

Setting the Standard

An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System



2020 Results

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TDI Research and
Evaluation Group



**Texas Department
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December 1, 2020

The Honorable Greg Abbott, Governor
The Honorable Dan Patrick, Lieutenant Governor
The Honorable Dennis Bonnen, Speaker of the House

Dear Governors and Speaker:

In accordance with Texas Insurance Code §2053.012 and Texas Labor Code §405.0025, the Texas Department of Insurance, Division of Workers' Compensation presents the biennial report on the impact of the 2005 House Bill 7 reforms on the affordability and availability of workers' compensation insurance for Texas employers and the impact of certified workers' compensation health care networks on return-to-work outcomes, medical costs, quality of care issues, and medical dispute resolution.

Please contact Jeff Nelson, Director of Division of Workers' Compensation External Relations, at 512-804-4405 if you have any questions or to request a briefing on this information.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Slape".

Doug Slape
Chief Deputy Commissioner of
Insurance

A handwritten signature in blue ink, appearing to read "C. Brown".

Cassie Brown
Commissioner of Workers' Compensation

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EXECUTIVE SUMMARY

Texas Insurance Code §2053.012 and Texas Labor Code §405.0025, require the Texas Department of Insurance (TDI) and the Workers' Compensation Research and Evaluation Group (REG) to issue biennial reports to the Texas Legislature no later than December 1 of every even-numbered year on the impact of the 2005 House Bill (HB) 7 reforms on the workers' compensation system. The report analyzes the affordability and availability of workers' compensation insurance for Texas employers and the impact of certified workers' compensation health care networks (networks) on return-to-work outcomes, medical costs, access and utilization of health care, injured employee satisfaction, health-related outcomes, complaints, and medical dispute resolution. The following are key findings from this analysis of the HB 7 reforms:

The Workers' Compensation Insurance Market

- Workers' compensation insurance has been profitable each year since 2004, as measured by the industry's combined ratios and return on net worth.
- Since 2003, insurance rates decreased nearly 72 percent.
- Average premiums decreased from a high of \$2.32 per \$100 of payroll in policy year 2003 to 63 cents per \$100 of payroll in policy year 2018. This is a reduction of about 73 percent.
- Rating tools which recognize individual risk variations, such as schedule rating and experience rating, continue to play a significant role in determining an employer's premium.

Key Findings:

Insurance Market:

With a 10-year average return on net worth of 10 percent for workers' compensation, Texas outperforms the national average of 7.4 percent, while the average premium per \$100 of payroll has decreased 73 percent since 2003.

Employers with Workers' Compensation:

Employer subscription rates since 2016 remain the highest since the first employer survey in 1993.

Medical Costs: Texas' cost-per-claim with 12 months maturity is about 24 percent less than the median cost of the 18 states analyzed.

Medical Utilization: The percentage of injured employees receiving professional and hospital services since 2005 has changed very little. Fewer injured employees are receiving pharmacy services compared to 2005 as a result of the pharmacy closed formulary implemented in 2011.

Satisfaction with Care: 80 percent of injured employees report that the medical care for their work-related injury was as good or better than their routine medical care.

Access to Care: Today on average, injured employees are waiting half as long to get their first non-emergency medical visit as they did in 2011.

Health Outcomes: Injured employees in Texas have improved their physical and mental functioning status significantly since 2005.

Return to Work: More injured employees receiving income benefits are getting back to work within six months - 83 percent compared to 74 percent in 2004.

- Loss ratios are lower for claims in a network than for non-network claims, and insurers continue to offer premium discounts to employers for participating in a network.

Workers' Compensation Health Care Networks

- As of June 1, 2019, TDI certified 30 networks covering 254 Texas counties to provide workers' compensation health care services to insurance carriers.
- About 48 percent of new claims are treated in networks, compared to 20 percent in 2010; however, network penetration has plateaued for the past six years.
- Since 2006, about 1.1 million injured employees have been treated in workers' compensation networks.

Access to Care, Satisfaction with Care, and Health-Related Outcomes

- The average number of days from the date of injury to the first non-emergency medical visit was cut in half from 2011 to 2020 (from 10.4 days to 4.9 days for non-network claims and 8.0 days to 4.0 days for network claims). Injured employees in networks consistently receive non-emergency medical care faster than non-network claims.
- A 2020 survey of 3,157 injured employees (administered by Texas A&M University and analyzed by REG) shows that 65 percent of injured employees reported no problem getting the medical care they felt they needed for their work-related injury, compared with 52 percent of injured employees surveyed in 2005.
- Most injured employees surveyed in 2020 (88 percent) reported that their ability to schedule a doctor's appointment was as good or better than their normal health care. These perceptions have not significantly changed since 2005.
- A slightly higher percentage of injured employees surveyed in 2020 reported that their treating doctor provided them with good medical care that met their needs, compared to injured employees surveyed in 2005.
- Most injured employees surveyed in 2005 (81 percent) and 2020 (80 percent) reported that the medical care they received for their work-related injury was as good or better than their routine medical care.
- Injured employees in Texas have improved their physical and mental functioning status significantly since 2005. The physical functioning score for injured employees increased from 38.4 in 2005 to 46.0 in 2020, while the mental functioning score increased from 46.6 in 2005 to 51.0 in 2020. Overall, the physical and mental functioning scores for injured employees in networks are higher than those scores for injured employees not in a network.

Medical Costs and Utilization of Care

- In 2001, Texas was among the highest nationally in terms of medical costs per claim, according to a multi-state comparison by the Workers' Compensation Research Institute. Today, Texas' cost per claim at 12 months maturity is about 24 percent less than the

median cost of the 18 states in the analysis, which included Florida, Pennsylvania, Louisiana, and Illinois.

- Despite medical cost inflation and annual increases in the medical fee guideline, the average professional medical cost per claim has not changed significantly from 2005 to 2019 for lost-time claims. Average medical cost per claim did increase for medical-only claims during this same period.
- From 2005 to 2019, overall hospital payments increased from about \$270 million in 2005 to \$396 million in 2019. Average hospital costs per claim at six months post-injury have doubled since 2005 for both lost-time and medical-only claims. The reason for these cost increases appears to be a rise in inpatient and outpatient hospital costs per claim over time.
- From 2005 to 2019, overall pharmacy payments declined 57 percent for lost-time claims (from \$146 million to \$62.4 million), and 63 percent for medical-only claims (from \$27.8 million to \$11.8 million). The average pharmacy cost per claim also declined at six months post-injury for lost-time claims during this period but increased for medical-only claims.
- The amount of medical care provided to injured employees can be measured by the percentage of injured employees receiving certain types of medical services, as well as the amount of those services received per injured employee. There has been little change over time in terms of the percentage of injured employees receiving professional and hospital services since 2005.
- Fewer injured employees received pharmacy services in 2019 compared to 2005 as a result of the implementation of DWC's pharmacy closed formulary in 2011, which requires preauthorization before any not-recommended or "N-drug" can be dispensed to injured employees.
- In general, networks have lower medical costs than non-networks for claims at both six months and 18 months post-injury. Networks' average medical cost for claims with six months maturity fell by 11 percent, from 2010 to 2020. In 2020, the average medical cost per network claim was about 9 percent lower at 18 months post-injury than non-network.
- A higher percentage of injured employees in networks received pharmacy services and professional services like office visits, other physical medicine services, and other diagnostic tests than non-network claims. Overall, a lower percentage of network injured employees received hospital services, compared to non-network injured employees.

Return-to-Work Outcomes

- Return-to-work rates have improved since the 2005 legislative reforms, across all employer size categories, and in almost all industry sectors.
- A higher percentage of injured employees receiving income benefits went back to work within six months in 2017 (83 percent), compared to those in 2007 (78 percent).
- At one year post-injury, about 9 out of 10 employees injured in 2017 returned to work.
- A higher percentage of injured employees surveyed in 2020 (76 percent compared with 64 percent in 2005) reported that they were employed at the time of the survey.

Medical Dispute Resolution and Complaints

Most dispute measures have improved significantly since 2005:

- The number of medical fee disputes decreased about 65 percent, preauthorization and concurrent review disputes decreased about 20 percent, and retrospective medical necessity disputes have essentially disappeared in the system.
- Medical dispute resolution improved significantly after the HB 7 reforms. The timeframe to resolve medical fee disputes declined from an average of 335 days in 2005 to 47 days in 2019, and the timeframe to resolve preauthorization disputes declined from 59 days in 2005 to 19 days in 2019.
- TDI has received relatively few complaints about networks. A total of 1,913 complaints have been filed with TDI since 2006, out of more than 1.1 million injured employees treated in networks. About 25 percent of these complaints were deemed justified.

Employer Participation in the Workers' Compensation System

- Since 1993, REG (and its predecessor) has monitored employer participation in the Texas workers' compensation system through a biennial survey of Texas employers using unemployment insurance data collected by the Texas Workforce Commission. In 2020, the employer survey took place during the COVID-19 pandemic. Readers are cautioned to keep the timing of the survey in mind when interpreting the results.
- Employer non-subscription rates remained essentially flat from 2018 to 2020, from 28 percent to 29 percent of Texas year-round private-sector employers. However, employer subscription rates since 2016 remain the highest rates since the first employer survey in 1993.
- Employer non-subscription rates are highest for small employers (i.e., 1-4 employees) and large employers (i.e., 500+ employees). Despite large insurance rate reductions since 2005, the percentage of large employers without workers' compensation coverage has steadily risen since 2010.
- In 2020, an estimated 19 percent of private-sector employees did not have workers' compensation coverage, which is lower than the estimated 24 percent of employees without workers' compensation coverage in 2004.
- The most frequently cited reasons by non-subscribing employers for not purchasing workers' compensation coverage included having too few employees (63 percent), too few on-the-job injuries (56 percent), workers' compensation wasn't required by law (59 percent), and insurance premiums are too high (48 percent). About one in five non-subscribing employers said that cutting costs because of the pandemic was an extremely important reason why they were non-subscribers.
- The most frequently cited reasons subscribing employers gave for providing workers' compensation coverage was the ability to participate in a network (49 percent), they thought workers' compensation was required by law (43 percent), they were concerned with lawsuits (41 percent), and there were lower workers' compensation insurance rates (27 percent). About 16 percent of subscribing employers said that the ability to provide coverage to employees during the pandemic was an extremely important reason why they purchase coverage.

1. INTRODUCTION

Before 2005, Texas had some of the highest average medical costs per claim compared to other states, and these costs were primarily driven by the amount of medical care provided to injured employees (also known as the utilization of care). Studies conducted by the Workers' Compensation Research and Evaluation Group's (REG) predecessor (the Research and Oversight Council on Workers' Compensation) also highlighted that despite receiving more medical care, injured employees in Texas had poorer return-to-work outcomes and satisfaction with care compared with similarly injured employees in other states.¹ Growing concerns from policymakers about high medical costs and poor outcomes led to the passage of House Bill (HB) 2600 by the 77th Texas Legislature in 2001, and HB 7 by the 79th Legislature in 2005.

HB 7 contained several provisions requiring Texas Department of Insurance (TDI) and REG to evaluate the impact of these reforms on a biennial basis and to report the results to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and the Legislature. Texas Insurance Code §2053.012 and Texas Labor Code §405.0025 require TDI and REG to issue these biennial reports to the Texas Legislature no later than December 1 of every even-numbered year. The reports must include the impact of these legislative reforms on the affordability and availability of workers' compensation insurance for Texas employers, and the impact of networks on return-to-work outcomes, medical costs, access and utilization of health care, injured employee satisfaction, health-related outcomes, complaints, and medical dispute resolution.

TDI and REG continue to track the results of these reforms to fulfill the legislature's intent to improve both the cost and quality of medical care provided to injured employees in Texas, as well as the affordability and availability of workers' compensation insurance for Texas employers.

¹ See Research and Oversight Council on Workers' Compensation, *Striking the Balance: An Analysis of the Cost and Quality of Medical Care in the Texas Workers' Compensation System* (January 2001).

2. THE WORKERS' COMPENSATION INSURANCE MARKET

HB 7 requires TDI to report on the affordability and availability of workers' compensation insurance for employers in Texas. This chapter fulfills this requirement by reviewing:

- market concentration and profitability;
- rates and premiums;
- competitive rating tools; and
- certified healthcare network experience.

Market Concentration

The 2019 total written premium for Texas workers' compensation insurance was \$2.52 billion, with 312 insurers writing policies. Table 2.1 shows premium since 2010, along with employer payroll, which is the exposure base used to price workers' compensation insurance. Premiums climbed to a pre-recession level in 2014, followed by a large decline in 2016 with some recovery in the latest two years, while payroll has been increasing steadily.

Table 2.1: Direct Written Premium and Payroll

Calendar Year	Direct Written Premium (\$B)	Change in Direct Written Premium	Policy Year	Payroll (\$B)	Change in Payroll
2010	\$1.92	-12%	2010	\$285	6%
2011	\$2.16	13%	2011	\$307	8%
2012	\$2.45	13%	2012	\$330	7%
2013	\$2.66	9%	2013	\$353	7%
2014	\$2.84	7%	2014	\$376	7%
2015	\$2.74	-4%	2015	\$390	4%
2016	\$2.35	-14%	2016	\$402	3%
2017	\$2.31	-2%	2017	\$430	7%
2018	\$2.52	9%	2018	\$463	8%
2019	\$2.52	0%			

Sources: Direct Written Premium: TDI's compilation of Texas Statutory Page 14 of the National Association of Insurance Commissioners (NAIC) Annual Statement for Calendar Years Ending December 31, 2010 – 2019, for positive direct written premium only. Payroll: Data compiled by the National Council of Compensation Insurance (NCCI). Note that policy year 2019 data is not yet available.

The top 10 insurance groups wrote about 76 percent of the market in 2019. These 10 groups and their respective total market share have been consistent. Table 2.2 shows the top 10 groups for 2019 along with their historic market share and ranking.

Texas Mutual Insurance Company has consistently been the top writer, with 42 percent of the market and \$1.069 billion in premium in 2019. The Texas Legislature created Texas Mutual 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. It predominately writes voluntary business, competing with the rest of the workers' compensation market. The involuntary (residual) market made up 0.44 percent of the market in 2019 and has consistently been less than one-half percent of the market.²

Table 2.2: Market Share and Ranking by Group

Group	2015	2016	2017	2018	2019
Top 10 Total for Year	79%	77%	77%	78%	76%
Texas Mutual Ins Co	1 40%	1 40%	1 42%	1 44%	1 42%
Travelers Group	2 7%	2 8%	2 8%	2 7%	2 7%
Liberty Mutual Group	3 6%	4 5%	3 5%	3 6%	3 5%
Zurich Ins Group	5 5%	7 5%	5 5%	4 5%	4 5%
Hartford Fire & Cas Group	6 5%	3 5%	4 5%	5 5%	5 5%
Chubb Ltd Group	7 5%	6 5%	6 3%	6 4%	6 4%
American Intl Group	4 5%	8 2%	7 3%	7 2%	7 2%
WR Berkley Corp Group	15 1%	16 1%	14 1%	11 2%	8 2%
CNA Ins Group	10 2%	11 2%	10 2%	9 2%	9 2%
BCBS of MI Group	12 1%	14 1%	13 1%	12 2%	10 2%

Source: TDI's compilation of the Texas Exhibit of Premiums and Losses of the NAIC Annual Statement for Calendar Years Ending December 31, 2015 - 2019. WR Berkley Corp Group and BCBS of MI Group replaced Old Republic Ins Group and Service Ins Holdings Group in 2019 – these groups had been in the top 10 for many years.

One indicator of a competitive market is when market share is not concentrated among certain participants. A commonly accepted economic measure of concentration is the Herfindahl-Hirschman Index (HHI) which considers the relative size and distribution of insurers in a market. A market with an HHI index between 1,500 and 2,500 is considered moderately concentrated and one with an HHI index above 2,500 is considered highly concentrated. The HHI, based on Texas workers' compensation group market shares in 2019, is 1,967, thus the Texas market is considered moderately concentrated.

Profitability

Two important measures of the financial health of the market are the loss ratio and the combined ratio. The loss ratio is the relationship between incurred losses (loss amounts already paid plus amounts set aside to cover future loss payments) and premium collected. The combined ratio is similar, except it combines incurred losses with expenses before comparing to premium.

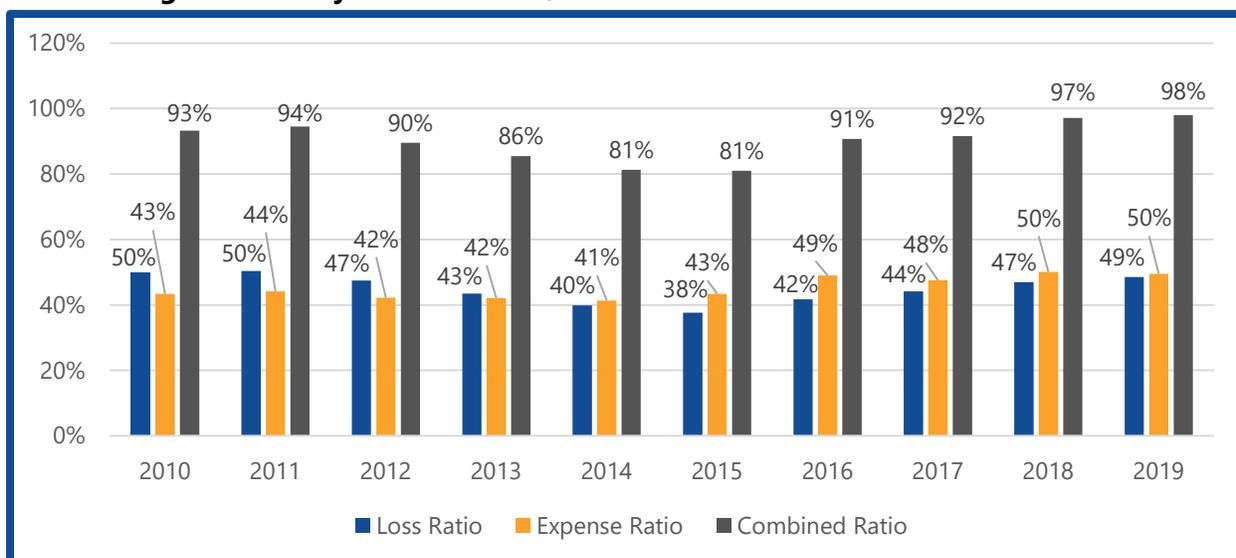
² Texas Mutual writes the involuntary market in its START program. START market share data is from the Texas Annual Legislative Report on Market Conditions.

Expenses include loss adjustment expenses, other expenses, and policyholder dividends. Loss adjustment expenses are costs incurred in processing claims. Other types of expenses include administrative overhead, commissions, taxes, licenses, and fees. Policyholder dividends are an optional return of profits.

For 2019, the estimated combined ratio is 98 percent. This means that for every dollar collected, 98 cents will be used to cover losses and expenses, and the remainder is underwriting profit.

Figure 2.1 shows that the last 10 years have been profitable. After decreasing since 2010, resulting in double digit underwriting profit for many years, the combined ratio has increased to its highest level during this last decade in 2019, but still shows marginal profit.

Figure 2.1: Projected Calendar/Accident Year Loss and Combined Ratios



Sources: NCCI's Texas - State Advisory Forums; NCCI's Texas Financial Call; TDI's compilation of the Insurance Expense Exhibit for Calendar Years Ending December 31, 2010 - 2018. Losses are developed to ultimate using the loss development factors from the NCCI Annual Statistical Bulletin, 2020 edition.

Another measure of profitability is the return on net worth. The return on net worth is the ratio of net income after taxes to net worth, and it indicates the return on equity. It includes income from all sources, including investments, and reflects all federal taxes, whereas the combined ratio reflects only the income from the insurance operations and does not reflect investment income or federal taxes.

With a 10-year average return on net worth of 10 percent for workers' compensation, Texas has outperformed the national average of 7.4 percent, and compares favorably to the 13.7 percent average for all industries in the U.S.

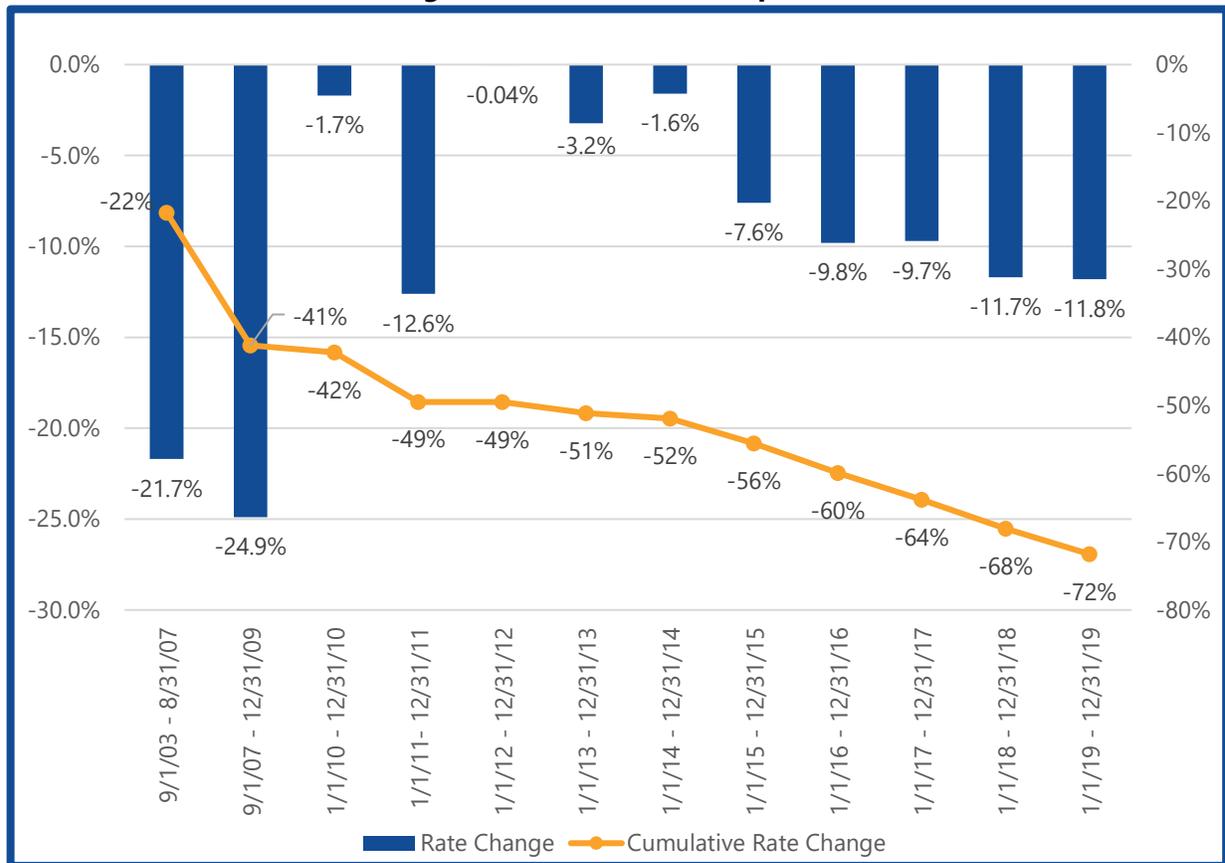
Rates

As shown in Figure 2.2, since 2003, rates have dropped nearly 72 percent. There were large rate decreases in the years following HB 7, reflecting the impact of reforms. Annual rate decreases have also been large in recent years, coinciding with decreases in rate bases during these years.

Rate bases include the National Council on Compensation Insurance (NCCI) advisory loss costs and TDI relativities. Since NCCI's initial Texas filing in 2011, loss costs have decreased by nearly 46 percent, while TDI relativities decreased about 44 percent through 2019. Insurers generally must file to adopt one of these rate bases each year. Senate Bill 1336, 86(R), repealed the relativities as of July 1, 2020. The TDI relativities are no longer produced by TDI or used by insurers, and all insurers have adopted NCCI's loss costs.

Relativities and loss costs are just the starting point for determining rates by classification for workers' compensation coverage. An insurer determines its rates by multiplying the rate bases by payroll and an insurer-specific multiplier. The multiplier covers the insurer's operational expenses, as well as the insurer's loss experience to the extent it differs from the rate bases.

Figure 2.2: Rate Trends Report



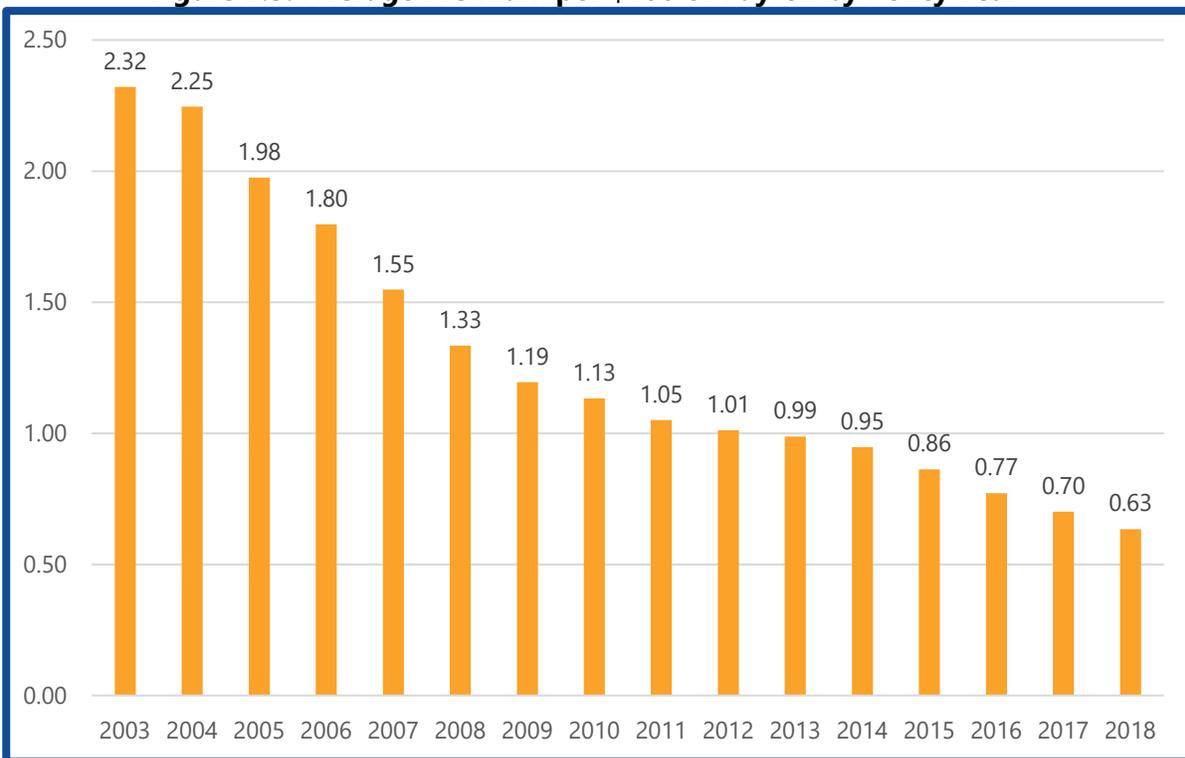
Source: Weighted average of insurer rate filings received by TDI. The period represents effective dates of rate changes. These figures include changes in insurer-specific multipliers, as well as overall changes in the TDI relativities and NCCI loss costs.

Premium

What employers actually pay (the premium) reflects not only rates, but also mandated and optional rating programs that recognize individual risk variations. Mandated programs include experience rating and premium discounts, while optional programs include schedule rating and negotiated deductibles. See Rating Tools section below.

Figure 2.3 shows the average premium per \$100 of payroll for policy years 2003 through 2018. Up until 2003, the industry suffered underwriting losses and the average premium climbed to its peak level of \$2.32 per \$100 of payroll. Starting in 2004, the average premium began to decrease steadily as insurers lowered rates and increased use of optional rating tools. As of 2018, the average premium was down to 63 cents per \$100 of payroll, representing a 73 percent decrease since 2003, coinciding with the average rate reductions that have taken place.

Figure 2.3: Average Premium per \$100 of Payroll by Policy Year



Source: NCCI's Texas Financial Call and data compiled by NCCI, 2020.

The average premiums reflect insurers' filed specific multipliers, as well as adjustments for experience rating, schedule rating, retrospective rating, network premium credits, deductible credits for promulgated deductible plans, and premium discounts. They do not reflect dividends or the impact of some smaller rating modifications, such as small employer premium incentives. Average premiums may change slightly over time, especially for the most recent years, as payroll audits determine final premiums.

Rating Tools Recognizing Individual Risk Variations

One of the revisions that HB 7 made to the workers' compensation statutes was that insurers must consider the effect on premiums of individual risk variations. Additionally, the revisions to the statutes state that neither rates nor premiums may be excessive, inadequate, or unfairly discriminatory.

Individual risk variations discussed in this section include experience rating, schedule rating, and deductibles.

Experience Rating

Experience rating is a rating tool that provides incentives for loss prevention by tailoring the cost of insurance to an individual employer's risk characteristics. It compares an employer's loss experience to the industry average in the same risk classification. While this tool is mandatory, it only applies when an employer's premium meets certain minimum thresholds.

According to data from NCCI, the 10-year average experience rating modification is about 0.86, or a 14 percent premium credit (discount). This discount was consistent during this 10-year period.

Schedule Rating

In addition to experience rating modifications, a credit or debit may be applied to the premium based on an underwriter's evaluation of the risk, up to a maximum modification, generally plus or minus 40 percent. This optional rating tool is known as schedule rating.

Schedule rating reflects characteristics of the employer that may not be fully reflected in the employer's past experience. The general categories often used include: the care and condition of premises; classification peculiarities; medical facilities; safety devices; selection, training, and supervision of employees; and management's cooperation with the insurer and safety organization.

Application of schedule rating to a policy can result in significant changes to the premium charged, even though there has been no change in the insurer's filed rate. Based on NCCI's Texas Financial Call, the average schedule rating adjustment was a credit of about 12 percent for policy years 2015 through 2019. Note that market forces and conditions often influence the use of schedule rating and the size of credits or debits given.

Deductibles

Another cost saving tool that is not reflected in the earlier analyses of loss ratios, combined ratios, and average premiums is a deductible, wherein the employer reimburses the insurer for all or part of a loss. Promulgated deductible plans and optional negotiated deductibles are two

types of deductible options available for Texas employers.³

Promulgated deductible options include per accident, per claim, and medical-only deductibles. Insurers wrote less than one percent of policies with a promulgated deductible in 2019.

Negotiated deductible credits are available for employers with larger premiums or larger deductible amounts, which effectively allows the employer to self-insure. About 4 percent of policies are written using a negotiated deductible. For these policies, the average overall premium credit is substantial, at 71 percent.

Certified Workers' Compensation Health Care Networks

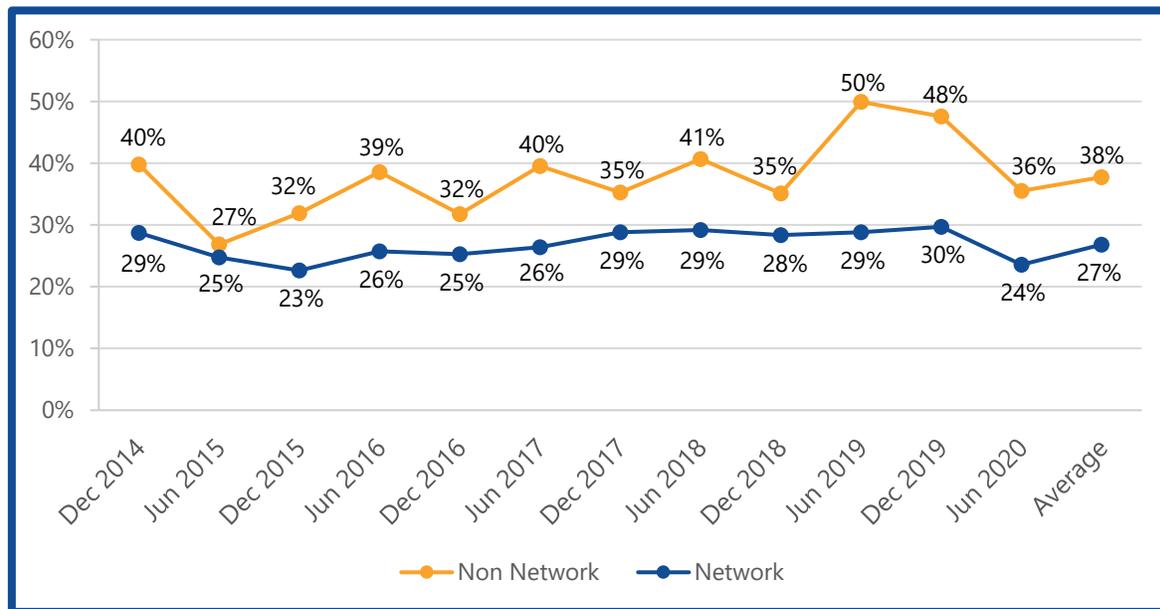
Another way for employers to reduce premiums is through participation in a TDI-certified health care network, which was a main focus of the HB 7 reforms. The objective of these networks was to improve the quality of medical care received by injured employees at a reasonable cost for Texas employers, and to improve outcomes from injuries. Employers that choose to participate in one of these networks receive a credit (discount) on their premiums.

Figure 2.4 shows the loss ratios for 12 of the most recent half-years for the top insurance groups that had more than 20 percent of their policies in networks. The loss ratios were determined using premium before application of the network premium credit to evaluate the reasonableness of the network credit.

The chart shows that the loss ratios for claims in a network are consistently less than the loss ratios for claims outside a network, which demonstrates favorable claims experience for health care networks, and supports the application of network premium credits.

³ NCCI's Texas Financial Call excludes large deductible policies. Insurers report losses for all other deductible policies on a gross basis. That is, if the total loss is \$20,000 and the employer has a deductible of \$5,000, the amount reported in the Financial Call is \$20,000, even though the insurer ultimately pays only \$15,000 of the loss. The direct earned premium is the amount of premium actually earned prior to the payment of policyholder dividends and the application of credits for deductible policies.

Figure 2.4: Loss Ratios for Network and Non-Network Experience



Source: TDI's annual network data call to top insurance groups that had more than 20 percent of their policies in networks. Losses were developed to ultimate.

3. WORKERS' COMPENSATION HEALTH CARE NETWORKS

A key component of the 2005 legislative reforms was the creation of a new workers' compensation health care delivery model, which allows insurance carriers to establish or contract with managed care networks that are certified by TDI using a method similar to the certification of health maintenance organizations.

Overview of the Network Provisions in HB 7

Under HB 7, workers' compensation insurance carriers may elect to contract with or establish workers' compensation health care networks (networks), as long as those networks are certified by TDI.⁴ If an employer chooses to participate in the insurance carrier's workers' compensation network, the employer's injured employees are required to obtain medical care through the network, provided that the injured employee lives in the network's service area and receives notice of the network's requirements from the employer.⁵

Employees receiving network notices are asked to sign an acknowledgment form that indicates which certified network the employer is participating in, and acknowledges that the employee understands how to choose a treating doctor, seek medical care within the network or from a

⁴ TDI's certification process includes a financial review, validation that the network meets the health care provider credentialing and contracting requirements established in TDI's rules, and a detailed analysis of the adequacy of health care providers available to treat injured employees in each proposed network's service area.

⁵ By statute, pharmacy services are exempted from workers' compensation networks.

network-approved referral provider (with the exception of emergency care), and file a complaint with the network or with TDI.

Health care providers and networks negotiate fees rather than use DWC's adopted fee guidelines. Additionally, networks may operate under their own treatment guidelines, return-to-work guidelines, and preauthorization requirements, although these treatment and return-to-work guidelines must meet minimum statutory criteria.⁶ Networks must also have case management and return-to-work coordination services, as well as provide annual quality assurance and financial reports to TDI to ensure that these networks continue to provide high quality medical care to injured employees.

HB 7 also requires REG to publish an annual workers' compensation network report card that evaluates certified networks on measures including medical costs and utilization, return-to-work outcomes, and injured employee satisfaction with and access to medical care.⁷

Growth in Workers' Compensation Networks

TDI began accepting applications to certify networks on January 2, 2006. As of June 1, 2019, TDI certified 30 networks covering 254 Texas counties to provide workers' compensation health care services to insurance carriers.⁸ As of May 31, 2019, 21 certified networks actively treated injured employees.

Public Entities and Political Subdivisions

Labor Code, Chapter 504 allows political subdivisions (such as counties, municipalities, school districts, junior college districts, etc.) to:

- use a network certified by TDI under Insurance Code, Chapter 1305;
- continue to allow injured employees to seek health care as non-network claims; or
- contract directly with health care providers if the use of a certified network is not "available or practical," essentially forming their own health care network.

While not required to be certified by TDI, these Chapter 504 networks must still meet DWC's workers' compensation reporting requirements. As of August 2019, there were 11 Chapter 504 networks servicing multiple political subdivisions.

⁶ Treatment and return-to-work guidelines utilized by certified workers' compensation networks must be "scientifically valid, evidence-based, and outcome-focused" (see Insurance Code §1305.304).

⁷ Per Texas Insurance Code §1305.502, REG is required to produce an annual workers' compensation network report card on key cost, utilization, and outcome measures (www.tdi.texas.gov/reports/wcreg/index.html#wcreports).

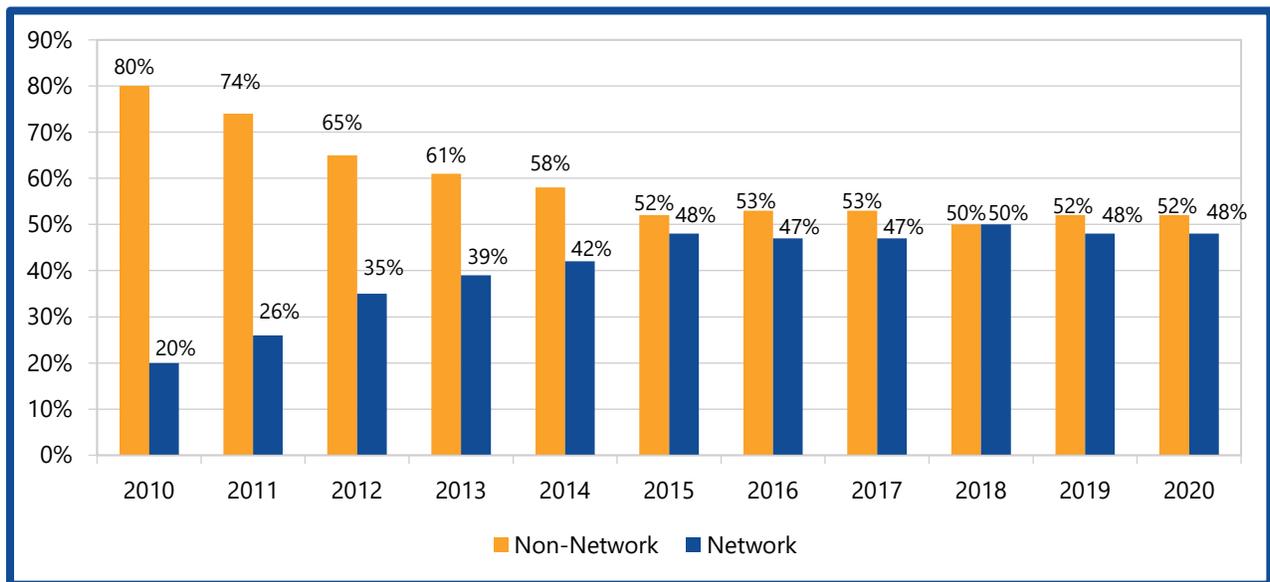
⁸ The following Managed Care Quality Assurance (MCQA) link has the certified networks, each with a list and map of their respective coverage areas www.tdi.texas.gov/wc/wcnet/wcnetworks.html.

Number of Injured Employees Treated in Networks

Each year REG tracks the number of injured employees who were treated by networks through an annual data call with each certified network and each Chapter 504 network. Since 2006, about 1.1 million injured employees have been treated in workers' compensation networks.

The 2020 Network Report Card shows that almost half of all new claims are treated in networks, and the percentage of new claims treated in networks has not changed significantly since 2015 (see Figure 3.1).

**Figure 3.1: Percentage of New Claims in Workers' Compensation Networks
2010-2020**



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020 Workers' Compensation Network Report Card.

4. ACCESS TO CARE, SATISFACTION WITH CARE, AND HEALTH-RELATED OUTCOMES

This section examines injured employee perceptions regarding the quality of their medical care and whether the system has seen improvements in these issues since the 2005 legislative reforms. This section also provides indications of the impact of networks on access to care, satisfaction with care, and health-related outcomes.

Survey Design and Data Collection

REG in conjunction with the Texas A&M University, Public Policy Research Institute conducted an injured employee survey in Spring 2020 to compare injured employees' experiences with their medical care (access to care, satisfaction with care, and health-related outcomes), as well as to

collect information about their experiences returning to work after their work-related injuries. Injured employees were surveyed at about 12 to 24 months post-injury.⁹

Selection of Treating Doctors

Prior to the passage of HB 7 in 2005, injured employees could select a treating doctor from DWC's Approved Doctor List (ADL), a list of doctors who registered and received approval from DWC to participate in the worker's compensation system. The ADL contained approximately 14,000 medical doctors (MDs), osteopaths (DOs), chiropractors (DCs), and other doctors (dentists, podiatrists, etc.) who agreed to participate at some level in the Texas workers' compensation system. To improve access to care and reduce administrative burdens for doctors treating injured employees, HB 7 eliminated the ADL.¹⁰ At the same time, HB 7 paved the way for networks to treat injured employees. Injured employees in networks were required to select a treating doctor from the networks' list of contracted doctors.

Interestingly, while injured employees could select their own treating doctors prior to the passage of HB 7, a significant percentage of injured employees reported that they selected a doctor recommended to them by their employer or insurance carrier. Overall, a significantly higher percentage of injured employees surveyed in 2020 (65 percent) reported that they selected a treating doctor recommended to them by their employer or part of their network's list of treating doctors, compared to injured employees surveyed in 2005 (36 percent).

The Texas Workers' Compensation Act allows a variety of medical specialties to serve as treating doctors for non-network claims. However, HB 7 allowed networks to select or designate certain medical specialties to serve as treating doctors for network claims. As a result, networks tend to use physicians and not chiropractors as treating doctors. In 2020, a higher percentage of injured employees surveyed reported that they selected a physician as their first treating doctor (83 percent), compared with 2005 (57 percent).

A larger percentage of injured employees surveyed in 2020 (89 percent) indicated that the doctor they saw for their workers' compensation medical care was not the doctor they normally saw for their routine medical care compared with 2005 (80 percent). This change may be the result of more injured employees seeking medical care through networks, which, to date, are not generally associated with group health plans that provide routine medical care.

Perceptions Improve Regarding Access to Care

Prior to HB 7, concerns were rising about injured employees' access to care within the Texas workers' compensation system. Physicians, particularly surgical specialists, expressed resistance to treating injured employees because of administrative burdens related to treating workers' compensation cases and inadequate reimbursement levels resulting from the Texas Workers' Compensation Commission's adoption of the 2003 Medicare-based Medical Fee Guideline.

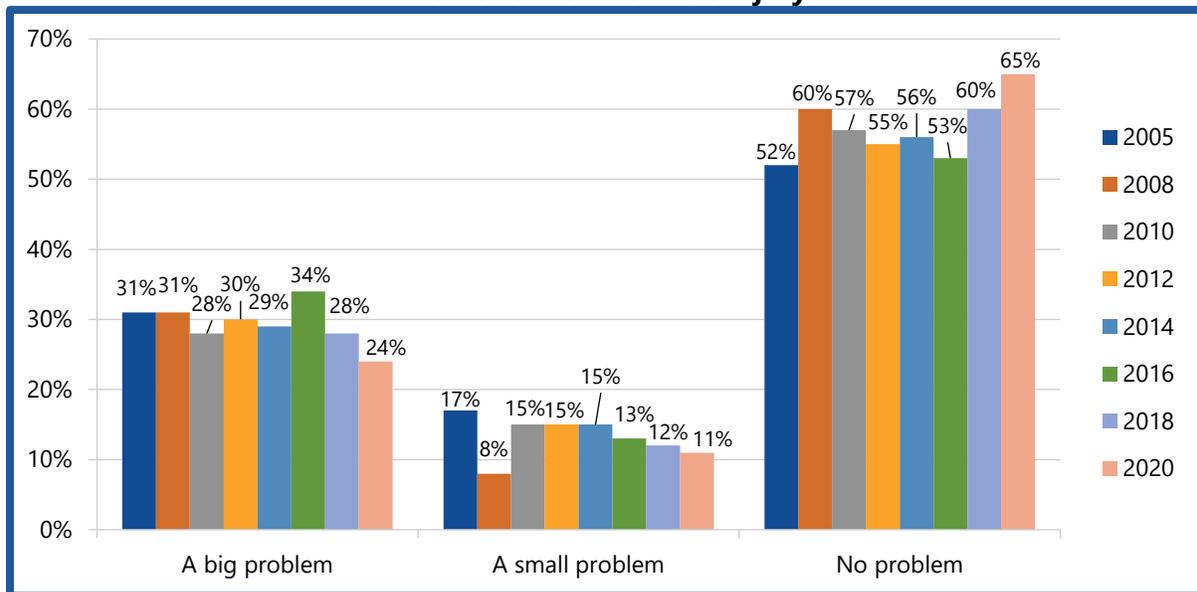
⁹ The Texas A&M University Public Policy Research Institute surveyed a total of 3,157 injured employees from March – June 2020.

¹⁰ Even though the ADL expired on August 31, 2007, TDI continues to regulate health care providers treating injured employees in the system.

To increase health care provider participation in the Texas workers' compensation system, DWC adopted a new professional services medical fee guideline in March 2008, which raised reimbursement levels for doctors and added an annual inflation adjustment to keep reimbursement levels current. HB 7 also included the adoption of evidence-based treatment guidelines (effective May 1, 2007), and the elimination of ADL registration requirements (effective September 1, 2007), to increase the certainty that medically necessary treatments would be reimbursed in the system.

Almost two-thirds (65 percent) of workers surveyed in 2020 reported "no problem" getting the medical care they felt they needed for their work-related injury, compared to 52 percent of workers surveyed in 2005 (see Figure 4.1).

Figure 4.1: Percentage of Injured Employees Who Reported Having Problems Getting Medical Care for Their Injury



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, Survey of Injured Employees 2005, 2008, 2010, 2012, 2014, 2016, 2018, and 2020.

As Table 4.1 illustrates, injured employees who received medical care from networks generally had better perceptions regarding their access to care. A higher percentage of most network injured employees said they either "always" or "usually" got medical care as soon as they thought they needed it, compared to non-network injured employees.

Table 4.1: Since You Were Injured, How Often Did You Get Care as Soon as You Wanted When You Needed Care Right Away?

How often did you get care?	Always	Usually	Sometimes/Never
Non-Network	55%	16%	29%
504-Alliance	62%*	16%	22%*
Corvel	57%	20%	24%
Coventry	57%	13%*	30%
First Health	64%*	11%*	25%
IMO	61%*	16%	23%*
Liberty	51%	17%	32%
Sedgwick	50%*	21%*	29%
Travelers	61%*	15%	24%*
WorkWell	63%*	12%*	25%*
Other Networks	58%*	17%	25%*

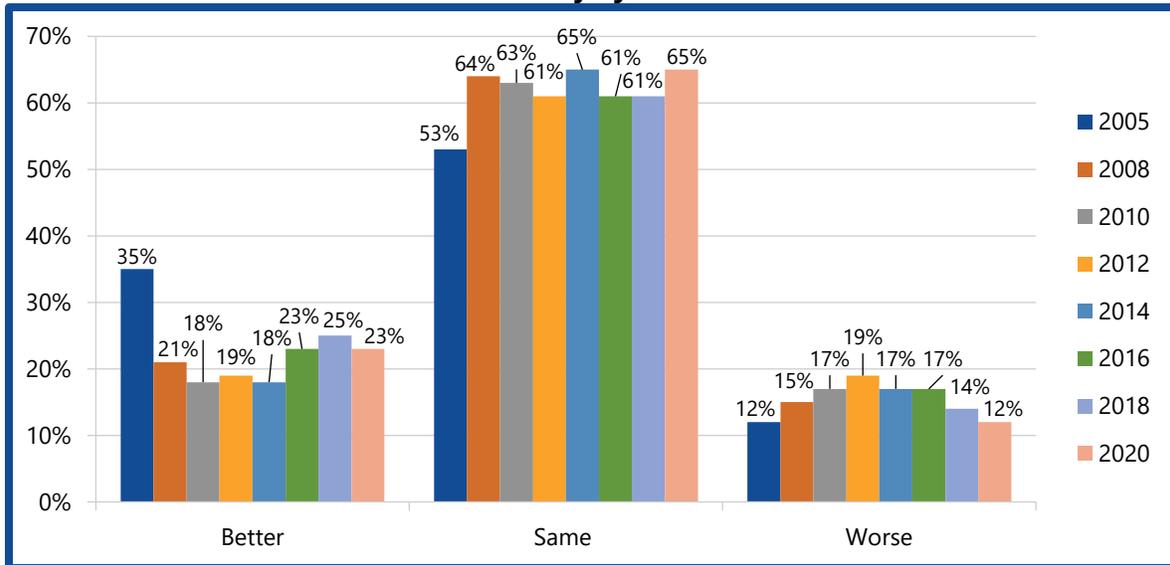
Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, Survey of Injured Employees 2005, 2008, 2010, 2012, 2014, 2016, 2018, and 2020.

Notes: Asterisks (*) indicate that the differences between the network and non-network are statistically significant. The figures presented above are adjusted for risk factors such as injury type, type of claim, and age differences that may exist between the groups. Percentage for each network may not add up to 100% because of rounding.

Most injured employees surveyed in 2020 (88 percent) reported that their ability to schedule a doctor's appointment was as good or better than their normal health care. These perceptions have not significantly changed since 2005 (see Figure 4.2). Generally, injured employees who received medical care in networks reported that their ability to schedule a doctor's appointment was better than or about the same as that of injured employees receiving non-network medical care.¹¹

¹¹ See Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020 Network Report Card for specific results for network and non-network claims.

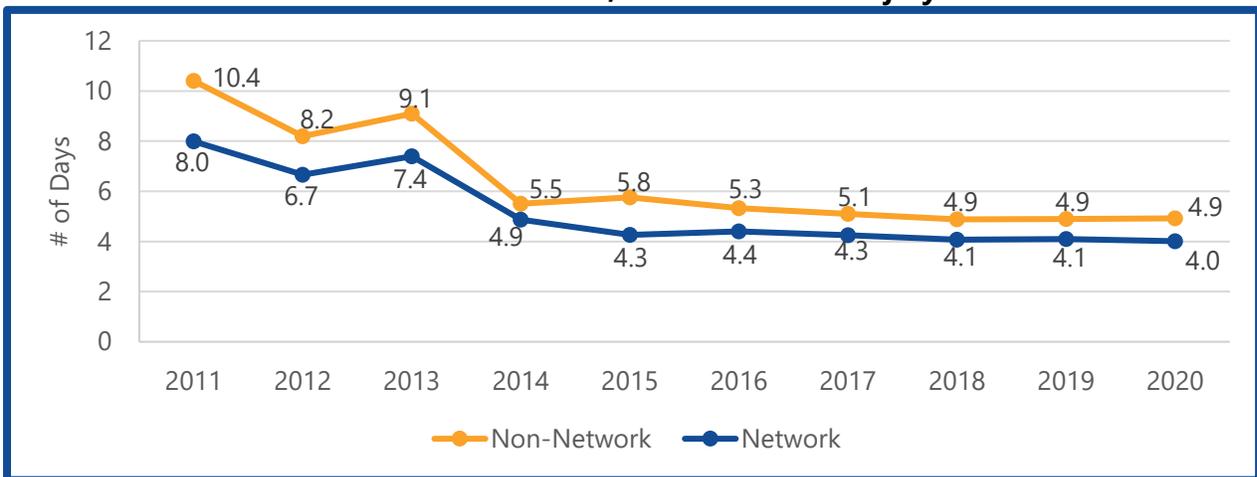
Figure 4.2: Compared to the Medical Care You Usually Receive When You are Injured or Sick, Your Ability to Schedule a Doctor’s Appointment for Your Work-Related Injury or Illness Was:



Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, Survey of Injured Employees 2005, 2008, 2010, 2012, 2014, 2016, 2018, and 2020.

The administrative medical billing and payment data shows that the timeliness of care has improved for injured employees in the last decade. The average number of days from the date of injury to the first non-emergency medical visit decreased by half from 2011 to 2020 (from 10.4 days to 4.9 days for non-network claims and 8.0 days to 4.0 days for network claims). Injured employees in networks consistently receive non-emergency medical care faster than non-network claims (see Figure 4.3).

Figure 4.3: Average Number of Days from Date of Injury to Date of First Non-Emergency Treatment 2011-2020, Six Months Post-Injury

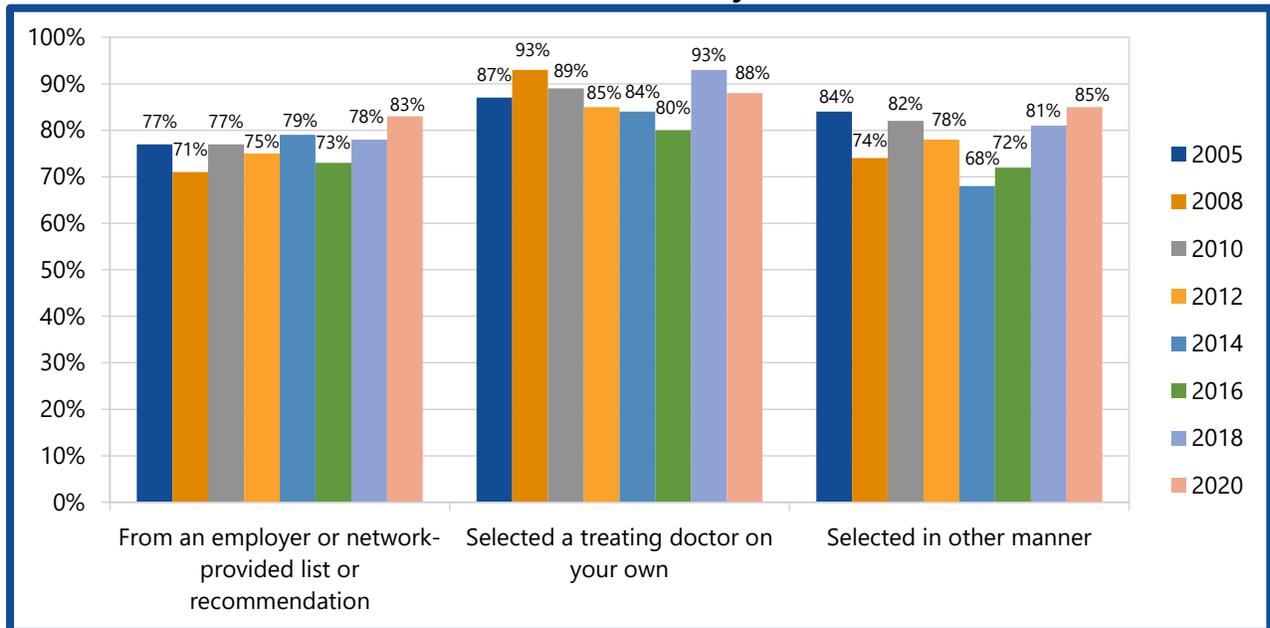


Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2020.

Treating Doctor Choice and Satisfaction

Previous studies conducted by REG show that injured employees' perceptions about the quality of their medical care are closely associated with their ability to choose their own treating doctor. Not surprisingly then, as networks expand coverage in Texas and injured employees are increasingly required to choose a treating doctor from a list of network doctors, satisfaction levels will be affected. However, the vast majority of injured employees surveyed in 2020 agreed that their treating doctor provided them with good medical care that met their needs regardless of whether they selected their own treating doctor or used a doctor from the network's list (see Figure 4.4).

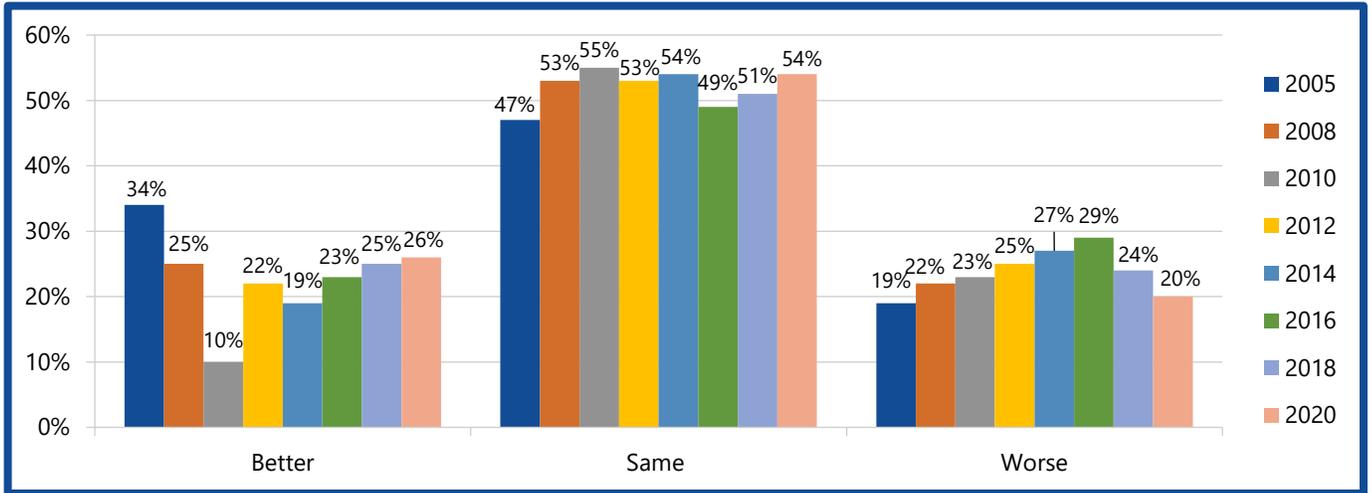
Figure 4.4: Percentage of Injured Employees That Indicated That Their Selected Doctor Provided Them with Good Medical Care by Doctor Selection Method



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, Survey of Injured Employees 2005, 2008, 2010, 2012, 2014, 2016, 2018, and 2020.

Additionally, most injured employees surveyed in 2005 and 2020 reported that the medical care they received for their work-related injury was as good or better than their routine medical care (see Figure 4.5).

Figure 4.5: Compared to the Medical Care You Usually Receive When You Are Injured or Sick, Would You Say the Care You Received for Your Work-Related Injury or Illness Was:



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, Survey of Injured Employees 2008, 2010, 2012, 2014, 2016, 2018, and 2020.

There are differences in satisfaction levels among individual networks profiled in the 2020 Workers' Compensation Network Report Card (see Tables 4.2 and 4.3). HB 7 included mechanisms to promote quality of care monitoring, including the requirement that every network produce and submit an annual Quality Improvement Plan to TDI.

Table 4.2: Percentage of Injured Employees Who Agreed That the Treating Doctor for Their Work-Related Injury or Illness Overall Provided Them with Very Good Medical Care That Met Their Needs

Treating doctor provided you with very good medical care	Strongly agree/Agree	Not sure	Strongly disagree/Disagree
Non-Network	77%	5%	18%
504-Alliance	87%*	2%*	10%*
Corvel	76%	4%	20%
Coventry	75%	6%*	19%
First Health	78%	7%*	15%
IMO	77%	3%*	20%
Liberty	66%*	4%	30%*
Sedgwick	70%*	7%*	24%*
Travelers	76%	5%	19%
WorkWell	77%	7%*	15%*
Other Networks	75%	6%	19%

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, Survey of Injured Employees 2008, 2010, 2012, 2014, 2016, 2018, and 2020.

Notes: Asterisks (*) indicate that the differences between the network and non-network are statistically significant. The figures presented above are adjusted for risk factors such as injury type, type of claim, and age differences that may exist between the groups. Percentage for each network may not add up to 100% because of rounding.

Table 4.3: Injured Employees’ Perceptions About Medical Care for Their Work-Related Injuries Compared to the Medical Care They Normally Receive When Injured or Sick

Percentage of injured employees indicating that the medical care for their work-related injuries was:	Better	Same	Worse
Non-Network	26%	52%	22%
504-Alliance	22%*	60%*	17%*
Corvel	18%	60%*	22%
Coventry	27%	49%	23%
First Health	27%	56%	18%
IMO	18%*	59%*	23%
Liberty	20%*	47%	33%*
Sedgwick	14%*	51%	35%*
Travelers	26%	54%	20%
WorkWell	24%*	54%	22%*
Other Networks	21%*	55%*	24%*

Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2020.

Note: Asterisks (*) indicate that the differences between the individual network and non-network are statistically significant. The figures presented above are adjusted for risk factors such as injury type, type of claim, and age differences that may exist between the groups. Percentage for each network may not add up to 100% because of rounding.

Health Outcomes Continue to Improve in 2020

Functional outcomes are used to measure whether an injured employee gets better or physically recovers from the injury (physical functioning) or whether an injured employee is likely to experience issues such as depression after the injury (mental functioning).

To measure the physical and mental functioning of injured employees, REG used a standardized set of questions, referred to as the Short Form 12 (SF-12) survey instrument, which asks injured employees to rate their current mental health as well as their current abilities to perform certain daily activities. The results are calculated into two overall scores: the physical component summary and the mental component summary, which have a range of scores from zero to 100 and are indexed to the mean score of 50 in a sample of the U.S. general population. Scores of more than 50 represent above-average health status, and scores at 40 or lower indicate below-average health status.

Overall, injured employees in Texas have improved their physical and mental functioning status significantly since 2005. The physical functioning score for injured employees increased from 38.4 in 2005 to 46.0 in 2020, while the mental functioning score increased from 46.6 in 2005 to 51.0 in 2020. Overall, the physical and mental functioning scores for injured employees in a network are

higher than for injured employees outside a network.¹²

5. MEDICAL COSTS AND UTILIZATION OF CARE

The Texas workers' compensation system implemented various legislative and regulatory reforms through HB 2600, 77th Legislature in 2001 and HB 7, 79th Legislature in 2005, including medical fee guidelines, treatment guidelines, workers' compensation health care networks, and the pharmacy closed formulary. This section of the report focuses on how medical costs and utilization-of-care trends have changed in the system over time, as well as some of the factors influencing these cost trends.

Medical costs are direct benefits for injured employees and represent a substantial portion of the total costs of the Texas workers' compensation system. Medical bills are organized by provider bill type, including professional, hospital, and pharmacy services. A claim is grouped as 'lost-time' if the employee has more than seven days of lost-time from work and receives income benefits. A claim is 'medical-only' if the employee has seven or less days of lost-time and does not receive income benefits.

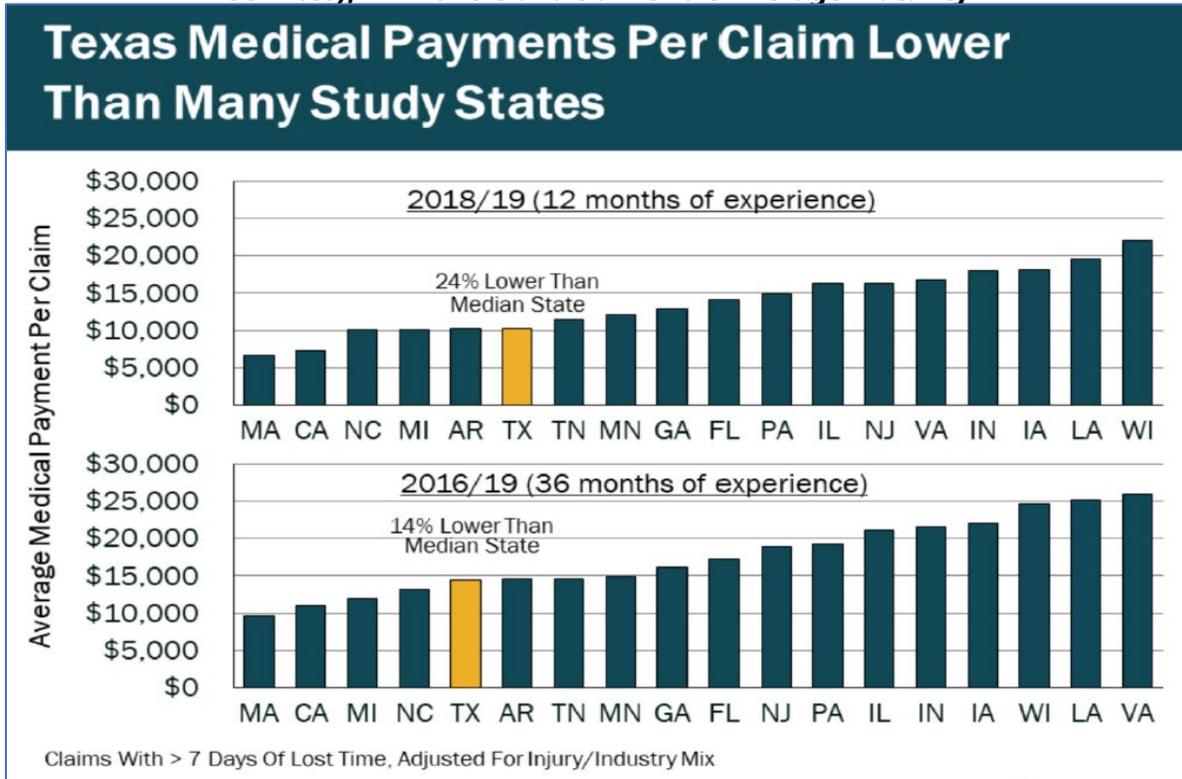
Please note: All the medical cost information provided in this report is unadjusted, meaning that the costs reported are actual costs paid and have not been adjusted to account for inflation changes over time.

Overall Medical Cost Trends

Prior to the 2005 legislative reforms, Texas had some of the highest medical costs per claim compared with other states, driven primarily by overutilization of medical treatment for injured employees. In 2001, Texas was among the highest nationally in terms of medical costs per claim, according to a multi-state comparison by the Workers' Compensation Research Institute. Now, Texas' cost per claim with 12 months maturity is about 24 percent less than the median cost of the 18 states included in the analysis, which included Florida, Pennsylvania, Louisiana, and Illinois (see Figure 5.1).

¹² For more detailed information about the physical and mental functioning scores for network and non-network claims, see the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020 Workers' Compensation Network Report Card results (see www.tdi.texas.gov/reports/wcreg/index.html#wcreports).

Figure 5.1: Average Medical Cost for Claims with More Than 7 Days of Lost-Time (All Services), 12 Months and 36 Months Average Maturity



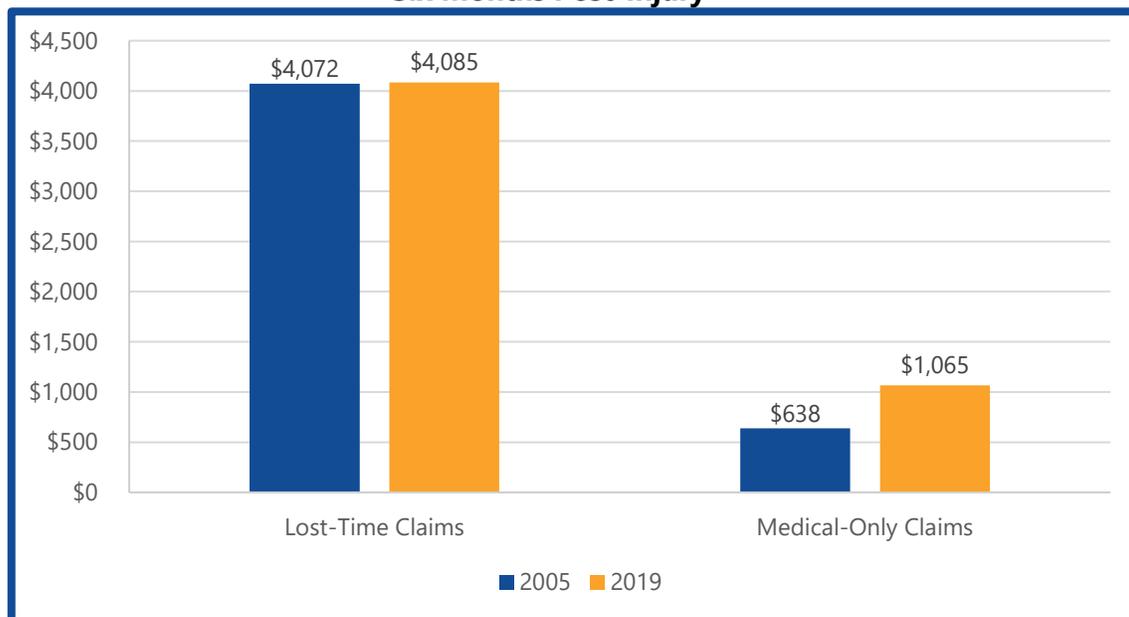
Source: Workers' Compensation Research Institute, CompScope™ Medical Benchmarks for Texas, 21st Edition, 2020.

Professional Services

In the late 1990s and early 2000s, the Texas workers' compensation system saw double-digit annual increases in average medical costs per claim. However, after the legislature passed HB 2600 and HB 7, medical costs began to decline. In recent years, average medical costs per claim have been fairly stable, although prices continue to increase each year due to annual changes to the DWC Medical Fee Guideline (which contains an annual inflation factor using the Medicare Economic Index).

These annual price increases have been offset by lower utilization of certain medical services that were historically overutilized in Texas, such as physical medicine and diagnostic services. As Figure 5.2 shows, despite medical cost inflation, the average professional medical cost per claim has not changed significantly from 2005 to 2019 for lost-time claims. Average medical costs per claim did increase for medical-only claims during this same period.

Figure 5.2: Average Professional Cost Per Claim, Injury Years 2005 and 2019, Six Months Post-Injury



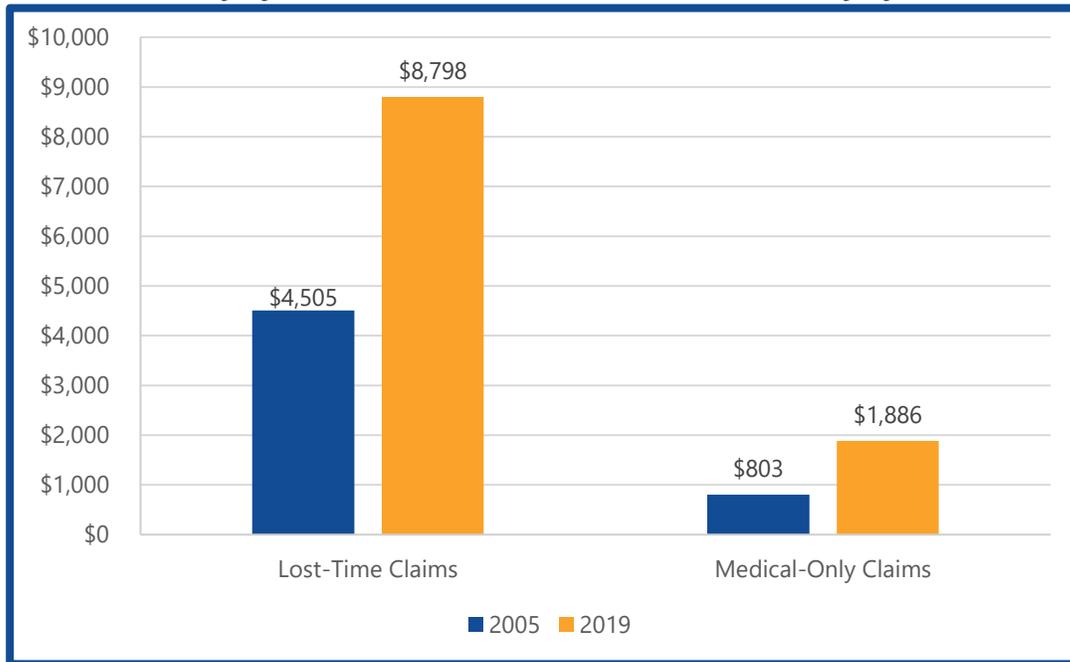
Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020.

Hospital Services

Overall hospital payments increased from about \$270 million in 2005 to \$396 million in 2019. As Figure 5.3 indicates, average hospital costs per claim at six months post-injury have basically doubled since 2005 for both lost-time and medical-only claims. The reason for these cost increases appears to be a rise in inpatient and outpatient hospital costs per claim over time.

Overall, inpatient hospital costs per claim at six months post-injury have increased about 185 percent since 2005, while outpatient hospital costs per claim have increased about 59 percent and other hospital costs (which include services such as skilled nursing and home health services) increased about 21 percent. Inpatient hospital costs increased significantly prior to the adoption of the 2008 inpatient hospital fee guideline and then steadily increased until 2017, when inpatient hospital costs per claim jumped 19 percent from 2017-2019. Before 2008, there was no outpatient hospital fee guideline in the Texas workers' compensation system. Once DWC adopted an outpatient hospital fee guideline in 2008, outpatient hospital costs per claim steadily increased over time.

Figure 5.3: Average Hospital Cost Per Claim, Injury Years 2005 and 2019, Six Months Post-Injury

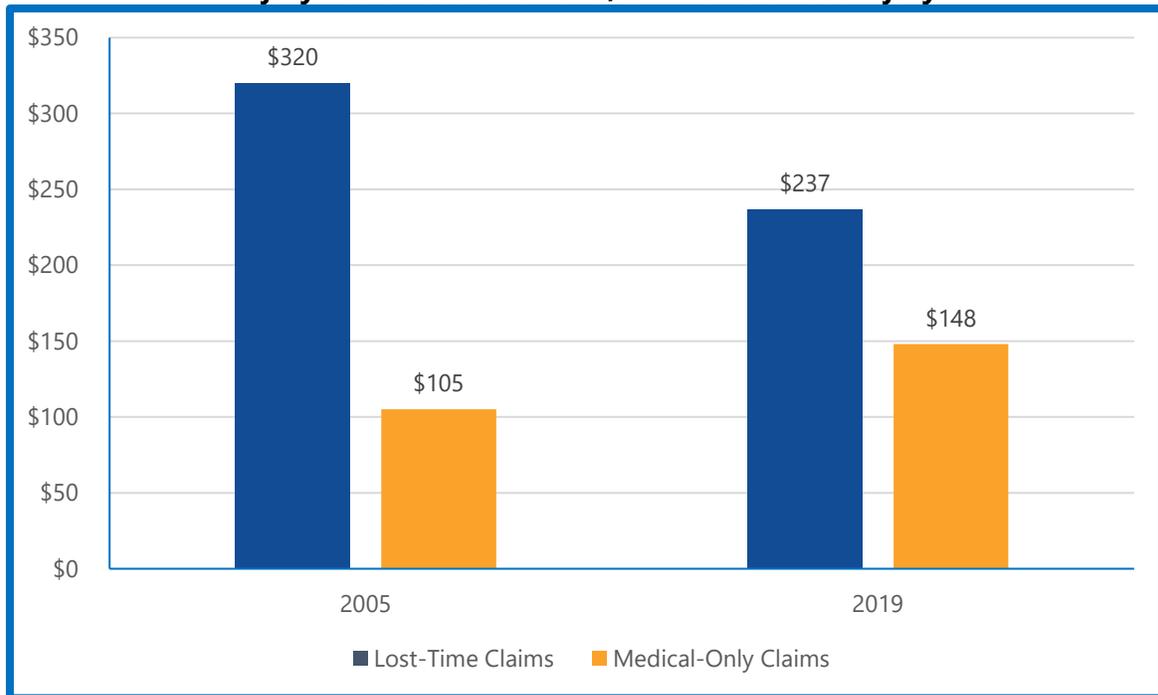


Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020.

Pharmacy Services

From 2005 to 2019, overall pharmacy payments declined 57 percent for lost-time claims (from \$146 million to \$62.4 million), and 63 percent for medical-only claims (from \$27.8 million to \$11.8 million). The average pharmacy cost per claim also declined at six months post-injury for lost-time claims during this time but increased for medical-only claims (see Figure 5.4). These cost reductions resulted from the implementation of a key component of the HB 7 legislative reforms: DWC's adoption of one of the nation's first workers' compensation pharmacy closed formularies in 2011. As a result, fewer claims received pharmacy services and for those that did, there were fewer prescriptions per claim in 2019 than before the HB 7 reforms.

Figure 5.4: Average Pharmacy Cost Per Claim, Injury Years 2005 and 2019, Six Months Post-Injury



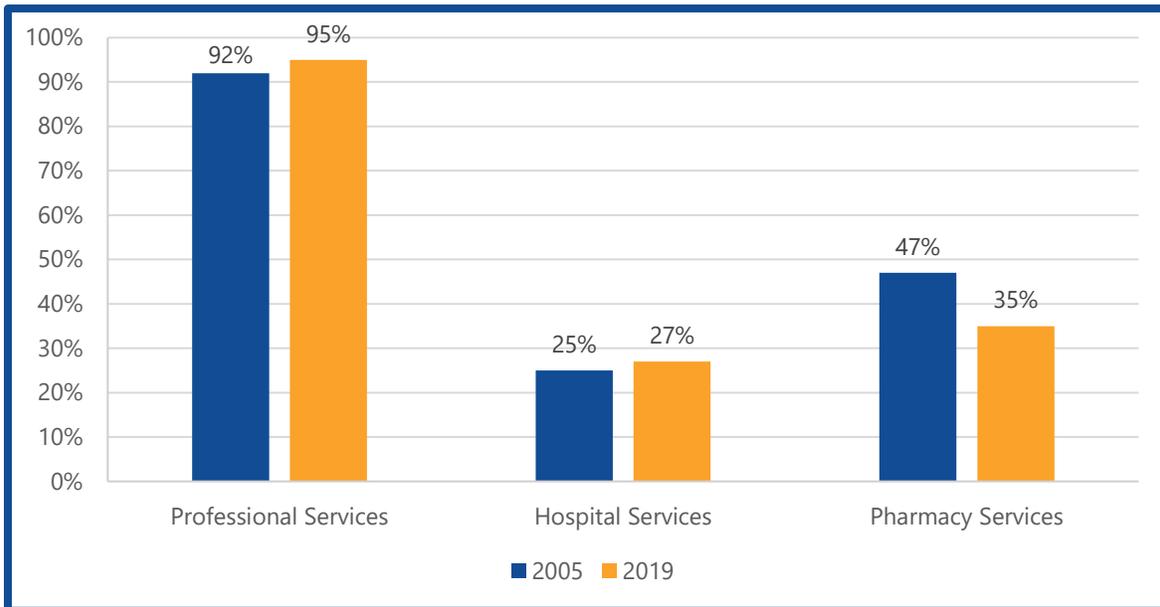
Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020.

Utilization of Health Care

Medical costs are affected not only by the fees for services, but also by the amount of medical care provided to injured employees (the utilization of care). Past studies indicated that higher medical costs in Texas (pre-HB 7) were primarily driven by overutilization of certain types of medical services. Specifically, Texas injured employees received more physical medicine services, surgical services, and diagnostic testing than similarly injured employees in other states.

The amount of medical care provided to injured employees can be measured by the percentage of injured employees receiving certain types of medical services, as well as the amount of those services received per injured employee. Figure 5.5 shows that there has been little change over time in terms of the percentage of injured employees receiving professional and hospital services since 2005. Fewer injured employees received pharmacy services in 2019 compared to 2005 as a result of the implementation of the pharmacy closed formulary in 2011.

Figure 5.5: Percentage of Injured Employees Receiving Health Care Services, Service Years 2005 and 2019



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020.

The percentage of injured employees receiving specific professional services and the amount of services billed per claim has changed significantly since 2005. A slightly higher percentage of injured employees now receive evaluation and management services (about 98 percent in 2018 compared to 96 percent in 2005) and durable medical equipment (about 68 percent in 2018 compared to 62 percent in 2005) compared to 2005. However, a lower percentage of injured employees now receive physical medicine services (57 percent in 2018 compared to 63 percent in 2005), spinal surgery (2.2 percent in 2018 compared to 8.4 percent in 2005), and other surgery services (46 percent in 2018 compared to 50 percent in 2005). The amount of services per billed per claim declined in almost every category of professional services since 2005.

6. RETURN-TO-WORK OUTCOMES

An important goal of the Texas workers' compensation system is to return injured employees to safe and productive employment. Effective return-to-work programs can help alleviate the economic and psychological impact of a work-related injury, reduce income benefit payments, and increase employee productivity for Texas employers.

Previous studies by the Research and Oversight Council on Workers' Compensation and the Workers' Compensation Research Institute indicated that before the 2005 legislative reforms, 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.

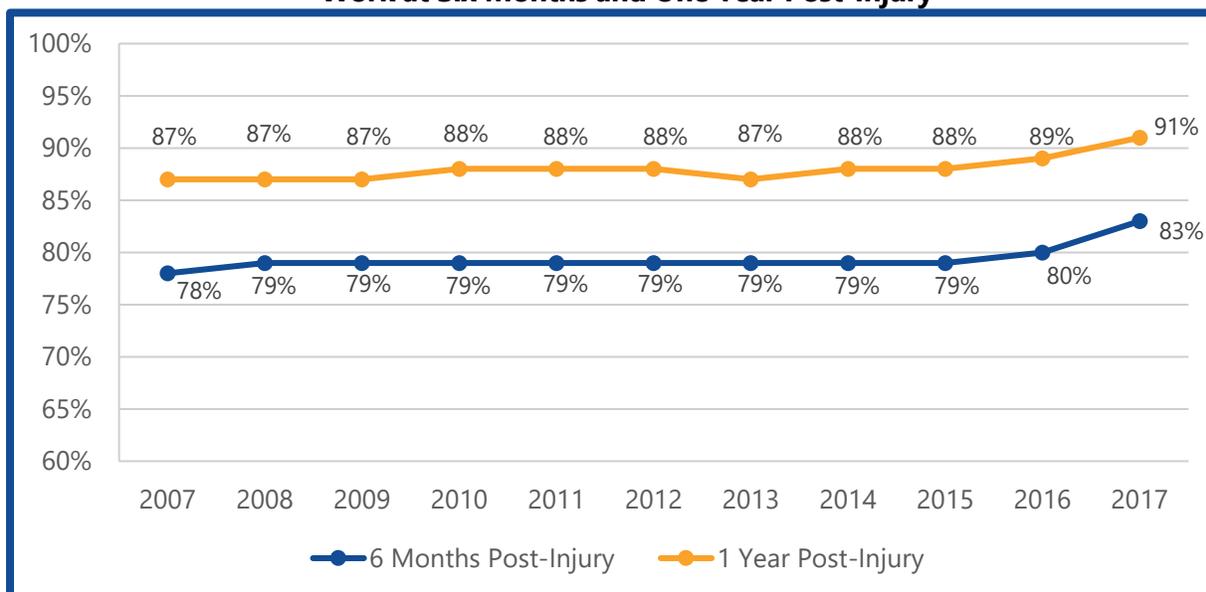
Return-to-Work Rates Improved Since HB 7

When workers' compensation data is compared with employee wage information from the Texas Workforce Commission, the most recent results show improvements in the percentage of injured employees who returned to work within six months and one year after their injuries. This analysis examined the return-to-work rates of injured employees who received temporary income benefits (TIBs) for their lost-time from work.

Overall, HB 7 reforms appeared to have helped alleviate the effects of the economic downturn in Texas. In 2007, about 78 percent of injured employees receiving TIBs went back to work within six months, compared to about 83 percent of injured employees in 2017.

At one year post-injury, about 9 out of 10 injured employees returned to work (see Figure 6.1). Injured employees who work for larger employers and in the public administration sector generally have the highest return-to-work rates. Overall, return-to-work rates have improved in the last decade across all employer size categories and in almost all industry sectors.

Figure 6.1: Percentage of Injured Employees Receiving TIBs Who Initially Returned to Work at Six Months and One Year Post-Injury



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020.

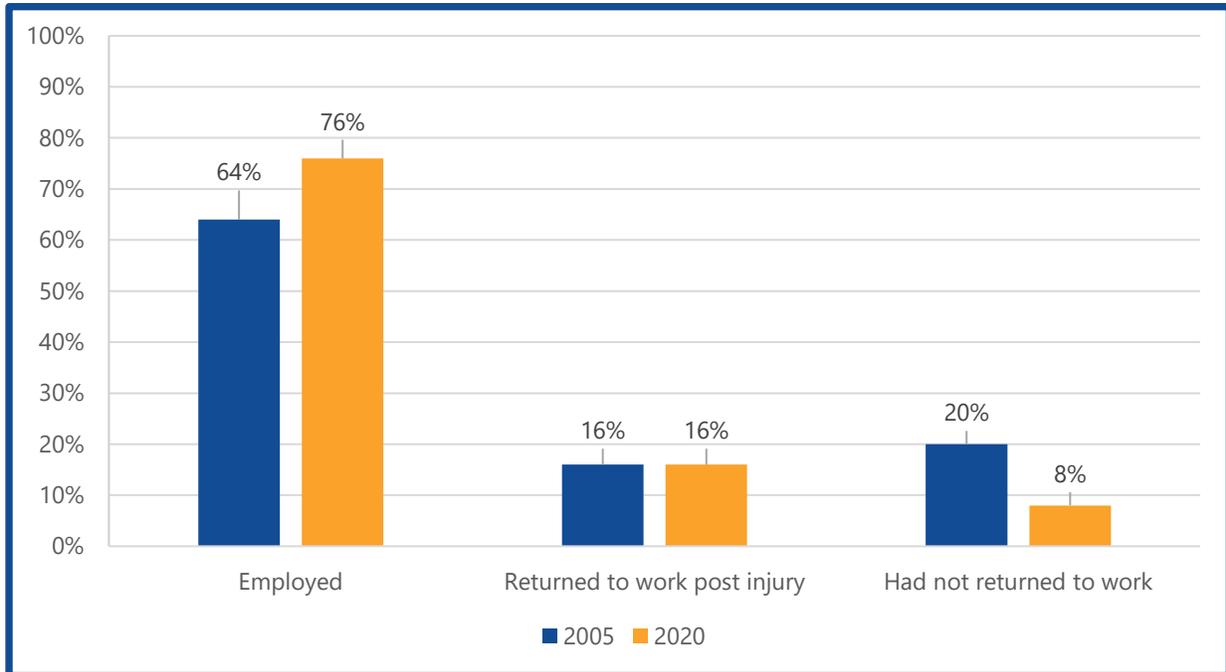
Comparison of Injured Employee Survey Results Pre- and Post- 2005

In 2020, REG in conjunction with Texas A&M University, Public Policy Research Institute surveyed 3,157 injured employees on their experience in the Texas workers' compensation system. It is clear from both the return-to-work rates shown in Figure 6.1 and the recent injured employee survey

that return-to-work rates have continued to improve since the 2005 legislative reforms.

As Figure 6.2 shows, a higher percentage (76 percent) of workers surveyed in 2020 reported that they were currently employed at the time of the survey (compared with 64 percent in 2005) and a significantly lower percentage of workers surveyed in 2020 (8 percent in 2020 compared with 20 percent in 2005) reported that they had not yet returned to work 12-24 months after their injuries.

Figure 6.2: Return-to-Work Experiences of Injured Employees, 2005 and 2020



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, Survey of Injured Workers, 2005 and 2020.

Comparisons between Network and Non-Network Claims

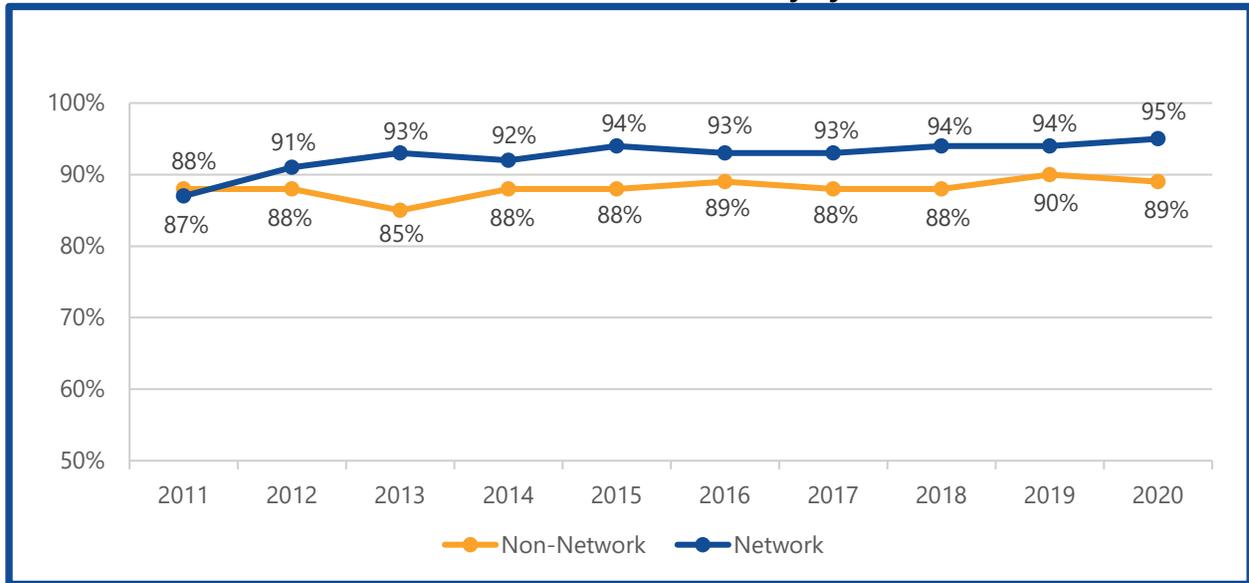
One important feature of the 2005 legislative reforms was the formation of health care networks, which were designed to increase the focus on disability management through the adoption of return-to-work guidelines and the mandatory use of case management. Additionally, these reforms envisioned that networks would be better positioned to facilitate communication between treating doctors and employers about injured employees' physical abilities to return to work and employers' job requirements or the availability of alternative duty assignments.

Results from the 2020 Workers' Compensation Network Report Card produced by REG indicate that injured employees treated in networks generally had higher initial return-to-work rates than injured employees treated outside of networks (see Figure 6.3).

It should be noted, however, that these return-to-work outcomes are heavily affected by whether the employers have effective return-to-work programs and are able to bring injured employees

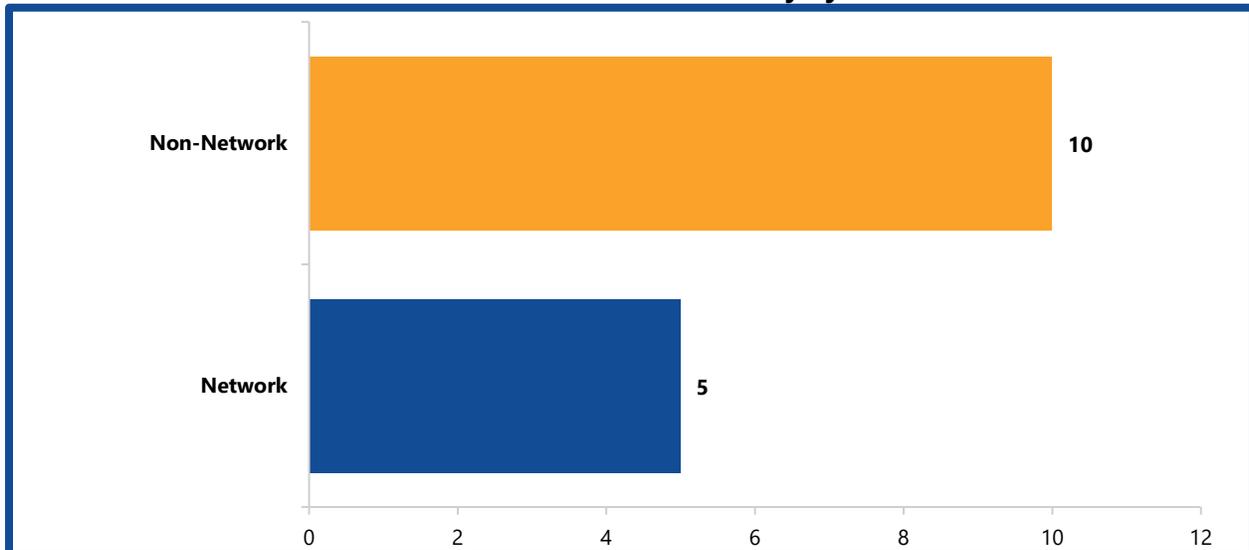
back to safe and appropriate employment. The improved performance of most network claims over non-network claims may be the result of coordination between system participants, including employers, to return injured employees to work. The report card results also indicate that most networks were more effective at returning employees back to work faster when compared to non-network claims (see Figure 6.4).

Figure 6.3: Percentage of Injured Employees Who Indicated That They Went Back to Work at Some Point After Their Injury



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020 Network Report Card.

Figure 6.4: Average Number of Weeks Injured Employees Reported Being Off Work Because of Their Work-Related Injury, 2020



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020 Network Report Card.

While system-wide return-to-work rates continue to improve, the increased focus on disability management under the 2005 legislative reforms seems to have resulted in return-to-work improvements in most network claims compared to non-network claims.

7. MEDICAL DISPUTE RESOLUTION AND COMPLAINT TRENDS

This section examines how the frequency, duration, and outcomes of medical disputes have changed since the 2005 legislative reforms. This section also reports the number of complaints received by TDI about workers' compensation health care networks.

Generally, there are three types of medical disputes raised in the workers' compensation system:

- fee disputes (i.e., disputes over the amount of payment for medical services);
- preauthorization disputes¹³ (i.e., disputes about the medical necessity of certain medical treatments that were denied prospectively by the insurance carrier); and
- retrospective medical necessity disputes (i.e., disputes about the medical necessity of treatments that have already been provided and billed).

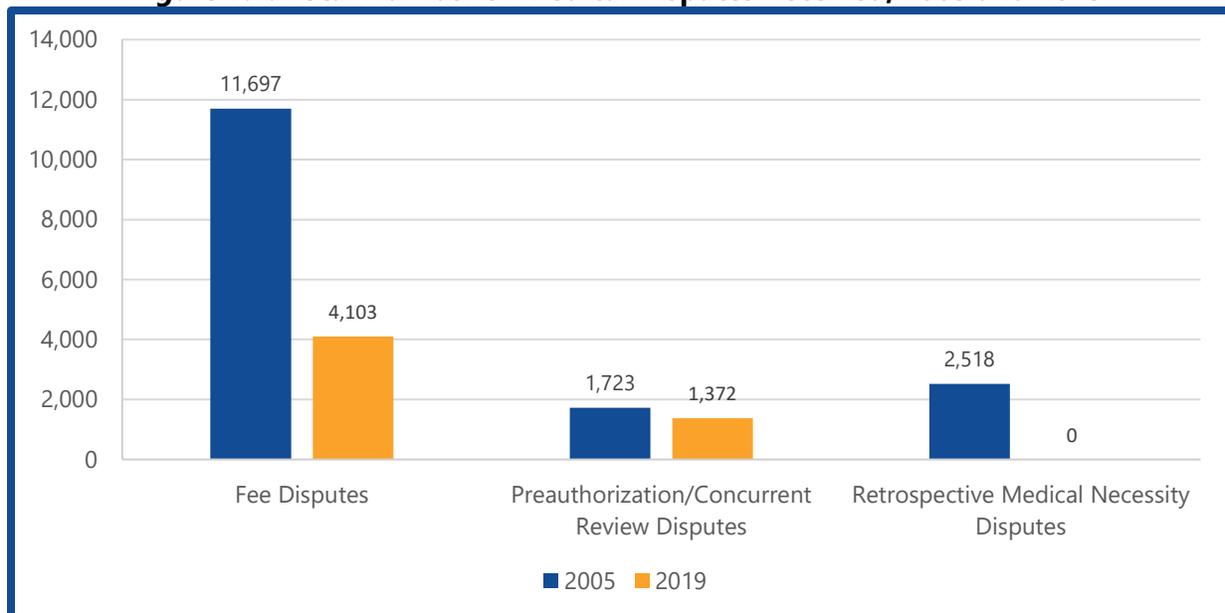
Figure 7.1 shows DWC experienced a significant reduction in the number of medical disputes filed since 2005. From 2005-2019:

- medical fee disputes decreased about 65 percent,
- preauthorization and concurrent review disputes decreased about 20 percent, and
- retrospective medical necessity disputes have essentially disappeared in the system.

The decrease in medical disputes is related to several factors: injured employees filed fewer workers' compensation claims; health care networks resolved their own fee disputes; DWC adopted medical treatment guidelines in 2007; and DWC adopted new professional, inpatient and outpatient hospital and ambulatory surgical center fee guidelines in 2008. In Texas, DWC staff experienced with DWC's medical billing rules, medical fee guidelines, and Medicare payment policies review and resolve medical fee disputes. By statute, medical necessity disputes are resolved by Independent Review Organizations (IROs), panels of doctors and other health care providers certified by TDI to resolve medical necessity disputes for workers' compensation and group health claims.

¹³ Texas Labor Code §413.014 and 28 Texas Administrative Code §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 §1305.351.

Figure 7.1: Total Number of Medical Disputes Received, 2005 and 2019

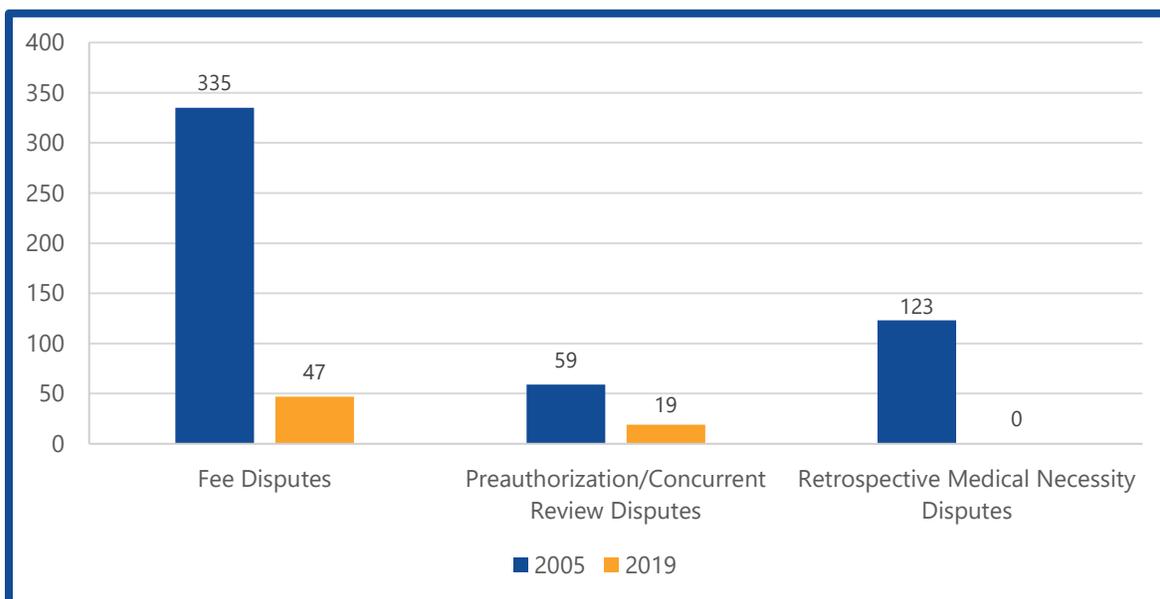


Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020.

The time frame to resolve medical disputes has also significantly declined since 2005, making the medical dispute process more efficient for system participants (see Figure 7.2). The average time frame to resolve medical disputes significantly declined since 2005 as DWC was able to resolve a backlog of fee disputes.

Resolution timeliness also improved significantly for medical necessity disputes. The average number of days to resolve a preauthorization or concurrent review dispute declined from 59 days in 2005 to about 19 days in 2019. Retrospective medical necessity disputes took an average of 123 days in 2005 to resolve, but these disputes have essentially disappeared in the system. In the last few years, retrospective medical necessity disputes represented less than 1 percent of all medical necessity disputes. In 2014, 2015, and 2017, the average retrospective medical necessity dispute duration was about 30 days, and in 2016 and 2018 the average dispute duration was about 20 days.

Figure 7.2: Average Number of Days to Resolve a Medical Dispute, 2005 and 2019



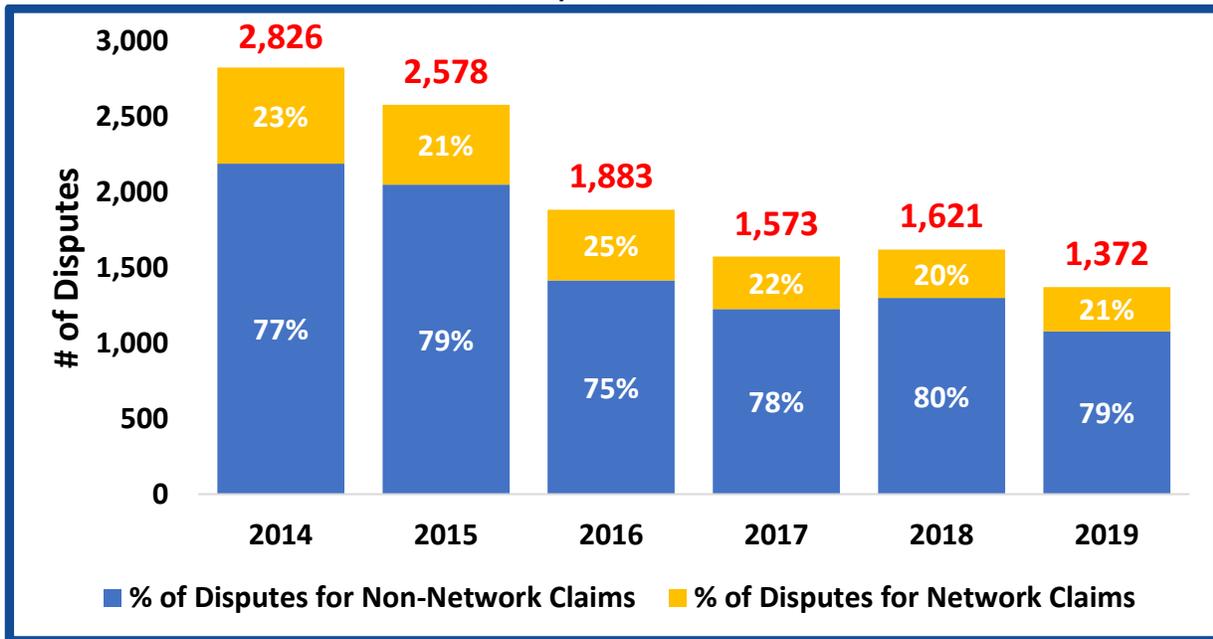
Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020.

Medical Necessity Disputes

While networks accounted for about half of all new claims in the last few years, non-network claims accounted for most of the medical necessity disputes filed (about 8 out of 10) (see Figure 7.3). Since 2005, the makeup of medical necessity disputes has also changed, as a result of an expanded statutory list of services requiring preauthorization, and the implementation of treatment guideline rules that require preauthorization for medical services that go beyond the guideline's recommendations. As Figure 7.4 shows, most medical necessity disputes in recent years (more than 9 out of 10) were associated with preauthorization denials. Concurrent review disputes declined (from about 8 percent of medical necessity disputes in 2014 to about 2 percent in 2019), and retrospective medical necessity disputes only represented less than 1 percent of medical necessity disputes in recent years (there were no retrospective medical necessity disputes in 2019).

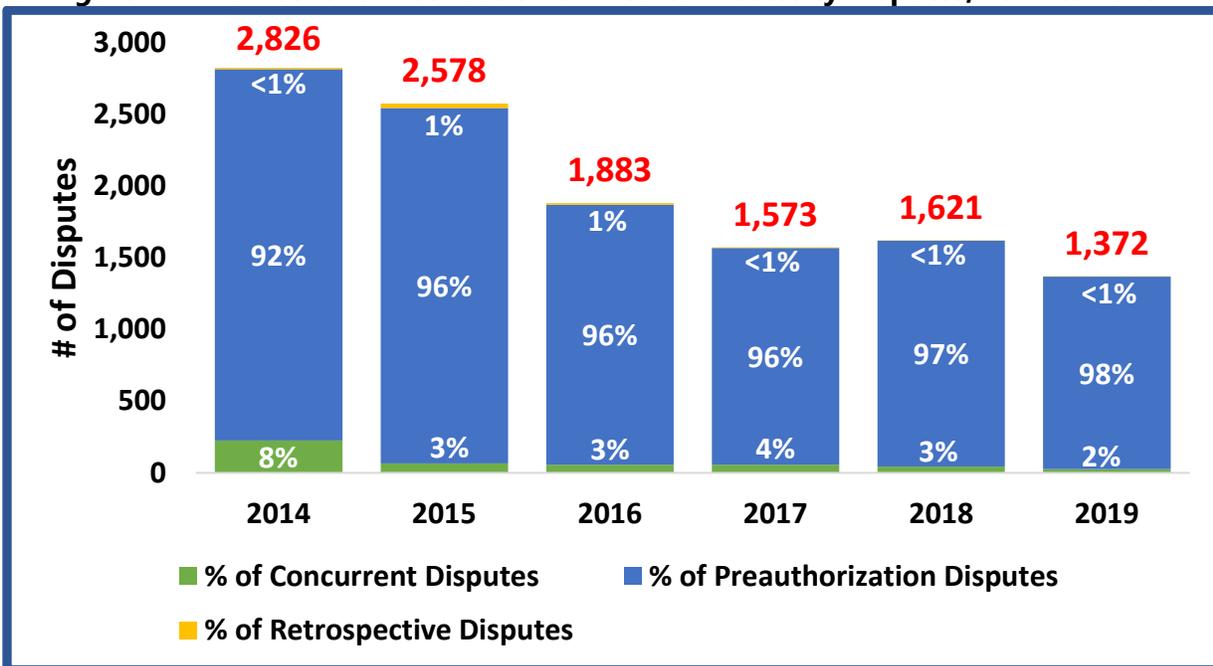
In 2019, about 31 percent of medical necessity disputes involved reviews of surgery, 22 percent involved physical medicine services, 5 percent involved radiology services, and only an estimated 1 percent involved prescription drugs (about 40 percent involved other types of medical services). The small number and percentage of pharmacy disputes is remarkable, given that DWC adopted a pharmacy closed formulary in 2011 that requires preauthorization for many "not-recommended" or "N drugs" before they can be dispensed to injured employees.

Figure 7.3: Number and Distribution of Medical Necessity Disputes by Network Status, 2014 to 2019



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020.

Figure 7.4: Number and Distribution of Medical Necessity Disputes, 2014 to 2019

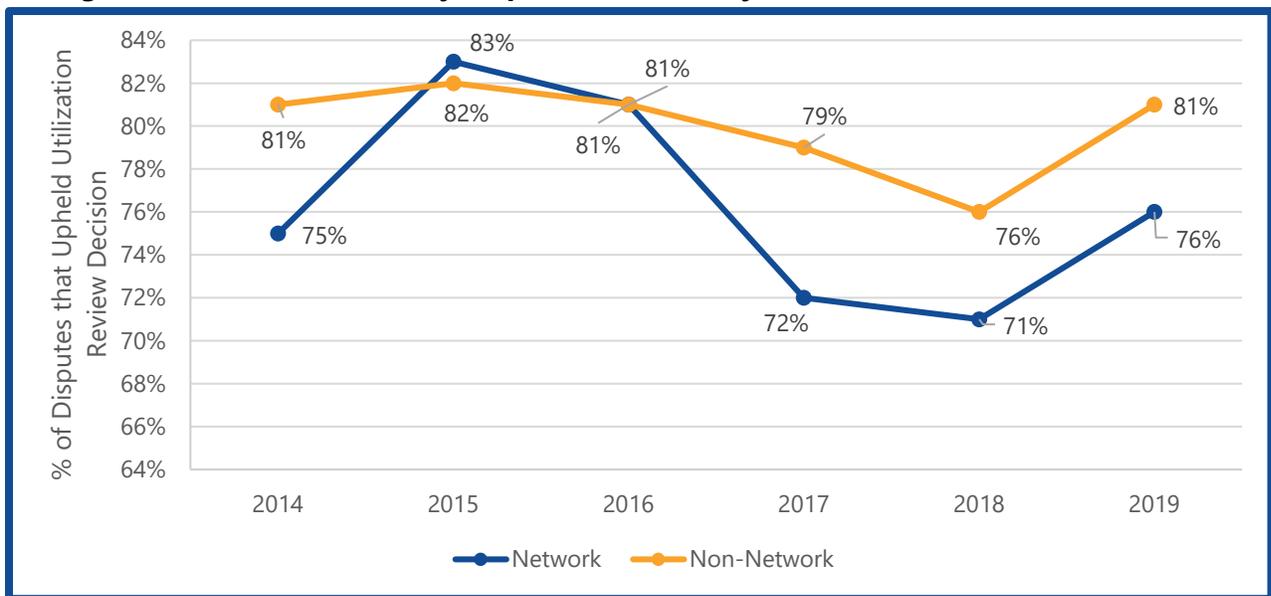


Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020.

As Figure 7.5 shows, most medical necessity disputes resulted in decisions that upheld the insurance carrier’s utilization review denial. These percentages have not really changed significantly since 2005. In 2005, about 71 percent of preauthorization dispute decisions upheld the insurance carrier’s utilization review denial. In 2019, utilization review decisions upheld about 76 percent of disputes involving network claims and 81 percent of disputes involving non-network claims.

IROs tended to uphold the insurance carrier’s utilization review denial more often for disputes involving non-network claims compared with network claims. The Labor Code requires IROs to take note of DWC’s adopted treatment guidelines when resolving medical necessity disputes and to document in the dispute decision why they diverged from the adopted treatment guidelines.

Figure 7.5: Medical Necessity Dispute Outcomes by Network Status, 2014 to 2019



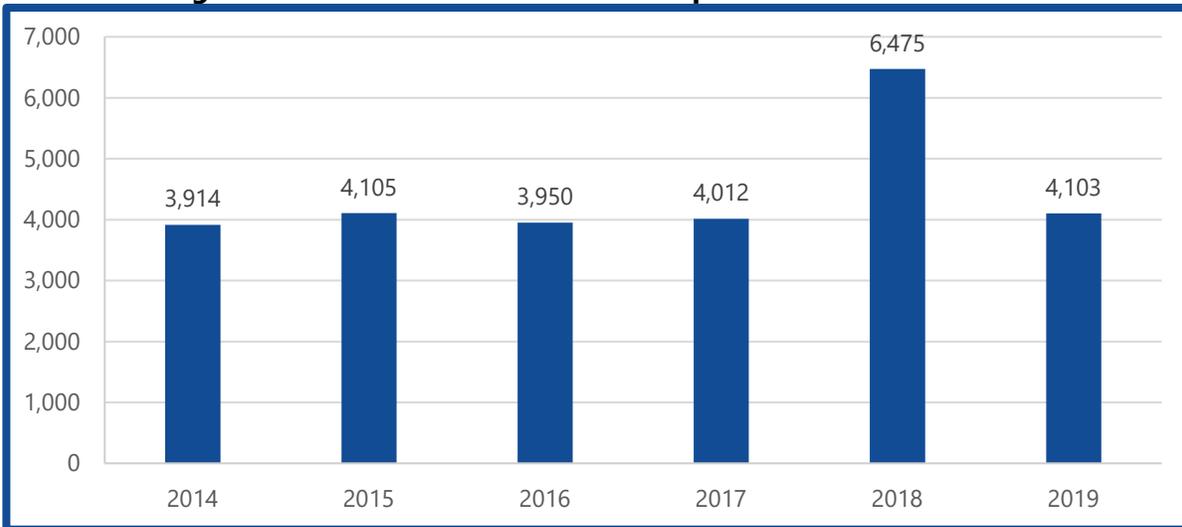
Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2020.

Medical Fee Disputes

Figure 7.6 shows the number of medical fee disputes received by DWC has been stable since 2014, with the exception of 2018, when a significant number of medical fee disputes were filed involving compound drugs. DWC adopted new rules in 2018 that required all compound drugs to be preauthorized before they could be dispensed in an effort to reduce the growing use and cost associated with these drugs.¹⁴ After these rules were adopted, medical fee disputes declined in 2019 back to pre-2018 dispute levels.

¹⁴ See Workers’ Compensation Research and Evaluation Group, *Baseline Evaluation of the Utilization and Cost Patterns of Compounded Drugs*, 2017.

Figure 7.6: Number of Medical Fee Disputes from 2014 to 2019



Source: Texas Department of Insurance, Division of Workers' Compensation, 2020.

In 2019, most medical fee disputes involved fee disagreements over payments for professional medical services, workers' compensation specific services (like impairment ratings and designated doctor examinations), pharmacy services, and hospital services (see Table 7.1). About 13 percent involved disputes resulting from a health care provider's untimely submission of medical bills or lack of preauthorization, and about 8 percent involved disputes over whether a network-contracted rate applied or the rate set by the DWC fee guidelines. Overall, very few disputes arise each year from injured employees involving out-of-pocket medical expenses.

Table 7.1: Medical Fee Disputes by Category, Calendar Year 2019

Category	Count	Percentage
Professional fee	893	22%
Workers' compensation specific fee	673	16%
Pharmacy fee	672	16%
Hospital fee	637	16%
Untimely submission of medical bills	391	10%
Certified health care network issue	327	8%
Lack of required preauthorization	113	3%
Ambulatory surgical center fee	85	2%
Injured employee out of pocket expenses	15	<1%
Other issues	297	7%

Source: Texas Department of Insurance, Division of Workers' Compensation, 2020.

The vast majority of DWC medical fee dispute decisions do not get appealed. If a party wants to appeal a decision, the party must first request a benefit review conference to try and mediate the dispute. If the parties are unable to mediate the dispute, then a party may request an appeal to the State Office of Administrative Hearings. In 2019, only 72 requests for medical benefit review conferences were received, which represents less than 2 percent of the medical fee dispute decisions rendered in 2019. Since these medical fee benefit review conferences were created by statute in 2011 (effective in 2012), less than 10 percent of medical fee dispute decisions each year have been appealed to a medical benefit review conference.

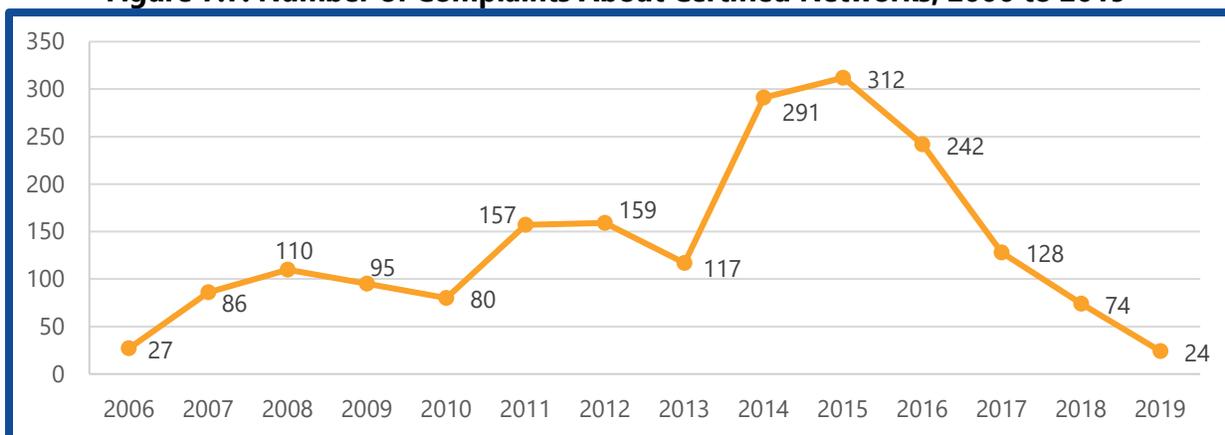
Network Complaints

Overall, TDI has received relatively few complaints about certified health care networks given the fact that about 1.1 million injured employees have been treated in these networks since 2006. Since 2006, TDI has received 1,913 complaints about certified networks,¹⁵ and only about 25 percent were deemed justified. Figure 7.7 shows that the number of complaints filed about certified health care networks increased with intermittent fluctuations from 2006 to 2015 but decreased sharply since 2015.

The most frequent types of complaints filed about certified health care networks included complaints about claim denials, failure to pay medical bills based on contracted rates, complaints about delayed payment for services provided, and complaints about access to care within the network. The least frequent types of complaints involved complaints about how the network or the insurance carrier conducted utilization review and the availability of primary care providers in network.

Chapter 1305 of the Insurance Code, as well as TDI’s network rules (Chapter 10 of the Texas Administrative Code) require networks to resolve complaints internally (including disputes over network fees), and to maintain a detailed complaint log that is subject to TDI examination.

Figure 7.7: Number of Complaints About Certified Networks, 2006 to 2019



Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2020

¹⁵ TDI received a total of 1,913 complaints from January 1, 2006, to September 18, 2020.

8. EMPLOYER PARTICIPATION

Since the Texas workers' compensation law was enacted in 1913, private-sector employers have been allowed to either obtain workers' compensation coverage or become "non-subscribers" that do not participate in the workers' compensation system.¹⁶ Several states with mandatory workers' compensation laws provide statutory exemptions to allow small employers or employers from select industries to opt out of their workers' compensation systems.¹⁷

Texas is the only state that permits private-sector employers (regardless of employer size or industry) the option of not obtaining workers' compensation coverage for their employees. Employers who choose not to have workers' compensation coverage lose the protection of statutory limits on liability and may be sued for negligence by their injured employees.

Since 1993, the state has periodically monitored the percentage of employers that are non-subscribers, the percentage of employees who work for non-subscribers, the types of alternative workers' compensation programs used by non-subscribers, and the reasons employers choose to or choose not to participate in the Texas workers' compensation system. Non-subscription rates help measure employers' perspectives about whether the benefits of participating in the workers' compensation system outweigh the costs of obtaining coverage. As a result, these rates are also an indicator of the relative "health" of the workers' compensation system.

Survey Design and Data Collection/COVID-19

In even-numbered years, REG and Texas A&M University, Public Policy Research Institute (PPRI) track employer participation by conducting a survey of Texas year-round private-sector employers, using data from the Texas Workforce Commission's Unemployment Insurance database.¹⁸ In 2020, Texas A&M surveyed more than 1,466 Texas employers, and REG analyzed the results. The survey respondents who provided the information for this report included company owners and executives, human resources and claims administrators, managers for accounting, finance, and legal, and other company staff.¹⁹

This year's regularly scheduled survey, however, was unusual because it took place from May – August 2020, during the COVID-19 pandemic. While the overall employer and employee participation estimates do not look significantly different from previous years, readers are cautioned to keep the timing of the survey in mind when interpreting the results. Statewide and

¹⁶ Texas governmental entities, including the state and its political subdivisions are required to provide workers' compensation insurance coverage to their employees.

¹⁷ Florida, for example, exempts non-construction employers with less than four employees. New Mexico exempts non-construction employers with less than three employees but allows some service and ranch employers the option to purchase coverage.

¹⁸ For the purposes of this study, "year-round" employers are employers with reported wages for four consecutive quarters. Employers with only seasonal employees were excluded from this analysis.

¹⁹ These employer participation estimates have a +/- 3.81 percent margin of error at the 95 percent confidence interval.

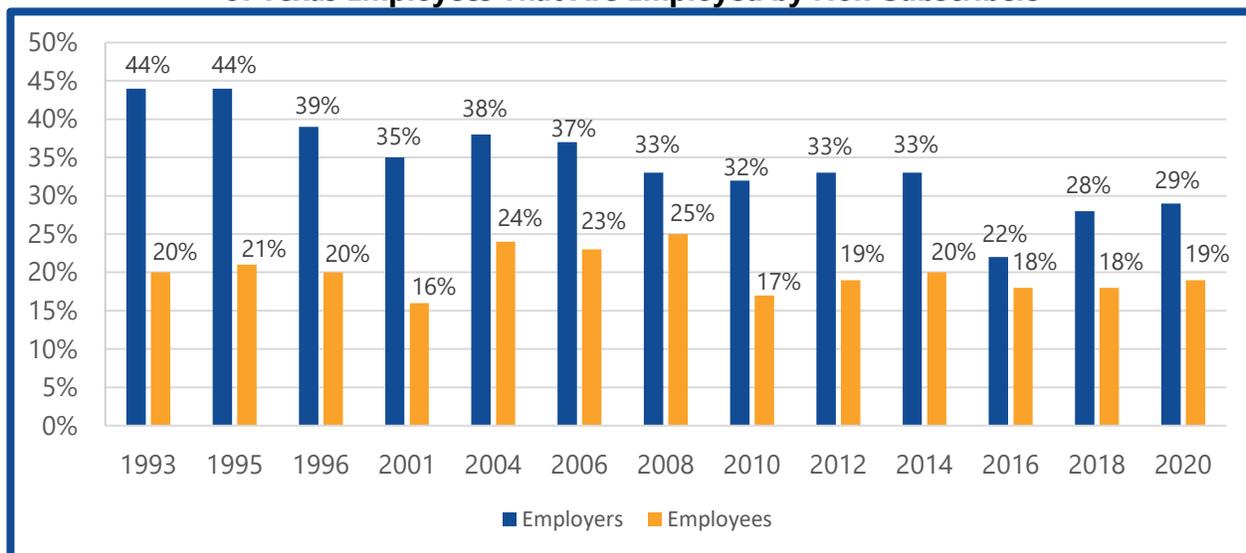
local orders affecting businesses as well as economic pressures resulting from the pandemic caused some employers to shut down temporarily or permanently and caused others to scale back their business operations. As a result, variations in employer participation rates by industry, as well as employer reasons for purchasing or not purchasing workers' compensation coverage may vary from previous years.

Employer Participation and Employee Coverage

Overall, the percentage of year-round, non-subscribing, private-sector Texas employers has declined significantly since the HB 7 reforms (from 38 percent in 2004 to 29 percent in 2020). Employer non-subscription rates remained essentially flat from 2018 to 2020, from 28 percent to 29 percent of Texas employers. In 2020, an estimated 117,624 private-sector employers do not have workers' compensation coverage, and they employ approximately 2.1 million private-sector employees. Conversely, an estimated 283,437 private-sector employers have workers' compensation coverage, and they employ approximately 9.03 million private-sector employees.

Although employer non-subscription rates have declined since the HB 7 reforms, the percentage of Texas employees who work for non-subscribers has not declined at the same rate. In 2004, an estimated 24 percent of private-sector employees worked for non-subscribing employers, compared to 19 percent in 2020 (see Figure 8.1). This is the result of a continuing trend of larger employers (i.e., 500+ employees) becoming non-subscribers despite large workers' compensation insurance rate and premium reductions since 2005.

Figure 8.1: Percentage of Texas Employers That Are Non-Subscribers and the Percentage of Texas Employees That Are Employed by Non-Subscribers



Source: Survey of Employer Participation in the Texas Workers' Compensation System, 1993 and 1995 estimates from the Texas Workers' Compensation Research Center and Texas A&M University, PPRI; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004-2020 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

Non-Subscription Rates by Employer Size

Historically, smaller employers have had the highest non-subscription rates since these employers tend to have fewer resources to purchase workers' compensation coverage for their employees (see Table 8.1). However, about one out of every five large employers (i.e., employers with 500+ employees) are non-subscribers, despite the cost of workers' compensation coverage significantly declining since 2005 as a result of HB 7 reforms. These larger employers tend to provide alternative occupational benefits through federal Employee Retirement Income Security Act plans that are not regulated by DWC.

Table 8.1: Percentage of Texas Employers That Are Non-Subscribers by Employment Size

Employment Size	1995	1996	2001	2004	2006	2008	2010	2012	2014	2016	2018	2020
1-4 Employees	55%	44%	47%	46%	43%	40%	41%	41%	43%	31%	36%	40%
5-9 Employees	37%	39%	29%	37%	36%	31%	30%	29%	27%	19%	27%	21%
10-49 Employees	28%	28%	19%	25%	26%	23%	20%	19%	21%	10%	16%	16%
50-99 Employees	24%	23%	16%	20%	19%	18%	16%	19%	18%	10%	10%	9%
100-499 Employees	20%	17%	13%	16%	17%	16%	13%	12%	14%	11%	10%	10%
500+ Employees	18%	14%	14%	20%	21%	26%	15%	17%	19%	19%	20%	22%

Source: Survey of Employer Participation in the Texas Workers' Compensation System, 1995 estimates from the Texas Workers' Compensation Research Center and Texas A&M University, PPRI; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004-2020 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

Non-Subscription Rates by Industry

Except for health care/educational services, all industry sectors have seen a decline in non-subscription rates since 2004 (see Table 8.2). Several industry sectors saw a decline in non-subscription rates since 2018 (including Arts/Entertainment/Accommodation/Food Services, Wholesale Trade/Retail Trade/Transportation, and Manufacturing) while other industry sectors saw an increase in non-subscription rates (including Mining/Utilities/Construction, Health Care/Educational Services, Finance/Real Estate/Professional Services, and Other Services). Because certain industries were more affected by the pandemic than other industries, readers are cautioned to keep the timing of the survey in mind when interpreting the results.

Table 8.2: Percentage of Texas Employers That Are Non-Subscribers by Industry

Industry Type	Non-Subscription Rate								
	2004	2006	2008	2010	2012	2014	2016	2018	2020
Agriculture/Forestry/Fishing/Hunting	39%	25%	27%	25%	29%	26%	14%	22%	21%
Mining/Utilities/Construction	32%	21%	28%	19%	22%	20%	19%	17%	23%
Manufacturing	42%	37%	31%	31%	29%	25%	21%	28%	25%
Wholesale Trade/ Retail Trade/Transportation	40%	37%	29%	32%	26%	34%	20%	33%	23%
Finance/Real Estate/Professional Services	32%	33%	33%	33%	32%	29%	24%	21%	31%
Health Care/Educational Services	41%	44%	39%	32%	35%	41%	28%	39%	42%
Arts/Entertainment/Accommodation/Food Services	54%	52%	46%	40%	40%	39%	24%	32%	19%
Other Services Except Public Administration	39%	42%	36%	42%	49%	47%	22%	36%	38%

Source: Survey of Employer Participation in the Texas Workers' Compensation System, 1995 estimates from the Texas Workers' Compensation Research Center and Texas A&M University, PPRI; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004-2020 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

Reasons Employers Become Non-Subscribers

When non-subscribing employers were asked why they did not purchase workers' compensation coverage, a majority indicated that they had too few employees, too few injuries, and were not required to have workers' compensation by law (see Table 8.3). Fewer employers in 2020 indicated that they became non-subscribers because they could do a better job of cutting costs or providing better benefits than workers' compensation.

Almost half (48 percent) said they did not purchase workers' compensation coverage because they felt insurance premiums were too high, and about one-fifth (21 percent) said that their company did not purchase coverage because they had to cut costs as a result of the pandemic.

Table 8.3: Most Frequent Reasons Non-Subscribing Employers Gave for Not Purchasing Workers' Compensation Coverage, 2020

Primary Reasons Given by Surveyed Employers	Percentage of Employers Who Indicated Reason Was Extremely Important
Your company had too few employees.	63%
Your company had few on-the-job injuries.	56%
Your company was not required to have workers' compensation coverage by law.	59%
Workers' compensation insurance premiums were too high.	48%
You feel your company could do a better job than workers' compensation at reducing the costs of on-the-job-injuries.	27%
Your company had to cut costs as a result of the pandemic.	21%
You feel your company could do a better job at ensuring that employees injured on the job receive appropriate benefits.	20%

Source: Survey of Employer Participation in the Texas Workers' Compensation System, Texas A&M University, PPRI and the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020.

Reasons Employers Gave for Purchasing Workers' Compensation Coverage

Coverage

In 2020, subscribing employers said their ability to provide medical care through networks (49 percent), their concern about lawsuits (41 percent), and their perception that workers' compensation was required (43 percent) were the primary reasons why they purchased workers' compensation coverage (see Table 8.4). About a fifth said they needed workers' compensation coverage to obtain government contracts and about 16 percent said they wanted to provide coverage to their employees because of the pandemic.

Table 8.4: Most Frequent Reasons Subscribing Employers Gave for Purchasing Workers' Compensation Coverage, 2020

Primary Reasons Given by Surveyed Employers	Percentage of Employers Who Indicated Reason Was Extremely Important
You were able to provide your injured employees with medical care through a workers' compensation health care network.	49%
You thought having workers' compensation coverage was required by law.	43%
You were concerned about lawsuits.	41%
Workers' compensation insurance rates were lower.	27%
You needed to have workers' compensation coverage to obtain government contracts.	22%
Your industry is considered high risk.	19%
You were able to reduce your insurance costs through deductibles, self-insurance, or other premium discounts.	20%
You wanted to provide coverage to your employees because of the pandemic.	16%

Source: Survey of Employer Participation in the Texas Workers' Compensation System, Texas A&M University, PPRI and the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020.

Non-Subscribers' Knowledge about Reporting Requirements in Texas

The 2020 employer survey also asked questions about non-subscribing employers' knowledge of workers' compensation reporting requirements (see Table 8.5). Overall, about half of non-subscribing employers did not have any knowledge about their reporting requirements to DWC.

In 2020, only about 15 percent of non-subscribing employers reported that they were extremely knowledgeable about the reporting requirement to notify DWC of their coverage status yearly through the filing of the DWC Form-005. About 17 percent of the non-subscribing employers reported that they were extremely knowledgeable about the reporting requirement to report all work-related deaths, occupational diseases, and injuries resulting in at least one day of lost-time to DWC by filing the DWC Form-007. Overall, despite outreach efforts by DWC to educate Texas employers about their reporting requirements, a significant percentage of Texas employers are not knowledgeable about these requirements.

Table 8.5: Non-Subscribers’ Knowledge of Reporting Requirements in Texas

Employers’ Knowledge	Percent of all Employers Surveyed								
	Not at All Knowledgeable			Somewhat Knowledgeable			Extremely Knowledgeable		
	2016	2018	2020	2016	2018	2020	2016	2018	2020
All employers without workers’ compensation insurance coverage are required to notify DWC about their coverage status at least annually through the filing of DWC Form-005.	56%	50%	47%	30%	32%	38%	14%	18%	15%
Employers without workers’ compensation insurance coverage that have at least five employees are required to report all work-related deaths, occupational diseases, and injuries resulting in at least one day of lost-time to DWC through the filing of DWC Form-007.	58%	51%	48%	28%	32%	35%	14%	16%	17%

Source: Survey of Employer Participation in the Texas Workers’ Compensation System, Texas A&M University, PPRI and the Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2016-2020.

9. CONCLUDING REMARKS

It has been 15 years since the legislature passed comprehensive HB 7 legislative reforms in an effort to address high medical costs and poor quality of care outcomes for injured employees. At the time HB 7 passed, the system was in flux. Texas had higher medical costs per claim than most other states, primarily driven by an overutilization of medical care, while injured employees had poor return-to-work outcomes, satisfaction with care, and access to care. These high medical costs drove higher insurance rates for Texas employers, who as a result, were increasingly making the decision not to provide workers’ compensation coverage to their employees.

The legislature targeted the system’s cost drivers through the various components of the HB 7 reforms – the establishment of evidence-based medicine, the adoption of treatment and return-to-work guidelines, the creation of a pharmacy formulary, the expansion of preauthorization for certain over-utilized or high-cost medical services, streamlining medical dispute processes, facilitating electronic medical bill submission and payment, and the creation of certified health care networks. The legislature also mandated constant monitoring of these reforms through various legislative reports, optional insurance rate hearings, and network report cards.

The results are clear. Medical costs systemwide have declined in Texas due to a reduction in overutilization of care. About half of the system’s claims are treated in networks, and these networks overall have consistently provided lower medical costs and good quality of care

outcomes for injured employees. Return-to-work rates have improved systemwide for injured employees due in large part to a good economy in Texas. Injured employees' perceptions about their access to and satisfaction with medical care, as well as their functional outcomes have also largely improved. Medical disputes are down, and the disputes that remain are handled more quickly. Workers' compensation insurance rates and premiums are significantly lower for Texas employers than in 2005, and insurance carrier availability and profitability remain high. Many states have looked to Texas' example, and several have chosen to replicate some or all of these legislative reforms in their own states with varying outcomes.



Setting the Standard
An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System
2020 Results

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