

## STRUCTURE, FUNCTION AND WORKLOAD

The Workers' Compensation Administration (WCA) operates within the framework of the New Mexico Workers' Compensation Act (the Act). The agency's annual operating budget, degree of budgetary flexibility, personnel system, management of property and purchasing process are mandated by the Act. The mission of the WCA is to administer the provisions of New Mexico's workers' compensation laws to "assure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to employers" [§ 52-5-1 NMSA 1978]. To meet these objectives, the WCA provides a wide range of services to the public through its main office in Albuquerque and six regional offices in Farmington, Las Cruces, Las Vegas, Lovington, Roswell and Santa Fe.

This section of the Annual Report provides an overview of the agency structure reporting to the Office of the Director and highlights each agency units' responsibilities, functions, and activities for the current year. The WCA's units are divided into three groups by primary functions: Public Assistance and Information activities, Regulation and Compliance activities, and Claims Dispute Resolution activities. For those units that provide services to the public, workload statistics are provided as available.

### Office of the Director

The director is responsible for the administration of the WCA. The director and select agency employees constitute the WCA legislative team, which attends the legislative session annually, tracks and analyzes all potential legislation that may affect the WCA, and provides fiscal and program information and impact analysis with regard to the review

and approval of the agency budget and for future fiscal planning. The director adopts rules governing the functions and programs of the WCA, conducts administrative hearings on compliance issues, certifies self-insurers and appoints workers' compensation judges and members of the Medical Advisory Committee. The director is an ex-officio member of the Advisory Council on Workers' Compensation and Occupational Disease Disablement and is the secretary-treasurer of the New Mexico Self-Insurers' Guarantee Fund Commission. The diagram below shows the reporting structure of the agency from the Office of the Director.

### Public Assistance and Education Activities

The Field Operations bureau incorporates all seven WCA offices, including the Albuquerque headquarters. Their activities provide essential services through the ombudsman, safety and public outreach programs. Select field offices utilize compliance officers to further the agency compliance effort. Field offices bring the services and functions of the agency closer to the users of the system. Field offices alleviate a significant cost to the system by reducing travel costs incurred by injured workers, employers, attorneys, insurance adjusters, and other personnel who need to attend hearings, trials and mediations. By locating the field offices in major population centers around the state, parties needing education or assistance while working within the system experience significant savings in travel and time.

### Ombudsman Program

The mission of WCA ombudsmen is to inform, educate and assist injured workers or

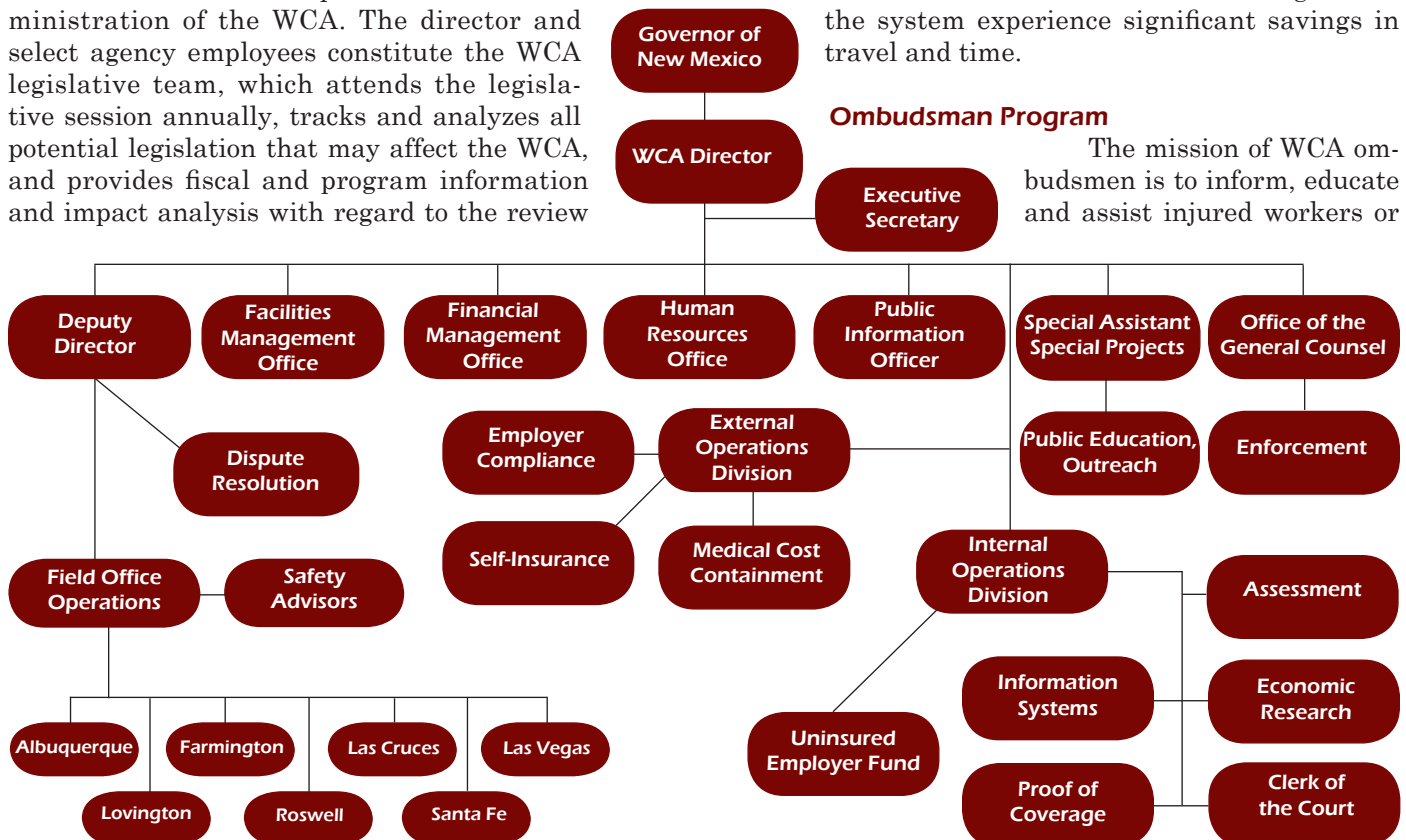


Table 1.1 Ombudsman Contact Summary, 2005-2010

	Total Contacts <sup>1</sup>	Disputes Submitted <sup>2</sup>	Disputes Resolved <sup>3</sup>
2005	17,099	4,604	3,279
2006	15,260	2,077	1,400
2007	13,341	4,735	1,054
2008	13,716	1,662	1,458
2009	13,806	1,850	1,627
2010	10,065	3,490	1,134

<sup>1</sup> Total Contacts: All cases assisted by ombudsmen

<sup>2</sup> Disputes Submitted: Potentially resolvable cases

<sup>3</sup> Disputes Resolved: Cases resolved without Mediation/Adjudication

family members, employers, insurance providers, health care providers, attorneys and others about their rights and responsibilities under the Act. Ombudsmen respond to telephone, in-person or e-mail inquiries. They also make informative presentations to various groups upon request. Ombudsmen assist pro se parties (not represented by an attorney) when filing a claim, if necessary, and facilitate communication between parties as they strive to resolve issues before they become the basis for litigation. There is an ombudsman, who strives to bring these important services closer to the people and communities throughout the state, in each of the WCA regional and Albuquerque offices.

In 2010 agency ombudsmen managed more than 3,490 disputes and resolved approximately 1,134 of these cases (see Table 1.1). A "resolved" dispute is a claim or potential claim that is informally resolved without litigation, i.e., without a mediator or judge having to hear and resolve the matter. Resolving potential claims at this level represents a significant savings to the system.

### Safety Program

The safety program focuses on the statutory responsibility of maintaining safe workplaces for New Mexico employees. This is done primarily by working with a listing of businesses in the state that pay more than \$5,000 (5K) in annual premium for workers' compensation insurance. New Mexico statute requires an annual safety inspection of these businesses – as well as those in the self-insured programs – and report the results to the agency. Annual inspections may be performed by a WCA safety consultant, an insurance company, or the business may conduct a self inspection or choose to hire a qualified safety professional to conduct the inspection on their behalf.

Using the agency database and cross-referencing with the New Mexico Department of Workforce Solution records, safety consultants team up with 5K businesses in their areas of responsibility. The agency pursues this program using two procedures: notification and annual inspections.

Table 1.2 Safety Consultant Statistics for Businesses with at least \$5,000 in workers' compensation premiums

Consultant Activities and Audience	2008	2009	2010
Letters Sent	1,471	3,331	5,674
Consultations	794	1,066	1,227
Safety Inspections	1,113	1,197	1,296
Presentations	8	14	30
People Attending Presentations	74	453	749
Trainings	20	14	27
People Attending Trainings	244	453	342
Visits	252	660	508

WCA safety consultants send notification letters to almost 300 businesses each month to inform them of the statutory mandate to conduct an annual safety inspection. The agency's goal is to contact 3,360 5K businesses each year. Safety consultants notify self-insured businesses during the self-insured audit process.

The second procedure is the annual inspection. With more than 9,000 5K employers operating from more than 10,000 locations across the state, safety consultants must prioritize their efforts by focusing on businesses that experience the greatest number of on-the-job injuries. Each safety consultant conducts three to five inspections per week. When the bureau is fully staffed, the team goal is to conduct 830 to 1,248 inspections annually. The agency encourages businesses that are not experiencing significant safety issues to learn how to self-inspect or request an inspection from their insurance company. Table 1.2 provides summary information on the 2010 safety consultant 5K business services activity.

In addition to the focus on safety in the workplace, other services provided by the WCA are consultations and training courses. A consultation involves a WCA safety consultant working closely with a business to help them design solutions for specific safety issues they face. This includes assisting a business that is experiencing a significant number of slips, trips and falls, or guiding business leaders as they develop a comprehensive safety program from the ground up. Training events occur after an inspection or consultation reveals that employees and management need guidance about a particular activity so the activity can be performed safely. This often requires the safety consultant to prepare a course, assemble study materials, and develop an education program. The agency believes both managers and workers respond positively to this learning process, which results in a safer workplace. The agency offers several training programs in Spanish.

In addition the agency provides assistance to business leaders who want to conduct their own training by providing research, specific accident data, and a library of videos that can be checked out and used in their training program. There is no charge for these services.

## Agency Regulation and Compliance Activities

The WCA has seven bureaus that monitor or regulate the activities of employers and workers, as well as health care providers, insurers and lawyers who fall under the workers' compensation statutes. Agency bureaus include: Employer Compliance, Self-Insurance, Office of the General Counsel, Enforcement, Medical Cost Containment, Economic Research and Management Information Systems. The bureaus collaborate to analyze workers' compensation claims and processes, research employer and worker trends within the workers' compensation system, and track the actions of insurers, health care providers, and lawyers who service the workers' compensation system. The following section gives an overview of the major functions of each bureau and summarizes their activities or legal actions in their regulatory role.

### Employer Compliance Bureau

It is the responsibility of the Employer Compliance bureau (ECB) to initiate and conduct investigations of employers operating in New Mexico to determine if they fall within the mandatory insurance coverage requirements of the Act. Compliance officers (COs) assigned to ECB are responsible for conducting these investigations. There are essentially two thresholds used to determine if an organization is required to carry a policy of coverage. First, enterprises engaged in an activity required to be licensed under the Construction Industries Licensing Act (CILA) [§ 60-13 NMSA 1978] must carry a policy of coverage regardless of the number of employees. For businesses falling under this provision, the number of

workers is not used to determine if coverage is required – it is the type of work performed. On the other hand, for businesses not regulated by CILA, coverage is required only if an employer has three or more workers. In New Mexico this includes all services provided by full time, part time, temporary, seasonal workers and family members.

ECB investigations originate from a number of sources. The agency proof of coverage (POC) system provides the bureau with a list of employers who have recently cancelled a policy or whose policy has expired. The WCA Management Information Systems (MIS) bureau assists ECB to generate an electronic mass mailing to employers from cancelled policy data reported to the POC system. The mailings inform the recipient that ECB has been notified of the cancellation and requests the employer to contact ECB and brief the bureau about the status of the organization. If the assigned CO determines that the organization is no longer subject to the Act (the business has been sold, closed, or no longer performs the requisite work or has the requisite number of workers), the case file is documented and closed. If the CO determines the organization is subject to the Act and not covered, ECB briefs the organization using an educational model and informs management that coverage is required and must be obtained immediately. The ECB forwards organizations that fail to comply to the Office of the General Counsel to be summoned before an agency compliance hearing. Table 1.3 highlights ECB activity for 2010.

Since February 2006, the ECB has utilized the services of WCA field office Business Operations Specialists (BOS) to research the Construction Industries Division online building permit system, KIVA. This system allows building contractors to obtain building permits via the Internet. BOS compare the information against the POC system to determine if current coverage exists. If coverage cannot be located, the BOS forwards information about the contractor to an agency CO. Internal customers such as ombudsmen, safety consultants, members of the Business and Public Outreach Team and the Uninsured Employers Fund, also provide ECB with investigative leads. Some sources of external investigative leads include competitor businesses, workers, insurance agents and attorneys.

ECB is focused on becoming a leader in developing and implementing innovative investigative and regulatory processes and methodologies through a Joint Powers Agreement (JPA) endorsed by the WCA and Workforce Solutions in January 2006. The JPA allows for data sharing between the two agencies to facilitate the enforcement of the coverage requirements of the Act. On a quarterly basis, Workforce Solutions provides the agency with an electronic file of employers who are reporting wages. The WCA compares employer data with the POC system to determine if a current filing is in place. ECB is able to identify and investigate employers who

**Table 1.3 Employer Compliance Enforcement Workload Results, 2002-2010**

Year	Employer Insurance Compliance Cases Opened	Employer Referrals that had Insurance	Employers Identified Needing Insurance	Referrals Forwarded to Adjudication	Employers Found to be Out of Business	Referrals Not Required to Have Insurance
2002	2,902	1,548	1,905	333	540	478
2003	2,405	1,355	1,473	455	641	507
2004	1,690	799	1,725	279	594	824
2005	1,941	842	2,140	304	479	428
2006	2,424	621	1,377	344	517	970
2007	1,926	607	794	350	582	994
2008	1,764	808	645	180	513	963
2009	1,795	764	571	120	340	652
2010	1,711	756	565	182	328	614

are paying wages but do not show coverage. ECB efforts proactively educate employers about their statutory responsibilities to supplement the economic outlook of workers in the event of an on-the-job injury and provide for the protection of employers who contribute to the quality of life in our state.

### Self-Insurance and Regulatory Audit Bureau

The Self-Insurance and Regulatory Audit bureau (SIRA) evaluates the qualifications of individual employers, groups and pools for becoming and remaining self-insured. SIRA examines the applications submitted by employers seeking to become self-insured and continues to assess the qualifications of those who have been granted self-insured status to ensure they meet financial standards and carry acceptable workers' compensation reserves. Table 1.4 shows the change in workers' compensation self-insurance coverage by individual employers, groups and pools. Bureau auditors perform periodic reviews of the self-insured entities to verify the employer's financial condition, claims liability, continued eligibility for self-insurance, and compliance with the Act. SIRA is responsible for 46 individual self-insured employers in the private and government sectors, nine self-insured groups, three pools, and 69 former self-insured employers who have continuing workers' compensation liability.

SIRA also performs audits of insurance companies for compliance, provides administrative support to the Self-Insurers' Guarantee Fund Commission, audits the contributions that the individual self-insured employers make to the fund, and audits the Uninsured Employers Fund. SIRA auditors are knowledgeable in finance, accounting and auditing of workers' compensation claims adjusting, reserving and risk management. Several of the auditors hold, or are working toward, an associate's degree in risk management and/or associate's degree in claims.

**Table 1.4 Self-Insurance Workload & Employees Covered, 2001-2010**

Year	Self-Insured Individual Employers	Self-Insured Groups & Pools	Self-Insured Covered Workforce	Self-Insured Workforce as Percent of Total Workforce
2001	69	12	224,847	38.2%
2002	66	12	233,890	39.5%
2003	64	12	233,915	37.4%
2004	64	14	238,797	37.5%
2005	64	14	256,413	39.8%
2006	61	14	261,721	39.5%
2007	57	13	255,786	37.8%
2008	50	13	235,843	29.5%
2009	49	12	229,284	30.0%
2010	48	12	227,349	30.2%

### Office of the General Counsel

The Office of the General Counsel (GC) litigates for the WCA before the director's designee and courts to enforce the provisions of the Act, to defend the director and WCA judges in writ proceedings, to appear as amicus curiae in appellate cases and other court proceedings, and to advise on contracts, rules, procurement and personnel matters. In 2010 the Office of the General Counsel handled 159 actions to bring employers into compliance with the mandatory insurance provisions of the Act (see Table 1.5). Of those actions, 39 resulted in district court injunctive relief and four district court actions were filed to collect penalties. GC handled seven out-of-state health care provider approvals. The director's designee periodically orders an accounting of how the benefits are used and GC then reviews and tracks all such reporting.

The office is also legal advisor for WCA regulatory functions and provides counsel to the Employer Compliance, Self Insurance, Field Services, Medical Cost Containment, Economic Research, and Safety bureaus, as well as Ombudsmen and Clerk of Court. GC advises the director, deputies, and the agency services bureau on contracts, leases, personnel matters and compliance with state and federal mandates. The office develops and implements public policy by providing technical support for rule making, drafting and analyzing legislation, and participating in regional, national and international initiatives. GC also provides general information on workers' compensation topics in response to constituent inquiries.

WCA records are statutorily confidential and any release of information requires a District Court order. GC processed 47 such requests in 2010. GC also processed 21 attorney withdrawals where a WCA judge had not been assigned to the case as well as four recommended resolution appeals. GC filed one enforcement action for violations of New Mexico law and promulgated two rules changes and one appeals defense.

**Table 1.5 Office of General Counsel Activities, 2001-2010**

Year	Insurance Enforcement Coverage Cases	Penalty Prosecutions	Insurance Coverage Injunctions
2001	221	17	16
2002	290	37	23
2003	369	7	28
2004	252	10	37
2005	271	14	22
2006	253	34	47
2007	286	25	31
2008	152	10	34
2009	109	12	36
2010	159	4	39

### Enforcement Bureau

The mission of the Enforcement Bureau is to investigate and potentially prosecute civil and/or criminal violations of the Workers' Compensation Act and Rules. The bureau investigates hundreds of reported violations annually. Reported violations include, but are not limited to, fraud, working outside medical restrictions, bad faith, unfair claims processing and late/non reporting of E-1s and E-6s.

The bureau works with the community to resolve alleged violations to ensure that benefits are being paid timely to qualified injured workers while maintaining reasonable costs to employers and taxpayers.

The Enforcement Bureau also works with the Economic Research Bureau in furthering the enforcement of filing the E-1s and E-6s and our Employer Compliance Bureau in investigating and prosecuting employers who are subject to the Act, but do not have workers' compensation coverage. The Enforcement Bureau has two full time investigators whose duties include full background checks on all parties involved in a complaint, summons and subpoena power, and full on-site surveillance. The General Counsel's office utilizes the Enforcement Bureau in furthering their administrative and criminal prosecution efforts, when warranted as well.

### Medical Cost Containment Bureau

The Medical Cost Containment (MCC) Bureau implements various cost saving measures for medical services that are provided to injured or disabled workers. Each year the bureau calculates and releases a hospital ratio list that governs how much New Mexico hospitals will be paid for services provided in their facilities as well as the method of reimbursement for freestanding ambulatory surgery centers. A separate fee schedule governs payment for outpatient services.

MCC also conducts utilization reviews on all inpatient admissions, i.e., hospital stays of 24 hours or greater. There were 504 individual admission reviews performed in 2010, of which 183 were emergency admissions. There were 1,802 days authorized and 1,649 days used by these admissions. The bureau currently contracts with case management services and assigns cases to certified nurse case managers based on the severity of injury, potential for chronic medical issues, and coordination requirements where services originate from multiple health care providers.

Peer review is performed as necessary on a case-by-case basis. The bureau also resolves medical billing and payment disputes among employers, insurers and health care providers. MCC staff support the Independent Medical Examinations Provider Selection Committee as well as the Medical Advisory Committee.

### Economic Research Bureau

The Economic Research Bureau (ERB) provides statistical and economic research about the New Mexico

**Table 1.6 Economic Research Bureau Claims Filed Workload, 2001-2010**

Year	Number of First Reports of Injury filed (E1 forms)	Percent E1 Claims filed Electronically	Number of Notice of Benefit Payment Filed (E6 forms)	Percent E6 Notices filed Electronically
2001	42,434	75.8%	22,715	60.6%
2002	41,055	79.6%	21,215	66.1%
2003	40,799	80.2%	22,362	66.8%
2004	40,921	84.0%	24,164	71.7%
2005	40,234	90.0%	24,560	70.6%
2006*	36,996	91.3%	21,570	73.1%
2007*	38,194	93.5%	24,084	90.9%
2008*	36,151	93.5%	21,172	84.1%
2009*	34,650	92.5%	21,744	80.1%
2010*	33,396	92.0%	22,749	84.8%

\*Source: Statistical Reports by Data Collection Method (Section), in WCA Quarterly Management Report 2006-2010

workers' compensation system and monitors late payment and filing issues for the director. The bureau also analyzes data on insurance costs and worker and workplace characteristics associated with injury and illness. The primary sources of information for these studies derive from First Reports of Injury or Illness (E1 form), Notices of Benefit Payments (E6 form), and Annual Expenditure Reports, which insurance carriers and third-party administrators submit to the agency. The bureau also relies on other agency databases for statistical reporting. See Table 1.6.

The primary ERB publication is this Annual Report, which is published in print format and posted online to the agency website. The bureau also publishes the WCA Quarterly Bulletin. The Bulletin is a quarterly newsletter that highlights regulatory changes, case law decisions, trends in claims and costs, safety issues, and other information about workers' compensation in New Mexico. The public can access electronic copies of ERB publications and other analytical reports by visiting the research section of the WCA website.

ERB collaborates with the Medical Cost Containment bureau to revise annually the maximum allowable amounts for the Health Care Provider Fee Schedule (HCPFS) and distribute the HCPFS in an American Medical Association approved format. Each year the bureau compiles and analyzes several million local cost records to estimate current workers' compensation physician services market rates. Due to statutory requirements of the Act, the WCA is required to annually update the schedule that sets forth the maximum fee amounts reimbursed to health care providers who perform procedures or provide treatment to injured workers. The statute requires the HCPFS to contain fee amounts that fall between the 60th and 80th percentile of current health care provider rates.

In October 2010 the bureau proposed an updated HCPFS that increased some rates that had fallen below the 60th percentile of current rates, yet also decreased some rates that had exceeded the 80th percentile of current rates. The proposed rate shifts have occurred due to both the American Medical Associations' changes to the meaning of many procedures to a narrower definition and other regional workers' compensation market activity. In 2010 the Economic Research Bureau analyzed physician fee data from New Mexico as well as the surrounding states and the federal government to formulate a proposed schedule of updates that incorporates the latest changes to the rates of medical procedures.

In addition to performing compilation and research on health care providers' fees, the bureau compiled 813 New Mexico hospital inpatient billing reports (submitted by insurers, third party administrators, and medical bill review companies) into a workers' compensation inpatient billing database. In 2010, 86.4 percent of these billing records were submitted in electronic form, while the rest were submitted in paper to the bureau. Bureau staff entered the information into the inpatient database. The bureau will analyze the dominant trends in types of inpatient surgeries and ranges of costs as the inpatient billing database develops into a larger set of records going forward.

In addition to medical costs studies, the bureau conducts analysis on workers' compensation issues in response to requests from the public, the Legislature, and the Advisory Council on Workers' Compensation and Occupational Disease Disablement. The bureau also responds to research requests from other governmental agencies, such as the U.S. Department of Labor, or national organizations, such as the U.S. Chamber of Commerce. Annually the bureau conducts analysis for the National Academy of Social Insurance regarding workers' compensation insurance costs in New Mexico.

### Management Information Systems Bureau

The Management Information System Bureau (MIS) is responsible for the agency's computer systems, including maintenance of databases, development and implementation of software applications, and hardware maintenance. MIS collects injury and claims information, proof of insurance coverage and inpatient hospital services data by using Electronic Data Interchange (EDI). EDI is a process of submitting various forms in a standard electronic format. Claims administrators can also file an E1 form or other payment information using the WCA web-based system without major software costs traditionally associated with the EDI process. The percent of claims submitted to the agency electronically has steadily increased as insurers and third party administrators have modernized their systems. Recently, MIS staff developed an automated procedure which cut down on daily EDI processing time dramatically. MIS staff also updated software and hardware equipment as

needed to better serve agency staff and the public.

MIS works closely with the New Mexico Department of Taxation & Revenue and Department of Workforce Solutions to increase the number of employers complying with insurance coverage requirements of the Act. The WCA has a video conferencing system which connects the Albuquerque office and the six field offices. WCA judges and related parties can use this system for conferences and hearings, thereby increasing productivity and reducing travel expenses.

The MIS bureau continues to modify the agency's website to better serve the needs of the public. In 2010 the WCA website registered 231,354 visits, a significant increase from 2009. The website provides information about WCA rules and forms, updates on agency services, and summaries of employer and worker questions and answers in the agency's booklets. The agency also posts performance measures about the WCA online, including the Annual Report and Quarterly Bulletins. For updates on any New Mexico workers' compensation issues, check the agency website at: <http://workerscomp.state.nm.us>.

### Claims Dispute Resolution Process

Dispute Resolution provides legal resolutions to claim disputes filed by workers, employers or insurers. The Clerk of the Court supports dispute resolutions functions for the WCA as the court of record. Functions and workload of both bureaus are described below.

#### Clerk Of The Court

Clerk of the Court (CC) functions are similar to those in state district court. The CC has two distinct areas of responsibility: dockets and records. The docket section intakes all workers' compensation complaints, applications to the workers' compensation judges, peti-

Table 1.7 Clerk of Court Workload, 2000-2010

Year	Total Complaints Filed	Lump Sum Petitions	Regular Complaints Filed
1999	2,944	1,577	1,367
2000	2,830	1,331	1,499
2001	2,800	1,232	1,568
2002	2,938	1,101	1,837
2003	2,824	1,053	1,771
2004	2,926	1,110	1,816
2005	2,751	1,139	1,612
2006	2,567	941	1,626
2007	2,735	931	1,804
2008	2,712	788	1,924
2009	3,129	1,116	2,013
2010	2,900	789	2,111

tions, health care provider disagreement disputes, and miscellaneous directors' issues. The CC also enters all filed pleadings into the docket-automated database. In 2009 the docket section entered more than 53,347 legal documents into the database.

The records section has the responsibility of safeguarding WCA files from their creation to their final disposition. This team also safeguards employers' First Reports of Accident or Illness and Notices of Benefit Payment received, audiotape recordings of trials and hearings and microfilm tapes of all disposed records that have fulfilled their retention periods under the Executive Records Retention and Disposition Schedule.

The CC participates in a recycling program to help prevent waste accumulation in public landfills that began in the early 1990s. In 2010, the agency recycled 11,200 pounds of paper.

Table 1.7 summarizes the main legal actions for the CC office from 1999-2010

Should any party in a workers' compensation case choose to appeal, the case is submitted to the New Mexico Court of Appeals (COA) within 30 days of the filing of the original judgment. Upon receiving a docketing statement, the WCA clerk prepares a Record Proper transcript and all pleadings filed in that case are forwarded to the appeals court. New Mexico statute requires both employers and insurers to pay filing fees for appeals, but workers do not have to pay a fee to file. When a Docketing Statement or General Calendar is filed, the WCA clerk must send additional records to the COA. The appellate court then issues a written opinion, which may be a formal published opinion or a memorandum. The COA files a Mandate directing the WCA court to take other action or none. If any party is unhappy with a decision, they can

move for a rehearing or ask the New Mexico Supreme Court to review the case.

### Dispute Resolution Bureau

Dispute Resolution (DR) handles all complaints seeking an award of benefits. The mediation staff conducts a mandatory mediation conference on every complaint within 60 days of filing. Mediations are conducted in the county of accident or by video conferencing available at the WCA field offices around the state. Employer representatives, insurance adjusters and injured workers are normally present in person to participate most effectively in the negotiations. Using a variety of dispute resolution techniques, the mediator attempts to bring the parties to a mutually agreeable resolution of their differences, or, if no agreement is reached, writes a recommendation on the issues in the case. The mediator then issues a recommended resolution, which, if not rejected by either party, becomes a court order of the WCA. Claims in which the recommended resolution is rejected proceed to formal hearing with a Workers' Compensation judge. Table 1.8 summarizes the mediation process.

A variety of other matters, such as health care provider disputes, independent medical examination requests, petitions for approval of lump sum settlements and requests for attorneys' fees, are also assigned to a Workers' Compensation judge for hearing. Hearings are governed by the New Mexico Rules of Civil Procedure and discovery procedures are permitted with the approval of the judge.

**Table 1.8 Mediation Resolutions & Median Days for Completion, 1999-2010**

Mediation Activities			
Year	Mediation Resolutions	Amended Resolutions	Mediations-Median Days for Completion
1999	1,328	75	50
2000	1,443	102	55
2001	1,419	83	57
2002	1,695	84	58
2003	1,640	107	59
2004	1,727	118	59
2005	1,584	102	62
2006	1,615	121	63
2007	1,808	127	62
2008	1,737	142	61
2009	1,804	103	63
2010	1,994	128	63

**Table 1.9 Legal Results of Contested Claims, 2000-2010.**

Year	Accepted Recommended Resolution (RR)	Pretrial Settlement*	Settled At Mediation†	Pretrial Complaint Resolution Rate*	Claims Resolved in Formal Trial **	Claims Pending Adjudication **
2000	77.7%	6.1%	--	83.8%	6.7%	9.5%
2001	72.9%	11.2%	--	84.1%	6.6%	9.3%
2002	77.8%	8.9%	--	86.7%	4.5%	8.8%
2003	75.4%	9.9%	--	85.3%	8.1%	6.6%
2004	71.3%	8.8%	--	80.1%	3.8%	16.1%
2005	70.3%	9.7%	--	80.0%	6.3%	13.7%
2006	69.4%	10.5%	--	79.9%	7.7%	12.4%
2007	66.8%	16.3%	--	83.1%	4.3%	12.6%
2008	71.5%	9.6%	4.2%	85.3%	7.5%	7.2%
2009	69.4%	7.2%	10.6%	87.2%	6.1%	6.7%
2010	67.8%	9.1%	3.2%	80.0%	4.4%	15.6%

\*Pretrial resolution rate is the sum of Accepted Resolutions, Pretrial Settlements and Settled at Mediation.

†Settled at Mediation relies on a new proceeding code created in 2008. No previous data available.

Categories may not sum to 100% due to rounding.

**Table 1.10 Lump Sum Dispositions, Trial Hearings, Health Care Provider Changes, 1999-2010**

Year	Adjudication Actions		
	Lump Sum Dispositions	Formal Trial Hearings	Change of Health Care Provider
1999	1,512	122	147
2000	1,294	104	160
2001	1,128	100	187
2002	1,021	90	217
2003	982	105	196
2004	1,011	80	204
2005	1,065	120	156
2006	884	133	163
2007	819	75	164
2008	653	138	127
2009	847	111	157
2010	1146	87	166

In 2010 pretrial resolutions accounted for 80 percent of complaints, as Table 1.9 shows.

The median number of days, from the date a complaint was filed to the issuance of a recommended resolution was 63 in 2010 (see Table 1.8). Parties filing complaints frequently request, and are granted, extensions to provide additional supporting information, which can extend the resolution process beyond the 60-day statutory limit.

The primary agency measure to assess the effectiveness of the mediation process is the percent of recommended resolutions accepted by both parties. In 2010 this acceptance rate was 67.8 percent for 1,804 recommended resolutions issued – down from 69.4 percent of resolutions in 2009. This acceptance rate includes mediations only and disregards cases settled prior to formal trial. One factor that influences resolution rates is the number of pending cases set for trial (see Table 1.9). In 2010 this measure rose to 20.4 percent.

Pretrial settlements in 2010 rose to 9.1 percent. If a recommended resolution is rejected, parties may still resolve a dispute through a pretrial settlement. A pretrial settlement is a noncompulsory alternative to a formal trial when a contested claim is not resolved through mediation. When requested, mediators assist parties in negotiating an agreement. A Workers' Compensation judge reviews and approves the settlement. In other cases, a Workers' Compensation judge facilitates negotiations. Settlement conferences are frequently conducted during discovery when parties are more amenable to settlement.

Workers' attorneys were involved in 86.7 percent of claims at the mediation level in 2010. Previously this level of worker-attorney involvement was reached in

**Table 1.11 Court Decision Challenges, Appeals, and Percent of Trial Cases Completed, 1999-2010**

Year	WCA Adjudication		
	Challenges	Appeals	Percent of Trial Cases Completed within 270 days of Filing
1999	272	33	89%
2000	267	45	79%
2001	322	31	75%
2002	286	34	43%
2003	453	27	30%
2004	184	21	18%
2005	152	22	13%
2006	216	39	23%
2007	529	37	15%
2008	780	27	11%
2009	723	46	12%
2010	756	29	10%

1991, the year the reformed Workers' Compensation Act became effective. In 1991 the WCA mediated 2,880 worker complaint conferences compared to 1,872 in 2010. Employers' attorneys were involved in 78.6 percent of contested claims at mediation level in 2010.

In 2010 2.1 percent of complaints went to formal trial for resolution. The number of trial hearings to decide contested claims fell to 87 in 2010 from 111 in 2009. The number of lump sum dispositions approved by Workers' Compensation judges increased to 1,146 in 2010 from 847 in 2009 (see Table 1.10).

Workers' Compensation judges averaged 97.4 days (weighted average) from the date a trial ended to the issuance of a decision.

In 2010, 29 cases decided by Workers' Compensation judges were sent to the New Mexico Court of Appeals, a decrease from 46 in 2009 (see Table 1.11). The COA returned 48 decisions in 2010 including 14 dismissals, six affirmations, 20 affirmations and remands, five reversal and remands, and one complete reversal.

Attorney involvement at the adjudication level has been increasing over the past few years and there was a continued increase in worker representation for 2010. Worker-attorneys were involved in 91.5 percent of claims contested in adjudication. The historic low was 80.7 percent involvement in 1998. Employer-attorneys were involved in 97.2 percent of the contested claims in adjudication in 2009, which represents a slight drop from last year's figure.

### **Uninsured Employers' Fund**

The Uninsured Employers' Fund (UEF) was created in 2003 with a dual purpose: (1) to protect an injured worker whose employer was required, but failed, to maintain workers' compensation insurance coverage at the time of the worker's job accident or illness, and (2) to assess a penalty against the uninsured employer. The law took effect on June 20, 2003, with WCA Rules on the UEF taking effect October 15, 2003.

The UEF pays workers' compensation indemnity and medical benefits to entitled injured workers. Beyond that, the UEF is obligated to pursue legal action against the uninsured employer for reimbursement of all monies paid to or on behalf of the injured worker, along with interest, costs and attorney fees. In addition to reimbursement, the UEF is mandated to impose a penalty against the uninsured employer of not less than 15 percent, nor more than 50 percent, of all benefits paid to or on behalf of a worker. In addition the UEF may seek additional reimbursement for the costs involved in any legal action instituted to determine or collect the penalty.

### **Assessment Bureau**

The Assessment Bureau aids the State of New Mexico Taxation and Revenue Department (TRD) in the collection of Workers' Compensation (WC) fees from non-compliant employers in an effort to increase revenue for the State of New Mexico. This is done by analyzing various databases to identify employers who are not paying their WC fees. The employers are contacted by telephone and/or letters in an effort to bring them into compliance. This includes efforts in the collection of past due payments. WC Fees are paid to TRD on a quarterly basis.

The Assessment Bureau also educates and assists employers in the completion of forms and registration process. They also are involved in conducting presentations, workshops and traveling to various agencies statewide.

### **WCA Administrative Services**

WCA service offices (Human Resources, Financial Management and Facilities Management) provide administrative support to members of the agency. Human Resources staff manages employment matters, payroll, employee benefits, and staff development functions. Financial Management oversees the agency budget of approximately \$11 million, as well as managing the agency's accounting system and purchasing activities. Facilities Management oversees physical facilities, vehicles, mail processing, phone systems, and staffing of reception areas and switchboards.

