

Final Report

# Montgomery County Public Schools Workers' Compensation Program

Report # OIG-19-003

April 5, 2019

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Montgomery County Maryland  
Office of the Inspector General

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# Montgomery County Public Schools Workers' Compensation Program

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## Background

MCPS employs over 23,000 people working at over 220 locations throughout the County. Each year thousands of employee workplace incidents events and injuries are reported resulting in millions of dollars of Workers' Compensation costs to the tax payers of Montgomery County.

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## Why We Did This Audit

The Montgomery County Office of Inspector General (OIG) sought to assist the MCPS in assessing their Workers' Compensation program to identify opportunities for improvements.

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## What We Found

We found opportunities for MCPS to consolidate and exploit existing data leading to reduced costs and improved services. The ability to collect and analyze data, develop metrics, and assign responsibilities to improve outcomes may be impacted due to incident reports being routed through different MCPS offices. Continued improvements in data accuracy are needed. Although individual case compliance is outside the scope of this audit, MCPS appears to follow internal policies, procedures, and applicable laws and regulations. We also noted that MCPS does not have a return-to-work or light-duty program, an industry best practice.

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## What We Recommend

We recommend that MCPS should employ data analytics for use in incident prevention efforts and as a managerial performance measurement tool. MCPS should continue to work with the Self-Insurance fund and third-party administrator staff on the accuracy of reporting and documenting events to improve the available data for analysis. Continued development of a consolidated incident and information system should be maintained, and the Division of Maintenance Incident Review Committee should be expanded system wide.

It is also recommended that MCPS review and eliminate redundant documentation. Collective bargaining language emphasizing the preferred provider program for enhanced WC benefits should be used. Other providers of Workers' Compensation coverage should be explored to establish comparison metrics for the services currently provided to MCPS.

A Light-duty/Return-to-Work policy and program should be implemented.

# Montgomery County Public Schools Workers' Compensation Program

## Section 1: Introduction and Background

### MCPS Workers Compensation Program and Process

Montgomery County Public Schools (MCPS) provides employees with access to Workers' Compensation (WC) benefits and services by way of a 1978 agreement with the Montgomery County Self Insurance Fund (fund) operated by the Department of Finance, Office of Risk Management. The Employee and Retiree Services Center (ERSC), an office of Montgomery County Public Schools (MCPS), is administratively tasked with managing the MCPS WC program. While the legal responsibility to provide services is retained by MCPS, the actual delivery of services is accomplished by participating in the Self-Insurance fund. The fund outsources the delivery of services through a Third-Party Administrator (TPA), a private contractor. MCPS uses internal policies and procedures, managed by the ERSC, regarding employees utilizing WC benefits. ERSC primarily handles how an employee accesses services, payroll issues, and return to work after the employee recovers. MCPS manages the start and end of an employee in the WC program, However the TPA manages the process and delivery of most WC services while an employee is in the program. (See graphic at P. 18)

ERSC is guided by one MCPS regulation on this topic (discussed in detail later) dealing primarily with reporting incidents and employee access to WC benefits. This regulation does not address management or delivery of those benefits. ERSC employs several informal internal procedures and applies several Collective Bargaining Agreement (CBA) provisions in their efforts. The most relevant CBA implication is a provision addressing access to enhanced benefits when the employee meets certain conditions.

MCPS Workers' Compensation regulatory and procedural compliance was examined in consideration of the relationship with the Self-insurance fund. Although evidence of non-compliance on the part of MCPS was not observed, information was learned during the audit suggesting additional consideration of the Self-Insurance fund and contractor policies and procedures may be in order.

The payment of WC claim related costs by the fund, on behalf of MCPS, is a fiscal concern to MCPS because annual contribution rates to Self-Insurance fund are based on its share of risk exposure modified by its share of losses (relative to the total for Self-Insurance fund).<sup>1</sup> During

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<sup>1</sup> This terminology and process explanation was provided to the OIG by Self-insurance fund/MCG Risk Management

## Introduction and Background

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the time period examined in this audit the Self-Insurance fund incurred \$10,732,705.40 of MCPS related WC costs.<sup>2</sup> Although difficult for MCPS to have a direct impact on specific claim costs, it can take steps that will potentially result in reduced future Self-Insurance fund contribution requirements.

Like a commercial insurance carrier, the Self-Insurance fund determines an annual WC contribution rate for each fund participant based on an actuarial study assessing risk and claim history. The required contribution rate amount becomes a budget item for the contributing agency and is typically measured as a dollar cost per \$100 of salary. For comparison purposes, the chart below illustrates contribution rates for several members of Self-Insurance fund for the last several fiscal years.

Agency	FY13	FY14	FY15	FY16	FY17	FY18	FY19
MCPS	\$ 0.55	\$ 0.51	\$ 0.57	\$ 0.61	\$ 0.74	\$ 0.65	\$ 0.71
MCG	\$ 3.16	\$ 3.50	\$ 3.34	\$ 3.25	\$ 2.57	\$ 3.22	\$ 2.91
MNCPPC	\$ 2.07	\$ 1.58	\$ 1.93	\$ 2.16	\$ 2.27	\$ 2.20	\$ 2.13
City of Gaithersburg	\$ 1.26	\$ 2.62	\$ 0.85	\$ 0.88	\$ 1.27	\$ 1.07	\$ 1.29
Revenue Authority	\$ 1.19	\$ 5.73	\$ 1.15	\$ 1.22	\$ 0.32	\$ 1.28	\$ 1.25

*\*Source: OIG generated chart from MCSIF supplied data; each represents the dollar cost per \$100 of agency payroll*

### Delivery of Workers' Compensation Services in the MCPS Program

MCPS, as with all participants in the Self-Insurance fund, has agreed to allow the TPA to receive, assess, process, manage and when applicable to settle certain WC claims.<sup>3</sup> Once a claim is received by the TPA, usually within 24-48 hrs of the incident, MCPS has limited involvement or control over the handling of the claim. A significant exception to continued MCPS involvement in a claim is when an employee is out of work due to a covered event and entitled to continuation pay. In these circumstances the MCPS Employee and Retiree Service Center (ERSC) processes documents to support correct wage payments. ERSC also maintains communications with the TPA and performs some employment related administrative actions while the employee is out of work. ERSC also manages the administrative process whereby an employee returns to full duty after a WC event.

The fund contracts almost all WC claim administrative responsibilities to a TPA: Managed Care Innovations, Inc (MCI) of Richmond, Virginia. MCI then sub-contracts the actual claim

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<sup>2</sup> Information provided CorVel, the TPA subcontractor. In some cases, MCPS pays additional salary benefits to employees out of work. While the exact amount paid by MCPS, above the Self-insurance fund payments, could be determined by looking at each claim, the data set in this audit was too large and cumbersome to reasonably make those calculations.

<sup>3</sup> See "Participating Agency Agreement" published by Self-insurance fund and signed by MCPS on 1 July 1978

processing, day-to-day management, medical bill payments, and additional services to CorVel Corporation. The subcontractor, CorVel, operates a 24hr call center to receive notifications regarding injured workers and this is when the initial claim is documented.<sup>4</sup>

CorVel provides other WC related services to MCPS such as development and maintenance of the preferred provider list (PPO), assigning nurse case managers, conducting medical utilization and progress reviews, and it has some approval authority for claim payments.<sup>5</sup> Claims involving large dollar amounts or unusual circumstances are reviewed and supervised by the MCG Department of Finance, Division of Risk Management (the parent organization to the fund) in consultation with the ERSC.

Through agreement with Self-Insurance Fund, the Montgomery County Office of County Attorney (OCA) provides WC claim related legal and litigation services for Workers' Compensation Commission (WCC) hearings, trials, and appeals. Claim related legal services are provided by the Montgomery County Office of County Attorney. Legal costs associated with MCPS workers' compensation hearings and litigation are ultimately included in the cost basis of the MCPS contribution rate to the fund.

## Section 2: Findings, Recommendations, and Supporting Analysis

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**Finding 1** Opportunities to make better use of available data may be hampered due to incidents being reported, analyzed and addressed through different MCPS offices.

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A key element in reducing WC costs is reducing events resulting in injuries by examining data about incidents to produce actionable plans to address root conditions. Interviews and process evaluations conducted by the OIG suggest that the current method of acquiring safety related information in MCPS can be conducted in a more efficient and useful manner to reduce injury producing events.

Depending on the type of incident, if it involves property damage or injuries, and if those injuries are to employees, staff, or visitors can result in reporting the event to separate MCPS offices. MCPS recently acquired, but has not yet fully deployed, a new Incident Management System (IMS) which reportedly will capture all safety related data into a central location. The capability

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<sup>4</sup> MCPS "Workers' Compensation Overview"; and CorVel website: <https://www.caremc.com/CareMcWebMvc/Account/Login>

<sup>5</sup> Self-insurance fund/MCI Contract section C (A) 13

## Findings, Recommendations, and Supporting Analysis

of this system was not examined but, as described, once in full operation this new system may address some of the data collection and analysis points observed.

Very useful and important information can be acquired if all information is consolidated in a single clearing house for analysis and then accountability assigned back to the relevant department or staff section to address the issue. To demonstrate this concept, we looked at 4572 claims filed with the TPA between December 1, 2015 and May 1, 2018. The below chart shows the breakdown of those claims by type and costs for the time frame covered by this audit; it should be noted that "costs" are those costs paid-to-date and many of these claims are still open:

Type of Claim	# of Claims	Amount Paid in Dollars (to date of this data)
DEATH	1	0
Indemnity	1429	\$10,348,539.80
Medical only	1183	\$384,129.20
Report only	1959	\$36.40
<b>Grand Total</b>	<b>4572</b>	<b>\$10,732,705.40</b>

*Source: OIG generated graph from MCSIP supplied data*

These claims represent approximately 3723 individual employees<sup>6</sup> (some employees file multiple claims) claiming a WC event. The breakdown of the number of separate claims filed by employees is illustrated here:

Total number of claims filed	4572
Employees filing one claim	2280
Employees filing two claims	577
Employees filing three claims	177
Employees filing four claims	46
Employees filing five claims	19
Employees filing more than five claims	30

*\*Source: OIG generated graph from MCSIP provided data.<sup>7</sup>*

One data indicator of potential fraud or abuse is employees filing unusual patterns of claims or multiple claims over a short period of time. Indemnity claims were specifically targeted for inspection under our belief that it serves little purpose to fraudulently file Report Only and Medical Only claims since they merely provide documentation and relatively minor medical

<sup>6</sup> This is a calculated number based on information from the data set. We did not have personally identifiable information connecting claims with a particular employee and as a result the calculation could be slightly off.

<sup>7</sup> We feel that an approximately 1% error rate due to incomplete data, for the purposes of this chart, would be too minor to be relevant.

treatment to employees.<sup>8</sup> Indemnity claims, on the other hand, can lead to time off work and eventually an award of cash based on a PPD award.

Multiple claims filed by a single employee were reviewed by the OIG and several claims were statistically outside of the norm. In each of these cases the OIG reviewed the available data fields and it was observed that the top ten claimants filed a total of 127 claims; but it was also observed that only seven of the 127 claims were filed for indemnity.

All ten of these employees work in Special Education. One employee, a special education para-educator, filed 22 claims; however, all claims were report only (RO). The following nine claims were also examined, and despite the volume of claims the data was found to be consistent with what would be expected.

Regarding these 127 claims, the OIG considered the type of claim, the documentation in the data, the nature of the job, and the consistency of both type of injury and body part claimed and each of these claims was viewed as an MCPS employee doing a difficult job in a very difficult environment. Nothing in the reviewed claim data was noted warranting further investigation regarding these claims.

Based on claim history from the data set, ten different MCPS employees<sup>9</sup> were found as warranting additional consideration.<sup>10</sup> These ten were identified by filing patterns alone and without OIG access or review of any claim file; therefore, the OIG can only note the pattern and has no information as to the validity of any of the claims. Information about the patterns exhibited by these claims was provided to both the Self-Insurance fund and MCPS for their consideration, and appropriate action, if any, and the OIG offers no opinion about any wrongdoing.<sup>11</sup>

An example of the criteria used to identify patterns can be demonstrated in what appears to be an employee, a building services worker, that filed five indemnity claims in approximately six months. These claims were considered notable because they were filed on five different body parts, the data had vague descriptions of the cause of the injury for three of the five claims, and all five were filed for indemnity. Although we identify this pattern as a potential indicator, we draw no conclusions on the meaning of the pattern due to incomplete information. This example is offered for the sole purpose to demonstrate key factors considered in the pattern identification of the ten employees we think warrant additional consideration.

Analytical graphs, produced by the OIG based on Self-Insurance fund data, are included in this report showing the relationships between WC costs, types of injuries, mechanism of injury, and

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<sup>8</sup> In theory, an employee could fraudulently file numerous RO and minor MO claims to support a future disability claim; but, for purposes of this report that possibility was disregarded.

<sup>9</sup> The data supplied to the OIG did not include personally identifiable information; however, these individual claims appear to be linked to the same individual through similarities in the data set. OIG recognizes that this links may be inaccurate due to how they were identified.

<sup>10</sup> Information concerning these claims was forwarded to MCPS and Self-Insurance fund for any necessary follow up consideration.

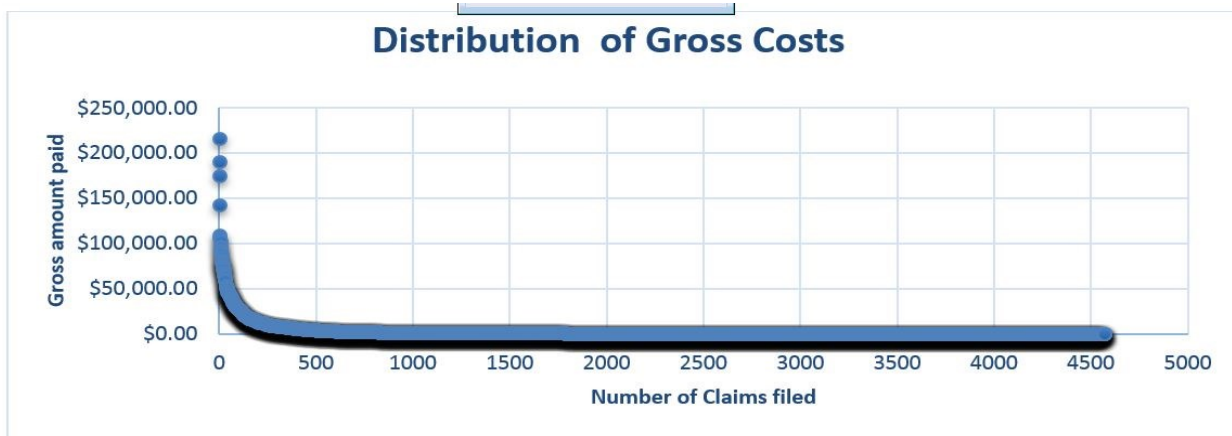
<sup>11</sup> In response to the notification by the OIG regarding these claims, MCSIF responded "The outcome of that review was that none of the claims were determined to be, or represent, an unusual pattern, and that the details from the claims files answered questions initially raised."

## Findings, Recommendations, and Supporting Analysis

facilities where WC injuries occurred.<sup>12</sup> Evidence supporting several recommendations came from cross referencing this data to identify possible opportunities for MCPS to impact injury rates and Costs.

### Gross Costs of all claims by individual claim amount

This graphic shows that a very large percentage costs associated with MCPS employees receiving workers' compensation benefits are connected to a small number of claims that are filed. In fact, almost 2,000 claims had either zero, or close to zero, costs associated with them. The four individually identifiable vertical points on the graph accurately portray the four most expensive claims from the data set.



\* Source: OIG generated graph from MCSIP provided data

### Volume of Claims by Injured Body Part

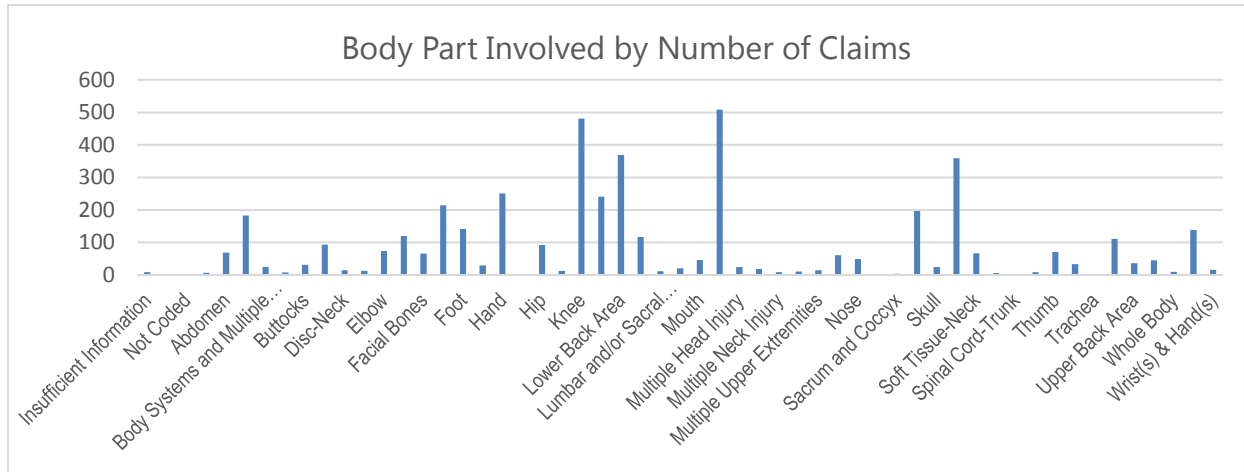
The below chart illustrates a representative number of claims broken down by the injured body part. The involved body part is labeled in terms of a nationally standardized data field adopted by the Maryland Workers' Compensation Commission.<sup>13</sup> Injuries to the knee, lower back, and head were the three most common specific injured body parts. The category "Multiple body parts" is the largest single category but it is not possible for the OIG to break this group down further without looking at individual records to which we did not have access.

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<sup>12</sup> Facility refers to where the employee was assigned and not where the actual injury took place

<sup>13</sup> [https://www.iaabc.org/iaabc/Standard\\_References.asp](https://www.iaabc.org/iaabc/Standard_References.asp) (accessed 16 July 2018)

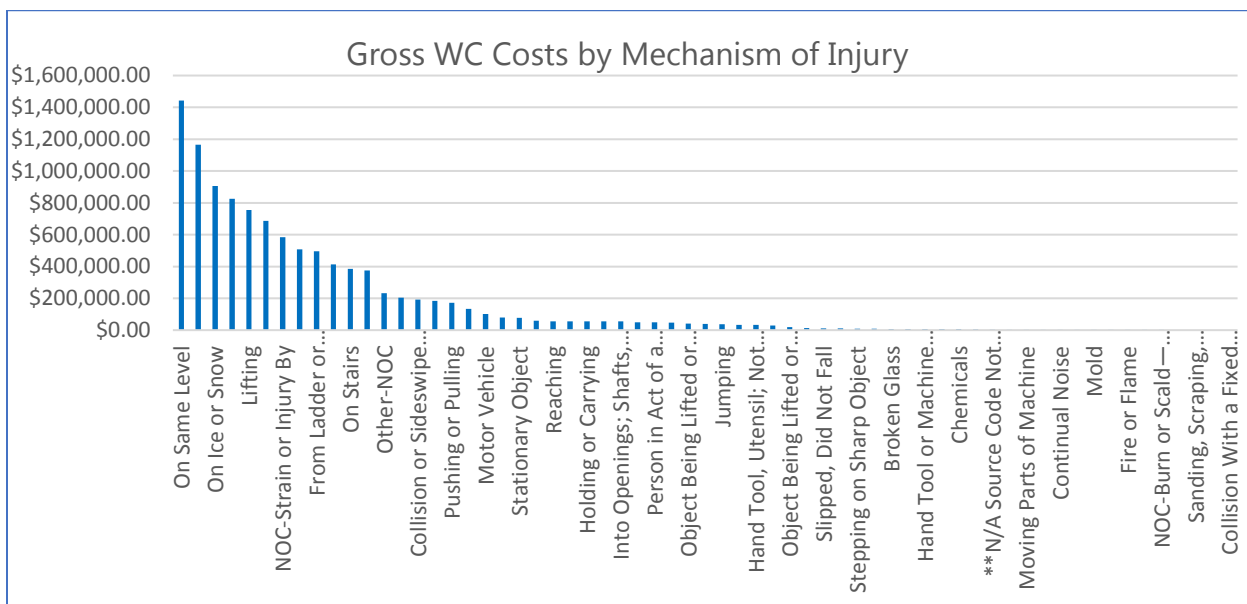




\*Source: OIG generated graph from MCSIP provided data (some fields are hidden due to space constraints)

### Cost of Claims by Mechanism of Injury

The graph below illustrates representative expenditures by claim type and mechanism of injury during the time period examined. The top three cost categories can logically be grouped and described as injuries related to slips, trips, and falls. Combined, they comprise slightly over 30% of the costs for workers' compensation injuries during the period examined (\$3,513,494.92 of the \$10,732,705.40 total). Another \$385, 949.95 of costs were incurred related to stairs<sup>14</sup> but not included in the above percentages because the detail of the events was not specific enough to determine if they were also slip, trips, and falls. These figures clearly demonstrate that significant expenses are incurred from a relatively limited mechanism of injury.



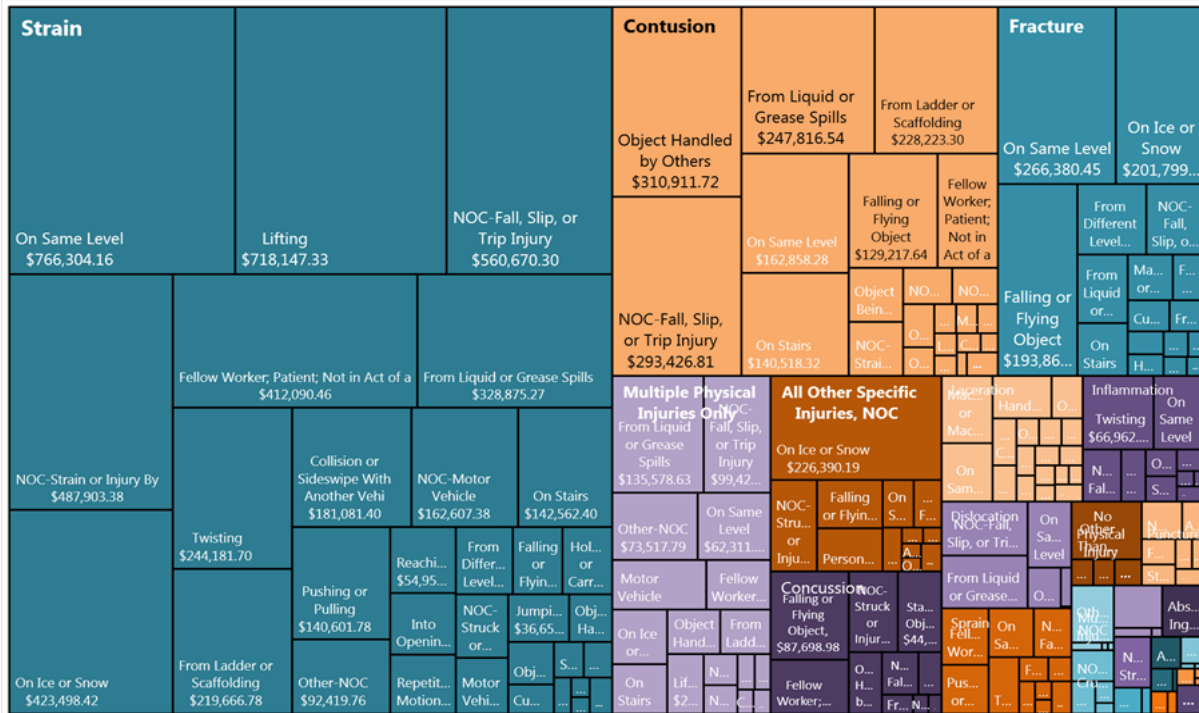
\*Source: OIG generated graph from MCSIP provided data (some fields are hidden due to space constraints)

<sup>14</sup> The data provided by Self-insurance fund is labeled with industry recognized categories that are somewhat generic in nature

## Findings, Recommendations, and Supporting Analysis

### Cost of Claims by Type of Injury

Statistically, regardless of where or how an incident occurs or what body part is involved, the most expensive claims are strains<sup>15</sup> and contusions.<sup>16</sup> Typically, these are considered relatively minor medical issues that are usually not subject to definitive medical testing. Based on the MCSIP data strain and contusions account for most WC expenses for which MCPS is ultimately responsible. The follow graphic, based on information in the prior three charts, illustrates the relative relations between the costs of strains and contusions and the total claims and costs.



\*Source: OIG generated chart from Self-insurance FUND supplied data: The size of each block represents a representative proportional share of the costs related to the injury

The Incident Review Committee (IRC), currently employed in the MCPS Division of Maintenance, provides an excellent model for how consolidated information can identify core issues that can be addressed. Consolidated information can be used to develop strategies in addressing problems, and potential problems, across MCPS facilities and activities. The IRC has documented impressive reductions in accident rates by using this approach over the past several years.

According to records examined by the OIG after the IRC was implemented by the Division of Maintenance in 2015, OSHA recordable injuries/illness dropped by approximately 33% the first

<sup>15</sup> As defined by the National Library of Medicine, a strain “. . . usually involves resting the injured area, icing it, wearing a bandage or device that compresses the area, and medicines. Later treatment might include exercise and physical therapy.”

<https://medlineplus.gov/sprainsandstrains.html> (accessed 25 July 2018)

<sup>16</sup> As defined by the National Library of medicine, a contusion is “a mark on your skin caused by blood trapped under the surface. It happens when an injury crushes small blood vessels but does not break the skin.” <https://medlineplus.gov/bruises.html> (accessed 25 July 2018)

year. By comparison, data examined by the OIG shows that OSHA recordable injuries/illness across the entirety of MCPS remained fairly constant during this same time frame.

OSHA-Recordable Injury/Illness Severity for MCPS DOM, MCPS (CY13 - CY17) <sup>1</sup>									
CY	Total OSHA-Recordable Injuries/Illnesses (DOM)	Lost Workday Cases (DOM)	Job Transfer, Restriction Cases (DOM)	Lost Workdays (DOM)	Days of Job Transfer, Restriction (DOM)	Severity Rate (DOM)	DART Rate (DOM)	Severity Rate (MCPS)	DART Rate (MCPS)
2013	50	20	1	575	9	249.0	9.0	76.2	1.8
2014	55	44	0	1,762	14	622.8	15.4	85.7	1.9
2015	53	37	0	1469	0	518.3	13.1	71.2	1.9
2016	35	23	0	431	0	149.2	8.0	65.5	2.1
2017	39	22	0	1,102	14	391.8	7.7	74.7	2.1

<sup>1</sup> Severity Rate: the number of days lost, restricted, or transferred per 100 full-time employees. work-related injuries/illnesses per 100 full-time employees. Days Away, Restricted, and Transferred (DART) Rate: the number of recordable incidents per 100 full-time employees resulting in lost workdays, restricted days, or job transfer.

\*Source: MCPS systemwide safety programs (<https://www.montgomeryschoolsmd.org/departments/facilities/safety/performance.aspx>)

Access and review of consolidated information by the IRC, can shed light on significant issues that can be addressed. Elevating the IRC process to a higher level than an individual Division not only demonstrates MCPS’s commitment to a safe workplace and educational environment but will also provide a level of authority to implement suggestions

Even with the limited data set used by the OIG in this report important and useful information can be developed. Using just basic analytical tools the OIG found information supporting that significant reductions in occurrence, extent of injuries, and costs can be achieved if just a few events and locations are addressed.

The OIG does not have the industrial safety expertise to make recommendations on specifically what should be addressed and merely notes the data supports further review in an IRC like process and examination by experts. The effects of these events and the resulting measurements and data analytics can support accountability and the assignment of responsibilities system wide.

**Recommendation 1:** Continue to develop a central incident information collection and clearing house and expand the current MCPS Incident Review Committee to a systemwide MCPS program with appropriate authority to implement changes.

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### Finding 2 Existing information is not being fully exploited to develop managerial performance metrics

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The local impact of a worker’s compensation incident is typically obvious to first line Managers and Principals when an employee for whom they are responsible cannot come to work due to a WC incident. However, the cumulative economic impact on MCPS of widely dispersed, and sometimes seemingly disconnected, incidents is not always apparent to employees and leaders in the best positions to curtail them. Adopting performance measures targeted at reducing incidents and improving safety will assist MCPS in emphasizing the organizational significance

## Findings, Recommendations, and Supporting Analysis

of this topic. It will also hold the parties in the best position to effectuate a positive outcome accountable for improvements.

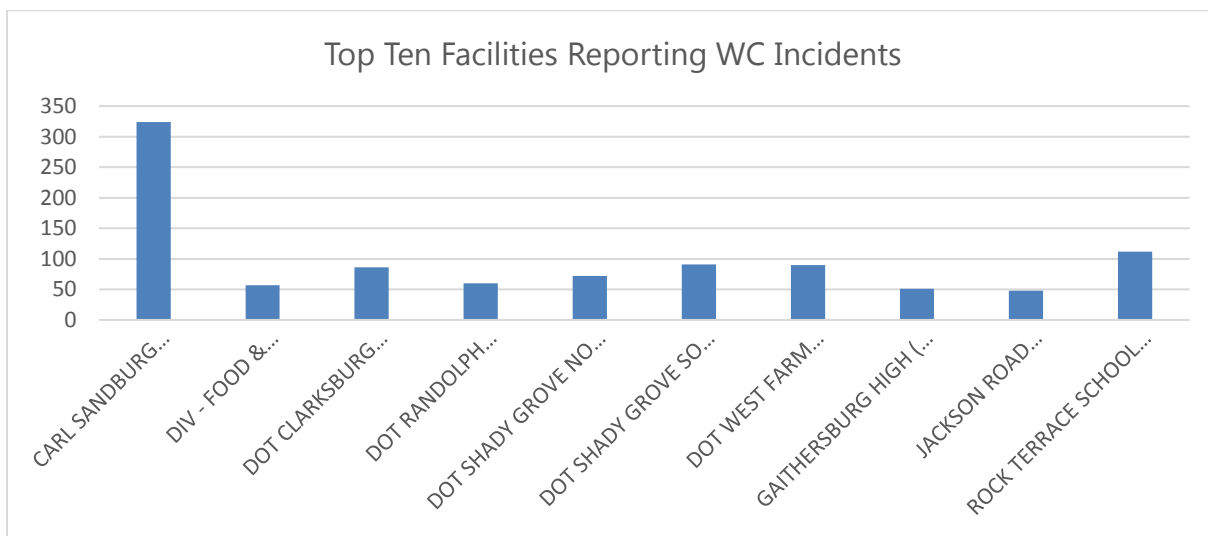
An example of how accountability and measurement can have a significant impact on events is demonstrated by our analysis of Self-Insurance fund data. The data we examined, illustrated in the chart below, shows that just over 25% of gross WC costs paid, during the examined time frame, came from incidents linked to just ten facilities<sup>17</sup>:

The facilities are:



\*Source: OIG generated graph from MCSIP provided data

The data also demonstrates that approximately 21% of total number of claims come from just 10 facilities:



\*Source: OIG generated graph from MCSIP provided data

<sup>17</sup> MCPS utilizes well over 200 facilities including schools, maintenance facilities of separate office complexes.

Five MCPS facilities appear in both the top 10 WC reporting and the top 10 WC cost facilities.<sup>18</sup> Somewhat understandable, three of the five are transportation depots where significant machinery and heavy labor are more prevalent than most MCPS facilities. It was also noted that most claims from Carl Sandburg Learning Center were Report Only claims and have a relatively minor costs associated with them. However, these RO claims are still Workers' Compensation claims with potential future liabilities and a factor used in the annual Self-Insurance fund contribution assessment process.

An important conclusion drawn from data analytics is that potentially significant reductions in injury rates and related WC costs can be achieved by aiding and encouraging employees and leaders at these facilities to address hazards. Implementing meaningful, data-based employee performance measurements will assist MCPS leadership in guiding the MCPS culture to accept safety as a principle of the work place.

Expert analysis of the complete data set will support recommendations and conclusions of the IRC which will apply across the MCPS system. Expertise of a group like this with the backing and authority of senior leadership will improve the chances that incidents are reduced. We additionally feel that this data demonstrates the feasibility of using reliable metrics to measure the progress and success of MCPS employees in the best position effectuate positive outcomes as they improve safety and reduce costs.

**Recommendation 2:** Establish metrics for incident reduction and consider implementing them as an employee performance measure.

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### Finding 3 Current data collection processes may capture inaccurate information

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While the OIG was generally impressed with the data provided, there were some problems noted. Most errors were of little consequence to this report but one common error, involving identification of job classes, could potentially impact statistical reporting to outside agencies like OSHA/MOSHA.

Job classification coding comes from an industry standard published by the National Council on Compensation Insurance (NCCI) and adopted by the State of Maryland. These codes are linked to other reporting requirements (OSHA for example) and frequently used in evaluating risk exposure.<sup>19</sup> For example, police officers and firefighters tend to have a higher risk factors than

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<sup>18</sup> They are DOT Clarksburg, DOT Randolph, DOT West Farm, Gaithersburg HS, and Rock Terr.

<sup>19</sup> In response to questions about these discrepancies, Self-insurance fund responded that they do "not use NCCI codes for contribution rating purposes" and in response to a different question Self-insurance fund wrote that incorrect/missing job codes "will be addressed through supervisor review, file auditing or exception reporting." The OIG is satisfied that this indicates their intent to continue training.

## Findings, Recommendations, and Supporting Analysis

accountants and doctors might. The examples of police officer and firefighter were not randomly selected. Although MCPS does not employ police officers and firefighters the data still indicates one police officer and five firefighters filed workers' compensation claims. The following chart shows claims by job classes reported by the TPA. We offer no opinion as to what the correct classification should be and just note that that the data appears to be inconsistent in terms of documented job classifications.

Job Class	Count of Claim Number
☒ Unassigned	152
☒ 0005/FARM: NURSERY EMPLOYEES & DRIVERS	1
☒ 3365/WELDING/CUTTING NOC & DRIVERS	1
☒ 5183/PLUMBING NOC & DRIVERS	2
☒ 5403/CARPENTRY: NOC	2
☒ 7230/TRUCKING: PARCEL OR PACKAGE DELIVERY?ALL EMPLOYEES & DRIVERS.	5
☒ 7373/SCHOOL BUS CONTRACTOR?INCLUDING INCIDENTAL CHARTER SERVICE: ALL OTHER EMPLOYEES & DRIVERS	13
☒ 7380/DRIVERS/CHAUFFRS/THEIR HELPERS NOC-COMMERC	3
☒ 7382/BUS CO: ALL OTHER EMP'S & DRIVERS	113
☒ 7704/FIREFIGHTERS & DRIVERS	5
☒ 7720/POLICE OFFICERS & DRIVERS	1
☒ 8204/BUILDING MATERIAL YARD & LOCAL MANAGERS, DRIVERS.	11
☒ 8380/AUTO: SERVICE/REPAIR CENTER & DRIVERS	4
☒ 8393/AUTOMOBILE BODY REPAIR	8
☒ 8810/CLERICAL OFFICE EMP'S--NOC	1
☒ 8835/NURSING: HOME HEALTH/PUBLIC/TRAVEL-ALL EMP	1
☒ 9012/BLDG OPS: PROF EE'S/PROPERTY MGRS	32
☒ 9015/BLDG OPS: BY OWNER/LESSEE/REAL ESTATE FIRM	32
☒ 9101/COLLEGE: ALL OTHER EMPLOYEES	2
☒ 9102/PARK-NOC: ALL EMPLOYEES & DRIVERS	1
☒ 9180/AMUSEMENT DEVICE OPS: NOT TRAVELING--NOC	1
☒ 9402/STREET CLEANING & DRIVERS	1
☒ 9403/GARBAGE/ASHES/REFUSE COLLECTION & DRIVERS	16
☒ 9410/MUNICIPAL/TOWNSHIP/COUNTY/STATE EMP--NOC	4162
☒ 9552/SIGN INSTALL/MAINT/REPAIR/REMOVE-OUTSIDE	2
<b>Grand Total</b>	<b>4572</b>

While this data collection issue might be a simple quality review or training issues, it should still be addressed to assure that the data bases are accurate, consistent, and reliable in order to support reporting and analysis requirements.

Two common, but minor errors observed in the data were:

- Missing one major data field (approximately 50 records, not significant in this audit)
- Spelling or punctuation errors in the narrative that were significant enough to make understanding the field challenging. The OIG understands that some of these narratives were submitted by the filing party and not completed by MCPS/Self-Insurance fund/or the TPA.

Proper analysis of data is grounded in the integrity and accuracy of the data. For any analysis to be reliable and ultimately useful, by groups like the IRC, it is imperative that the data be accurate, verified and validated. While it was conveyed to the OIG that in many cases the data provided reflects exactly what was reported to the TPA, the presence of these errors suggests that continued training and validation is prudent.

**Recommendation 3:** Continue to improve and train staff (including the TPA) on reporting and documenting events and information accurately.

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**Finding 4** Due to audit scope limitations, without looking at individual files it was not possible to determine compliance in any individual case, However, no evidence was found suggesting MCPS systemic non-compliance.

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MCPS Policies and procedures were examined considering Maryland state law and supporting regulations and no deviations by MCPS were noted. MCPS also appears to follow its own internal regulations, policies and practices although some minor documentary discrepancies were noted.

MCPS regulation EIF-RA, titled "Worker's Compensation Insurance and Personal Property Loss" directs the MCPS Employee and Retiree Service Center (ERSC) to administer the MCPS WC program and to develop and publish procedures.<sup>20</sup> This is the only MCPS regulation specifically addressing WC. Additionally, there is one contract provision in each of three Collective Bargaining Agreements (CBA) applicable to WC. Although the provisions in each CBA are not identical, they are substantially similar and therefore collectively discussed in this report as one provision. Documents describing MCPS procedures, supplied to the OIG by ERSC, are in the format of casual informational papers and are not documented as a formal procedure.

Regulation EIF-RA states that when an employee is injured "the supervisor should contact the workers' compensation claims administrator." Although the "claims administrator" is not identified, the context of the regulation indicates that the reference is to the TPA. Notification to the TPA triggers the generation of several internal administrative documents by ERSC, the initial and most relevant being an information letter to the employees providing them notice about the WC program, information on continuation pay and of points of contact for questions.

Application of the above regulation, as explained in the unofficial procedures document provided to the OIG, is clearly described in those documents. A preliminary review of compliance revealed no questions or complaints about them, and they appear to be functioning as intended despite their informal appearance. Absent one minor discrepancy, which has apparently never come up as a problem (a 24-hr. notice requirement in the procedure document versus 48-hrs in the CBA), there was nothing about procedural documentation warranting further examination.<sup>21</sup>

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<sup>20</sup> It was observed that this regulation references a section of Maryland Law that has been moved to another part of the code. Since the concept remains valid even if the cite is incorrect the issue was not explored any further. The regulation should be updated to reflect the correct code section.

<sup>21</sup> The CBA gives 48 hrs, while a MCPS procedures document titled "MCPS Workers' Compensation Overview" states 24 hrs.

## Findings, Recommendations, and Supporting Analysis

Once a WC claim is initiated with the TPA, compliance with WC laws, rules, and procedures primarily falls on the Self-Insurance fund/TPA and not MCPS, although ultimately remaining a MCPS responsibility as the employer. We spoke to the OCA regarding claim disputes between MCPS employees and the TPA/Self-Insurance fund and learned they were resolved informally, at administrative hearings and occasionally at trial. Comments from the OCA support that these issues were largely grounded in differences of professional medical opinion (usually over medical treatment, required services, or time off work) and not on compliance issues involving MCPS. Further interviews with MCPS risk management, ERSC, Self-Insurance fund, MCI, and CorVel did not indicate any issues with legal compliance on the part of MCPS.

### ERSC Claim Processing

The main administrative responsibilities retained by MCPS/ERSC in the MCPS WC program is processing salary continuation vouchers. When an employee is out of work due to a WC event ERSC initiates a review and voucher process allowing an employee, eligible for continuation pay, to be paid just as if they were still at work.<sup>22</sup> Salary continuation pay is comprised of the Self-Insurance fund paid WCC required minimum plus the MCPS contribution required to equal 100% of the pre-injury salary. If an employee is not eligible for continuation pay the TPA will issue a check for up to the state required maximum.<sup>23</sup>

The Self-Insurance fund and the TPA complimented ERSC in their efforts to proactively obtain and deliver required wage determination documents to the TPA. This was brought up as an example of how ERSC improved the voucher process. ERSC automatically obtains these documents and uploads them into the TPA system. By doing this, one step of the process is eliminated because the TPA does not need to request, and wait for, these same documents later. (see step#2 below).

According to ERSC, it takes “usually take one hour or less per claim” to set up a new claim for the voucher process and between 4 to 8 hours bi-weekly to manage all vouchers depending on the number of current claims.

This manual process was described by MCPS as follows:<sup>24</sup>

1. A WC incident is reported online or by phone.
2. The MCPS Leave Team, WC specialist, enters incident in the HRIS system and sends out general information letters (email and US Mail). The MCPS Leave Team prepares wage related documents sends them by email to the TPA. This step usually takes 1 hour or less per claim.
3. Medical documents supporting an employee being out of work are forwarded by employees to the Leave team, documented, and then emailed to the TPA by the WC specialist. This takes less than 15 minutes per day.

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<sup>22</sup> Eligibility for continuation pay is conditioned on the employee seeking medical treatment from a preferred provider

<sup>23</sup> Disqualifying reason can vary; but, include receiving medical treatment from a non-approved doctor

<sup>24</sup> Although the process described is summarized by the OIG, this is a direct quote Emails from MCPS-ERSC



4. On a bi-weekly basis, the TPA creates the WC voucher and emails it to the MCPS Leave Team WC specialist. The Leave Team notifies the MCPS timekeeper and provides posting instructions to them.
5. Finally, the MCPS Leave team WC specialist processes the voucher(s) and enters them in the system so the WC payment is made when payroll runs. If an employee had previous time off and was not paid, a special check is written.

*\*Source: This process was described in writing by MCPS ERSC and slightly modified for readability in this report*

Processing times, estimated by ERSC and considering only WC indemnity cases from the time frame covered by this audit, are calculated at approximately 49 hours a month spent on documenting and initiating claims into the voucher process.<sup>25</sup> The ERSC staff effort required to support this process equates to approximately a 1/3 FTE position.<sup>26</sup>

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### Finding 4a MCPS employees are required to produce documents duplicative to those required by the TPA

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Although, compliance issues were not reported in this process, MCPS and TPA representatives mentioned that room for improvement in this process exists. The suggestion offered by the TPA, supported by the Self-Insurance fund, was for MCPS to evaluate current internal MCPS documentation requirements that may be duplicative to Self-Insurance fund/TPA forms and not used by other members of Self-Insurance fund. Considering these suggestions, we examined MCPS documentation requirements and identified three forms that appear to be candidates for re-consideration.

The first form is referenced in MCPS regulation EIF-RA requiring an injured employee obtain and fill out a “*Employee Claim for Compensation (C30D)*” form and return it to the “insurance company.”<sup>27</sup> This form and terminology appear to be referring to a legacy process no longer used. The informal MCPS *Workers’ Compensation Guidelines* provided to the OIG denotes the current practice where an employee, or their supervisor, contacts the TPA (by phone or online) and provides all the basic information needed for the TPA to generate a claim. This notification is called the “First Notice of Loss” or FNOL. The employer, but not the employee, is then required to file with the Maryland WCC an *Employers First Report of Injury* notice. Although not documented in the regulation, procedures or guidelines, it appears in practice that the WCC Employer notice is filed by the TPA and not the Self-Insurance fund or MCPS.

The second two MCPS forms that appear to be redundant and should be re-evaluated are MCPS 440-35 (*Physicians Certification*) and 440-40 (*Return to Work Evaluation*). The usefulness and applicability of these documents is questionable because they are internal MCPS forms, presumably evaluated by ERSC, but deal with areas under the contractual control and

<sup>25</sup> 1429 Indemnity claims, at one hour each, divided by 29 months = 49.27 hrs/Mo. Claims are not filed evenly across all months.

<sup>26</sup> 1 FTE= 2080 paid hrs per year, actual work hours are usually less due to leave and vacations.

<sup>27</sup> MCPS regulation EIF-RA @p.2

## Findings, Recommendations, and Supporting Analysis

supervision of the Self-Insurance fund/TPA. According to the Self-Insurance fund and the TPA, these documents are duplicative of those required by the TPA (and available to MCPS) and may cause delays and place unnecessary administrative burdens on the injured employee. According to the Self-Insurance fund/TPA, making employees obtain these additional documents and the time needed by ERSC to review and evaluate them appears to be unnecessary. This delay can also impact the timely delivery of benefits and payment of correct wages which may expose Self-Insurance fund and MCPS to legal liabilities.

Concerning these forms and the CBAs, there does not appear to be any contractual requirement concerning them, although all three of the CBAs have provisions regarding an injured workers' obligation to file a leave form (Form 430-1, *Leave Request*), our review noted that there are different versions of form 440-40 (*Return to Work Evaluation*) depending on which CBA covers the employee but they appear to be substantially similar in use and intention to documents required by the TPA.

Comments by Self-Insurance fund/TPA support that documentary process improvements could streamline internal administrative case management. A desire to improve the process was also mentioned by ERSC particularly in support their increase participation in the case review process. During case review, an ERSC staff member meets with the TPA and reviews nominated WC cases for progress, compliance problems, and possible indicators of fraud. In theory, increased ERSC participation in case review leads to better case management and earlier detection of anomalies that may be indicators of malingering or even fraud.

**Recommendation 4a:** Eliminate redundant MCPS documentation, specifically forms C30 and 440-35/40, to improve efficiencies and reduce the burden on the employee.

Continuing the analysis of the process, in addition to State and contractual wage benefits, MCPS employees are legally entitled to medical treatment for injuries from a WC event. Employees injured "in the course of their employment"<sup>28</sup> and a notice of injury to MCPS will result in a claim being opened by the TPA; but this is not the same thing as claim filed by the employee with the Maryland Workers' Compensation Commission (WCC), the state agency for administering WC issues in Maryland. Employees have the right, but are under no obligation, to file a claim with the State WCC.<sup>29</sup> Large numbers of claims filed by employees with the TPA do not result in claims being filed with the WCC.<sup>30</sup> Claims filed with the WCC typically involve employee disputes over access to and continuation of treatment characterized by the treating physician as necessary, but disputed by the TPA medical review; disputes over palliative versus therapeutic care; and unusual or atypical drugs and treatments.<sup>31</sup>

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<sup>28</sup> This is a term of art and a threshold for most compensation under Maryland WC law and a highly litigated definition that will often include activities not commonly associated with the typical work environment.

<sup>29</sup> MD Lab & Emp Code § 9-201 et. Seq. (2017)

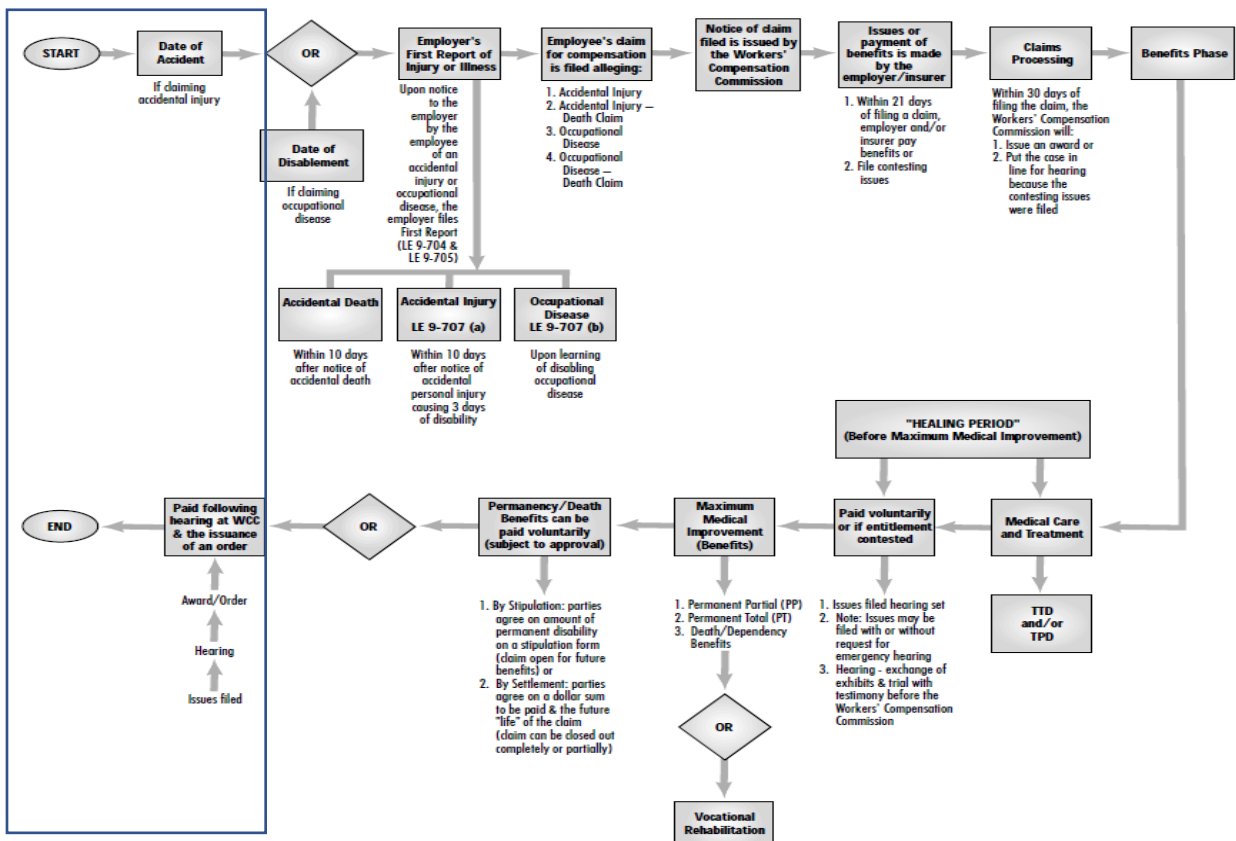
<sup>30</sup> Of the 4572 total TPA claims examined, only 635 have corresponding Maryland State WCC claims on file.

<sup>31</sup> OIG Conversations with OCA and claims representatives

## Findings, Recommendations, and Supporting Analysis

Regardless if an employee claim is handled internally by the TPA or the employee files a claim through the Maryland WCC, the responsibilities of MCPS are substantially the same: to provide access to medical treatment and wage continuation benefits. Although an employee is not required by contract or law to file a claim with the WCC some do for various reasons, potentially including additional benefits, and are discussed in more detail in following sections.

Claims filed with the TPA are processed according to TPA policies and they fall under the supervision and management of the TPA and this process gives the employee access to mandatory benefits and in some cases enhanced contractual benefits. The claims process of the TPA was not examined in this audit but was anecdotally described to the OIG as substantially following the WCC process. Claims that are also filed with the Maryland Workers' Compensation Commission (WCC) proceed in the manner illustrated in the below flow chart.<sup>32</sup>



The box on the left indicates processes primarily under the control of MCPS; all other process are under the control of MCSIF

Chart Source: [http://www.wcc.state.md.us/PDF/Publications/Claim\\_flow.pdf](http://www.wcc.state.md.us/PDF/Publications/Claim_flow.pdf). Accessed 7-1-18

This chart is slightly misleading with the last step in the process labeled "END." MCPS is required by law to provide lifetime medical benefits for a covered injury/illness/body part.<sup>33</sup> Under certain circumstances, in addition to medical treatment, if the covered injury continues to cause

<sup>32</sup> According to MCPS regulation, procedure and contracts all claims must be filed with the TPA; but only some claims are also filed with the WCC.

<sup>33</sup> MD Lab & Emp Code § 9-660 (2017)

## Findings, Recommendations, and Supporting Analysis

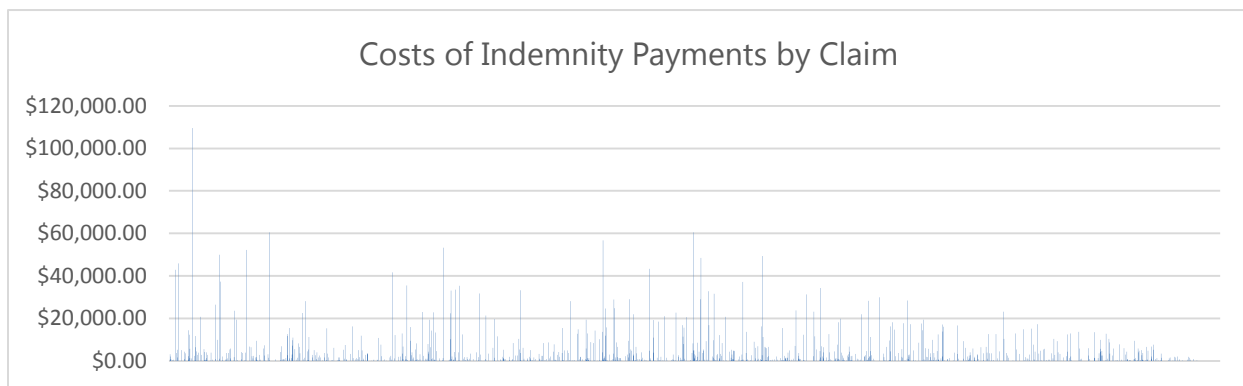
problems the employee can file for additional benefits in a process called “worsening” resulting in additional indemnity payments.<sup>34</sup> The point on the diagram labeled “END” may or may not be the end depending on the circumstances of the claim.

One potential benefit, to the employee, in filing a State WCC claim is that filing a claim with the WCC may access benefits not addressed in the Self-Insurance fund program. Specifically, in indemnity cases filed with the WCC the Self-Insurance fund could be required to compensate the employee for Permanent Partial Disabilities (PPD)<sup>35</sup> or Permanent Total Disability (PTD).<sup>36</sup>

PPD is a payment made directly to the employee, over time, once they have completed treatment to Maximum Medical Improvement (MMI).<sup>37</sup> The purpose of PPD is to compensate for any reduction in abilities due to the injury and is usually expressed as percentage of disability to the effected body part. The amount of the payment is calculated based on a complicated formula found in the state WC law which considers the body part involved, the nature of the injury and the extent of the disability.

The consideration factors are reduced to a disability percentage called the “rating” which is then applied to a WCC standard scale to determine a dollar amount. The final determination of this rating percentage is a significant source of litigation since a higher rating benefits the employee and lower rating benefits the employer/insurer. PPD rates (regardless if stipulated or disputed) are procedurally brought before the WCC this was not considered by the OIG as a compliance issue.

Indemnity, or non-medical expenses can be substantial as shown in the chart below. For illustration purposes, each vertical line represents a single claim from the data set. These costs represent approximately 44% of the total WC costs paid by on MCPS claims by the Self-Insurance Fund during the period examined.



*Each line represents an individual claim cost between Dec 1, 2015 and May 1, 2018*

Source: OIG chart developed from data provided by Self-Insurance

<sup>34</sup> MD Lab & Emp Code § 9-625 et. Seq. (2017)

<sup>35</sup> MD Lab & Emp Code § 9-635 et. Seq. (2017)

<sup>36</sup> The relationship of these two concepts to disability retirement benefits and possibly federal disability benefits is a complex subject far beyond the scope of this audit. Suffice it to say there are financial and legal reasons law why an employee may want or not want to file for these benefits.

<sup>37</sup> Maximum Medical Improvement is an important legal term signaling the point a claimant is eligible a compensation award. It refers to the point where no additional treatment, therapy, or time will likely improve the condition, rehabilitation, or abilities of the injured worker.

Not all claims are filed seeking medical or indemnity payments. In fact, almost one half of the claims reported to the TPA were only to document an event (specific types and numbers are discussed in detail below) and did not seek medical any significant treatment or time off work. Documentation, also called Report Only (RO), claims are for relatively minor medical treatment, with less than 3 days off work and require minimal information and supporting records from the employee. Claims involving more significant injuries and time off work exceeding three days require MCPS to provide specific benefits.<sup>38</sup>

If an MCPS employee is out of work for more than three days due to a covered injury, the law requires wages to be paid in the amount of two thirds of the employee's average weekly wage limited by a state calculated "Average Weekly Wage" (AWW).<sup>39</sup> Each year the State of Maryland Workers' Compensation Commission (WCC) calculates the amount of the AWW based on a complicated set of economic factors to serve as a minimum benefit calculation tool and not as the actual weekly wage of the employee.<sup>40</sup> The AWW also sets a wage "cap" which limits the amount an employer is required to pay under the law.<sup>41</sup>

MCPS is not restricted from paying more than the State required and calculated AWW minimum amount and in each CBA MCPS has agreed to pay the full salary, not capped by the AWW, for up to one year if certain conditions are met.<sup>42</sup> The main condition is that the employee must obtain treatment from a Board of Education approved medical provider for the enhanced benefits to apply. <sup>43</sup> CorVel reports that only about 53% of employees use a preferred provider but do not offer any details or insight as to why this number is so low.<sup>44</sup>

Maryland WC law allows MCPS employees to seek treatment from any provider; but, limits employer financial responsibilities to those identified in a state payment guide.<sup>45</sup> Since not all doctors accept the State wage guidelines, if an employee obtains services from a provider who charges more than the amount provided for in the state guidelines, the employee could be responsible for the difference (balance).<sup>46</sup> The CBAs contractual provision allows an employee

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<sup>38</sup> MD Lab & Emp Code § 9-101 et. Seq. (2017)

<sup>39</sup> MD Lab & Emp Code § 9-621 (2017); Despite the name, this is a hypothetical average weekly wage and not related to any particular employee.

<sup>40</sup> MD Lab & Emp Code § 9-602 (2017)

<sup>41</sup> "Section 9-603 of the Labor and Employment Article states that the maximum compensation paid shall be determined as of January 1st of each calendar year. The Department of Labor, Licensing and Regulation of the State of Maryland has advised this Commission that the Average Weekly Wage of workers' covered by Maryland Unemployment for the fiscal year ending June 30, 2017 is \$1,094.00." <http://www.wcc.state.md.us/PDF/Rates/2018.pdf> accessed 4 May 2018

<sup>42</sup> Although very difficult to make an exact comparison, the OIG calculates a maximum tax free AWW capped income of \$1094/WK to roughly equate to a taxable income of \$1422/WK (assuming a 30% combined total tax obligation). This means that an employee making more than about \$74,000/yr. will benefit from the CBA higher payment rates.

<sup>43</sup> No documents were identified to demonstrate that the BOE has approved any specific list of providers, but MCPS/ERSC advised that the preferred provider list developed and maintained by the TPA has been used to fulfill this requirement. Also, these requirements do not apply if the employee was injured due to an assault or while intervening in violent incident.

<sup>44</sup> Information provided by Self-insurance fund/TPA via email to the OIG

<sup>45</sup> MD Lab & Emp Code § 9-663 (2017)

<sup>46</sup> While an employee can seek medical services anywhere, they want, medical service providers are not required to accept workers' compensation patients; and, some don't due to the restrictions on the amount they can charge. MD Lab & Emp Code § 9-101 et. Seq. (2017)

## Findings, Recommendations, and Supporting Analysis

to receive continuation pay (100% of regular salary, not limited or reduced by the AWW) if they treat with an in-network doctor.

The benefit to MCPS (and the fund) of this CBA provision is the reduction of WC costs by using preferred providers with beneficial negotiated service rates. The advantage to the employee for using preferred providers is access to potentially higher benefits, or longer benefits, than required by law. According to anecdotal reports from the TPA, employees frequently use the preferred provider initially but then are referred, or elect, to use an out-of-network provider resulting in increased treatment costs. This situation may be a contributing factor to the 47% opt out rate provided by the TPA.

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**Finding 4b** Language in all three Collective Bargaining agreements is unclear as to the requirement to use preferred providers for all medical services in order to receive enhanced benefits.

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We found that the current wording of all three CBAs is substantially similar in reference to services required to be provided by “a” physician that has been designated a preferred provider.<sup>47</sup> This CBA wording is silent, making the provision difficult to enforce, when employees use multiple providers and in referral situations.

Enforcement of these contractual obligations, as currently written, is complicated and confusing because the provision is not clear as to the requirement that all providers be program members. Due to this lack of clarity, evaluating compliance in each case requires individual verification and a decision regarding each service provider. Regardless if the employee uses out-of-network providers by design or mistake; the result is that MCPS does not receive the full benefit for which it bargained. Comments provided by the TPA and various stakeholders with access to relevant information lead the OIG to accept this as factual.<sup>48</sup>

To improve the participation rate, MCPS should seek to clarify the language in these provisions. Stronger language can be drafted to assure employees covered by CBAs are aware of their obligations to receive the enhanced benefits. The OIG is aware of the complexities involved with amending or negotiating provisions of a CBA and make this recommendation with those considerations in mind.

**Recommendation 4b:** Clarify the CBA language to emphasize the required use of the preferred provider program for all service providers to access to enhanced WC benefits.

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<sup>47</sup> The MCAAP/MCBOA contract states an employee “. . . may be placed on workers’ compensation leave at full salary by the superintendent provided the unit member seeks medical with respect to the injury from a physician who is among a list of preferred providers . . .”; and, the SEIU and MCEA contracts convey the same point.

<sup>48</sup> OIG notes from meeting with Self-insurance fund/TPA/MCI dated 7 June 2018

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**Finding 5** MCPS does not appear to have benchmarks to assess the value of services provided by the Montgomery County Self Insurance Fund or their contractors.

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MCPS has received insurance coverage through the Self-Insurance fund program for over 30 years with a procedural amendment signed in 2009. No information reviewed suggests that MCPS has considered the development of metrics to measure value or compare costs. Commercial vendors as well as industry associations offer WC coverage that could provide valuable performance insight for MCPS management. Other sources of school system WC coverage are readily available. For example, the Maryland Association of Boards of Education (MABE), on which MCPS holds a Board seat, provides WC coverage for 17 of the 24 school districts in Maryland and certainly has expertise insuring for these risks in an educational environment.

Contract competition and multi-source bidding is a best practice in procurement for government services. Although not prohibited, single source contracting, which is essentially what MCPS has done with the Self-Insurance fund, is strongly disfavored and highly scrutinized when used in government contracting. Without competition, or at least comparison, it is difficult for MCPS to evaluate if they are getting the best value for the tax dollar expenditures.

We do not imply that there is anything inappropriate with single source contracting or with the relationship between MCPS and the Self-Insurance fund. The establishment of external benchmarks simply provides MCPS management a tool by which they can gauge the providers selected by the fund and is raised only as a method to measure the concept of best value.

**Recommendation 5:** Explore and evaluate other providers of Workers' Compensation coverage to develop metrics to evaluate value (such as cost and services) provided by the Self-Insurance fund and their TPA.

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**Finding 6** MCPS does not have a return-to-work or light-duty program (LD/RTW), an industry Best-Practice.

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Return-to-Work and light-duty programs are commonly held as industry best practices regarding WC injuries. According to information provided by the Maryland Association of Boards of Education (MABE), school systems insured by them (17 of the 24 systems in the state) are encouraged to have LD/RTW policies and they report that most do. Various Maryland school systems contacted by the OIG confirmed the information from MABE although some admitted

## Findings, Recommendations, and Supporting Analysis

it was an unofficial program handled on a case by case basis and participation was not mandatory.<sup>49</sup>

A review of general insurance and education system trade literature indicates that Light-duty and Return-to-work (LD/RTW) programs are considered industry Best-Practices and the industry norm.<sup>50</sup> The OIG reviewed current MCPS policy and practice in comparison to other local government employers and specifically compared MCPS to other Boards of Education throughout Maryland. These programs are commonly used in the Montgomery County Government and by other Self-Insurance fund members.

Parties interviewed by the OIG in the context of this audit (including MCPS, MCG Risk Management, Self-Insurance fund, MCI, and CorVel) universally agree that these programs are valuable to the employer, the insurer and the employee. MCPS does not have these programs in place despite a recommendation sent to MCPS from the Montgomery County Council based on a 2006 OIG report.<sup>51</sup>

Workers' Compensation insurance industry literature also supports comments made to the OIG by Self-Insurance fund, the TPA, and MABE that these programs help control WC costs, reduce lost work time and help maintain the efficiencies of the organization. The existence of these programs in other school systems, both in Maryland and other jurisdictions, supports the conclusions that LD/RTW programs can function in an educational environment.

Light-duty and return-to-work programs can have an immediate effect of reducing WC costs by having the employee continue to contribute to the organization in medically reasonable manner. An employee in these programs continues to receive medical treatment under WC but salary expenses are borne by the employing agencies and not Self-Insurance fund. This will likely result in reduced Self-Insurance fund WC costs allocated to the agency and can eventually help lower annual contribution rates.

According to information from the OCA, an injured employee offered reasonable LD/RTW has a significant incentive to participate. Unjustified refusal to participate in these programs is disfavored by the WCC and could result in significant adverse rulings by the Commission regarding the employee's access to non-medical benefits. Considering just the non-medical costs associated with MCPS WC claims, significant savings can be achieved by implementing these programs.

### **Recommendation 6:** Create a Light-duty/Return to Work policy and program.

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<sup>49</sup> MABE email to OIG dated 9 July 2018

<sup>50</sup> See "Professional safety" October 2014; "Construction Executive Risk Management" June 2014; "Best Practices for schools" Ohio Bureau of Workers' Compensation, undated; "Business of Workers' Comp in Education" June 2015.

<sup>51</sup> Full report available at: <https://www.montgomerycountymd.gov/OIG/Resources/Files/PDF/IGActivity/FY2007/workers'comp.pdf>



## Section 3: Other Matters for Consideration

While conducting this audit the OIG discovered that the Montgomery County Government and Managed Care Innovations (MCI), the prime contractor for the delivery of WC services, were engaged in litigation regarding MCI's breach of contract over the delivery of WC services to Self-Insurance fund members.<sup>52</sup> We also noted that while these parties were actively engaged in breach of contract litigation, the contract with MCI was renewed.<sup>53</sup> Although it is not known if any MCPS claims were part of this legal action, it appears that the relevant offices in MCPS were not aware of the litigation.<sup>54</sup>

This Federal lawsuit case was resolved in June of 2018, in favor of Montgomery County (the Self-Insurance fund), with a partial summary judgment against MCI for over \$1 million dollars and a settlement on the remaining open issues.<sup>55</sup> MCI's defense to these allegations appeared to be largely based on their assertion that a prior subcontractor was responsible for the breach of contract and did not appear to refute that a breach had occurred.

Although beyond the scope of this audit, it would likely benefit MCPS to carefully review the matters alleged and any recoveries made pursuant to that litigation to verify all necessary and proper credits, if any, were passed back to MCPS.

## Response of MCPS Chief Operating Officer

The response from the Chief Operating Officer of the Montgomery County Public Schools is included in its entirety as Appendix A to this document.

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<sup>52</sup> Montgomery County V. Managed Care Innovations, LLC; U.S. District Court for Maryland, Case 8:16-cv-00713-PJM

<sup>53</sup> Absent an extension contract #1049987 between MCG and MCI would have expired June 30, 2018. It now expires June 30<sup>th</sup>, 2022

<sup>54</sup> Based on Email from ERSC

<sup>55</sup> Court records indicate a summary judgment award of over \$1.2 Million in favor of Montgomery County and references an additional settlement whose details were not included in the court record.

# Appendix A: Response of MCPS Chief Operating Officer



April 3, 2019



Mr. Mark Nee  
Office of the Inspector General  
51 Monroe Street, Suite 802  
Rockville, Maryland 20850

Dear Mr. Nee:

Thank you for the opportunity to comment on your report, "Montgomery County Public Schools Workers' Compensation Program." We have appreciated the collaborative efforts between the Office of the Inspector General and Montgomery County Public Schools (MCPS) to conduct a performance audit of our workers' compensation program. This performance audit was authorized by the Montgomery County Board of Education in order to help identify potential areas of improvement in how we provide employees workers' compensation benefits.

Your report points to several areas of consideration for us in the future. Most notably, we appreciated your emphasis on developing a centralized clearinghouse and review process for workers' compensation claims. The model provided by the MCPS Division of Maintenance Incident Review Committee that you highlighted in the report provides an excellent foundation on which we can build a broader incident review process. In addition, we are eager to explore further the concept of a light-duty and return-to-work program and the potential positive impacts that you described in your report.

Again, we have appreciated the opportunity to review the MCPS workers' compensation program with you and look forward to further collaboration in this area moving forward.

Sincerely,



Andrew M. Zuckerman, Ed.D.  
Chief Operating Officer

AMZ:sro

Copy to:

Members of the Board of Education	Ms. Diamond
Dr. Smith	Mr. Tallur
Mr. Civin	Ms. Webb

**Office of the Chief Operating Officer**

850 Hungerford Drive, Room 149 ♦ Rockville, Maryland 20850 ♦ 240-740-3050

## Appendix B: Statistical Analysis and Methodology

Supporting some recommendations of this report and as example of the value of data analysis, the OIG considered a sample set of MCPS WC data provided by Self-Insurance fund. Claims filed or paid on between December 1, 2015 and May 1, 2018 were examined based on the records of CorVel. It is important to understand that the data set covers claims filed in this timeframe and that some incidents could possibly have happened outside these dates. The intention of this approach was to provide a general snapshot of active claims in the system during a certain timeframe.

The date range of the data retrieved has no significance and was selected to provide a data pool large enough to make statistical inferences generally valid. Although each claim was individually distinguishable by a unique claim number the OIG did not ask for, nor did it learn, any personally identifiable information about any specific claimant. Certain data fields, for example date of birth, were used in statistical equations but not connected to any identifiable person.

The OIG applied basic data analysis and graphing tools to the Self-Insurance fund supplied dataset to generate the charts and graphs used in this report. Generic perceptions learned from this data was intended to identify claims or trends deserving a more detailed analysis and not offered as a conclusion. Although some data fields were obviously wrong or missing, all data was presumed to be accurate unless a questionable data field would have affected the outcome of a chart. In these situations, the corrupt data was discarded and not used in the calculations. The most common problems involved apparent improper job classification and missing fields (date of birth for example) and did not have any impact on the claim analysis.

The term "claim," in the context of this report, merely means that MCPS/Self-Insurance fund/TPA was notified of an incident and that a case file was opened by CorVel, it does not address the validity, merits, or compensability of the claims. Notification of the employer, not the filing a State WCC claim, is both a legally significant requirement and the triggering event for the start of the MCPS WC process and this event formed the baseline requirement for inclusion in the data pool.

The data was comprised of four important and distinguishable sub-groups, but examined by the OIG in totality; the sub-groups are defined as follows:

*Report only claims (RO):* These are reports made to document an event but no loss of time of work (or very minimal time) and no medical treatment of any significance was needed. Examples of RO claims include minor contusions, exposures to body fluids, slips trips and falls where the employee continued working, minor assaults not resulting injuries, and various cuts and scrapes. Report only claims are useful for analytical purposes and to document events in case treatment is needed in the future.

*Medical only claims (MO):* These claims document an injury occurred and some treatment was needed; but, no significant loss of work time was claimed. Examples of medical only claims include things like sprains requiring X-rays, cuts requiring sutures, sore backs and shoulders

with-out any obvious trauma. Medical only claims result in less than three days of missing work which is the time frame dictated in the Workers' Compensation statute to trigger an indemnity claim.

Indemnity claims (IO): are more serious, up to and including fatal, injuries and events resulting in more than three lost days of work. These claims trigger wage replacement, often result in long term liabilities and potentially significant financial compensation paid directly to the employee if they are found to have a permanent partial disability (PPD) or permanent total disability (PTD). In PPD cases, the Workers' Compensation Commission may grant compensation awards after the employee reaches maximum medical improvement (MMI) and they have permanent impairment from the injury.

Fatalities: Only one fatality was reported to the TPA and based on the limited information provided to us it appears to have been a medical issue that occurred at work and not due to an accident. A medical condition resulting in death at work does not necessarily mean that it is or is not a WC event, so this single event was left in the data pool for consideration with the others. However, since it was only one event out of over 4,500, it is statistically invisible.

#### Objectives, Scope, and Methodology

The objectives of the audit were to verify the use of recommended (best) practices in the MCPS Workers' Compensation program, identify opportunities to control costs and identify/curb potential abuses of the program. The OIG did not have access to individual case files and therefore met with the Office of the County Attorney to inquire about systemic compliance with laws and regulations. We reviewed existing MCPS policies and procedures to determine if a process exists for claims to be addressed in a proper manner consistent with the Workers' Compensation law.

The scope of the audit was limited to examining the processes and procedures applied to Workers' Compensation claims reported and filed by MCPS employees. Specific identities of MCPS employees were not needed and were not requested. Uniquely identified, but anonymous, records, separated from personally identifiable information, were used.

A data pool of 4,572 Workers' Compensation claims filed with MCPS from December 1, 2015 to May 1, 2018 was analyzed. The dates covered, and the size of the data pool has no specific significance and was selected solely to provide a large enough data set to meaningfully identify patterns, trends and basic statistical deviations from the norms.

The methodology employed during this audit followed the guidance in *Government Auditing Standards* (December 2011 Revision) and *the Principles and Standards for Offices of Inspector General* (May 2014 Revision).<sup>56</sup>

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<sup>56</sup> Both documents are available for review at: <http://www.montgomerycountymd.gov/oig/links.html>

If you are aware of fraud or misconduct  
in County government activities,  
contact the County Inspector General



☎ Confidential OIG Hotline: 240 777 7644

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