



**Biennial Report
to the 84th Legislature
December 2014**

W. Ryan Brannan
Commissioner of Workers' Compensation



Texas Department of Insurance

Commissioner of Workers' Compensation, Office of the Commissioner

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1609

512-804-4400 • 512-804-4401 fax • www.tdi.state.tx.us

December 1, 2014

The Honorable Rick Perry, Governor
The Honorable David Dewhurst, Lieutenant Governor
The Honorable Joe Straus, Speaker

Dear Governor Perry, Lieutenant Governor Dewhurst and Speaker Straus:

In accordance with Section 402.066, Labor Code, I am pleased to submit the Texas Department of Insurance, Division of Workers' Compensation's biennial report to the 84th Texas Legislature. This report provides an update on the Texas workers' compensation system and a brief description of two legislative recommendations that I believe will improve my ability to effectively and efficiently regulate the workers' compensation system.

I am available to discuss any of the issues contained in the report and to provide you with technical assistance. The legislative recommendations in this report will be incorporated into TDI's forthcoming biennial report to the 84th Texas Legislature, which will cover other lines and financial aspects of insurance in Texas.

Please contact me or Melissa Hamilton, Associate Commissioner of Government Relations at 512-463-6123 if you have any questions or need any additional information.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Ryan Brannan".

W. Ryan Brannan
Commissioner of Workers' Compensation

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Introduction

In the last nine years since the 2005 landmark House Bill (HB) 7 legislative reforms to the Texas workers' compensation system were passed, the Texas Department of Insurance, Division of Workers' Compensation (DWC) has spent a considerable amount of time working with system stakeholders in order to improve the operational effectiveness of the Texas workers' compensation system, while ensuring that the system meets the basic legislative goals of providing adequate benefits to injured employees at a reasonable cost to Texas employers. Overall, the Texas workers' compensation system has improved significantly in a variety of areas, including injury rates, employer participation, claims costs, return-to-work outcomes, access to care, medical dispute resolution and insurance rates and premiums. Despite these noteworthy improvements, there are still areas in the system that need further monitoring and attention, including decreasing the number of designated doctor disputes, improving injured employee education and outreach and reducing the high numbers of work-related fatalities.

Going into the upcoming 84th legislative session, it is clear that while additional improvements can always be made, the system as a whole is stable. While other states face increasing claims costs, rising insurance rates, an opioid prescription drug crisis, lengthy dispute resolution processes, and poor return-to-work results, Texas continues to serve as an example of how sound legislative reforms combined with careful monitoring and implementation can result in a strong workers' compensation system that serves the needs of all system participants. In fact, many states have recently approached DWC in an effort to learn and adopt many of the components of the 2005 legislative reforms into their own state workers' compensation systems. Several states have now adopted or are in the midst of adopting a Texas-like pharmacy closed formulary, evidence-based treatment guidelines, an administrative dispute resolution process, a Texas-style medical necessity dispute resolution process and certification processes for workers' compensation health care networks.

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It should be noted that all of the key provisions of the 2005 legislative reforms to the Texas workers' compensation system have been implemented by DWC. The system trends presented in this report allow DWC, policymakers, and system participants to gauge the relative health of the system and consider whether legislative changes are recommended to fine-tune past reform efforts, improve major program areas, and address lingering statutory questions needing further directive.

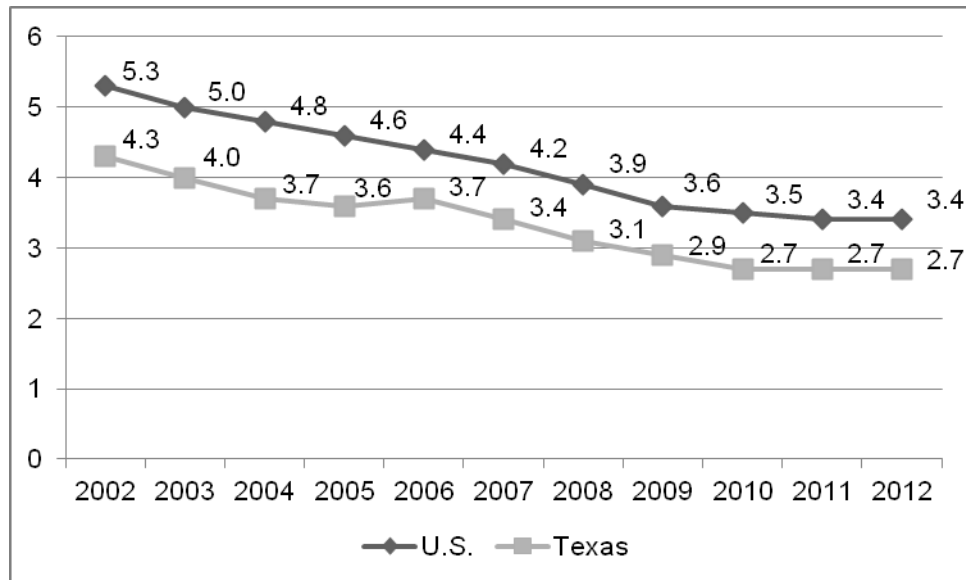
Injury Rates and Claim Frequency Continues to Decrease, but Fatalities Remain High

The Texas workers' compensation system continues to experience marked reductions in both the non-fatal occupational injury and illness rate and the overall number of reportable claims filed with DWC; however, the number of workplace fatalities in Texas continues to be cyclical. Since the passage of HB 7 in 2005, the non-fatal occupational injury and illness rate in Texas decreased 25 percent from 3.6 to 2.7 injuries per 100 full-time employees. Workplace injury and illness rates vary widely by industry. However, the incidence rates for industries such as agriculture/forestry/fishing and hunting, construction, transportation and warehousing, manufacturing and leisure and hospitality have experienced significant declines since 2005, while industries such as information and retail trade have experienced increased injury rates in recent years. The industry sectors with the highest rates include: retail trade (4.1 injuries/illnesses per 100 full-time employees), transportation and warehousing (3.9), agriculture, forestry, fishing and hunting (3.9), trade/transportation/utilities (3.7), and health care and social assistance (3.4). Compared with the rest of the nation, the injury rate in Texas has been consistently below the national average (see Figure 1).¹

The non-fatal occupational injury and illness rate in Texas has decreased 25 percent since 2005. Texas' rate has consistently been below the national average since the early 1990's.

¹ Changes to the federal Occupational Safety and Health Administration recordkeeping logs in 2002 and the transition from the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS) in 2003 may limit comparability of pre-2003 data series.

Figure 1: Texas and U.S. Nonfatal Occupational Injury and Illness Rates Per 100 Full-time Employees (2002-2012)



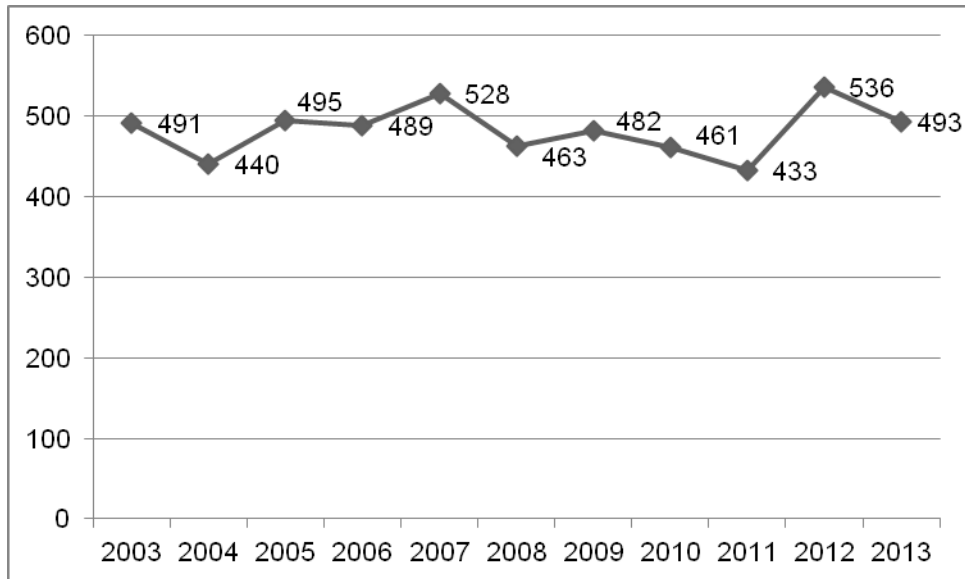
Source: Texas Department of Insurance, Division of Workers' Compensation and U.S. Department of Labor, Bureau of Labor Statistics, *Annual Survey of Occupational Injuries and Illnesses*, 2013.

Despite the consistent reduction in the non-fatal occupational injury and illness rate in Texas over the past nine years, the number of fatal occupational injuries in Texas continues to fluctuate (see Figure 2). After seeing decreases in 2010 and 2011, Texas recorded a significant increase in workplace fatalities in 2012 due to increases in both the construction and mining industry sections, including oil and gas extraction activities. Workplace fatalities declined 8 percent in 2013 to 493 fatal occupational injuries. Transportation incidents continue to be the leading cause of work-related fatalities in Texas. Following transportation incidents, contact with objects (76 fatalities), falls/slips/trips (73 fatalities) and violence and other injuries by persons or animals (66 fatalities) were the most frequent causes of workplace fatalities in 2013. In 2013, the industry subsectors in Texas that experienced the highest number of fatal occupational injuries included truck transportation, specialty trade contractors, support activities for mining, heavy and civil engineering construction, and justice/public order/safety activities. Half of the fatalities in 2013 involved White, non-Hispanic employees; 38 percent involved Hispanic or

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Latino employees; 9 percent involved Black or African-American employees; and 3 percent were Asian or Native Hawaiian/Pacific Islander.

Figure 2: Number of Fatal Injuries and Illnesses in Texas by Year, 2001-2013



Source: Texas Department of Insurance, Division of Workers' Compensation and U.S. Department of Labor, Bureau of Labor Statistics, *Census of Fatal Occupational Injuries*, 2013.

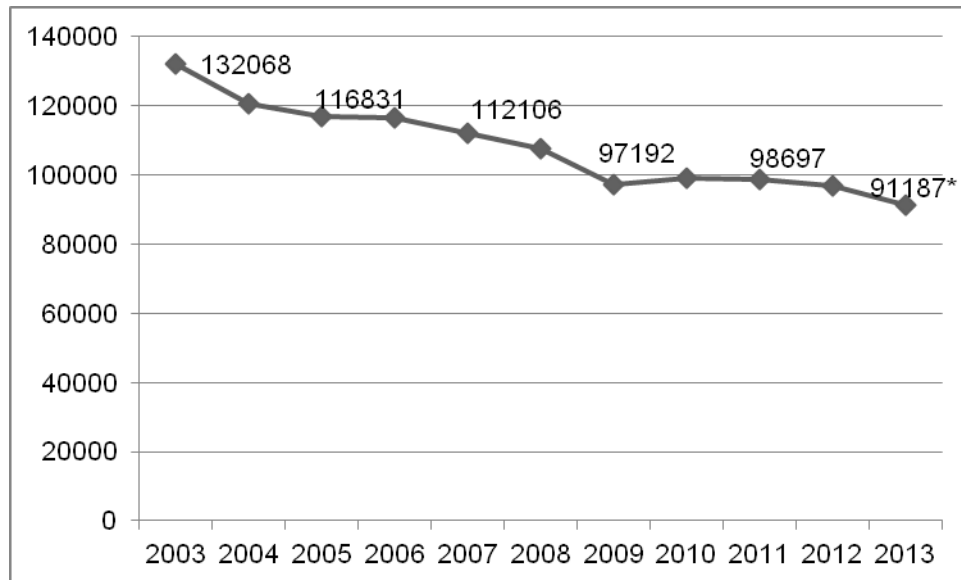
Recent Efforts by DWC to Improve Workplace Safety. In an effort to increase the importance of workplace safety and to reduce the number of workplace fatalities in Texas, DWC has recently embarked on a new safety outreach initiative aimed at highlighting best practices for employers who consistently maintain a safe workplace for their employees. This initiative includes highlighting those employers who have achieved the Safety and Health Recognition Program (SHARP) award sponsored by the U.S. Department of Labor and/or the DWC Peer Review Safety Award, designed to recognize Texas employers with exemplary safety programs, which can serve as models for other employers. DWC recently focused its attention toward raising safety awareness by publicly recognizing employers with exemplary workplace safety programs and low rates of work-related injuries and illnesses at their onsite facilities through local media outreach and DWC's annual safety and health conference. While DWC has statutory mandates to promote safety awareness and outreach, as well as regulate insurance carrier loss-prevention activities, Occupational Safety and Health Administration (OSHA) is primarily responsible for the regulation of workplace safety issues in Texas.

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DWC is also focusing its efforts to raise transportation safety awareness in Texas through social media campaigns, presentations at transportation association conferences and free safety publications and DVDs, as well as meetings with insurance carrier loss control specialists to highlight innovative ways the insurance industry is using to promote transportation safety issues. In addition to meetings with insurance carriers' loss control specialists, DWC is also planning roundtable discussions with employer groups, as well as other state agencies to identify best practices for safety and to identify potential barriers for implementing these best practices. DWC will continue to look for ways to partner with other state agencies to facilitate reduction of transportation-related workplace fatalities in Texas.

Similar to the non-fatal occupational injury and illness rates seen in Figure 1, the number of workers' compensation claims reported to DWC has declined since 2003 (31 percent reduction); however, the percentage of declines of reported claims has begun to slow down in recent years (see Figure 3). The reasons for those declines in reported claims, both nationally and in Texas, stem from a variety of factors, including increased safety awareness among employers and employees, enhanced health and safety outreach and monitoring efforts at the federal and state level, improvements in technology, globalization, increased use of independent contractors, and the possibility of under-reporting workplace injuries and illnesses. At the national level, states have begun to see increases in claim frequency as a result of the economic recovery. However, additional monitoring by DWC is needed to determine whether claim frequency in Texas has begun to plateau or whether increases in the number of employees in Texas, even with declining injury rates, will result in increased claim frequency in the future.

Figure 3: Number of Workers' Compensation Claims Reported to DWC, Injury Years 2003-2013



Note: Data updated through August 2014. These numbers include the claims that are required to be reported to DWC, including fatalities, occupational diseases, and injuries with at least one day of lost time. Medical-only claims are not required to be reported to DWC. *Data for 2013 should be viewed with caution since the number of claims per calendar year will continue to grow as injuries for that calendar year are reported or as “medical only” injuries begin to lose time away from work.

Source: Texas Department of Insurance, Division of Workers' Compensation, 2014.

Insurance Rates and Premiums Continue to Decline

House Bill 7 requires the Commissioner of Insurance to report on the affordability and availability of workers' compensation insurance for Texas employers. The Property and Casualty Actuarial Office of the Texas Department of Insurance (TDI) monitors insurance rate filings and reports workers' compensation insurance metrics as part of a biennial report to the Texas Legislature on the impact of HB 7 on insurance rates and premiums.² In 2013, nearly 290 insurance companies had positive direct written premium for workers' compensation insurance in Texas and the total direct written premium for the Texas workers' compensation insurance market was about \$2.66 billion.

² For additional information on the effect of the reforms on the workers' compensation insurance market, see *Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System, 2014 Results*.

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In terms of market share, ten insurance company groups write approximately 79.2 percent of the market, and the top writer, Texas Mutual Insurance Company, has 38.6 percent of the market based on its 2013 direct written premium in Texas. The Legislature created Texas Mutual (formerly Texas Workers' Compensation Insurance Fund) in 1991 to serve as a competitive force in the marketplace, to guarantee the availability of workers' compensation insurance in Texas, and to serve as the insurer of last resort. While Texas Mutual is the insurer of last resort, it predominately writes voluntary business, competing with the rest of the workers' compensation market. The involuntary (residual) market makes up less than a quarter of one percent of the workers' compensation insurance market.

Two important measures of the financial health of the Texas workers' compensation insurance market are the loss ratio and the combined ratio. The loss ratio is the relationship between premium collected and the losses incurred (i.e., amounts already paid out plus amounts set aside to cover future payments) by insurance companies. The combined ratio is similar to the loss ratio, except that it compares the premiums collected with both the losses and expenses incurred by the insurance company. A combined ratio of less than 100 percent indicates that an insurance company earned a profit on its insurance operations (also known as an underwriting profit). A ratio of over 100 percent indicates a loss on insurance operations, although this loss may be more than offset by earnings on investments. For example, if the projected ultimate combined ratio is 110.0 percent, then for every \$1.00 in premium that is collected by the insurance company it is projected that \$1.10 will be used to pay losses and expenses incurred by the insurance company. The insurance company will need to find other sources to pay the 10 cents that is not covered by the premium. This may come from investments or even a direct charge against the insurance company's surplus.

In 2013, the projected accident year combined ratio was 89.6 percent. This means that for every dollar collected by the insurance company, it will pay an estimated 89.6 cents to cover losses and expenses and keep the remaining amount as profit. Table 1 shows the loss ratio and the combined ratio, both of which reflect that the last seven years have been very profitable for workers' compensation insurance companies. The combined ratio averaged 74.5% from 2003 to

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2007. In 2008, concurrent with the recession, this ratio deteriorated and continued to do so until 2010 when it started to rebound.

Table 1: Projected Ultimate Calendar Year/Accident Year Loss and Combined Ratios

Accident Year	Direct Earned Premium	Ultimate Losses	Loss Ratio	Combined Ratio
2007	\$2,199,889,123	\$860,742,498	39.1%	74.3%
2008	\$2,210,268,795	\$967,884,307	43.8%	84.5%
2009	\$1,945,668,267	\$808,876,095	41.6%	83.1%
2010	\$1,724,553,041	\$866,200,706	50.2%	93.6%
2011	\$1,809,776,728	\$943,756,300	52.1%	96.3%
2012	\$2,028,964,954	\$1,030,843,040	50.8%	93.0%
2013	\$2,212,617,271	\$1,051,085,244	47.5%	89.6%

Source: NCCI Workers' Compensation Financial Data Call (Valuation Year 2013), 2013 Texas Compilation of Statutory Page 14, 2013 Texas Compilation of the Insurance Expense Exhibit. Loss development factors used in determining the ultimate losses are from the NCCI Annual Statistical Bulletin, 2014 edition.

Since 2003, workers' compensation insurance rates have declined over 50 percent.

Since 2003, workers' compensation insurance rates have come down just over 50 percent. This decline includes changes in insurance companies' own deviations as well as overall changes to the workers' compensation classification relativities established by TDI. This decline also includes changes in companies' deviations as well as overall changes in the classification relativities established by TDI. This decrease also includes the impact from companies using National Council on Compensation Insurance (NCCI) loss costs along with any changes to these companies' loss cost multipliers.

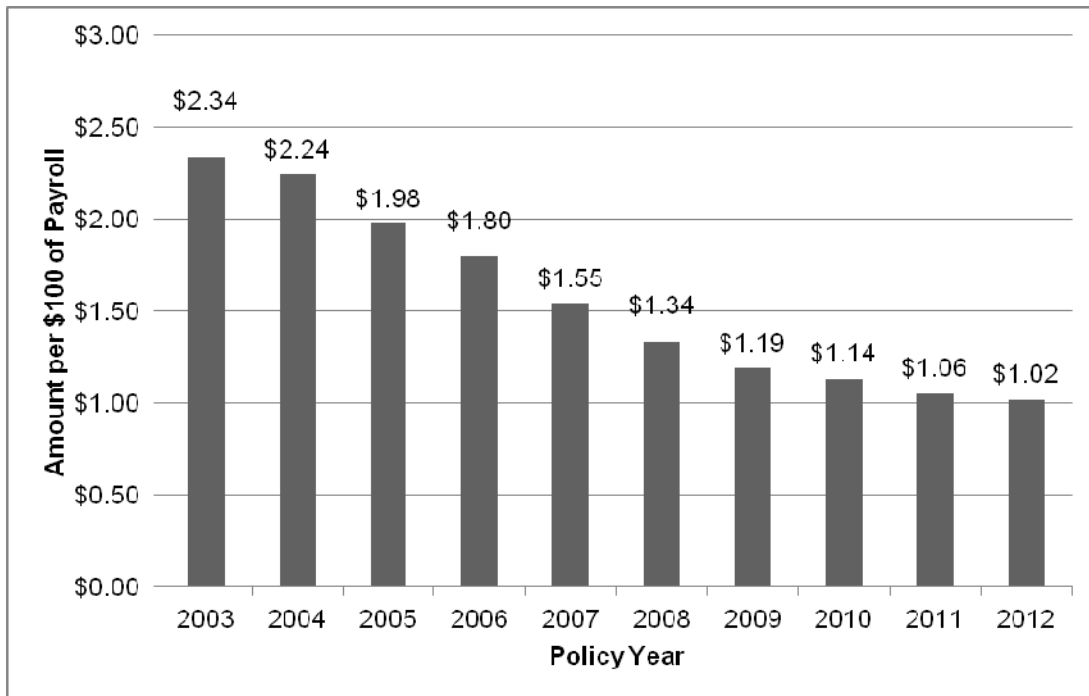
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In preparation for the 2014 biennial rate hearing on workers' compensation insurance, insurance companies were required to submit rate filings in August 2014, which were to include the company's "rate indication." A company's rate indication is the actuarial determination of how its rate or premium level should change going forward. These indications are based on the insurance companies' own calculations and do not reflect any judgments or assumptions made by TDI. For the 234 companies that filed rate indications with TDI, the average premium-weighted indication is -3.5 percent. This suggests that the industry estimates the need for a 3.5 percent decrease in current premium levels to cover losses and expenses and produce the targeted profit. Even though the companies' indications suggest a small decrease in premium levels on average, no companies proposed a rate change with their filing.

While the rate changes filed by the insurance companies in the last few years show how much rates have come down, these rates are just the start of the workers' compensation insurance pricing process. What employers actually pay, the premium, reflects not only rates but also mandated rating programs such as experience rating and premium discounts, as well as optional rating tools such as schedule rating plans and negotiated experience modifiers to recognize individual risk variations. Insurance companies use these rating tools to modify rate changes to achieve desired premium levels.

Figure 4 shows the average premium per \$100 of payroll for policy years 2003-2012, reflecting year to year changes in premiums charged. Beginning with policy year 2004, the average premium per \$100 of payroll began to decrease steadily as insurance companies lowered their rates and increased the use of rating tools, such as schedule rating. As of 2012, the average premium per \$100 of payroll was down to \$1.02. This overall steady decrease coincides with the average rate reductions that have taken place, resulting in employers seeing the benefits of the insurance companies' filed rate decreases.

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Figure 4: Average Premium per \$100 of Payroll by Policy Year

Source: The Texas Workers' Compensation Financial Data Call and data compiled by the National Council on Compensation Insurance.

Employer Participation and Employee Coverage Rates Have Improved, but About 5 Percent of Texas Employees Still Have No Coverage for Occupational Injuries

Texas is the only state where private-sector employers (regardless of employer size or industry) are allowed the option of obtaining workers' compensation coverage or becoming "non-subscribers" to the workers' compensation system.³ Employers who choose to not obtain workers' compensation coverage (either through purchasing a commercial policy, becoming a certified self-insured employer or a member of a certified group of self-insured employers) lose the protection of statutory limits on liability under the Labor Code and may be sued for negligence by their injured employees.

³ In New Jersey all employers are required to have coverage or be self-insured. Non-compliant employers are fined and their injured employees receive income and medical benefits through the Uninsured Employers' Fund (UEF). Recently, Oklahoma passed legislative reforms that allow certain employers to opt-out of the workers' compensation system if they meet certain financial requirements and offer benefits that are similar to those found in the workers' compensation system.

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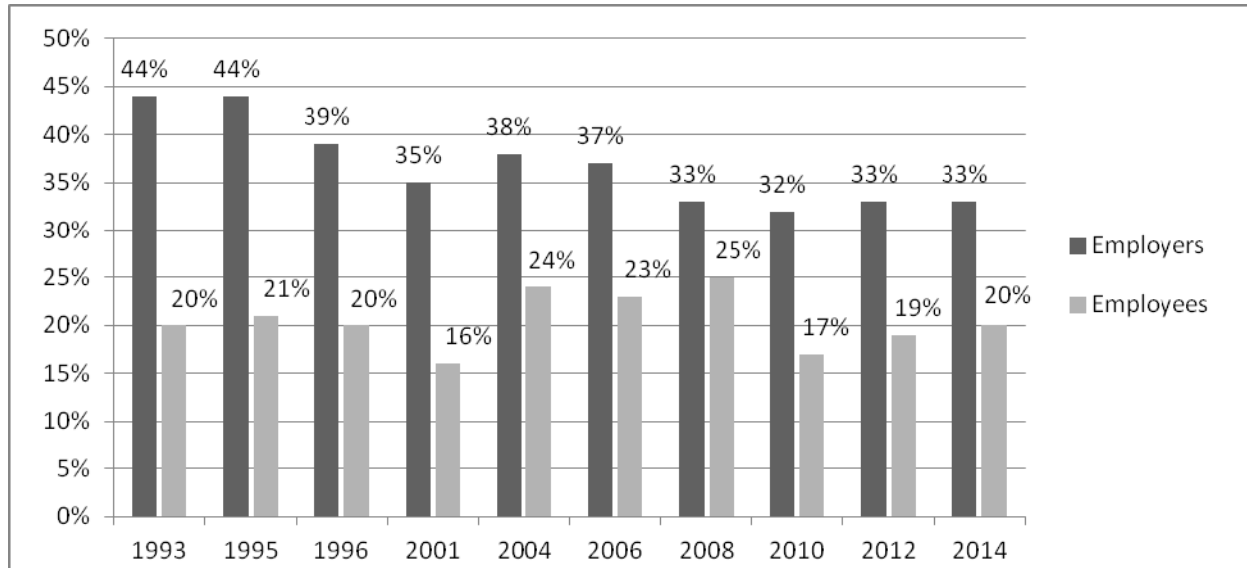
Non-subscription rates remain an important performance measure in the workers' compensation system since it generally measures employers' perspectives regarding whether the benefits of participating in the workers' compensation system are greater than the costs of obtaining the coverage. The percentage of Texas employers that are non-subscribers to the workers' compensation system remained at 33 percent in 2014 – the second lowest percentage since 1993 (an estimated 119,000 employers in 2014). However, an estimated 20 percent of Texas employees (representing approximately 1.9 million employees in 2014) worked for non-subscribing employers – the third lowest percentage in the past ten years. Conversely, 80 percent of Texas private-sector employees (an estimated 7.7 million employees) are employed by the 67 percent of employers (an estimated 238,000 employers) that are subscribers to the workers' compensation system (see Figure 5).

Approximately 67 percent of private, year-round employers have workers' compensation, and they employ about 80 percent of the private workforce in Texas.

Although non-subscribing employers have opted not to provide workers' compensation coverage to their employees, some of these employers (approximately 33 percent in 2014) provide an alternative occupational benefit plan. It is important to note that these non-subscriber benefit plans are not regulated by DWC and the benefits offered in these plans vary by employer. Approximately 75 percent of the non-subscriber employee population is covered by some form of an alternate occupational benefit plan. As a result, an estimated 95 percent of private-sector employees in Texas have some form of coverage in the case of a work-related injury in Texas (either workers' compensation coverage or coverage from a non-subscriber occupational benefit plan). This means that approximately 5 percent (approximately 470,000 private-sector employees) do not have any coverage in the case of a work-related injury in 2014. In 2012, it was estimated that approximately 5 percent of private-sector employees (approximately 500,000 employees) did not have workers' compensation coverage through a non-subscriber benefit plan.

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Figure 5: Percentage of Texas Employers That Are Non-subscribers and the Percentage of Texas Employees That Are Employed by Non-subscribers, 1993-2014



Source: *Survey of Employer Participation in the Texas Workers' Compensation System*, 1993 and 1995 estimates from the Texas Workers' Compensation Research Center and the Public Policy Research Institute (PPRI) at Texas A&M University; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004, 2006, 2008, 2010, 2012 and 2014 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

The percentage of Texas employers who have workers' compensation coverage has increased since the passage of HB 7 in 2005 (from 62 percent of Texas employers in 2004 to 67 percent of Texas employers in 2014), due primarily to lower insurance premiums and the increased availability of workers' compensation health care networks. Although the majority of non-subscribing employers are small employers, results from the 2004-2014 employer surveys highlighted the trend of larger employers choosing to opt out of the Texas workers' compensation system for reasons that centered primarily on the ability to adequately control medical costs for their injured employees.

However, this trend for large employers reversed from 2008 to 2010, when steep insurance rate reductions and an economic downturn led to an increased percentage of large employers, especially those with more than 500 employees, purchasing workers' compensation coverage. It is possible that tight economic conditions play an influential role in large employers' decisions to purchase coverage in the Texas workers' compensation system since workers' compensation coverage provides additional protection for employers from employee lawsuits that may result

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from a work-related injury. Despite lower workers' compensation insurance rates in recent years, it appears that an increasing number of the largest employers in Texas have begun to opt out of the workers' compensation system since 2010, while an increasing number of small and mid-sized employers have increased their workers' compensation coverage rates (see Table 2). The industries with the highest non-subscription rates (Arts/Entertainment/Accommodation/Food Services, Finance/Real Estate/Professional Services, Health Care/Educational Services and Wholesale Trade/Retail Trade/Transportation) have not changed significantly over time, but certain industries such as Manufacturing, Agriculture/Forestry/Fishing/Hunting, Mining/Utilities/Construction have seen recent decreases in the non-subscription rates in recent years.

Table 2: Percentage of Texas Employers That Are Non-subscribers, by Employment Size

Employment Size	1995	1996	2001	2004	2006	2008	2010	2012	2014
1-4 Employees	55%	44%	47%	46%	43%	40%	41%	41%	43%
5-9 Employees	37%	39%	29%	37%	36%	31%	30%	29%	27%
10-49 Employees	28%	28%	19%	25%	26%	23%	20%	19%	21%
50-99 Employees	24%	23%	16%	20%	19%	18%	16%	19%	18%
100-499 Employees	20%	17%	13%	16%	17%	16%	13%	12%	14%
500 + Employees	18%	14%	14%	20%	21%	26%	15%	17%	19%

Source: *Survey of Employer Participation in the Texas Workers' Compensation System*, 1993 and 1995 estimates from the Texas Workers' Compensation Research Center and the Public Policy Research Institute (PPRI) at Texas A&M University; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004, 2006, 2008, 2010, 2012 and 2014 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

Compliance Efforts Regarding Reporting Requirements for Non-subscribing Employers

While the types and amounts of benefits provided to injured employees who work for non-subscribing employers as well as the administration of those benefit programs fall outside of the jurisdiction of TDI's and DWC's regulation, non-subscribers are still subject to certain reporting requirements under the Workers' Compensation Act and DWC rules. Non-subscribers are

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required to report annually to DWC that they have elected not to obtain workers' compensation coverage by filing the DWC Form-005, *Employer Notice of No Coverage or Termination of Coverage* with DWC.⁴ Additionally, non-subscribers who employ at least five employees are required to file a notice with DWC (using the DWC Form-007, *Employer's Report of Non-covered Employee's Occupational Injury or Disease*) for each occupational disease and on-the-job injury that results in more than one day of lost time.⁵ Failure to comply with these reporting requirements may result in enforcement action and administrative penalties levied up to \$25,000 per day per occurrence.

Four sessions ago the 80th Legislature added an appropriation rider to TDI's budget, which requires DWC to submit, as part of its biennial report to the legislature, a report regarding the compliance of non-subscribing employers with these reporting requirements as well as any administrative penalties levied against non-complying employers. Prior to the 2007 legislative session, non-subscriber reporting compliance efforts on behalf of the agency were primarily complaint driven; however, historically, DWC (and its predecessor the Texas Workers' Compensation Commission) has only received a relatively small number of complaints regarding non-subscriber reporting compliance. Since 2009, there have been over 2,400 complaints on non-subscriber reporting compliance, resulting in over 250 warning letters issued to employers and nearly \$80,000 in penalties issued against non-subscribers for failing to respond to requests and filing required forms. Compliance efforts have increased in recent years as DWC has increased employer education efforts about these reporting requirements – almost half of the penalties levied against non-subscribers have been assessed in the last two years.

Absent external complaints from system participants, identifying potential non-complying employers has proven to be challenging for the agency for several reasons, including the completeness, accuracy and timeliness of workers' compensation policy data and employer identifying data submitted to DWC and other Texas state agencies. For example, an employer may have filed for unemployment insurance purposes with the Texas Workforce Commission

⁴ See Section 406.004, *Labor Code*.

⁵ See Section 411.032, *Labor Code*.

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using the Federal Employment Identification Number (FEIN) of the parent organization, but may have different workers' compensation insurance policies under various FEIN's and names of subsidiaries of the parent organization. As a result, it is somewhat difficult for DWC to identify individual employers that may be non-subscribers and to check for these employers' compliance with reporting requirements.

Recent Efforts by DWC to Improve Non-subscriber Reporting Compliance. In an effort to make it easier for Texas employers to report their non-subscriber status, DWC adopted amendments to clarify existing rules regarding reporting requirements for non-subscribing employers in January 2013; developed an online version of the DWC Form-005 to allow employers to directly enter their information and obtain a verification of submission at no charge; and provided an online bulk-filing option for larger employers with multiple locations or third party administrators submitting forms on behalf of multiple employers. DWC is also currently in the process of testing a new automated SMART form version of the DWC Form-005 and DWC Form-007 that would allow an employer to fill out the form once online, submit it to DWC and save it locally to enable resubmission or amendments for future filings. DWC anticipates having both SMART forms available for implementation by early 2015.

DWC has also re-organized its employer resources website to better assist employers in locating pertinent workers' compensation information. The employer resources website (see www.tdi.state.tx.us/wc/employer/index.html) now features a direct link to the automated DWC Form-005 form as well as Online Reporting Help and Frequently Asked Questions. DWC has also distributed information about these reporting requirements and the adoption of new rules to state business and non-subscriber associations and coordinated with other state agencies to add these reporting requirements on their websites in order to increase employer awareness of these non-subscriber reporting requirements and to more effectively enforce these requirements.

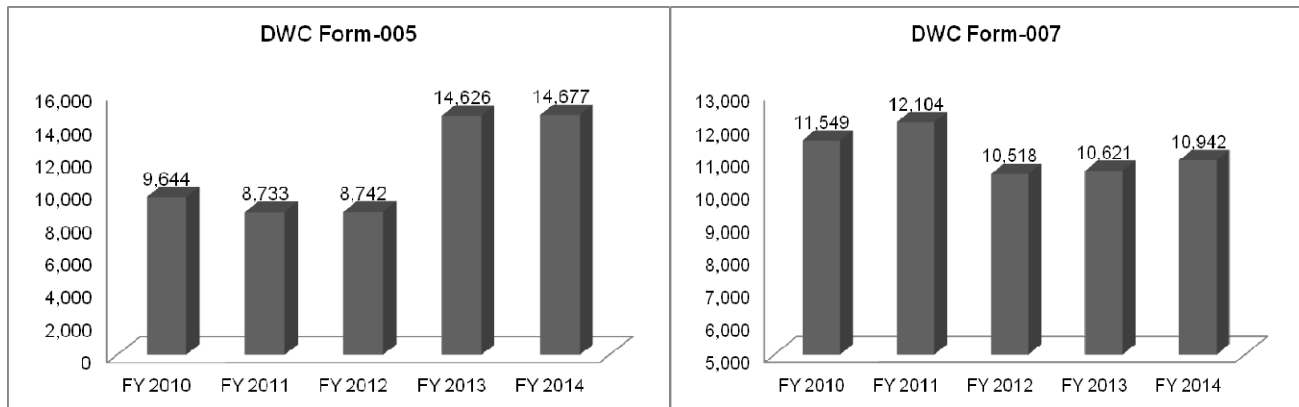
Despite DWC's recent compliance and education efforts regarding employer reporting requirements, and despite providing employers the option to file the DWC Form-005 form online and through electronic bulk-filing options, overall non-subscriber compliance with existing

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reporting requirements remains low. The volume of DWC Form-005 filings did, however, increase after the adoption of new rules in January 2013, which clarified the timeframe for employers to report the DWC Form-005 and DWC Form-007 forms (see Figure 6).

Approximately 12 percent of non-subscribers (an estimated 119,000 private employers are non-subscribers in 2014) are estimated to be in compliance with the DWC Form-005 form filing requirement.

Figure 6: Total Number of DWC-005 and DWC-007 Forms Received by Fiscal Year



Source: Texas Department of Insurance, Division of Workers' Compensation, 2014.

While filings of the DWC Form-005 did increase after the adoption of the January 2013 rules, filings of the non-subscriber injury report (the DWC Form-007) did not increase proportionately. In fact, filings of these injury reports actually decreased after FY 2011 and have been slowly on the rise in recent years. Some large non-subscribers have reported that they believe only those injuries that they have accepted liability for as a work-related injury must be reported to DWC. This may help explain why injury reports from non-subscribers tend to be lower compared to the number of workers' compensation claims reported by subscribing employers.

DWC urges all employers, regardless of whether they have workers' compensation coverage or not, to comply with statutory and regulatory injury reporting requirements. This means employers must report all potentially work-related fatalities, occupational diseases, and injuries that result in at least one-day of lost time from work, regardless of whether the employer has accepted compensability or liability for the claim. Employers that do not comply with these requirements face possible enforcement actions, including monetary penalties. Employers who

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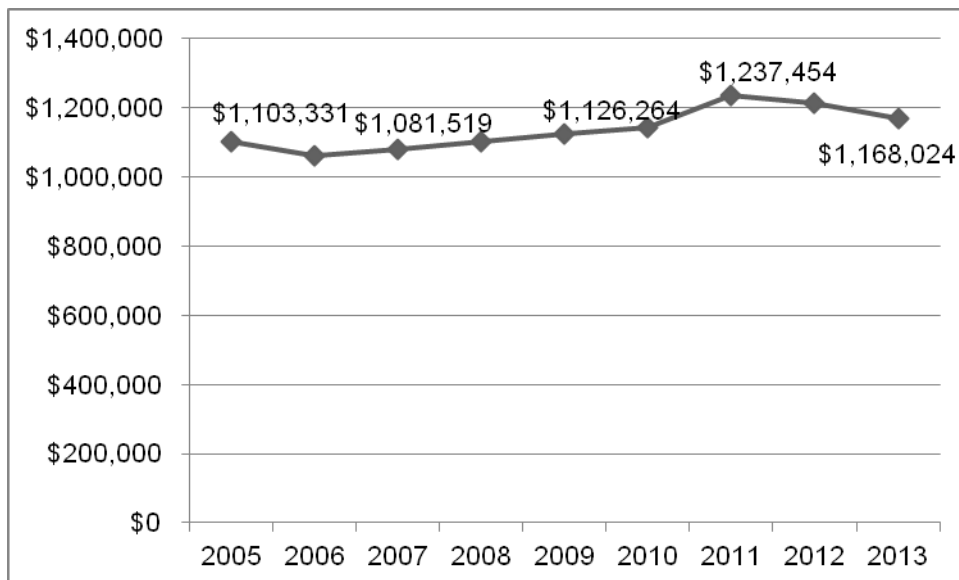
have failed to report either the DWC Form-005 or DWC Form-007 forms are encouraged to self-report to DWC because self-reporting is a mitigating factor that will be taken into account when determining whether enforcement action is needed.

Medical Costs Have Stabilized in the System, Despite Continued Medical Inflation

Over the past 14 years, a significant amount of attention has been placed on the issue of lowering medical costs through a reduction in the utilization of medical services provided to injured employees. The issue of reducing medical costs and improving the quality of medical care provided to injured employees was also a key component driving the passage of a new health care delivery model in HB 7 – workers' compensation health care networks.

Figures 7 and 8 illustrate the medical cost trends that the system was experiencing prior to and after the implementation of the 2005 legislative reforms. As Figure 7 illustrates, when total medical payments for professional services are analyzed without taking into account inflationary changes, it appears that total payments have stabilized in the Texas workers' compensation system (from \$1.1 billion in 2005 to \$1.2 billion in 2013).

Figure 7: Total Medical Payments, Service Years 2005-2013

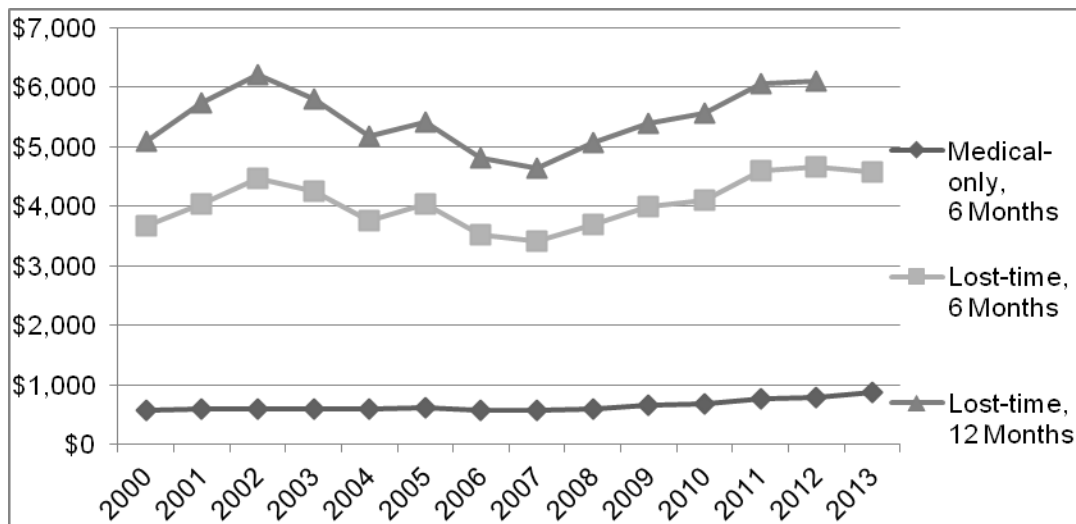


Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.

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Looking at Figure 8, it appears that the average medical cost per claim is still relatively stable compared to the double-digit increases in medical costs that the system was experiencing in the late 1990's and early 2000's prior to the passage of HB 7.⁶ Recent cost increases are mainly due to the 2008 DWC Medical Fee Guideline, which contains an annual inflation factor – the Medicare Economic Index.

Figure 8: Average Medical Cost per Claim, Unadjusted Injury Years 2000-2013, Professional Services



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.

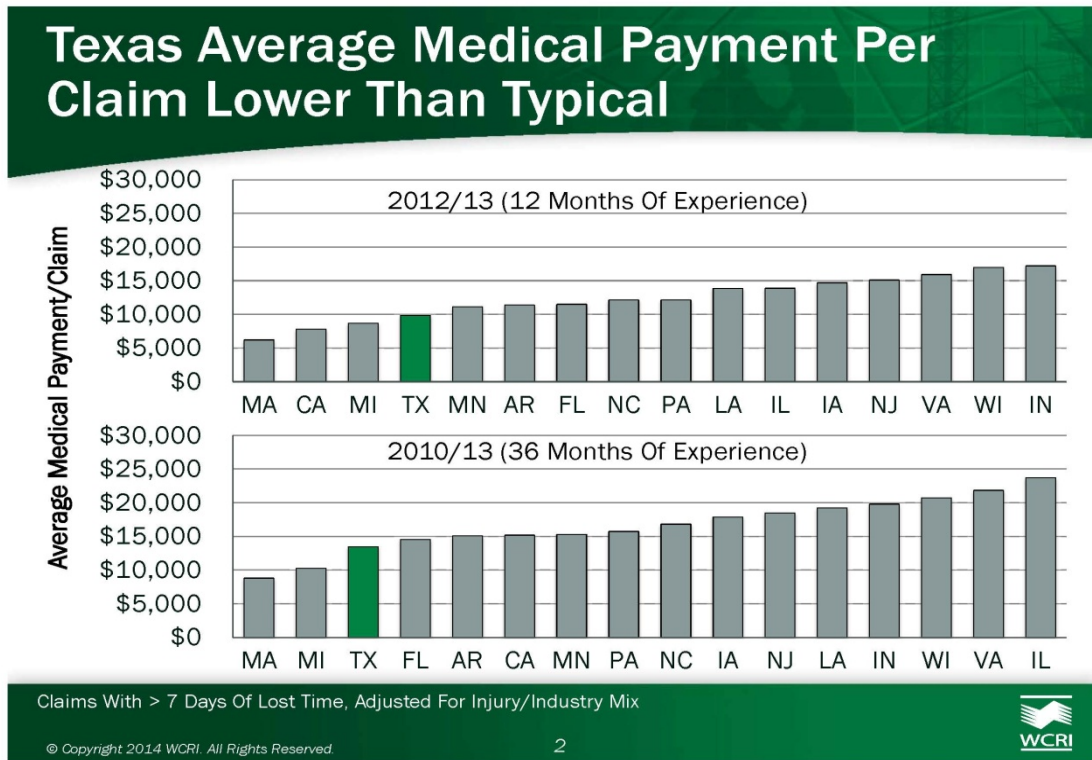
When compared with other states, Texas has experienced significant reductions in medical costs per claim as a result of legislative reforms to the Texas workers' compensation system in 2005. According to a 16-state comparison by the Workers' Compensation Research Institute, in 2001, Texas was among the highest nationally in terms of medical costs per claim. By 2010, Texas was almost 23 percent below the median cost of those same 16 states, including Florida, Pennsylvania, Louisiana and Illinois. Even with recent medical price increases in Texas, Texas medical costs per claim remain lower than most of the study states as a result of changes made

⁶ On August 1, 2003, the system's first Medicare-based professional service fee guideline took effect. While this fee guideline increased reimbursement for some categories of services, including primary care, reimbursements for specialty surgery services were significantly reduced. On the whole, the reimbursement rates for professional medical services in the Texas workers' compensation system went from approximately 140 percent of Medicare to approximately 125 percent of Medicare.

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by the adoption of 2008 DWC Medical Fee Guidelines, Texas medical costs per claim remain lower than most of the study states (see Figure 9).

Figure 9: Average Medical Cost for Claims with More Than 7 Days of Lost Time (All Services), 12 Months and 36 Months Average Maturity



Source: Workers' Compensation Research Institute, Monitoring the Impact of Reforms in Texas: CompScope™ Medical Benchmarks, 15th Edition, 2014.

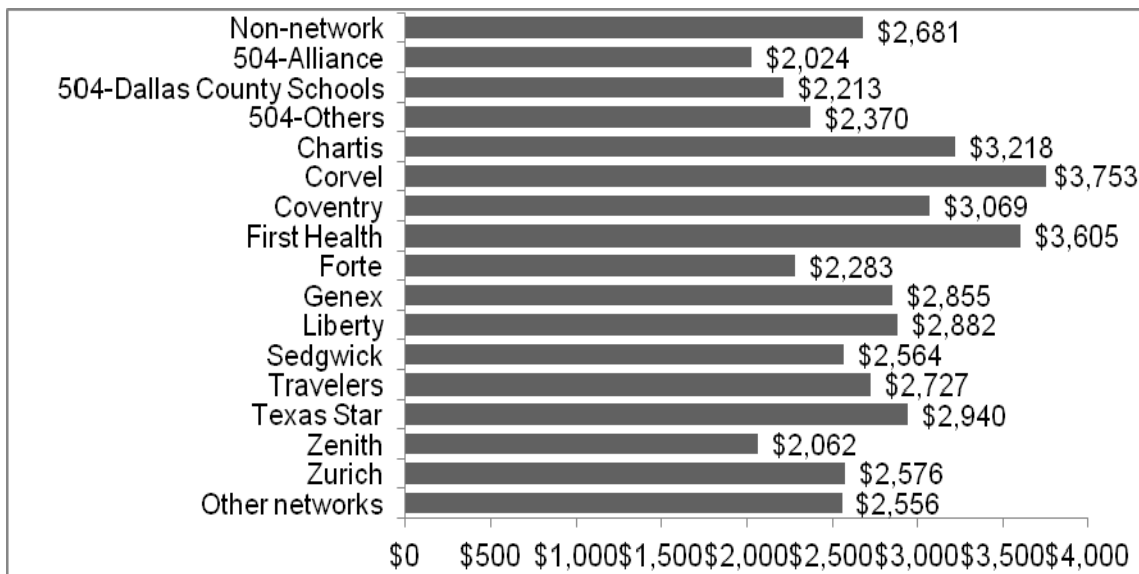
Information from the annual workers' compensation network report card produced by the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group (REG) in September 2014 provides some insight into the ongoing implementation of certified health care networks.⁷ In general, differences began to emerge among individual networks. As Figure 10

⁷ For more information about how individual networks compare with each other and with non-network claims on a variety of cost, utilization, access to care, satisfaction with care, return-to-work, and health outcomes measurements, see "2014 Workers' Compensation Network Report Card Results" by Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, available online at (www.tdi.texas.gov/reports/report14.html).

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shows, at six months post injury, the average medical cost per claim for the networks was higher than non-network claims, but this gap in medical costs has been reduced over time. Overall, most networks experienced either cost reductions or lower increases than non-network claims. When medical costs are further broken down into professional, hospital, and pharmacy services, the average medical cost per claim for professional services was higher for network claims than non-network claims at six months post injury. However, network claims typically had lower hospital and pharmacy costs per claim.

Figure 10. Average Medical Cost per Claim, Network and Non-Network Claims, Six Months Post-Injury



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.

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Based on the analysis available to date, the reduction in the total amount of medical payments made in the system between 2002 and 2006 can be attributed mostly to fewer claims being filed, as well as lower utilization of specific types of services. Greater scrutiny on certain types of services through the mandatory preauthorization of physical and occupational therapy services (required by HB 7 in 2005), as well as the implementation of the DWC adopted treatment guideline – the *Official Disability Guidelines: Treatment in the Workers' Comp*, published by the Loss Data Institute (adopted in 2007) have resulted in fewer overall professional service per claim and services per visit (particularly for office visits, physical medicine services and spinal surgery services). The impact of certified health care networks on medical costs remains mixed, but differences among individual networks have begun to emerge and the gap in costs between network and non-network claims has begun to tighten. Claim frequency appears to be flattening out in recent years and medical cost increases since 2007 appear to be more price-driven than utilization driven, which may signal increased medical costs in the future unless additional utilization reductions can be achieved or prices controlled.⁸

According to a 16-state comparison by the Workers' Compensation Research Institute, in 2001 Texas was the highest nationally in terms of medical costs per claim. By 2010, Texas was 23 percent below the median cost of these same states.

Two areas in particular, need close monitoring by DWC in the future – the percentage of injured employees receiving durable medical equipment (DME) services and the percentage of medical-only claims receiving impairment rating examinations and special reports. The percentage of medical-only claims receiving impairment rating examinations has increased substantially (from 65 percent of lost-time claims receiving these services in 2005 to 72 percent in 2012).

⁸ The Workers' Compensation Research Institute has also mainly attributed recent increases in medical payments per claim in Texas to fee schedule changes in 2008. See Workers' Compensation Research Institute, *Monitoring the Impact of Reforms in Texas: CompScope™ Medical Benchmarks, 15th edition*, 2014.

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Pharmacy Closed Formulary Produces Significant Results; Other States Looking to Replicate Texas Formulary Model

The last component of the 2005 legislative reforms implemented by DWC was the adoption of a pharmacy closed formulary for Texas workers' compensation claims, which took effect for new workers' compensation claims with dates of injury on or after September 1, 2011 and for older (legacy) claims on September 1, 2013.⁹ The closed pharmacy formulary includes all FDA-approved drugs, except for investigational and experimental drugs and excludes drugs listed as "N" drugs (or "not recommended" drugs) in Appendix A of DWC's adopted treatment guidelines - the *Official Disability Guidelines: Treatment in Workers' Comp*, published by the Work Loss Data Institute. Under this formulary, prescriptions for drugs that are excluded from the formulary require pre-approval from the insurance carrier before they can be dispensed.

DWC's efforts over the past two years have been focused primarily on facilitating the smooth transition of legacy claims to the formulary and responding to requests for Medical Interlocutory Orders (MIOs) in situations where a prescribing doctor is concerned that a pre-authorization denial of a drug that is excluded from the closed formulary will result in a medical emergency for the injured employee.¹⁰ These efforts have placed greater emphasis on the need for closer monitoring of prescription drug usage by both prescribing doctors and insurance carriers to ensure that injured employees get the medical care they need to get back to work quickly and safely. To assist with the transition of these older claims, DWC:

- Held multiple stakeholder meetings and formed a stakeholder working group to get input on the status of the transition process in order to identify any potential barriers to securing treatment agreements for these claims;
- Developed template communication letters for insurance carriers to use to inform prescribing doctors, injured employees and pharmacies of the application of the closed

⁹ Legacy claims include those workers' compensation claims with dates of injury prior to September 1, 2011.

¹⁰ As of October 31, 2014, DWC received fewer than 100 requests for MIOs and approved about half of these requests. The most frequently requested and approved drug was Oxycontin.

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pharmacy formulary and to initiate claim-level discussions to determine the appropriate course of treatment for these claims;

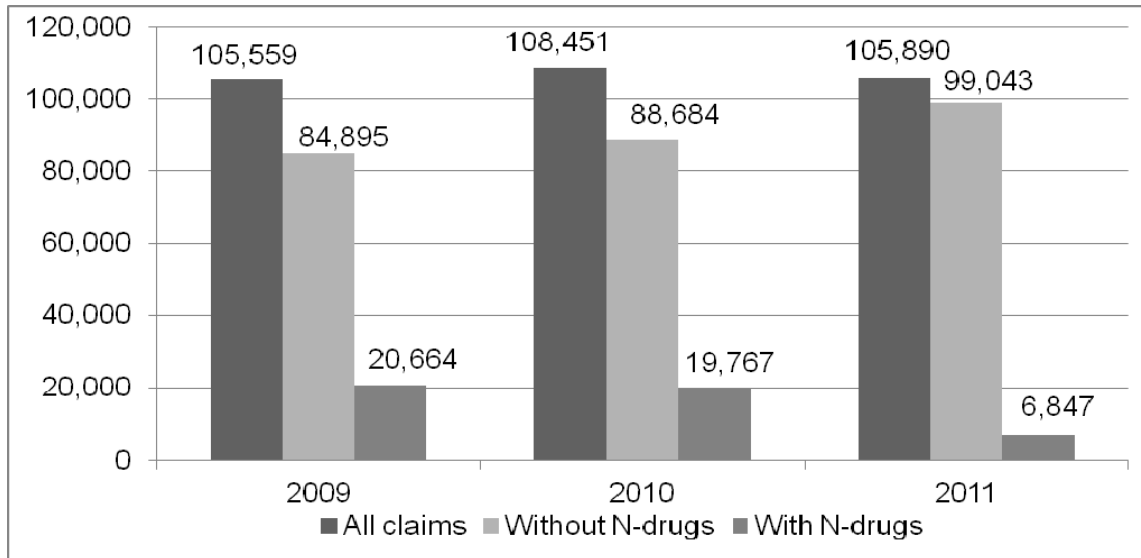
- Conducted several outreach presentations to doctor groups and other system stakeholders to inform them on the requirements of the formulary and the MIO process;
- Published numerous formulary implementation reminders and conducted several mail-outs with prescribing doctors and insurance carriers;
- Initiated phone calls with the top prescribing doctors and selected insurance carriers to encourage communication among these parties regarding the best course of care for injured employees;
- Conducted three data calls with selected insurance carriers to monitor the number of legacy claims and to monitor insurance carriers' progress with initiating communications with injured employees, prescribing doctors and pharmacies to facilitate treatment agreements for individual claims; and
- Published quarterly data assessments on the impact of the formulary on claim frequency, cost and utilization of drugs excluded from the closed formulary.

New research by the REG in 2014 shows that the pharmacy closed formulary adopted by DWC has had a significant impact on new injuries.¹¹ The study compared injuries that occurred in 2011 (September – August) with injuries that occurred during the same timeframe in 2010 and in 2009. To ensure comparability, both sets of claims were analyzed at eighteen months post-injury to account for differences in claim maturity. The study found that under the closed formulary the total number of claims receiving “N” drugs was reduced by 65 percent between 2010 and 2011 (see Figure 11).

¹¹ For more information, see Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, *Impact of the Texas Pharmacy Closed Formulary, A Preliminary Report*, 2014.

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Figure 11: Frequency of Claims Receiving “N” Drugs, Injury Years 2009-2011



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.

The closed pharmacy formulary had a significant impact on prescription drug costs in the Texas workers' compensation system. Overall, total pharmacy costs for 2011 were reduced by 15 percent (approximately \$6 million) when compared to 2010 claims. These cost reductions were even more significant for “N” drugs. Prescription drug costs attributed to not-recommended (“N”) drugs for 2011 claims were reduced by 82 percent when compared to 2010 and the average “N” drug cost per claim was reduced by almost half (see Table 3).

Table 3: Impact of Closed Formulary on Pharmacy Costs, Injury Years 2009-2011

Injury Year	2009	2010	2011	2010-2011 Percentage Change
Total pharmacy costs	\$40,001,352	\$38,436,372	\$32,823,107	-15%
Total cost of N-drug prescriptions	8,287,773	\$6,474,477	\$1,152,152	-82%
Average N-drug cost per claim	\$401	\$328	\$168	-49%

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.

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DWC's pharmacy closed formulary has reduced the number of prescriptions for "not recommended" or "N drugs" by 75 percent and costs for these drugs by 82 percent.

The pharmacy closed formulary has also significantly impacted prescribing patterns for Texas physicians treating workers' compensation claims (see Table 4). The frequency of "N" drug prescriptions being dispensed to injured employees was reduced by 75 percent from 2010 to 2011, while the number of "N" drug prescriptions per claim that received an "N" drug was reduced by 29 percent. The reduction in "N" drug prescriptions did not result in an overall increase in other types of prescriptions. In fact, there were slight decreases in the number of "other drug" prescriptions to injured employees during this time. In addition to reductions in the usage of "N" drugs, there were also reductions in the use of opioid painkillers (including opioids in the "N" drug and other drugs categories) for claims subject to the closed formulary. The frequency of all opioid prescriptions was reduced by 11 percent and the frequency of "N" drug opioids was reduced by 64 percent between 2010 and 2011.

Table 4: Impact of Closed Formulary on Prescription Patterns, Injury Years 2009-2011

Injury Year	2009	2010	2011	2010-2011 Percentage Change
N-Drugs				
Number of prescriptions	67,002	57,369	14,195	-75%
Number of prescriptions per claim	3.24	2.90	2.07	-29%
Other Drugs				
Number of prescriptions	575,865	595,126	575,062	-3%
Number of prescriptions per claim	5.57	5.61	5.47	-2%

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.

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Additional data is needed to determine the long-term effects of the closed pharmacy formulary on the utilization and costs of “N” drugs in the Texas workers’ compensation system. However, recent data indicates that the formulary has had a significant impact on both the utilization and costs associated with these “not recommended” drugs, as well as an impact on the overall utilization of opioids. Future monitoring is needed to determine if these reductions in the use of “N” drugs will also reduce the number of injured employees who become addicted to certain opioid prescription drugs and whether the formulary will have a positive impact on the ability of injured employees to go back to work.

Access to Care Has Improved for Injured Employees

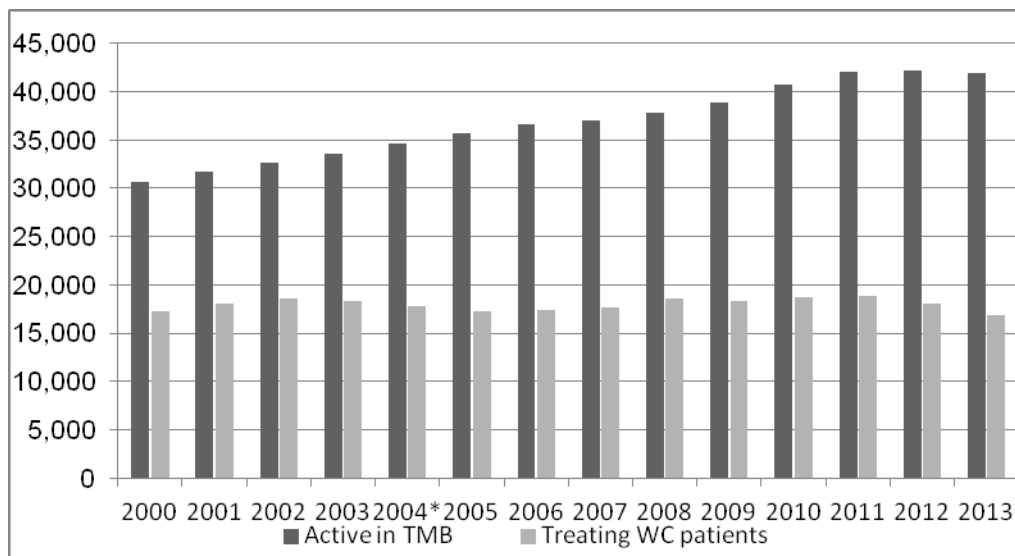
Ensuring that injured employees have adequate access to medical care is an important function of the workers’ compensation system. Without sufficient access to care, necessary medical care is delayed, which exacerbates total medical and income benefit costs and unnecessarily prolongs time off of work. System participants have raised concerns in the past that the workers’ compensation system was experiencing an “access to care problem” and that many health care providers, particularly physicians, were concerned with the “hassle factor” associated with treating injured employees and the compensation rates that accompanied that medical care. Indeed, the passage of the first Medicare-based professional services fee guideline in 2002 (the guideline became effective in August 2003 after a court battle) spurred controversy when the compensation rate for workers’ compensation professional services was set at 125 percent of Medicare. For some specialty providers, such as surgeons, this was a significant cut in compensation and many providers stated that they would no longer accept injured employees as patients.

An analysis of the medical billing and payment data collected by DWC combined with the licensing information from the Texas Medical Board indicates that between 2002 and 2005 there was a decline in the number of active physicians (i.e., those physicians that had an active license and were practicing) who treated workers’ compensation claims, even though the total number of active physicians in Texas continued to increase (see Figure 12). With the passage of tort reform legislation in 2003, more physicians have set up active practices in Texas. This influx of

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new physicians resulted in an increase in the number of physicians treating workers' compensation claims from 2005 – 2012 (from 17,219 physicians treating workers' compensation claims in 2005 to 18,063 physicians treating workers' compensation claims in 2012). The number of physicians treating injured employees declined in 2013, but this may be the result of immature data so additional monitoring is needed to determine if this decline is truly a trend or whether it is simply the result of lower claim frequency necessitating fewer treating physicians.

Figure 12: Total Number of Active Physicians Who Treated Workers' Compensation Claims, Service Years 2000-2013

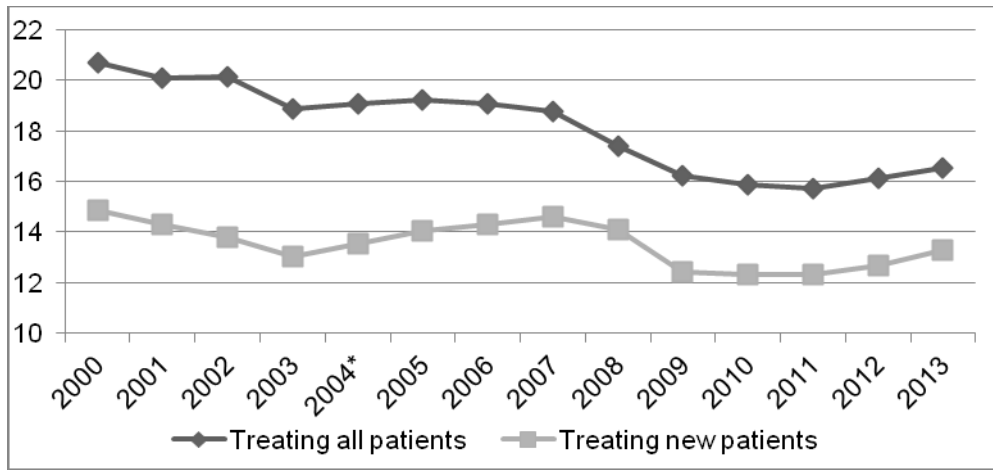


Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.

*2004 shows an average of 2003 and 2005 due to incomplete data.

With the consistent decline of injury rates and reported workers' compensation claims along with a stable number of physicians participating in the Texas workers' compensation system since the passage of HB 7, the average workers' compensation caseload for each participating physician has declined, resulting in fewer injured employees competing for the same physician (see Figure 13). In 2005, there were approximately 19.3 workers' compensation claims per treating physician compared to 16.1 claims in 2012 and 16.5 in 2013 – a 15 percent decrease.

Figure 13: Average Number of Claims per Workers' Compensation Participating Physician, 2000-2013



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.
 *2004 shows an average of 2003 and 2005 due to incomplete data.

Workers' compensation participation rates vary by medical specialty and geographic region. Although the 2003 and 2008 Medical Fee Guidelines raised fees for Evaluation & Management services, the number of primary care physicians treating injured employees has continued to decline, indicating that primary care physician shortage issues that exist across Texas also exist in the Texas workers' compensation system. Overall, about 40 percent of Texas physicians participate in the Texas workers' compensation system and 73 percent of these physicians are located in the five largest metro areas: Houston, Dallas, San Antonio, Austin, and Fort Worth.

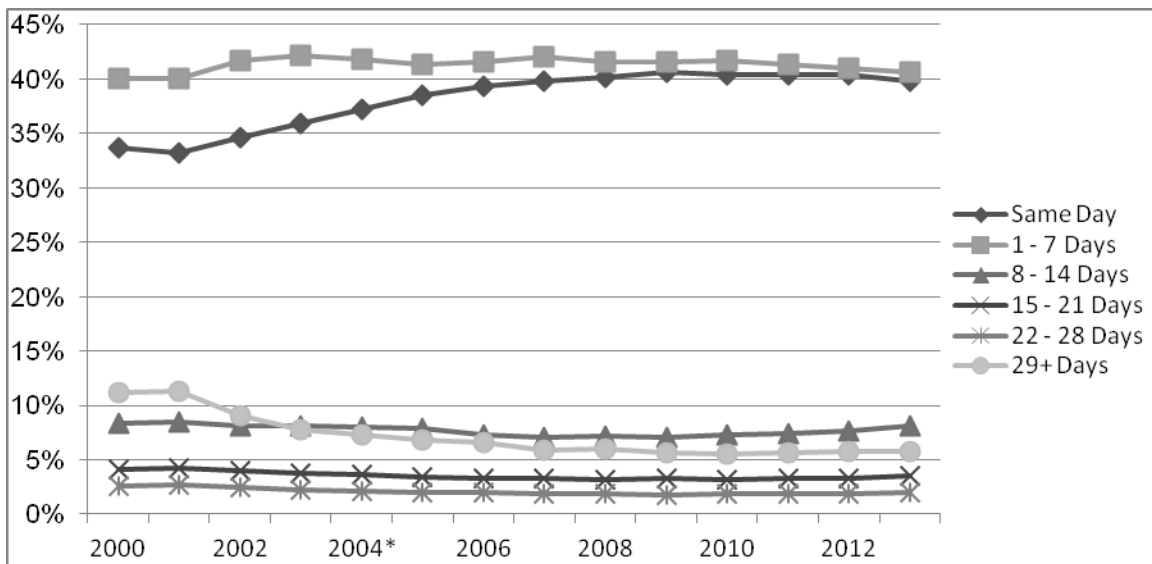
Approximately 81 percent of injured employees received initial medical care either on the same day of injury or within 7 days in 2013, up from 74 percent in 2000. The percentage of 'same day' treatment group increased steadily reaching 41 percent in 2009. The largest decrease in the timeframe from the date of injury to the first non-emergency medical treatment was seen in the share of claims with extreme delays (29 days or more), which decreased from 11 percent in 2000 to 6 percent in 2013. This delayed group consists

Overall, about 40 percent of active Texas physicians participate in the Texas workers' compensation system. Approximately 81 percent of injured employees receive non-emergency medical care either the same day or within 7 days of the injury.

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largely of disputed and/or denied claims, which nevertheless showed a significant improvement in access to care (see Figure 14). It should be noted, that several studies have shown that delayed access to initial medical treatments increase overall claim costs and reduce the likelihood of injured employees returning to productive employment.

Figure 14: Percentage of Claims by Number of Days between Injury and the First Non-Emergency Service, 2000-2013



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.

*2004 shows an average of 2003 and 2005 due to incomplete data.

Additionally, the introduction of certified networks appears to have improved the timeliness of medical care for injured employees. Non-network claims averaged approximately 8 days from the date of injury to first non-emergency medical treatment in 2013, compared to 5-6 days for most certified networks.

In an effort to improve injured employee education about their rights and responsibilities, including their ability to choose a treating doctor, DWC has recently initiated a pilot program to conduct face-to-face outreach and provide plain language information to injured employees.

Return-to-Work Rates Continue to Improve, but the Recent Recession Has Had an Impact

One of the most basic objectives of the Texas workers' compensation system is to return injured employees to safe and productive employment. Effective return-to-work programs can not only

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help reduce the economic and psychological impact of a work-related injury on an injured employee, but it can also reduce income benefit costs and curb productivity losses for Texas employers.

Previous studies by both the Research and Oversight Council on Workers' Compensation (ROC) and the Workers' Compensation Research Institute (WCRI) indicated that compared to similarly injured employees in other states, Texas injured employees were generally off work for longer periods of time and were more likely to report that their take-home pay was less than their pre-injury pay.¹² Armed with these study findings, policymakers and system participants have placed considerable attention on improving return-to-work outcomes in recent years.

Despite the economic downturn in late 2009-2012, 77 percent of employees injured in 2012 went back to work within 6 months from the date of injury.

Several components of the 2005 legislative reforms to the Texas workers' compensation system placed significant focus on the importance of employees returning to work, including a requirement for DWC to adopt return-to-work guidelines; the institution of a return-to-work reimbursement program for employers; greater coordination of vocational rehabilitation referrals between DWC, the Office of Injured Employee Counsel and the Department of Assistive and Rehabilitation Services (DARS); improvements in return-to-work outreach efforts; and DWC's adoption of rules to implement changes in the work-search requirements for injured employees who qualify for Supplemental Income Benefits (SIBs).

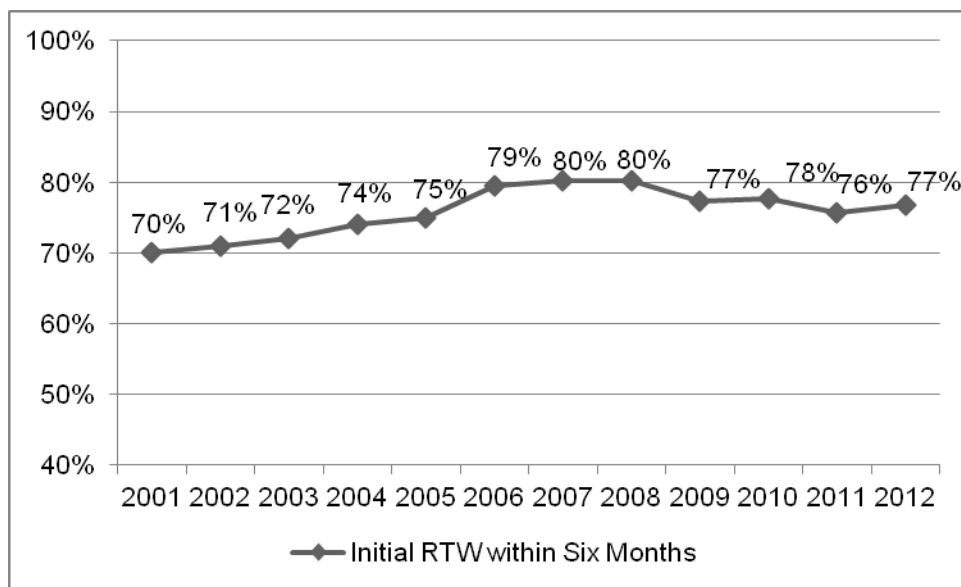
Since the passage of HB 2600 in 2001 and the passage of HB 7 in 2005, there has been a steady increase in the percentage of injured employees receiving Temporary Income Benefits (TIBs) (i.e., injured employees with more than seven days of lost time) who have initially returned to

¹² See Research and Oversight Council on Workers' Compensation, *Returning to Work: An Examination of Existing Disability Duration Guidelines and Their Application to the Texas Workers' Compensation System: A Report to the 77th Legislature*, 2001; and Workers' Compensation Research Institute, *CompScope Benchmarks for Texas*, 6th Edition, 2006.

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work post-injury. In fact, the 2005 legislative reforms to the Texas workers' compensation system appeared to have helped temper the effects of the economic downturn in Texas. Despite the economic decline in late 2009-2012, a higher percentage of injured employees receiving income benefits went back to work within six months in 2012 (77 percent), compared to 2004 (74 percent) (see Figure 15). Since 2001, the percentage of injured employees returning to work within six months of their injury has increased by seven percent.

Figure 15: Percentage of Injured Employees Receiving TIBs Who Have Initially Returned to Work within 6 Months Post-Injury



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.

While the percentage of injured employees who initially return to work is an important benchmark of system performance, whether these injured employees remain employed once they go back to work is a more accurate measure of the system's ability to promote "successful" return-to-work initiatives. As Table 5 indicates, the percentage of injured employees receiving TIBs who have initially returned to work and remained employed for at least three successive quarters (or nine months) also continues to improve. Roughly 74 percent of employees injured in 2012 who initially returned to work within the first six months of their injuries remained employed for three consecutive quarters, compared to only 66 percent in 2004. Like the initial return-to-work rates in Figure 15, the percentage of TIBs recipients who returned to work and remained employed declined from 2009 to 2011 due to the impact of the U.S. recession and

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continuing higher unemployment rates. DWC will continue to monitor the impact of the recession and the subsequent economic recovery on return-to-work rates for workers' compensation claims in future reports.

Table 5: Percentage of Injured Employees Receiving TIBs Who Have Initially Returned to Work and Remained Employed for Three Successive Quarters (6 Months to 3 Years Post-injury)

Injury Year	Within 6 Months Post Injury	Within 1 Year Post Injury	Within 1.5 Years Post Injury	Within 2 Years Post Injury	Within 3 years Post Injury
2008	72%	75%	77%	80%	83%
2009	68%	75%	78%	81%	84%
2010	69%	76%	79%	82%	85%
2011	68%	76%	79%	81%	
2012	74%				

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.

Note 1: The study population consists of 294,732 employees injured in 2008-2012 who also received Temporary Income Benefits (TIBs). Note 2: The third year of 2011, and the 1.5, second, and third years of 2012 are excluded due to insufficient data. Note 3: Sustained return-to-work rates for 2012 injuries are subject to change, as more wage data is made available for injuries occurring in the latter quarters of 2012.

Not only have the percentage of injured employees who returned to work and remained employed improved since the 2005 legislative reforms to the Texas workers' compensation system in HB 7, but the amount of time the average injured employee who received TIBs is off work after an injury has also decreased from a median of 28-29 days in 2004-2005 to 20-21 days in 2012-2013. Additionally, results from the 2014 Workers' Compensation Network Report Card produced by the Workers' Compensation Research and Evaluation Group indicate that with two

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exceptions, injured employees from seventeen network entities had higher or same initial return-to-work rates than non-network claims. The improved performance of most networks over non-network claims may be the result of coordination between system participants, including employers to return injured employees to work.

DWC will continue to monitor these return-to-work measures on a continuous basis to track the impact of the implementation of treatment and return-to-work guidelines and the impact of workers' compensation health care networks on return-to-work outcomes in Texas.

Medical Disputes Have Significantly Declined

In addition to high costs and poor outcomes, the 2001 and 2005 legislative reforms to the Texas workers' compensation system also focused on reducing friction for health care providers, injured employees and insurance carriers by requiring medical necessity disputes to be resolved by Independent Review Organizations (i.e., panels of doctors certified by TDI), as well as implementing the use of standardized medical billing forms/documentation requirements/coding requirements, certified health care networks and evidence-based treatment guidelines. Generally, there are three types of medical disputes raised in the workers' compensation system:

- **fee disputes** (which may include a dispute over the application of the DWC's fee guidelines as well as billing requirements);
- **preauthorization disputes**¹³ (i.e., disputes regarding the medical necessity of certain medical treatments that were denied prospectively by the insurance carrier); and

¹³ Labor Code, Section 413.014 and 28 Texas Administrative Code (TAC) §134.600 include a list of medical treatments and services that require preauthorization by the insurance carrier before they can be provided to an injured employee. Networks are not subject to these preauthorization requirements and may establish their own lists of medical treatments and services that require preauthorization. See Texas Insurance Code, Section 1305.351.

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- **retrospective medical necessity disputes** (i.e., disputes regarding the medical necessity of medical treatments and services that have already been rendered and billed by the health care provider).

As Table 6 indicates, there has been a significant reduction in the number of medical disputes filed with DWC as a result of the 2005 legislative reforms to the Texas workers' compensation system. In 2003, DWC's predecessor, the Texas Workers' Compensation Commission, received approximately 17,433 medical disputes, but by 2013 that number had fallen by about 70 percent to 5,187. The decline in disputes is related to several factors, such as fewer claims filed, the creation of health care networks in 2006, the adoption of DWC's medical treatment guidelines in 2007, and DWC's adoption of new professional, inpatient and outpatient hospital and ambulatory surgical center fee guidelines in 2008.

*Medical disputes
have declined 70
percent from
2003 to 2013.*

There has also been a shift over time in the distribution of medical disputes in the Texas workers' compensation system. Prior to the HB 7 legislative reforms to the Texas workers' compensation system, a higher share of medical disputes involved medical treatments that were denied retrospectively as not medically necessary by the insurance carrier. With the increased emphasis on pre-authorization in HB 7 2005, most retrospective medical necessity disputes disappeared from the system and the percentage of pre-authorization disputes increased from 13 to 26 percent.

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Table 6: Number and Distribution of Medical Disputes Submitted to DWC, by Type of Medical Dispute (as of August 2014)¹⁴

Year Dispute Received	Pre-authorization	Fee Disputes	Retrospective Medical Necessity Disputes	Total
2003	11%	70%	19%	17,433
2004	13%	60%	27%	14,291
2005	13%	68%	19%	13,257
2006	16%	70%	14%	9,706
2007	27%	72%	1%	8,810
2008	22%	75%	3%	12,244
2009	24%	74%	2%	12,293
2010	41%	58%	1%	7,596
2011	35%	63%	2%	7,795
2012	37%	62%	1%	5,643
2013	26%	73%	1%	5,187

Source: Texas Department of Insurance: Division of Workers' Compensation and Workers' Compensation Research and Evaluation Group, 2014.

Claim Denial Rates and Requests for Indemnity Dispute Resolution Decline, but Designated Doctor Disputes Rose Significantly in 2011 and 2012

The number of workers' compensation claims initially denied or disputed by the insurance carrier as not being work-related decreased by 43 percent in recent years from more than 18,000 in 2005 to approximately 10,500 in 2013. As a percentage of all reportable claims, these whole-claim denials declined from 16 to 13 percent over the same duration (see Figure 16). These numbers reflect initial compensability (i.e., whether an injury is work-related or not) and liability denials and do not account for denied claims that were eventually approved either

¹⁴ From August 2008 to August 2009, one health care provider filed approximately 6,000 pharmacy fee disputes against one insurance carrier. DWC upheld a great majority of these disputes in favor of the insurance carrier (approximately 60 percent of all fee disputes decisions made during those years), and the requestor eventually withdrew all of the disputes during the appeal process.

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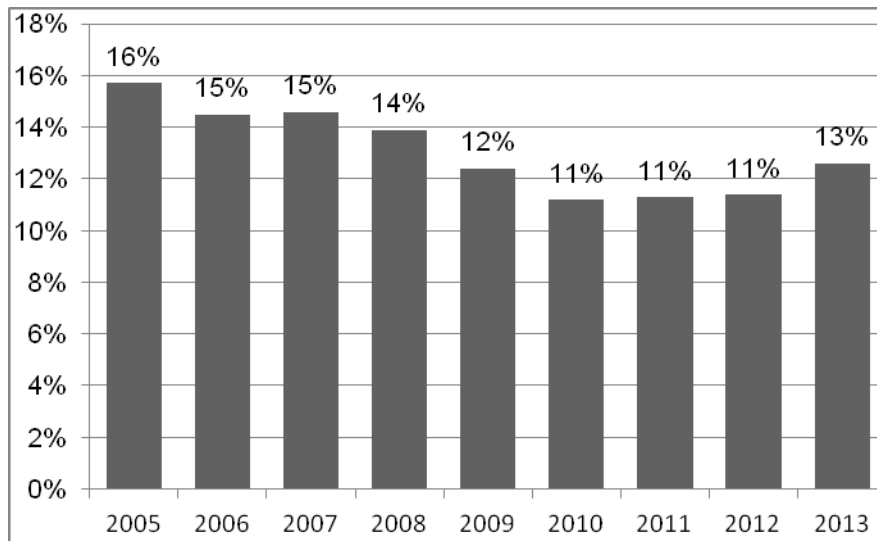
through a mutual agreement between the injured employee and the insurance carrier or determined to be “work-related” during DWC dispute proceedings.

Calculating partial claim denial rates for workers’ compensation claims is more complicated because many of these extent-of-injury (the extent of the compensable injury) denials occur at later points in

the claim process. Although insurance carriers are required to provide notice of these denials to injured employees using the plain language notice promulgated by DWC (i.e., PLN-11 form), this form is used for multiple purposes, including disputes over disability and eligibility to death benefits. DWC has recently proposed changes to the PLN-11 form, which would allow additional data to be collected so that extent-of-injury denial trends can be more accurately monitored.

Insurance carriers denied fewer claims in 2013. About 13 percent of reportable claims were denied in 2013, compared to about 16 percent in 2005.

Figure 16: Percentage of Reportable Claims That Are Initially Denied/Disputed, by Injury Year



Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2014.

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The vast majority of claims, 92-98 percent, are handled without the need for dispute resolution by DWC.

Although much of the system's focus, energy and resources are spent on those workers' compensation claims that have a dispute between the insurance carrier and the injured employee, it is important to understand that only a very small percentage of workers' compensation claims ever end up in a dispute at DWC (see Table 7). This means that the vast majority (92-98 percent) of workers' compensation claims are handled without the need for dispute resolution by DWC.

Table 7: Percentage of Reportable Claims with a Workers' Compensation Dispute Proceeding at DWC by Calendar Year of Injury

Calendar Year of Injury	Percentage of Claims
2008	7%
2009	7%
2010	7%
2011	8%
2012	7%
2013	5%*

Source: Texas Department of Insurance, Division of Workers' Compensation, System Data Report, 2014, data through December 2013.

Note: *The percentage of claims with a dispute proceeding may continue to increase as issues arise on more recent injury claims.

Along with reductions in the number of workers' compensation claims filed with DWC over time, the number of Benefit Review Conferences (BRC) requests has also decreased steadily over the past ten years. A BRC is an informal meeting with the injured employee, an insurance carrier representative, and a DWC Benefit Review Officer to discuss and attempt to resolve disputed issues. An injured employee or an insurance carrier may request a BRC. In 2003, system participants requested a total of 57,609 BRCs. By 2013, that number fell to 14,070 requests, a 76 percent decrease since 2003 (see Figure 17). Some of the decreases in the number of BRC

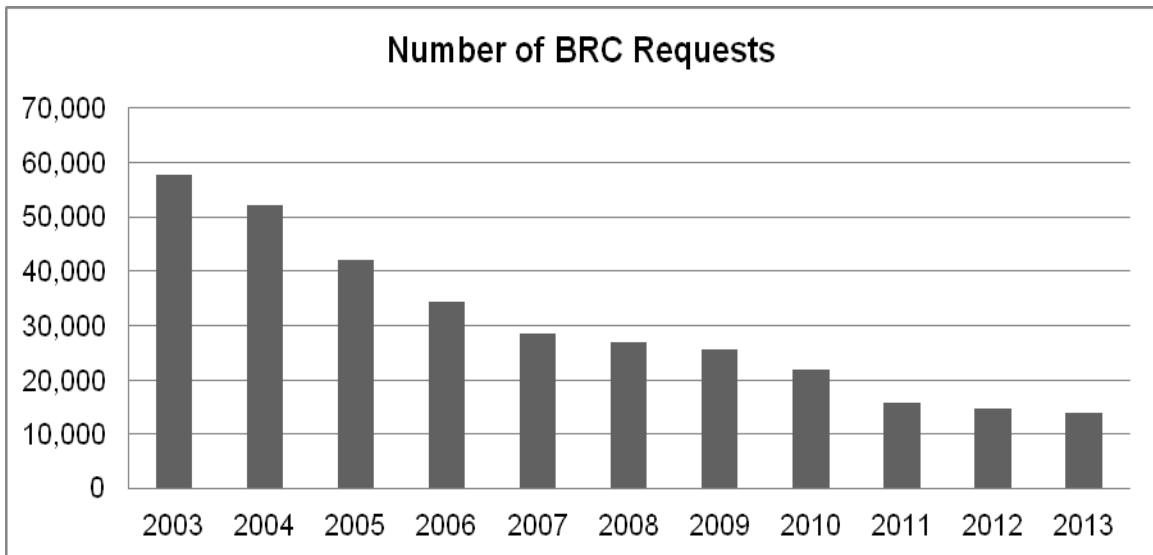
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requests can be attributed to the decline in the number of reportable claims between 2003 and 2013; however, the number of BRC requests fell by 76 percent over the same period, which is double the rate of the decrease experienced by reportable claims.

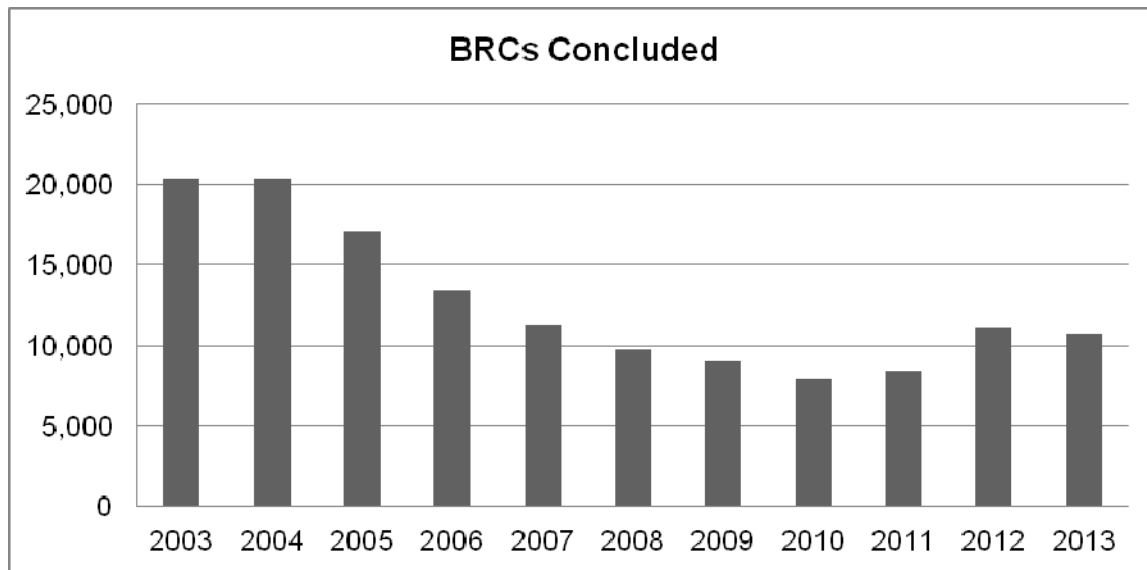
In addition to the lower number of BRC requests, the number of concluded BRCs also declined steadily from 2003 to 2010 by 61 percent (See Figure 18). However, the trend changed course after 2010, increasing by 40 percent in 2012, followed by a slight decrease (4 percent) in 2013. Despite the more than 10,000 BRCs concluded in 2013, that number was still 47 percent lower than the number of concluded BRCs in 2003. Further, the 4 percent decrease in BRCs concluded during 2013 raises doubt that the 2012 increase is indicative of a long-term increasing trend.

The number of Benefit Review Conferences concluded on workers' compensation disputes has declined 47 percent since 2003, but Designated Doctor disputes account for almost 60 percent of disputed issues.

Figure 17: Number of Benefit Review Conference Requests Received, 2003 - 2013



Source: Texas Department of Insurance, Division of Workers' Compensation, System Data Report, and Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.

Figure 18: Number of Benefit Review Conferences Concluded by DWC, 2003 - 2013

Source: Texas Department of Insurance, Division of Workers' Compensation, System Data Report, and Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.

Given the decrease in the number of concluded BRCs in 2013, it seems more likely that the increases in 2011 and in 2012 were temporary responses to new system requirements.¹⁵ In 2011, DWC adopted amendments to BRC rules in accordance with the Texas Workers' Compensation Act. These rules clarified that disputing parties must request a BRC to stop the 90-day finality of the first impairment rating and date of Maximum Medical Improvement (MMI) and follow through on the dispute request. The date of MMI is the earliest of: 1) the date a doctor determines an injured employee has recovered from the work-related injury as much as can be anticipated or 2) 104 weeks after income benefits began to accrue with exceptions for spinal surgery. The impairment rating is the percentage of permanent impairment to the whole body resulting from a compensable injury. Prior to the 2011 rule adoption, injured employees and insurance carriers would try to stop the statutory 90-day finality of the first impairment rating or date of MMI by submitting a BRC request to DWC and then writing on that request that the party did not want a BRC, which was inconsistent with the statutory intent to dispute the

¹⁵ Labor Code, Section 408.0041 states that an injured employee's first impairment rating or date of MMI becomes final if it is not disputed after 90 days from the date it was assigned to the injured employee.

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first impairment rating or date of MMI by the 90th day or it would become final.¹⁶ Also in 2011, the 82nd Legislature passed HB 2605, which required parties to demonstrate efforts to resolve disputes prior to requesting a BRC, as well as required parties to show “good cause” to cancel or reschedule a BRC, instituted deadlines for rescheduling BRCs and required DWC to hold a BRC if a party fails to appear unless the party demonstrates “good cause.”

In 2011 and 2012, the number of requests by parties to reschedule BRCs increased significantly (46 percent increase from 2010 to 2011), but those requests subsequently declined 15 percent in 2013. The primary reasons for these reschedule requests indicate that many of the parties who requested these BRCs were not adequately prepared to resolve the dispute (about half of the requests to reschedule), which indicates that they were likely requesting the BRCs for procedural reasons.

The increase in disputes during 2011 and 2012 primarily involve three primary dispute issues that are generally brought up together in the same dispute (i.e., disputes over Designated Doctors' impairment ratings, disputes over Designated Doctors' MMI dates, and disputes regarding extent-of-injury). Designated doctors are doctors appointed by DWC to recommend a resolution of dispute over the medical condition of an injured employee. These three disputed issues comprised 86 percent of the increased number of disputed issues from 2011 to 2012. The combined share of these three disputed issues increased gradually between 2008 and 2010 (from 28 percent to 34 percent). However, by 2013, their share of all dispute issues had jumped to nearly 60 percent (see Figure 19).

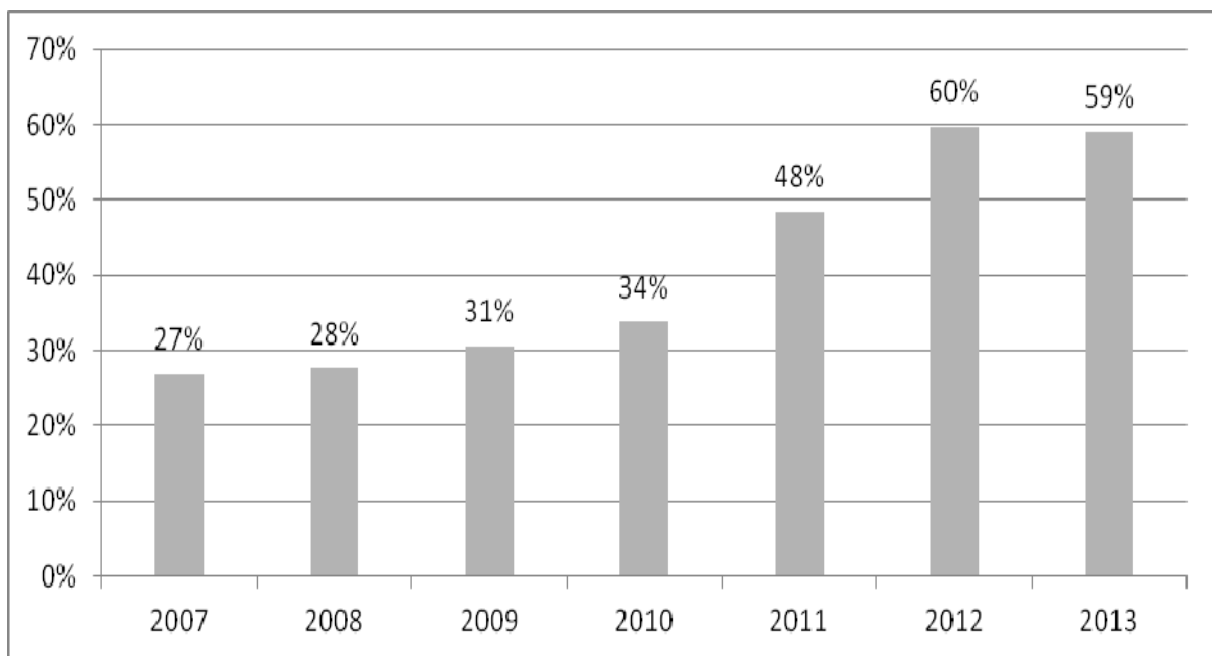
Increases in these disputed issues coincide with the passage of new BRC rules clarifying that a BRC must be requested and scheduled in order to stop the 90-day finality of the first impairment rating/date of MMI. Additionally, by statute insurance carriers must first request an evaluation by a DWC-assigned Designated Doctor to determine if the employee is at MMI, and if so, what the impairment rating is before they can request an evaluation by a doctor of their choice. As a

¹⁶ 28 TAC §130.12 (b), which became effective in March 2004, also lays out the requirements to dispute the first certification of MMI or the impairment rating by requesting a designated doctor or by requesting a BRC under 28 TAC §141.1.

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result, there are many instances where the DWC-assigned Designated Doctor is the first doctor to determine whether an injured employee has reached MMI or has an impairment rating. Therefore, it is often the Designated Doctor's first MMI date or impairment rating that may become final if it is not disputed within 90 days by either the insurance carrier or the injured employee, which is why disputes regarding Designated Doctor reports increased in 2011 and 2012.

Figure 19: Percentage Share of Total BRC Issues, Extent-of-Injury, Designated Doctor Impairment Rating, and Designated Doctor MMI Date



Source: Texas Department of Insurance, Division of Workers' Compensation, System Data Report, and Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2014.

Dispute outcomes have also changed with the influx of new Designated Doctor disputes in 2011 and 2012. By statute, DWC-assigned Designated Doctors have presumptive weight in DWC administrative dispute proceedings¹⁷ since these doctors are independently assigned by DWC to

¹⁷ In Texas, workers' compensation disputes are resolved through a multi-level administrative dispute process. The first level, the BRC, is an informal mediation between the parties held at a local DWC field office. Unresolved disputes at the BRC are then heard at a formal Contested Case Hearing or CCH, which is also held in a local DWC field office. If the parties are still dissatisfied, the CCH decision can be appealed to the Appeals Panel, a panel of administrative law judges, who review the CCH decision and either uphold it, overturn it or remand it back to the CCH. If the parties are still dissatisfied with the dispute, they may appeal the Appeals Panel decision to district court.

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resolve certain issues, such as MMI and impairment ratings, and receive special training and testing. As such, parties that dispute a Designated Doctor report must overcome this statutory presumptive weight through a preponderance of the evidence in order to prevail in the dispute. In FY 2010, prior to the influx of these Designated Doctor disputes, approximately 52 percent of disputed issues at the Contested Case Hearing (CCH) level of the administrative dispute resolution process were resolved in favor of the injured employee or by mutual agreement. A CCH is a formal hearing where a DWC Hearing Officer makes a decision, in writing, about the disputed issue(s) that were not resolved at the BRC. This number dropped to approximately 42 percent in Fiscal Year 2012 because in the vast majority of Designated Doctor disputes, the Designated Doctor report is upheld. DWC will continue to monitor these dispute trends to determine if any statutory or regulatory changes are needed in the future and to ascertain if the trends in 2011 and 2012 were simply short-term reactions to new requirements or a more permanent trend. Despite the recent increases, overall disputes decreased by almost half in the last ten years.

Concluding Remarks

The Texas workers' compensation system has changed significantly over time as a result of significant legislative reforms in 2001 and 2005 and continues to show signs of progress. Early indications show that these reforms have helped to stabilize claims costs, improve return-to-work rates, and improve injured employees' access to medical care. The number of medical fee and income benefit disputes filed with DWC is down overall and non-fatal occupational injury and illness rates also reduced as workers' compensation claim frequency continues to decline. These improvements in system outcomes have helped reduce workers' compensation insurance costs in Texas since 2005, which has resulted in lower workers' compensation insurance premiums resulting in more employers making the decision to provide workers' compensation coverage for their employees. Certified health care networks, an important component of the 2005 legislative reforms, have now begun to show their ability to improve return-to-work outcomes, as well as improve timeliness of care for injured employees.

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Given the magnitude of the legislative reforms that were passed in 2001 and 2005 and the results of those reforms, significant legislative changes to the Texas workers' compensation system are not recommended at this time. DWC's focus over the next two years will be to continue monitoring the implementation of previous legislative reforms; work towards improving electronic communications with system participants; enforce existing laws and rules; encourage employers to provide safe workplaces for their employees; ensure that insurance carriers handle their claims timely and fairly; improve data collection; fine tune dispute resolution processes; and review outdated rules and forms to improve system efficiency.

Although OSHA has the primary responsibility for regulating workplace safety issues in Texas, reducing workplace fatalities and encouraging employers to provide safe workplaces for their employees must be a priority for all system participants, including DWC. DWC will be looking for ways in the next biennium to leverage relationships with industry experts and other agencies to identify and educate employers on best practices for safety. DWC also sees the need to better educate injured employees about their rights and responsibilities within the workers' compensation system and to provide the outreach necessary to ensure that injured employees can successfully navigate the system. As such, DWC plans to enhance its coordination with the Office of Injured Employee Counsel, the state agency dedicated to assisting and advocating for injured employees, so that both agencies can maximize their resources to improve communications to injured employees. DWC is also in the process of piloting new plain language educational materials and hosting face-to-face outreach sessions in local field offices in an attempt to help injured employees better understand the basics about workers' compensation.

DWC will continue to look for ways to reduce disputes and encourage system participants to be more prepared for dispute proceedings. Last fiscal year, DWC piloted a new scheduling order at the BRC level to identify areas where disputing parties needed to gather additional information or evidence prior to scheduling a second BRC on a claim-specific dispute. To support the new scheduling order, DWC has also been making follow-up phone calls to system participants to monitor their progress in gathering the additional information needed for their disputes, as well as to assist parties to obtain missing information as necessary. Because of the increase in Designated Doctor disputes involving extent-of-injury issues, it has become clear that injured

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employees need better access to injury causation analyses from their treating doctors. In response, DWC is the process of creating new training materials for treating doctors to help them understand the importance of these analyses and to educate them on what information is needed by DWC in the case of a dispute. All of these new DWC initiatives are too new to fully evaluate their effectiveness, but they demonstrate a commitment by the agency to continue to identify system issues and look for solutions.

WORKERS' COMPENSATION LEGISLATIVE RECOMMENDATIONS

Increase the Maximum Reimbursement for Burial Benefits in the Texas Workers' Compensation System

BACKGROUND: The Texas Workers' Compensation Act provides for various types of indemnity benefits payable to injured employees and their beneficiaries in the case of a compensable occupational injury, illness or death. One of these types of indemnity benefits, burial benefits, is designed to compensate the person (i.e., a family member, friend, etc.) who pays for the costs of burial for the deceased employee.

Currently, the statute allows for the compensation of burial expenses up to \$6,000 per workers' compensation claim, or the actual costs incurred for reasonable burial expenses, whichever is less. This burial benefit has not increased since the passage of House Bill 2510, 76th Legislature, Regular Session, effective September 1, 1999, when the burial benefit was increased from \$2,500 to \$6,000.

ISSUE: According to the National Funeral Directors Association, the national median cost of an adult funeral in 2012 was \$8,343 (most current data available). This cost estimate does not take into account crematory fees, cemetery, obituaries, and monument or marker costs. Twenty-nine states currently provide burial benefits in amounts that exceed \$6,000 and sixteen states

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currently provide at least \$10,000 or more in burial benefits in the case of a compensable death.¹⁸

As a result, current compensation of burial benefits have not kept up with increased costs associated with burial expenses in today's market, which places undue economic pressure on family and friends of deceased employees to make certain burial decisions to stay within the burial benefit amount designated by statute or pay the remaining burial expenses out of their own pocket. Over the past decade, the median cost of an adult funeral in the United States has increased approximately 35.2 percent.¹⁹

RECOMMENDATION: Amend Section 408.186(a), Labor Code to increase the maximum reimbursement for burial benefits payable under the Workers' Compensation Act from \$6,000 to \$10,000.

Establish a Pilot Safety Reimbursement Program for Small Employers

BACKGROUND: Section 402.021, Labor Code, outlines the legislative intent for the Texas workers' compensation system and includes, as part of that intent, that the workers' compensation system "must promote safe and healthy workplaces through appropriate incentives, education and other actions." The best possible outcome for Texas employers and employees is to prevent unnecessary workplace injuries and illnesses, and to "reduce, and to every reasonable extent eliminate the causes of loss of production, reduction of work hours, temporary and permanent incapacity of workers, and increases in certain insurance rates."²⁰

As part of its statutory duty to administer the workers' compensation system, the DWC provides numerous free safety resources for Texas employers, including customized onsite workplace

¹⁸ Workers' Compensation Research Institute and International Association of Industrial Accident Boards and Commissions, *Workers' Compensation Laws as of January 1, 2014*, available at http://www.wcrinet.org/studies/public/books/wclaws_2014_book.html.

¹⁹ National Funeral Directors Association, *Funeral Service Trends and Statistics*, (April 12, 2013) available at <http://nfd.org/about-funeral-service-/trends-and-statistics.html>.

²⁰ See Section 411.101, Labor Code.

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safety and health training, the Occupational Safety and Health Consultation (OSHCON) Program, an extensive library of safety publications and safety DVDs for employer use, the US Department of Labor's Occupational Safety and Health Administration (OSHA) 10-hour construction classes, and safety and health newsletters. DWC also hosts an annual safety and health conference for Texas employers, which focuses on accident prevention issues such as transportation safety, workplace violence prevention, effective safety management processes, and regulatory compliance.

Building on the existing safety resources for Texas employers, DWC has recently expanded its efforts to promote workplace safety and health issues. These efforts include publicly recognizing employers with exemplary safety programs who qualify for the DWC Peer Review Safety award and the DWC OSHCON Safety and Health Recognition Program (SHARP) award. Additionally, DWC is focusing more attention on transportation safety issues through industry roundtables and educational outreach, because transportation incidents remain the leading cause of workplace fatalities in Texas.

ISSUE: While Texas has consistently seen lower non-fatal occupational injury and illness rates compared to the national average for years, Texas has a higher number of workplace fatalities than most states, primarily due to the size of the state and the state's industry mix. Generally speaking, smaller employers (i.e., employers with fewer than 50 employees) often do not have the resources available to purchase necessary safety equipment or provide additional safety training to reduce or eliminate workplace hazards. As a result, these smaller employers are at a disadvantage compared to larger employers who can employ risk management or loss control personnel for this purpose.

Although DWC provides numerous safety resources to Texas employers, recognizes that small employers and employers in certain high risk industries could benefit from a safety reimbursement program; similar to an existing program for return-to-work issues under Section 413.022, Labor Code. Other states, including Wyoming, Ohio, Minnesota, and Washington offer similar employer safety reimbursement programs to their employers.

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RECOMMENDATION: Amend Chapter 411 of the Labor Code to add a new Section 411.111, to establish a pilot safety reimbursement program for small employers (i.e, employers with fewer than 50 employees) and employers in certain high-risk industries through Fiscal Year 2019. This program would provide reimbursements to employers with workers' compensation coverage who incur allowable expenses to improve workplace safety (e.g., workplace modifications, purchase safety equipment, provide additional safety training). Reimbursements would be available on a first come-first serve basis up to a maximum amount per year (\$100,000). Individual employer reimbursements would not exceed \$5,000 per year.

By December 1, 2018, DWC would include, as part of its biennial report to the Legislature, an analysis detailing the results of the pilot safety reimbursement program with a recommendation of whether the Legislature should continue the safety reimbursement program beyond Fiscal Year 2019.