



# OIEC Quarterly Review

Issue No. 6

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## Letter from the Public Counsel

Dear Friends,

Participating in our first legislative session as an agency was an exciting and educational experience for OIEC. Speaking on behalf of everyone at our agency, I would like to express our sincere appreciation to the Representatives, Senators, and their staffs for their cooperation and generous response to our legislative efforts. I am frequently asked by friends and family what it is really like during the session. My honest response is that I had no idea that there was such dedication to the people's business by so many bright, hard working people. I was truly impressed.

The Legislature has seen fit to increase the number of our Ombudsmen and to give us customer service staff. These additional people will enable us to intervene earlier in disputes and get medical care for injured employees sooner. We are mindful of the necessity of getting injured workers early and effective medical treatment so that they can return to work sooner. Everyone wins when we can accomplish that.

Also, I would like to thank the industry and professional associations for their input regarding issues of mutual interest to us. It is my intention to make every effort to build on the good relationships that have been formed for the purpose of addressing the legitimate interests of all of the stakeholders to the workers' compensation process.

Sincerely,





## Legislative Update



*While OIEC serviced nearly 30,000 injured employees by telephone in 2006, OIEC estimates it is likely to service over 200,000 by telephone with the addition of a customer service program.*

The 80<sup>th</sup> Texas Legislature has come and gone and many decisions were made that affect both OIEC as an agency as well as the workers' compensation system. OIEC is pleased with the legislative guidance given and the several bills that benefit injured employees that passed this session. The following is a list and brief summary of the bills that passed during the session that benefit injured employees:

- HB 724: provides for an administrative proceeding for medical disputes in the workers' compensation system and modifies the eligibility requirements for death benefits to include a deceased injured employee's parents, who receives burial benefits under Texas Labor Code §-408.186.
- House Bill (HB) 886: authorizes the Texas Department of Insurance, Division of Workers' Compensation (DWC) to pre-certify workplace modification plans that are submitted to DWC's Return-To-Work Pilot Program. HB 886 is based on OIEC's legislative recommendation and encourages the use of DWC's Return-To-Work Pilot Program whereby small employers may be reimbursed up to \$2,500 for workplace modifications to return an employee back to work.
- HB 888: authorizes OIEC and its Ombudsman Program to obtain copies of an injured employee's medical records to assist injured employees in administrative dispute resolution proceedings. This bill is particularly helpful in light of HB 724 (discussed above), which requires an administrative dispute resolution hearing for medical issues prior to judicial review.
- HB 1003: requires all health care providers participating in the workers' compensation system to have a Texas medical license. HB 1003 is based on OIEC's legislative recommendation and requires all health care providers performing peer reviews to hold a medical license issued by the Texas Medical Board.
- HB 1006: requires health care providers performing medical necessity reviews as a part of an Independent Review Organization (IRO) to hold a medical license issued by the Texas Medical Board. This bill and HB 1003 assure Texas patients are diagnosed, treated, and reviewed by Texas doctors. OIEC believes that requiring patients in the workers' compensation system to be serviced by Texas doctors assures proper regulation over health care rendered to the injured employee.
- HB 2004: requires a health care provider who performs peer reviews on a workers' compensation case be certified in a professional specialty appropriate to the care received by the injured employee.
- SB 458: includes prosthetic or orthotic devices as eligible medical care in the workers' compensation system.
- SB 1169: provides for the reimbursement of an insurance carrier for the overpayment of certain workers' compensation benefits from the Subsequent Injury Fund. This bill was amended to include OIEC's legislative recommendation to authorize DWC's Benefit Review Officers to issue an interlocutory order at a Benefit Review Conference and reduce the time frame for issuing the order from ten to three days.

Heading into its first legislative session, OIEC requested legislative guidance on whether the agency should serve as a "One Stop Shop" and assist injured employees prior to a formal dispute with the insurance carrier or whether the agency should only  
*(continued on page 3)*



## Legislative Update (Continued)

service those injured employees that had a formal dispute and a Benefit Review Conference was scheduled. OIEC received legislative guidance that the agency should service all injured employees of Texas. As a result, OIEC was given additional funding through the legislative appropriations process to hire additional Ombudsmen as well as to obtain a customer service program to assist injured employees via telephone. While OIEC serviced nearly 30,000 injured employees by telephone in 2006, OIEC estimates it is likely to service over 200,000 by telephone with the addition of a customer service program. Funding for this initiative will be received September 1, 2007.

## Legal Services



In addition to providing individualized assistance to the Ombudsmen assigned to their teams, the OIEC Regional Staff Attorneys (RSAs) continue to develop and deliver training for the Ombudsmen with a focus on developing practical skills. In March 2007, the Ombudsmen participated in half-day training sessions around the state that addressed direct and cross-examination of expert witnesses. The training consisted of a lecture session, which addressed strategies for dealing with expert witnesses. The

lecture was followed by a mock hearing where each of the Ombudsman participants were afforded an opportunity to conduct a direct examination of an expert witness called by the injured employee and a cross-examination of an expert witness called by the insurance carrier. The RSA played the role of the expert witness. In addition, written materials were provided to the Ombudsmen that included a list of potential examination questions by topic and some general strategy suggestions concerning expert witness testimony and reports. In the feedback provided following the training, the participants indicated that the training provided deliverables that they could employ in assisting injured workers in the administrative dispute resolution process.

In July 2007, the RSAs are going to provide training to the Ombudsmen at the Second Annual OIEC Conference on disability management and more specifically, the treatment guidelines and return-to-work guidelines. The training will be designed to address real world examples of how the guidelines are being used and argued in the dispute resolution process. As with the direct and cross-examination training, the goal of the training at the OIEC Conference is to provide tangible recommendations and strategies for providing assistance to injured employees in this developing area of the law.

Finally, the third installment of practical skills training is in the process of being developed for delivery in September 2007. This training is going to address two different topics. One portion of the training is going to focus on discovery tools and using them effectively in workers' compensation and the second section is going to consider objections both from the standpoint of making proper objections and responding to them. Feedback suggests that the training conducted by the RSAs has been well-received by the Ombudsmen. The consensus is that the training has been both informative and fun. Every effort is going to be made to ensure that future training continues to serve those objectives.

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*The participants in the Direct and Cross-Examination of Expert Witnesses training indicated that the training provided deliverables that they could employ in assisting injured workers in the administrative dispute resolution process.*

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## Injured Employee Services

The new quarter is off to a great start! Over the last three months, Ombudsmen have assisted over 2,300 injured employees in dispute resolution proceedings and appeals. Their hard work and dedication is appreciated.



Along with the technical training provided by our RSAs, the Ombudsmen participated in monthly teleconferences. Recent training included legislative updates, treatment planning and disability management, as well as internal procedures. Training is emphasized to ensure all Ombudsmen are up-to-date on relevant topics and best able to assist injured employees.

Many Ombudsmen could be found traveling all over Texas to cover dispute resolution proceedings in other offices. Teamwork is evident by the willingness to help in a pinch. Relief has arrived at some offices! And with that, Injured Employee Services welcomes several new employees:

Gloria Medina - Customer Service (Central Office)  
 Victor Montes - Ombudsman Assistant (Dallas)  
 Sylvia Morales Daboh - Ombudsman Assistant (Dallas)  
 Gary Sewell - Ombudsman (Dallas)  
 Adriana Torres - Ombudsman Assistant (Amarillo)  
 Ruby Urtado - Ombudsman Assistant (Lubbock)

The Ombudsmen's Team Leads continue to implement many valuable ideas that will make the Ombudsmen's job of assisting injured employees efficient and effective.

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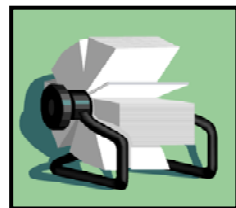
*Training is emphasized to ensure all Ombudsmen are up-to-date on relevant topics and best able to assist injured employees.*

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## A Look Ahead

The Second Annual OIEC Conference will be held in Austin July 11<sup>th</sup> – July 13<sup>th</sup>. It is packed full of useful and timely information including a legislative update, disability management, and even a case study presented by OIEC's Public Counsel! Because OIEC's staff is located in 24 different offices across the state, the OIEC team especially enjoys getting together during this time to share ideas and build friendships and resources that last throughout the year.

## Contact Us



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Please provide feedback, ask questions, or send a request to be added to the Quarterly Review distribution list at: [OIECinbox@oiec.state.tx.us](mailto:OIECinbox@oiec.state.tx.us).