds to report directly to the Director of the Department of Labor and Industry, but specifies the Office shall not be physically housed within the Department's Division of Industrial Insurance.²¹

Chapter 51.14 states the Office of the Ombuds shall:

- Act as an advocate for injured workers of self-insured employers;
- Offer and provide information on industrial insurance as appropriate to workers of self-insured employers;
- Identify, investigate and facilitate resolution of industrial insurance complaints from workers of self-insured employers;
- Maintain a statewide toll-free telephone number for the receipt of complaints and inquiries; and
- Refer complaints to the Department of Labor and Industry when appropriate.

To provide start-up funding for the Office of the Ombuds, the Department of Labor and Industries was authorized to impose a one-time assessment on all self-insurers.²² Ongoing funding for the Office is obtained as part of an annual administrative assessment of self-insurers.²³

See **Appendix B** for the Washington Office of the Ombuds statutes.

under age 18 employed by his/her parents on the family farm, commercial transportation services drivers, and for-hire vehicle operators. Rev. Code Wash. 51.12.020.

¹⁶ Rev. Code Wash. 51.14.010.

¹⁷ Rev. Code Wash. 51.14.010 – 51.14.170.

¹⁸ Rev. Code Wash. 51.14.300.

¹⁹ Rev. Code Wash. 51.14.300 – 51.14.301.

²⁰ Rev. Code Wash. 51.14.320.

²¹ Rev. Code Wash. 51.14.300.

²² Rev. Code Wash. 51.15.390.

²³ Ibid.

If you need further information, please contact the LSO Research Evaluation Division at 307-777-7881.

Appendix A

Texas Labor Code Title 5 Workers' Compensation, Subtitle A Texas Workers' Compensation Act, Chapter 404 Office of Injured Employee Council [Expires September 1, 2025]

Subchapter A Office; General Provisions

Sec. 404.001. Definitions

In this chapter:

- (1) "Office" means the office of injured employee counsel.
- (2) "Public counsel" means the injured employee public counsel.

Sec. 404.0015. Application of the Sunset Act [Repealed]

Sec. 404.002 Establishment of Office; Administrative Attachment to Texas Department of Workers' Compensation

- (a) The office of injured employee counsel is established to represent the interests of workers' compensation claimants in this state.
- (b) The office is administratively attached to the department but is independent of direction by the commissioner, the commissioner of insurance, and the department.
- (c) The department shall provide the staff and facilities necessary to enable the office to perform the duties of the office under this subtitle, including:
 - (1) administrative assistance and services to the office, including budget planning and purchasing;
 - (2) personnel services; and
 - (3) computer equipment and support.
- (d) The public counsel may enter into interagency contracts and other agreements with the commissioner of workers' compensation and the commissioner of insurance as necessary to implement this chapter.

Sec. 404.003. Sunset Provision

The office of injured employee counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2025.

Sec. 404.004. Public Interest Information

- (a) The office shall prepare information of public interest describing the functions of the office.
- (b) The office shall make the information available to the public and appropriate state agencies.

Sec. 404.0041. Effect of Lobbying Activity [Repealed]

Sec. 404.005. Access to Programs and Facilities

- (a) The office shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the office's programs.
- (b) The office shall comply with federal and state laws for program and facility accessibility.

Sec. 404.0055. Removal of Board Members [Repealed]

Sec. 404.006. Rulemaking

- (a) The public counsel shall adopt rules as necessary to implement this chapter.
- (b) Rulemaking under this section is subject to Chapter 2001, Government Code.

Sec. 404.007. Negotiated Rulemaking; Alternative Dispute Resolution

- (a) The office shall develop and implement a policy to encourage the use of:
 - (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of office rules; and
 - (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the office's jurisdiction.
- (b) The office's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.
- (c) The office shall:
 - (1) coordinate the implementation of the policy adopted under Subsection (a);
 - (2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
 - (3) collect data concerning the effectiveness of those procedures.
- (d) The office's alternative dispute resolution policy does not affect the manner in which the office participates in the division's administrative dispute resolution process or the department's alternative dispute resolution process through the office's administrative attachment to the department.

Sec. 404.008. Complaints

- (a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.
- (b) The office shall make information available describing its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

Sec. 404.009 Research Agenda [Repealed]

Sec. 404.0091. Public Information; Accessibility [Repealed]

Sec. 404.0092. Resolution of Complaints [Repealed]

Sec. 404.010. Coordination with Other State Agencies; Confidentiality [Repealed]

Sec. 404.011 to 404.050 [Reserved for expansion]

Subchapter B Injured Employee Public Counsel

Sec. 404.051. Appointment; Term

(a) The governor, with the advice and consent of the senate, shall appoint the injured employee public counsel. The public counsel serves a two-year term that expires on February 1 of each odd-numbered year.

(b) The governor shall appoint the public counsel without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. Section 401.011(16) does not apply to the use of the term "disability" in this subchapter.

(c) If a vacancy occurs during a term, the governor shall fill the vacancy for the unexpired term.

(d) In appointing the public counsel, the governor may consider recommendations made by groups that represent wage earners.

Sec. 404.052. Qualifications

To be eligible to serve as public counsel, a person must:

- (1) be a resident of Texas;
- (2) be licensed to practice law in this state;
- (3) have demonstrated a strong commitment to and involvement in efforts to safeguard the rights of the working public;
- (4) have management experience;
- (5) possess knowledge and experience with the workers' compensation system; and
- (6) have experience with legislative procedures and administrative law.

Sec. 404.053. Business Interest; Service as Public Counsel

A person is not eligible for appointment as public counsel if the person or the person's spouse:

- (1) is employed by or participates in the management of a business entity or other organization that holds a license, certificate of authority, or other authorization from the department or division or that receives funds from the department or division;
- (2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the department, division, or the office; or
- (3) uses or receives a substantial amount of tangible goods or funds from the department, division, or the office, other than compensation or reimbursement authorized by law.

Sec. 404.054. Lobbying Activities

A person may not serve as public counsel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to the operation of the department, the division, or the office.

Sec. 404.055. Grounds for Removal

(a) It is a ground for removal from office that the public counsel:

- (1) does not have at the time of appointment or maintain during service as public counsel the qualifications required by Section 404.052;
- (2) violates a prohibition established by Section 404.053, 404.054, 404.056, or 404.057; or
- (3) cannot, because of illness or disability, discharge the public counsel's duties for a substantial part of the public counsel's term.

(b) The validity of an action of the public counsel or the office is not affected by the fact that the action is taken when a ground for removal of the public counsel exists.

Sec. 404.056. Prohibited Representation or Employment

(a) A former public counsel may not make any communication to or appearance before the division, the department, the commissioner, the commissioner of insurance, or an employee of the division or the department before the second anniversary of the date the person ceases to serve as public counsel if the communication or appearance is made:

- (1) on behalf of another person in connection with any matter on which the person seeks official action; or
- (2) with the intent to influence a commissioner or commissioner of insurance decision or action, unless the person is acting on the person's own behalf and without remuneration.

(b) A former public counsel may not represent any person or receive compensation for services rendered on behalf of any person regarding a matter before the division or the department before the second anniversary of the date the person ceases to serve as public counsel.

(c) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

(d) A former employee of the office may not:

- (1) be employed by an insurance carrier regarding a matter that was in the scope of the employee's official responsibility while the employee was associated with the office; or
- (2) represent a person before the division or the department or a court in a matter:
 - (A) in which the employee was personally involved while associated with the office; or
 - (B) that was within the employee's official responsibility while the employee was associated with the office.

(e) The prohibition of Subsection (d)(1) applies until the first anniversary of the date the employee's employment with the office ceases.

(f) The prohibition of Subsection (d)(2) applies to a current employee of the office while the employee is associated with the office and at any time after.

Sec. 404.057 Trade Associations

(a) In this section, "trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not serve as public counsel if the person has been, within the previous two years:

- (1) an officer, employee, or paid consultant of a trade association in the field of workers' compensation; or
- (2) the spouse of an officer, manager, or paid consultant of a trade association in the field of workers' compensation.

Sec. 404.058 to 404.100 [Reserved for Expansion]

Subchapter C General Powers and Duties of Office

Sec. 404.101 General Duties

(a) The office shall, as provided by this subtitle:

- (1) provide assistance to workers' compensation claimants;
- (2) advocate on behalf of injured employees as a class regarding rulemaking by the commissioner and commissioner of insurance relating to workers' compensation;
- (3) assist injured employees with contacting appropriate licensing boards for complaints against a health care provider; and
- (4) assist injured employees with referral to local, state, and federal financial assistance, rehabilitation, and work placement programs, as well as other social services that the office considers appropriate.

(b) The office:

- (1) may assess the impact of workers' compensation laws, rules, procedures, and forms on injured employees in this state; and
- (2) shall, as provided by this subtitle:
 - (A) monitor the performance and operation of the workers' compensation system, with a focus on the system's effect on the return to work of injured employees;
 - (B) assist injured employees, through the ombudsman program, with the resolution of complaints pending at the division or department;
 - (C) assist injured employees, through the ombudsman program, in the division's administrative dispute resolution system; and
 - (D) advocate in the office's own name positions determined by the public counsel to be most advantageous to a substantial number of injured employees.

(b-1) The office may seek and accept grant funding to enable the office to perform its duties under this subtitle. This subsection does not authorize the office to seek or accept payment from an injured employee.

(c) The office may not appear or intervene, as a party or otherwise, before the commissioner, commissioner of insurance, division, or department on behalf of an individual injured employee, except through the ombudsman program.

Sec. 404.1015. Refusal to Provide or Termination of Services

(a) The public counsel may refuse to provide or may terminate the services of the office to any claimant who:

- (1)** is abusive or violent to or who threatens any employee of the office;
- (2)** requests assistance in claiming benefits not provided by law; or
- (3)** commits or threatens to commit a criminal act in pursuit of a workers' compensation claim.

(b) If the public counsel determines under Subsection (a) that the services of the office should be refused or terminated, the office shall inform the affected claimant in writing and notify the division.

(c) The office shall notify and cooperate with the appropriate law enforcement authority and the Department of Insurance, Fraud Unit, if the office becomes aware that the claimant or a person acting on the claimant's behalf commits or threatens to commit a criminal act.

Sec. 404.102. General Powers and Duties of Public Counsel

The public counsel shall administer and enforce this chapter, including preparing and submitting to the legislature a budget for the office and approving expenditures for professional services, travel, per diem, and other actual and necessary expenses incurred in administering the office.

Sec. 404.103. Operation of Ombudsman Program

(a) The office shall operate the ombudsman program under Subchapter D.

(b) The public counsel shall assign staff attorneys, as the public counsel considers appropriate, to supervise the work of the ombudsman program and advise ombudsmen in providing assistance to claimants and preparing for informal and formal hearings.

(c) The office shall coordinate services provided by the ombudsman program with services provided by the Department of Assistive and Rehabilitative Services.

Sec. 404.104. Authority to Appear or Intervene

The public counsel:

- (1)** may appear or intervene, as a party or otherwise, as a matter of right before the commissioner, commissioner of insurance, division, or department on behalf of injured employees as a class in matters involving rules, agency policies, and forms affecting the workers' compensation system that the commissioner or the commissioner of insurance adopts or approves;

(2) may intervene as a matter of right or otherwise appear in a judicial proceeding involving or arising from an action taken by an administrative agency in a proceeding in which the public counsel previously appeared under the authority granted by this chapter;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of injured employees as a class in any proceeding in which the public counsel determines that the interests of injured employees as a class are in need of representation, except that the public counsel may not intervene in an enforcement or parens patriae proceeding brought by the attorney general; and

(4) may appear or intervene before the commissioner, commissioner of insurance, division, or department, as a party or otherwise, on behalf of injured employees as a class in a matter involving rates, rules, agency policies, or forms affecting injured employees as a class in any proceeding in which the public counsel determines that injured employees are in need of representation.

Sec. 404.105 Authority to Assist Individual Injured Employees in Administrative Procedures

(a) The office, through the ombudsman program, may appear before the commissioner, division, or State Office of Administrative Hearings to provide assistance to an individual injured employee during:

(1) a workers' compensation administrative dispute resolution process; or

(2) an enforcement action by the department or division against an employee for a violation of the Texas Workers' Compensation Act.

(b) This chapter may not be construed as requiring or allowing legal representation for an individual injured employee by an office attorney or ombudsman in any proceeding.

Sec. 404.106. Legislative Report

(a) The office shall report to the governor, lieutenant governor, speaker of the house of representatives, and the chairs of the legislative committees with appropriate jurisdiction not later than January 1 of each odd-numbered year. The report must include:

(1) a description of the activities of the office;

(2) identification of any problems in the workers' compensation system from the perspective of injured employees as a class, as considered by the public counsel, with recommendations for regulatory and legislative action; and

(3) an analysis of the ability of the workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers.

(b) The office shall coordinate with the workers' compensation research and evaluation group to obtain needed information and data to make the evaluations required for the report.

(c) The office shall publish and disseminate the legislative report to interested persons, and may charge a fee for the publication as necessary to achieve optimal dissemination.

Sec. 404.107. Access to Information by Public Counsel

The public counsel:

- (1) is entitled to the same access as a party, other than division staff or department staff, to division or department records available in a proceeding before the commissioner, commissioner of insurance, division, or department under the authority granted to the public counsel by this chapter; and
- (2) is entitled to obtain discovery under Chapter 2001, Government Code, of any nonprivileged matter that is relevant to the subject matter involved in a proceeding or submission before the commissioner, commissioner of insurance, division, or department as authorized by this chapter.

Sec. 404.108. Legislative Recommendations

The public counsel may recommend proposed legislation to the legislature that the public counsel determines would positively affect the interests of injured employees as a class.

Sec. 404.109 Injured Employee Rights; Notice

The public counsel shall adopt, in the form and manner prescribed by the public counsel and after consultation with the commissioner of workers' compensation, a notice of injured employee rights and responsibilities to be distributed by the division as provided by commissioner or commissioner of insurance rules. A right or responsibility adopted under this section must be consistent with the requirements of this subtitle and division rules. This section may not be construed as establishing an entitlement to benefits to which the claimant is not otherwise entitled under this subtitle.

Sec. 404.110 Applicability to Public Counsel of Confidentiality Requirements

- (a) Confidentiality requirements applicable to examination reports and to the commissioner of insurance under Sections 401.058, 401.105, 401.106, 441.201, and 501.158, Insurance Code, as applicable, and Section 404.111, apply to the public counsel.
- (b) An employee of the office may not be compelled to disclose information communicated to the employee by a claimant on any matter relating to the claimant's claim. This subsection does not prohibit or alter the office's duty to notify and cooperate with appropriate law enforcement authorities under Section 404.1015(c).

Sec. 404.111 Access to Information

- (a) When assisting an injured employee, the office is entitled to the same access to information related to the employee's injury and workers' compensation claim as the employee or any other party to the claim.
- (b) The office may not access information under Subsection (a) that is an attorney-client communication or an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.
- (c) In furtherance of assisting an employee under Section 404.105(a)(2), the office may not access information under Section 404.111(a) to which the employee is not otherwise entitled. If the office

possesses any information made confidential by the Texas Workers' Compensation Act or any other laws of this state to which the employee is not otherwise entitled, that information may not be disclosed to the employee or any other party assisting an employee under Section 404.105(a)(2). Nothing in this subsection prohibits or alters the office's duty to notify appropriate law enforcement authorities under Section 404.1015(c).

(d) [Repealed by Acts 2011, 82nd Leg., ch. 289 (H.B. 1774), § 8, effective September 1, 2011.]

(e) The office may not make public any confidential information provided to the office under this chapter. Except as provided by Subsection (c), the office may disclose a summary of the information that does not directly or indirectly identify the individual or entity that is the subject of the information. The office may not release, and an individual or entity may not gain access to, any information that:

- (1) could reasonably be expected to reveal the identity of a health care provider or an injured employee;
- (2) reveals the zip code of an injured employee's primary residence;
- (3) discloses a health care provider discount or a differential between a payment and a billed charge; or
- (4) relates to an actual payment made by a payer to an identified health care provider.

(f) Information collected or used by the office under this chapter is subject to the confidentiality provisions and criminal penalties of Section 402.091.

(g) Information on health care providers and injured employees that is in the possession of the office, and any compilation, report, or analysis produced from the information that identifies providers and injured employees is not:

- (1) subject to discovery, subpoena, or other means of legal compulsion for release to any individual or entity; or
- (2) admissible in any civil, administrative, or criminal proceeding.

(h) Notwithstanding Subsection (e)(2), the office may use zip code information to analyze information on a geographical basis.

Sec. 404.112 to 404.150 [Reserved for expansion]

Subchapter D Ombudsman Program

Sec. 404.151. Ombudsman Program

(a) The office shall maintain an ombudsman program as provided by this subchapter to assist injured employees and persons claiming death benefits in obtaining benefits under this subtitle.

(b) An ombudsman shall:

- (1) meet with or otherwise provide information to injured employees;
- (2) investigate complaints;
- (3) communicate with employers, insurance carriers, and health care providers on behalf of injured employees;

- (4) assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system; and
- (5) meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any informal or formal hearing.

Sec. 404.152. Designation as Ombudsman; Eligibility and Training Requirements; Continuing Education Requirements

(a) At least one specially qualified employee in each division office shall be an ombudsman designated by the office of injured employee counsel, who shall perform the duties under this subchapter as the person's primary responsibility.

(b) To be eligible for designation as an ombudsman, a person must:

(1) demonstrate satisfactory knowledge of the requirements of:

- (A) this subtitle and the provisions of Subtitle C that relate to claims management;
- (B) other laws relating to workers' compensation; and
- (C) rules adopted under this subtitle and the laws described under Subdivision (1)(B);

(2) have demonstrated experience in handling and resolving problems for the general public; and

(3) possess strong interpersonal skills.

(c) The public counsel shall by rule adopt training guidelines and continuing education requirements for ombudsmen. Training provided under this subsection must:

- (1) include education regarding this subtitle, rules adopted under this subtitle, and decisions of the appeals panel, with emphasis on benefits and the dispute resolution process;
- (2) require an ombudsman undergoing training to be observed and monitored by an experienced ombudsman during daily activities conducted under this subchapter; and
- (3) incorporate the requirements of Section 404.103(b).

Sec. 404.1525. First Responder Liaison

(a) In this section, "first responder" has the meaning assigned by Section 504.055.

(b) The public counsel shall designate an employee of the office to act as first responder liaison.

(c) The first responder liaison shall assist an injured first responder and, if applicable, the ombudsman assigned to the first responder's case, during a workers' compensation administrative dispute resolution process.

(d) The first responder liaison:

- (1) must meet the qualifications for designation as an ombudsman under this subchapter; and
- (2) is subject to the training and education requirements for an ombudsman under this subchapter.

Sec. 404.153. Employer Notification; Administrative Violation

(a) Each employer shall notify its employees of the ombudsman program in the manner prescribed by the office.

(a-1) An employer that employs first responders or supervises volunteer first responders shall notify the first responders of the first responder liaison in the manner prescribed by the office. In this subsection, "first responder" has the meaning assigned by Section 504.055.

(b) An employer commits an administrative violation if the employer fails to comply with this section.

Sec. 404.154. Public Information

The office shall widely disseminate information about the ombudsman program.

Sec. 404.155 Cost for Certain Copies of Medical Records; Administrative Violation

(a) At the written request of an ombudsman designated under this subchapter who is assisting a specific injured employee, a health care provider shall provide copies of the injured employee's medical records to the ombudsman at no cost to the ombudsman or the office.

(b) The workers' compensation insurance carrier is liable to the health care provider for the cost of providing copies of the employee's medical records under this section. The insurance carrier may not deduct that cost from any benefit to which the employee is entitled.

(c) The amount charged for providing copies of an injured employee's medical records under this section is the amount prescribed by rules adopted by the commissioner for copying medical records.

(d) A health care provider may not require payment for the cost of providing copies of an injured employee's medical records under this section before providing the copies to the ombudsman.

(e) The public counsel may adopt rules regarding a time frame for the provision of copies of an injured employee's medical records under this section and any other matter relating to provision of those copies.

(f) A health care provider or insurance carrier that fails to comply with the requirements of this section or rules adopted under this section commits an administrative violation. The commissioner shall enforce a violation under this subsection in accordance with Chapter 415.

Appendix B

Revised Code of Washington Title 51 Industrial Insurance, Chapter 51.14 Self-Insurers, Office of the Ombuds (Sections 51.14.300 – 51.14.400)

51.14.300. Ombuds office created—Appointment—Open and competitive contracting

The office of the ombuds for workers of industrial insurance self-insured employers is created. The ombuds shall be appointed by the governor and report directly to the director of the department. The office of the ombuds may be openly and competitively contracted by the governor in accordance with chapter 39.26 RCW but shall not be physically housed within the industrial insurance division.

51.14.310 Ombuds—Term of office—Removal—Vacancies

The person appointed ombuds shall hold office for a term of six years and shall continue to hold office until reappointed or until his or her successor is appointed. The governor may remove the ombuds only for neglect of duty, misconduct, or inability to perform duties. Any vacancy shall be filled by similar appointment for the remainder of the unexpired term.

51.14.320 Ombuds—Training or experience qualifications

Any ombuds appointed under this chapter shall have training or experience, or both, in the following areas:

- (1) Washington state industrial insurance including self-insurance programs;
- (2) The Washington state legal system;
- (3) Dispute or problem resolution techniques, including investigation, mediation, and negotiation.

51.14.330. Ombuds office—Staffing level

During the first two years after the office of the ombuds is created, the staffing level shall be no more than four persons, including the ombuds and any administrative staff. Thereafter, the staffing levels shall be determined based upon the office of the ombuds's workload and whether any additional locations are needed.

51.14.340. Ombuds office—Powers and Duties

The office of the ombuds shall have the following powers and duties:

- (1) To act as an advocate for injured workers of self-insured employers;
- (2) To offer and provide information on industrial insurance as appropriate to workers of self-insured employers;
- (3) To identify, investigate, and facilitate resolution of industrial insurance complaints from workers of self-insured employers;

- (4) To maintain a statewide toll-free telephone number for the receipt of complaints and inquiries; and
- (5) To refer complaints to the department when appropriate.

51.14.350. Ombuds office—Referral procedures—Department response to referred complaints

- (1) The office of the ombuds shall develop referral procedures for complaints by workers of self-insured employers. The department shall act as quickly as possible on any complaint referred to them by the office of the ombuds.
- (2) The department shall respond to any complaint against a self-insured employer referred to it by the office of the ombuds and shall forward the office of the ombuds a summary of the results of the investigation and action proposed or taken.

51.14.360. Ombuds liability—Discriminatory, disciplinary, or retaliatory actions—Communications privileged and confidential—Testimony

- (1) No ombuds is liable for good faith performance of responsibilities under this chapter.
- (2) No discriminatory, disciplinary, or retaliatory action may be taken against any employee of a self-insured employer for any communication made, or information given or disclosed, to assist the ombuds in carrying out its duties and responsibilities, unless the same was done maliciously. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.
- (3) All communications by the ombuds, if reasonably related to the requirements of his or her responsibilities under this chapter and done in good faith, are privileged and confidential, and this shall serve as a defense to any action in libel or slander.
- (4) Representatives of the office of the ombuds are exempt from being required to testify as to any privileged or confidential matters except as the court may deem necessary to enforce this chapter.

51.14.370. Confidentiality of ombuds records and files—Disclosure prohibited—Exception

All records and files of the ombuds relating to any complaint or investigation made pursuant to carrying out its duties and the identities of complainants, witnesses, or injured workers shall remain confidential unless disclosure is authorized by the complainant or injured worker or his or her guardian or legal representative. No disclosures may be made outside the office of the ombuds without the consent of any named witness or complainant unless the disclosure is made without the identity of any of these individuals being disclosed.

51.14.380. Explaining ombuds program—Posters and brochures

The ombuds shall integrate into existing posters and brochures information explaining the ombuds program. Both the posters and the brochures shall contain the ombuds's toll-free telephone number. Every self-insured employer must place a poster in an area where all workers

have access to it. The self-insured employer must provide a brochure to all injured workers at the time the employer is notified of the worker's injury.

51.14.390. Ombuds office—Funding

(1) To provide start-up funding for the office of the ombuds, the department shall impose a one-time assessment on all self-insurers. The amount of the assessment shall be determined by the department and shall not exceed the amount needed to pay the start-up costs.

(2) Ongoing funding for the office of the ombuds shall be obtained as part of an annual administrative assessment of self-insurers under RCW 51.44.150. This assessment shall be proportionately based on the number of claims for each self-insurer during the past year.

51.14.400. Ombuds—Annual report to governor

(1) The ombuds shall provide the governor with an annual report that includes the following:

(a) A description of the issues addressed during the past year and a very brief description of case scenarios in a form that does not compromise confidentiality;

(b) An accounting of the monitoring activities by the ombuds; and

(c) An identification of the deficiencies in the industrial insurance system related to self-insurers, if any, and recommendations for remedial action in policy or practice.

(2) The first annual report shall be due on or before October 1, 2008. Subsequent reports shall be due on or before October 1st.