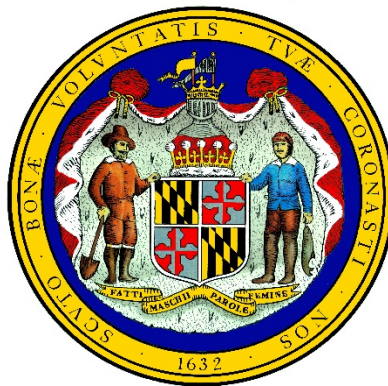


Audit Report

Workers' Compensation Commission

July 2023



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DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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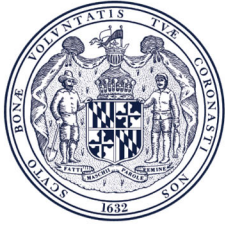
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MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
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Gregory A. Hook, CPA
Legislative Auditor

July 27, 2023

Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee
Delegate Jared Solomon, House Chair, Joint Audit and Evaluation Committee
Members of Joint Audit and Evaluation Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a fiscal compliance audit of the Workers' Compensation Commission (WCC) for the period beginning August 6, 2018 and ending September 30, 2022. WCC adjudicates claims for compensation arising under the Workers' Compensation Law and is responsible for the approval and monitoring of Maryland self-insured employers. WCC's expenditures are recovered from assessments to insurance companies and self-insured employers.

Our audit disclosed that WCC did not use available information to proactively identify employers that did not have the required workers' compensation insurance. For example, WCC did not utilize records it obtains from the Maryland Department of Labor - Unemployment Insurance Division (DUI) to identify employers that may not have current workers' compensation insurance. We utilized the data from DUI and an insurance rating and data collection bureau specializing in workers' compensation to identify 1,650 employers with one or more employees active during our audit period that appeared to lack workers' compensation insurance. Our test of 20 of these employers confirmed that 19 did not have insurance.

In addition, our audit disclosed that WCC did not maintain complete tracking records of actions taken against potentially noncompliant employers. Our examination of the case docket records for hearings held on 7 days between November 2021 through September 2022 disclosed that 139 of the 647 employers (21 percent) scheduled for hearings were not listed on the tracking records and for 493 other employers (76 percent), the records did not indicate the outcome of the cases.

Furthermore, we noted WCC did not have procedures to independently verify that all collections received were deposited and did not require payments to be made electronically (such as via wire transfer) to enhance accountability and security over the funds.

Finally, our audit also included a review to determine the status of the three findings contained in our preceding audit report. We determined that WCC satisfactorily address one of the three prior audit findings. The remaining two findings are repeated in this report.

WCC's response to this audit is included as an appendix to this report. We reviewed the response to our findings and related recommendations, and have concluded that the corrective actions identified are sufficient to address all audit issues.

We wish to acknowledge the cooperation extended to us during the audit by WCC. We also wish to acknowledge WCC's willingness to address the audit issues and implement appropriate corrective actions.

Respectfully submitted,

A handwritten signature in black ink that reads "Gregory A. Hook". The signature is written in a cursive, flowing style.

Gregory A. Hook, CPA
Legislative Auditor

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Background Information

Agency Responsibilities

The Workers' Compensation Commission (WCC) administers Title 9 of the Labor and Employment Article of the Annotated Code of Maryland, also known as the Maryland Workers' Compensation Law. WCC receives reports of workplace accidents, adjudicates claims for compensation arising under the law, conducts hearings of contested workers' compensation cases, refers claimants requiring rehabilitation to appropriate rehabilitation service providers, and assesses penalties against employers to be paid to the Uninsured Employers' Fund for failing to provide workers' compensation insurance coverage as required by law. For adjudicated claim awards that involve permanent disability or death, the awards include provisions to fund Maryland's Subsequent Injury Fund and Uninsured Employers' Fund through WCC-imposed assessments against employers or insurers. Finally, WCC is responsible for approving employers who wish to be self-insured in the State and for monitoring their activities and financial solvency.

According to WCC's records, WCC received 22,075 workers' compensation claims and approved 16,213 awards involving permanent disability or death, totaling approximately \$373.9 million during fiscal year 2022. In accordance with State law, all of WCC's expenditures, as well as the expenditures of certain programs within the Maryland Department of Labor (MDL), are primarily funded by assessments billed to insurance companies that issue workers' compensation insurance policies and companies that self-insure for workers' compensation coverage.

WCC is governed by a 10-member Commission, appointed by the Governor to staggered 12-year terms, subject to confirmation by the Maryland Senate. WCC's fiscal year 2022 appropriation provided for 115 employee positions and, according to the State's records, WCC expenditures totaled \$18.6 million (see Figure 1 on the following page). These expenditures were solely funded by fiscal year 2022 assessments, which according to WCC's records totaled approximately \$33.2 million (of which \$13.9 million was used to fund MDL programs).

Figure 1
WCC Positions, Expenditures, and Funding Sources

Full-Time Equivalent Positions as of June 30, 2022		
	Positions	Percent
Filled	99	85.3%
Frozen ¹	1	0.9%
Vacant	16	13.8%
Total	116	
Fiscal Year 2022 Expenditures		
	Expenditures	Percent
Salaries, Wages, and Fringe Benefits	\$11,635,952	62.4%
Technical and Special Fees	844,157	4.5%
Operating Expenses	6,168,699	33.1%
Total	\$18,648,808	
Fiscal Year 2022 Funding Sources		
	Funding	Percent
Special Fund	\$18,648,808	100.0%
Total	\$18,648,808	

Source: State financial and personnel records

Status of Findings From Preceding Audit Report

Our audit included a review to determine the status of the three findings contained in our preceding audit report dated April 2, 2019. As disclosed in Figure 2 on the following page, WCC satisfactorily addressed one of these findings. The remaining two findings are repeated in this report.

¹ Prior to December 1, 2021, a hiring freeze resulted in certain positions being frozen. Frozen positions were unauthorized to be filled according to budgetary instructions from the Department of Budget and Management. Any position that is currently marked as frozen has not been filled since the freeze was lifted; however, these positions now are available to be filled.

Figure 2
Status of Preceding Findings

Preceding Finding	Finding Description	Implementation Status
Finding 1	WCC had not taken timely action to schedule hearings before the Commission for known or potentially uninsured employers, and its monitoring records were incomplete.	Repeated (Current Finding 2)
Finding 2	WCC lacked adequate procedures to ensure that all collections received were deposited, and that deposits were made in a timely manner.	Repeated (Current Finding 3)
Finding 3	Adequate controls had not been established to ensure the propriety of WCC's payroll, employee leave balances, and user access capabilities in the Statewide Personnel System.	Not repeated

Findings and Recommendations

Employer Compliance

Background

State law generally requires each employer with one or more employees to maintain workers' compensation insurance from an authorized insurer to provide coverage of accidental personal injury arising out of and in the course of employment or obtain approval to self-insure. The Workers' Compensation Commission (WCC) is responsible for determining if employers are in compliance with the applicable workers' compensation insurance laws.

Additionally, State law gives WCC the authority to order an employer without proper workers' compensation insurance to attend a hearing. The purpose of the hearing is to give the employer the opportunity to explain why it should not be considered in violation of the law requiring such insurance. An employer found to be in violation of the law is described as noncompliant, and WCC may order the employer to obtain insurance and pay a penalty not to exceed \$10,000 to the Uninsured Employers' Fund. State law also requires WCC to set hearings as soon as practicable for employers who fail to secure the required insurance coverage.

WCC identifies potentially uninsured employers by reviewing reports, provided by the National Council on Compensation Insurance (NCCI),² of employers who have cancelled their current workers' compensation insurance policies. WCC may also identify uninsured employers through workers' compensation claim hearings and tips received from the public. For each employer identified, WCC mails the employer a letter requesting information about current insurance coverage or documentation supporting why coverage is no longer needed.

When an employer fails to respond to the aforementioned letter with appropriate documentation, WCC issues an order directing the employer to attend a hearing before the Commission. Based on WCC's records, the Commission held 47 employer compliance hearings for 3,184 cases from August 2018 to September 2022. Due to the COVID-19 pandemic, the Commission did not hold employer compliance hearings from May 2020 to October 2021.

² NCCI is an insurance rating and data collection bureau specializing in workers' compensation, which gathers and analyzes related data, including workers' compensation claims and policies, and maintains associated databases for the benefit of its member organizations across the country, including WCC.

Finding 1

WCC did not use available information to proactively identify employers that did not have the required workers' compensation insurance.

Analysis

WCC did not use available information to proactively identify employers that did not have the required workers' compensation insurance. Specifically, WCC's process was not comprehensive as it did not utilize active employment records available from the Maryland Department of Labor's Division of Unemployment Insurance (DUI)³ to identify employers with one or more employees that may not have current workers' compensation insurance. Rather, as noted above, WCC's procedures were generally limited to following up on NCCI records of employers that cancelled workers' compensation insurance policies and investigating tips regarding employers with no workers' compensation insurance. These procedures would not proactively identify employers who never obtained the required workers' compensation insurance.

We obtained DUI records of employers with one or more employees active between July 1, 2017 through December 31, 2020 which we deemed reliable for our purposes and compared them to NCCI records for calendar year 2020. We filtered these records to include only those employers added to the DUI records during our audit period. Our comparison identified 1,650 Maryland employers with one or more employees based on DUI records that did not have active workers' compensation insurance according to NCCI. Our test of 20 of these employers to WCC records confirmed that 19 did not have active Maryland workers' compensation coverage. WCC was not aware of the lack of insurance for 18 of the 19 employers until we brought the matter to its attention.

Recommendation 1

We recommend that WCC

- a. develop a comprehensive process to proactively identify employers that potentially did not have workers' compensation insurance. For example, WCC should periodically obtain and compare DUI records of employers with one or more employees to NCCI records; and**
- b. investigate and take appropriate corrective actions (such as assessing penalties) for any employers that do not have the required workers'**

³ WCC utilizes data from DUI in its calculation of assessments to licensed workers' compensation insurers and self-insured companies. WCC advised us that although it has access to query DUI data for certain assessment calculation purposes, it does not have the data in a format that would allow for identification of employers without workers' compensation insurance.

compensation insurance, including any of the 1,650 employers noted above determined to not have insurance.

Finding 2

WCC did not maintain complete tracking records of actions taken against potentially noncompliant employers, which precluded effective oversight.

Analysis

WCC did not maintain complete tracking records of actions taken against potentially noncompliant employers, which precluded effective oversight. The purpose of the tracking records is to assist WCC in monitoring the disposition of cases when potentially noncompliant employers are first identified. Our examination of the case docket records for the hearings held on 7 days between November 2021 through September 2022 disclosed that 139 of the 647 employers (21 percent) scheduled for hearings were not listed on the tracking records and for 493 other employers (76 percent), WCC did not document the outcome of the cases in the tracking records.⁴ The lack of complete tracking records precluded WCC from effectively monitoring the timeliness and correctness of processed cases.

Similar conditions regarding incomplete tracking records were commented upon in our preceding audit report. In its response to that report, WCC indicated that a new information technology modernization project would be implemented that would create an electronic system to administer the employer compliance program that would be linked to the docket function. In addition, WCC indicated that it had created a docket checklist to help ensure that each case was properly documented. Although WCC indicated these steps would be completed by February 2019, during our current audit we noted that the new system was still being developed and WCC had not fully implemented procedures to ensure its tracking records were complete (such as by reconciling the tracking records to the related docket records as recommended last audit).

Recommendation 2

We recommend that WCC ensure its tracking records are complete. For example, we recommend that WCC periodically compare its tracking and docket records to ensure completeness and accuracy (repeat).

⁴ State law requires WCC to set hearings as soon as practicable for employers and our prior audit noted that such hearings were not being scheduled timely. We did not test the timeliness of the hearings this audit due to the lack of complete and accurate tracking records and because the Commission suspended the hearings from May 2020 to October 2021 due to the COVID-19 pandemic.

Cash Receipts

Finding 3

WCC did not have procedures to independently verify that all collections received were deposited, and did not require large payments to be submitted electronically to enhance security of the funds.

Analysis

WCC did not have procedures to independently verify that all collections received were deposited since the employee responsible had access to the collections and maintained the related accounts receivable records. In addition, WCC did not require large payments to be submitted electronically to enhance security of the funds. WCC deposits totaled \$33.7 million during fiscal year 2022, which primarily related to assessment payments from insurance companies and self-insured employers.

- The employee responsible for verifying the initial record of collections to the validated deposit documentation had access to the safe where collections were stored prior to deposit. In addition, this employee created the invoices for assessments, and maintained the accounts receivable records which generated the resultant collections. As a result, errors or other discrepancies could occur without timely detection and there was a lack of assurance that all collections had been deposited. The Comptroller of Maryland's *Accounting Procedures Manual* requires independent verification of collections to deposit. The *Manual* further provides for segregating cash receipts and accounts receivable related functions.
- WCC did not require insurance companies and self-insured employers to submit assessment payments electronically (such as via wire transfer) to enhance accountability and security over the funds. Our review of 319 large dollar value payments WCC received during the period May 2021 through September 2022 totaling \$13.8 million, disclosed that 55 checks totaling \$13.1 million ranged in amounts from \$20,000 up to \$2.5 million.

A similar condition regarding the lack of an independent deposit verifications was commented upon in our prior audit. In response to that report, WCC indicated that effective January 2019 the employee performing the deposit verifications and accounts receivable recordkeeping no longer had access to the safe and related collections. However, as noted above, access to the safe and related collections had not been restricted during the current audit period. WCC management advised us that staffing vacancies within the fiscal department prevented the recommendations from being implemented as intended.

Recommendation 3

We recommend that WCC

- a. ensure employees responsible for performing the deposit verifications and accounts receivable recordkeeping do not have access to related collections, as required; (repeat) and**
- b. consider requiring assessment check payments to be made electronically to enhance security over the funds.**

We advised WCC on accomplishing the necessary separation of duties using existing personnel.

Audit Scope, Objectives, and Methodology

We have conducted a fiscal compliance audit of the Workers' Compensation Commission (WCC) for the period beginning August 6, 2018 and ending September 30, 2022. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine WCC's financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit included employer compliance, assessments, cash receipts, disbursements, and payroll. We also determined the status of the findings contained in our preceding audit report.

Our assessment of internal controls was based on agency procedures and controls in place at the time of our fieldwork. Our tests of transactions and other auditing procedures were generally focused on the transactions occurring during our audit period of August 6, 2018 to September 30, 2022, but may include transactions before or after this period as we considered necessary to achieve our audit objectives.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, tests of transactions, and to the extent practicable, observations of WCC's operations. Generally, transactions were selected for testing based on auditor judgment, which primarily considers risk, the timing or dollar amount of the transaction, or the significance of the transaction to the area of operation reviewed. As a matter of course, we do not normally use sampling in our tests, so unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the transactions tested. Therefore, unless sampling is specifically indicated in a finding, the results from any tests conducted or disclosed by us cannot be used to project those results to the entire population from which the test items were selected.

We performed various data extracts of pertinent information from the State's Financial Management Information System (such as revenue and expenditure data) and the State's Central Payroll Bureau (payroll data). These extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from these sources were sufficiently reliable for the purposes the data were used during this audit. We also extracted data from WCC's assessment billing and compliance tracking records for the purpose of testing certain areas. We performed various tests of the relevant data and determined that the data were sufficiently reliable for the purposes the data were used during the audit. We further obtained active employer data extracts from the Maryland Department of Labor's Division of Unemployment Insurance (DUI) for the purpose of testing employer compliance. We performed various tests of the relevant data and determined that the data were sufficiently reliable for the purposes the data were used during our audit of WCC. Finally, we performed other auditing procedures that we considered necessary to achieve our audit objectives. The reliability of data used in this report for background or informational purposes was not assessed.

WCC's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records; effectiveness and efficiency of operations, including safeguarding of assets; and compliance with applicable laws, rules, and regulations are achieved. As provided in *Government Auditing Standards*, there are five components of internal control: control environment, risk assessment, control activities, information and communication, and monitoring. Each of the five components, when significant to the audit objectives, and as applicable to WCC, were considered by us during the course of this audit.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could

adversely affect WCC's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also includes findings regarding significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to WCC that did not warrant inclusion in this report.

WCC's response to our findings and recommendations is included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise WCC regarding the results of our review of its response.

WES MOORE
Governor

ARUNA MILLER
Lt. Governor

MARY K. AHEARN
Chief Executive Officer



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Commissioners

July 26, 2023

Mr. Gregory A. Hook, CPA
Office of Legislative Audits
The Warehouse at Camden Yards
351 West Camden Street
Suite 400
Baltimore, MD 21201

Dear Mr. Hook:

The Workers' Compensation Commission (WCC) appreciates the opportunity to provide responses to the Draft Audit Report for the period beginning August 6, 2018 and ending September 30, 2022. The WCC's responses are presented using the Agency Response Form provided by your office.

Please do not hesitate to contact David E. Jones, Chief Financial Officer, if you or your staff should have any questions or concerns regarding the WCC's proposed strategy for addressing these issues. David's telephone number is (410) 864-5255.

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen Quinn", written over a horizontal line.

Maureen Quinn
Chair

Attachment

cc: Mary K. Ahearn, Chief Executive Officer
David E. Jones, Chief Financial Officer

Workers' Compensation Commission

Agency Response Form

Employer Compliance

Finding 1

WCC did not use available information to proactively identify employers that did not have the required workers' compensation insurance.

We recommend that WCC

- a. develop a comprehensive process to proactively identify employers that potentially did not have workers' compensation insurance. For example, WCC should periodically obtain and compare DUI records of employers with one or more employees to NCCI records; and
- b. investigate and take appropriate corrective actions (such as assessing penalties) for any employers that do not have the required workers' compensation insurance, including any of the 1,650 employers noted above determined to not have insurance.

Agency Response			
Analysis			
Please provide additional comments as deemed necessary.			
Recommendation 1a	Agree	Estimated Completion Date:	12/31/2023
Please provide details of corrective action or explain disagreement.	The WCC will contact DUI to determine the most feasible way to capture the reporting recommended and modify the Memorandum of Understanding with the DUI to include getting the recommended reporting to compare with NCCI records. The WCC will endeavor to build the data collection/comparison into the ongoing Enterprise Modernization Project for the Employer Compliance program.		
Recommendation 1b	Agree	Estimated Completion Date:	12/31/2023
Please provide details of corrective action or explain disagreement.	The WCC will review the 1,650 employers to determine if coverage existed; contact those employers that did not have coverage to determine if coverage was required and proceed accordingly (assess fines if coverage was required).		

Workers' Compensation Commission

Agency Response Form

Finding 2

WCC did not maintain complete tracking records of actions taken against potentially noncompliant employers, which precluded effective oversight.

We recommend that WCC ensure its tracking records are complete. For example, we recommend that WCC periodically compare its tracking and docket records to ensure completeness and accuracy (repeat).

Agency Response			
Analysis			
Please provide additional comments as deemed necessary.			
Recommendation 2	Agree	Estimated Completion Date:	6/30/2023
Please provide details of corrective action or explain disagreement.	The WCC will monthly review the tracking records (Excel file) to ensure that it is complete and accurate. The WCC will also ensure that each docketing sheet is maintained in the system for comparison to the tracking sheet. It should be noted that the hardcopy files also show the actions taken on each employer compliance case.		

Workers' Compensation Commission

Agency Response Form

Cash Receipts

Finding 3

WCC did not have procedures to independently verify that all collections received were deposited, and did not require large payments to be submitted electronically to enhance security of the funds.

We recommend that WCC

- a. ensure employees responsible for performing the deposit verifications and accounts receivable recordkeeping do not have access to related collections, as required; (repeat) and**
- b. consider requiring assessment check payments to be made electronically to enhance security over the funds.**

We advised WCC on accomplishing the necessary separation of duties using existing personnel.

Agency Response			
Analysis			
Please provide additional comments as deemed necessary.			
Recommendation 3a	Agree	Estimated Completion Date:	4/27/2023
Please provide details of corrective action or explain disagreement.	<p>The WCC has reassigned these functions to ensure segregation of duties. Specifically, the employee who is responsible for performing the deposit verifications is now a different individual than the employee who is responsible for accounts receivable recordkeeping. The employee who is now responsible for performing the deposit verifications does not have access to the safe and collections.</p> <p>It should be noted that the agency addressed this finding from the previous audit on January 24, 2019 by ensuring the employee who was responsible for performing the deposit verifications and for account receivable recordkeeping did not have access to the safe and collections. This segregation of duties was in place until June 2021 when the individual performing the accounts receivable recordkeeping departed the agency. Because of the short staffing and other logistical challenges brought on by the COVID-19 pandemic, the agency was not able to maintain this segregation of duties until another employee was hired and</p>		

Workers' Compensation Commission

Agency Response Form

	trained. As of April 27, 2023, the agency once again has the appropriate segregation of duties in place.		
Recommendation 3b	Agree	Estimated Completion Date:	12/31/2023
Please provide details of corrective action or explain disagreement.	The WCC will consult with the State Treasurer's Office to consider allowing insurance companies and self-insured employers to submit check payments electronically (such as via wire transfer) to enhance accountability and security over the funds.		

AUDIT TEAM

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