

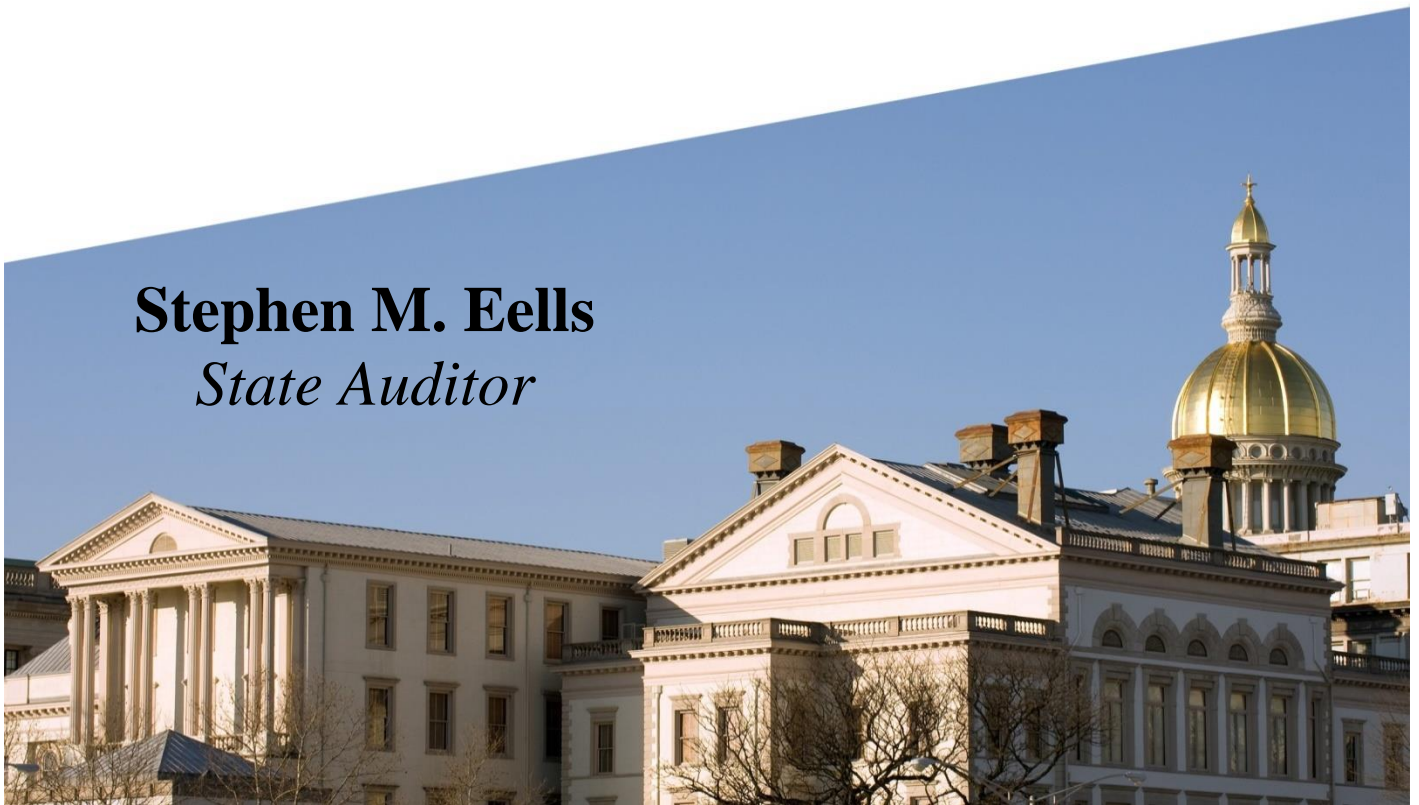


New Jersey Legislature
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OFFICE OF THE STATE AUDITOR

Department of Labor and Workforce Development
Temporary Disability Insurance

July 1, 2017 to October 31, 2019

Stephen M. Eells
State Auditor



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The Honorable Craig J. Coughlin
Speaker of the General Assembly

Ms. Peri A. Horowitz
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Office of Legislative Services

Enclosed is our report on the audit of the Department of Labor and Workforce Development, Temporary Disability Insurance for the period of July 1, 2017 to October 31, 2019. If you would like a personal briefing, please call me at (609) 847-3470.

A handwritten signature in blue ink, appearing to read "Stephen M. Eells".

Stephen M. Eells
State Auditor
March 11, 2020

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Scope

We have completed an audit of the Department of Labor and Workforce Development (DOLWD), Temporary Disability Insurance program for the period July 1, 2017 through October 31, 2019. The audit included benefit payments accounted for in the State Disability Benefit Fund, administered by the Division of Temporary Disability and Family Leave Insurance (division). The State Disability Benefit Fund (fund) is primarily funded by contributions from New Jersey employers and their employees. The fund's annual expenditures for the Temporary Disability Insurance program averaged \$422 million for fiscal years 2017 through 2019.

Temporary Disability Insurance (TDI) provides cash benefits to New Jersey workers who suffer an illness, injury, or other disability that was not work related and prevents them from working. Most employers in New Jersey are required to have TDI for their employees.

Objectives

The objectives of our audit were to determine whether financial transactions were related to the TDI program, were reasonable, and were recorded properly in the accounting systems. An additional objective was to determine the adequacy of internal controls over the processing and review of TDI claims.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section I, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In preparation for our testing, we studied legislation, the administrative code, circulars promulgated by the Department of the Treasury, policies of the DOLWD, as well as documented the internal controls of the Disability Automated Benefits System. Provisions we considered significant were documented, and compliance with those requirements was verified by interview, observation, and testing. We also read the budget messages, reviewed financial trends, and interviewed the department's personnel to obtain an understanding of the program and the internal controls.

We assessed the reliability of DOLWD data by performing electronic testing, reviewing existing information about the data and the system that produced them, and interviewing division officials knowledgeable about the data. We determined the data were sufficiently reliable for the purposes of this report. In addition, we utilized data received from the New Jersey COURTS Online system.

While we concluded the data were sufficiently reliable for the purposes of our review, we did not independently verify the data.

A nonstatistical sampling approach was used. Our samples of benefit payments were designed to provide conclusions on our audit objectives, as well as internal controls and compliance. Sample populations were judgmentally selected for testing.

Conclusions

We found the financial transactions included in our testing were related to the TDI program, were reasonable, and were recorded properly in the accounting systems. We also determined controls to ensure TDI claims were processed in compliance with program regulations were adequate. In making these determinations, we noted certain internal control weaknesses meriting management's attention and presented an observation on claims processing times.

Workers' Compensation Claims Reimbursement

The division does not independently verify potential Temporary Disability Insurance cases with Workers' Compensation court filings.

The division does not have adequate controls in place to detect the existence of Temporary Disability Insurance (TDI) claims that are potentially a duplication with Workers' Compensation (WC) benefits. Failure to properly identify claims with the potential for duplicating benefits could lead to a violation of the TDI law and lost reimbursement to the fund.

Per N.J.S.A. 43:21-30(b), an individual is prohibited from collecting both TDI and WC benefits for the same injury over the same time period. However, an individual who is involved in a contested WC claim may receive TDI benefits from the division while awaiting settlement of their WC claim, provided the individual has filed a viable claim petition with the DOLWD's Workers' Compensation Division and has signed an agreement to reimburse the fund for any TDI benefits received. This is intended to prevent an individual from receiving WC benefits and TDI benefits for the same injury over the same time period. However, the division relies solely on individuals to disclose the existence of contested WC cases that are related to TDI claims.

We performed a review of TDI claims where an individual filed a claim without indicating the injury was work related and who also filed a contested WC case. Our review was performed on claims where the injury date was within 10 days of the WC case injury date for the same individual and the WC case was not dismissed. The injury descriptions from both the TDI claim and the WC case were compared, and similarities were judgmentally determined. We determined 273 of 418 claims were from similar injuries, which indicates a potential duplication of benefits. The total calculated amount of TDI benefits paid for the 273 claims was \$2,046,434. We provided this information to division personnel for further action.

Recommendation

The division should better coordinate with the DOLWD's Workers' Compensation Division to perform comparisons of all individuals who file TDI claims and WC claims within short time periods of each other. The comparisons will provide a more comprehensive detection process of claims that carry a duplication of benefits risk.



Workers' Compensation Lien Awards

The division can improve collection efforts on outstanding lien awards.

An individual must indicate on the disability claim application whether or not the injury is work related. When an individual indicates that the injury is work related and follows the steps outlined in the previous finding, the division places a WC lien on the claim to indicate the potential

reimbursement of disability benefits. In cases where the contested WC claim is dismissed, the TDI claim is treated like a regular claim with no reimbursement required.

We performed a review of TDI claims with attached WC liens from adjudicated WC cases where an amount was awarded to the fund. We reviewed all 48 claims where reimbursement awards were outstanding for more than 100 days according to the division's automated system. Our review found that 24 had some payment activity not recorded in the system and the remaining 24 claims, totaling \$145,671, had no payment activity.

Further discussion with division personnel revealed the procedures for the handling of outstanding lien awards were not followed because the liens had not been sent to the DOLWD's Benefit Payment Control Unit (BPC) to initiate steps for recovery. Division procedures require outstanding WC lien awards to be sent to the BPC 100 days after adjudication to initiate steps for recovery. Failure to follow this procedure could result in uncollected reimbursements to the fund.

Recommendation

The monitoring of outstanding lien awards should be strengthened to ensure all outstanding reimbursements are sent to the BPC 100 days after adjudication in an effort to recover all lien amounts owed.



Private Plan Denials

Companies and unions that provide private temporary disability insurance are not submitting required reports and denial documentation.

State Plan disability coverage is provided automatically to all covered employers. However, employers may establish a Private Plan, which must be approved by the DOLWD, to replace the State Plan. A Private Plan may be through an insurance company, a union welfare fund, or a self-insured employer. At a minimum, the benefit amounts, eligibility requirements, and duration provided by the Private Plan must be equivalent to those provided by the State Plan. The DOLWD's Private Plan Compliance Unit can approve, modify, and terminate Private Plans. It is also responsible for monitoring the claims activity of Private Plans, including the denials of claims.

N.J.A.C. 12:18-2.30 requires self-insured companies, insurance companies, and union organizations to submit biannual reports identifying the number of claims received and accepted, and the amount of benefits claimed. Our review of the reports submitted for the period July 1, 2017 to December 31, 2017 found only 343 of the 568 reportable entities (60 percent) had submitted the required biannual reports.

Additionally, when a claim is denied under a Private Plan, N.J.A.C. 12:18-2.2(f) requires the division be “immediately furnished with a copy of the claim and the notice of denial.” Furthermore, the New Jersey Private Plan Claims Manual, given to all Private Plan employers, states that whenever a Private Plan claim is denied or terminated, copies of the denial letter and disability claim file must be sent to the Claims Review Unit within the Private Plan Compliance Unit. We estimated the 343 reportable entities that submitted their biannual reports may have denied up to 1,733 claims. However, documentation for only 559 denials had been sent to the division for review, with a total 39 being reversed, resulting in \$189,328 of approved benefits to previously denied claims.

The Private Plan Compliance Unit does not follow up with employers or take steps to revoke their Certificate of Approval for not submitting their biannual reports or supporting documentation for denials. Without independent review of the denials, claims could be unjustly denied.

Recommendation

We recommend the DOLWD improve its monitoring of Private Plans to ensure compliance with the administrative code.



Timeliness of Deposits

The DOLWD is not depositing checks in a timely manner.

Treasury Circular 12-02-OMB requires state agencies to ensure that all state funds are deposited on the same day as received. We performed a count of WC lien reimbursement checks and found 84 totaling \$590,449 were held at the division and not deposited the same day as received. One check for \$7,579 had been held for 182 days. The table below provides a breakdown of the length of time checks had been held at the time of our review.

| Days Held | Count | Total |
|------------------|--------------|-------------------|
| 1-7 | 13 | \$ 72,600 |
| 8-14 | 14 | 85,354 |
| 15-21 | 9 | 64,851 |
| 22-28 | 15 | 108,879 |
| 29-35 | 6 | 63,628 |
| 36-42 | 17 | 113,368 |
| 43-49 | 7 | 59,521 |
| 50 or more | 3 | 22,248 |
| Total | 84 | \$ 590,449 |

Further review of the check deposit log for the period of January 29, 2019 through August 12, 2019 revealed that 311 checks had been held by the division for an average of more than 28 days before being submitted for deposit.

The division's procedures manual for the handling of claims with WC liens instructs personnel to hold checks in a safe until it is evident in the division's automated system that a reimbursement amount is to be paid for the lien. Once the reimbursement is entered into the automated system, the check is submitted to the BPC for deposit. This process results in checks being held in a manner that is not in compliance with the Treasury Circular.

Recommendation

The division should revise its procedures regarding the handling of claims with WC liens to ensure that checks received for WC reimbursements are deposited the same day as received.



Observation

Claims Processing Times

While the division is improving its processing times, it is still not meeting the benchmarks set forth by the current law.

According to Public Law 2019, Chapter 37, the "division shall implement disability insurance goals for the timely determination and prompt payment of temporary disability benefits." The law specifies that at least 75, 85, or 90 percent of the original benefit determinations shall be completed within 14, 21, or 28 days, respectively, of the commencement of the disability, or the receipt of the benefit claim by the division, whichever is later. The following chart was prepared using the division's reports and shows the processing times for the previous 5 years.

Percentage of Claims Processed

| <u>Days</u> | <u>Benchmark</u> | <u>2014</u> | <u>2015</u> | <u>2016</u> | <u>2017</u> | <u>2018</u> |
|------------------|------------------|-------------|-------------|-------------|-------------|-------------|
| 14 or less | 75 | 52.7 | 48.0 | 35.9 | 19.9 | 45.0 |
| 15-21 | 85 | 62.0 | 57.6 | 51.3 | 33.0 | 59.6 |
| 22-28 | 90 | 76.8 | 65.8 | 62.0 | 56.8 | 72.8 |
| Number of Claims | | 112,118 | 108,395 | 106,845 | 113,045 | 108,729 |

While the chart shows that processing times are improving overall, the division has still not met its benchmarks. It should be noted, current changes to the TDI program may increase claim volume.





PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lieutenant Governor

State of New Jersey
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
PO Box 110
TRENTON, NEW JERSEY 08625-0110

ROBERT ASARO-ANGELO
Commissioner

March 5, 2020

David J. Kaschak, Assistant State Auditor
Office of Legislative Services
125 South Warren Street
PO Box 067
Trenton, New Jersey 08625

Dear Mr. Kaschak:

Thank you for providing the New Jersey Department of Labor and Workforce Development (NJDOLE), Division of Temporary Disability Insurance (TDI) draft report dated, February 14, 2020. We are providing our comments to the findings below.

Finding: The division does not independently verify potential Temporary Disability Insurance cases with Workers' Compensation court filings.

NJDOL Response: The division was made aware that a substantial amount of benefits could be recovered if we were able to compare our claim information to outstanding Workers' Compensation (WC) appeals "within short time periods of each other". The cross match would be based on dates of injury, type of injury, and the WC case still being open in the courts. The data base search would be relatively straight forward and would highlight those claims when the claimant failed to disclose their injury occurred while they were at work. This would provide an avenue for significant disability benefit recovery if the WC case is ultimately decided in the claimant's favor. The division agrees to discuss the initiation of a routine cross-reference match of the TDI and WC databases on a quarterly or perhaps monthly basis with the Division of Information Technology to reduce fraud. The divisions have been seeking to remediate this matter through modernization efforts currently taking place to replace the claims processing system, Disability Automated Benefit System (DABS). Currently, DABS is not capable of automated verification of potential Temporary Disability Insurance cases with Workers' Compensation court filings.

Finding: The division can improve collection efforts on outstanding lien awards.

NJDOL Response: The division agrees. We reviewed the check processing procedures and strengthened them to reduce redundancy and significantly improve timeliness. Definitive action is now consistently taken within the new policy range of 90 days after adjudication. Going forward, the division will ensure that claims where the judge has determined the injury to be work related will be set up for reimbursement within 90 days of the judgement regardless of the receipt of a reimbursement payment. Benefit Payment Control will be notified when a claim is being refunded without an associated payment from a Workers' Compensation carrier. This will allow for

notifications to be created and sent to the claimant in an effort to recover all lien amounts owed. Policy change and overall enhanced monitoring has been successful.

Finding: Companies and unions that provide private temporary disability insurance are not submitting required reports and denial documentation.

NJDOL Response: The division agrees to increase the monitoring of insurers to improve compliance with regard to submission of biannual reports and denial notices. Follow ups will be conducted with non-compliant insurers. Consideration will be given to a “Notice of Potential Termination” being sent to such insurers as a reminder of their obligations under the law and administrative code.

Finding: The DOLWD is not depositing checks in a timely manner.

NJDOL Response: The division reviewed the process of depositing Workers’ Compensation reimbursement checks. All checks identified by the State Audit’s team have been deposited. A new process was developed and an additional staff member has been assigned to ensure that checks are processed for deposit on the same day they are received.

Disposition of WC claim by Division of Workers’ Compensation

Note: The additions to the procedural manual regarding this process are in [**bold**] print, item D-2a.

- A. *A hearing is held by the Division of Workers’ Compensation (DWC) and a decision is rendered by a Judge of Workers’ Compensation.*
- B. *DWC enters the decision into COURTS which interfaces with DABS.*
- C. *Claims Examiners review their workloads daily for the appearance of new JDG tasks. These tasks are transferred to the designated holding workload (521).*
 1. *The Assistant Supervisor (or Senior Examiner) will review the WC segment in DABS to determine if a monetary award has been entered by the Division of Workers’ Compensation. If a monetary award has been entered, the claim will be reassigned to a designated workload (B08) and monitored for 90 days to await the receipt of the reimbursement check from the WC Carrier. WCU does **not** notify the respective parties of the judgment, as that is done during the WC court proceedings.*
 2. *A judge will evaluate the TDI lien for applicability and to ensure that duplication does not occur under TDBL and related WC Laws. If the court makes a partial award of the period TDI paid, there are two possible paths.*
 - a. *If the claim petition (CP) is still open, a partial payment may have been made solely to force a benefit payment by the insurance carrier (voluntary tender). A full judgment may not have been made. Therefore, only the period covered by the award to TDI will be set in refund to be offset by the reimbursement. Amend the*

lien in COURTS to reflect the amount and duration of the remaining TDI benefits disbursed to the claimant.

b. Section 20 Settlements:

- 1) A partial award may be made as a "Section 20 settlement" (see TDIM-0065) We will be satisfied with the award in certain instances. If the total amount of the settlement is less than the amount of our lien and we are reimbursed the total amount of the settlement, we would waive the remainder of the refund. This occurs only if the claimant received no additional benefits in the judgment. If monies were awarded to the claimant directly which would cover the remainder of our refund, the claimant would be held responsible for the outstanding refund.*
- 2) A partial award may be made if there is some overlapping of multiple injuries. We would be reimbursed only for the duration we paid which was exclusively attributable to the work-related injury. We would not be reimbursed for any period of time the claimant had been disabled fully or in part by any non-work related injury, as that should be covered by NJTDI.*

D. If a monetary award has not been entered, review COURTS to ascertain why an award was not entered.

- 1. If the claim was dismissed for the claimant's failure to appear or some other reason, reimbursement will not be pursued from the claimant at this time. A decision that reads "dismissed" or "dismissed without prejudice" is taken to mean that the injury or illness is not work related. The lien remains on the CP in COURTS, however, in the event that the case is reopened at some future date.*
- 2. **[If the reimbursement check has not been received within 90 days, the Assistant Supervisor will:***
 - a. **Create an overpayment refund and mail a corresponding letter of explanation immediately to the claimant. This letter will enclose the Demand for Refund (Form P60) as well as a copy of the "Certification of Contested Workers' Compensation" [Form DS-221] signed by the claimant. These documents will be outbound mail-logged for record purposes.]***

Appropriation of received WC carrier insurance reimbursement checks.

Note: The additions to the procedural manual regarding this process are in **[bold]** print, item B-2.

- A. The physical check from the insurance company is received in the Claims Intake section.*

B. Clerical staff determine the associated Social Security Number and identify the check as a WC reimbursement check.

1. A check transmittal list is created for each check. Each check and the transmittal form are securely walked to the Technical Support Unit in the Reconsideration Unit.
2. **[The designated check processing staff of FLI/WCU (Senior Claims Examiner, Asst. Supervisor) receives a photocopy of the check. The staff member must process the check immediately by matching the check to the appropriate claim sequence in DABS, verifying that the amount matches benefits disbursed, and setting TDI payments in refund by creating an ineligible decision. The decision is suppressed so that it is not automatically mailed to the claimant. The FLI/WCU unit shall ensure that no less than two staff members are familiar with check processing to account for absence and ensure timely processing.]**
3. The Technical Support Unit holds the check in a safe until it is evident in DABS that a redetermination has been entered and a refund amount established. The Technical Support Unit is notified that action has been taken on a claim/check by paper notification from FLI/WCU staff. Once the refund is evident on LOOPS, the check is walked to Benefit Payment Control so it may be applied to the refund amount.
4. The FLI/WCU staff member will check LOOPS R100 within two business days to verify that the check was applied to the appropriate refund and no balance remains.

Observation: Claims Processing Times

While the division is improving processing times, it is still not meeting the benchmarks set forth by the current law.

NJDOL Response: The division is aware of the goals set forth regarding processing times and agree the length of time to process claims is unacceptable. However, we feel it is important to explain the realities in which we operate to explain how difficult processing claims is on a daily basis.

For 70 years the Division of Temporary Disability Insurance (TDI) has provided a service to the workers of New Jersey. In 1988 the program moved away from manual claim processing to a Common Business Oriented Language (COBOL) based mainframe system, the Disability Automated Benefit System (DABS). The Family Leave Insurance (FLI) program was retro-fitted onto that same legacy system in 2009. In 2019, the TDI and FLI law expanded to better suit the needs of working families, bringing the critical need to modernize these programs and processing system to the forefront.

As the program's technology has changed in these 70 years, so too has the workforce of New Jersey and their expectations of these programs. When the program was first launched, workers were more likely to have a career with one permanent, lifelong employer. With economic change, the types of jobs more readily available has increasingly shifted towards transitory and/or part-time work, with a person being more likely to work for multiple employers in a single year. Utilization of TDI and FLI has increased and become more complex. However, the mainframe system remains inflexible

and is reaching end of life in terms of on-going support.

New Jersey's workers have high expectations of the technology available, an expectation that cannot be met by the DABS system. This legacy system is not designed to deal with rapidly expanding mobile services, due to limited access. The system is only available to users for 12 hours on weekdays (7AM to 7PM), 6 hours on Saturdays (7AM to 1PM), and no availability on Sundays. This availability is a core limitation that cannot be adjusted or worked around. With these system limitations, any customers who apply online or use the online inquiry application during the off-hours will not receive the most current information. The described limitation is one of hundreds which impede our ability to meet the goals set forth.

Our only solution to meet the expectations of our customers and to meet realistic goals to process claims is to replace the current processing system, DABS, with a new, modern, flexible claims processing system. To modernize is to bring the division's practices and technology into alignment with current industry standards. The overall modernization objective of the division is to assist and serve New Jersey workers. A top priority of the TDI/FLI modernization team is to provide the most up to date information possible to applicants who are disabled or caring for ill family members or newborns. The list below is intended to describe optimizations that may be possible through a modernization effort to improve services.

- **Design a new systemic workflow in which the process is simpler and faster for claimants, medical providers, employers, and staff.**
- **Engage users with real-time responses and personalized support to increase satisfaction.**
- **Increase online application utilization to 90 percent in 1-year post implementation of the new claims processing system (currently between 40-45%).**
- **Strive for 99.9 percent system availability to enhance user experience and accessibility.**
- **Increase automation in claims processing to reduce administrative costs.**
- **Reduce claim processing time to meet or exceed the requirements outlined within the Temporary Disability Benefits Law, 43:21-25 et seq.**
- **Provide a fully integrated system solution with interfaces to critical external databases, third party applications, and other systems required to process claims.**

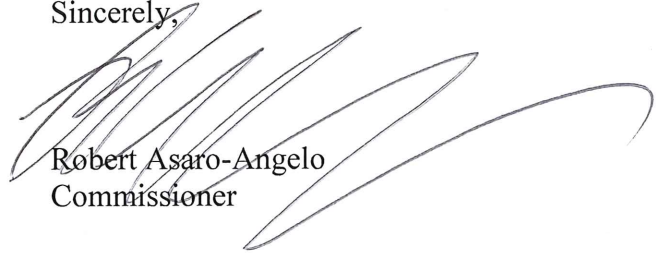
With strong support from Governor Murphy and his administration, we believe we will be able to transfer from DABS to a new solution by the end of 2021. Once implemented, we envision a worker being able to view their dashboard in real time to make them aware of where their claim lives within the system, not unlike a package tracking system where you can view the exact phase the claim is in. More importantly, if information is missing, what the information actually is, and giving the ability for the claimant to correct information or upload necessary documentation.

New Jersey workers and TDI/FLI staff can expect improved performance, increased data collection

capabilities, less hands on “touching” of the claim by staff, and, most importantly, reduced claims processing timeframes.

If you have any questions or concerns please contact Theresa Vallely, Acting Director, Office of Internal Audit at (609) 984-1779 or Theresa.Vallely@dol.nj.gov.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Robert Asaro-Angelo
Commissioner

c: Julie Diaz
Paul Yuen
Anna McMullen
Ron Marino
Theresa Vallely
Jeff Flatley