

Division of Workers' Compensation Biennial Report to the 87th Legislature



December 2020

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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 Labor Code §402.066, I am pleased to submit the Texas Department of Insurance, Division of Workers' Compensation's biennial report to the 87th Texas Legislature. This report provides an update on the Texas workers' compensation system and a brief description of two legislative recommendations that I believe will improve the state's ability to effectively and efficiently regulate the workers' compensation system.

I am available to discuss any of the issues contained in the report and to provide you with technical assistance. Please contact Jeff Nelson, Director of External Relations, at 512-804-4405 if you have any questions or need any additional information. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Cassie Brown".

Cassie Brown
Commissioner of Workers' Compensation

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1. Introduction

This year brought about many unexpected events. The emergence of the novel coronavirus (COVID-19) disrupted lives, affected businesses and the economy, and created new concerns about workplace safety and medical care. As businesses reopen or remain open, employers have continuing concerns about liability if their employees or customers become sick. Employees have concerns about whether they will still have jobs, and if they get sick, whether they will have access to medical care and wage replacement benefits. The workers' compensation community is also dealing with new challenges from COVID-19. Many are handling claims operations remotely and trying to answer questions about whether COVID-19 is an occupational disease or not.

As the regulator and administrator of the Texas workers' compensation system, the Texas Department of Insurance, Division of Workers' Compensation (DWC) also made changes to its operations as a result of this pandemic. These changes include:

- creating a COVID-19 resource page on its website with information and frequently asked questions tailored toward injured employees, health care providers, insurance carriers, and employers;
- automating several business operations to reduce physical mail coming into the agency;
- implementing an agency telecommuting plan for staff and using existing software to allow staff to continue to work, meet, and provide customer service virtually;
- holding virtual meetings with health care provider groups, insurance carriers, and injured employee representatives to discuss changes to agency operations and answer questions about workers' compensation and COVID-19;
- moving all DWC dispute proceedings to a remote format (virtual or telephonic) to allow parties

Key Findings:

Workers' Compensation Insurance Market:

Since 2003, workers' compensation insurance rates have dropped nearly 72 percent, while insurance companies writing in Texas averaged a 10 percent return on net worth.

Employer Participation: 71 percent of Texas private-sector employers have workers' compensation coverage and they employ about 81 percent of the Texas workforce.

Injury Rates and Claims: The non-fatal injury and occupational illness rate is down 42 percent from 2005, but COVID-19 resulted in an increase in the total number of claims filed since 2019.

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

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.

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.

Dispute Resolution: About 92 percent of claims are handled without the need for dispute resolution with DWC. Medical and indemnity disputes have declined significantly since 2005.

COVID-19: Initial data call results show that only about 35 percent of COVID-19 claims filed resulted in a positive test or diagnosis.

- to continue to move their claim disputes through the process while respecting social distancing;
- filing an emergency rule to expand the use of telemedicine for physical and occupational rehabilitation services;
 - providing Texas employers and employees with virtual workplace safety consultations and trainings, including OSHA 10-hour and 30-hour construction training;
 - providing designated doctors with online certification training and webinars;
 - issuing a data call to workers' compensation insurance carriers with the highest number of COVID-19 related claims in order to provide the legislature with a better understanding of the impact to the system;
 - pausing orders for injured employees to attend non-medically necessary examinations on issues such as impairment ratings, extent of injury, return to work, and disability in order to keep injured employees and staff safe, conserve personal protective equipment, and reduce the strain on health care providers during COVID-19; and
 - issuing several bulletins and memos with approval from the Governor's office to waive or temporarily suspend certain statutory and regulatory requirements. Among these were requirements that restricted first responders from obtaining benefits if certain conditions were not met, work-search requirements for injured employees, certain medical billing requirements for health care providers, and training and testing requirements for designated doctors.

Before the pandemic, the Texas workers' compensation system had experienced 15 consistent years of positive trends and stability since House Bill (HB) 7 passed in 2005, including lower injury and insurance rates, fewer claims filed, lower medical costs, improved access to medical care, fewer disputes, and improved return-to-work rates for injured employees. Texas has been an innovative state for workers' compensation administration, adopting best practices from other health care delivery systems like evidence-based treatment guidelines, pharmacy formularies, standardized billing and utilization review requirements, network certification, and medical data collection. As a result, other state workers' compensation systems often look to Texas as a model.

Looking ahead, DWC's focus for the next two years is to continue efforts to improve automation and administrative efficiencies for both DWC and system stakeholders. This means evaluating changes the agency made during the pandemic to increase electronic transmission of information, streamline internal business processes, and eliminate outdated and unnecessary regulatory requirements, and making these changes permanent.

Going into the 87th legislative session, DWC notes that while COVID-19 will be a focus for workers' compensation legislation, this report presents system trends that allow DWC, policymakers, and system stakeholders to gauge the relative health of the Texas workers' compensation system and consider whether additional legislative changes are necessary.

2. Declining Insurance Rates and Premiums Make Coverage More Affordable for Texas Employers

One measure of a successful workers' compensation system is that employers have access to affordable workers' compensation insurance to cover their employees. This concept is even more important in Texas since workers' compensation insurance coverage is voluntary for private employers. The Texas Department of Insurance (TDI) Property and Casualty Actuarial Office monitors insurance rate filings and reports workers' compensation insurance metrics as part of a biennial report to the Texas Legislature on the impact of the 2005 legislative reforms on insurance rates and premiums.¹ In 2019, 312 insurance companies wrote workers' compensation insurance in Texas, and the total direct written premium (the growth of an insurance company's business during a given period) for the state's workers' compensation insurance market was about \$2.5 billion. The top 10 insurance company groups write about 76 percent of the market. The top writer, Texas Mutual Insurance Company, currently has 42 percent of the market and serves as the insurer of last resort.

Texas continues to have a healthy workers' compensation insurance market, which encourages competition from insurance companies and allows employers to purchase workers' compensation coverage at affordable rates. One important measure of market health is the size of the residual market (policies written by the insurer of last resort). In 2019, the residual market represented only about 0.44 percent of the Texas workers' compensation insurance market.

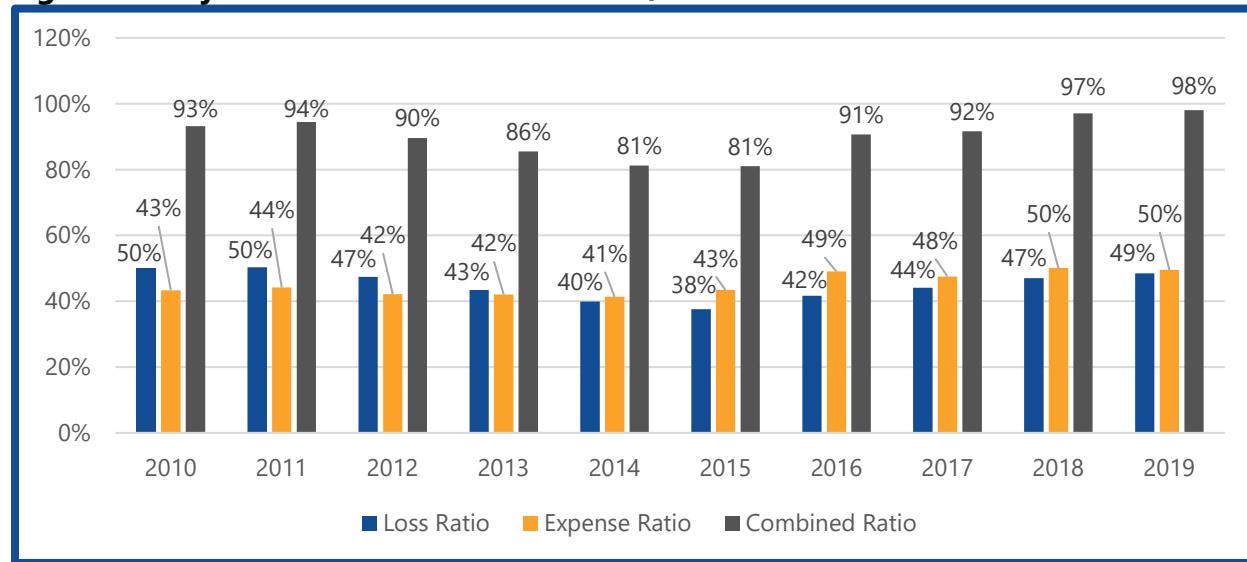
Since 2003, workers' compensation insurance rates have dropped nearly 72 percent.

Overall, the last decade has been very profitable for insurance companies writing workers' compensation insurance in Texas. In 2019, the projected accident year combined ratio for workers' compensation in Texas was 98 percent.² This means that for every dollar an insurance company collects, it will pay an estimated 98 cents to cover losses and expenses and keep the remainder as profit. Figure 1 shows the projected workers' compensation loss ratio and the combined ratio for the last decade. Insurance companies writing in Texas also averaged a 10 percent return on net worth (net income after taxes to net worth) over the last decade, which outperforms the national average of 7.4 percent.

¹ For more information on the effect of the reforms on the workers' compensation insurance market, see Texas Department of Insurance, Workers' Compensation Research and Evaluation Group's, *Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System, 2020 Results*.

² Two important measures of the market's financial health are the loss ratio and the combined ratio. The loss ratio is the relationship between premium collected and the losses incurred (amounts already paid out plus those amounts set aside to cover future payments) by insurance companies. The combined ratio is similar, except it compares premiums collected with the losses and expenses incurred by the insurance company.

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



Sources: National Council on Compensation Insurance's (NCCI) 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.

Texas employers have also seen insurance rates decline significantly over time, making insurance coverage more affordable. Since 2003, workers' compensation insurance rates have dropped nearly 72 percent. While insurance rates have continued to decline in the last decade, these rates are just the start of the workers' compensation insurance pricing process. What employers pay – the insurance premium – reflects not only rates, but also mandated rating programs, such as experience

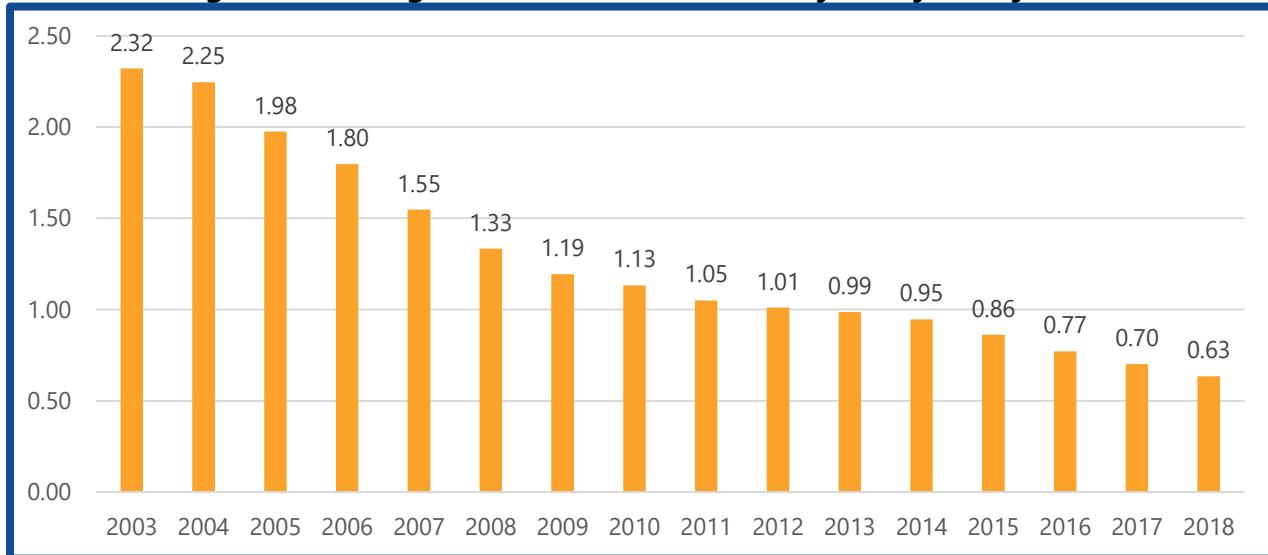
ratings and premium discounts, as well as optional rating tools, such as schedule rating plans and negotiated experience modifiers.

Since 2003, average workers' compensation premium costs per \$100 of payroll declined about 73 percent.

Figure 2 shows the average premium per \$100 of payroll for policy years 2003-2018, reflecting year-to-year changes in premiums charged. Beginning with policy

year 2004, the average premium per \$100 of payroll began to decrease steadily as insurance companies lowered rates and increased the use of optional rating tools. As of policy year 2018, the average premium per \$100 of payroll decreased to 63 cents – a 73 percent reduction since 2003.

Figure 2: Average Premium Per \$100 of Payroll by Policy Year



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

3. Employer Participation Rates and Employee Coverage Rates Remain Stable in 2020

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 or purchasing alternate insurance.³ Employers who choose not to have workers' compensation coverage (referred to as non-subscribers) lose the protection of statutory limits on liability and may be sued for negligence by their injured employees.

Non-subscription rates remain an important performance measure in the workers' compensation system because, in most cases, they show whether employers believe the benefits of participating in the workers' compensation system outweigh the costs of obtaining the coverage.⁴ Overall, the percentage of year-round, non-subscribing, private-sector Texas employers has declined significantly since the 2005 legislative reforms (from 38 percent in 2004 to 29 percent in 2020) due primarily to lower insurance premiums and the increased availability of workers'

About 71 percent of private, year-round employers have workers' compensation, and they employ about 81 percent of the private workforce in Texas.

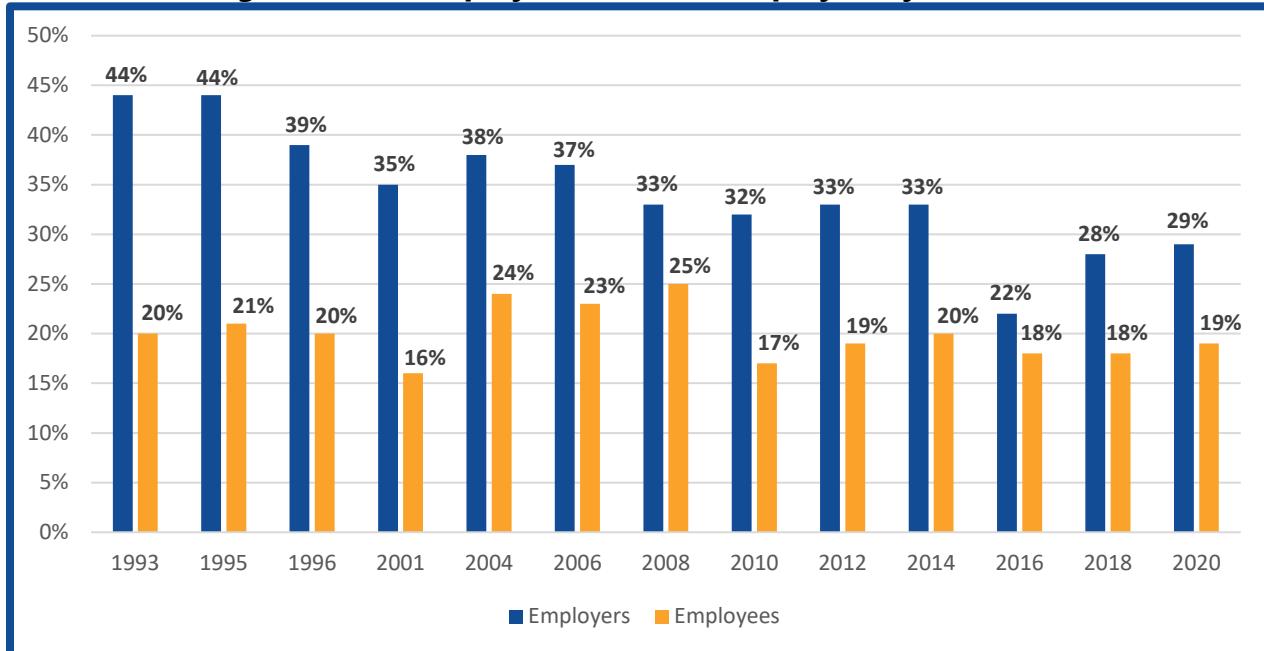
³ Labor Code §406.096 requires building and construction contractors who enter contracts with governmental entities to provide workers' compensation coverage to their employees.

⁴ Since 1993, the Workers' Compensation Research and Evaluation Group (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.

compensation health care networks. 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. About 283,437 private-sector employers do have workers' compensation coverage, and they employ approximately 9 million private-sector employees.

Although employer non-subscription rates have declined over time, 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 3). This is the result of a continuing trend of larger employers (i.e., 500+ employees) becoming non-subscribers despite large workers' compensation insurance rate reductions since 2005.

Figure 3: 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 the Public Policy Research Institute (PPRI) at Texas A&M University; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004-2020 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

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 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.

Although non-subscribing employers have opted not to provide workers' compensation coverage to their employees, some of these employers (about 37 percent in 2020) provide an alternative occupational benefit plan for their employees in case of a work-related injury. Because larger employers tend to provide occupational benefits to employees compared to smaller employers, an estimated 59 percent of employees who work for non-subscribing employers were covered by an alternative occupational benefits plan in 2020. It is important to note that these non-subscriber benefit plans are not regulated by DWC and the benefits offered in these plans vary by employer. Overall, an estimated 878,000 private-sector employees in Texas do not have any employer coverage in the case of a work-related injury in Texas in 2020 - an increase from about 638,000 employees in 2018.

Table 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 the Public Policy Research Institute (PPRI) at Texas A&M University; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004-2020 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

4. Compliance Efforts Regarding Reporting Requirements for Non-Subscribing Employers

Although non-subscriber benefit programs are not regulated by DWC, non-subscribers are still subject to certain reporting requirements under the Labor Code and DWC rules. Non-subscribers must file a notice annually with DWC that they have elected not to obtain workers' compensation coverage (DWC Form-005, *Employer Notice of No Coverage or Termination of Coverage*). Non-subscribers that employ at least five employees must also file a notice with DWC (DWC Form-007, *Employer's Report of Non-Covered Employee's Occupational Injury or Disease*) for each occupational disease and on-the-job injury that results in more than one day of lost time. Failure to follow these reporting requirements may result in enforcement action and administrative penalties.

In 2007, the 80th Texas Legislature added an appropriation rider to TDI's budget that requires DWC to submit, as part of its biennial report to the legislature, a report on the compliance of non-subscribing employers that includes any administrative penalties levied against employers that do

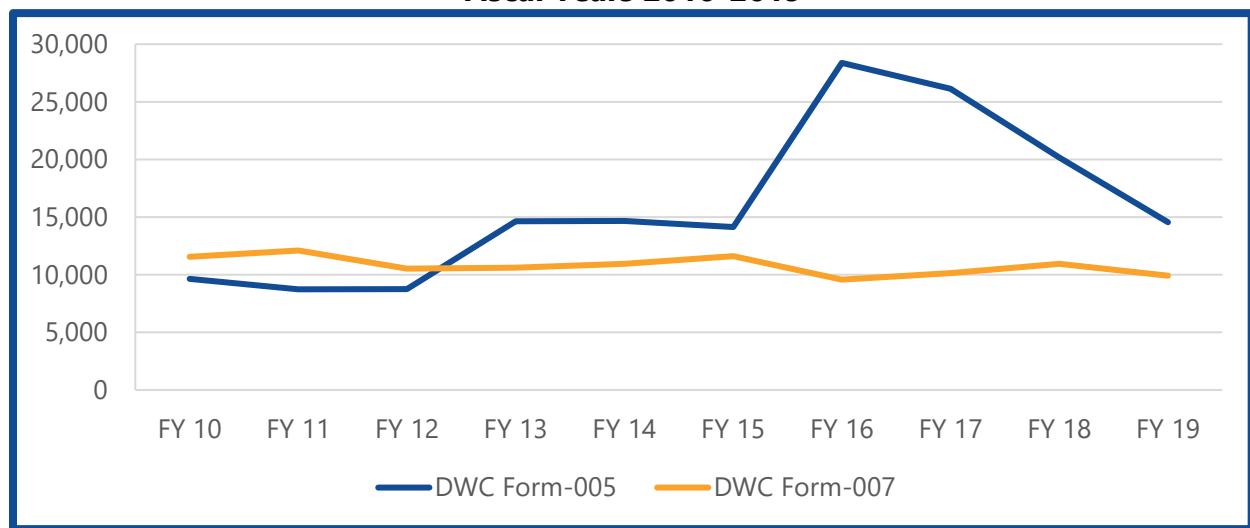
not comply. Historically, DWC receives very few complaints about non-subscriber compliance. Since 2009, internal DWC monitoring efforts have generated most of the 2,859 complaints reported. These internal complaints resulted in more than 473 warning letters and about \$93,000 in penalties for non-subscribers that failed to respond to requests or file required forms. In the absence of complaints from system participants, it is difficult to identify non-complying employers because the policy and employer data submitted to DWC and other state agencies is often incomplete. As a result, it is difficult for DWC to identify individual employers that may be non-subscribers using existing data and to verify reporting compliance for these employers.

In an effort to increase knowledge of and compliance with employer reporting requirements, DWC reorganized its employer resources website to help employers better locate pertinent workers' compensation and non-subscription information, automated the DWC Form-005 to make it easier for employers to report non-coverage to DWC, and created video tutorials to help employers fill out the required forms and answer frequently asked questions.

In 2016 and 2017, DWC provided a grace period for non-subscribers in an effort to increase employer reporting compliance, and this effort increased the number of DWC Form-005 filings with DWC. When DWC did not provide a grace period to employers in 2018, DWC Form-005 filings dropped (see Figure 4). Despite these efforts to increase employer education and compliance, overall non-subscriber reporting compliance remains low and has declined since 2016. DWC estimates that about 12 percent of non-subscribers complied with the DWC Form-005 filing requirement in 2020, compared to an estimated 19 percent in 2018 and 35 percent compliance rate in 2016.

Even when filings of DWC Form-005 increased in 2016, filings of the non-subscriber injury report, DWC Form-007, did not increase proportionately. In fact, filings of these injury reports decreased after Fiscal Year 2011 and have fluctuated in recent years. It is impossible to calculate a compliance rate for the DWC Form-007 filings since DWC has no information on how many injuries non-subscribing employers have until they are reported.

Figure 4: Total Number of DWC Form-005 and DWC Form-007 Received by DWC, Fiscal Years 2010-2019



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

5. DWC Fraud Unit Secures More Than \$1.1 Million in Restitution for Workers' Compensation System

In May 2016, the commissioner of workers' compensation transferred workers' compensation fraud investigations back to DWC from TDI and established a dedicated workers' compensation fraud unit. This allows DWC to pursue criminal fraud actions and use existing resources to detect and prosecute fraud. Following this transfer, the 85th Legislature passed HB 2053, which clarified DWC's existing statutory authority to conduct fraud investigations, provided subpoena authority, and authorized DWC's ability to provide litigation assistance to local prosecutors in workers' compensation fraud cases. The 85th Legislature also authorized a budget rider for DWC to establish a workers' compensation fraud prosecutor in the Travis County District Attorney's Office.

Since 2016, the DWC Fraud Unit and prosecution teams obtained orders for restitution exceeding \$1.1M for workers' compensation system participants.

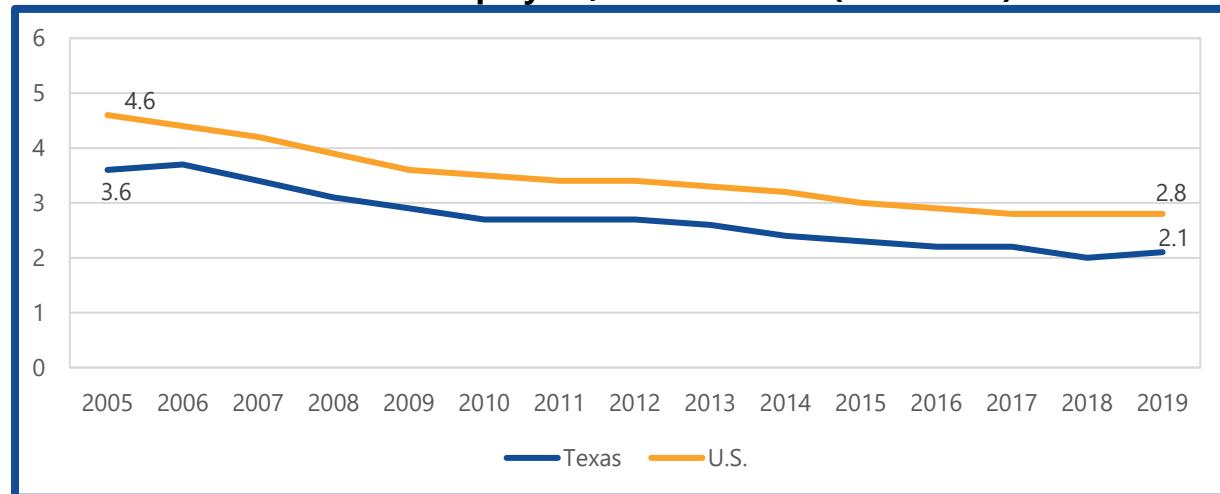
Since 2016, the DWC Fraud Unit and prosecution teams have been actively investigating fraud referrals, pursuing prosecutions, and to date, have obtained 48 indictments, secured 34 convictions, and obtained orders for restitution exceeding \$1.1 million for workers' compensation system participants. The DWC Fraud Unit also collaborates with federal agencies and insurance carrier special investigative units on more complex health care provider and premium fraud cases.

6. Injury Rates Continue to Decline, But COVID-19 Affects Claim Frequency Trends

Prior to the COVID-19 pandemic, Texas continued to experience a steady decline in both the non-fatal occupational injury and illness rate and the overall number of reportable workers' compensation claims filed with DWC. However, COVID-19 has interrupted these claim frequency trends, at least in 2020. Since the 2005 legislative reforms, the non-fatal occupational injury and illness rate in Texas decreased 42 percent, from 3.6 to 2.1 injuries per 100 full-time employees. The 2019 national rate remained at 2.8. Workplace injury and illness rates vary widely by industry. Industries such as arts/entertainment/recreation, transportation/manufacturing, and agriculture/forestry/fishing/hunting have the highest injury rates in Texas. Overall, Texas's non-fatal occupational injury and illness rate has consistently been lower than the national rate (see Figure 5). The non-fatal occupational injury and illness rates for 2020 will not be available until next November so it remains to be seen whether the pandemic will affect these overall injury rates.

The non-fatal occupational injury and illness rate in Texas has decreased 42 percent since 2005. Overall, Texas' rate continues to be lower than the national rate.

Figure 5: Texas and U.S. Non-Fatal Occupational Injury and Illness Rates Per 100 Full-Time Employees, Private-Sector (2005-2019)



Source: Texas Department of Insurance, Division of Workers' Compensation and U.S. Department of Labor, Bureau of Labor Statistics, Annual Survey of Occupational Injuries and Illnesses, 2020.

Despite the consistent reduction in the non-fatal occupational injury and illness rate in Texas over the past 15 years, the number of fatal occupational injuries continues to fluctuate. Texas saw between 527-545 workplace fatalities each year from 2014-2017. In 2018, the number of workplace fatalities declined 9 percent from 534 fatalities in 2017 to 488 workplace fatalities in 2018. Transportation incidents continue to be the leading cause of work-related fatalities. In 2018, the

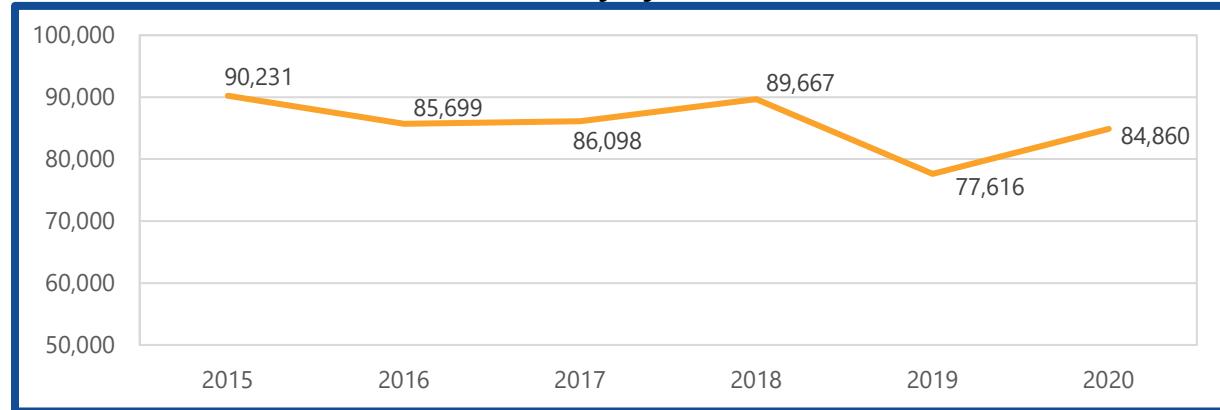
industry sector in Texas with the highest number of fatal occupational injuries was trade/transportation/utilities, followed by construction. The occupation category with the highest number of fatalities was driver/sales workers and truck drivers.

The emergence of COVID-19 in 2020 resulted in an increase in the total number of claims filed since FY 2019, which will continue to grow as more claims are filed.

The number of workers' compensation claims reported to DWC also declined steadily from 2005-2019 (a 34 percent reduction). This decline, however, has begun to slow in recent years. The emergence of COVID-19 in 2020 resulted in an increase in the total number of claims filed since FY 2019 (as of September 2020), which will continue to grow as more claims are filed (see Figure 6). DWC continues to monitor the

impact of COVID-19 on workers' compensation claims, benefits, and disputes.

Figure 6: Number of Workers' Compensation Claims Reported to DWC, by Fiscal Year of Injury, 2015-2020



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

Note: Data as of October 2020. Fiscal years begin on September 1 and end on August 31. For example, Fiscal Year 2020 began on September 1, 2019, and ended on August 31, 2020. These numbers include the claims that are required to be reported to DWC, including fatalities, occupational diseases, and injuries with at least one day of lost time. Medical-only claims are not required to be reported to DWC. Data for 2019 and 2020 should be viewed with caution since the number of claims per calendar year will continue to grow as injuries for that calendar year are reported or as "medical-only" injuries begin to lose time away from work.

7. Medical Costs Continue to Decline, Inpatient Hospital Costs Increasing

In 2005, the Texas Legislature made several statutory changes to address Texas' high medical costs and poor injured employee outcomes, including adopting evidence-based treatment guidelines, creating a pharmacy closed formulary, and certifying workers' compensation health care networks. Since then, total medical payments have declined in the system, primarily due to fewer claims needing treatment and a reduced amount of medical care received by injured employees per claim. From 2013 to 2019, total medical payments (for professional, hospital, and pharmacy services combined) decreased by about 14 percent, while pharmacy payments decreased by 50 percent (see Table 2). These payment declines do not account for medical inflation that occurred during this time.

From 2013 to 2019, total medical payments decreased by about 14 percent, while pharmacy payments decreased by 50 percent.

Table 2: Total Medical Payments, Service Years 2013 and 2019

Medical Cost Categories	2013	2019	% Change from 2013-2019
Professional Services	\$638,182,620	\$539,825,347	-15%
Hospital Services	\$363,362,580	\$361,695,669	-5%
Pharmacy Services	\$125,398,786	\$62,430,311	-50%
Total Medical Payments	\$1,126,945,999	\$963,953,346	-14%

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

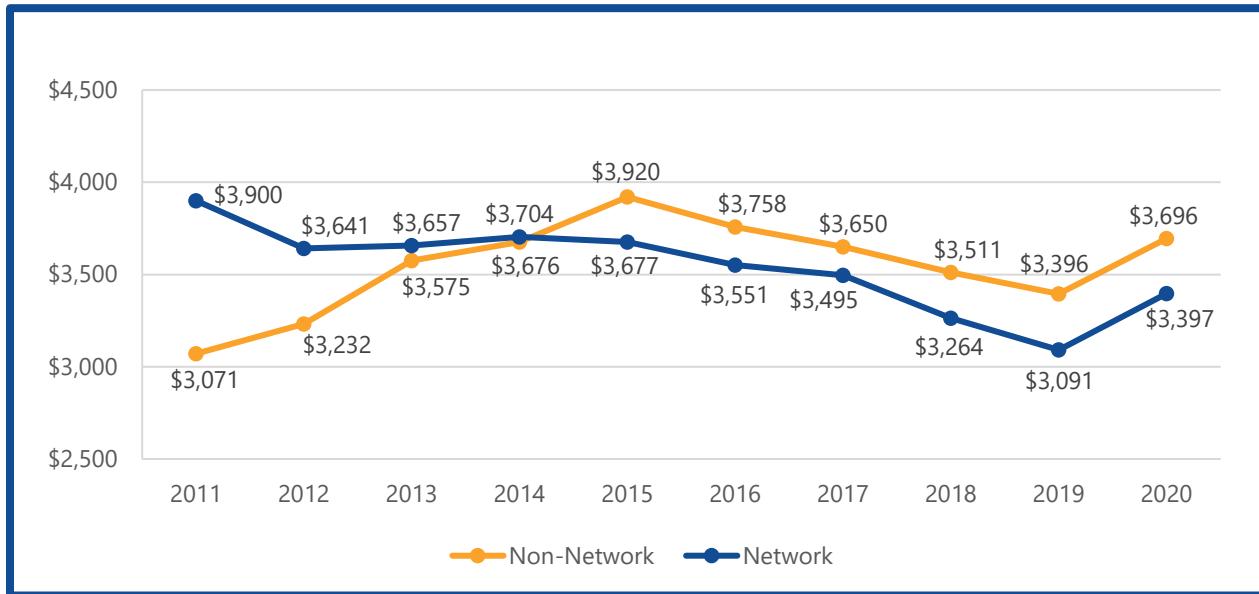
One area that has changed significantly since the 2005 reforms is the use of certified health care networks. There are currently 30 networks covering all 254 Texas counties and certified by TDI. The percentage of new workers' compensation claims treated in networks has grown from about 20 percent of new claims in 2010 to about 48 percent in 2020, but network participation rates have not increased in the last few years.

In 2020, network medical costs were about 9 percent lower per claim at 18 months post-injury compared with non-network claims.

Initially, medical costs per claim were higher in certified networks because networks tended to use more health care services per claim in the first six months post-injury. In 2014, the trend changed and now networks on average have lower medical costs than non-network claims (see Figure 7). As employers and insurance carriers continue to use health care networks to deliver medical treatment to injured employees, the cost and outcomes of these networks

will play a larger role in determining the overall efficiency of the Texas workers' compensation system.

Figure 7: Average Medical Cost Per Claim at 18 Months Maturity, Network Report Card Years 2011-2020



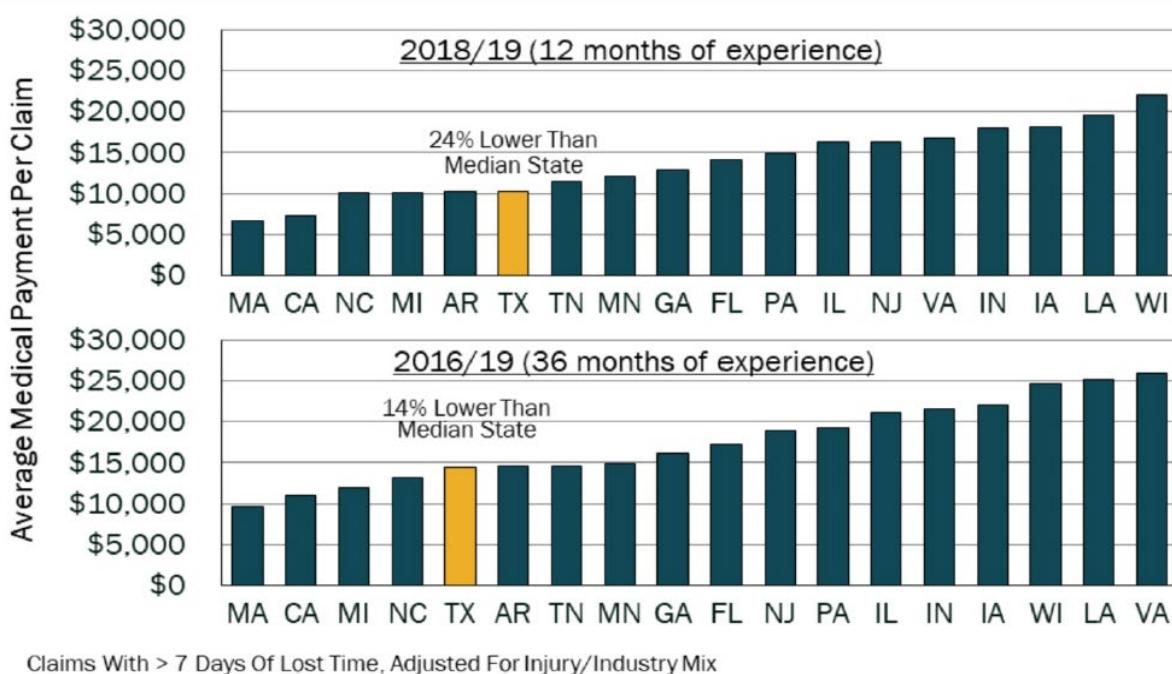
Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020

Compared with other states, Texas experienced significant reductions in medical costs per claim because of legislative reforms to the workers' compensation system. 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 analyzed, which included Florida, Pennsylvania, Louisiana, and Illinois (see Figure 8).

Texas' medical cost per claim is about 24 percent less than the median cost of an 18-state comparison.

Figure 8: Average Medical Cost for Claims with More Than Seven Days of Lost Time (All Services), 12 Months and 36 Months Average Maturity

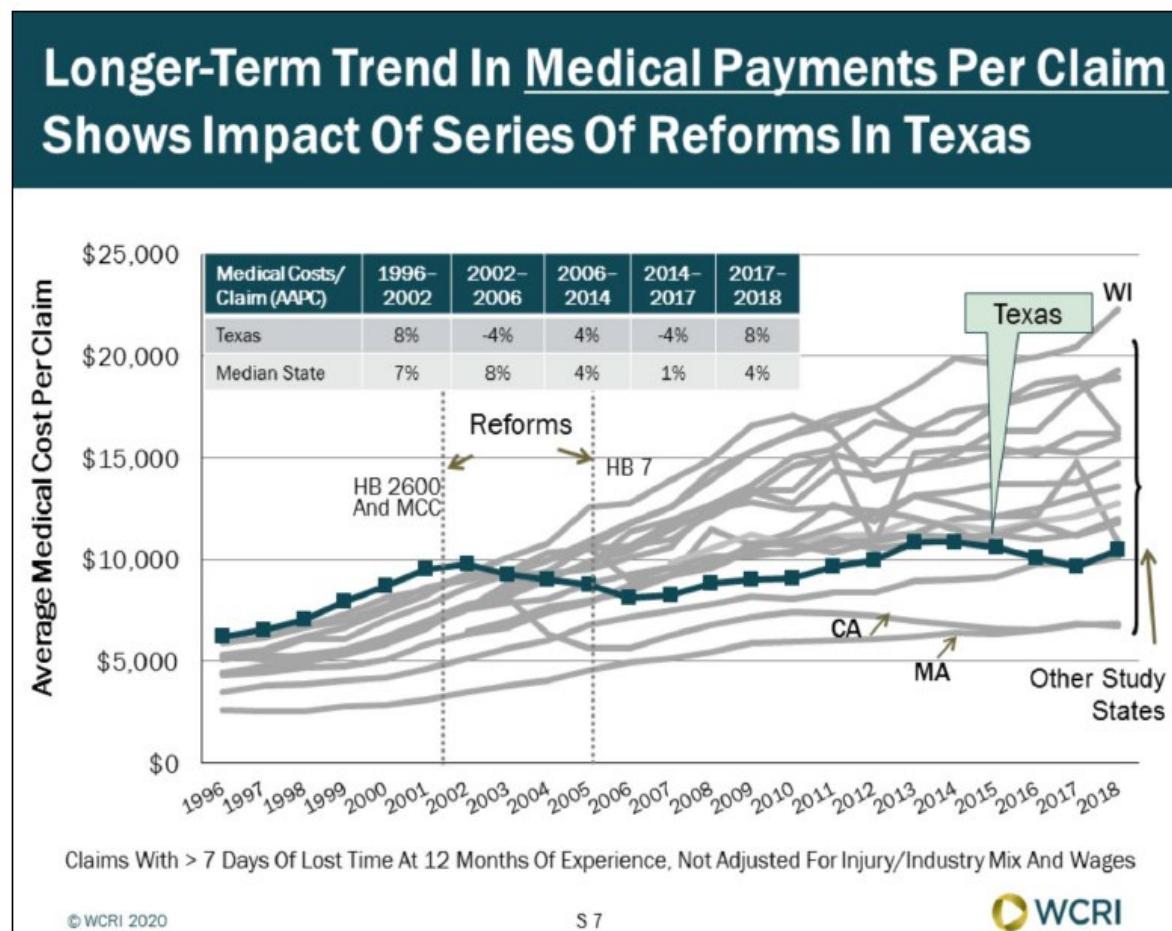
Texas Medical Payments Per Claim Lower Than Many Study States



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

As Figure 9 indicates, while other states have seen dramatic medical cost increases in their workers' compensation systems, Texas' costs have stabilized. This stabilization, coupled with reduced injury rates, enabled insurance carriers to lower workers' compensation insurance rates and encouraged more employers to provide workers' compensation coverage to their employees.

Figure 9: Average Medical Cost for Claims with More Than Seven Days of Lost Time (All Services), 12 Months Average Maturity, 1996-2018



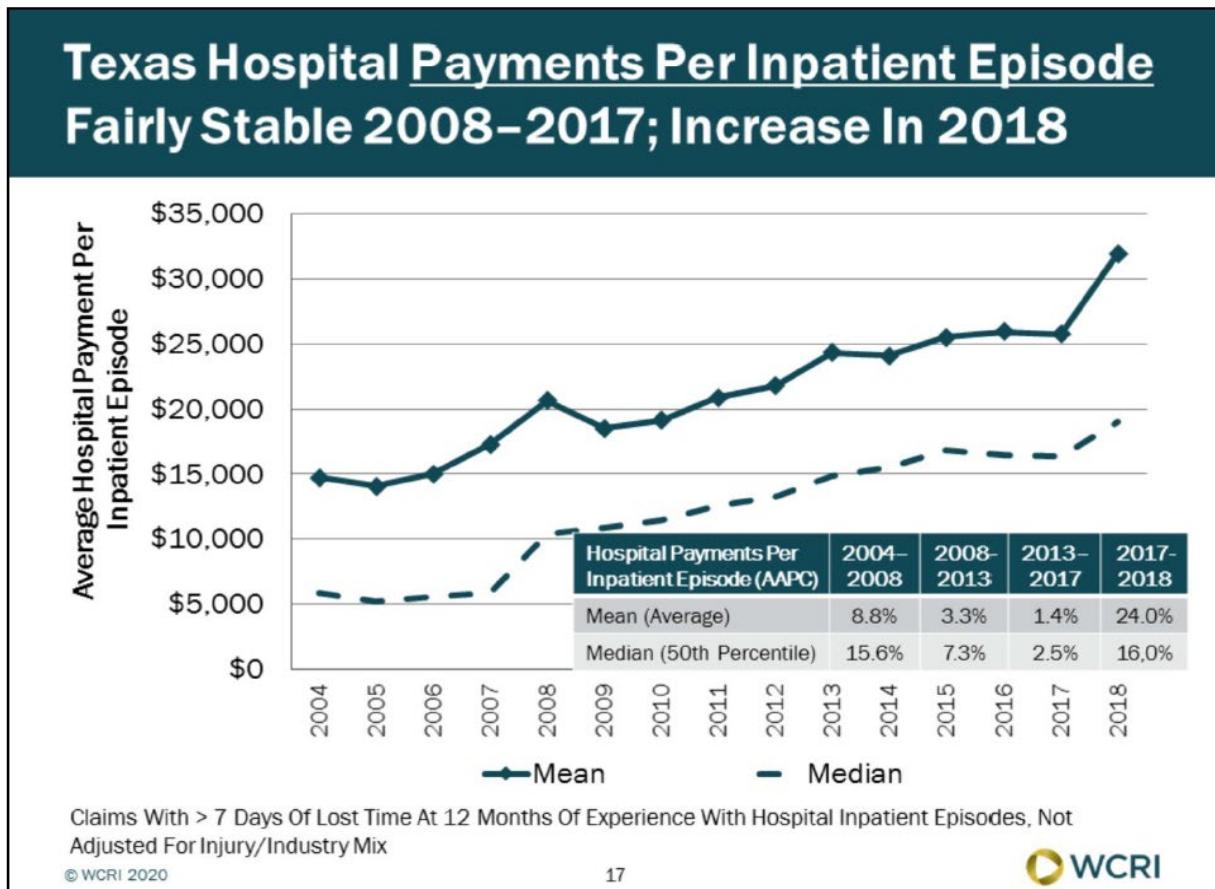
Source: Workers' Compensation Research Institute, CompScope™ Medical Benchmarks, for Texas, 21st Edition, 2020.

Note: "MCC" means medical cost containment. In 2001 and 2005, the legislature passed reforms, which added new medical cost containment tools for workers' compensation claims, such as preauthorization requirements for spinal surgery, physical and occupational therapy, treatment guidelines, and networks.

Although Texas' medical costs have declined since the legislative reforms and look favorable compared to other states, hospital costs have increased in recent years, indicating the need for further monitoring. In 2018, inpatient hospital costs increased about 24 percent due to several factors, including changes in injury severity and the mix of surgeries being performed in an inpatient setting,⁵ as well as changes in the Medicare inpatient prospective payment system, which may have resulted in higher reimbursement rates for certain diagnostic related groups (see Figure 10).

⁵ Less severe claims and less complicated procedures are now being done in an outpatient hospital setting compared to inpatient, resulting in more severe claims being associated with inpatient costs. Network claims tend to utilize outpatient hospital procedures more than inpatient hospital procedures, compared to non-network claims.

**Figure 10: Average Hospital Cost for Claims with More Than 7 Days of Lost Time,
12 Months Average Maturity, 2004-2018**



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

8. Access to Care Improves for Injured Employees

Making sure injured employees have adequate access to medical care is an important system goal. Without sufficient access, studies show necessary medical care is delayed, which increases medical and income benefit costs, and unnecessarily adds to time off work for injured employees.

An analysis of medical billing and payment data collected by DWC shows a net increase in the number of physicians (medical doctors or MDs and doctors of osteopathy or DOs) actively participating in Texas workers' compensation since the 2005 reforms (from almost 17,656 physicians in 2005, to more than 17,981 in 2019). In contrast, the number of claims needing treatment dropped 34 percent during this time.

Texas saw a net increase in the number of physicians treating injured employees since 2005.

In addition to physicians, other types of health care providers, such as chiropractors, physician assistants, nurse practitioners, and physical and occupational therapists also provide medical care to injured employees. Like other health care delivery systems, the use of physician extenders (i.e.,

physician assistants and nurse practitioners) has increased in the Texas workers' compensation system in the last few years, especially for initial medical visits. As Table 3 illustrates, the number of physician extenders and physical and occupational therapists treating injured employees has steadily increased since 2015, even though the number of workers' compensation claims needing treatment declined during this time. The number of chiropractors treating injured employees declined from about 1,316 to 957 and the number of MDs providing non-emergency medical care to injured employees declined from 17,293 to 16,518.

Table 3: Number of Texas Licensed Health Care Providers Treating Injured Employees, by Provider Type, 2015-2019

Provider Type	Calendar Year				
	2015	2016	2017	2018	2019
Doctor of Medicine	17,293	17,019	16,674	16,906	16,518
Doctor of Osteopathy	1,440	1,457	1,446	1,485	1,463
Doctor of Chiropractic	1,316	1,164	1,130	1,056	957
Doctor of Dentistry/Optometry/Podiatry	780	767	716	762	777
Physician Assistant	1,553	1,631	1,702	1,820	1,885
Nurse Practitioner	3,012	3,338	3,547	3,941	4,138
Physical Therapist/Occupational Therapist	2,800	2,929	3,105	3,290	3,395

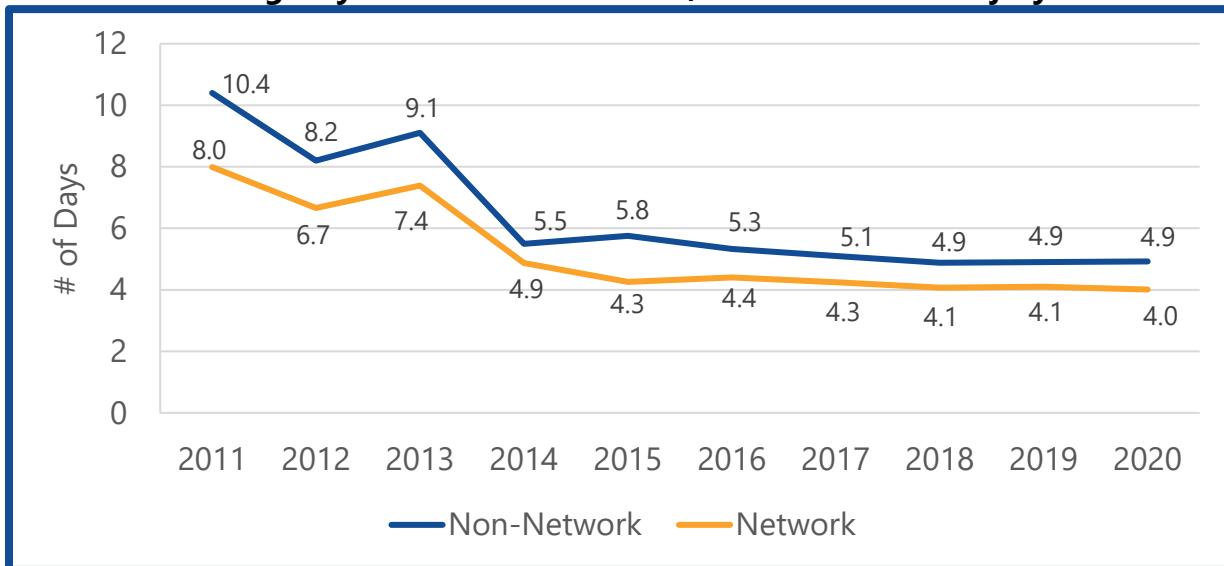
Source: Texas Department of Insurance, Division of Workers' Compensation, 2020.

Note: Health care providers included in this table provided at least one non-emergency medical treatment to an injured employee in each year, regardless of whether the treatment was paid. Impairment rating examinations were excluded from this analysis.

Average number of days from the date of injury to the first non-emergency medical visit was reduced by half from 2011 to 2020.

The timeliness of care has also improved for Texas injured employees in the last decade. The average number of days from the date of injury to the first non-emergency medical visit was reduced 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 11).

Figure 11: 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.

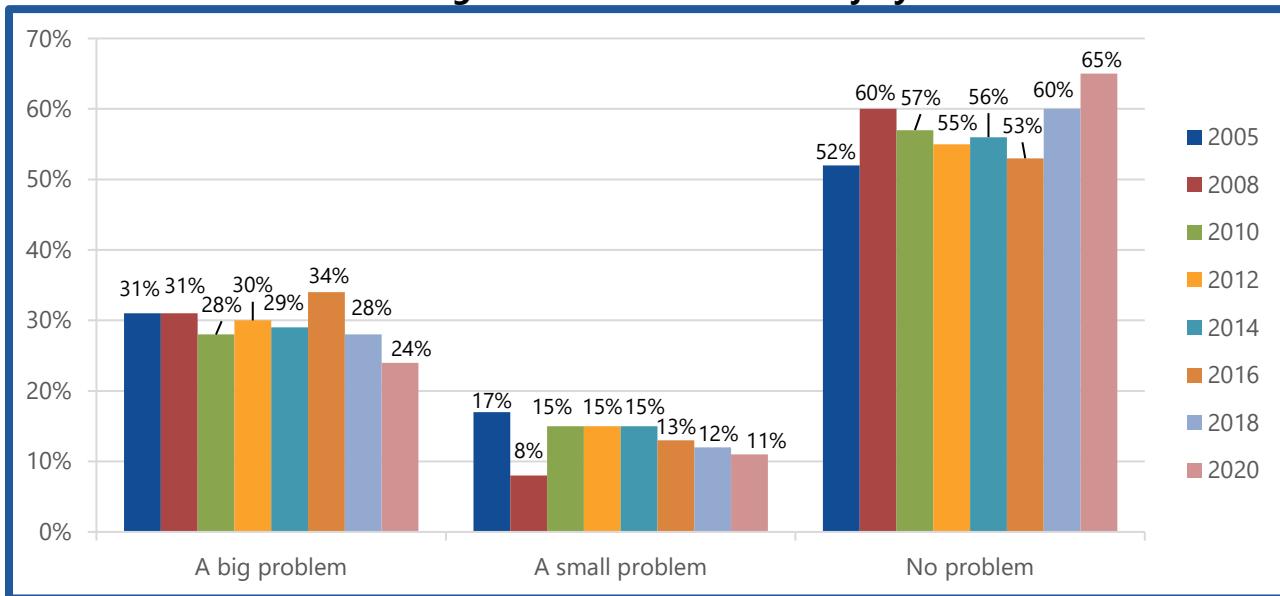
In 2020, almost two-thirds (65 percent) of employees surveyed reported "no problem" getting the medical care they felt they needed for their work-related injury.

In 2020, the Workers' Compensation Research and Evaluation Group in conjunction with Texas A&M University, Public Policy Research Institute surveyed 3,157 injured employees to collect injured employees' experiences with their medical care (access to care, satisfaction with care, and health-related outcomes), as well as information about their experiences returning to work after their work-related injuries.⁶ These survey results were compared with results from injured employees surveyed in 2005. Almost two-thirds (65 percent) of employees surveyed in 2020 reported

"no problem" getting the medical care they felt they needed for their work-related injury, compared to 52 percent of employees surveyed in 2005 (see Figure 12).

⁶ Injured employees were surveyed at about 12 to 24 months post-injury.

Figure 12: 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 illustrates, injured employees who received medical care from networks generally had better perceptions about 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: 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, 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. Percentages for each network may not add up to 100% because of rounding.

9. Return-To-Work Rates Improve for Injured Employees

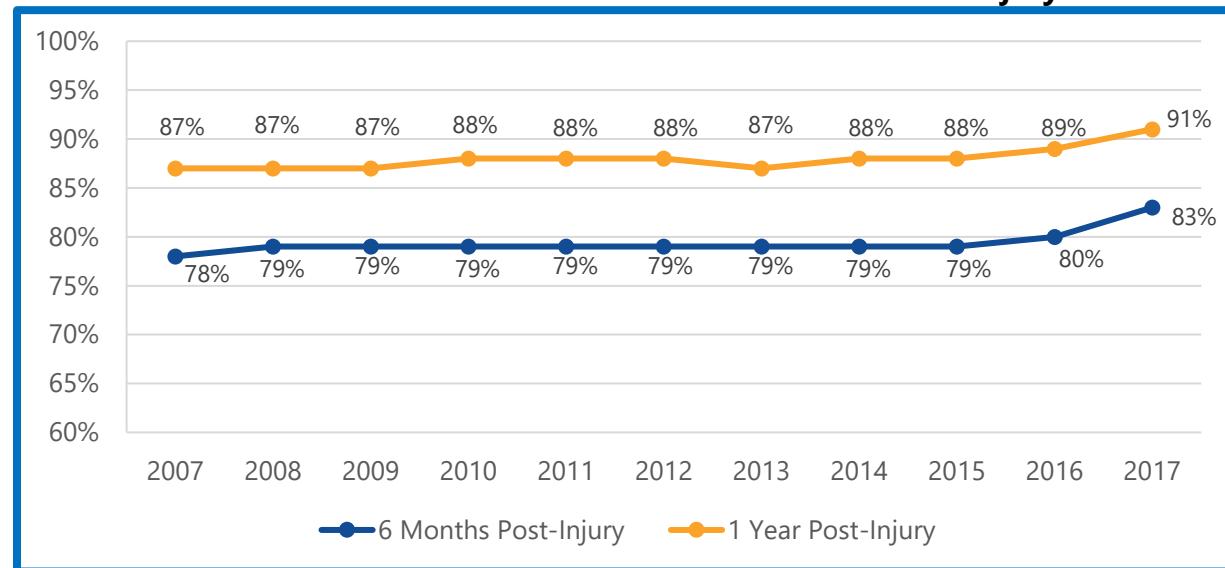
Effective return-to-work programs help reduce the economic and psychological impact of a work-related injury on an injured employee, reduce income benefit costs, and curb productivity losses for Texas employers. Prior to the 2005 legislative reforms, Texas had higher medical costs and lower return-to-work rates per claim compared to other states. In recent years, return-to-work rates have improved and stabilized, allowing the majority of injured employees to return to work after their injuries.

In 2007, about 78 percent of injured employees receiving temporary income benefits (TIBs) went back to work within six months, compared to about 83 percent of injured employees in 2017.⁷ At one year post-injury, about 9 out of 10 injured employees returned to work (see Figure 13). As expected, injured employees who work for larger employers and in the public administration sector generally have the highest return-to-work rates. Overall, in the last decade, return-to-work rates have improved across all employer size categories and almost all industry sectors.

More injured employees are returning to work in Texas.

About 9 out of 10 injured employees receiving temporary income benefits return to work within one year of their injury.

Figure 13: Percentage of Injured Employees Receiving TIBs Who Initially Returned to Work at Six Months and One Year Post-Injury



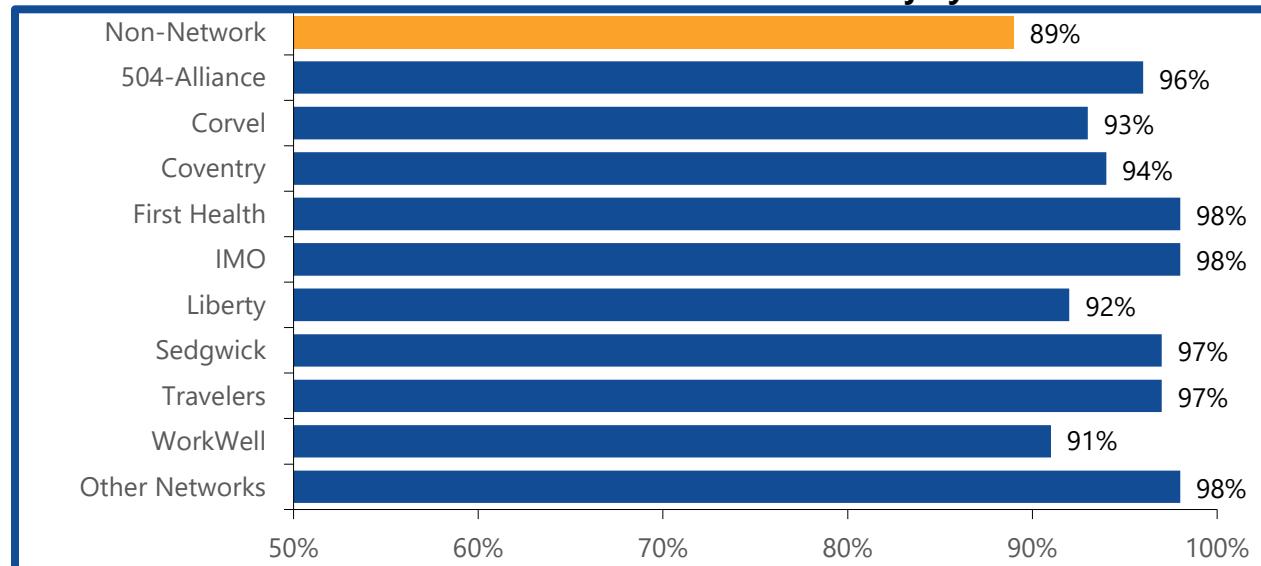
Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2020.

⁷ TIBs are paid to injured employees who have been off work for at least one week because of a work-related injury.

Results from the REG's 2020 Workers' Compensation Network Report Card also indicate that injured employees who receive medical care from networks (either certified health care networks or political subdivision health plans) reported higher return-to-work rates than injured employees with non-network claims (see Figures 14 and 15). The improved performance of most network over non-network claims may be the result of improved coordination between system participants, particularly employers who help injured employees return to work and network health care providers who are focused on releasing employees back to work quickly after a work-related injury.

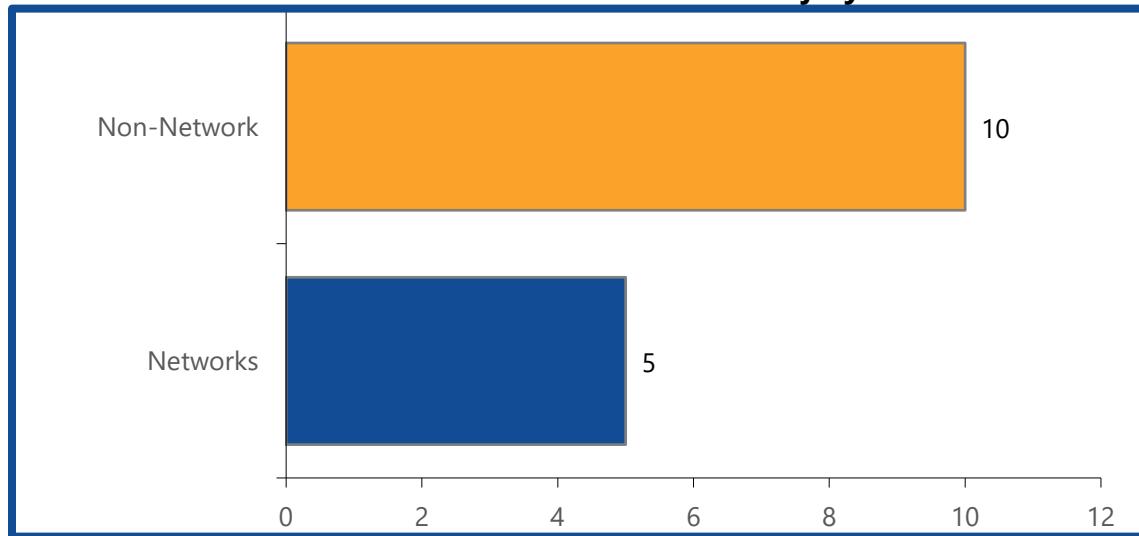
Injured employees who receive medical care from networks reported higher return-to-work rates than employees with non-network claims.

Figure 14: 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.

Figure 15: Average Number of Weeks Injured Employees Reported Being Off Work Because of Their Work-Related Injury



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

10. Indemnity Dispute Resolution Requests Decline: Most Disputes Involve Designated Doctor Opinions

Although much of the system's resources are spent on claim disputes between insurance carriers and the injured employees, it is important to note that only a fraction (4 to 8 percent) of workers' compensation claims ever end up in a dispute at DWC. Along with reductions in the number of workers' compensation claims filed with DWC over time, the number of indemnity disputes requested and concluded has also decreased steadily since 2005.

About 92 percent of claims are handled without the need for dispute resolution by DWC.

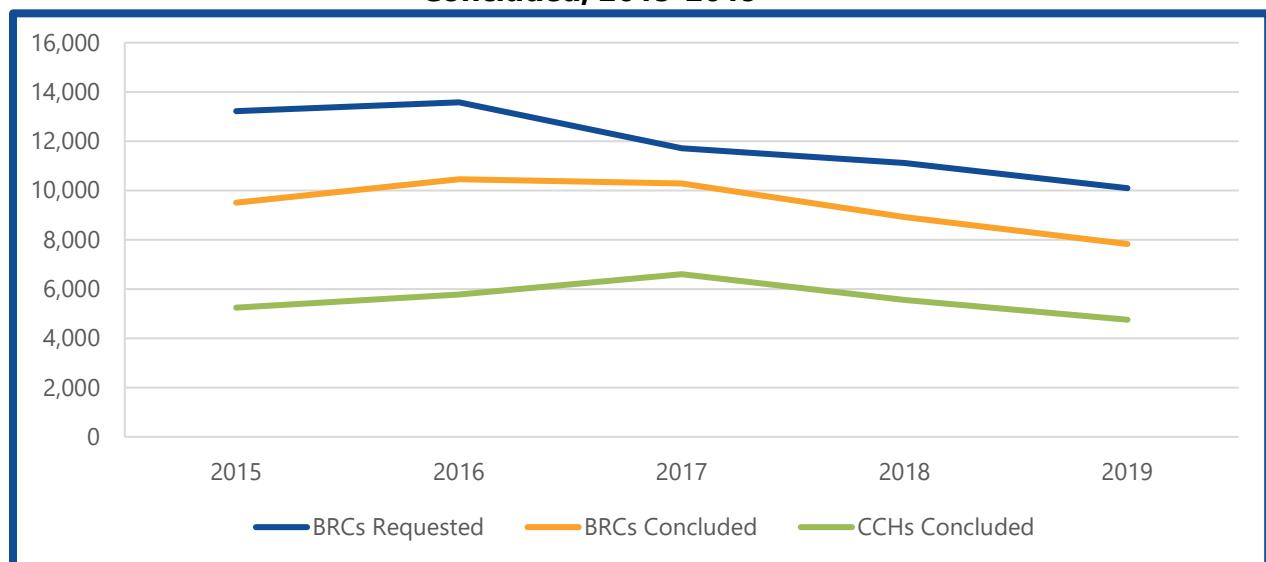
A benefit review conference (BRC) is an informal meeting most commonly between the injured employee, an insurance carrier representative, and a DWC benefit review officer to discuss and attempt to resolve disputed issues. Any party may request a BRC. If a dispute between the parties cannot be resolved at the BRC level, then a contested case hearing (CCH) is held. A CCH is a formal administrative hearing where a DWC administrative law judge hears the case and issue a written decision resolving the disputed issues. If a party is dissatisfied with the CCH decision, the party may file an appeal of the decision to the DWC Appeals Panel, which is the final step in the administrative dispute resolution process. The Appeals Panel may uphold or reverse a CCH decision, or remand the

decision back to the DWC administrative law judge. Either party may appeal the Appeals Panel decision to district court.

In 2005, parties requested nearly 42,000 BRCs. By 2019, that number fell to 10,094 requests, a 76 percent decrease. Along with fewer requests, the number of concluded BRCs also decreased by more than 50 percent since the 2005 legislative reforms (from about 17,000 concluded in 2005 to 7,827 in 2019). Some of this decline can be attributed to a consistent reduction in the number of claims reported to DWC. However, the number of BRCs and CCHs concluded has fluctuated in recent years due to an increasing number of designated doctor and extent of injury disputes.⁸ Since 2015, the number of BRCs concluded declined 18 percent, while the number of CCHs concluded declined 9 percent (see Figure 16).⁹

The number of BRCs requested has declined 76 percent since 2005, while the number of BRCs concluded dropped by more than 50 percent.

Figure 16: Number of BRCs Requested and Number of BRCs and CCHs Concluded, 2015-2019



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

Since 2011, a higher proportion of the disputes requested at the BRC and CCH levels include issues involving the extent of an employee's injury, the designated doctor's determination regarding the injured employee's date of maximum medical improvement (MMI), or the impairment rating (IR) assigned to an injured employee's claim by the designated doctor. In 2011, these three issues

⁸ Appeals Panel decision trends have also fluctuated in recent years. In FY 2015, the Appeals Panel issued 2,548 decisions, including decisions to uphold or reverse the CCH decision or remand the dispute back to the CCH. This number grew to 3,079 in FY 2017 and then declined again to 2,433 in FY 2019.

⁹ DWC appoints DDs to examine injured employees and issue opinions to resolve certain types of questions including, the extent of the employee's injury, the date an injured employee reached MMI, the employee's IR, whether the employee can return to work, and other similar issues. By statute, DD opinions have presumptive weight in DWC dispute proceedings.

represented about 48 percent of disputes at the BRC level but increased to about 60 percent of disputes in 2012. Since 2012, these three issues have represented about 60-65 percent of disputed issues at the BRC (61 percent in 2019).

Increases in these disputed issues in the last few years coincide with several factors, including:

- an August 2010 ruling by the Texas Supreme Court in *Transcontinental Insurance Company v. Crump* that described the burden of proof needed to show that a work-related activity was the “producing cause” of the employee’s injury;
- DWC’s adoption of BRC rules in 2011 clarifying that a BRC must be requested and scheduled to stop the statutory 90-day finality of the first valid IR or date of MMI assigned to an injured employee; and
- subsequent decisions by DWC’s Appeals Panel holding that:
 1. extent of injury is a threshold issue for determining disputes related to MMI and IR; and
 2. medical conditions included in an MMI and IR certification that has become final under Labor Code §408.123 are part of the compensable injury.

In 2019, almost half (49 percent) of injured employees with disputes at the BRC level were assisted by ombudsmen with the Office of Injured Employee Counsel (OIEC), 42 percent were represented by attorneys, and 10 percent were assisted by other lay representatives or had no representation. These percentages have been relatively stable in the last three years. The percentage of injured employees with ombudsman assistance or attorney representation at the CCH level mirrored the percentages at the BRC level.

11. Medical Disputes

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 disputes/concurrent review disputes¹⁰ (i.e., disputes about the medical necessity of certain medical treatments that were denied prospectively or concurrently 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).

Since 2005, medical disputes have declined significantly:

- Medical fee disputes – ↓ 65 percent
- Preauthorization disputes – ↓ 20 percent
- Retrospective disputes – have completely disappeared.

DWC staff experienced with DWC's medical billing rules, medical fee guidelines, and Medicare payment policies review and resolve medical fee disputes. Either party may appeal a medical fee decision by requesting a benefit review conference at DWC followed by a hearing at the State Office of Administrative Hearings.

Medical necessity disputes are resolved by Independent Review Organizations (IROs) that are panels of doctors and other health care providers certified by TDI to resolve medical

necessity disputes for workers' compensation and group health claims. Either party may appeal an IRO decision to a DWC administrative law judge.

Overall, DWC experienced a significant reduction in the number of medical disputes filed since 2005. From 2005-2019:

- medical fee disputes decreased about 65 percent (from 11,697 disputes in 2005 to 4,103 in 2019);
- preauthorization and concurrent review disputes decreased about 20 percent (from 1,723 disputes in 2005 to 1,372 in 2019); and
- retrospective medical necessity disputes have completely disappeared in the system (from 2,518 disputes in 2005 to 0 in 2019).

The decrease in medical disputes is related to several factors, including:

- fewer workers' compensation claims filed;
- health care networks created in 2006 which resolve their own fee disputes;
- DWC's medical treatment guidelines adopted in 2007, which provide a consistent, evidence-based medical necessity standard for health care providers and insurance carriers; and

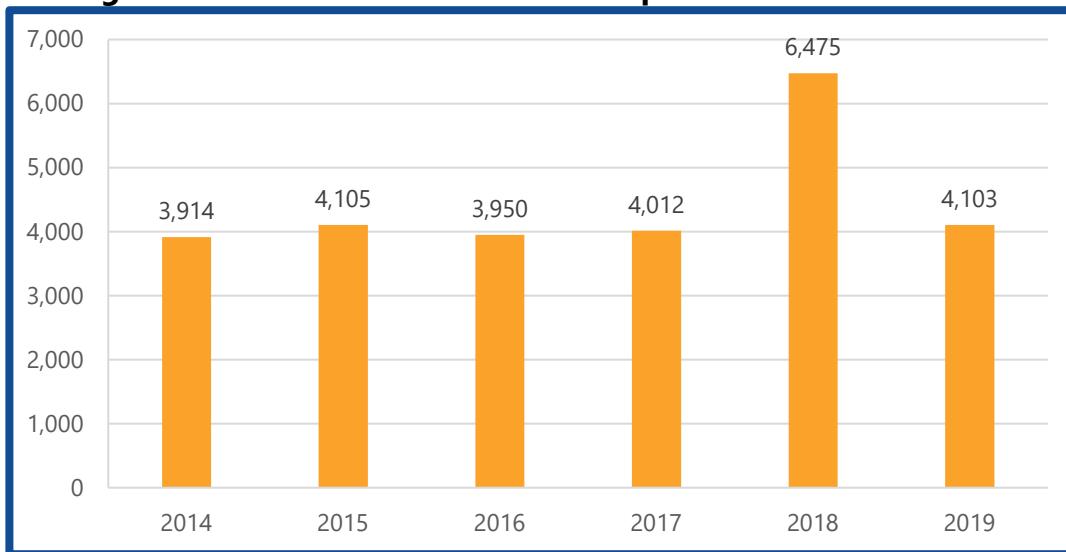
¹⁰ Texas Labor Code §413.014 and 28 Texas Administrative Code §134.600 include a list of medical treatments and services that require preauthorization by the insurance carrier before they can be provided to an injured employee. Networks are not subject to these preauthorization requirements and may establish their own lists of medical treatments and services that require preauthorization. See Texas Insurance Code §1305.351.

- DWC's adoption of new professional, inpatient and outpatient hospital and ambulatory surgical center fee guidelines in 2008, which provide standardized reimbursement amounts for the majority of medical services provided to injured employees.

Before 2005, a greater share of medical disputes involved medical treatments that were denied retrospectively as not medically necessary by insurance carriers. With the legislative reforms' increased emphasis on preauthorization, most retrospective medical necessity disputes disappeared from the system and the percentage of all medical disputes involving preauthorization denials increased. Now, most of the remaining medical disputes in the system involve fee disputes for non-network or out-of-network medical care.

Medical fee disputes increased temporarily in 2018 (from 4,012 disputes in 2017 to 6,475 disputes in 2018) due to a large number of compound drug disputes filed by a handful of pharmacies, but disputes declined again in 2019 once DWC adopted new compound drug rules (see Figure 17). 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.

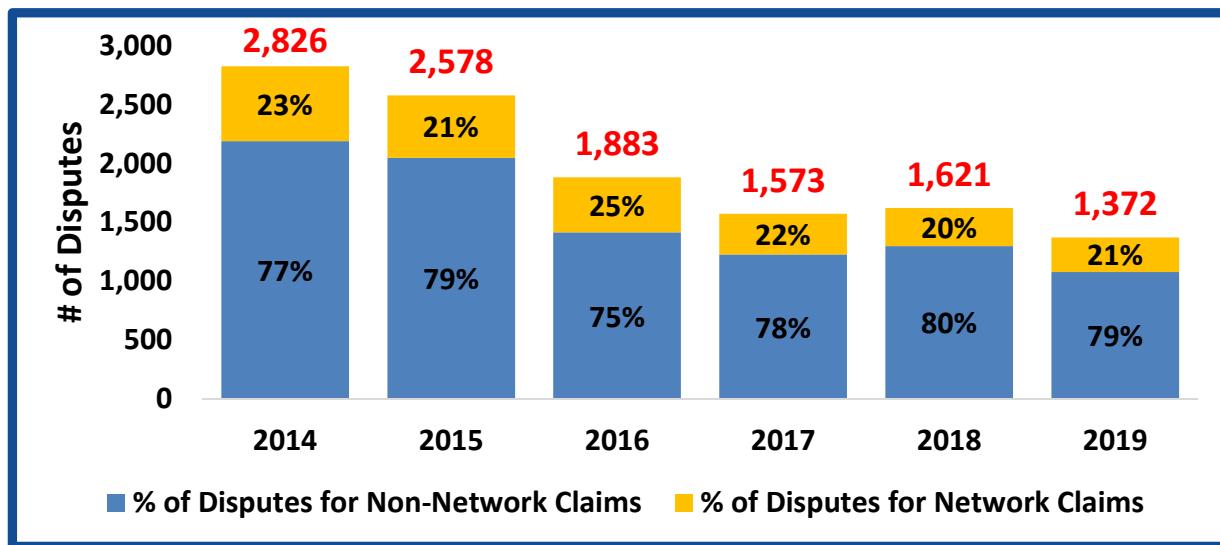
Figure 17: Number of Medical Fee Disputes from 2014 to 2019



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

Medical necessity disputes continue to decline each year (see Figure 18). 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 disputes filed).

Figure 18: Number and Distribution of Medical Necessity Disputes by Network Status, 2014-2019



Source: Workers' Compensation Research and Evaluation Group, 2020.

The timeliness of resolving medical disputes in the system has also improved over time. In 2005, the system resolved a preauthorization dispute in an average of 59 days, a retrospective medical necessity dispute in an average of 123 days, and a medical fee dispute in an average of 335 days. In 2019, preauthorization disputes were resolved in an average of 19 days and fee disputes in an average of 47 days (there were no retrospective medical necessity disputes in 2019).

Since 2005, timeliness of medical dispute resolution has improved:

- Medical fee disputes – 335 days in 2005 to 47 days in 2019.
- Preauthorization disputes – 59 days in 2005 to 19 days in 2019.

In terms of dispute outcomes, most medical necessity disputes resulted in decisions that upheld the insurance carrier's utilization review denial. These percentages have not changed significantly since 2005. In 2005, about 71 percent of preauthorization dispute decisions upheld the insurance carrier's utilization review denial. In 2019, about 76 percent of disputes involving network claims and 81 percent of disputes involving non-network claims upheld the insurance carrier's utilization review decision. IROs tended to uphold the insurance carrier's utilization review decision 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 on the dispute decision why they diverged from the adopted treatment guidelines.

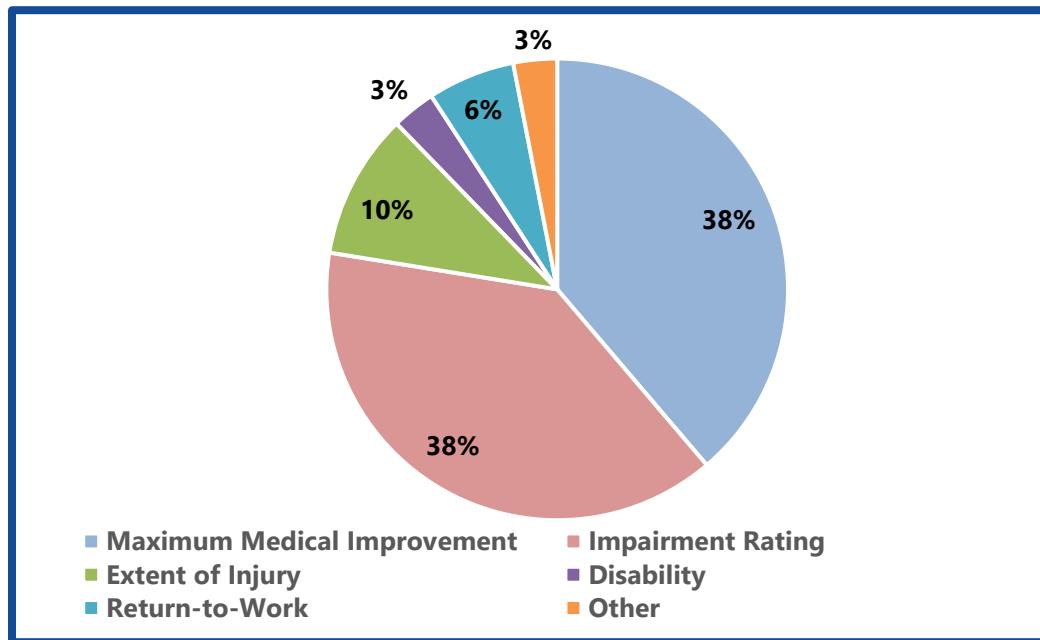
12. Designated Doctor Opinions Continue to Be A Valuable Tool for Dispute Resolution

Designated doctors (DDs) perform an important role in resolving many types of disputes about an injured employee's claim. The DD examinations determine the date of an employee's MMI, IR, extent of injury, ability to return to work, and other related issues. Without these expert opinions, the system would potentially have tens of thousands of additional disputes to resolve each year. DWC certifies DDs, who must complete required training and testing, and assigns them examinations based on the doctor's credentials, the injured employee's affected body parts, and the injured employee's diagnosis. Because of their enhanced training and testing, and their role as an independent evaluator, DD opinions have presumptive weight in DWC dispute resolution proceedings.

Many DD appointments requested by system participants involve assessments of an injured employee's date of MMI and IR, followed by assessments of an injured employee's ability to return to work, and the extent of the employee's injury. Figure 19 provides information for fiscal year 2019. This distribution of DD examinations by issue type has remained essentially the same for the last five years.

Because of their enhanced training and testing and their role as an independent evaluator, designated doctor opinions have presumptive weight in DWC dispute resolution proceedings.

Figure 19: Distribution of Designated Doctor Appointments by Issue, Fiscal Year 2019

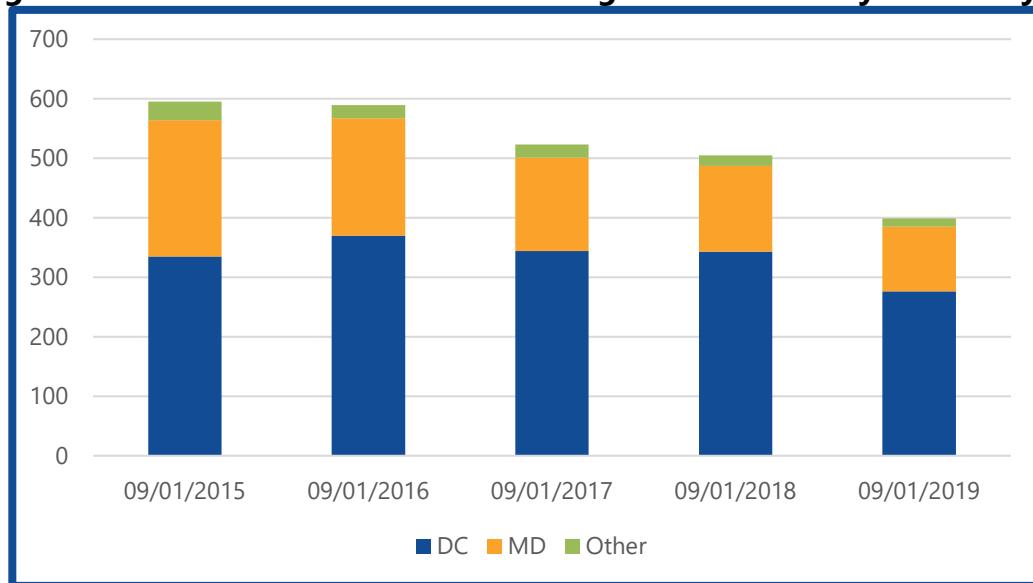


Source: Texas Department of Insurance, Division of Workers' Compensation, 2020.

Note: "Other" includes disability, return-to-work/supplemental income benefits eligibility, and other related issues.

The total number of DDs certified by DWC declined from 595 in fiscal year 2015, to 504 in fiscal year 2019 (see Figure 20). Fewer licensed medical doctors (MDs) and doctors of osteopathy (DOs) now participate in the DD program, which is a concern since these doctors are qualified to evaluate nearly all musculoskeletal and non-musculoskeletal injuries seen in the workers' compensation system. The number of chiropractors (DCs) serving as DDs has also declined, but at a lower rate than MDs and DOs. Despite these declines, in fiscal year 2019 more than 97 percent of injured employees saw a qualified DD in their county of residence, or an adjacent county.

Figure 20: Number of DWC Certified Designated Doctors by License Type



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

Note: "Other" includes osteopaths and podiatrists.

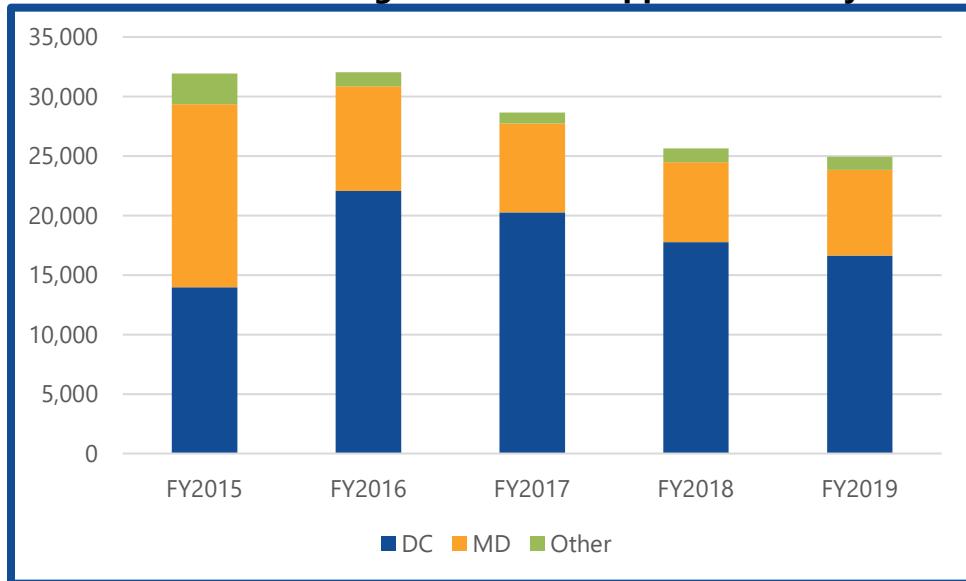
In fiscal year 2015, MDs and DOs performed approximately 56 percent of DD examinations, but by fiscal year 2018, MDs and DOs only performed about 33 percent of these examinations.

During the same time frame, however, the number of DD appointments also declined by about 22 percent (from 31,933 appointments in fiscal year 2015, to 24,936 appointments in fiscal year 2019) due to a decrease in the number of workers' compensation claims filed in the system. The distribution of DD examinations by license type has also changed over time, resulting in fewer examinations that require a MD or DO and more examinations where a DC can examine the injured employee. In fiscal year 2015, MDs performed approximately 56 percent of DD examinations, but by fiscal year 2019 MDs and DOs only performed about 33

percent of these examinations (see Figure 21). In 2018, DWC adopted rules to provide a balanced appointment distribution methodology for all doctors qualified to evaluate musculoskeletal areas of

the body. The new assignment methodology will increase the transparency of the DD assignment process and help retain MDs and DOs on the designated doctors list. DWC also recently implemented virtual DD and MMI/IR certification training to help reduce travel time and costs for doctors.

Figure 21: Distribution of Designated Doctor Appointments by License Type



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

Note: "Other" includes osteopaths and podiatrists.

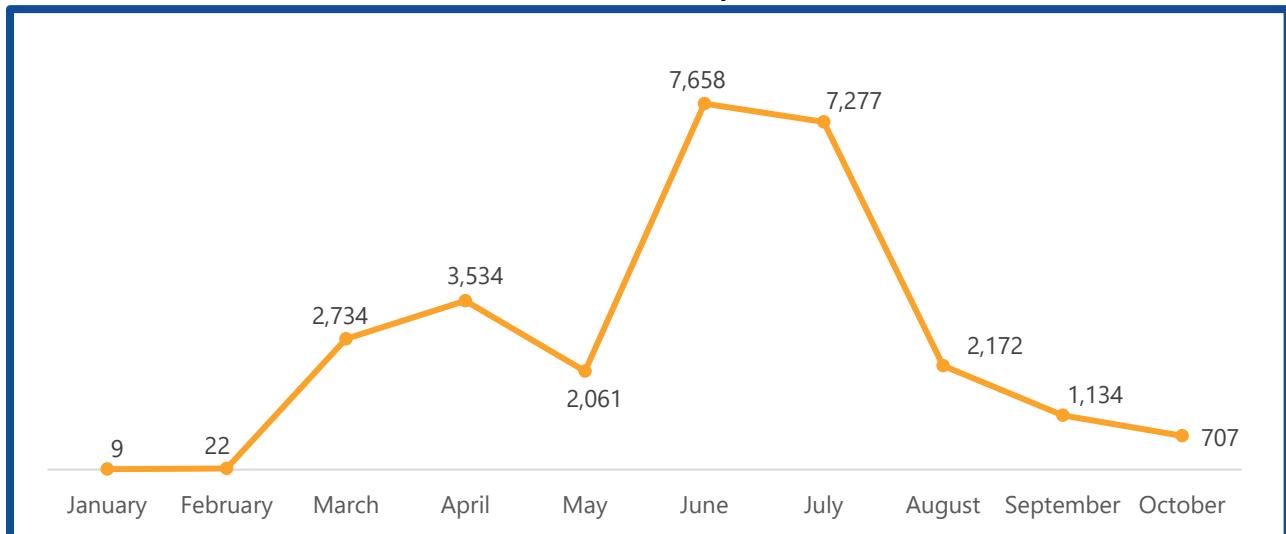
DWC will continue monitoring the impact of the recent rule changes and the DD training and testing process to ensure that an adequate number of qualified doctors remain available to perform these examinations.

13. COVID-19 Presents New Challenges for Workers' Compensation

On March 13, 2020, Governor Greg Abbott issued a statewide disaster declaration for COVID-19. While state and local efforts are being made to address the pandemic, there are many unknowns about its ultimate impact on the Texas population and economy, and on employees and employers covered under the state's workers' compensation system.

As of October 25, 2020, insurance carriers reported a total of 27,308 COVID-19 claims to DWC, including 118 fatalities. These totals include those with a positive test or diagnosis as well as claims filed for possible exposures to COVID-19. The number of COVID-19 claims in Texas began to increase starting in March consistent with Governor Greg Abbott's disaster declaration. Figure 22 shows the number of COVID-19 claims received by insurance carriers by month of injury. Claims began to decline in mid-April as Texas began reopening efforts, surged again in June, and continued to increase until mid-July. Claims declined again in mid-July and continued to decrease through October.

**Figure 22: Number of COVID-19 Claims Filed by Month of Injury,
as of October 25, 2020**



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

Two industry sectors – Health Care and Social Assistance and Public Administration – represent three quarters (75 percent) of all COVID-19 claims and more than half (58 percent) of COVID-19 work fatalities. Health Care and Social Assistance includes health care providers, hospitals, nursing homes, and other health care facilities. Public Administration includes correctional officers, first responders, and other public sector employees. Several of the counties with the most COVID-19 claims are also the counties with the most COVID-19 confirmed cases according to the Department of State Health Services. The top 10 counties in terms of COVID-19 claim frequency represent about 57 percent of all COVID-19 claims reported by insurance carriers to DWC as of October 25, 2020 (see Table 5).

Two industry sectors (Health Care and Social Assistance and Public Administration) represent 75 percent of all COVID-19 claims and more than half (58 percent) of all COVID-19 work fatalities.

**Table 5: Number of COVID-19 Claims Filed by County,
as of October 25, 2020**

County	COVID-19 Claims Reported
Harris	6,087
Dallas	1,719
Tarrant	1,527
Fort Bend	1,195
Bexar	1,128
Hidalgo	1,106
El Paso	855
Travis	837
Montgomery	697
Walker	551
All Other Counties	11,606

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

Early in the pandemic, DWC monitored the COVID-19 claims reported by insurance carriers and realized that many of these claims appeared to be "exposure-only" claims, with no documentation of whether the injured employee tested positive for COVID-19. Many of these claims were investigated and either accepted or denied by the insurance carrier, based on whether the injured employee could provide medical evidence of a positive test or diagnosis, as well as documentation showing a connection between the COVID-19 infection and their work.

To understand the proportion of these COVID-19 claims with a positive test or diagnosis, DWC issued a data call with 66 selected insurance carriers representing the State of Texas, political subdivisions, commercial insurance carriers, and certified self-insured employers. These insurance

Initial data call results show that only 35 percent of COVID-19 claims filed had a positive test or diagnosis.

carriers represented 83-85 percent of all reportable claims and 90 percent of occupational diseases in Texas during 2017–2019. DWC requested three data call submissions from selected insurance carriers: data for claims as of June 30, 2020; data for claims as of September 30, 2020; and data for claims as of December 31, 2020. Overall, the results of the data call

(for claims reported to the insurers as of June 30, 2020), showed that 35 percent of the COVID-19 claims involved an injured employee who tested positive or was diagnosed with COVID-19 (see Table 6).

Among these positive test claims, nearly half (48 percent) were accepted as work-related by insurance carriers, more than a third (38 percent) were denied by the insurance carriers, and 14 percent were still under investigation.

These statistics vary across types of insurance carriers. COVID-19 claims being processed by the State of Texas¹¹ reported the highest rate of denials (72 percent). Commercial insurance carriers had the highest number of denials. Despite the number of COVID-19 claims that were denied, DWC's administrative data (as of October 25, 2020), showed that there were only 10 COVID-19 claim disputes filed with DWC during this timeframe.

Despite the number of COVID-19 claims that were denied, only 10 COVID-19 claim disputes have been filed with DWC as of October 25, 2020.

Table 6. Number of COVID-19 Claims, Positive Test Claims, and Claim Disposition as of June 30, 2020, Data Call Results

Type of Insurance Carrier	# of Claims Reported to Carriers	# and % of Claims with Positive Test or Diagnosis	# and % of Positive Claims Accepted by Insurance Carriers	# and % of Positive Claims Denied by Insurance Carriers	# and % of Positive Claims Still Under Investigation
Commercial carriers	3,719	2,406 (65%)	826 (34%)	1,077 (45%)	503 (21%)
Political subdivisions	6,138	1,421 (23%)	1,102 (78%)	198 (14%)	121 (9%)
State of Texas	2,448	495 (20%)	137 (8%)	358 (72%)	0
All insurance carriers	12,305	4,322 (35%)	2,065 (48%)	1,633 (38%)	624 (14%)

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, Data Call as of June 30, 2020.

Note: "State of Texas" includes the State Office of Risk Management, the University of Texas System, the Texas A&M University System, and the Texas Department of Transportation. "Commercial carriers" includes licensed insurance companies and certified self-insured employers.

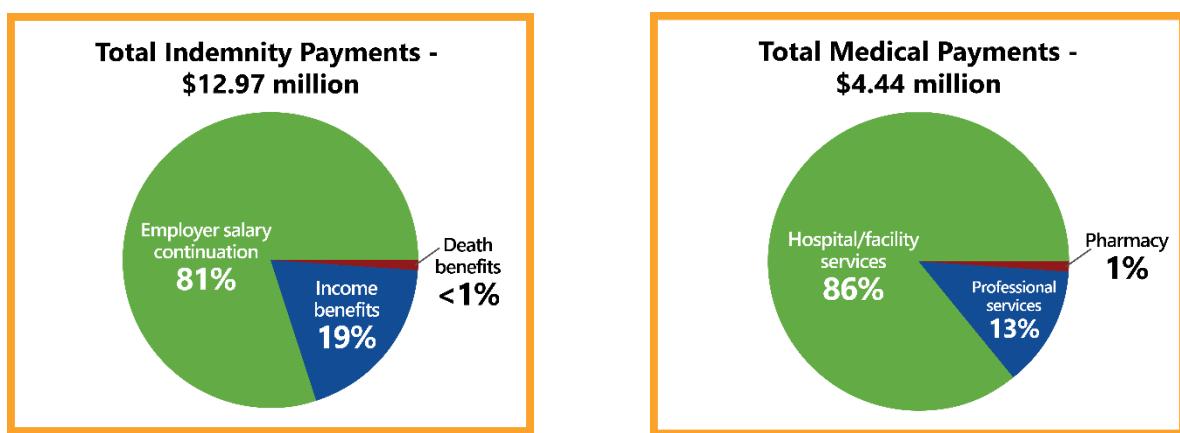
At the beginning of the pandemic, many industry experts were concerned that COVID-19 claims costs could overburden state workers' compensation systems and drive up insurance rates for employers. However, while the medical and indemnity data reported by insurance carriers to DWC is still immature, the data reported to date does not support these concerns.

An analysis of DWC's data for those claims reported to insurance carriers as of June 30, 2020, shows that as of October 8, 2020, about \$12.97 million was paid in indemnity benefits to injured employees

¹¹ "State of Texas" includes the State Office of Risk Management, the University of Texas System, the Texas A&M University System, and the Texas Department of Transportation. "Commercial carriers" includes licensed insurance companies and certified self-insured employers.

with COVID-19, and that the majority of this (81 percent) was employer salary continuation that was paid instead of receiving income benefits (see Figure 23). In terms of medical treatment, insurance carriers paid about \$4.44 million for these claims, and the vast majority of these payments (86 percent) were for hospital/facility services. DWC will continue to monitor these COVID-19 claim and dispute resolution trends as new data becomes available.

Figure 23: Total Indemnity and Medical Payments Made on COVID-19 Claims Reported to Insurance Carriers as of June 30, 2020 (Data as of October 8, 2020)



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

14. Concluding Remarks

Prior to the COVID-19 pandemic, the Texas workers' compensation system was well positioned compared to other states. Injury rates, claims, medical costs, indemnity disputes, and medical disputes are down from pre-2005 reform levels, which has lowered insurance rates and allowed for more affordable insurance coverage for Texas employers. As a result, more employees have workers' compensation coverage than before the reforms. There are more Texas physicians and other primary health care providers willing to treat injured employees and timeliness of medical care has improved. Return-to-work rates are up for injured employees, driven by a strong Texas economy and improved access to medical care.

The impact of COVID-19 on these system improvements is still uncertain. Claims are up in 2020, but many of these claims to date are the result of exposures to COVID-19 on the job, and only a minority of injured employees tested positive or were diagnosed with COVID-19 according to recent data call results. It is premature to assess the cost of COVID-19 claims on the system, but early indications are that COVID-19 claims costs are much lower than what was predicted by some industry experts.

The economic impact of COVID-19 presents new challenges for the Texas workers' compensation system. Disruptions in non-emergency medical care during the lockdown may have negative impacts for injured employees, even with the availability of telemedicine. It is also uncertain how COVID-19 will impact injured employees' future health care needs. High unemployment rates and fewer

businesses will likely make it harder for injured employees to return to work after injuries. Since Texas is a voluntary state for workers' compensation purposes, it is also likely that certain employers will weigh the economic cost of purchasing workers' compensation coverage, even with low insurance rates, while others may choose to provide coverage to protect themselves from lawsuits from employees who allege they contracted COVID-19 on the job.

At the same time, the pandemic caused state agencies, like DWC, to rethink how they do business. DWC quickly transitioned to remote work and automated many of its business operations, which allowed the agency to continue to serve system participants well during the pandemic. DWC is scheduled to go through Sunset review in 2023, which will provide an opportunity to reexamine substantive policy issues post-COVID-19. Given the timing of this upcoming review and the strong state of the Texas workers' compensation system, significant legislative changes to the system are not recommended at this time. DWC puts forth two legislative recommendations for consideration by the 87th Texas Legislature: 1) to streamline certain outdated legislative reporting requirements; and 2) to provide flexibility to hold benefit review conferences remotely. This report also highlights an issue that will likely be discussed during the upcoming legislative session – COVID-19 and statutory barriers affecting claims handling.

15. DWC Legislative Recommendations:

Streamline Legislative Reporting Requirements

Recommendation:

Amend [Insurance Code §1305.502](#) to require the Workers' Compensation Research and Evaluation Group (REG) to publish the network report card biennially instead of annually, and eliminate the requirement to issue certain legislative reports examining the impact of the 2005 legislative reforms (HB 7) in Labor Code [§405.0025](#) and Insurance Code [§§1305.501](#) and [2053.012](#). The REG and DWC will continue to provide information on issues such as medical costs and utilization, return-to-work outcomes, access to medical care, the impact of networks, and other important system trends as part of DWC's biennial report to the Legislature under [Labor Code §402.066](#).

Issue:

This recommendation streamlines several legislative reporting requirements in the Insurance Code and the Labor Code created during the 2005 legislative reforms. These legislative reports require significant staff time and monetary resources to produce, which reduces the ability of DWC to allocate resources to research projects that may be more relevant to today's workers' compensation system. DWC spends more than \$200,000 per year through an interagency contract to conduct the injured employee surveys needed to produce the annual network report card and the biennial report on the impact of the 2005 legislative reforms, and these survey administration costs are only expected to continue to increase over time.

The network report card results do not change significantly from year to year, so publishing the

report card on a biennial basis will continue to allow valid medical cost and quality of care outcome comparisons between network and non-network claims. DWC already includes many of the same system performance measures (i.e., medical costs and utilization, return-to-work outcomes, access to medical care, the impact of networks, frequency of medical disputes) in its own biennial report to the legislature, which is also published by December 1 of every even-numbered year.

Background:

Labor Code §405.0025(b) and (c) and Insurance Code §1305.501 require the REG to issue a biennial report to the legislature by December 1 of every even-numbered year. The report must evaluate the impact of certified health care and political subdivision networks on medical costs and utilization of medical care, access to medical care, satisfaction with care, return-to-work outcomes, injured employee functional outcomes, network complaints, and medical disputes. Insurance Code §2053.012 requires TDI to issue a biennial report to the legislature by December 1 of every even-numbered year. The report must evaluate the impact of the 2005 legislative reforms on the affordability and availability of workers' compensation insurance for Texas employers, including how the 2005 reforms affected premium savings for employers, insurance market competition, insurer financial solvency, employer participation (i.e., non-subscription rates), economic development, and employer participation in networks. DWC and TDI fulfill these report requirements through the issuance of the report entitled, "Setting the Standard: An Analysis of the 2005 Legislative Reforms on the Texas Workers' Compensation System," by December 1 of every even-numbered year.

Insurance Code §1305.502 requires the REG to publish an annual report card comparing certified health care networks, political subdivision networks, and non-network claims with each other. The report card must include a comparison of medical costs and utilization of care, return-to-work outcomes, access to care, satisfaction with care, and health-related functional outcomes.

Provide Flexibility to Hold Benefit Review Conferences Remotely

Recommendation:

Amend [Texas Labor Code §410.005](#) to hold Benefit Review Conferences (BRCs) by video conference or by phone, while providing "good cause" exceptions for a BRC to be held in person. This change will create cost savings for DWC, OIEC, and system participants. Injured employees will benefit by needing less time to set aside to attend BRC dispute proceedings at a DWC field office. This will reduce their travel and time away from work and may also reduce their need to arrange for childcare. By providing the "good cause" exception for in-person BRCs, the process will remain fair and accessible for everyone.

This recommendation is also consistent with the Legislature's mandate that DWC take maximum advantage of technological advances to provide the highest levels of service possible to system participants and promote communication among system participants. [Labor Code §402.021\(b\)\(9\)](#).

Issue:

[Texas Labor Code §410.005](#) requires dispute proceedings to be conducted within 75 miles of the injured employee's residence unless DWC finds good cause for the "selection of a different location." Due to the impact of COVID-19, DWC moved all proceedings to a virtual format citing the "good cause" exception and held proceedings by video or by phone. DWC has seen excellent results both from a process and implementation standpoint.

Background:

Dispute Process

One of the main responsibilities of DWC is to help resolve disputes on contested claims. While dispute resolution is a critical function, most claims—around 92-96% of the more than 90,000 claims normally filed in a year—are administered without the need for DWC to hold a dispute resolution proceeding. Historically, dispute proceedings have been held at one of the 20 field offices that DWC shares with OIEC across Texas.

Disputes can go through several stages, the first being a BRC. BRCs are non-adversarial, informal meetings at which a DWC benefit review officer explains the process and works with the parties to identify the issues in dispute, identify any additional information needed to resolve the dispute (typically additional medical reports or analyses), and reach an agreement through mediation where possible.

If there is no agreement, the next step is a Contested Case Hearing (CCH). The CCH is a formal hearing that a DWC administrative law judge conducts. At a CCH, the parties may present sworn testimony and documents (often medical records), cross-examine the other side's witnesses, and make arguments in support of their contentions. At the conclusion of the CCH the administrative law judge will issue a formal written decision and order to the parties. If a party is dissatisfied with the decision they may appeal to the DWC Appeals Panel and, if necessary, to district court. BRCs and CCHs have generally been in-person proceedings while the Appeals Panel is a paper review.

Cost and Efficiency Savings

Travel costs for DWC staff will be reduced as less travel is required for employees covering BRC dockets at remote field offices. Cases will move more efficiently and be more equally assigned and docketed among proceedings staff throughout Texas. Scheduling conflicts will also be reduced by implementing this change. As such, injured workers will benefit as disputes will be resolved more quickly.

Dispute participants, which commonly include an injured employee and their attorney or an OIEC ombudsman, and a representative from the insurance carrier and their representative, will see efficiencies and cost savings. DWC also projects that, by implementing this recommendation, attorney fees associated with travel could be reduced benefiting both injured employees and insurance carriers.

16. Emerging Issue:

COVID-19

The emergence of a novel virus, COVID-19, and the resulting world-wide pandemic has created new challenges for the Texas workers' compensation system. On March 13, 2020, Governor Abbott issued a statewide disaster declaration for COVID-19. While the Labor Code provides coverage for occupational diseases, issues such as the availability and consistency of COVID-19 testing, confusion among stakeholders about when to report exposures involving employees, and legal issues about whether COVID-19 is an occupational disease have raised questions about whether certain statutory changes are needed to provide workers' compensation benefits when injured employees contract a disease as a result of their employment.

During the pandemic, Governor Abbott waived certain statutory requirements that affected COVID-19 workers' compensation claims. However, stakeholders continue to discuss whether these waivers should be permanent and whether other statutory changes should be enacted to remove perceived coverage barriers or create new statutory presumptions that certain diseases are work-related for first responders and essential workers. A few key statutes that will likely be discussed this legislative session include:

[Health and Safety Code §81.050\(j\)](#) and [28 Texas Administrative Code §122.3](#) currently require emergency response providers who are exposed to certain communicable diseases to provide the following information to their employer:

- 1) a sworn affidavit to the employer detailing the date and circumstances of the exposure; and
- 2) within 10 days of the exposure, provide the results of a test showing that the employee has an absence of the disease.

Governor Abbott waived these provisions on April 10, 2020. Some argue that these requirements should be permanently waived in situations involving a public health emergency, while others are concerned about the cost impact to governmental entities if this defense is waived.

[Labor Code §501.026](#) provides for workers' compensation benefits for certain emergency volunteers when the governor has issued a disaster declaration. Labor Code §501.026(d) says the benefits are contingent on the volunteer seeking treatment for the injury within 48 hours after the occurrence of the injury. Although this section has not been an issue so far, there could be a question of how this section should be applied in situations where an emergency volunteer is exposed to a disease, like COVID-19, during volunteer activities.

[Government Code, Chapter 607, Subchapter B](#) provides a statutory presumption to firefighters, emergency medical technicians (EMTs), and peace officers that certain diseases are work-related. These diseases include heart attacks and strokes, tuberculosis and other respiratory diseases, and smallpox or other diseases for which immunization is possible. Chapter 607 also provides a statutory

presumption for certain cancers for firefighters and EMTs. Certain situations must be met in order qualify for a presumption, including requirements that:

- a firefighter, EMT, or peace officer must have been employed for at least five years; and
- must have received a physical examination upon or during employment that failed to show evidence of the disease that is the subject of the presumption.

Some argue that these statutory requirements should be permanently waived for a statewide disaster declaration involving a communicable disease since these requirements do not make sense for communicable diseases. On the other hand, others are concerned about the cost impact to governmental entities if a statutory presumption applies to communicable diseases like COVID-19.

During the pandemic, some insurance carriers have investigated COVID-19 claims involving firefighters, EMTs, and peace officers under the respiratory illness presumption under Chapter 607 (about 743 claims as of October 25, 2020). Many of these claims were subsequently denied (about 41 percent) for a variety of reasons. One reason is that the respiratory illness presumption under Chapter 607 requires a "statistically positive correlation with work" as a firefighter, EMT, or peace officer. Since COVID-19 is a novel disease, these statistical correlations may be difficult to prove until more research becomes available.

The statutory presumptions in Chapter 607 only apply to certain types of first responders. Some argue that a COVID-19 presumption should be created to cover various types of essential workers, who may have a higher likelihood of exposure to the disease compared to the general population. Others argue that creating such a presumption would significantly increase workers' compensation costs and unfairly shift costs from group health to workers' compensation.



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