

STATE OF TENNESSEE

Workers' Compensation Advisory Council

ANNUAL REPORT - CALENDAR YEAR 2005

**DALE SIMS, STATE TREASURER
CHAIR**

STATE OF TENNESSEE

Workers' Compensation Advisory Council

ANNUAL REPORT ~ CALENDAR YEAR 2005

**DALE SIMS, STATE TREASURER
CHAIR**

**M. LINDA HUGHES
EXECUTIVE DIRECTOR**

ANNUAL REPORT
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**STATE OF TENNESSEE  
WORKERS' COMPENSATION ADVISORY COUNCIL  
ANNUAL REPORT  
CALENDAR YEAR 2005**

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Pursuant to *Tennessee Code Annotated* §50-6-121(c), the Workers' Compensation Advisory Council herewith submits its annual report for calendar year 2005:

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**HISTORICAL BACKGROUND**

The Workers' Compensation Advisory Council was created initially by the legislature in the Workers' Compensation Reform Act of 1992. The Workers' Compensation Reform Act of 1996 terminated that existing Advisory Council and created a new advisory council on workers' compensation. The Advisory Council initially was to be comprised of seven (7) voting members [six (6) appointed members and a chair to be selected by the appointed voting members], four (4) nonvoting members, and four (4) ex officio members.

In 1996, the Governor, the Speaker of the Senate and the Speaker of the House of Representatives each appointed one voting member to represent employers and one voting member to represent employees. The Governor appointed the four (4) nonvoting members: an attorney, a

health care provider, an insurance company representative and a local government representative. The chair and vice chair of the Special Joint Committee on Workers' Compensation<sup>1</sup> and the commissioners of Labor and Commerce & Insurance, or their designees, were designated as ex officio, nonvoting members. [*See, TCA §50-6-121.*]

In 1997, the statute was amended to add an additional nonvoting attorney member to be selected from a list of three names submitted by the Tennessee Trial Lawyers Association. As of January, 1998, a Chair had not been selected by the voting members. During the 1998 legislative session the General Assembly amended *TCA §50-6-121* to designate the State Treasurer, or the Treasurer's designee, as Chair of the Advisory Council. That amendment became effective July 1, 1998, and on that date, Mr. Steve Adams, State Treasurer, assumed the position of Chair of the Advisory Council. The Chair is permitted to vote only on matters related to the administration of the Advisory Council or the Advisory Council's research and the chair cannot vote on any matter which constitutes the making of a policy recommendation to the Governor or to the General Assembly.

During the legislative session of 2001, the General Assembly added an additional non-voting member to the Advisory Council to represent the Tennessee Defense Lawyers Association. In 2003, another non-voting member was added to represent health care providers (to be selected by the Governor from three names submitted by the Tennessee Hospital Association). Since 2003, no new positions have been added to the Advisory Council by the General Assembly.

#### **MEMBERSHIP CHANGES - 2005:**

Calendar year 2005 brought two changes to the membership of the Advisory Council. In late April, 2005, Mr. Neil Nevins, voting member appointed by Lt. Governor/Speaker of the Senate John Wilder to represent employers, submitted his resignation. Lt. Governor Wilder appointed Mr. Ronnie Hart to fill the remainder of Mr. Nevins' term. In September, 2005, Mr. Steve Turner, voting

<sup>1</sup> *Tennessee Code Annotated §50-6-130* created a "Special Joint Committee on Workers' Compensation"; however, it is often referred to as the "Joint Oversight Committee" or the "Joint Committee".

member appointed by House Speaker Jimmy Naifeh to represent employers, advised the members of the Advisory Council that he had submitted his resignation to Speaker Naifeh. Pursuant to statute, a member continues to serve until a replacement is named; as of December 31, 2005, Speaker Naifeh had not named anyone to replace Mr. Turner. Attached as "APPENDIX - A" to this report is a chart listing the members of the Advisory Council as of December 31, 2005.



### **DUTIES AND RESPONSIBILITIES OF THE ADVISORY COUNCIL**

*Tennessee Code Annotated* §50-6-121 (as amended by the Reform Act of 2004 ) outlines the authority given to the Advisory Council, its general duties and its specific responsibilities. The statute makes it clear that the Advisory Council's role is strictly advisory. The statute specifically authorizes the Advisory Council to:

- make recommendations to the governor, the general assembly, the special joint committee on workers' compensation, the standing committees of each house that review the status of the workers' compensation system, the commissioner of labor and workforce development and the commissioner of commerce and insurance relating to the promulgation or adoption of legislation or rules;
- make recommendations to the commissioner of labor and workforce development and the commissioner of commerce and insurance regarding the method and form of statistical data collections; and
- monitor the performance of the workers' compensation system in the implementation of legislative directives.

Additional responsibilities of the Advisory Council are contained in other sections of the workers' compensation law and in the insurance law, codified in *Tennessee Code Annotated*, Titles 50 and 56, respectively. Annually, the Advisory Council is required to review the workers' compensation system in Tennessee and report its findings to the Governor, the Speakers of the

Senate and House of Representatives and other specified members of the legislature. This Annual Report fulfills that responsibility.

The Advisory Council is also directed to provide the Commissioner of Commerce and Insurance with a recommendation regarding advisory prospective loss costs filings made by the National Council on Compensation Insurers (NCCI), the authorized Tennessee rating bureau. The Advisory Council's actions regarding the loss costs filings submitted in 2005 are outlined herein.



## **ACTIVITIES OF THE ADVISORY COUNCIL**

### **~CALENDAR YEAR 2005~**

The Advisory Council is required by statute to meet at least two times during a calendar year. In 2005, the Advisory Council met on nine (9) different dates: January 28; February 18; March 4; March 18; April 1; April 15; May 20; August 25; September 29. The length of the meetings are generally 2-3 hours except for the meetings at which legislation is reviewed. Those meetings usually require a full day or multiple meeting dates. The minutes of the meetings of the Workers' Compensation Advisory Council for Calendar Year 2005 and prior years can be reviewed at the Advisory Council's website: [www.state.tn.us/labor-wfd/wcac](http://www.state.tn.us/labor-wfd/wcac) under the "Minutes" link.

During calendar year 2005, the Advisory Council considered and discussed many different issues that impact the Tennessee workers' compensation system. The following summarizes the most significant of those issues.

## I. WORKERS' COMPENSATION LEGISLATION - Filed in 2005

The Workers' Compensation Reform Act of 2004 changed the manner of the review of workers' compensation legislation by the Advisory Council. While the Reform Act specifically permits a standing committee that reviews workers' compensation to refer pending legislation to the Advisory Council, the Reform Act placed limitations on the legislation review. A portion of the Reform Act of 2004, codified in *TCA* §50-6-121(i), provides the following concerning the Advisory Council's review of legislation:

... "The comments of the council shall not include recommendations for or against passage of the proposed legislation but shall describe the potential effects of the proposed legislation on the workers' compensation system and its operation and any other information or suggestions which the council may think helpful to the sponsors, the standing committees or the general assembly."

Therefore, the members of the Advisory Council are no longer permitted to provide recommendations concerning workers' compensation legislation.

In 2005, Senator Jerry Cooper, Chair of the Senate Commerce, Labor and Agriculture Committee referred the workers' compensation bills assigned to the Senate Committee to the Advisory Council for review and comments. The Advisory Council met on March 4<sup>th</sup> and March 18<sup>th</sup> to review, discuss and make comments regarding workers' compensation legislation. The Advisory Council provided the Senate Committee a report that included the following regarding each bill: a summary of the present law; a summary of the proposed change in the law as a result of the bill; an explanation of the practical effect of the proposed legislation on the current workers' compensation law and system; and the comments of the individual members of the Advisory Council regarding the specific bill. A copy of the April, 2005, report to the Senate Commerce Committee can be found on the Advisory Council's website under the "Reports" link.

## II. FILINGS BY THE NATIONAL COUNCIL ON COMPENSATION INSURANCE

The National Council on Compensation Insurance [hereinafter, NCCI] is the authorized rate making entity for all workers' compensation carriers in the State of Tennessee. The NCCI makes various filings on behalf of the carriers and these filings are submitted to the Commissioner of Commerce and Insurance. Some filings require action by the Commissioner and the Advisory Council, while others do not. Two types of filings the NCCI submits to the Commissioner of Commerce and Insurance that are reviewed by the Advisory Council are Advisory Prospective Loss Costs Filings and Law Only Filings. The following is a summary of the Advisory Council's actions during calendar year 2005, regarding filings submitted by the NCCI.

### A. Advisory Prospective Loss Costs Filing

#### **\*Filed in December, 2004 - effective July 1, 2005**

The annual Advisory Prospective Loss Costs filing is generally submitted in late Summer with an effective date of March 1 of the following year. During Calendar Year 2004, at the request of the Commissioner of Commerce and Insurance, the NCCI submitted two Advisory Prospective Loss Costs filings - - one with an effective date of March 1, 2005 and another with an effective date of July 1, 2005. With the concurrence of the Commissioner, the Advisory Council reviewed and made a recommendation regarding the filing with an effective date of March 1, 2005. On December 22, 2004, the Commissioner disapproved the "March 1, 2005 Filing". On December 23, 2004, NCCI submitted another Advisory Prospective Loss Costs filing with an effective date of July 1, 2005.

The Commissioner of Commerce and Insurance referred the "July 1, 2005 Filing" to the Advisory Council for review and recommendation pursuant to *Tennessee Code Annotated* §50-6-402. Pursuant to the statute, the Advisory Council is required to make written comment on the filing to the Commissioner of Commerce and Insurance within 60 days of the receipt of the filing.

On February 18, 2005, the Advisory Council met to consider the "July 1, 2005 Filing". The voting members unanimously agreed to recommend to Commissioner Flowers that "the NCCI's proposed overall increase of +3.9% from the loss costs that became effective on September 1, 2004, and the individual loss costs for each classification as included in the NCCI's filing, be approved to be effective on July 1, 2005."

At the March 4, 2005, Advisory Council meeting, Commissioner Flowers and staff of the Department of Commerce and Insurance presented a proposed modification to the NCCI's loss costs filing that was to be effective on July 1, 2005 to the Council for review and recommendation. The proposed modification affected only class code #5537 (heating, ventilation, air-conditioning and refrigeration systems - installation, service and repair & drivers). The Commissioner requested approval of a three year transition program for implementation of new classification methodology for class code #5537. The voting members unanimously voted to modify their recommendation made at the February 18 meeting by limiting it to all classes, except class code #5537; with regard to that class code, the Advisory Council unanimously recommended the adoption of the three year transition plan recommended by the Department of Commerce and Insurance.

## **B. Law Only Filing**

### **\*Related to the Workers' Compensation Reform Act of 2004 - Implementation of a Medical Fee Schedule & Change in TTD Maximum Rate**

In April, 2005, the Commissioner of Commerce and Insurance forwarded to the Advisory Council a Law Only Loss Costs Filing submitted by the NCCI to be effective on July 1, 2005. The filing proposed a -6.9% average overall decrease from the current loss costs was a result due to implementation of a medical fee schedule and the increase in the maximum compensation rate for temporary total disability from 100% of the state's average weekly wage to 110%. Both the medical fee schedule and the change in TTD benefits enacted by the Reform Act of 2004 and both were to become effective on July 1, 2005. The portion of the filing related to the medical fee schedule

resulted in a -7.1% reduction in loss costs and the increase in the TTD maximum rate resulted in a +0.2% increase; therefore, the net overall change was -6.9%.

During the Advisory Council meeting on May 20, 2005, members of the Advisory Council reviewed the proposed Law Only Filing. Members expressed concerns that due to the nature of the deadlines for data reporting to the NCCI by insurance carriers it will be several years before data will be reported that reflect the changes made in Tennessee by the adoption of a medical fee schedule. The voting members of the Workers' Compensation Advisory Council unanimously recommended the decrease of 6.9% as filed by the NCCI to be effective on July 1, 2005, be approved. In addition, members of the Advisory Council cautioned that care should be taken by those who publicize the recommended overall decrease in rates to assure the public and other officials understand that the recommended decrease related to the Law Only Filing would become effective at the same time as the Advisory Prospective Loss Costs Filing made by the NCCI in late December, 2004, that was approved as an increase in rates of +3.9%.

### **C. Advisory Prospective Loss Costs Filing**

**\*Filed in August, 2005 - effective March 1, 2006**

The NCCI submitted an Advisory Prospective Loss Costs filing to the Commissioner of Commerce and Insurance in August, 2005, that recommended an increase of +1.6% in the loss costs to be effective March 1, 2006. As required by statute, Commissioner Flowers forwarded the filing to the Advisory Council for review and comment.

The Advisory Council considered the loss costs filing at its meeting on September 29, 2005. The voting members unanimously recommended the NCCI's proposed overall increase of +1.6% from the loss costs that became effective on July 1, 2005, and the individual loss costs for each classification as included in the NCCI's filing be approved to be effective on March 1, 2006.

## D. Summary of Loss Costs Filings, Recommendations & Approvals

\* 1996 - 2005

As a historical record, the following chart is provided to the reader. It outlines the loss costs filings and law only filings submitted by the NCCI, the recommendations of the Advisory Council recommendations and the approvals of the Department of Commerce and Insurance from 1996 through 2005:

| Year Filing Made | NCCI Filed Rate     | Advisory Council Recommendation                                             | Commerce & Insurance Approved Rate                                          | Effective Date                  |
|------------------|---------------------|-----------------------------------------------------------------------------|-----------------------------------------------------------------------------|---------------------------------|
| 1996             | -5.4%               | -8.2%                                                                       | -8.2%                                                                       | 1/1/1997                        |
| 1997             | -3.4%               | -10.0%                                                                      | -7.0%                                                                       | 1/1/1998                        |
| 1998             | -10.3%              | -9.0%                                                                       | -9.0%                                                                       | 3/1/1999                        |
| 1999             | +3.3%               | +7.0%                                                                       | +7.0%                                                                       | 3/1/2000                        |
| 2000             | No Filing Submitted |                                                                             |                                                                             | rates effective 3-1-00 continue |
| 2001             | +0.5%               | +1.4%                                                                       | +1.4%                                                                       | 3/1/2002                        |
| 2002             | -3.1%               | 0.0%<br>with each class<br>code relativity to<br>be adjusted<br>accordingly | 0.0%<br>with each class<br>code relativity to<br>be adjusted<br>accordingly | 3/1/2003                        |

|      |                                                                                                             |                                                                                                                                                                                       |                                                                                                                                                                               |                                                                      |
|------|-------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| 2003 | +7.9%                                                                                                       | +7.9%<br>with each class<br>code relativity to<br>be adjusted<br>accordingly                                                                                                          | +7.9%<br>overall increase<br>with each<br>classification<br>code within the<br>industry groups<br>to be readjusted<br>as specified by<br>Dept.                                | 3/1/2004                                                             |
| 2004 | -6.3%<br>"Law Only<br>Filing                                                                                | -6.3%                                                                                                                                                                                 | -6.3%                                                                                                                                                                         | 9/1/2004                                                             |
| 2004 | +3.4%                                                                                                       | +3.4%<br>from loss costs<br>effective on<br>9/1/04; individual<br>loss costs for each<br>classification as<br>included in NCCI<br>filing to be<br>approved effective<br>March 1, 2005 | Commissioner<br>of Commerce<br>and Insurance<br>issued an order<br>on December 22,<br>2004<br>disapproving the<br>loss costs filing<br>to be effective<br>on March 1,<br>2005 | Disapproved                                                          |
| 2004 | +3.9%<br><br>filed in Dec.<br>2004 with<br>proposed<br>changes to class<br>code 5537 filed<br>in early 2005 | +3.9%<br><br>Advisory Council<br>also approved 3<br>year transition<br>program for class<br>code 5537 as<br>requested by<br>Department                                                | +3.9%                                                                                                                                                                         | 7/1/2005                                                             |
| 2005 | -6.9%<br><br>"Law Only<br>Filing"                                                                           | -6.9%                                                                                                                                                                                 | -6.9%                                                                                                                                                                         | 7/1/2005<br><b>Note: Net<br/>change =<br/>-3.3% as<br/>of 7/1/05</b> |
| 2005 | +1.6%                                                                                                       | +1.6%                                                                                                                                                                                 | +1.6%                                                                                                                                                                         | 3/1/2006                                                             |

### III. TENNESSEE'S WORKERS' COMPENSATION INSURANCE MARKETS

#### A. Tennessee Workers' Compensation Insurance Markets - In General

At the August 25, 2005, Advisory Council meeting, the Department of Commerce and Insurance reported the Tennessee workers' compensation insurance market totaled \$1.7 billion in premiums at the end of **2004**. The following chart compares **2003 and 2004 premiums** and shows the percentage growth in each market segment from 2002 through 2003 and from 2002 through 2004:

| Type of Market Segment                                                                                                                                 | Total Premiums<br>(in millions) |       | Percentage of Total Market |      | Market Segment<br>Percentage Growth |                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|-------|----------------------------|------|-------------------------------------|-------------------------|
|                                                                                                                                                        | 2003                            | 2004  | 2003                       | 2004 | 2002<br>through<br>2003             | 2002<br>through<br>2004 |
| Voluntary Market                                                                                                                                       | \$547                           | \$573 | 33%                        | 33%  | 9%                                  | 15%                     |
| Large Deductible Insurance Policies *†                                                                                                                 | \$629                           | \$667 | 39%                        | 38%  | 18%                                 | 25%                     |
| Self-Insured Employers †<br>[2003: 147 self-insured employers; 322,498 covered employees; 2004: 145 self-insured employers; 290,141 covered employees] | \$263                           | \$314 | 16%                        | 18%  | 12%                                 | 35%                     |

|                                                                                                                                                                                                |       |       |    |    |     |     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|----|----|-----|-----|
| Self-Insured Groups<br>† ‡<br>[2003: 10 self-insured groups, excluding govt. groups; 158,582 covered employees; 2004: 9 self-insured groups, excluding govt. groups; 56,644 covered employees] | \$58  | \$55  | 4% | 3% | 15% | 10% |
| TWCIP<br>(Assigned Risk Plan)                                                                                                                                                                  | \$131 | \$132 | 8% | 8% | 20% | 21% |

\* Large deductible premium is gross/estimated (for 2003, 79% is deductible credit; 21% is reported premium; for 2004, 73% is deductible credit; 27% is reported premium).

‡ Self-Insured Groups exclude government groups

† Loss sensitive programs comprise 58% of the total market for 2003; 59% for 2004.

## **B. Tennessee Assigned Risk Market:**

### **1. Relative Size of the Assigned Risk Pool**

*TCA*§56-5-314(c)(3) requires the Department of Commerce and Insurance to make an annual determination concerning the relative size of the workers' compensation assigned risk pool as compared to the entire workers' compensation insurance marketplace. The statute also requires, if the size is determined to be greater than 15%, the Commissioner of Commerce and Insurance to report to the Advisory Council on whether any actions authorized by the statute should be implemented.

In 2004, the Commissioner of Commerce and Insurance reported to the Advisory Council that the relative size of the assigned risk plan (relative to the entire Tennessee workers'

compensation insurance marketplace) was 15.65% and recommended two initiatives to reduce the percentage in the assigned risk plan to less than 15%. In July, 2005, the Commissioner reported to the Advisory Council that the relative size of the assigned risk plan had been reduced to 14.94%. The Department explained during the August 25, 2005, Advisory Council meeting the reduction was due to the initiatives of the Department: (1) policyholders were required to reapply every three years, requiring two voluntary market declinations, beginning January 1, 2005; and (2) a letter from the Commissioner was sent to policyholders on renewal quotes encouraging them to have AON add their business to a "shopping list".

## 2. Tennessee Workers' Compensation Insurance Plan (TWCIP)

During the August 25, 2005, meeting of the Advisory Council, a representative of AON Risk Services, Inc., the Tennessee assigned risk plan administrator, presented a report concerning the Tennessee assigned risk plan. The following table contains the cumulative premiums in the assigned risk market for the various plan years, as reported by the AON representative, Mr. Tom Redel.

| Plan Year<br>[as of June 30, 2005] | Cumulative Premium |
|------------------------------------|--------------------|
| 1998                               | \$ 23,184,345      |
| 1999                               | \$ 20,454,066      |
| 2000                               | \$ 34,759,938      |
| 2001                               | \$ 68,772,008      |
| 2002                               | \$ 115,802,200     |
| 2003                               | \$ 131,035,084     |
| 2004                               | \$ 134,758,291     |
| 2005                               | \$ 57,714,558      |

The following table contains AON's projected surplus or deficit for the servicing carriers in the Tennessee assigned risk plan. For comparison purposes, the table contains the projections for the servicing carriers reported previously by AON and included in the Advisory Council's Annual Report for calendar years 2003 and 2004 and the projections reported by AON to the Advisory Council in August, 2005.

| PLAN YEAR | SERVICING CARRIERS PROJECTED SURPLUS OR (DEFICIT) AS OF 12/31/02 | SERVICING CARRIERS PROJECTED SURPLUS OR (DEFICIT) AS OF 12/31/03 | SERVICING CARRIERS PROJECTED SURPLUS OR (DEFICIT) AS OF 12/31/04 |
|-----------|------------------------------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------------|
| 1998      | ( \$ 3,385,044)                                                  | ( \$ 3,326,501)                                                  | ( \$ 5,918,261)                                                  |
| 1999      | ( \$ 1,703,404)                                                  | ( \$ 1,354,943)                                                  | ( \$ 1,916,962)                                                  |
| 2000      | ( \$ 6,998,284)                                                  | ( \$ 7,419,786)                                                  | ( \$ 6,502,673)                                                  |
| 2001      | \$ 1,256,390                                                     | ( \$ 227,562)                                                    | \$ 2,172,507                                                     |
| 2002      | ( \$15,700,050)<br>Estimated *                                   | ( \$12,726,465)                                                  | \$ 3,687,246                                                     |
| 2003      |                                                                  | ( \$34,886,105)<br>Estimated *                                   | \$ 6,273,762                                                     |
| 2004      |                                                                  |                                                                  | ( \$ 28,784,259)<br>Estimated *                                  |

\* These figures are based on very green, inaccurate data as a policy could be written on December 31 of a plan year and the losses would not yet be determined and all the premiums for the plan year would not have been collected. AON reported each year that it expected the figure would decline as the plan year progresses.

### C. Update on Company Insolvencies

The Department of Commerce and Insurance presented an update on insurance carrier insolvencies at the August 25, 2005 meeting. The following chart contains the information reported by the Department.

| Company                              | State of Incorporation | Date Placed in Liquidation | Total # of Claims | Total Dollars Paid | Total Unpaid Claims |
|--------------------------------------|------------------------|----------------------------|-------------------|--------------------|---------------------|
| Reliance Insurance Company           | Pennsylvania           | 10/3/01                    | 1,727             | \$ 23,954,383      | \$ 24,208,144       |
| Home Insurance Company               | New Hampshire          | 6/13/03                    | 111               | \$ 1,263,111       | \$ 7,617,693        |
| Reciprocal of America                | Virginia               | 6/20/03                    | 308               | \$ 841,512         | \$ 4,271,456        |
| Legion & Villinova Insurance Company | Pennsylvania           | 7/28/03                    | 1,790             | \$ 21,333,495      | \$ 34,494,606       |
| Casualty Reciprocal                  | Missouri               | 8/18/04                    | 47                | \$ 228,014         | \$ 945,570          |

The Department also reported the Truckers Self Insurance Group had entered liquidation on February 6, 2004. The Group primarily operated in 2002 and 2003 and had 52 members. The Department reported the Group had a \$7.4 million deficiency with 300 open claims. As of the report by the Department in August, 2005, there had been one assessment of \$2.8 million dollars for 2002 and approximately half had been collected through collection actions, including garnishments. In addition, since the liquidation had been filed, 600 proof of claims had been filed and approximately 60% had been resolved.

**D. Tennessee Guaranty Association**

During the years from 1990 through 1999, the Tennessee Guaranty Fund did not issue any assessments on workers' compensation insurance carriers due to insolvencies of carriers. However, beginning in 2000, assessments were necessary. The following assessments were made (amounts are approximate): 2000 - \$10 million; 2001 - \$10.5 million; 2002 - \$12 million; 2003 - \$14 million; and 2004 - \$16 million.

**IV. OTHER ISSUES****A. Medical Fee Schedule**

The Workers' Compensation Reform Act of 2004 authorized the Commissioner of the Department of Labor and Workforce Development to establish by rule a comprehensive medical fee schedule in consultation with the Medical Care and Cost Containment Committee and the Workers' Compensation Advisory Council. When the Commissioner filed a copy of the proposed rules with the Advisory Council, the Reform Act of 2004 mandated that the Advisory Council submit written comment to the Commissioner and the Joint Committee on Workers' Compensation within thirty (30) days of receipt of the proposed rules. The proposed Medical Fee Schedule rules were submitted to the members of the Advisory Council on March 31, 2005.

At the Advisory Council meeting on April 1, 2005, Dr. Robert Kirkpatrick, Medical Director, Department of Labor and Workforce Development made a presentation to the Council regarding the proposed rules. He explained the Medical Fee Schedule is generally a Medicare-based system with multiple conversion factors and noted some specific procedures and providers are to be paid at a rate higher than 100% of Medicare. The Advisory Council met again on April 15, 2006, to discuss the proposed rules establishing the Medical Fee Schedule and to provide written comment on the proposed rules as required by statute.

At the April 15 meeting, the members of the Advisory Council acknowledged the Department of Labor and Workforce Development had spent countless hours in the development of the proposed rules with a goal to develop a medical fee schedule that assures the delivery of quality medical care to injured workers while controlling prices and system costs. The members also noted this is a difficult balance to achieve as the success or failure of the result is in the eye of the beholder and the concept of a medical fee schedule cannot please every provider of medical care in the workers' compensation system.

The Advisory Council expressed its concern regarding the possibility of delay in access to care as such delay will result in additional trauma or injury to the injured employee as well as an increase in other system costs. The Council also noted the proposed medical fee schedule had reimbursement rates higher than a majority of the states that have medical fee schedules, including the states that are contiguous to Tennessee and stated it believed such reimbursement rates to be consistent with the goal of maintaining a system in which the injured worker is provided quality medical care in a timely manner. However, the Advisory Council requested the Department of Labor and Workforce Development to monitor closely the injured employee's access to quality and timely medical care during the implementation of the medical fee schedule and to not wait until its annual review of the fee schedule to make corrective actions if it became aware of significant and legitimate compromises in the quality and timeliness of care.

Based on the concerns expressed by the health care provider representatives on the Advisory Council as well as other interest groups that provided written comment to the Advisory Council regarding the operational aspects inherent in implementing a complex medical fee schedule by July 1, 2005, the Advisory Council expressed support of legislation delaying the penalty provisions associated with the medical fee schedule for six months. In addition, the Advisory Council urged the Department to review the comments and concerns received by the Advisory Council from interested groups and to timely address the concerns regarding procedural and definition issues if they were found to be legitimate.

**B. Implementation of Reform Act of 2004****By the Department of Labor and Workforce Development**

One of the Advisory Council's statutory responsibilities is to monitor the performance of the workers' compensation system in the implementation of legislative directives. In order to obtain the information necessary to fulfill this responsibility, the Advisory Council requested the Department of Labor and Workforce Development to provide periodic updates to the Council regarding the Department's efforts to implement the Reform Act of 2004.

During calendar year 2005, the Commissioner of the Department of Labor and other Department personnel presented updates at the meetings of the Advisory Council. Those updates included, but were not limited to, the following issues:

- numbers and qualifications of personnel for both regional and satellite offices;
- various "public necessity" and "proposed" rules promulgated by the Department as a result of the Reform Act of 2004 [the medical cost containment program, the medical fee schedule, the in-patient hospital fee schedule, the medical impairment rating registry, the benefit review program, and the penalty program for late payment of benefits];
- lawsuits filed challenging the constitutionality of the Reform Act; and
- utilization of the benefit review program for conferences, settlements and orders relating to benefits.

## CONCLUSION

The Workers' Compensation Advisory Council met on nine (9) occasions in calendar year 2005. As in past years, these meetings ranged in length from as few as two (2) hours to as long as a full day. This Annual Report is intended to provide the reader a synopsis of the topics considered at the meetings during the year. For a more detailed summary of the activities of the Advisory Council the reader is urged to review the Advisory Council's website: [www.state.tn.us/labor-wfd/wcac](http://www.state.tn.us/labor-wfd/wcac).

The members of the Advisory Council appreciate the opportunity to be of service to the Governor and the General Assembly as well as the employees and employers of the great State of Tennessee. They respectfully submit this Annual Report for Calendar Year 2005.

Respectfully submitted on behalf of the  
Workers' Compensation Advisory Council  
on the    day of September, 2005:

Dale Sims, State Treasurer  
Chair

**APPENDIX A**  
**WORKERS' COMPENSATION ADVISORY COUNCIL**  
**Members and Ex-Officio Members**  
**As of December 31, 2005**

## Members

| Name         | Affiliation                      | Address                                                | Status |
|--------------|----------------------------------|--------------------------------------------------------|--------|
| <b>Chair</b> |                                  |                                                        |        |
| Dale Sims    | Treasurer, State of<br>Tennessee | First Floor, State Capitol<br>Nashville, TN 37243-0225 | Chair  |

## Employer Representatives

|               |                                        |                                           |               |
|---------------|----------------------------------------|-------------------------------------------|---------------|
| Ronnie Hart   | Tennessee Restaurant<br>Association    | 1224A Lakeview Dr.<br>Franklin, TN 37067  | Voting Member |
| Bob Pitts     | Associated Builders and<br>Contractors | 1604 Elm Hill Pike<br>Nashville, TN 37210 | Voting Member |
| Steven Turner | Turner Dairies, Inc.                   | 2040 Madison Avenue<br>Memphis, TN 38104  | Voting Member |

## Employee Representatives

|                  |                                              |                                                        |               |
|------------------|----------------------------------------------|--------------------------------------------------------|---------------|
| Jack A. Gatlin   |                                              | 365 Blankenship Road<br>Covington, TN 38019            | Voting Member |
| Jerry Lee        | Tennessee AFL-CIO Labor<br>Council           | 1901 Lindell Avenue<br>Nashville, TN 37201             | Voting Member |
| Othal Smith, Jr. | International Brotherhood of<br>Boilermakers | 357 Riverside Drive<br>Suite 150<br>Franklin, TN 37064 | Voting Member |

## Local Government Representative

|          |                                   |                                                                  |                   |
|----------|-----------------------------------|------------------------------------------------------------------|-------------------|
| Bob Kirk | City of Dyersburg -<br>Councilman | 425 W. Court Street<br>P.O. Box 1358<br>Dyersburg, TN 38205-1358 | Non-voting Member |
|----------|-----------------------------------|------------------------------------------------------------------|-------------------|

## Insurance Representative

|            |                                      |                                                |                   |
|------------|--------------------------------------|------------------------------------------------|-------------------|
| Jerry Mayo | Insurance Corporation of<br>Hannover | 9005 Overlook Boulevard<br>Brentwood, TN 37027 | Non-voting Member |
|------------|--------------------------------------|------------------------------------------------|-------------------|

## Health Care Representative

|                                     |  |                                                |                   |
|-------------------------------------|--|------------------------------------------------|-------------------|
| Claiborne (Chip) Christian,<br>M.D. |  | 221 W. Paris Street<br>Huntingdon, TN<br>38344 | Non-voting Member |
|-------------------------------------|--|------------------------------------------------|-------------------|

## Attorney Representatives

|                            |                                          |                                                                                |                   |
|----------------------------|------------------------------------------|--------------------------------------------------------------------------------|-------------------|
| Katherine D. (Kitty) Boyte | Tennessee Defense<br>Lawyers Association | Howard, Tate & Sowell<br>150 Second Avenue<br>Suite 201<br>Nashville, TN 37201 | Non-voting Member |
|----------------------------|------------------------------------------|--------------------------------------------------------------------------------|-------------------|

|                                 |                           |                                                                                                 |                   |
|---------------------------------|---------------------------|-------------------------------------------------------------------------------------------------|-------------------|
| Jacqueline B. Dixon,<br>Esquire | Tennessee Bar Association | Hollins, Wagster &<br>Yarbrough, P.C.<br>424 Church Street<br>22nd Floor<br>Nashville, TN 37219 | Non-voting Member |
|---------------------------------|---------------------------|-------------------------------------------------------------------------------------------------|-------------------|

|                            |                                        |                                                                   |                   |
|----------------------------|----------------------------------------|-------------------------------------------------------------------|-------------------|
| J. Anthony Farmer, Esquire | Tennessee Trial Lawyers<br>Association | Farmer & Ferraris<br>6130 Lonas Drive<br>Knoxville, TN 37909-3233 | Non-voting Member |
|----------------------------|----------------------------------------|-------------------------------------------------------------------|-------------------|

## Ex Officio Members

|                  |                                                    |                                                                                           |                   |
|------------------|----------------------------------------------------|-------------------------------------------------------------------------------------------|-------------------|
| Joe Haynes       | State Senator                                      | Room 5, Legislative Plaza<br>Nashville, TN 37243-0220                                     | Ex Officio Member |
| Jere Hargrove    | State Representative                               | Room 34, Legislative Plaza<br>Nashville, TN 37243-4156                                    | Ex Officio Member |
| James G. Neeley  | Commissioner of Labor and<br>Workforce Development | 710 James Robertson Pkwy<br>Andrew Johnson Tower<br>8th Floor<br>Nashville, TN 37243-0655 | Ex Officio Member |
| Paula A. Flowers | Commissioner of<br>Commerce and Insurance          | 500 James Robertson Pkwy<br>Davy Crockett Tower<br>Suite 500<br>Nashville, TN 37243-0565  | Ex Officio Member |