Agency Comments

State of South Carolina

1333 Main Street, 5th Floor
P.O. Box 1715
Columbia, S.C. 29202-1715

TEL: (803) 737-5700
FAX: (803) 737-5764

Workers' Compensation Commission

November 18, 2010

Mr. Thomas J. Bardin, Jr.
Legislative Audit Council
1331 Elmwood Avenue
Columbia, SC 29201

Dear Mr. Bardin:

Thank you for the opportunity to comment on the Legislative Audit Council's report *A Review of the South Carolina Workers' Compensation Commission, November 2010.* The Workers' Compensation Commission appreciates the professional manner in which the audit team interacted with Commission employees during the audit process, and the positive recognition of the substantial improvements the Commission has made over the past several years, including more timely hearings, information technology system upgrades, and hundreds of millions of dollars in cost reductions to the system by the implementation of the Inpatient and Outpatient Hospital Fee Schedule. Working with the auditors during this process assisted us with our continuous improvement efforts in order to better serve the citizens and businesses of South Carolina.

The following are our comments and responses to the information and recommendations in the report.

Background

During FY 09-10, the total amount paid out through the workers' compensation system as a whole was $824,291,483. Of this amount $296,016,200 was reported by insurance carriers for medical payments for all claims closed during FY 09-10. (Page 2)

To clarify, $824,291,483 was the amount paid through the workers' compensation system for all cases closed during FY 09-10. The amount reported reflects the total amounts paid on the claim, in some instances over multiple years prior to the closing of the case.

The amount of medical costs reported ($296,016,200) for cases closed in FY 09-10 does not take into consideration future medical expenses paid if so ordered by the Commission. The insurance carrier is not required to report medical expenses incurred after the Decision and Order has been served and the case is closed at the Commission. Medical cost is one component of the total cost of the workers' compensation system. As shown in the table below medical costs decreased by $126.4 million between FY 08-09 and FY 09-10. Indemnity cost experienced a slight increase of $28 million.

Total System Cost

	FY 07-08	FY 08-09	FY 09-10
Medical	$332,226,192	$422,442,693	$296,016,200
Indemnity (Compensation)	$564,668,920	$500,298,190	$528,275,283
Total	$896,565,112	$922,740,888	$824,291,483

Source: SC Workers' Compensation Commission Statistical Report – Attachment A

Indemnity or compensation payments are made to claimants for injuries resulting in temporary (partial or total) disabilities or permanent (partial or total) disabilities. Indemnity payments for temporary or permanent disabilities are determined by either an agreement between the claimant and employer/insurance carrier or an award by the Commission. For FY 09-10 total indemnity paid was $528,275,283.

Agreements between the claimant and employer/insurance carrier resulted in 94% of the total indemnity paid for cases reported closed in FY 09-10. During the same reporting period, awards by Commissioners resulted in 6% of the total indemnity paid. Attachment B provides a total of the indemnity paid by category.

The amount of premiums paid may be considered as one benchmark of the cost of workers' compensation in South Carolina. The amount of premiums paid reported by the Department of Insurance for calendar year 2009, the State Accident Fund for Fiscal Year 2010 and estimates of the amount of premium paid by self insured employers for FY 2010 premiums paid by employers totaled $930,270,665. Attachment C provides the premiums reported paid for calendar year 2009 and fiscal year 2010.

As shown in the table below, the total amount of permanency indemnity awarded by Commissioners for FY 09-10 amounted to less than 2% of the total amount of premiums paid.

Total Premiums Paid (Attachment C)	$	930,270,665
Total Permanency Awards (Attachment B)	$	14,305,954
Percent of Premiums Paid		1.53%

According to Commission statistics, the wait time for hearings has decreased. From FY 05-06 to FY 09-10, the number of days from the last request for a hearing to the actual hearing date decreased from approximately four months to approximately three months, which includes a required 30-day period of notification of the parties. (Page 6)

We appreciate the Council's recognition of the improvements the Commission made in reducing the time required to schedule a hearing from four months to three months from FY 05-06 to FY 09-10. However, more significant improvements were made between FY 03-04 and FY 09-10, when the Commission reduced the waiting time to schedule a hearing from approximately eight months in FY 03-04 to slightly more than 3 months in FY 09-10. The Hearings and Appeals Scheduling Report is Attachment D. It contains the average number of days to process request for hearings and appeals for the FY 02-03 through FY 09-10.

The Commission also adopted a new hospital inpatient and outpatient fee schedule in 2006. According to the National Council on Compensation Insurance (NCCI), the new schedule will result in an overall workers' compensation system cost decrease of 5.3%. This represents a total savings of $97,774,779 for the two-year period of FY 08-09 and FY 09-10 (Page 6)

The $97,774,779 of total savings is an estimate derived by using NCCI's 5.3% projected cost savings per year and the total compensation and medical cost reported paid on closed cases for the two year period. The actual total medical cost reported for the two years after the Commission adopted the hospital inpatient and outpatient fee schedule went down by $126.4 million. The hospital fee schedule is one component of the total medical cost to the system. We are unable to calculate the direct impact the fee schedule had on total medical cost because of litigation occurring between 2006 and 2010. A group of ambulatory surgery centers, a component of the services regulated by the fee schedule, were involved in litigation with the Workers' Compensation Commission and were not required to comply with the new fee schedule pending the outcome of the litigation. On October 6, 2010 the litigation ended and the SC Supreme Court ruled the ambulatory surgery centers are subject to the fee schedule. As a result of this decision we anticipate further reductions to the medical cost of the system in future years.

Compliance and Administrative Issues

The S. C. Workers' Compensation Commission violated state law by not depositing checks received for fines in a timely manner. (Page 7)

The Commission appreciates the Council bringing this to the attention of the Commission. The intent of the unanimous action taken by the Commission in open session at the April 2010 Business meeting was to delay the assessment and collection of the fines until after the beginning of the new fiscal year for financial and budgetary implications. However, this was not clearly understood and from May 1, 2010 to June 4, 2010 staff delayed depositing checks totaling $244,000. This activity took place over a period of five weeks and upon notification by the Council's auditors of this violation, the Commission immediately ceased this practice and deposited all of the checks within three working days.

Public Affairs and Ombudsman Duties

It is important for the agency to have a designated person to handle inquiries of injured workers and employers of this state regarding the workers' compensation system. (Page 8)

The S.C. Workers' Compensation Commission should designate an ombudsman/public affairs officer. (Page 8)

The Commission agrees it is important for the agency to have a designated person to handle inquires of injured workers and employers. The executive director is designated as the ombudsman/public affairs officer.

S.C. Regulation 67-202 A (12) cited in the report defines the Commission's Public Affairs Division (formerly Public Assistance). The regulations contain no specific requirements for the Commission to fund the Public Affairs Division or ombudsman position. Section 42-3-90 of the S. C. Code of Laws establishes three divisions with the Commission's Administrative Department. The statute does not include a requirement for a Public Affairs Division. In FY 05-06 the General Assembly approved funding for the position of ombudsman however for FY 08-09 and FY 09-10 the General Assembly reduced the Commission's budget by 30.5%. This reduction in funding required the Commission to evaluate the core functions and business processes to determine where expenditures may be reduced. The Commission implemented a Reduction-in-Force program eliminating four positions whose functions were either absorbed by existing positions or out-sourced. Subsequently before vacant positions are filled, its duties and responsibilities are evaluated to determine if they could be re-assigned without a reduction in service level

Prior to the ombudsman's position becoming vacant, staff began measuring activities and outcomes of its duties and responsibilities. When the vacancy occurred, the Commission evaluated the duties and responsibilities and determined the ombudsman/public affairs services could be carried out by the executive director and support staff without a negative impact. The executive director has been designated as the ombudsman/public affairs officer and has assumed the responsibilities. To date the Commission has experienced no decrease in the level of service delivery. The Commission is fully committed to the ombudsman function and will continue to monitor the ombudsman's activities to ensure that claimants and employers continue to receive the highest level of services.

Identifying Uninsured Employers

Recommendation

The S.C. Workers' Compensation Commission should add an additional compliance officer position to increase fine collections and bring uninsured employers into compliance. (Page 10)

The Commission appreciates the Council's recommendation to add an additional compliance officer in order to increase fine collections and bring uninsured employers into compliance. In July 2010 the Commission began collecting monthly data for the purpose of establishing a benchmark for performance standards for each of the compliance officers. The requirement for compliance officers to identify 50 potential uninsured employers per month was established in the early stages of the data collection. It has not been validated as a sound benchmark. The Commission will continue to evaluate and improve the process by which the compliance officer identifies and notifies businesses of their potential non-compliance.

The Report recommends the Commission employ an additional compliance officer. Prior to implementing this recommendation and incurring additional expenditures with no guarantees of increased revenues, the Commission will evaluate the performance standard of each officer to determine if each officer's monthly benchmark may be increased. This may result in additional uninsured employers coming into compliance and potentially increasing fine assessments and collections without increasing costs to provide this service by adding additional personnel.

Referral of Claimants to Vocational Rehabilitation

The S.C. Workers' Compensation Commission should implement a formal policy for referring claimants to the S.C. Vocational Rehabilitation Department. This policy should ensure that eligible claimants from all South Carolina counties are notified of the S.C. Vocational Rehabilitation Department's services. (Page 11)

The S.C. Workers' Compensation Commission should develop a memorandum of understanding with the S.C. Vocational Rehabilitation Department regarding the referral of workers' compensation claimants for vocational rehabilitation services. (Page 11)

The Commission concurs with the Council's findings and recommendations with regard to improving the efforts to refer claimants needing vocational counseling, evaluation and training. Currently referrals are being obtained by the S.C. Vocational Rehabilitation Department (Voc Rehab) through a periodic review of case files and claimant notification process performed by a Voc Rehab case manager. Cooperative efforts between the Commission and Voc Rehab are underway to prepare a Memorandum of Understanding (MOA) between the agencies, to evaluate the current methods used to inform claimants about services offered by Voc Rehab and develop improved methods for referring claimants on a statewide basis.

Informal Conference Process

We found inconsistencies in how the informal conferences were held and found that additional information is needed in the files. (Page 12)

The Council found inconsistencies in how the informal conferences are conducted and could be improved by establishing guidelines, training claims mediators and requiring checklists to ensure that claimants are informed of their rights. The Commission

recognizes the need for consistency in the informal conference process and will develop a training program for claims mediators to address this. The training will emphasize the necessity of receipt of the required information from the parties for a determination of a proper settlement. A checklist will be developed for use by the informal conference mediators. It will include verification of the information provided to the claimant during the informal conference.

The Commission does not agree with the finding the Commission files examined did not contain sufficient information to assess compliance with the Commission standards with regard to the claims mediator's proposed settlement. The Commission's informal conference system is a voluntary system of mediation. The parties come together by request of either party to try to settle the pending matter.

The facts surrounding each injured worker's case are separate and unique to that individual. There are no statutory or regulatory requirements to document a claimant's disability. Section 42-9-390 of the SC Code of Laws (1976) governs the voluntary settlements between the claimant and the employer/insurance carrier. The settlement agreement between the parties is approved by the claims mediator at the informal conference. The claims mediator's role is to facilitate the discussion between the parties in attempt to reach an agreement. The Commission's role in this process is to ensure any agreement is within the provisions of the statute and regulations. If no agreement is reached, the matter is set for a hearing before the jurisdictional Commissioner. Because each case is individual and unique and the conference is held as an opportunity to reach an agreement between the parties, we see no rational basis for imposing requirements to document justification for the settlement.

Again thank you for the opportunity to comment on the Council's report. We look forward to meeting with the Council auditors within the next twelve months to assess our progress implementing the Council's findings and recommendations.

Sincerely,

T. Scott Beck
Interim Chairman

Attachment A

SC Workers' Compensation Commission Statistical Report

	2007-2008	2008-2009	2009-2010
1. Number of Employers Purchasing Insurance	79,034	76,748	75,006
2. Number of Employers Qualifying as Self-Insurers	3,049	2,605	2,101
3. Investigations Active Beginning of Fiscal Year	228	127	117
4. Investigations Initiated	695	1,092	1,343
5. Investigations Set for Show Cause Hearings/	113	111	193
Consent Agreements Received	132	344	409
6. Total Investigations Closed	796	443	977
7. Investigations Active at Close of Fiscal Year	127	334	421
8. Number of Accident Cases Filed with the Commission	73,795	71,973	58,753
A. New Cases	70,897	70,235	57,178
B. Reopened cases	2,898	1,738	1,575
9. Number of Cases Closed during Fiscal Year	75,251	71,973	62,536
A. Individually Reported Accidents	30,918	26,313	29,044
B. Minor Medical Only Accidents Reported in Summary	44,333	45,660	33,492
10. Total Compensation & Medical Cost Paid on Closed Cases	$896,565,112	$922,740,888	$824,291,483
A. Medical Costs	$332,226,192	$422,442,693	$296,016,200
B. Compensation	$564,338,920	$500,298,190	$528,275,283
11. Temporary Total Compensation Agreements	16,630	15,512	15,580
12. Supplemental Compensation Agreements	3,616	3,600	3,674
13. Applications for Stop Payment *	2,464	2,515	2,206
14. Cases Docketed for Hearings	11,092	9,866	10,912
15. Cases Assigned for Informal Conferences	5,167	3,734	6,264
16. Hearings Conducted by Single Commissioners	2,580	2,345	2,211
17. Informal Conferences Conducted	3,682	3,141	3,549
18. Decisions, Opinions & Orders, Single Commissioners	2,323	2,444	2,100
19. Cases Appealed to Full Commission for Review	876	700	647
20. Reviews Conducted by Full Commission or Panel	446	450	357
21. Decisions and Opinions by Full Commission or Panel	643	504	367
22. Commission Decisions Appealed to Circuit Court	234	219	178
23. Common Law Settlements	10,385	10,506	10,715
24. Attorney Fee Approvals	10,197	9,969	9,343
25. Self-Insurance Tax Collected and Deposited to the General Fund	$5,480,671	$5,330,997	$4,909,303

* Includes 60-Day Hearings

Source: Amanda Underhill, Information Technology Dept. SCWCC

Attachment B

Total Indemnity Cost for FY 09-10

	Agreement	Award	Total
Temporary			
Partial	$ 3,069,725	$ 713,271	$ 3,782,995
Total	$ 140,201,418	$ 14,265,450	$ 154,466,868
Sub Total	$ 143,271,143	$ 14,978,721	$ 158,249,863
% of Total Compensation	27.12%	2.84%	29.96%
Permanency			
Partial	$ 48,268,482	$ 10,492,786	$ 58,761,268
Total	$ 16,079,756	$ 3,745,456	$ 19,825,211
Disfigurement	$ 397,833	$ 67,712	$ 465,545
Death			
Clinchers	$ 290,973,395		
Sub Total	$ 355,719,465	$ 14,305,954	$ 79,052,024
% of Total Compensation	67.34%	2.71%	14.96%
Total	$ 498,990,608	$ 29,284,675	$ 528,275,283
% of Total Compensation	94.46%	5.54%	100.00%

Source: WCC Statistical Reports, IT Department

Attachment C

Total Workers' Compensation Premium for SC

Total Workers' Compensation Premium		Premiums	% of Total Market
CY09	Commercial market - CY 2009 (SCDOI)	$ 586,955,083	63.10%
FY10	Self-insurance FY 2010 (See Calculations Below)	$ 253,315,582	27.23%
FY10	State Accident Fund FY 2010 (Est.)	$ 90,000,000	9.67%
	Total	$ 930,270,665	100.00%

Self-insurance expenses coverted to premium

Expenses X Normalized premium factor = Self-Insurance premium

Self-Insured expenses FY 10	$ 194,858,140
Normalized premium factor Aug - 2010	1.3
Self-Insured premium FY 10	$ 253,315,582

Source: Al McCutcheon, Director of Insurance and Medical Services, SCWCC

Attachment D

8/24/10

Hearings and Appeals Scheduling Report FY 02-10									
Line	FY	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10
1	**Hearings:**								
2	Avg Number of Days to Process Proper Request:	131	167	116	56	45	44	42	29
3	Avg Number of Days to Schedule Hearing:	192	233	183	124	107	98	103	102
4	**Appeals:**								
5	Avg Number of Days to Process Appeal:	74	119	80	94	69	66	67	77
6	Avg Number of Days to Appeal Hearing	207	206	137	156	131	116	116	117

Notes:

Hearings:

Line 3 Includes the required 30 day period for notification to all parties

Appeals:

Lines 5 & 6 includes the required 60 day period for appellate briefs reponses.

Source:

Amanda Underhill, Information Technology Department, SCWCC

South Carolina Vocational Rehabilitation Department

Enabling eligible South Carolinians with disabilities to prepare for, achieve and maintain competitive employment.

SCVRD

Barbara G. Hollis, Commissioner

August 17, 2010

Thomas J. Bardin, Jr., Director
Legislative Audit Council
1331 Elmwood Ave., Suite 315
Columbia, SC 29201

Re: Legislative Audit Council Review letter dated August 10, 2010

Dear Mr. Bardin:

I am writing in response to the Legislative Audit Council's review of the South Carolina Workers' Compensation Commission and the specific finding entitled *Referral of Claimants to Vocational Rehabilitation.* The South Carolina Vocational Rehabilitation Department (SCVRD) agrees that it would be beneficial to implement a more formalized process for referrals of claimants to SCVRD.

Prior to receiving this LAC recommendation, SCVRD had been examining our outreach to individuals receiving Workers' Compensation benefits and had begun meeting to identify ways to ensure that claimants who are eligible for SCVRD are aware of these services statewide. SCVRD welcomes the opportunity to work with the Commission to develop a memorandum of understanding outlining the referral process and the roles and responsibilities of the two organizations. We have historically had a strong, collaborative partnership, and SCVRD looks forward to working together to ensure that eligible claimants have access to our network of offices and services throughout the state.

Thank you for the recommendations that are certainly in keeping with our mission of enabling eligible South Carolinians with disabilities to prepare for, achieve, and maintain competitive employment. Please contact me if you have any questions or need additional information.

Sincerely,

Barbara G. Hollis

Barbara G. Hollis
Commissioner

BGH/jah

State Office ▪ 1410 Boston Avenue ▪ P.O. Box 15 ▪ West Columbia, South Carolina 29171-0015 ▪ www.scvrd.net
(803) 896-6500 ▪ (803) 896-6525 (Fax) ▪ (800) 832-7526 (Toll free) ▪ (803) 896-6532 (TDD) ▪ info@scvrd.state.sc.us

This report was published for a total cost of $37; 80 bound copies were printed at a cost of 47¢ per unit.