STATE OF ILLINOIS
OFFICE OF THE
AUDITOR GENERAL
William G. Holland, Auditor General

SUMMARY REPORT DIGEST

WORKERS' COMPENSATION PROGRAM AS IT APPLIES TO STATE EMPLOYEES

MANAGEMENT AUDIT
Release Date: April 2012

SYNOPSIS

The Workers' Compensation Program as it applies to State employees involves three State agencies: the Department of Central Management Services (CMS), the Illinois Workers' Compensation Commission, and the Illinois Attorney General. According to data received from CMS, for the four-year period January 1, 2007, through December 31, 2010, State employees **filed a total of 26,101 workers' compensation claims**. As of July 2011, over **$295 million was paid** in workers' compensation for State employees on claims filed during the four-year period.

Our review of the workers' compensation program found that **CMS**:

- Data was incomplete, inaccurate, and inconsistent.
- Adjusted claims and made decisions regarding compensability without appropriate forms being submitted.
- Did not have caseload standards and could not always provide Adjuster caseloads.
- Needed to establish clearer policies regarding settlement contracts and approval limits.
- Negotiated settlement contract terms directly with the injured employee's legal counsel.
- Did not have formal policies for conflicts of interest for Adjusters or other employees who process workers' compensation claims.

Our review of the workers' compensation program found that the **Workers' Compensation Commission**:

- Data was incomplete, inaccurate, and inconsistent.
- Did not conduct annual reviews to evaluate Arbitrator performance.
- Did not have guidelines for Arbitrators regarding awards. We reviewed awards and found that many were inconsistent for the same type of injury to the same body part.
- Review Board responsible for conducting investigations of complaints against Arbitrators and Commissioners did not meet for 3 ½ years (February 11, 2008-September 9, 2011).
- Did not have a formal policy or specific procedures to identify fraud.

Our review of the workers' compensation program found that the **Attorney General**:

- Did not have specific policies or procedures to identify or control fraud for workers' compensation cases referred to them.

Throughout this audit we identified numerous shortcomings in both the structure and operations of the workers' compensation program as it applies to State employees. These problems have led to a program that is ill designed to protect the State's best interests as it relates to processing and adjudicating workers' compensation claims for State employees. Because of the extensive problems that permeate the workers' compensation program as it applies to State employees, **the General Assembly may wish to consider further changes to the structure and operations of the Workers' Compensation Program as it applies to State employees**.

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FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

BACKGROUND

Workers' compensation is a system of benefits provided by law to most workers who have job-related injuries or diseases. Employers, including the State of Illinois, provide workers' compensation benefits either by purchasing insurance policies or by paying for the benefits themselves (known as self-insurance). The State of Illinois covers its employees through self-insurance.

Three State agencies have responsibilities for processing, reviewing, determining compensation, and paying workers' compensation claims filed by State workers.

- **The Department of Central Management Services (CMS)** is statutorily responsible for administering the workers' compensation program for State of Illinois agencies, boards, commissions, and universities (20 ILCS 405/405-411).
- **The Illinois Workers' Compensation Commission (Commission)** acts as an administrative court system to resolve disputes between injured workers and their employers regarding workers' compensation claims. Although for private sector employers/employees the decisions of the Workers' Compensation Commission may be appealed through the courts, decisions are final for cases involving employees of the State of Illinois. Therefore, **for claims involving State employees the Workers' Compensation Commission is the court of last resort for settling disputes.**
- As the attorney for the State, **the Attorney General (AG)** represents the State of Illinois at proceedings in front of the Workers' Compensation Commission for claims filed by State employees. The AG also prepares, reviews, and approves settlement contracts for injured State employees. (pages 13-20)

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DATA ISSUES

CMS and the Illinois Workers' Compensation Commission need to address several data issues regarding workers' compensation claims and cases. At our request, both CMS and the Commission provided data regarding claims and cases filed for the four-year period 2007-2010. However, after reviewing the data and testing case files, we determined that several limitations existed in the data provided. Both agencies' workers' compensation information systems contained data that was incomplete, inaccurate, and inconsistent. (pages 20-21)

ANALYSIS OF CLAIMS FILED 2007-2010

For the period January 1, 2007 through December 31, 2010, State employees filed a total of 26,101 workers' compensation claims.

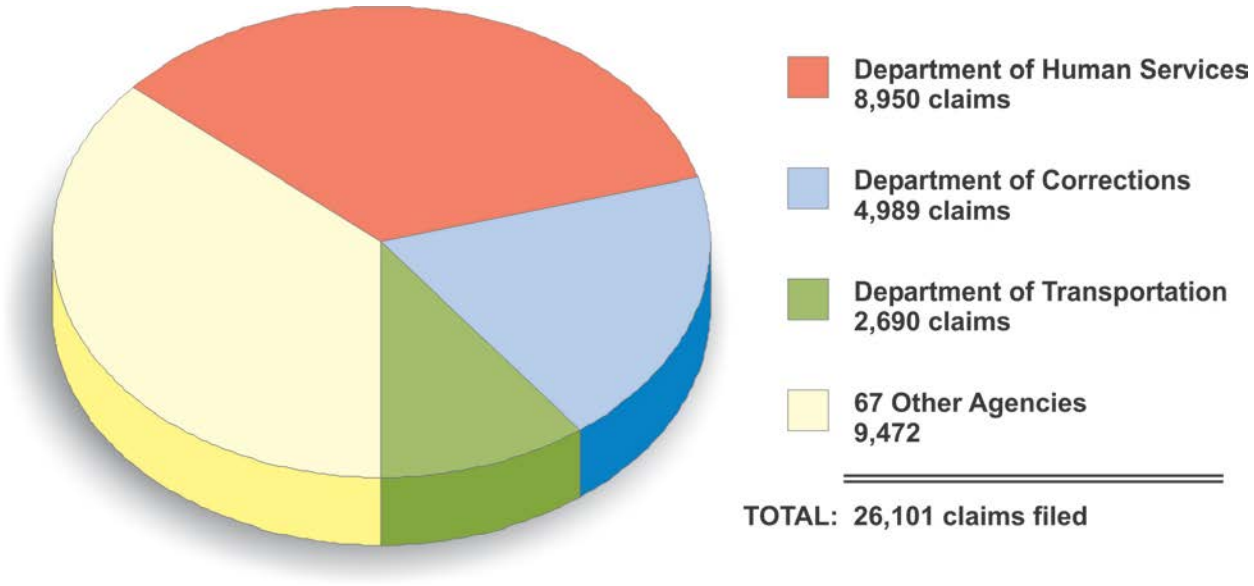
According to data received from CMS, for the period January 1, 2007, through December 31, 2010, **State employees filed a total of 26,101 workers' compensation claims**. Two types of injuries accounted for three-quarters of all injuries (sprains and contusions). For 13,412 (51%) claims, the primary injury involved a sprain. Contusions accounted for another 6,235 (24%) claims.

Number of Claims Filed by Agency

DHS and Corrections comprised over half of all claims.

Three agencies accounted for 16,629 (64%) of the total claims filed during 2007-2010 (DHS, Corrections, and IDOT). Together, **DHS and Corrections comprised over half of all claims (53%)** filed, at 8,950 and 4,989 claims filed, respectively (See Digest Exhibit 1). Certain facilities and employing units drive the large number of claims that were filed by these two agencies. At DHS, for instance, employees at Chester Mental Health Center filed 1,180 claims during the four-year period, giving that facility the highest number of claims for any facility or employing unit in State government during that timeframe. Overall, six of the top 10 employing units for workers' compensation claims filed during 2007-2010 were DHS mental health or developmental centers.

Digest Exhibit 1
WORKERS' COMPENSATION CLAIMS FILED BY AGENCY
January 1, 2007 through December 31, 2010



Source: OAG analysis of CMS workers' compensation claims data for claims filed 2007-2010.

Of Corrections' facilities, Menard Correctional Center had the most claims with 869 claims filed during the four-year period. Stateville Correctional Center ranked second of Corrections'

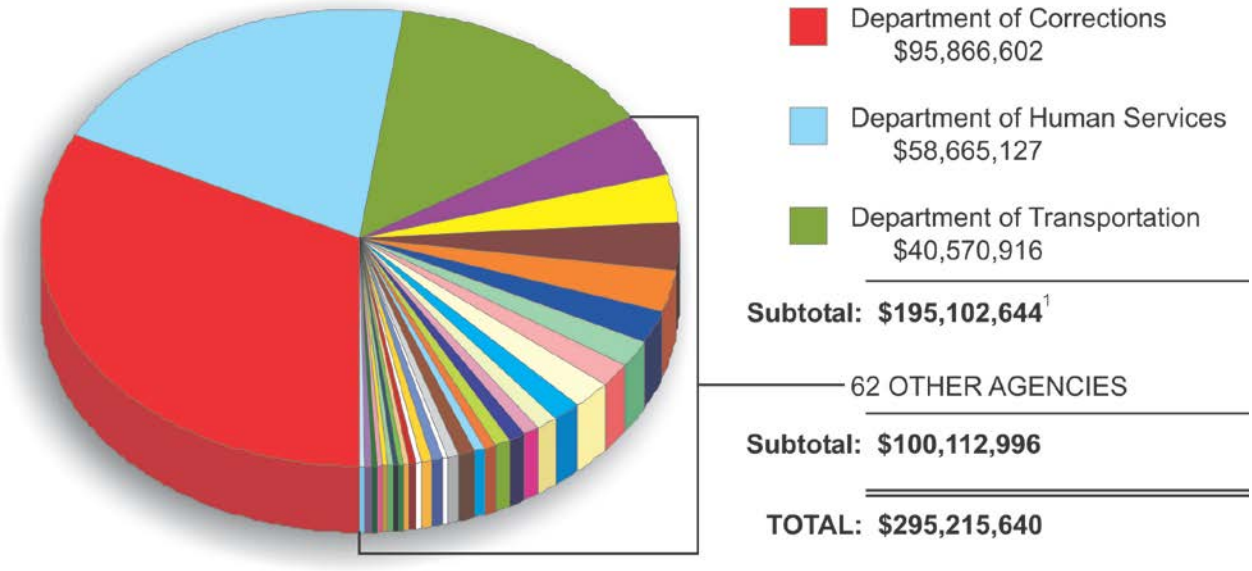
facilities with 668 claims filed during the same period.

Dollar Value of Claims Filed by Agency

Over $295 million was paid in workers' compensation for State employees on claims filed during the four-year period 2007-2010, according to CMS data.

Over $295 million was paid in workers' compensation for State employees on claims filed during the four-year period 2007-2010, according to CMS data. The largest single category of the State's payments - $103.1 million or 35 percent of all State payments - were made directly to medical providers for medical treatment of injured workers or to reimburse employees for medical costs. Settlements paid to State employees or their attorneys accounted for about one third (32%) of the State's payments for workers' compensation, or $95.6 million. Approximately 25 percent or $74.7 million was for Temporary Total Disability amounts paid to employees to provide income while they were off work. Awards from decisions made by Arbitrators at the Illinois Workers' Compensation Commission accounted for about six percent of the payments at $17.7 million.

Digest Exhibit 2
WORKERS' COMPENSATION PAYMENTS BY AGENCY
For Claims Filed 2007-2010
As Of July 2011



Note: [1]Total does not add due to rounding.

Source: OAG analysis of CMS workers' compensation claims payment data for claims filed 2007-2010.

Almost $96 million or about one third of the $295 million in workers' compensation claims paid during the four-year period was for Corrections' employees.

Although overall DHS employees filed more claims during the audit period, claims filed by Corrections' employees accounted for the highest dollar value of State payments. Almost **$96 million or about one third of the $295 million in workers' compensation claims paid during the four-year period was for Corrections' employees**. As of July 2011, Menard Correctional Center workers' compensation claims filed for the past four years have resulted in over $30 million in payments. DHS claims accounted for $58.7 million of the

The average cost per claim for DHS employees as of July 2011 was $6,555. By comparison, the average cost per claim for Corrections employees as of July 2011 was $19,216.

$295 million in State payments for workers' compensation claims filed during 2007-2010. Even though employees at DHS facilities filed nearly twice as many workers' compensation claims as employees at the Department of Corrections, the total payments related to those claims were only about half as much. The average cost per claim for DHS employees as of July 2011 was $6,555. By comparison, the average cost per claim for Corrections employees as of July 2011 was $19,216. (pages 24-39)

CLAIMS REPORTING

We identified several problems regarding notification and injury reporting. Documenting supervisory notification of an injury by the employee is critical when filing a claim because by law the employee must notify the employer within 45 days of the accident or injury. Although there is a form for supervisors to complete, supervisor notification can also be verbal and is not always documented. The CMS 900-3 (Supervisor's Report of Injury or Illness) contains information regarding how (oral or in writing) and when (date and time) the supervisor was informed by the employee of the accident or injury. However, this form was missing or incomplete in 19 percent of the cases we reviewed.

We identified 1,318 claims (5%) that took longer than the 45 day requirement from the date of injury to the date reported in CMS' system. Of the 109 claim files we reviewed that involved settlements and awards, 26 (24%) took more than 45 days from the date of the injury to the date the injury was reported according to CMS data. Only 4 of these 26 claims were initially denied for compensability according to CMS responses.

For repetitive trauma cases such as Carpal Tunnel Syndrome, determining an accident date is problematic because these claims are filed only after the injury is diagnosed or manifests itself.

For repetitive trauma cases such as **Carpal Tunnel Syndrome**, determining an accident date is problematic because these claims are filed only after the injury is diagnosed or manifests itself. In our file testing, we found examples of Carpal Tunnel Syndrome claims in which the date of the accident was listed as years prior to the date reported. We also found instances in which the employee was no longer employed with the State when the claim was filed or was on leave for an unrelated workers' compensation claim when they filed another workers' compensation claim for repetitive trauma. (pages 47-50)

CLAIMS ADJUDICATION AT CMS

CMS was adjusting claims and making decisions regarding compensability without appropriate forms being submitted.

CMS needs to improve its process for adjusting claims for State employee workers' compensation. We reviewed 109 claims files at CMS (68 settlements and 41 awards) and found a significant amount of missing or incomplete forms. We also found:

- CMS was adjusting claims and making decisions regarding compensability without appropriate forms being submitted, and forms that were submitted were not always

complete.

- Determinations of compensability by adjusters were not reviewed by supervisors.
- Cases where no formal request for TTD was made by employees, but employees were receiving TTD benefits.
- CMS adjusters did not verify Average Weekly Wage information submitted by agency workers' compensation coordinators and did not have access to payroll information.
- Medical bills were not always properly approved or dated.

Adjustor Caseloads

CMS does not have caseload standards and could not always provide Adjuster caseloads.

We found that CMS did not have caseload standards and could not always provide Adjuster caseloads. As of May 2011, there were eight CMS staff to adjust workers' compensation claims and two claims supervisors. From our review of disposition codes in CMS' data, we identified 12,613 claims that were open as of July 2011. If these claims were distributed equally among adjusters, each Adjuster would be responsible for 1,577 claims. If the two claims supervisors also assumed a caseload, the caseload would be 1,261 cases each. According to workers' compensation industry sources the typical adjuster caseload is 175 to 250 active claims per adjuster. It should be noted, however, that a number of the 12,613 claims open as of July 2011 may be inactive and merely being held open by CMS until the expiration of the statute of limitations period. CMS was unable to estimate the number of inactive cases in its system for the auditors. (pages 50-61)

WORKERS' COMPENSATION COMMISSION

Establishing a case with the Workers' Compensation Commission is a separate process from filing a claim with CMS. Simply because an employee is injured on the job does not mean there will be a case filed with the Commission related to the injury claim.

We found that improvements need to be made in the process for establishing a case with the Commission.

We found that improvements need to be made in the process for establishing a case with the Commission. We reviewed case files and found Applications for Adjustment of Claim were not always being filed with the Commission. An Application for Adjustment is a key document for the Commission because it is used to establish a case file, assign a case number, and establish the city in which the accident occurred so that a call site and Arbitrator can be assigned. Of the 109 settlements and awards sampled, 13 (12%) did not contain an Application for Adjustment in the file at the Commission. There were also three case files in our sample that could not be located.

Cases More Than Three Years Old

Commission rules provide that cases that were filed three years ago or more must proceed to arbitration unless the parties show they have good cause to wait. These are known as "red-line" cases. Because of data accuracy issues, the

status call and red-line reports were not accurate. The Commission has even posted a request on its website for assistance from parties in removing settled cases from the call lists. According to Commission data (received in August 2011), as of June 1, 2011, 2,515 cases were more than three years old according to the date of the Application for Adjustment but had not been closed out. However, because of the inconsistency of employer name in the Commission's system, it was not possible to determine how many of these were cases filed by State employees. Of the 109 cases we sampled that received a settlement or award, 15 (14%) were more than three years old and may have warranted dismissal. These cases were 36 to 164 days past the three year mark.

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Data Issues

Data that we received from the Workers' Compensation Commission has severe limitations because the data has missing, inaccurate, and/or inconsistent information. Although we were able to analyze the overall caseloads for Arbitrators, we were unable to determine with any accuracy the number of cases involving a State employee assigned to each Arbitrator by employing unit (i.e. State agency) or by type of injury.

Lack of Performance Reviews

The Workers' Compensation Act requires annual performance reviews for Arbitrators. However, in our review of the personnel files for 31 Arbitrators assigned to call sites as of April 2011, we found that there were **no annual reviews being conducted to evaluate Arbitrator performance**. The personnel files did not contain any other information to indicate that reviews of Arbitrators' performance had been conducted. (pages 63-78)

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SETTLEMENTS AND AWARDS PROCESS

There are significant differences between resolving a workers' compensation claim by reaching a settlement or by receiving an award through a trial with a Commission Arbitrator. A **settlement** is a contract negotiated between an injured employee and the employer in order to resolve any dispute regarding the benefits due to the injured employee under the Workers' Compensation Act or Occupational Diseases Act. If an employer and injured employee cannot reach an agreement or choose not to, either party may petition for a trial with an Arbitrator at the Commission and a trial will be held. If an Arbitrator's decision rules in favor of the injured employee, this is termed an **award**.

CMS provided auditors with a listing of all claims filed for the four-year period January 1, 2007, to December 31, 2010. Of the 26,101 workers' compensation claims filed during the four-year period, **3,621 (14%) received a settlement** as of July 2011. According to our analysis of CMS' data, these **3,621 settlements involved 3,299 individuals who received a**

total of $107,362,741. Of the 26,101 workers' compensation claims filed during the four-year period, **611 (2%) received an award** as of July 2011. According to our analysis of CMS' data, these **611 awards involved 567 individuals who received a total of $17,806,709**.

We reviewed the settlement process and found that:

CMS needs to establish clearer policies regarding settlement contracts and approval limits for Risk Management employees.

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CMS Risk Management Supervisors were negotiating, and in some cases finalizing, settlement contract terms directly with the injured employee's legal counsel.

- CMS Risk Management Supervisors were negotiating, and in some cases finalizing, settlement contract terms directly with the injured employee's legal counsel.
- CMS' files did not always contain support for all injuries compensated as part of the settlement. Although most CMS files generally contained medical support for the injuries listed in the settlement contract, we identified settlement contracts that did not contain medical evidence.
- Settlement files at the Commission also did not always contain medical evidence. In these instances, the evidentiary basis for the Arbitrator's approval of the settlement contract is not apparent.

The Commission's Application for Adjustment does not contain a specific question regarding whether the employer is the State of Illinois.

- The Commission's Application for Adjustment does not contain a specific question regarding whether the employer is the State of Illinois. Although the Commission's information system contains a data field used to identify State employees, the field is not always accurate.

We reviewed the awards process and found that:

- All 41 award files we reviewed contained an award decision.
- For the award files reviewed that did not involve an expedited hearing, the time from the trial to the date the decision was filed ranged from 13 to 83 days. The decisions in five cases were filed more than 60 days after the trial. Our sample of 41 award decisions included nine 19(b) (expedited) cases. For the 19(b) cases, the decision was filed between 7 to 66 days after the trial date. Of these nine cases, 7 decisions were filed more than 25 days after the trial date. Three of these 7 decisions were filed more than 60 days after the trial date.

The Commission does not have guidelines for Arbitrators regarding awards.

- The Commission does not have guidelines for Arbitrators regarding awards. We reviewed awards and found that many are inconsistent for the same type of injury to the same body part. These inconsistencies involved the percent loss of use as well as the manner of determining loss. For instance, for Carpal Tunnel

Syndrome claims, the amount awarded for cases we reviewed ranged from as little as 5 percent loss of a hand to as much as permanent total disability for life. Repetitive motion injury awards varied with some Arbitrators awarding the same percentage loss amount for either hand while others awarded more for loss of the dominant hand. (pages 79-101)

POSSIBLE CONFLICTS OF INTEREST

Although the Illinois Workers' Compensation Commission has promulgated rules regarding conflicts of interest for Commissioners and Arbitrators, we identified several relationships that may have posed a conflict for the Arbitrator.

The Commission's Review Board did not meet for 3 ½ years (February 11, 2008-September 9, 2011).

The **Commission's Review Board** is responsible for conducting investigations of complaints against Arbitrators and Commissioners. The Board is required to meet quarterly and to call a meeting within 15 days of any complaints received. The Board did not meet for 3 ½ years (February 11, 2008-September 9, 2011). During this timeframe, we found several allegations regarding Arbitrators and Commissioners alleging fraud, unethical practices, and favoritism. In addition, on February 15, 2011, the Commission placed two Arbitrators on administrative leave while they were being investigated.

The Department of Central Management Services has no formal policies for conflicts of interest for Adjusters or other employees who process workers' compensation claims. CMS provided two e-mails from 2004 and 2006 as documentation of its conflict of interest policies. However, all Adjusters employed by CMS during the audit period were not included in the e-mail. (pages 103-115)

FRAUD IDENTIFICATION POLICIES

The Workers' Compensation Commission does not have a formal policy or specific procedures to identify fraud.

We found the Workers' Compensation Commission does not have a formal policy or specific procedures to identify fraud and does not conduct statistical reviews or analyses to identify fraud or trends that might warrant further review or investigation. According to a Commission official, the Workers' Compensation Commission monitors complaints and allegations, and all fraud allegations are referred to the Department of Insurance (DOI) Fraud Unit for follow-up. However, we found the Commission did not refer any cases to the DOI Fraud Unit during the four-year period subject to our audit.

CMS has policies that require Risk Management Division employees to act on any reports of workers' compensation disability benefit abuse and to assist law enforcement officials in efforts toward prosecuting abuses. Although CMS has established policy guidance for identifying possible fraud, as well as procedures for reporting cases for investigation, we found that CMS does not conduct statistical analyses to identify trends and patterns in claim reporting that might be

indicators of fraudulent activity. According to CMS officials, the agency's computer system's data integrity problems and a shortage of staff made it difficult to conduct statistical reviews of the data to analyze and identify fraudulent trends.

The Office of the Attorney General does not have specific policies or procedures to identify or control fraud for workers' compensation cases referred to them.

We found the Office of the Attorney General does not have specific policies or procedures to identify or control fraud for workers' compensation cases referred to them. Attorney General officials stated that they are limited in identifying trends or fraud through data analysis because they only have a small number of the total workers' compensation cases (i.e., those cases in which a settlement contract is negotiated and/or approved by the Attorney General's Office, or which are taken to the Commission and the Attorney General represents the State at trial). Therefore, any analysis that could be conducted would be limited. Attorney General officials also stated that their focus is on assembling a defense in order to set beneficial precedent and prevent fraudulent trends from occurring.

Department of Insurance Fraud Unit

Public Act 94-277, codified at 820 ILCS 305/25.5 and effective July 20, 2005, created a Workers' Compensation Fraud Unit within the Illinois Department of Insurance (formerly the Division of Insurance at DFPR). The Unit's sole purpose is to examine reports of workers' compensation fraud and noncompliance with insurance requirements by employers. On October 17, 2011, we inquired with the Department of Insurance (DOI) about the number of workers' compensation referrals, investigations, and convictions for State employee workers' compensation claims the DOI Fraud Unit had been involved in. DOI officials responded that "we cannot search our records by 'state employee' because none of the captured information in the system specified the target's place of employment in a searchable field. As such we will have to search our records manually in order to get the numbers." DOI responded to our inquiry more than four months later, on February 27, 2012, by saying that there had been a total of eight investigations of State employee workers' compensation claims resulting in no convictions during the four-year time period subject to our audit.

The DOI Fraud Unit has not procured or implemented the required system utilizing analytics such as predictive modeling, data mining, social network analysis, and scoring algorithms for the detection and prevention of fraud, waste, and abuse.

Public Act 097-018, effective June 28, 2011, imposed additional requirements on DOI for the purpose of identifying and detecting workers' compensation fraud. The Fraud Unit at the Department of Insurance is required to procure and implement a system utilizing analytics such as predictive modeling, data mining, social network analysis, and scoring algorithms for the detection and prevention of fraud, waste, and abuse. The Act states that this system must be implemented on or before January 1, 2012. As of February 28, 2012, the DOI Fraud Unit had not procured or implemented the required system. (pages 115-122)

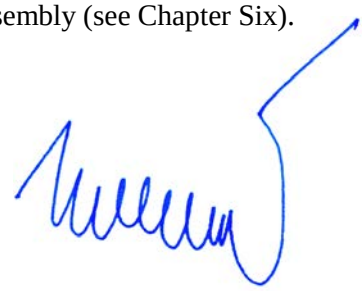
REPORT CONCLUSIONS

Throughout this audit we identified numerous shortcomings in both the structure and operations of the workers' compensation program as it applies to State employees. These problems have led to a program that is ill designed to protect the State's best interests as it relates to processing and adjudicating workers' compensation claims for State employees. Because of the extensive problems that permeate the workers' compensation program as it applies to State employees, **the General Assembly may wish to consider further changes to the structure and operations of the Workers' Compensation Program as it applies to State employees**. (pages 123-125)

RECOMMENDATIONS

The audit report contains a total of 22 recommendations. Some recommendations include more than one agency. The report contains 12 recommendations to the Department of Central Management Services, 10 to the Illinois Workers' Compensation Commission, 3 to the Attorney General, and 1 to the Department of Insurance. Agencies generally agreed with the recommendations. Appendix E to the audit report contains the agency responses.

The audit report also contains a Matter for Consideration by the General Assembly (see Chapter Six).



WILLIAM G. HOLLAND
Auditor General

WGH:MSP

AUDITORS ASSIGNED: This Management Audit was performed by the Office of the Auditor General's staff.