Office of the State Comptroller

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Office of State Comptroller Investigation Finds that Workers' Compensation Policy Encouraged Settlements that Harmed Pension Funds and Gave Insurers Windfalls

Report recommends state agencies act to protect pension funds; Division of Workers' Compensation agrees to changes

TRENTON – An investigation report released today by the Office of the State Comptroller (OSC) finds that a policy implemented over the past 15 years in workers' compensation cases harmed New Jersey's underfunded pension funds and taxpayers by relieving insurers of their obligation to pay injured employees.

The policy adopted by the Division of Workers' Compensation in 2006 encourages injured employees to accept continuing medical monitoring and coverage instead of cash settlements. This approach places the financial obligation on pension funds to pay workers, rather than insurance provided by joint insurance funds and private insurers who agreed to pay benefits on behalf of public employers.

Every dollar that insurers saved through these settlements cost the pension fund. OSC's investigation revealed that at least 114 public employees received both an accidental disability pension and a medical monitoring settlement between 2016 and 2019. The actual cost to the pension funds was not possible for OSC to calculate because there are no records or data on what insurers would have paid in the absence of medical monitoring settlements.

"State agencies should all be rowing in the same direction and not implementing or tolerating policies that expose the pension funds to costs that insurers already agreed to pay," said **Acting State Comptroller Kevin D. Walsh.** "The medical coverage policy has been a drain on New

Jersey's pension funds for 15 years. It is a loophole that has cost taxpayers an incalculable sum of money and undermined the laws adopted by the Legislature."

OSC's investigation found that the policy departs in multiple ways from what New Jersey laws say about how workers' compensation benefits should be administered. The law has a two-year limit on medical coverage for work-related injuries, but the policy waives that requirement. The law says attorneys' fees must be based on how much the injured employee is paid by insurers, but the policy provides attorneys' fees even when insurance providers pay nothing. The law says that benefits received must be reviewed periodically, but the policy provides lifetime medical coverage for work-related injuries with no additional reviews. The law says that workers' compensation benefits are supposed to be deducted from employees' accidental disability pension payments, but the policy made it so that there is no reduction because the employees receive the equivalent of an insurance policy, not money.

OSC found that, despite there being no legal basis for the policy, it is widely used because it provides benefits to the people and entities involved in workers' compensation cases:

- Insurers receive windfalls by avoiding making cash payments to employees with severe injuries that prevented them from continuing in their jobs. Employees with less severe injuries counterintuitively cost insurers *more* because the insurers could not pass those costs onto the pension funds.
- Injured employees, who by law cannot receive more than 70 percent of their income through an accidental disability pension, additionally receive medical coverage for life. This results in considerable cost saving for insurers and provides injured employees with more benefits than they are entitled to under the law.
- Attorneys representing injured employees get paid even though they do not recover monetary workers' compensation benefits for their clients and no law requires them to be paid.

Insurers appear to benefit the most from this arrangement, according to OSC's investigation.

The Division of Pensions and Benefits, which administers the pension funds, does not support the policy encouraging medical monitoring settlements and recognizes that it harms the pension funds, but has taken no steps to counteract the policy.

OSC's report includes recommendations intended to prevent future harm to the pension funds. In response to OSC's report, the Division of Workers' Compensation has committed to rescinding its memoranda permitting workers' compensation settlements to use the medical monitoring policy. The Division of Pensions and Benefits contends – incorrectly, according to OSC's findings – that it does not have the authority to act to protect the pension funds.

OSC initiated its investigation after receiving a complaint that public employees were being encouraged to seek medical monitoring settlements in order to avoid pension offsets.

The full investigatory report is available **here.**

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