

lower rate of self-insured worker appeals and the higher rate of self-insured employer appeals – is largely explained by the source of the underlying decision. The self-insured employer is the underlying decision maker for its claims, which logically means that the employer is going to more vigorously defend before BIIA. In our interviews we sensed that the TPAs handling self-insured claims had a strong sense of professional pride in their decisions and were quite willing to defend them before BIIA.

3.2.2 Insurance Types

As discussed earlier in the report in Chapter 1: Claims Management Organization, for claims involving self-insured employers, the L&I oversight role appeared to be minimal. For allowance decisions, our file reviews showed L&I entered allowance orders 99% of the time, but between 35 and 40% of the files did not have evidence supporting an allowance. For denial decisions, L&I entered the requested denial orders 98% of the time. In State Fund denials in our file reviews, most claims (80%) had at least some record evidence supporting causation; i.e., the claim had some support, but after investigation the CM determined it should be denied. This is understandable, as causation can be a “toss up,” involving issues requiring interpretation. In self-insured denials, however, only 40% of claims had at least some evidence supporting causation. This does not mean the evidence supporting denial was missing, but it presents a contrast with State Fund claims. There could be varying interpretations of this, including an indication that: 1) the record is not being well developed; 2) in self-insured claims there is more clarity with respect to causation; or 3) that L&I is missing importance evidence. Based on the statistic that L&I upholds virtually all denial orders requested by self-insured employers, it may be that the supporting evidence is there, but it is not being provided to or reviewed by L&I.

This does not mean, however, that self-insured claims are being inappropriately denied. If the denial order was protested or appealed there appeared to be no evidence of different outcomes for self-insured claims on appeal vs. State Fund claims. To the contrary, the evidence is strong that for all three insurance types – self-insurance, Retro, and non-Retro – and for both the dispute process at L&I and the appeals process at BIIA, the outcomes are consistent. Across insurance types they have nearly identical reversal rates of L&I decisions, regardless of whether the appeal was filed by the employer or worker. Moreover, the survey results found nearly identical perceptions of the dispute process across the different insurance types.

3.2.3 Stakeholder Perceptions

Perceptions of fairness in a judicial process can be interpreted along two dimensions: 1) the level of positive perceptions about the system; and 2) are these perceptions similar across different subgroups. On the second dimension, the audit’s paramount concern was whether workers and employers reported perceptions of judicial fairness differently depending upon the insurance status of employer (self-insured, Retro, or non-Retro).

“Fairness” is in large part a perception and, as such, requires surveying participants about their opinions. However, the outcome of a judicial process, specifically whether the surveyed party prevailed in a dispute, has a large impact on overall perceptions. Therefore, we approached the question from two directions. First, we asked respondents about their perception of the decision. Next, we asked about their perception about different steps in the process. These process questions were synthesized from research on what components of a judicial process are consistent with an equitable system. Specifically,

Management Performance for a more detailed examination of differences in outcomes of retrospective rating program participation vs. non-participation.