

oppaga Progress Report



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Division of Administrative Hearings Significantly Improves the Method of Assessing Fees

at a glance

As we recommended in our December 2002 review, the Division of Administrative Hearings (DOAH) has implemented a time tracking system and began billing state agencies for time actually spent in hearings. The division also no longer bills for cancelled and continued hearing hours. However, DOAH's revised time tracking system does not require judges to track non-hearing time spent on cases.

DOAH has reduced the costs passed on to state agencies when prorating its budget in two ways.

- DOAH increased its contract rate for hearing services provided to other entities from \$100 to \$129 per hour to fully cover costs, which generated an additional \$77,054 in revenue.
- DOAH now assesses the Workers' Compensation Appeals Program for administrative support. In Fiscal Year 2004-05, the program was assessed \$435,431 for administrative costs.

DOAH continues to conduct hearings for certain entities at little or no charge. The Legislature could consider authorizing DOAH to bill for the cost of hearing services that it is not recovering through other means.

Scope

In accordance with state law, this progress report informs the Legislature of the actions taken in response to the findings and recommendations included in our 2002 special examination of the Division of Administrative Hearings (DOAH) Adjudication of Disputes Program.^{1, 2}

Background

The Division of Administrative Hearings was created to improve the fairness of state agency administrative proceedings. The division is intended to provide a uniform, impartial, efficient, accessible, and affordable forum for resolving conflicts between private citizens or organizations and state agencies.

DOAH is divided into two units: the Adjudication of Disputes Program and the Workers' Compensation Appeals Program. Our prior review focused on the Adjudication of Disputes Program.

The Adjudication of Disputes Program employs administrative law judges to conduct administrative hearings. The program's hearings cover two primary types of cases:

¹ Section 11.51(6), *F.S.*

² *Division of Administrative Hearings Method of Assessing Fees Needs Significant Revision*, [Report No. 02-70](#), December 2002.

rule challenges and disputes between agencies and persons whose substantial interests will be affected by an agency's decision other than a rule. DOAH also conducts hearings for other types of cases as specified in law, such as Baker Act cases.³

The Workers' Compensation Appeals Program is composed of the Office of the Judges of Compensation Claims. The office resolves workers' compensation disputes by determining obligations of employers and insurance companies to injured workers.

DOAH is entirely trust funded. DOAH's Fiscal Year 2004-05 appropriation for the Adjudication of Disputes Program was \$8,448,263 and 75 full-time equivalent positions (FTEs).⁴ The program is funded primarily from a fee assessment to state agencies as part of the legislative appropriations process. The program also receives funding from local government entities that have contracted with DOAH for hearing services, other entities that are required by law to pay DOAH for services at the contract rate, and entities that are required by statute to pay DOAH filing fees for services, such as the Florida Birth-Related Neurological Injury Compensation Association.

Prior Findings

Our 2002 report examined DOAH's fee assessment method for the Adjudication of Disputes Program and concluded that DOAH's fee assessment method did not accurately assess state agencies in two respects. First, DOAH used scheduled hearing hours as the basis for assessments, which provided no accountability for the actual time spent on state agency cases. Second, the fee assessment method passed on costs to state agencies for services provided to other entities.

³ Baker Act hearings are conducted for persons involuntarily committed to mental institutions under the Baker Act, or the Florida Mental Health Act, s. 394.467, F.S. The Baker Act affords these persons an administrative hearing at least every six months to determine if involuntary placement will continue.

⁴ The Workers' Compensation Appeals Program was appropriated \$16,337,360 and 197 FTEs for Fiscal Year 2004-05. The program is budgeted separately from the Adjudication of Disputes Program and receives funding from an assessment on workers' compensation insurance premiums.

DOAH used scheduled hearing hours as the basis for fee assessments, which provided no accountability for the actual time spent on state agency cases

DOAH did not track the actual time spent on state agency cases. Instead, DOAH prorated its budget among state agencies using data on scheduled hearing hours, which included pre-hearing conferences, motion hearings, final hearings, and hearings that were cancelled or continued without a 30-day notice.⁵ To increase the accuracy of its fee assessment, we recommended that DOAH implement a timekeeping system to track the time administrative law judges actually spend on state agencies' cases. We further recommended that DOAH use actual time data rather than scheduled hearing hours to prorate its budget for the Adjudication of Disputes Program among state agencies.

DOAH passed on costs to state agencies for services provided to other entities

Several entities were not paying the full cost for services they received. Because DOAH prorated its entire budget for the Adjudication of Disputes Program among state agencies, the cost of providing services to other entities was passed on to state agencies in three ways.

First, DOAH did not charge the full cost of providing services to entities that pay contract rates. DOAH did not attempt to fully recover the costs of providing hearing services when establishing its contract rates, resulting in state agencies subsidizing the costs of these services. DOAH's contracts with local government entities specified that DOAH would bill them at a flat rate of \$100 an hour for administrative law judge time incurred on their behalf, plus travel and teleconferencing expenses. This rate, which had been in effect since 1990, was not based on an analysis of the cost to provide services and was not intended to fully cover the costs.

⁵ For Fiscal Year 2000-01, over 85% of scheduled hearing hours were cancelled or continued without a 30-day notice.

We recommended that DOAH analyze its costs and revise its hourly rate when renewing its annual contracts with these entities. We also recommended that DOAH deduct estimated revenues from other entities before prorating its budget among state agencies.

Second, the Adjudication of Disputes Program budget was financing oversight and support services that DOAH provides to the Workers' Compensation Appeals Program. DOAH also passed on costs to state agencies that it incurs for administering and providing support services to the Workers' Compensation Appeals Program (Office of the Judges of Compensation Claims). The program is budgeted separately from the Adjudication of Disputes Program and has a separate funding source. Although the Legislature included four administrative positions when it transferred the Workers' Compensation Appeals Program to DOAH, personnel funded from the Adjudication of Disputes Program budget also provide oversight and support services. We recommended that the Legislature assess the Workers' Compensation Appeals Program budget category for its portion of administrative support, which totaled an estimated \$586,799 for Fiscal Year 2001-02.

Third, DOAH did not charge selected entities for administrative hearings. State agencies also bear the cost of several types of hearings for which DOAH receives little or no compensation. These include Baker Act hearings and hearings conducted on behalf of the State Board of Administration, the Pinellas County Construction Licensing Board, and the Florida Birth-Related Neurological Injury Compensation Association.⁶ Since DOAH does not assess fees for these hearings, it passes on these costs to state agencies when prorating its budget. For example, four administrative law

judges spend 20% of their time on activities related to Baker Act hearings, an estimated direct salary and benefit cost of \$105,782 annually.

We recommended that the Legislature authorize DOAH to assess the Department of Children and Families for time spent on Baker Act hearings, as mental health services are funded through the department's budget. To allow DOAH to recover costs from other entities, we recommended that the Legislature revise Ch. 120, *Florida Statutes*, to authorize DOAH to bill for the cost of hearing services that it is not recovering through other means.

Current Status ---

DOAH has significantly improved its fee assessment method but additional steps could be taken to reduce costs passed on to state agencies.

DOAH implemented a time tracking system

As recommended, DOAH implemented a time keeping system for administrative law judges to track time spent on state agency cases. Judges record actual time spent in pre-hearing conferences, motion hearings, and final hearings. DOAH now provides quarterly reports to state agencies, the Governor's Office, and legislative appropriations committees summarizing actual time spent by judges in administrative proceedings. DOAH also currently excludes cancelled and continued hearing hours when calculating total hearing hours to prorate its budget among state agencies. This change was implemented on November 21, 2003, with a retroactive effective date of July 1, 2003.

However, DOAH's revised time tracking system does not require judges to track non-hearing time spent on cases. This time includes reviewing the case file and writing orders. We continue to recommend that DOAH track and bill for the time actually spent on each agency's cases.

⁶ DOAH receives a \$15 filing fee from the claimant for cases involving the Florida Birth-Related Neurological Injury Compensation Association, but this fee does not cover DOAH's cost for handling these cases. DOAH has no statutory or appropriations authorization to fund these types of cases in another manner and receives no compensation from the entities involved in the other types of hearings listed.

DOAH's current fee assessment method has reduced costs passed on to state agencies

DOAH has reduced the costs passed on to state agencies by increasing its contract rate and charging the Workers' Compensation Appeals Program for administrative support. However, DOAH was not authorized to change how it recovers costs for hearing services provided to certain entities for little or no compensation.

DOAH increased its contract rate to fully cover costs. DOAH was required in the Fiscal Year 2003-04 general appropriations act to establish contract rates for hearing services on a total-cost-recovery basis.⁷ Therefore, DOAH increased its contract rate for providing services from \$100 to \$129 per hour, which covers the cost of the services provided by judges to these entities. According to DOAH administrators, the division spent 4,687 hours in Fiscal Year 2003-04 providing services to entities that pay contract rates. By increasing its contract rate, DOAH collected an additional \$77,054. DOAH also implemented our recommendation to deduct the revenues received from other entities before prorating its annual budget among state agencies.

⁷ The 2004 Legislature passed legislation (House Bill 1869) amending section 120.65, *F.S.*, to make this provision a statutory requirement.

DOAH now assesses the Workers' Compensation Appeals Program for administrative support. For Fiscal Year 2004-05, DOAH assessed the Workers' Compensation Program \$435,431 for administrative support.⁸ DOAH also deducted this revenue before prorating its budget among state agencies. Deducting this revenue decreases the amount of costs passed on to state agencies for services.

DOAH continues to conduct hearings for certain entities at little or no charge. The Legislature did not authorize DOAH to bill for the cost of hearing services that it is not recovering through other means. To decrease the amount of costs that state agencies must pay for services provided to unrelated programs, we continue to believe that the Legislature should consider amending s. 766.305(2), *Florida Statutes*, to authorize DOAH to bill for the cost of these hearing services.

⁸ To calculate the amount that it charges the program for administrative support, DOAH distributes a percentage of the cost of shared administrative functions to each budget entity.

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