



# *Legislative Report*

## **For 2011 - 2012**

**Submitted to:**  
**The Governor's Office**  
**Lieutenant Governor**  
**Speaker of the House of Representatives**  
**and**  
**Legislative Offices**

**By:**  
*The Office of Injured Employee Counsel*

**Published December 20, 2012**

**Signed:**   
Norman Darwin, Public Counsel

## Table of Contents

---

Letter From the Public Counsel .....	4
<b>Section 1</b> provides an overview of the agency, including its mission, organization, location, budget, workforce characteristics, and performance measure results.....	5
Agency Mission.....	5
Agency Organization.....	5
Agency Location .....	7
Agency Budget.....	8
Method of Finance .....	8
Workforce Characteristics (as of August 31, 2012).....	9
Performance Measure Results.....	11
<b>Section 2</b> provides a description of the activities of the Office of Injured Employee Counsel in fulfilling the agency’s mission to assist, educate, and advocate on behalf of the injured employees of Texas. [LABOR CODE SECTION 404.106(a)(1)] .....	13
Assisting Injured Employees.....	13
Educating Injured Employees and Other Stakeholders.....	17
Advocating on Behalf of Injured Employees .....	21
Additional Activities .....	25
<b>Section 3</b> provides the identification of any problems in the workers’ compensation system from the perspective of injured employees as a class, as considered by the public counsel, with recommendations for regulatory and legislative action. [LABOR CODE SECTION 404.106(a)(2)].	31
1. Medical Necessity Dispute at Judicial Review .....	32
2. Challenge of Compensability .....	36
3. Dispute of First Certification of Maximum Medical Improvement and Impairment Rating	39
4. Supplemental Income Benefits: Range of Motion .....	42
5. Consistency in Venue for Benefit Disputes .....	46

**Section 4** provides an analysis of the ability of the workers’ compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers.

[LABOR CODE SECTION 404.106(a)(3)] .....	49
Texas’ Employment at All-Time High.....	49
Non-Fatal Occupational Injuries and Illnesses Slightly Increase in 2011 .....	49
Texas’ Incidence Rate Still Lower than the Nation. ....	50
Fatal Occupational Injuries Decrease for Second Straight Year.....	51
Workers’ Compensation Participation in Texas.....	52
Workers’ Compensation Cost to Employers.....	54
Adequate, Equitable, and Timely Benefits Provided to Injured Employees .....	57
Income Benefits.....	57
Temporary Income Benefits (TIBs) .....	60
Impairment Income Benefits (IIBs) .....	61
Supplemental Income Benefits (SIBs) .....	63
Lifetime Income Benefits (LIBs) .....	63
Death Benefits .....	64
Medical Benefits .....	66
Indemnity Dispute Resolution.....	73
Medical Dispute Resolution .....	77
Return-to-Work Rates Mixed.....	79
Conclusion .....	81

*Steps have been taken to make the OIEC Legislative Report accessible. Information in this document has been formatted to accommodate browser software for the visually impaired wherever possible.*

## Letter From the Public Counsel

---

Dear Friends,

I have had the privilege to serve as Public Counsel of the Office of Injured Employee Counsel (OIEC) since it was established in March 2006. As Public Counsel, it has been my responsibility to guide the agency in its mission to assist, educate, and advocate on behalf of injured employees in Texas.

OIEC provides ombudsman services free of charge to assist injured employees in the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) administrative dispute resolution system. The agency also provides information to injured employees about their rights and responsibilities and the role of OIEC and advocates on behalf of injured employees as a class.

I am pleased to present OIEC's 2012 Legislative Report, which reflects the significant progress made in fulfilling the agency's mission. The report contains the statutory information requirements in accordance with Texas Labor Code Section 404.106.

Section 1 of the report provides an overview of the agency and a table of the agency's FY 2010 – FY 2012 performance measure results. Section 2 provides a description of the activities of the agency. During the past two years, the agency's efforts to increase awareness of its mission and role in the workers' compensation system have proven successful and have contributed to the increased demand for the agency's services.

It has been seven years since HB 7 was passed, and we are seeing a fundamental shift in the purpose and meaning of the Texas Workers' Compensation Act. HB 7 is hardly recognizable today with all of the changes that have occurred. Extent-of-injury issues, causation issues, impairment, and income benefits have all gone through seismic shifts in the past few years. Section 3 provides recommendations for regulatory and legislative action to solve some of the problems identified on behalf of injured employees in the workers' compensation system.

And finally, Section 4 of the report provides an analysis of the ability of the workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers.

I would like to express my appreciation to the legislators and their staff for their commitment to enabling OIEC to have the tools necessary to fulfill its statutory mandates. Much remains to be done, though, and we look forward to educating all interested parties about the necessity for maintaining a balanced approach to solving problems.

Sincerely,



Norman Darwin, Public Counsel  
Office of Injured Employee Counsel

---

# Section 1

---

**Section 1 provides an overview of the agency, including its mission, organization, location, budget, workforce characteristics, and performance measure results.**

---

## Agency Mission

---

*The Office of Injured Employee Counsel's mission is to assist, educate, and advocate on behalf of the injured employees of Texas*

## Agency Organization

---

The Public Counsel serves as the executive director of the Office of Injured Employee Counsel (OIEC) and is appointed by the Governor with the advice and consent of the Senate. The Public Counsel serves a two-year term that expires on February 1 of each odd-numbered year (Texas Labor Code Section 404.051). Public Counsel Norman Darwin was appointed by Governor Rick Perry on December 8, 2005, and reappointed in 2007, 2009, and again in 2011 for a term to expire February 1, 2013.

The Deputy Public Counsel oversees the daily operations and administration of OIEC and serves as OIEC's legislative liaison, public information officer, general counsel, and chief of staff.

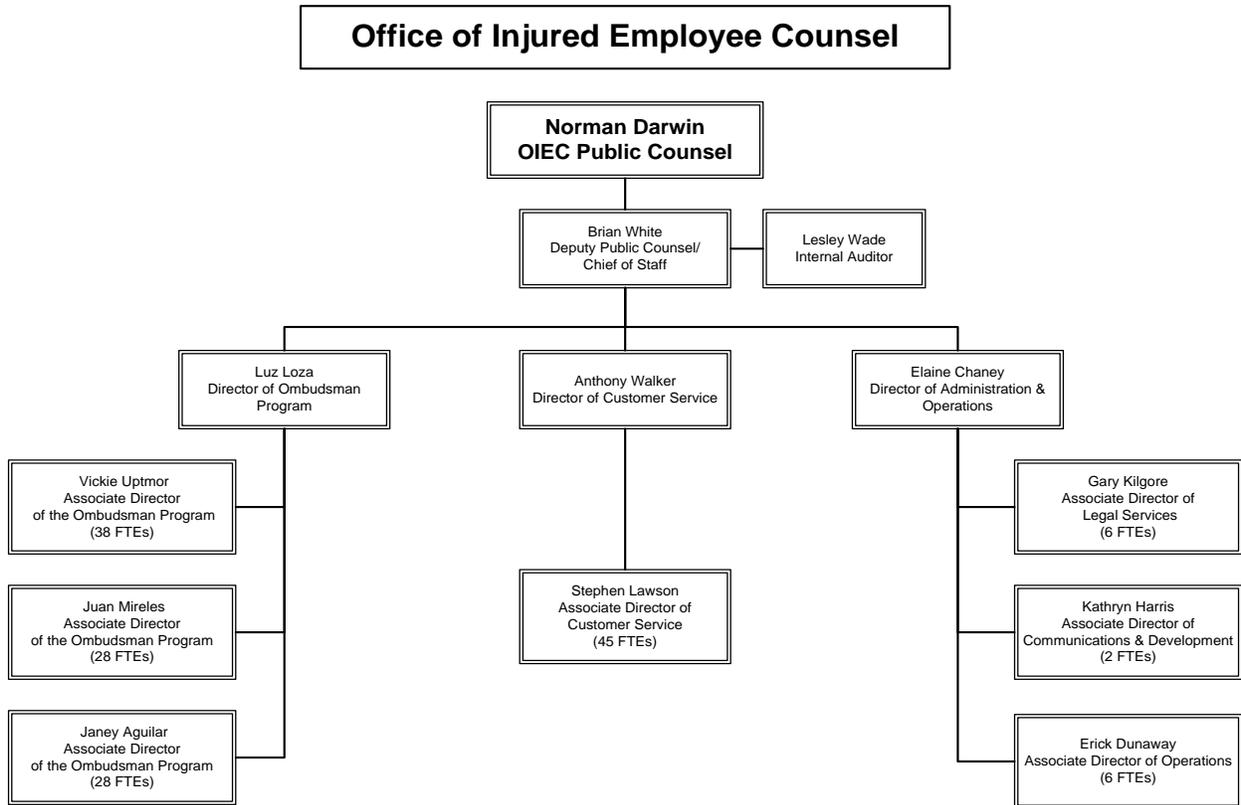
OIEC's four program areas are described below, followed by the agency's organizational chart.

- ◆ ***Ombudsman Program*** - The Ombudsman Program consists of highly trained professionals who assist unrepresented injured employees with disputes relating to their workers' compensation claim at no cost to them. Ombudsmen assist the unrepresented injured employees in preparing for benefit review conferences (mediation), contested case hearings (administrative hearings), and appeals of the hearing officer's decision through the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) Appeals Panel. Ombudsmen also attend benefit review conferences and contested case hearings with the injured employees and communicate on their behalf with the other system participants, including TDI-DWC. Ombudsman assistance is also provided to injured employees in administrative proceedings pending before the State Office of Administrative Hearings.
- ◆ ***Customer Service*** - The Customer Service Program educates injured employees and the public by responding to questions they have about the workers' compensation system. Customer service representatives also identify disputed issues that may arise in an injured employee's workers' compensation insurance claim and try to resolve them within the first 20 business days after the disputed issue is identified.

Customer service representatives work with injured employees and refer them to federal, state, or local financial or social services agencies as appropriate. Referrals are made to the Texas Department of Assistive and Rehabilitative Services for services in an effort to return the injured employee to work. Referrals are also made to the Texas Workforce Commission, the Texas Department of Insurance, the Texas Medical Board, or other social and regulatory services.

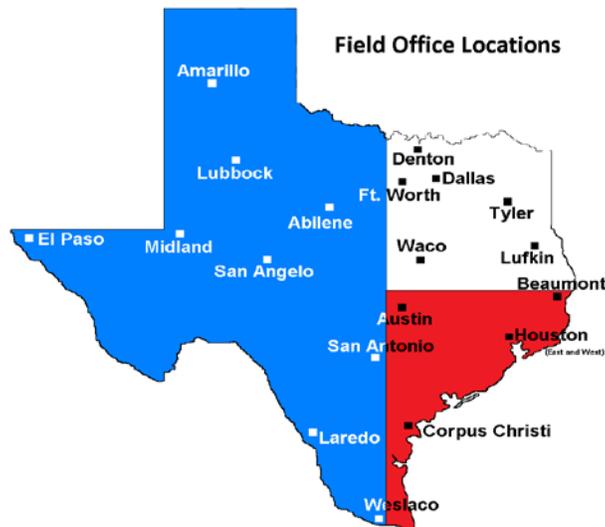
- ◆ **Administration and Operations** - Administration and Operations includes three sections – Operations, Legal Services, and Communications and Development – with different responsibilities necessary to fulfill the agency’s mission as described below.
  - **Operations** - The Operations section provides technical and administrative support for the agency, including functions such as: strategic planning; budget planning and management; records retention; rulemaking; performance measure monitoring and reporting; staff services; hiring and disciplinary actions; and administering surveys and issuing reports required by statute. Operations staff also works in conjunction with TDI on services, such as human resources, budget, accounting, information technology services, and facilities issues, due to the agency’s administrative attachment to TDI (*See page 8*).
  - **Legal Services** - Legal Services provides legal counsel to the agency’s program areas; analyzes and provides comments on rules proposed by TDI-DWC; and suggests legislative recommendations that will protect the interests of injured employees. Legal Services also determines whether there are issues pending before the Texas appellate courts or the Texas Supreme Court where OIEC needs to serve as a voice for the injured employees of Texas. Regional staff attorneys provide training and serve as a resource for the ombudsmen and customer service representatives. They also oversee the work of the Ombudsman Program and advise ombudsmen in providing assistance to injured employees in preparation for administrative proceedings.
  - **Communications and Development** - The Communications and Development section utilizes a variety of initiatives to raise awareness of the services provided by OIEC. OIEC communications specialists:
    - publish the agency’s newsletter, “The Quarterly Review”;
    - coordinate outreach presentations, workshops, information booths, seminars, and statewide speaking engagements;
    - maintain OIEC’s intranet, internet, and social media websites;
    - assist legislative offices with constituent issues related to workers’ compensation, and advocate on behalf of injured employees at the State Capitol as part of the agency’s statutorily mandated advocacy function;
    - research opportunities for grant funding, which is a new charge pursuant to the 82nd Legislative Session, 2011; and
    - oversee the agency’s succession planning initiatives.
- ◆ **Internal Audit** - The agency’s internal audit function provides consultation to OIEC management and furnishes independent analysis, appraisals, and recommendations about the adequacy and effectiveness of the agency’s internal control policies, procedures, and performance in carrying out assigned responsibilities.

The agency's organizational chart is provided below.



## Agency Location

OIEC's Central Office is located at 7551 Metro Center Drive in Austin, Texas. Approximately 90 percent of staff is located in 20 field offices across the State, and approximately 10 percent of agency staff works in the Austin Central Office.

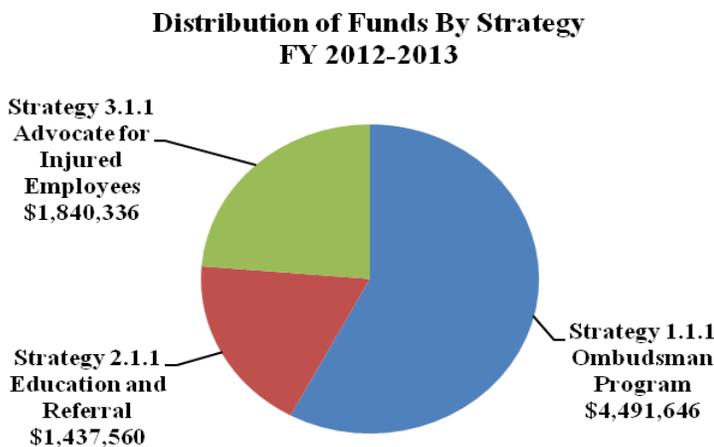


## Agency Budget

---

OIEC submitted its FY 2014-2015 Legislative Appropriations Request in August 2012. The base request is the same funding level as FY 2010. However, due to the increase in agency workload and the number of customers for whom English is not their first language, OIEC is requesting additional funding to assist the agency in meeting the demand for its services.

OIEC's current total budget for the FY 2012-2013 biennium is \$15,539,341 (including a Department of Information Resources rebate of \$257). The total expended in FY 2011 was \$8,007,434, which included an approximate \$200,000 of unexpended balance transferred from FY 2010 to FY 2011. The approximate expenditure for FY 2012 is \$7,615,528. Below is a graph indicating the distribution of funds for each of OIEC's strategies as indicated in the FY 2012-2013 General Appropriations Act.



## Method of Finance

---

OIEC is administratively attached to TDI and is funded from the same operating account – General Revenue (GR) Dedicated Account 36. The funding mechanism is self-leveling and has no fiscal impact on General Revenue.

The Texas Legislature appropriates funds from GR Dedicated Account 36 to various agencies that participate in or contribute to regulation of insurance, prevention of insurance loss, and administration of workers' compensation. Both the Texas Insurance Code and Texas Labor Code require that the maintenance taxes be set with the intention of collecting the revenue needed to fund authorized expenditures from Fund 36.

The agency is not funded for consumables, facilities, or other items as a result of its administrative attachment. As a result, approximately 95 percent of OIEC's budget is dedicated to employee salaries, which is uncommon in State government and makes the agency one of the leanest agencies in Texas.

## Workforce Characteristics (as of August 31, 2012)

OIEC is authorized to employ 175 full-time equivalent (FTE) positions in FY 2012-2013. OIEC relies on competent, knowledgeable, and diverse staff to effectively and efficiently serve the injured employees of Texas. Officials, administrators, professionals, and para-professionals make up 100 percent of OIEC's workforce. Females make up 86 percent of the workforce, and Black, Hispanic, and other ethnicities make up 64 percent of the agency's workforce as shown in the table below.

EEO Category	Office of Injured Employee Counsel – Workforce Statistics					
	Black	Hispanic	Anglo	Other	Male	Female
Officials, Admin. (A)	0.00%	28.57%	71.43%	0.00%	28.57%	71.43%
Professional (P)	11.43%	50.48%	37.14%	0.95%	18.10%	81.90%
Technical (T)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Para-Professional (Q)	7.50%	67.50%	25.00%	0.00%	2.50%	97.50%
Admin. Support (C)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Skilled Crafts (S)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Service & Maintenance (M)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
<b>All Categories</b>	<b>9.87%</b>	<b>53.95%</b>	<b>35.53%</b>	<b>0.66%</b>	<b>14.47%</b>	<b>85.53%</b>

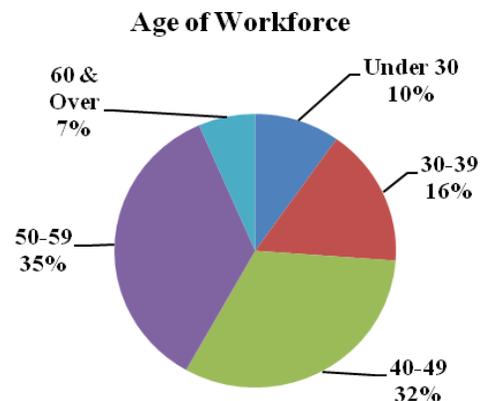
Source: TDI

**Age of Workforce.** The average age of an OIEC employee is 46.3 years. Only 10 percent of the employees are under the age of 30 while 42 percent of the agency's employees are 50 or older.

**Average State Tenure.** The average State tenure for an OIEC employee is 11.7 years. Fifty-one percent of OIEC employees have worked for the State at least 10 years, and 20 percent have at least 20 years of experience with the State.

**Workers' Compensation Experience.** Sixty-two percent of OIEC staff has at least 10 years of workers' compensation experience, and almost half of the agency has at least 15 years of experience. Within the next few years much of this experience may be lost due to retirements.

**Employee Turnover.** OIEC has been relatively successful in retaining employees and limiting the costs associated with employee turnover: recruiting, selecting, orienting, and training new employees, leave payout to departing employees, and lower workplace productivity due to vacancies. OIEC's turnover rate (excluding interagency transfers) was 10.3 percent in FY 2010 and 11.1 percent in FY 2011. OIEC's turnover rate increased to 16.7 percent in FY 2012. One of the reasons for the higher turnover rate in FY 2012 was retirement.



*Employee Retirement.* Nineteen percent of all agency staff is eligible to retire by December 31, 2015, and 35 percent of staff will be eligible to retire by the end of 2018. Nine percent was eligible to retire at the end of August 2012.

Thirty-nine percent of OIEC directors and supervisors are eligible to retire by December 31, 2015, and 67 percent will be eligible to retire by the end of 2018. Below is the breakdown of directors and supervisors in each program area eligible to retire as of a particular date. The total number of directors and supervisory staff is indicated in parentheses.

**Percentage of Directors and Supervisors By Program Area  
Eligible to Retire By December 31,**

	<b>2015</b>	<b>2018</b>
Ombudsman Program (10)	40% (4)	70% (7)
Customer Service Program (4)	25% (1)	50% (2)
Administration and Operations (4)	25% (1)	75% (3)

Each of the 20 field offices and the Central Office are at risk of losing staff and their expertise due to retirement within three to six years. Several offices, including the Central Office in Austin, Corpus Christi, Laredo, Lubbock, and Lufkin have more than 50 percent of staff eligible to retire within six years. The table below cites the percentage of staff eligible to retire at each office by the end of 2015 and 2018 according to data provided by TDI.

**Percentage of Office Staff Eligible to Retire  
By December 31,**

	<b>2015</b>	<b>2018</b>
Abilene	00.0	00.0
Amarillo	00.0	33.3
Austin	00.0	00.0
Beaumont	66.7	66.7
Central	18.8	62.5
Corpus Christi	50.0	50.0
Dallas	6.3	31.3
Denton	16.7	33.3
El Paso	12.5	37.5
Fort Worth	25.0	31.3
Houston East	23.1	38.5
Houston West	18.8	31.3
Laredo	33.3	66.7
Lubbock	66.7	66.7
Lufkin	66.7	66.7
Midland	0.0	0.0
San Angelo	25.0	25.0
San Antonio	0.0	12.5
Tyler	25.0	37.5
Waco	14.3	42.9
Weslaco	11.1	22.2

## Performance Measure Results

Performance measures are an important part of the agency's ability to monitor its workload and accomplishments. The table below reflects performance measure results in FY 2010, FY 2011, and FY 2012 associated with OIEC's mission to assist, educate, and advocate on behalf of the injured employees in Texas. Key measures are identified in bold.

Performance Measures	FY 2010	FY 2011	FY 2012
<b>GOAL 1 -- ASSIST</b>			
<i>Outcome Measure 1.1 oc 1</i> Percentage of Disputes Resolved by the Office of Injured Employee Counsel Prior to Holding a Texas Department of Insurance Administrative Dispute Resolution Proceeding	57.82%	65.68%	63.58%
<i>Outcome Measure 1.1 oc 2</i> <b>KEY</b> <b>Percentage of Proceedings Held Before the Division of Workers' Compensation in Which the Injured Employee was Assisted by an Ombudsman</b>	<b>38.83%</b>	<b>45.12%</b>	<b>48.98%</b>
<i>Outcome Measure 1.1 oc 3</i> <b>KEY</b> <b>Percentage of Issues Raised at Contested Case Hearings (CCH) Where the Injured Employee Prevailed When Assisted by an Ombudsman</b>	<b>36.81%</b>	<b>33.90%</b>	<b>27.95%</b>
<i>Outcome Measure 1.1 oc 4</i> <b>KEY</b> <b>Percentage of Issues Raised on Appeal Where the Injured Employee Prevailed When Assisted by an Ombudsman</b>	<b>33.39%</b>	<b>26.77%</b>	<b>22.97%</b>
<i>Output Measure 1.1.1 op 1</i> Number of Injured Employees Prepared for a BRC by an Ombudsman	3,669	4,073	6,080
<i>Output Measure 1.1.1 op 2</i> <b>KEY</b> <b>Number of BRCs with Ombudsman assistance</b>	<b>3,956</b>	<b>4,915</b>	<b>7,226</b>
<i>Output Measure 1.1.1 op 3</i> Number of Injured Employees Prepared for a CCH by an Ombudsman	1,759	1,812	3,140
<i>Output Measure 1.1.1 op 4</i> <b>KEY</b> <b>Number of CCHs with Ombudsman assistance</b>	<b>1,925</b>	<b>1,954</b>	<b>2,907</b>
<i>Output Measure 1.1.1 op 5</i> <b>KEY</b> <b>Number of Injured Employees Prepared for an Appeal by an Ombudsman</b>	<b>577</b>	<b>636</b>	<b>1,039</b>
<i>Efficiency Measure 1.1.1 ef 1</i> Average Number of days to Resolve a Disputed Issue Prior to Entering a Proceeding	12	20	20
<i>Explanatory Measure 1.1.1 ex 1</i> Average Indemnity Cost Avoided per Injured Employee Assisted by an Ombudsman	\$1,845	\$1,829	\$1,832
<i>Explanatory Measure 1.1.1 ex 2</i> Number of Disputed Issues Resolved Prior to entering a Proceeding	6,138	6,589	6,991

<b>Performance Measures</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b><i>GOAL 2 -- EDUCATE</i></b>			
<i>Outcome Measure 2.1 oc 1</i> <b>KEY</b> <b>Percentage of Injured Employees Reached Regarding their Rights &amp; Responsibilities.</b>	<b>95%</b>	<b>95%</b>	<b>95%</b>
<i>Output Measure 2.1.1 op 1</i> <b>KEY</b> <b>Number of Injured Employees Reached Regarding their Rights and Responsibilities</b>	<b>183,031</b>	<b>184,535</b>	<b>182,794</b>
<i>Output Measure 2.1.1 op 2</i> Number of Injured Employees Assisted by Telephone	275,892	235,387	238,195
<i>Output Measure 2.1.1 op 3</i> Number of Injured Employees Assisted at Field Office Locations	22,874	26,853	34,866
<i>Output Measure 2.1.1 op 4</i> Number of presentations performed by OIEC	81	78	105
<i>Output Measure 2.1.1 op 5</i> Number of Referrals to DARS, TWC, TDI, and Others	9,514	5,631	4,741
<i>Efficiency Measure 2.1.1 ef 1</i> <b>KEY</b> <b>Average Time from Date of Injury to the Date an Injured Employee is Sent Their Rights and Responsibilities</b>	<b>18.79</b>	<b>18.42</b>	<b>18.58</b>
<b><i>GOAL 3 -- ADVOCATE</i></b>			
<i>Outcome Measure 3.1 oc 1</i> Percentage of Workers' Compensation Formal or Informal Rules Analyzed by OIEC	100%	100%	100%
<i>Outcome Measure 3.1 oc 2</i> Percentage of Workers' Compensation Formal or Informal Rulemaking Processes in which OIEC Participated	88%	73%	100%
<i>Outcome Measure 3.1 oc 3</i> <b>KEY</b> <b>Percentage of Workers' Compensation Rules Changed for the Benefit of the Injured Employee as a Result of OIEC Participation</b>	<b>86%</b>	<b>100%</b>	<b>82%</b>
<i>Output Measure 3.1.1 op 1</i> <b>KEY</b> <b>Number of Rules Analyzed by OIEC (informal and formal)</b>	<b>8</b>	<b>11</b>	<b>15</b>
<i>Output Measure 3.1.1 op 2</i> <b>KEY</b> <b>Number of Rulemaking Processes (informal and formal) in Which OIEC Participated</b>	<b>7</b>	<b>8</b>	<b>11</b>
<i>Output Measure 3.1.1 op 3</i> Number of Adopted Workers' Compensation Rules Changed for the benefit of IE's as a Result of OIEC's Participation	6	8	9
<i>Output Measure 3.1.1 op 4</i> Number of Assists a Regional Staff Attorney Provides to an Ombudsman	3,056	2,782	2,949
<i>Output Measure 3.1.1 ex 1</i> Number of Workers' Compensation Rules Adopted	8	11	15

---

# Section 2

---

**Section 2 provides a description of the activities of the Office of Injured Employee Counsel in fulfilling the agency’s mission to assist, educate, and advocate on behalf of the injured employees of Texas. [LABOR CODE SECTION 404.106(a)(1)]**

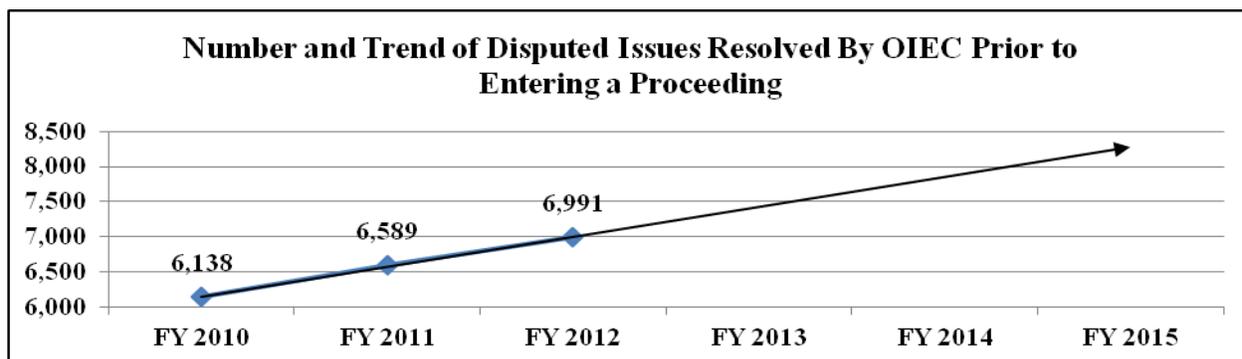
---

## Assisting Injured Employees

---

*Early Intervention Efforts.* The Office of Injured Employee Counsel (OIEC) strives to resolve disputes as quickly as possible to ensure that injured employees receive their benefits in a timely manner. The agency currently resolves approximately 60 percent of disputed issues prior to an administrative proceeding through its early intervention efforts. This results in fewer dispute proceedings and has a positive financial impact for the Texas Department of Insurance, Division of Workers’ Compensation (TDI-DWC) and the State of Texas as fewer disputes continue through their administrative and judicial systems.

The chart below illustrates the number of disputed issues resolved prior to entering TDI-DWC’s administrative dispute resolution system and the projected trend for the next few years.



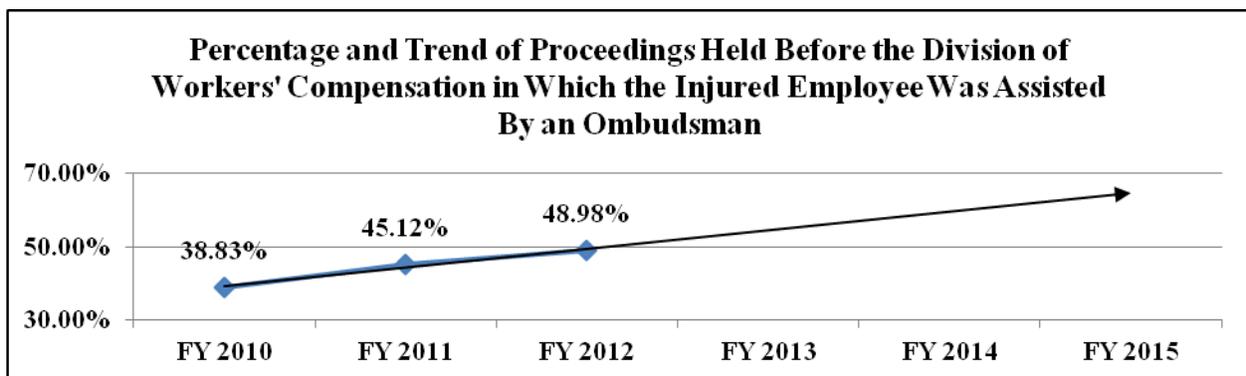
The following three examples illustrate how OIEC assists injured employees and succeeds in resolving their disputes prior to an administrative dispute resolution proceeding.

1. OIEC received a telephone call from an injured employee whose temporary income benefits were being discontinued due to a doctor’s certification that he had reached maximum medical improvement (MMI) with a 4 percent impairment rating. OIEC determined that the certifying doctor had examined the injured employee at the request of the treating doctor but that the certifying doctor had been asked to perform only a functional capacity examination. OIEC also discovered that the certifying doctor was not certified by TDI-DWC to perform impairment rating evaluations. OIEC provided this information to the insurance adjuster. Upon researching and validating OIEC’s determination, the adjuster reinstated the injured employee’s temporary income benefits with interest.

2. An injured employee contacted OIEC when he reached statutory MMI. Statutory MMI is reached 104 weeks after benefits begin to accrue. At that point, except in very unique circumstances, no further temporary income benefits are due. However, the injured employee may be entitled to impairment income benefits. A designated doctor was requested to examine the injured employee and assign an impairment rating. Upon receipt of the designated doctor's report, the adjuster initiated payment of impairment income benefits as of the date of the examination. The adjuster disputed entitlement of impairment income benefits for the time between the first scheduled appointment – when the injured employee was considered a “no-show” – and the second appointment, which the injured employee did attend. OIEC provided verification by TDI-DWC and the designated doctor's office that the injured employee had a valid reason – a family emergency – for not attending the first scheduled appointment and had rescheduled. OIEC worked with the adjuster to provide all the necessary information, and the adjuster sent the injured employee an impairment income benefits check for the weeks in dispute.
  
3. OIEC assisted an injured employee who had been certified to have reached MMI; however, the impairment rating did not include all of the compensable injuries or take into consideration the surgery that was to be performed by the same doctor. Additionally, the adjuster was asking to recoup \$4,500 in overpayments from future benefits. OIEC contacted the treating doctor and explained the impact of a premature and incomplete certification of MMI. Taking into account the other compensable injuries and the upcoming surgery, the treating doctor rescinded his certification of MMI. OIEC contacted the adjuster, who agreed to resume paying temporary income benefits once she received the doctor's report.

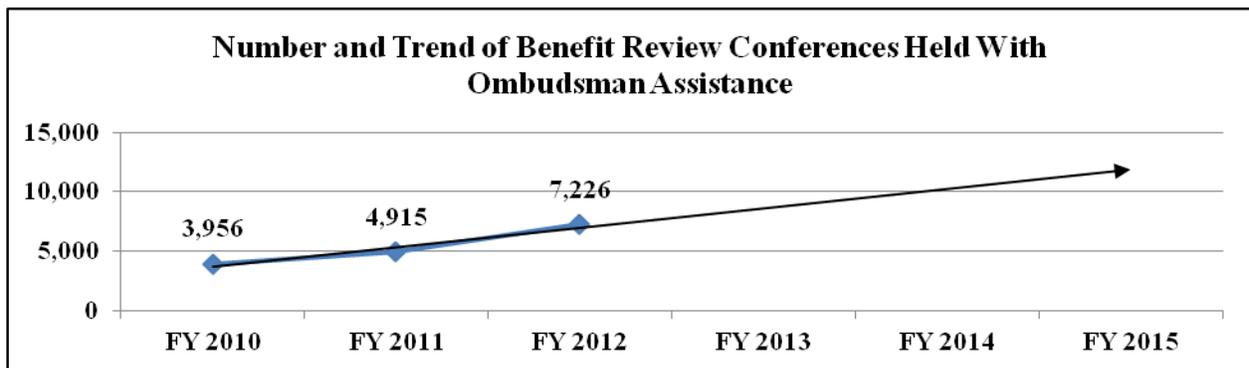
If the dispute is not resolved during OIEC's early intervention process, a benefit review conference is scheduled and the dispute enters the TDI-DWC administrative dispute resolution process.

*Increase in the Need for Ombudsman Assistance.* Injured employees request ombudsman assistance in about half of the administrative dispute resolution proceedings. The percentage of proceedings where an injured employee is assisted by an ombudsman has increased approximately 26 percent since FY 2010. The chart below indicates the percentage of proceedings held with ombudsman assistance since FY 2010. This trend is expected to continue.

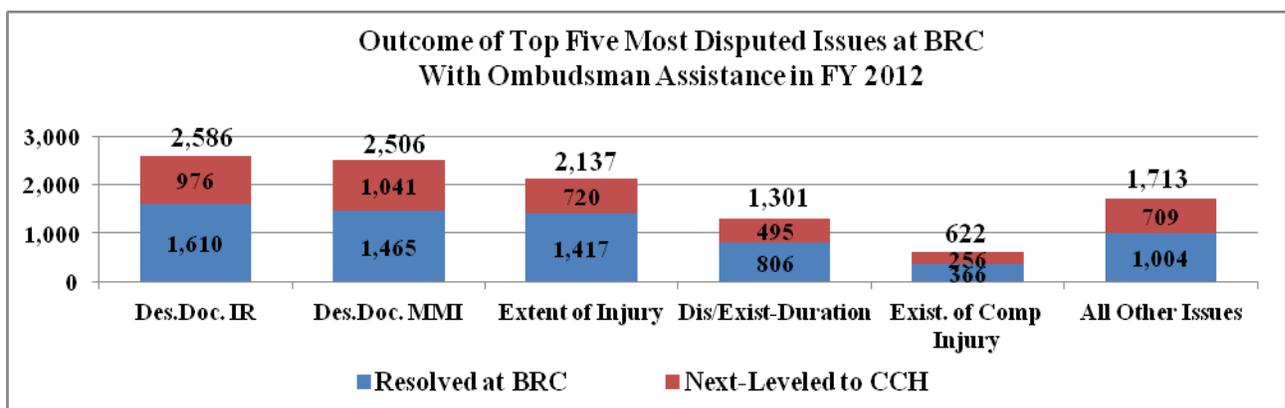


*Savings to Injured Employees.* The increase in the need for ombudsman assistance during the past few years is due in part to ombudsman services being provided at no cost to the injured employee. Attorneys can charge up to 25 percent of an injured employee’s indemnity benefits. The choice of ombudsman assistance saved an average of \$1,832 in benefits per injured employee in FY 2012.

*Ombudsman Assistance at a Benefit Review Conference (Mediation).* Although OIEC resolves approximately 60 percent of disputed issues prior to entering TDI-DWC’s administrative dispute resolution process, many issues proceed to a benefit review conference. The number of benefit review conferences with ombudsman assistance has increased approximately 83 percent since FY 2010. The chart below indicates the number of benefit review conferences where the injured employee was assisted by an ombudsman in FY 2010, FY 2011, and FY 2012.

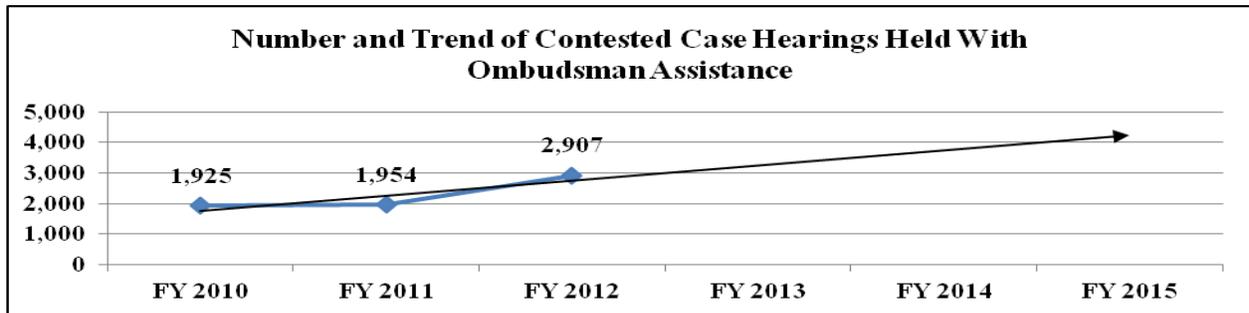


*Issues in Dispute at a Benefit Review Conference – Ombudsman Assistance.* Disputes regarding: 1) a designated doctor’s impairment rating, 2) a designated doctor’s maximum medical improvement (MMI) date, and 3) the extent of an injury make up approximately two-thirds of all disputed issues at a benefit review conference (BRC) where an injured employee is assisted by an ombudsman. The chart below reflects the top five most disputed issues and the number resolved at a benefit review conference where the injured employee is assisted by an ombudsman.

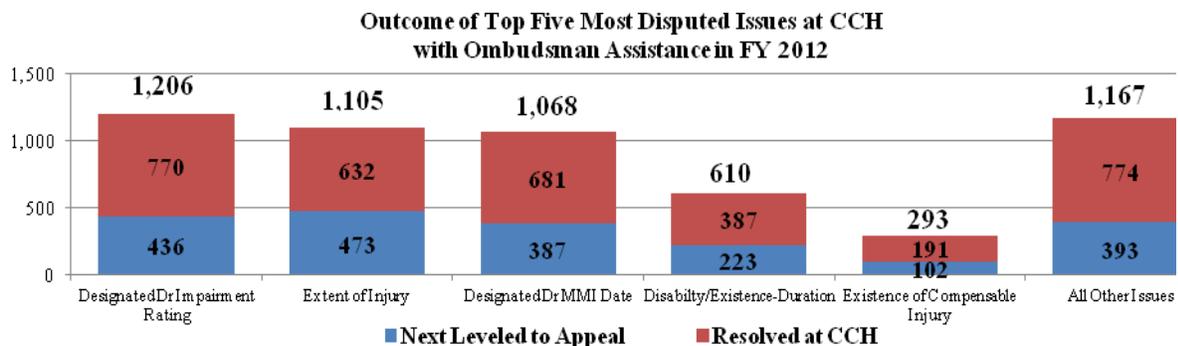


Disputes that are not resolved at a benefit review conference are scheduled for a contested case hearing (CCH).

*Ombudsman Assistance at a Contested Case Hearing (Administrative Hearing).* In FY 2012, almost 1,000 more contested case hearings were held with ombudsman assistance compared to the number held in FY 2010 and FY 2011, which is an increase of more than 50 percent. The increase in the number of contested case hearings with ombudsman assistance is reflected in the chart below.

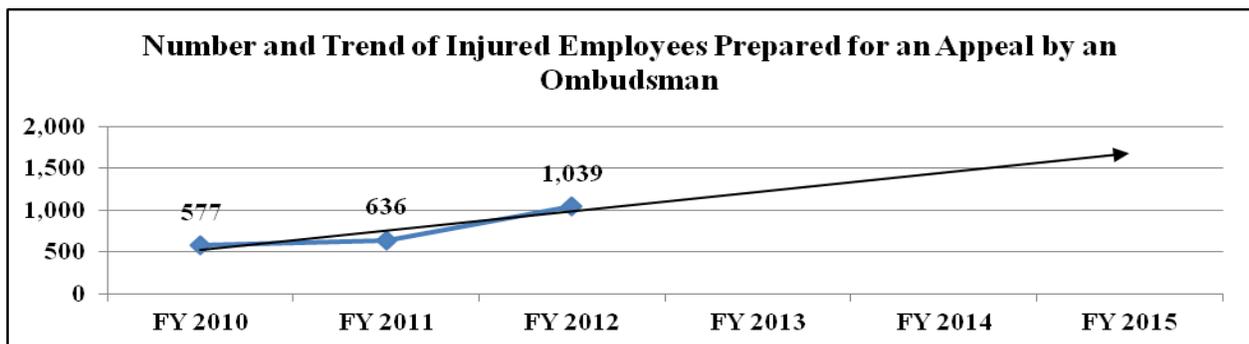


*Issues in Dispute at a Contested Case Hearing – Ombudsman Assistance.* Disputes regarding: 1) a designated doctor’s impairment rating, 2) the extent of an injury, and 3) a designated doctor’s maximum medical improvement date make up approximately two-thirds of all disputed issues at contested case hearings when an injured employee is assisted by an ombudsman. The chart below reflects the top five most disputed issues and the number resolved at a contested case hearing where the injured employee is assisted by an ombudsman.



Any party that disagrees with the hearing officer’s decision after the contested case hearing may appeal the decision to TDI-DWC’s Appeals Panel.

*Ombudsman Assistance at Appeal.* The chart below illustrates the increase in the number of injured employees that choose ombudsman assistance at the appeal level. The number of injured employees prepared for an appeal by an ombudsman has increased 80 percent since FY 2010.



## Educating Injured Employees and Other Stakeholders

---

*Field Office Educational Presentations.* Once a month, each OIEC field office offers an hour-long presentation to educate its customers on a given topic. Recent topics included the following:

- Ten Things to Know About Compensability and Extent of the Injury;
- What to Expect at Your Designated Doctor Examination;
- Early Return to Work Benefits Everyone; and
- What To Do If You Receive a Workers' Compensation Medical Bill.

These outreach efforts help to inform injured employees and the public about the role that OIEC plays and answers their questions about the Texas Workers' Compensation System.

*Electronic Education.* While OIEC explores the opportunity of making information available in electronic media formats such as webinars or videos, the agency performs mass email distributions to notify OIEC stakeholders of special events and key agency information. OIEC's website provides a considerable amount of information about OIEC and the workers' compensation system.

Social media use is on the rise by State agencies. OIEC was one of the first agencies to use social media outlets. OIEC can be found by searching for "OIEC" at [www.twitter.com](http://www.twitter.com) and [www.facebook.com](http://www.facebook.com). OIEC is also in the process of uploading videos concerning workers' compensation topics to YouTube – OIECTube. The videos will enhance OIEC's effort to educate the public concerning the workers' compensation system in Texas.

*Non-Electronic Education.* Many OIEC customers do not have access to the Internet and are unable to take advantage of recent technological developments. According to OIEC's 2011 Customer Satisfaction Survey, approximately 40 percent of injured employees said that they do not have Internet access at home. This finding is similar to the 45 percent of survey respondents from two years ago that indicated no computer access.

In an effort to overcome this barrier, OIEC provides outreach and informational materials for injured employees and other system participants in paper form. All literature and materials are available in English, Spanish, and other languages upon request.

*Referral Services Assistance.* One of the statutory duties of OIEC, pursuant to Section 404.106 of the Texas Labor Code, is to refer injured employees to local, state, and federal financial assistance; rehabilitation and work placement programs; and other social services as needed. Referrals are made to the Texas Department of Assistive and Rehabilitative Services for services in an effort to return the injured employee to work. Referrals are also made to the Texas Workforce Commission, TDI, the Texas Medical Board, or other social and regulatory services. Injured employees' complaints regarding health care providers are referred to the appropriate licensing boards or oversight agencies. OIEC has made over 10,000 referrals in the past two years.

*Partnering with Other Entities to Educate.* OIEC constantly seeks new opportunities and venues to share information about the agency and its services. OIEC has broadened its public outreach initiatives to reach more customers. In addition to providing information at speaking engagements and presentations, OIEC hosts educational sessions at exhibition booths free of charge at various organizations' conventions. For example, OIEC:

- Partnered with the Texas Funeral Service Commission in order to educate potential beneficiaries of employees who are killed on the job. OIEC hosted an information booth at a recent Texas Funeral Director's Association conference.
- Worked with the Workers' Defense Project as an avenue to educate injured employees in the workers' compensation system about OIEC's role and services. The Workers' Defense Project assists low-income employees with the resources to improve their working and living conditions.
- Hosted an informational booth at the TexMed 2012 Convention. OIEC was one of more than 200 exhibitors who provided product and services information on a variety of topics that benefit doctors, medical practice staff, and patients. Approximately 1,500 health care providers attended this event and almost as many visited OIEC's booth.
- Hosted a booth and presented at the Second Chance for Success Job Fair 2011. Hundreds of employees from the Rio Grande Valley attended the event organized by South Texas government agencies and federal, state, and local employers.

OIEC's education booth at the Texas Orthopaedic Association Conference proved to be a successful event because some attendees had not heard about OIEC prior to the conference. OIEC staff was able to provide them with valuable information and resources. The attendees who were aware of OIEC reported that they regularly refer their patients to OIEC and spoke highly of the Ombudsman Program.

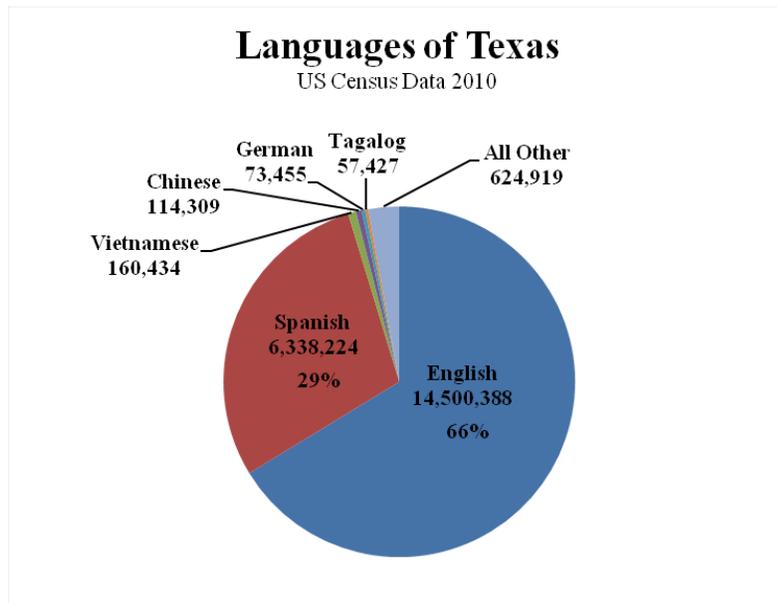
Informational booths were also recently staffed at the TDI-DWC Workers' Compensation Seminars in Austin, San Antonio, Dallas, Fort Worth, McAllen, and Houston. Additionally, public outreach presentations were conducted for the following entities:

- Toyota plant in San Antonio;
- Texas Municipal Police Association;
- Mexican Consulate in Dallas;
- AFL-CIO local in Houston;
- Local 540 of the Food and Commercial Workers Union in Dallas;
- Denton Black Chamber of Commerce;
- Dallas Hispanic Chamber of Commerce; and
- Mid-Size Agency Coordinating Council.

*Access Plan.* One challenge in providing excellent customer service that OIEC encounters is language barriers. This challenge has grown as the non-English speaking population grows in Texas and nationally.

According to a U.S. Census Bureau report analyzing data from the 2007 American Community Survey, the percentage of speakers of non-English languages grew by 140 percent over the time period from 1980 – 2007 while the nation’s overall population grew by 34 percent. Spanish speakers accounted for the largest numeric increase nationwide. There were 23.4 million more Spanish speakers in 2007 than in 1980, which represents a 211 percent increase.

Due to the various languages spoken across Texas, it is important for OIEC to ensure that the agency can effectively communicate with its customers. Below is a chart of the different languages spoken throughout the State.



One of the tools the agency uses to ensure effective communication is its *Access Plan for Non-English Speakers*. Pursuant to Texas Labor Code Section 404.005(a), OIEC is required to prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to its programs. The *Access Plan* summarizes OIEC’s efforts to ensure access to the agency for non-English speaking individuals. OIEC’s *Access Plan* is available on the agency’s Internet at [www.oiec.texas.gov/topics/access](http://www.oiec.texas.gov/topics/access).

Since one-third of Texans are Spanish speakers, OIEC ensures that nearly all of its offices have OIEC staff that can to provide personal assistance in Spanish. More than half of OIEC staff is bilingual, and over 60 percent of the Customer Service Program and 55 percent of the Ombudsman Program staff speak Spanish. OIEC staff also speaks German and Vietnamese.

OIEC’s hiring practices ensure that field office personnel have the skills to speak languages other than English. Additionally, in an effort to increase the number of bilingual staff, OIEC is purchasing tools/resources for interested staff to learn a new language.

OIEC also provides outreach and educational materials in Spanish and other languages including but not limited to Chinese (Cantonese), Vietnamese, Laotian, and Korean, upon request.

The agency's website ([www.oiec.texas.gov](http://www.oiec.texas.gov)) can be translated into several languages. A feature on the OIEC internet translates the web pages into other languages, including Portuguese, Spanish, French, Italian, German, Dutch, Swedish, Russian, Greek, Arabic, Chinese (both Cantonese and Mandarin), Korean, and Japanese. At the top of the OIEC internet pages, in the upper right hand corner, is a weblink that says "Translate Page." This brings the user to the bottom of the page where a language can be selected to translate the page.

OIEC's toll-free number (1-866-EZE-OIEC • 1-866-393-6432) provides assistance to callers in both English and Spanish. Interpreter services are available for injured employees in various stages of the workers' compensation dispute resolution process. OIEC has employed Language Line Services through a Texas Department of Information Resources contract to provide translation services to its customers. This tool is expensive, and OIEC anticipates that usage will continue to increase.

OIEC is committed to continue efforts to improve and expand its offerings to non-English speakers in the State. The agency is also taking steps to ensure its website, including documents, are accessible to individuals with impaired vision and other disabilities.

*OIEC Staff Certified as Mental Health First Aiders.* OIEC staff interact with Texans who are dealing with life stress. Job loss, physical pain, and income reduction or elimination are some of the most stressful life events yet are commonplace among OIEC customers. The agency has trained all staff in Mental Health First Aid (MHFA) to give OIEC employees the knowledge and tools to assist a customer who may be in emotional or mental distress. OIEC's Deputy Public Counsel/Chief of Staff and Associate Director of Communications and Development received Instructor Certification to teach the MHFA course.

MHFA is a public education program coordinated by the National Council for Community Behavioral Healthcare that introduces participants to risk factors and warning signs of mental health problems, builds understanding of their impact, and provides an overview of common treatments. MHFA is a 12-hour course that uses role-playing and simulations to demonstrate how to assess a mental health crisis, select interventions and provide initial help, and connect persons to professional, peer, social, and self-help care. The program uses a five-step action plan to support someone developing signs and symptoms of mental illness or in an emotional crisis:

1. Assess for risk of suicide or harm;
2. Listen non-judgmentally;
3. Give reassurance and information;
4. Encourage appropriate professional help; and
5. Encourage self-help and other support strategies.

OIEC staff is now better prepared to act in the event of a psychiatric emergency, understand how to interact with a person in crisis, how to protect themselves, and how to connect the person with professional help. Ultimately, the training helps OIEC to better serve injured employees.

*Workers' Compensation Rule Activity.* OIEC advocates on behalf of injured employees as a class by analyzing and participating in workers' compensation system initiatives and encouraging the simplification of procedures and forms. OIEC provides comments to TDI-DWC during the development phase of rules and forms relating to workers' compensation found in Title 28 of the Texas Administrative Code. During the past two years, OIEC has provided comments to TDI-DWC on the following informal and formal rules and forms:

- *May 2011* - DWC Form-022, Required Medical Examination Notice or Request for Order;
- *July 2011* - Informal proposal to amend 28 Texas Administrative Code Sections 141.2, 141.3, and 143.2;
- *July and October 2011* - 28 Texas Administrative Code Sections 180.4, 180.9, and 180.10 and to amend 28 Texas Administrative Code Sections 180.1, 180.3, 180.5, 180.8, and 180.27 regarding monitoring and enforcement;
- *August 2011* - Review of Self-Insurance rules 28 Texas Administrative Code Sections 114.1-114.15;
- *September 2011* - Proposal of 28 Texas Administrative Code Sections 19.2001-19.2021 regarding utilization reviews for health care provided under workers' compensation insurance coverage;
- *September 2011* - Proposal to amend 28 Texas Administrative Code Sections 133.2, 133.240, 133.250, 133.270, and 133.305 regarding general medical provisions, and 28 Texas Administrative Code Section 134.600 regarding preauthorization, concurrent utilization review, and voluntary certification of health care;
- *September 2011* - Proposal to amend 28 Texas Administrative Code Sections 141.2, 141.3, and 143.2;
- *September 2011* - Informal proposed revisions to the DWC Form-045, Request for a Benefit Review Conference;
- *September 2011* - Informal proposal to add new 28 Texas Administrative Code Sections 126.15 and 125.16 and to amend 28 Texas Administrative Code Section 128.1;
- *October 2011* - Informal draft rules proposal to amend 28 Texas Administrative Code Sections 127.1, 127.5, 127.10, 127.20, 127.25, 130.6 and 180.23; to repeal Section 180.21; and to add new Sections 127.100, 127.110, 127.120, 127.130, 127.140, 127.200, 127.210, and 127.220 relating to designated doctor procedures and requirements;
- *November 2011* - Proposal to add new 28 Texas Administrative Code Sections 126.15 and 125.16 and to amend 28 Texas Administrative Code Section 128.1 regarding procedures for the resolution of underpayments and overpayments of income benefits;
- *November 2011* - Informally proposed Notice of Underpayment of Income Benefits;
- *December 2011* - Informal draft rules relating to notice and reporting requirements for subscribing and non-subscribing employers; and rules relating to notice of Texas Labor Code Section 504.053(b)(2) Election by a Self-Insured Political Subdivision;
- *January 2012* - Informal draft of rules relating to medical dispute resolution;
- *January 2011* - Informal draft rule 28 Texas Administrative Code Section 127.130(b) regarding designated doctor qualification criteria;
- *January 2012* - Proposal to amend 28 Texas Administrative Code Sections 133.2 and 133.240 regarding general medical provisions; and 28 Texas Administrative Code Section

134.600 regarding preauthorization, concurrent utilization review, and voluntary certification of health care;

- *March 2012* - Review of rules involving Title 28. Part 2, Texas Administrative Code, Chapter 142, Dispute Resolution-Benefit Contested Case Hearing;
- *March 2012* - proposal to amend 28 Texas Administrative Code Sections 127.1, 127.5, 127.10, 127.20, 127.25, 180.23; to repeal Sections 130.6 and 180.21; and to add new Sections 127.100, 127.110, 127.120, 127.130, 127.140, 127.200, 127.210, and 127.220 relating to designated doctor procedures and requirements;
- *March 2012* - Proposed rules relating to notice and reporting requirements for subscribing and non-subscribing employers; and rules relating to notice of Texas Labor Code Section 504.053(b)(2) Election by a Self-Insured Political Subdivision;
- *March 2012* - Informally proposed DWC Forms 032, 067 and 068;
- *April 2012* - Proposed amendments to 28 Texas Administrative Code Sections 133.307, 133.308, 144.1–144.7, and 144.9–144.16;
- *April 2012* - Health Care Providers Pain Management Services (Opioid) Plan-Based Audit;
- *April 2012* - Informal Working Draft of 28 Texas Administrative Code Sections 19.1701-19.1719 and Sections 19.2001-19.2017 relating to utilization review;
- *June and August 2012* - Rule 28 Texas Administrative Code Sections 180.60-180.78 regarding the Medical Quality Review Panel and Medical Quality Review process;
- *June 2012* - Review of rules involving Title 28 Texas Administrative Code, Chapter 150, Representation of Parties before the agency – Qualifications of Representatives;
- *August 2012* - Informal proposal to add new 28 Texas Administrative Code Section 126.17 and to amend Section 130.12, regarding post designated doctor treating doctor examination;
- *August 2012* - Draft of the Plain Language Notice Relating to the Potential Entitlement to Workers' Compensation Death Benefits (PLN-12); and
- *September 2012* - Proposed rules relating to utilization review for health care 28 Texas Administrative Code Sections 19.1701-19.1719 and Sections 19.2001-19.2017.

*Notice of Injured Employee Rights and Responsibilities Amended.* In December 2011, OIEC adopted amendments to Texas Administrative Code Section 276.6 concerning the *Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System*. The amended notice reflects changes in the workers' compensation system as a result of the Sunset Advisory Commission's comprehensive review of the system and resulting legislation passed during the 82nd Texas Legislature, Regular Session, 2011. The effective date of the amended rule and notice was June 1, 2012. This timeframe allowed system participants adequate time to prepare for the changes resulting from the amended notice and coincided with the effective date of key Sunset Advisory Commission legislation.

*Ethics Rules Adopted.* OIEC adopted three new administrative rules to codify the agency's ethical standards. New Section 276.7 of the Texas Administrative Code establishes OIEC's ethics statement. Section 276.8 describes OIEC's Ethics Committee and the Committee's mission statement. Section 276.13 clarifies that an injured employee must have a legitimate workers' compensation claim when requesting assistance from an OIEC ombudsman. The new rules were adopted in August 2011.

*Amicus Curiae Briefs.* OIEC advances its advocacy role by pursuing matters before the courts on issues of importance to injured employees as a class. Labor Code Section 404.104(3) provides that the agency “may appear or intervene, as a party or otherwise, as a matter of right, on behalf of injured employees as a class in any proceeding in which the public counsel determines that the interests of injured employees as a class are in need of representation.” OIEC has filed 10 *amicus curiae* briefs on behalf of injured employees in Texas. Here is a summary of the latest brief filed by the agency:

- In May 2011, OIEC filed an *amicus curiae* brief with the Texas Supreme Court in support of the Petitioner’s (Texas Mutual Insurance Company) Motion for Rehearing in the case of *Texas Mutual Insurance Company v. Sara Care Child Center, Inc. and Martha Martinez*, No. 10-0885. OIEC believes that the Court of Appeals’ decision has a disproportionate impact on the rights of injured employees to seek judicial review. OIEC has determined that the interests of injured employees as a class will be adversely affected if the decision is not reversed in part.

*Amicus Curiae Update.* OIEC filed an *amicus curiae* brief with the Texas Supreme Court in July 2009 in support of the Petition for Review in the case of *Liana Leordeanu v. American Protection Insurance Company*. The central issue in the case was whether or not Ms. Leordeanu was in the course and scope of her employment when she was involved in a motor vehicle accident. OIEC was strongly compelled to file an amicus brief in this case because the mis-analysis of the Court of Appeals would drastically reduce coverage for the growing class of employees who office from their homes and travel as an integral part of their work.

On December 3, 2010, the Texas Supreme Court ruled 8-1 in favor of Ms. Leordeanu. This decision will likely have a positive effect on employees who are injured while traveling for work or for injured employees who work remotely.

*Expert Witness Project.* Injured employees in Texas are facing unprecedented challenges in proving their cases within the administrative dispute resolution process. Data for fiscal years 2009-2011 shows that injured employees assisted by OIEC prevailed in indemnity disputes 35 percent, 34 percent, and 30 percent of the time, respectively. For medical disputes in the same timeframe, injured employees prevailed 15 percent, 12 percent, and 12 percent of the time, respectively. For indemnity disputes in which injured employees received attorney representation, injured employees prevailed 45 percent, 42 percent, and 39 percent of the time for fiscal years 2009, 2010, and 2011, respectively.

One key factor motivating this trend is the ever-increasing evidentiary standard required to prove entitlement to benefits. This is especially true in medical disputes. While there are certainly other factors at play—factors over which OIEC has no control—OIEC may be in a position to reverse this trend by assisting injured employees in meeting the evidentiary standards necessary to prove entitlement to income and medical benefits. To do this, OIEC is using agency funds to procure medical doctors to serve as expert witnesses in certain cases. OIEC has designated this initiative the “Expert Witness Project.”

As part of its recently granted authority to pursue grant funding, OIEC plans to fund an expanded program of procuring expert witnesses and use the Expert Witness Project as a model for that endeavor.

*Legislative Recommendations Passed by the 82nd Texas Legislature.* As the State agency that represents the interests of injured employees and assists them in the workers' compensation system, OIEC takes seriously its role as the voice of the injured employee in carrying forward legislation that improves workers' compensation benefits and the system as a whole. Pursuant to Labor Code Section 404.108, the OIEC Public Counsel may recommend legislation determined to benefit the interests of injured employees as a class. OIEC legislative recommendations that passed during the 82nd Texas Legislature include the following:

- House Bill (HB) 2692/Senate Bill (SB) 807 (amended onto HB 1774): OIEC was given the authority to seek and accept grant funding to enable the office to perform its duties;
- HB 2691 (amended onto HB 1774): OIEC's Legislative Report is due on January 1 instead of December 1;
- HB 1870/SB 809: A party is allowed 45 days to appeal a medical dispute decision in district court, which is the same timeframe as an appeal of an indemnity dispute decision;
- HB 1872 (amended onto SB 809): TDI-DWC is the appropriate venue for resolving Workers' Compensation Health Care Network disputes in cases where an insurance carrier or employer fails to provide notice of network status information to an injured employee; and
- HB 3427/SB 511 (amended onto HB 2605): An injured employee has the opportunity to seek the opinion of a treating doctor or a referral doctor if not satisfied by the designated doctor's opinion regarding maximum medical improvement and impairment rating. It requires the insurance carrier to pay the cost of such an examination.

The legislation passed by the 82nd Texas Legislature helps protect the interests of injured employees and upholds the workers' compensation system goal of treating injured employees with dignity and respect.

*Succession Planning.* OIEC has a weighty responsibility – to assist hard-working Texans who likely are in pain and may be frustrated by the complexities of the workers’ compensation system. The core of the agency, the ombudsmen, must know the law, understand aspects of health care, and have the heart of a social worker. The ombudsmen and customer service representatives also must be educators, able to patiently explain laws, rules, processes, and procedures so that injured employees and their families can make informed decisions about pursuing their claims. OIEC’s overall strength in serving injured employees resides in the knowledge and experience its staff possesses. This strength soon will be at risk as experienced staff becomes eligible for retirement. Additional information regarding OIEC retirement is on page 10 of this report.

Much of the impetus for formal succession planning at OIEC is the potential for high employee turnover and loss of critical knowledge and experience due to retirements. However, the process exists to preserve continuity in services regardless of the reason for the vacancy – resignation, transfer, termination, death, disability, or retirement.

The process of OIEC’s succession planning, which began in 2011, is preparing the agency for the risks associated with loss of knowledge that is critical to achieve its mission. OIEC is implementing its succession plan by identifying, developing, and transferring knowledge to employees who become highly qualified and capable of filling key positions or performing crucial functions as individuals leave the agency.

*Sunset Advisory Commission Review.* OIEC underwent the Sunset Advisory Commission Review in 2011. Legislation was passed during the 82nd Texas Legislature, Regular Session, 2011 to continue the agency through FY 2016. In addition to continuing the agency for six more years to coincide with TDI-DWC’s Sunset Advisory Commission Review, OIEC’s Sunset bill, HB 1774, included the following provisions:

- **Clarifies that OIEC has access to claim information only when assisting an injured employee.**

*Impact:* This change altered provisions of the Texas Labor Code regarding OIEC’s access to the injury and claim information of injured employees. Section 404.111(a) now provides that when assisting an injured employee, OIEC is entitled to the same access to information related to the employee’s injury and workers’ compensation claim as the employee or any other party to the claim. Additionally, Section 402.085(a)(5) now provides that OIEC is only entitled to access injury and claim information of an injured employee when OIEC is assisting the injured employee. OIEC and TDI-DWC entered into a Memorandum of Understanding (MOU) to facilitate the implementation of these provisions of the Texas Labor Code. Due to the MOU, OIEC discontinued its Fatality Outreach Program, which provided helpful information to beneficiaries of workers killed on the job.

- **Requires OIEC to maintain complaint information.**  
*Impact:* This was a standard across-the-board recommendation from the Sunset Advisory Commission and did not impact the agency. OIEC had been in compliance with the new provision since 2006, the year the agency became operational.
- **Requires OIEC to encourage the use of its alternative dispute resolution process.**  
*Impact:* This was a standard across-the-board recommendation from the Sunset Advisory Commission. OIEC developed alternative procedures for rulemaking and dispute resolution, which conformed to the State Office of Administrative Hearings model guidelines as required by the Commission.
- **Authorizes OIEC to seek and accept grant funding.**  
*Impact:* This provision authorizes OIEC to seek and accept grant funding. Grants are being sought to help fund two agency priorities: an Expert Witness Program and a program to extend Mental Health First Aid (MHFA) education to injured employees. OIEC is conducting an Expert Witness Project in which medical doctors serve as expert witnesses for injured employees whose medical or income benefits have been denied. Grant funds would be used to expand this program. OIEC also would like to use grant funding to help injured employees who may be experiencing mental health issues. OIEC has trained agency staff members in MHFA to help them understand, identify, and address mental illness among the injured employees they serve. By offering the training directly to injured employees, OIEC can help its customers to get the information and resources they need to move on with their lives and return to work, if possible.
- **Changes the due date for OIEC's *Legislative Report* from December 1 to January 1 prior to the beginning of the convening of the Texas Legislature.**  
*Impact:* This provision gives the agency an additional month to collect data and submit its biennial *Legislative Report*.

*Customer Satisfaction Survey.* Each year OIEC surveys its customers to assess their satisfaction level and identify opportunities to improve the agency's customer service. The agency is attempting to improve the number of survey respondents by attaching a self-addressed envelope to paper surveys that are given to customers when visiting a field office.

The results of the 2011 Customer Satisfaction Survey showed that more than 88 percent of the respondents were satisfied with their OIEC experience. Although the satisfaction level is relatively high, there is room for improvement.

A high percentage of respondents (92.1 percent) agreed or strongly agreed that OIEC staff members were knowledgeable and able to answer their questions. One of the top priorities of the agency is the training provided to staff, and OIEC anticipates that the results will be higher in the 2012 survey.

OIEC provides training to staff throughout their tenure with the agency. This is necessary because of the various changing aspects and complexity of the workers' compensation system. One of OIEC's key initiatives is training efforts to ensure that customer service representatives,

ombudsmen, and other OIEC staff are familiar with all facets of the workers' compensation system and stay abreast of dispute resolution rules and processes.

*Survey of Employee Engagement.* At the beginning of calendar year 2012, OIEC employees were asked to participate in the *Survey of Employee Engagement*. The biennial survey provides information about the employees' perceptions of the effectiveness of the agency and the employees' satisfaction with the agency. The survey is conducted by The University of Texas at Austin, School of Social Work, and most State agencies participate in the survey.

This is the third time OIEC employees have taken this survey, and OIEC is very proud of the outstanding response rates realized each year the survey is administered. In 2008, OIEC had a response rate of 82 percent. In 2010, 100 percent of OIEC employees responded, which was the first time in State history that the survey was completed with a 100 percent response rate. In 2012, OIEC had a response rate of 99 percent, which is the second highest response rate in Texas' history. A high response rate means that OIEC employees have an investment in the organization, want to see the organization improve, and generally have a sense of responsibility to the organization. Results are provided to OIEC employees, and a committee is formed to identify ways to focus on and improve the areas of concern. According to the survey results, the three areas of agency strengths include the following:

- **Supervision.** The Supervision construct provides insight into the nature of supervisory relationships within the organization, including aspects of leadership, the communication of expectations, and the sense of fairness that employees perceive between supervisors and themselves. High Supervision scores indicate that employees view their supervisors as fair, helpful, and critical to the flow of work. **Score: 424** (out of 500)
- **Employee Development.** The Employee Development construct is an assessment of the priority given to employees' personal and job growth needs. It provides insight into whether the culture of the agency sees human resources as the most important resource or as one of many resources. It directly addresses the degree to which the agency is seeking to maximize gains from investment in employees. High scores indicate that employees feel the agency provides opportunities for growth in agency responsibilities and personal needs. **Score: 422**
- **Strategic.** The Strategic construct reflects employees' thinking about how the organization responds to external influences that should play a role in defining the organization's mission, vision, services, and products. Implied in this construct is the ability of the organization to seek out and work with relevant external entities. High scores indicate employees view the organization as able to quickly relate its mission and goals to environmental changes and demands. It is viewed as creating programs that advance the organization and having highly capable means of drawing information and meaning from the environment. **Score: 417**

Survey results also indicated the three areas of concern, which are identified below:

- **Pay.** The Pay construct addresses perceptions of the overall compensation package offered by the organization. It describes how well the compensation package 'holds up'

when employees compare it to similar jobs in other organizations. Low scores suggest that pay is a central concern or reason for dissatisfaction or discontent. In some situations pay does not meet comparables in similar organizations. In other cases individuals may feel that pay levels are not appropriately set to work demands, experience, and ability. Cost-of-living increases may cause sharp drops in purchasing power, and as a result, employees will view pay levels as unfair. **Score: 250**

- **Job Satisfaction.** The Job Satisfaction construct addresses employees' attitudes about the overall work situation. This construct looks at the degree to which employees intrinsically like their jobs and the total work environment. It focuses on both the job itself and the availability of resources to do the job. Moderate levels of job satisfaction can result in good but not excellent work. In general, job satisfaction stems from these factors: supervisory effectiveness, manageability of the workload, supportiveness of the environment, and the level of pay and benefits. Although this area scored relatively high, it was one of the three lowest scoring constructs. **Score: 358**
- **Information Systems.** The Information Systems construct provides insight into whether computer and communication systems enhance employees' ability to get the job done by providing accessible, accurate, and clear information. The construct addresses the extent to which employees feel that they know where to get needed information, and that they know how to use it once they obtain it. In general, a low score stems from these factors: traditional dependence on word of mouth, low investment in appropriate technology, and possibly some persons using their control of information to control others. **Score: 371**

*Ombudsman Best Practices Survey.* OIEC stays abreast of assistance and advocacy programs for injured employees in other states by consulting Workers' Compensation Research Institute and International Association of Industrial Accident Boards and Commissions reports and conducting its own research. A survey of programs in 15 states conducted by OIEC in April/May 2012 sought "best practices" to enhance the agency's services to injured employees; however, the responses indicate that OIEC's advocacy functions go beyond those in most of the other states. The survey respondents included Alabama, Arizona, Arkansas, California, Florida, Kansas, Kentucky, Maine, Nevada, New Mexico, New York, North Dakota, Ohio, Oregon, and Washington. Most of the ombudsman programs must maintain impartiality and assist all parties to a claim with the aim of facilitating the process and preventing litigation often by offering voluntary mediation services. In general, their staff do not attend hearings. Ombudsman programs in Florida, Maine, Nevada, North Dakota, Oregon, and Washington focus primarily on assisting injured employees. Maine and Nevada offer attorney assistance to injured employees through the administrative and judicial processes. Some of the survey findings follow.

- **Florida** – The structure of Florida's Bureau of Employee Assistance and Ombudsman Office (EAO) is closest to that of OIEC. The staff, divided into three teams, has the authority to be more proactive than OIEC in initiating contact with injured employees. The First Report of Injury Team uses the Florida Division of Workers' Compensation data to identify employees who have lost more than seven days of work due to job-related injuries, educates them about the system, advises them of their responsibilities, and informs them of EAO's services. (By statute, OIEC staff does not have access to this data.) The Injured Worker Helpline Team fields telephone calls from all stakeholders, assists injured employees with problems

obtaining benefits, attempts to facilitate resolution, and refers disputes needing extensive investigation to the Ombudsman Team. The Ombudsman Team assists in resolving complex and contentious disputes and provides early intervention services to employees with catastrophic or severe injuries. This team tries to anticipate whether the injured employee may decide to litigate and intervenes to offer assistance with addressing their concerns.

- **Kentucky** – The Kentucky Division of Ombudsman and Workers’ Compensation Specialist Services facilitates the exchange of information among the parties to a claim and can submit enforcement complaints to the Commissioner of the Office of Workers’ Claims who has the authority to levy fines if the parties do not process claims in a timely manner or respond promptly to communications.
- **Nevada** – The Nevada Attorney for Injured Workers (NAIW) uses medical expert witnesses on behalf of injured employees in selected cases. The staff often writes specific opinion letters to treating physicians and offers the responses as evidence. NAIW has a small budget to pay for the review of medical records or evaluation of the claimant but usually has the claimant pay for the service, if necessary. Nevada law allows NAIW to have input on the choice of physician for performing an independent medical evaluation at the insurer’s expense.
- **North Dakota** – The North Dakota Decision Review Office (DRO) educates and assists injured employees with concerns and disputes about their claim. Injured employees who are dissatisfied with the review process outcome can appeal to an administrative hearing. The regulatory agency, the Workforce Safety and Insurance (WSI), pays for an initial legal consultation with an attorney so the injured employee can obtain an independent legal opinion. WSI also pays attorney fees if the employee prevails on appeal. Like OIEC, DRO advocates for injured employees as a class by suggesting improvements to claim procedures or applications of statute and recommending new legislation to enhance benefits.
- **Oregon** – The Oregon Ombudsman for Injured Workers participates on a Management-Labor Advisory Committee that reports on court decisions having significant impact on the workers’ compensation system, the adequacy of benefits, and medical and system costs.
- **Washington** – The Washington Office of the Ombudsman for Self Insured Workers sponsors an Ombudsman Workgroup consisting of stakeholder groups to share information and foster communication. The Office also issues periodic e-news alerts to educate employers about specific issues or concerns coupled with regulatory and policy guidelines.

**Internal Audits.** OIEC’s internal auditor conducts audits and makes recommendations about the adequacy and effectiveness of the agency’s systems of internal control policies and procedures and the quality of performance in carrying out assigned responsibilities. Audits are performed in accordance with the Standards for the Professional Practice of Internal Auditing, the Code of Ethics contained in the Professional Practices Framework as promulgated by the Institute of Internal Auditors, and generally accepted government auditing standards. Recent audits may be viewed on the agency’s website at [http://www.oiec.texas.gov/resources/audit\\_reports.html](http://www.oiec.texas.gov/resources/audit_reports.html) and include:

- Administration and Operations Division Review No. 2010-009;

- Post Payment Audit No. 2011-005;
- Complaint Process Review No. 2011-006;
- Agency Training Activities Review No. 2011-007;
- Customer Service Program Audit No. 2011-009;
- Agency Ombudsman Program Review No. 2011-010;
- Legal Services Division Review No. 2012-005;
- Administration and Operations Review No. 2012-006;
- Customer Services Program Audit No. 2012-008; and
- Agency Ombudsman Program Audit No. 2012-009.

*External Audits.* OIEC is also subject to audits conducted by the Texas State Auditor's Office and other State agencies. Recent audits may also be found on the agency's website at [http://www.oiec.texas.gov/resources/audit\\_reports.html](http://www.oiec.texas.gov/resources/audit_reports.html) and include the following:

- Risk Management Program Review conducted by the State Office of Risk Management (SORM) on April 7, 2011;
- On-Site Consultation by SORM on September 22, 2011 to discuss the TDI/OIEC Disaster Recovery Plan/Business Continuity Plan; and
- Post Payment Audit completed November 29, 2011, by the Texas Comptroller of Public Accounts, which evaluated OIEC's purchase, travel, and payroll transactions.

*Business Plan Provides Framework for Agency Initiatives.* OIEC uses a business-planning process to detail the agency's most critical objectives, a target date by which the objectives must be met, and the parties responsible for completing them. The Business Plan is detailed and includes many initiatives and projects that OIEC must perform in support of the agency's mission to assist, educate, and advocate on behalf of the injured employees of Texas. The Business Plan demonstrates OIEC's commitment to completing tasks in a timely and effective manner as well as the agency's commitment to open government. The current plan is available on OIEC's publications webpage at [http://www.oiec.texas.gov/documents/pub\\_busplanoiec.pdf](http://www.oiec.texas.gov/documents/pub_busplanoiec.pdf).

---

## Section 3

---

**Section 3 provides the identification of any problems in the workers' compensation system from the perspective of injured employees as a class as considered by the public counsel with recommendations for regulatory and legislative action. [LABOR CODE SECTION 404.106(a)(2)]**

---

Labor Code Section 402.021(a) provides that the goals of the workers' compensation system are:

- Each employee shall be treated with dignity and respect when injured on the job;
- Each injured employee shall have access to a fair and accessible dispute resolution system;
- Each injured employee shall have access to prompt, high-quality medical care within the framework established by the Texas Workers' Compensation Act; and
- Each injured employee shall receive services to facilitate the employee's return to employment as soon as it is considered safe and appropriate by the employee's health care provider.

With these goals in mind, this section of the Legislative Report offers legislative recommendations on behalf of injured employees as mandated by Labor Code Section 404.106. OIEC's legislative recommendations for the 83rd Texas Legislative Session relate to the following topics:

1. Medical Necessity Disputes at Judicial Review;
2. Challenge of Compensability;
3. Dispute of First Certification of Maximum Medical Improvement and Impairment Rating;
4. Supplemental Income Benefits: Range of Motion; and
5. Consistency in Venue for Benefit Disputes.



## 1. Medical Necessity Dispute at Judicial Review

---

Injured employees do not currently have access to legal representation to help protect their right to medical benefits when contested in district court. The law prohibits OIEC from assisting injured employees in appeals to the judicial system; the agency's services are limited to the administrative process pursuant to the Labor Code Section 404.105. Additionally, the three largest legal aid clinics in Texas do not take workers' compensation cases. In cases regarding income benefits, the law provides that the insurance carrier is liable for attorney's fees incurred by the injured employee when the insurance carrier loses its appeal in district court [Texas Labor Code Section 408.221(c)]. There is no such provision in cases regarding medical necessity disputes. The adoption of a program covering the cost of reasonable attorney's fees in such cases would help injured employees secure the services of an attorney and access to the courts to protect their right to necessary medical benefits.

***Legislative Recommendation:*** Enact legislation providing that the insurance carrier is liable for attorney's fees incurred by the injured employee when the injured employee prevails in a medical necessity case on judicial review. This recommendation addresses a gap in workers' compensation law that has resulted in the loss of medical benefits for seriously injured employees.

A copy of the recommended bill follows.

Please contact Brian White or Kathryn Harris at (512) 804-4170 for more information about this legislative recommendation.

A BILL TO BE ENTITLED

AN ACT

relating to the payment of attorney's fees for a workers' compensation claimant.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter L, Section 408.221, Labor Code, is amended as follows:

Sec. 408.221. ATTORNEY'S FEES PAID TO CLAIMANT'S COUNSEL.

(a) An attorney's fee, including a contingency fee, for representing a claimant before the division or court under this subtitle must be approved by the commissioner or court.

(b) Except as otherwise provided, an attorney's fee under this section is based on the attorney's time and expenses according to written evidence presented to the division or court. Except as provided by Subsection (c) or Section 408.147(c), the attorney's fee shall be paid from the claimant's recovery.

(c) An insurance carrier that seeks judicial review under Subchapter G, Chapter 410 of a final decision of the appeals panel regarding compensability or eligibility for, or the amount of, income or death benefits is liable for reasonable and necessary attorney's fees as provided by Subsection (e) ~~(d)~~ incurred by the claimant as a result of the insurance carrier's appeal if the claimant prevails on an issue on which judicial review is sought by the insurance carrier in accordance with the limitation of issues contained in Section 410.302. If the carrier appeals multiple issues and the claimant prevails on some, but not all, of the issues appealed, the court shall apportion and award fees to the claimant's attorney only for the issues on which the claimant prevails. In making that apportionment, the court shall consider the factors prescribed by Subsection (e) ~~(d)~~. This subsection does not apply to attorney's fees for which an insurance carrier may be liable under Section 408.147. An award of attorney's fees under this subsection is not subject to commissioner rules adopted under Subsection (g) ~~(f)~~.

(d) If an injured employee prevails on judicial review of a medical necessity dispute under Chapter 413, the insurance carrier is liable for reasonable and necessary attorney's fees incurred by the injured employee during judicial review. If the injured employee appeals multiple issues and prevails on some, but not all of the issues appealed, the court shall apportion and award fees to the claimant's attorney only for the issues on which the claimant prevails. In making that apportionment, the court shall consider the factors prescribed by Subsection (e)-(d). An award of attorney's fees under this subsection is not subject to commissioner rules adopted under Subsection (g)(f).

(e) (d) In approving an attorney's fee under this section, the commissioner or court shall consider:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions involved;
- (3) the skill required to perform the legal services properly;
- (4) the fee customarily charged in the locality for similar legal services;
- (5) the amount involved in the controversy;
- (6) the benefits to the claimant that the attorney is responsible for securing; and
- (7) the experience and ability of the attorney performing the services.

(f)(e) The commissioner by rule or the court may provide for the commutation of an attorney's fee, except that the attorney's fee shall be paid in periodic payments in a claim involving death benefits if the only dispute is as to the proper beneficiary or beneficiaries.

(g)(f) The commissioner by rule shall provide guidelines for maximum attorney's fees for specific services in accordance with this section.

~~(h)(g)~~ An attorney's fee may not be allowed in a case involving a fatal injury or lifetime income benefit if the insurance carrier admits liability on all issues and tenders payment of maximum benefits in writing under this subtitle while the claim is pending before the division.

~~(i)(h)~~ An attorney's fee shall be paid to the attorney by separate draft.

~~(j)(i)~~ Except as provided by Subsection (c), ~~(d)~~, or Section 408.147(c), an attorney's fee may not exceed 25 percent of the claimant's recovery.

SECTION 2. This act takes effect September 1, 2013.

## 2. Challenge of Compensability

---

In recent years, a significant and increasing number of cases have involved extent-of-injury disputes, and in many cases the insurance carrier's intent is to eliminate lifetime medical coverage. For example, in a recent district court case, issues were submitted to a jury regarding whether the compensable injury extended to 36 different body parts, many of which were not claimed by the injured employee to be a part of the compensable injury. The statute should be amended to require that the insurance carrier assert an extent-of-injury defense within 60 days of receiving written notice of the injury to a certain body part, or that defense will be waived.

In the recent case of *Charles Osborn v. Ace American Insurance Company*, 2011 WL 4089995, *Court of Appeals*. (Waco 2011), the court in a Memorandum Opinion made the following statement:

FN3. We cannot dispute the trial court's following observation in its order on rehearing: It is the position of the Trial Court that the complexity and confusion of the Texas Workers' Compensation System is, *in great part*, the basis for the confusion and opposing positions of the parties, this is due to the series of administrative and bureaucratic labyrinths through which the parties are forced to navigate (*specifically the plaintiff, who though having provided valuable and effective health care services to the injured worker, has yet to be compensated for said services*).

An example of this complexity and confusion can be seen in comparing the law to the administrative rule. Texas Labor Code Section 409.021(c) provides: "If an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability."

However, Texas Administrative Code Section 124.3(e) states: "Texas Labor Code, §409.021 and Subsection (a) of this section do not apply to disputes of extent of injury. If a carrier receives a medical bill that involves treatment(s) or service(s) that the carrier believes is not related to the compensable injury, the carrier shall file a notice of dispute of extent of injury (notice of dispute)..."

The Texas Supreme Court in the case of *State Office of Risk Management v. Mary Lawton*, 295 S.W.3d 646, (Tex. 2009), stated: "Texas Labor Code §409.021 is intended to apply to the compensability of the injury itself or the carrier's liability for the claim as a whole, not individual aspects of the claim...[A] dispute involving extent of injury is a dispute over the amount or type of benefits, specifically, medical benefits, to which the employee is entitled (i.e. what body areas/systems, injuries, conditions, or symptoms for which the employee is entitled to treatment); it is not a denial of the employee's entitlement to benefits in general." The court is clearly pointing out that the extent-of-injury dispute is a denial of "benefits in general" for a claimed injury to a body part.

In some cases, extent-of-injury defenses have been asserted many years after the occurrence of the compensable injury, which causes unnecessary disputes in the workers' compensation system. The insurance carriers, by asserting an extent-of-injury defense, have sought to deny medical treatment contrary to the statutory benefit of lifetime medical benefits.

***Legislative Recommendation:*** Amend the statute to provide that an insurance carrier must dispute the compensability of an injury to a part of the body within 60 days of receiving written notification that the injury extends to that body part. Such notification should be in written form and must specifically identify the body part in question.

A copy of the recommended bill follows.

Please contact Brian White or Kathryn Harris at (512) 804-4170 for more information about this legislative recommendation.

A BILL TO BE ENTITLED

AN ACT

relating to waiver of an insurer's right to contest compensability of certain workers' compensation claims.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 409.021, Labor Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) After the expiration of the 60-day period under Subsection (c), if the insurance carrier receives written notice of a new manifestation of the original injury, an additional injury, or an additional diagnosis and does not contest the compensability of that injury or diagnosis on or before the 60th day after the date on which it receives the notice described by this subsection, the insurance carrier waives its right to contest the extent or compensability of the new manifestation of the original injury, additional injury, or diagnosis. This subsection may not be construed as limiting an insurance carrier's ability to reopen the issue of compensability under Subsection (d) based on newly discovered evidence.

SECTION 2. Section 409.021(f), Labor Code, as added by Chapter 939 (S.B. 1282), Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 3. The change in law made by this Act applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date of this Act. A claim based on a compensable injury that occurs before that date is governed by the law in effect on the date that the compensable injury occurred, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2013.

### 3. Dispute of First Certification of Maximum Medical Improvement and Impairment Rating

---

In November 2010, OIEC petitioned TDI-DWC to amend 28 Texas Administrative Code Section 130.12 (b) (1). This rule prescribes only two methods to stop the 90-day clock to dispute the first certification of maximum medical improvement or impairment rating: 1) by requesting a benefit review conference or 2) by requesting a designated doctor examination if the first certification was made outside of the designated doctor process. By filing a rule petition with TDI-DWC, OIEC primarily intended to address instances where a benefit review conference is sought to stop the 90-day clock when a designated doctor has already been appointed, and more specifically, instances where injured employees are not prepared to proceed to a benefit review conference but must request one as the sole method to stop the 90-day clock to preserve the right to dispute resolution.

OIEC and the Sunset Advisory Commission share the goal of ensuring that parties are fully prepared to proceed with a dispute of first certification of maximum medical improvement (MMI) or impairment rating (IR) before a benefit review conference is requested. Unfortunately, in many instances injured employees seek OIEC's assistance near the expiration of the 90-day period, and the only mechanism available to preserve their right to dispute the first certification is to request a benefit review conference. OIEC has addressed the problem by requesting TDI-DWC to amend Rule 130.12 to read that parties "may dispute a first certification of MMI or IR by filing a written dispute in the form and manner required by the Division (TDI-DWC)." OIEC believed that this simple fix would have spared TDI-DWC any premature use of the administrative dispute resolution process, satisfied the Sunset Advisory Commission's recommendation that parties not proceed to benefit review conferences unprepared, and ensured the injured employee's right to dispute the first certification of maximum medical improvement or impairment rating.

On January 12, 2011, TDI-DWC declined the rule petition, reasoning that the requested amendment, in effect, would allow for a unilateral waiver of dispute resolution under the 90-day rule for an indefinite period by allowing the party to file a notice of dispute with TDI-DWC without requiring the disputing party to request formal resolution of the dispute by TDI-DWC.

Rule 141.1 (Requesting and Setting a Benefit Review Conference) does not state how the injured employee is to dispute the maximum medical improvement and impairment rating in precise terms because it does not clearly state what is required to make a complete request for a Benefit Review Conference. It is vague, ambiguous, and incapable of being understood by a person of ordinary knowledge and understanding. The requirements of the rule are so vague and ambiguous that clerical personnel within TDI-DWC may have inconsistent standards for what constitutes an accepted request. Whether the injured employee is able to dispute an inappropriate impairment rating may depend on who reviews the request.

The court of appeals in Austin provided guidance on when a rule is unconstitutionally vague in the case of *Vista Healthcare, Inc. v. Tex. Mut. Ins. Co.*, 324 S.W.3d 264, (Austin- 2010). It stated:

We construe administrative rules in the same manner as statutes since they have the force and effect of statutes... The text of rules, like statutes, is the first and foremost means of achieving our primary objective: ascertaining and giving effect to the intent of the body that enacted them...

Rules are presumed valid and the burden of demonstrating their invalidity is on the challenging party... We will find a rule unconstitutionally vague only if it **(1) does not give fair notice of what conduct may be punished, and (2) invites arbitrary and discriminatory enforcement by its lack of guidance for those charged with enforcement...**

When persons of common intelligence are compelled to guess at a law's meaning and applicability, due process is violated and the law is invalid... (Emphasis added.)

**Legislative Recommendation:** Revise Labor Code Section 408.123(e) to prevent an injured employee from being required to prematurely enter the dispute resolution system in order to avoid finality of the first certification of maximum medical improvement or impairment rating. A party's written notice to contest maximum medical improvement and impairment ratings should suspend the 90-day statutory time frame without constituting a request for a benefit review conference. This change would provide the additional time necessary to obtain the evidence required to pursue a dispute and prevent injured employees and other parties from being forced to enter the administrative dispute resolution process unprepared to protect their rights.

A copy of the recommended bill follows.

Please contact Brian White or Kathryn Harris at (512) 804-4170 for more information about this legislative recommendation.

A BILL TO BE ENTITLED

AN ACT

relating to disputing the certification of maximum medical improvement and evaluation of impairment rating.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 408.123(e), Labor Code, is amended to read as follows:

(e) Except as otherwise provided by this section, an employee's first valid certification of maximum medical improvement and first valid certification of an impairment rating is final if the certification or assignment is not ~~contested~~ ~~disputed~~ before the 91<sup>st</sup> day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. Contesting the certification or rating only requires the party to file a written contest with the Division, which shall not serve as a request for a benefit review conference on that issue. When the party is fully prepared to enter the Division's dispute resolution process, the party may request a benefit review conference.

SECTION 2. This Act takes effect September 1, 2013.

#### 4. Supplemental Income Benefits: Range of Motion

---

TDI-DWC enacted Rule 130.1(c), which provides that all impairment ratings assigned prior to October 15, 2001, must use the American Medical Association (AMA) Guides to Impairment, 3rd Edition, second printing. All impairment ratings assigned after that date must use the 4th Edition. The injury model (diagnosis-related estimates (DRE)) of the 4th Edition does not provide for a 15 percent impairment of the lumbar spine, an injury incurred in a high percentage of work place injuries. Under the DRE model of the 4th edition, an injured employee with either a cervical or thoracic injury who qualifies for a DRE III radiculopathy rating is assigned a 15 percent impairment rating. However, the lumbar DRE III radiculopathy rating is 10 percent. Therefore, injured employees with lumbar spine injuries are thereby denied access to an impairment rating of 15 percent because there simply is not a 15 percent rating in the lumbar DRE table. An injured employee can only meet the supplemental income benefits threshold requirement of having at least a 15 percent impairment if the patient meets the criteria for a DRE IV or higher category. They are thereby denied impairment income benefits and supplemental income benefits commensurate with a 15 percent impairment rating.

The AMA Guides, 4th Edition, states on page 100 of Chapter 3: “In the Injury Model, the lumbosacral spine segment is considered to represent 75 percent of total body function.”

Texas Labor Code Section 408.142(a) provides:

An employee is entitled to supplemental income benefits if on the expiration of the impairment income benefit period computed under Section 408.121(a)(1) the employee:

- (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury.

Texas Labor Code Section 408.124 states:

(a) An award of an impairment income benefit, whether by the commissioner or a court, must be based on an impairment rating determined using the impairment rating guidelines described by this section.

(b) For determining the existence and degree of an employee’s impairment, the division shall use “Guides to the Evaluation of Permanent Impairment,” third edition, second printing, dated February 1989, published by the American Medical Association.

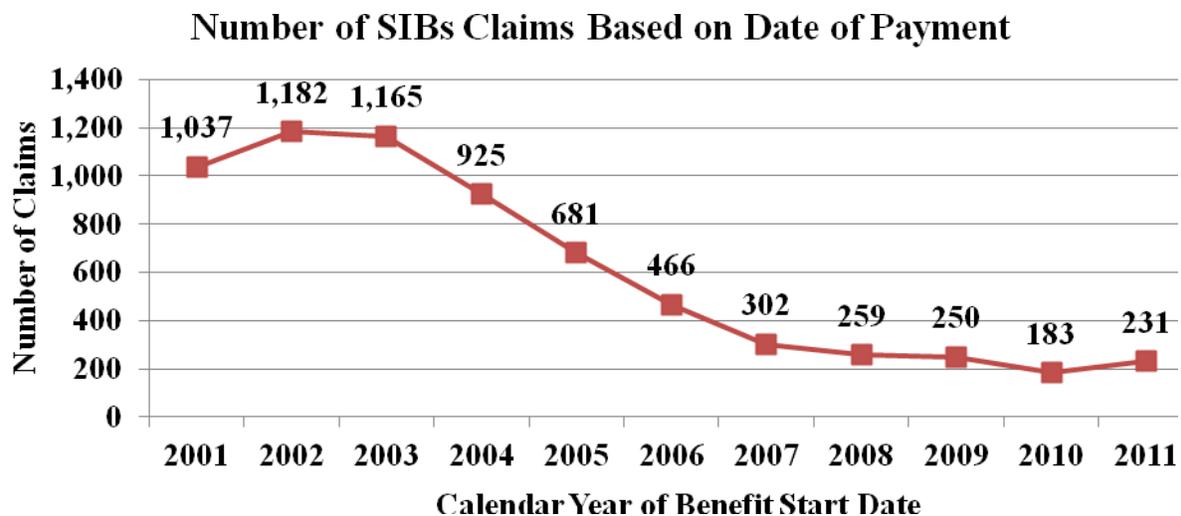
(c) Notwithstanding Subsection (b), the commissioner by rule may adopt the fourth edition of the “Guides to the Evaluation of Permanent Impairment,” published by the American Medical Association, or a subsequent edition of those guides, for determining the existence and degree of an employee’s impairment.

The Texas Legislature created workers’ compensation benefits for a particular class of injured employees who had incurred a 15 percent permanent impairment as a result of their compensable injury. However, TDI-DWC, by adopting the 4th Edition and the injury model for rating impairment, chose to use a rating system that does not provide a 15 percent rating for a lumbar

spine injury. By doing so, TDI-DWC has removed a class of employees from benefits (impairment income benefits and supplemental income benefits) when they have a lumbar spine injury that would produce a 15 percent impairment if there was such a designation. It is not an issue of defining the injury; it is an issue of denying a subclass of benefits that all other injured employees have.

There is no rational basis for concluding that an impaired employee with a lumbar spine injury should receive an impairment rating less than injured employees with less impairment to another part of the body, nor is there a compelling State interest that requires it.

Below is a graph from TDI-DWC data that reflects the number of claims receiving supplemental income benefits (SIBs) and the loss of that benefit occurring as a result of the adoption of the 4th Edition of the AMA Guides. None of the claims receiving SIBs since the adoption of the 4th Edition of the AMA Guides are from lumbar injuries.



Furthermore, none of the claims determined by the injury model that include significant long-term residual disability from failed lumbar treatment are receiving SIBs. That is due to the 4th Edition’s reliance on the injury model for calculating impairment, which provides no value for a deterioration of the lumbar condition or failed treatment. Instead, it relies entirely on the initial diagnosis for its rating. That denies and deprives injured employees with lumbar injuries from receiving benefits when they have more residual impairment than employees with less impairment but whose injuries are to other parts of the body.

The Texas Workers’ Compensation Commission (TWCC) – the predecessor to TDI-DWC – recognized that the 4th Edition of the AMA Guides underrated lumbar injuries, especially those that required surgery. In attempt to at least partially rectify this, TWCC issued Advisory 2003-10 and Advisory 2003-10B, signed February 24, 2004, which made it easier to obtain a 20 percent impairment rating under DRE category IV. However, this attempt by TWCC to rectify the problem was thwarted when the courts declared the issuance of the advisories beyond its authority in *Texas Dep’t. of Ins. v. Lumbermans Mutual Insurance Co.*, 212 S.W.3d 870 (Tex. App.-Austin, 2006, pet. denied). To solve the problem of injured employees being

undercompensated because the 4th Edition of the AMA Guides underrates lumbar injuries, OIEC submits that the Legislature should either provide that lumbar spine impairment ratings be assessed using the range-of-motion model or that the impairment rating threshold for SIBs entitlement be reduced.

***Legislative Recommendation:*** Enact legislation providing that the range-of-motion model incorporated into the 4th Edition of the AMA Guides should be used to determine the impairment rating of the lumbar spine, or in the alternative, that the criteria for supplemental income benefits be lowered to 10 percent impairment.

A copy of the recommended bill follows.

Please contact Brian White or Kathryn Harris at (512) 804-4170 for more information about this legislative recommendation.

A BILL TO BE ENTITLED

AN ACT

relating to utilizing the range of motion model incorporated into the 4<sup>th</sup> Edition of the American Medical Association Guides to determine the impairment rating of the lumbar spine.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 408.124, Labor Code, is amended by adding Subsection (d) to read as follows:

Sec. 408.124. Impairment Rating Guidelines.

- a) An award of an impairment income benefit, whether by the commissioner or a court, must be based on an impairment rating determined using the impairment rating guidelines described by this section.
- b) For determining the existence and degree of an employee's impairment, the division shall use "Guides to the Evaluation of Permanent Impairment," third edition, second printing, dated February 1989, published by the American Medical Association.
- c) Notwithstanding Subsection (b), the commissioner by rule may adopt the fourth edition of the "Guides to the Evaluation of Permanent Impairment," published by the American Medical Association, or a subsequent edition of those guides, for determining the existence and degree of an employee's impairment.
- d) The Division shall use the range of motion model from the fourth edition of the "Guides to the Evaluation of Permanent Impairment" to determine impairment for all lumbar injuries rather than the injury or diagnosis-related estimates model regardless of the which edition of the Guides the Division adopts pursuant to subsection (b) or (c) of this section.

SECTION 2. This Act takes effect September 1, 2013.

## 5. Consistency in Venue for Benefit Disputes

---

House Bill 724, 80th Texas Legislature, 2007, reintroduced an administrative hearing process to resolve workers' compensation disputes regarding medical benefits. However, the new legislation did not adequately provide for a consistent venue for medical and indemnity benefit appeals to district court.

Judicial review of indemnity disputes is currently heard in the county in which the injured employee resided at the time of injury, or if they have moved, in the county of current residence. On the other hand, judicial review of medical disputes is currently heard in Travis County. Venues for both types of benefit disputes should be the same to provide greater access to the courts for injured employees. The burden for injured employees to file a medical appeal in Travis County has been so onerous that only three injured employees in more than five years were able to file their case in Travis County District Court.

***Legislative Recommendation:*** Implement the recommendation of the Sunset Advisory Commission Staff Report of 2010 by amending Chapter 413 of the Labor Code to provide a party the same venue to appeal both an administrative medical dispute decision and indemnity dispute decision. Specifically, appeals of medical necessity and non-network medical fee disputes should be filed and held in the county where the employee resided at the time of injury or at the time disability associated with a work-related illness began. Parties to a dispute would also be authorized to file district court appeals in a mutually agreed-upon county. Appeals misfiled in the incorrect county would follow the resolution process established in statute for indemnity dispute district court appeals. This recommendation would only apply to appeals of agency decisions regarding medical necessity and fee disputes.

A copy of the recommended bill follows.

Please contact Brian White or Kathryn Harris at (512) 804-4170 for more information about this legislative recommendation.

A BILL TO BE ENTITLED

AN ACT

relating to consistency of venue for benefit disputes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Section 413.0311 (d), Labor Code, is amended to read as follows:

(d) A party who has exhausted all administrative remedies under Section 413.031 and this section and who is aggrieved by a final decision of the hearings officer under Subsection (c) may seek judicial review of the decision. Except as provided by Section 413.0313, judicial ~~[Judicial]~~ review under this subsection shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, except that the party seeking judicial review under this section must file suit not later than the 45<sup>th</sup> day after the date on which the division mailed the party the decision of the hearings officer. For purposes of this subsection, the mailing date is considered to be the fifth day after the date the decision of the hearings officer was filed with the division.

SECTION 2. Subchapter C, Chapter 413, Labor Code, is amended by adding Section 413.0313 to read as follows:

Sec. 413.0313. JUDICIAL REVIEW OF CERTAIN MEDICAL DISPUTES: VENUE.

(a) The party bringing suit to appeal the decision must file a petition with the appropriate court:

- (1) In the county where the employee resided at the time of injury or death, if the employee is deceased; or
- (2) In the case of an occupational disease, in the county where the employee resided on the date disability began or any county agreed to by the parties.

(b) If a suit under this section is filed in a county other than the county described by Subsection (a), the court, on determining that it does not have the jurisdiction to render judgment on the merits of the suit, shall transfer the case to a proper court in a county described by Subsection (a). Notice of the transfer of a suit shall be given to the parties. A suit transferred under this subsection shall be considered for all purposes the same as if originally filed in the court to which it is transferred.

(c) If a suit is initially filed within the 45-day period in Section 413.0311(d), and is transferred under Subsection (c), the suit is considered to be timely filed in the court to which it is transferred.

SECTION 3. The change in law made by this Act applies only to a suit for judicial review filed on or after the effective date of this Act. A suit for judicial review filed before the effective date of this Act is covered by the law as it existed on the date the suit was filed, and the former law is continued in effect for that purpose.

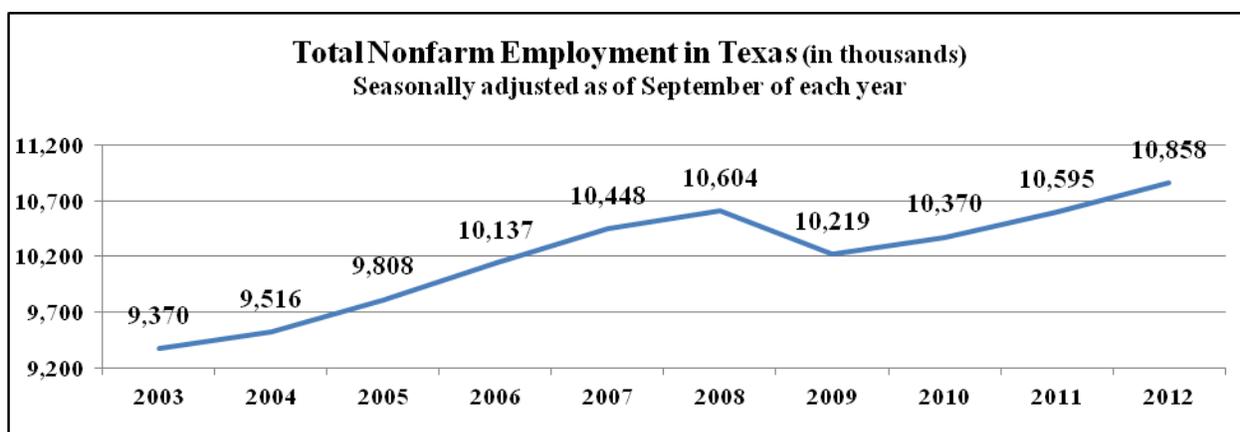
SECTION 4. This act takes effect September 1, 2013.

# Section 4

**Section 4 provides an analysis of the ability of the workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers. [LABOR CODE SECTION 404.106(a)(3)]**

## Texas' Employment at All-Time High

Texas has weathered the recession, and employment is at its highest since 2008. The chart below reflects the total non-farm employment (seasonally adjusted) in Texas as of September of each year since 2002 and shows the gradual increase from 2003 to 2008 and again from 2009 to 2012. Employment reached an all-time high in September 2012.<sup>1</sup>



Source: U. S. Department of Labor, Bureau of Labor Statistics

Although employment in Texas has been *steadily increasing*, the number of occupational injuries and illnesses has been *steadily decreasing* in the State over the past few years – until 2011.

## Non-Fatal Occupational Injuries and Illnesses Slightly Increase in 2011

The number of occupational injuries and illnesses reported in 2011 increased in Texas for the first time since 2006. There were 196,642 occupational injuries and illnesses reported in 2011 by private industry employers in the *Survey of Occupational Injuries and Illnesses* conducted by the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics.<sup>2</sup>

The next chart shows the slight increase in the number of non-fatal occupational injuries and illnesses in Texas in 2011 after four years of a steady decline.

<sup>1</sup> Source: U. S. Department of Labor, Bureau of Labor Statistics; State and Area Employment, Hours, and Earnings data; [http://data.bls.gov/timeseries/SMS4800000000000001?data\\_tool=Xgtable](http://data.bls.gov/timeseries/SMS4800000000000001?data_tool=Xgtable).

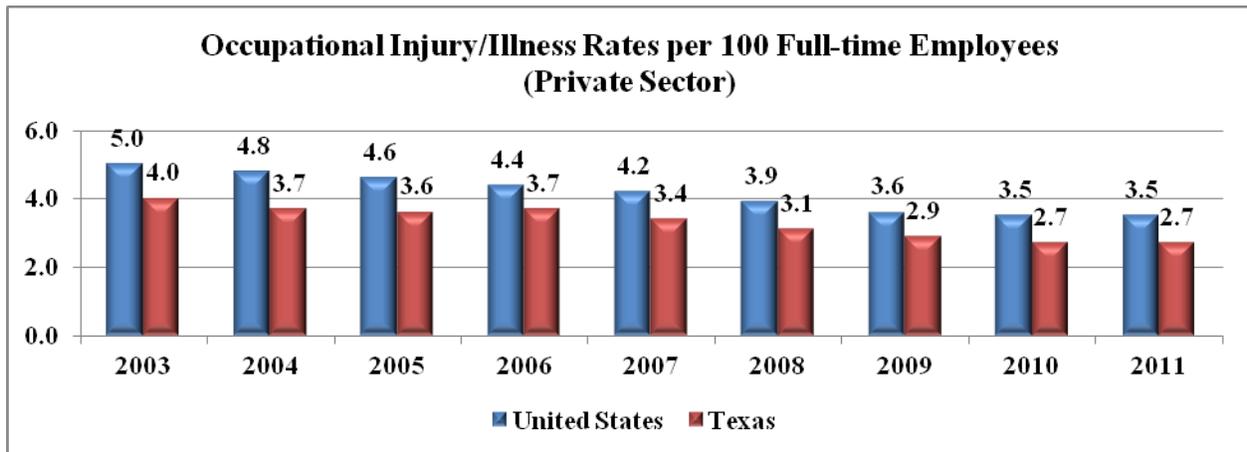
<sup>2</sup> Source: Texas Department of Insurance, Division of Workers' Compensation, Workplace Safety, Federal Data Collection. Data is provided by the Bureau of Labor Statistics' annual Survey of Occupational Injuries and Illnesses in cooperation with TDI-DWC Workplace Safety. DatCollection.



#### Texas' Incidence Rate Still Lower than the Nation.

Almost three million non-fatal occupational injuries and illnesses were reported in the United States by private industry employers in 2011, resulting in an incidence rate of 3.5 cases per 100 equivalent full-time workers for the nation. The incidence rate remained unchanged in 2011 compared to 2010, according to a U.S. Department of Labor, Bureau of Labor Statistics news release, *Workplace Injuries and Illnesses – 2011*.<sup>3</sup>

In Texas, the incidence rate also held steady in 2011 at 2.7 cases per 100 equivalent full-time workers. Texas' incidence rate continues to be below the nation's incidence rate, as shown in the chart below.



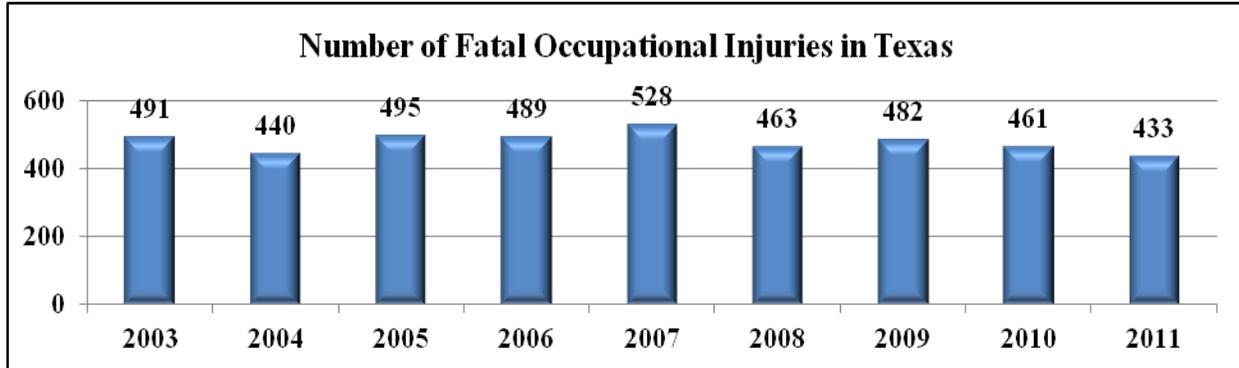
Of the major private-sector industries with the 10 highest incidence rates in 2011, air transportation and couriers/messengers are the top two in Texas. Motion picture and sound recording industries reported the largest increase (148 percent), from 2.5 in 2010 to 6.2 in 2011. Couriers and messengers reported the largest decrease, at 22 percent, from 9.3 in 2010 to 7.3 in 2011. The service-providing industries' incidence rates increased overall from 2.6 in 2010 to 2.7 in 2011. Within this group, the utilities industries experienced a rate increase of 95 percent, from 2.1 in 2010 to 4.1 in 2011.<sup>4</sup>

<sup>3</sup> Source: U.S. Department of Labor, Bureau of Labor Statistics, News Release, *Workplace Injuries and Illnesses – 2011*; October 25, 2012; <http://www.bls.gov/news.release/pdf/osh.pdf>.

<sup>4</sup> Source: Texas Department of Insurance; News Release; *Rate of Nonfatal Injuries, Illnesses in Private Sector Unchanged in 2011*. November 6, 2012.

## Fatal Occupational Injuries Decrease for Second Straight Year<sup>5</sup>

The number of fatal occupational injuries in Texas in 2011 (433) was the lowest recorded since before 2003 [when the Standard Industrial Classification (SIC) system transitioned to the North American Industry Classification System (NAICS) (i.e., data from 2003 and beyond cannot be compared to any previous years)] as shown in the chart below.



The number of fatal occupational injuries in Texas has steadily decreased since 2009 along with Texas' share of the nation's total fatal occupational injuries (9 percent in 2011) – as shown in the table below – down 1 percent each year.

<b>Fatal Occupational Injuries Texas Compared to the U.S.</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>United States</b>	4,551	4,690	4,609
<b>Texas</b>	482	461	433
<b>Texas Percent of U.S. Fatalities</b>	<b>11%</b>	<b>10%</b>	<b>9%</b>

The next table indicates the event or exposure that caused the fatal occupational injuries in Texas in 2009, 2010, and 2011.

<b>Fatal Occupational Injuries in Texas by Event or Exposure</b>													
<b>Year</b>	<b>Total</b>	<b>Transportation incidents</b>		<b>Violence and other injuries by persons or animals</b>		<b>Falls, slips, and trips</b>		<b>Contact with objects and equipment</b>		<b>Exposure to harmful substances or environments</b>		<b>Fire and explosions</b>	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>2011</b>	433	168	39%	70	16%	67	15%	66	15%	43	10%	18	4%
<b>2010</b>	461	200	43%	75	16%	50	11%	64	14%	53	11%	18	4%
<b>2009</b>	482	164	34%	94	20%	82	17%	65	13%	61	13%	15	3%
<b>3-Year Average</b>		39%		17%		14%		14%		11%		4%	

<sup>5</sup> Source: Texas Department of Insurance New Release, *Work-Related Fatalities Decreased in Texas in 2011 for the Second Year in a Row* <http://www.tdi.texas.gov/news/2012/news2012104.html> and U.S. Department of Labor, Bureau of Labor Statistics.

Transportation incidents continue to be the leading cause of fatal occupational injuries in Texas as well as in the majority of states. In 2011, Texas led the nation in the number of transportation incidents that resulted in a fatal occupational injury. At 168, they are 39 percent of all fatal occupational injuries in the State. California had the next highest number at 118, or 33 percent of that state’s total. Although Texas ranks the highest in the *number* of fatal transportation incidents in the nation, Texas does not rank the highest in the *percentage* of fatal transportation incidents. For example, 49 percent of all fatal occupational injuries in Alabama are due to transportation incidents.<sup>6</sup>

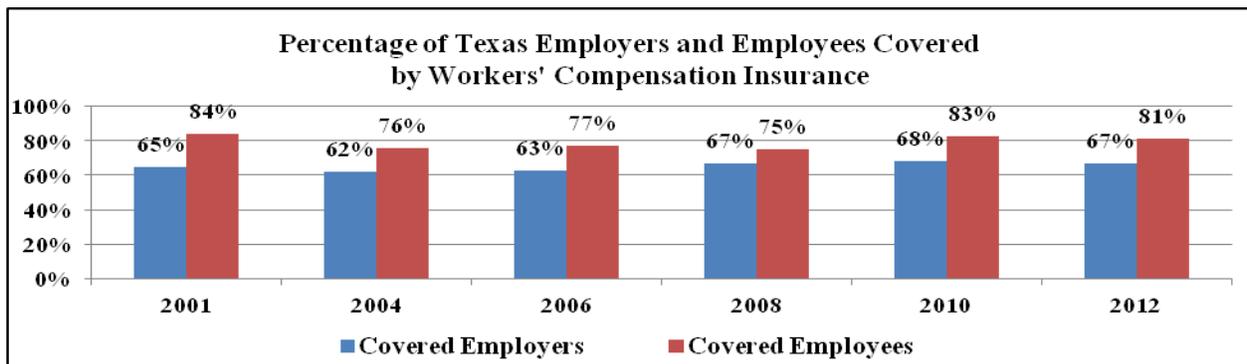
### Workers’ Compensation Participation in Texas

Not all injuries, illnesses, and fatalities are covered under Texas workers’ compensation insurance. Texas is the only state in which workers’ compensation insurance is not mandatory. Coverage is voluntary in Texas, but employers not providing coverage are not protected from tort suits, and their employees can file a lawsuit claiming the employer is liable for their work-related injury or illness.

In 2012, Oklahoma considered legislation similar to Texas law, which would have allowed some employers to “opt-out” of coverage. The measure failed after House members refused to accept Senate amendments. The legislation is expected to be considered again in Oklahoma’s 2013 legislative session, which begins in January. Other states have also expressed interest in passing similar legislation.<sup>7</sup>

*Employer Participation in Workers’ Compensation Decreases in 2012.*<sup>8</sup> The Texas Department of Insurance (TDI)’s 2012 survey of employer participation reported that fewer employers in Texas carry workers’ compensation insurance than in 2010. An estimated 67 percent of private-sector employers carry Texas workers’ compensation insurance – a decrease of 1 percent since the 2010 survey.

The percentage of employees covered by workers’ compensation insurance also decreased. In 2010, 83 percent of Texas employees were covered by workers’ compensation insurance. The percentage of covered employees decreased to 81 percent in 2012. The chart below reflects the percentage of Texas employers and employees covered by workers’ compensation insurance since the 2001 survey.



<sup>6</sup> Source: U.S. Department of Labor, Bureau of Labor Statistics, Economic News Release, *Table 5. Fatal occupational injuries by state and event or exposure, 2010-2011*. <http://www.bls.gov/news.release/cfoi.t05.htm>

<sup>7</sup> Source: WorkCompCentral Article, *Supporters Say 'Opt-Out' Plan Will Return in 2013*; dated 7/20/2012.

<sup>8</sup> Source: Texas Department of Insurance; *Employer Participation in the Texas Workers' Compensation System: 2012 Estimates*; December 2012.

The most frequently cited reasons employers gave for participating in the Texas Workers' Compensation System included concerns about lawsuits and the ability to participate in a certified health care network. The ability to participate in certified health care networks was also the primary reason given by large employers (i.e. employers with 500 or more employees) for participating in the Texas Workers' Compensation System.

The survey<sup>9</sup> indicated that in 2012 only 59 percent of employers with less than five employees are covered by workers' compensation insurance. The percentage increases as the employment size increases except for the largest employers (500 or more employees). The highest percentage (88 percent) of employers with workers' compensation insurance have 100 to 499 employees while 83 percent of large employers (with 500 or more employees) choose workers' compensation insurance. The table below shows the percentage of employers covered by Texas workers' compensation insurance by employment size since 2004.

<b>Percentage of Employers Covered by Texas Workers' Compensation Insurance by Employment Size</b>					
<b>Employment Size</b>	<b>2004</b>	<b>2006</b>	<b>2008</b>	<b>2010</b>	<b>2012</b>
<b>1-4 Employees</b>	54%	57%	60%	59%	59%
<b>5-9 Employees</b>	63%	64%	69%	70%	71%
<b>10-49 Employees</b>	75%	74%	77%	80%	81%
<b>50-99 Employees</b>	80%	81%	82%	84%	81%
<b>100-499 Employees</b>	84%	83%	84%	87%	88%
<b>500+ Employees</b>	80%	79%	74%	85%	83%

*Non-Subscription in Texas Increasing.* While most Texas employers choose to purchase workers' compensation insurance, an estimated 33 percent of year-round Texas private-sector employers (approximately 113,000 employers) do not have workers' compensation coverage – a.k.a. non-subscribers. The rate of non-subscription increased from 32 percent in 2010 to 33 percent in 2012. The most frequently cited reasons by non-subscribers for not purchasing workers' compensation insurance were that they had too few employees, they had few on-the-job injuries, they were not required to have workers' compensation insurance by law, and workers' compensation medical costs were too high.

An estimated 19 percent of Texas non-public employees (representing approximately 1.7 million employees in 2012) worked for non-subscribing employers – an increase of 2 percent since 2010 but the third lowest percentage since 1993. Employee coverage rates in 2012 were affected somewhat by Walmart's decision to become a non-subscriber.<sup>10</sup> Walmart is one of the largest employers in Texas.

According to an article in the Texas Tribune,<sup>11</sup> non-subscription saves money for the employer, but it may negatively impact the injured employee. One issue is the cap on medical and indemnity benefits. According to the article, Walmart's in-house plan caps total medical

<sup>9</sup> Source: Texas Department of Insurance; *Employer Participation in the Texas Workers' Compensation System: 2012 Estimates*; December 2012.

<sup>10</sup> Ibid.

<sup>11</sup> Source: Texas Tribune; Walmart Stirs Concern over Texas Workers' Compensation System, by Becca Aaronson, April 9, 2012. <http://www.texastribune.org/texas-economy/economy/walmart-stirs-concern-over-workers-compensation-sy/>. Visited 5-8-2012.

coverage at \$300,000 for individual injuries compared with lifetime coverage for the injury under the Texas Workers' Compensation System. The Walmart plan provides 90 percent of lost wages for injured employees for up to 120 weeks compared with up to 70 percent of lost wages for up to 401 weeks under the Texas Workers' Compensation System. Therefore, an injured employee making \$500 per week would receive more than double the amount of benefits in the workers' compensation system than they would under the Walmart plan.

Another potential issue for non-subscribers is retaliation. Texas law prohibits an employer from terminating or retaliating against an employee because the employee has filed a workers' compensation claim. The public policy behind this law is to encourage employees to report job-related accidents, seek necessary medical treatment, and not be subjected to retaliation for doing so. However, this "workers' compensation retaliation" law does not apply to non-subscribers.<sup>12</sup>

It is worth noting that TDI's *Setting the Standard* 2012 report<sup>13</sup> indicated that, for the first time in recent surveys, employers participating in the Texas Workers' Compensation System reported higher satisfaction levels with their workers' compensation coverage than non-subscribers with their alternative occupational benefit programs.

### **Workers' Compensation Cost to Employers**

---

According to a [claimsjournal.com](http://www.claimsjournal.com) article,<sup>14</sup> the 2012 Property & Casualty Workers' Compensation and Safety Survey found that 59 percent of the 3,500 employers surveyed are very or somewhat concerned about managing the cost of workers' compensation. Respondents indicated that cost containment is their biggest workers' compensation insurance concern along with increasing exposures, renewals, and rising fraud behaviors. Results of the survey also indicated that of the respondents:

- 65 percent found a safety-minded culture to be the most effective measure in cost containment for workers' compensation costs;
- 59 percent considered a light-duty or return-to-work program as an effective or highly effective method of controlling costs; and
- 45 percent reported that they have a written return-to-work policy.

Workers' compensation premiums represent a significant expenditure for employers. However, over the last several years, many Texas employers have benefited from decreasing rates and lower premium costs compared to other states.

*Texas Workers' Compensation Premiums Decrease Overall.* The average workers' compensation premium cost for Texas employers per \$100 payroll was \$1.38 in 2010 and has decreased approximately 52 percent compared to 2003 when the premium cost was at its highest at \$2.85 according to TDI's Classification and Premium Calculation Office.

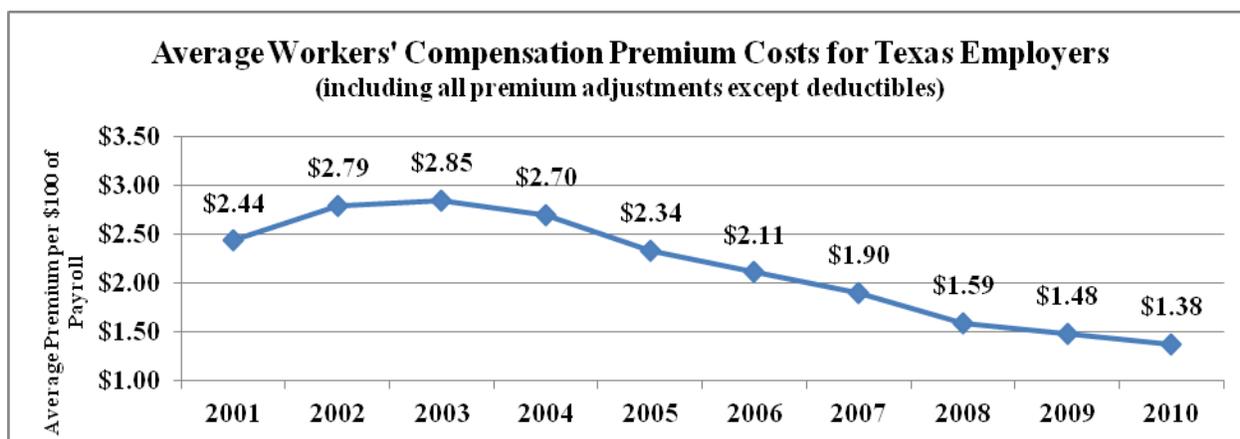
---

<sup>12</sup> Source: Business Insurance; *Texas Immune From Workers Comp Retaliation Suits: Ruling*, by Judy Greenwald; April 29, 2011. <http://www.businessinsurance.com/article/20110429/NEWS/110429910>. Visited 5-8-2012.

<sup>13</sup> Source: Texas Department of Insurance; *Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System, 2012 Results*; December 2012.

<sup>14</sup> Source: Claims Journal. *Cost Containment Tops Employer Concerns on Workers' Comp: Survey*, March 23, 2012; <http://www.claimsjournal.com/news/national/2012/03/23/203553.htm>

The chart below reflects the average workers' compensation premium costs for Texas employers (including all premium adjustments except deductibles) from 2001 to 2010.



Notes:

- The average premiums reflect insurers' manual rate deviations, experience rating, schedule rating, expense and loss constants, the effect of retrospective rating and premium discounts.
- Since workers' compensation is an audit line (that is, premiums are based on audited payrolls), the indicated average premiums may change over time, especially for the most recent years.
- The average premiums do not reflect the effect of discounts due to deductible policies, nor do they reflect policyholder dividends.
- Averages are based on data reported in the 12/31/2010 Texas Workers' Compensation Financial Data Call and material taken from the 2009 Class Relativity Study.

Due to TDI's acceptance of an alternative rate basis using the National Council on Compensation Insurance (NCCI) advisory loss cost filing in addition to the workers' compensation classification relativities<sup>15</sup>, the average employer premium will not be calculated by TDI for 2011 and future calculations will not be comparable to the average premiums previously reported. Previously reported average premiums used only workers' compensation relativities.<sup>16</sup>

*Texas Premiums Lower Than Most States in 2012.* Texas has a lower workers' compensation premium rate in 2012 than 37 other states, and Texas' premium rate is approximately 18 percent below the median premium rate in the nation, according to Oregon's Workers' Compensation Premium Rate Ranking Summary.<sup>17</sup>

The Oregon Study is considered the definitive ranking for workers' compensation costs in the nation. It compares the average premium rates for the 50 states and the District of Columbia.

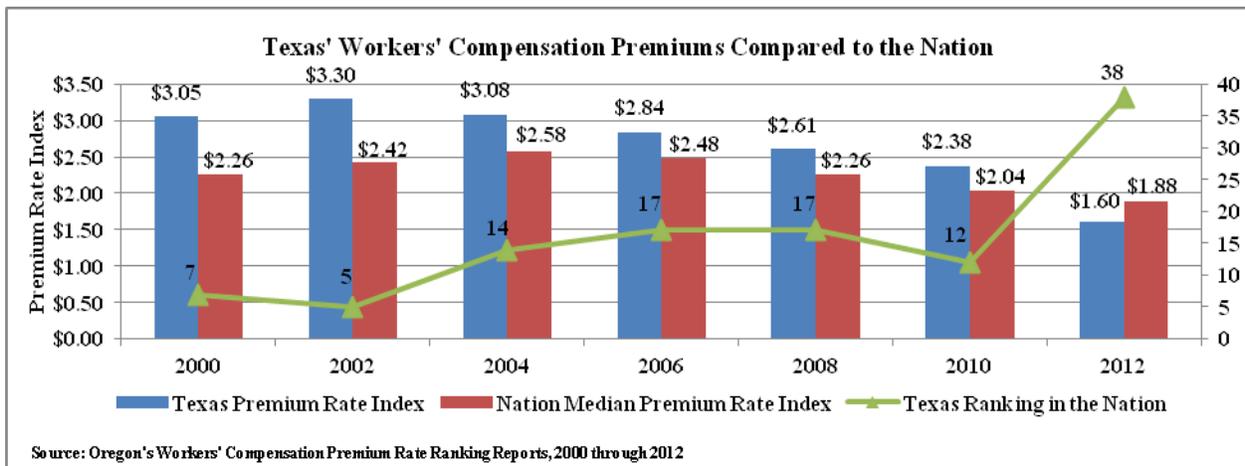
In previous years, Texas ranked higher than most states. For example, in 2002 Texas ranked fifth in the nation – meaning that only four other states had higher workers' compensation premium rates. However, from 2010 to 2012 the premium rates in Texas and its ranking, as calculated by Oregon, made a substantial turnaround. Texas' ranking among other states went from 12th in the nation in 2010 to 38th in 2012.

<sup>15</sup> See Commissioner's Bulletin #B-0004-12 dated January 30, 2012 at <http://www.tdi.texas.gov/bulletins/2012/cc3.html>

<sup>16</sup> Source: Texas Department of Insurance, Classification and Premium Calculation Office.

<sup>17</sup> Source: Oregon Department of Consumer & Business Services Workers' Compensation Premium Rate Ranking bi-annual studies <http://www4.cbs.state.or.us/ex/imd/external/reports/index.cfm?fuseaction=dir&ItemID=1998>. Oregon produces a bi-annual study of a comparison of workers' compensation premium rates of all states and the District of Columbia.

The chart below shows the premium rate and ranking in Texas compared to the nation (median rate) since 2000.



Oregon's study indicated that the national median rate – \$1.88 – is at its lowest since Oregon began the study in the 1980s. Texas' rate is also at its lowest, at \$1.60, and for the first time since 2000 the Texas rate is lower than the national median rate.

*The Possibility of a Future Increase in Workers' Compensation Premiums.* According to TDI's 2012 biannual report,<sup>18</sup> insurance carriers were required to submit rate filings to TDI in August 2012 in preparation for the 2012 rate hearing on workers' compensation insurance. Rate filings include the insurance carrier's "rate indication," which is an actuarial determination of how the insurance carrier's premium level should change going forward and includes estimates of future income needs.

The rate indications received by TDI reflected the need for an increase of 1.3 percent, on average, in current premium levels to cover losses and expenses and produce a targeted profit. Although some of the insurance carrier's rate indications identified a need to increase premium levels, few proposed a rate change.

The report also stated that approximately 60 percent of Texas employers reported experiencing either a decrease or no change to their workers' compensation premiums in 2012; however, more than 30 percent of employers experienced premium increases in 2012 compared to 26 percent in 2010 and less than 25 percent in 2008. It is unclear if these reported premium increases are the result of increased workers' compensation rates or payroll increases resulting from the ongoing economic recovery in Texas, or both.

If insurance carriers continue to experience the need to increase premium levels to cover losses and expenses and produce a larger profit, and employer payroll continues to increase, there is a possibility that workers' compensation premiums will begin to increase in Texas.

<sup>18</sup> Source: Texas Department of Insurance; *Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System, 2012 Results*; December 2012.

## Adequate, Equitable, and Timely Benefits Provided to Injured Employees

The next few pages of this report provide an analysis of the ability of the workers' compensation system to provide adequate, equitable, and timely benefits to injured employees.

### Income Benefits

Income benefit types and amounts, and death and burial benefits, are described below.

1. **Temporary Income Benefits (TIBs).** TIBs are paid during the period of temporary disability (lost time from work) while the injured employee is recovering from an on-the-job injury.
2. **Impairment Income Benefits (IIBs).** IIBs are paid to injured employees for permanent impairment when the injured employee reaches maximum medical improvement.
3. **Supplemental Income Benefits (SIBs).** SIBs are paid to injured employees for ongoing disability after IIBs have been exhausted. Only employees with a 15 percent impairment rating and who are unemployed or underemployed as a result of their work-related injuries are eligible to receive SIBs.
4. **Lifetime Income Benefits (LIBs).** LIBs are paid for the life of the injured employee for specific catastrophic injuries as set forth in Section 408.161 of the Texas Labor Code.
5. **Death Benefits and Burial Benefits.** Death benefits and burial benefits are paid to the deceased employees' spouse or eligible beneficiaries as a result of a death from a compensable injury. Burial benefits pay up to \$6,000 of the deceased employee's funeral expenses and are paid to the person who paid the funeral expenses.

State Average Weekly Wage / Maximum and Minimum Weekly Benefits											
Fiscal Year	SAWW State Average Weekly Wage	Temporary Income Benefits (TIBs) max	TIBs min	Impairment Income Benefits (IIBs) max	IIBs min	Supplemental Income Benefits (SIBs) max	SIBs min	Lifetime Income Benefits (LIBs) max	LIBs min	Death Benefits max	Death Benefits min
<b>2013</b> (10/1/12-09/30/13)	\$817.94	818.00	123.00	573.00	123.00	573.00	N/A	818.00	123.00	818.00	N/A
<b>2012</b> (10/1/11-09/30/12)	\$787.47	787.00	118.00	551.00	118.00	551.00	N/A	787.00	118.00	787.00	N/A
<b>2011</b> (10/1/10-09/30/11)	\$766.34	766.00	115.00	536.00	115.00	536.00	N/A	766.00	115.00	766.00	N/A
<b>2010</b> (10/1/09-09/30/10)	\$772.64	773.00	116.00	541.00	116.00	541.00	N/A	773.00	116.00	773.00	N/A
<b>2009</b> (10/1/08-09/30/09)	\$749.63	750.00	112.00	525.00	112.00	525.00	N/A	750.00	112.00	750.00	N/A
<b>2008</b> (10/1/07-09/30/08)	\$712.11	712.00	107.00	498.00	107.00	498.00	N/A	712.00	107.00	712.00	N/A
<b>2007</b> (10/1/06-9/30/07)	\$673.80	674.00	101.00	472.00	101.00	472.00	N/A	674.00	101.00	674.00	N/A

The next table includes the number of claims reported to TDI-DWC (with at least one day of lost time), the amount paid by benefit type, and the average benefit amount paid per claim based on the year of the injury. Data included in the table for 2010 and 2011 will continue to change as employees injured in those years receive the next level or new type of benefit. However, interesting findings based on this data that may change only slightly include the following:

- Approximately half of all injured employees that receive TIBs receive IIBs, and less than 1 percent of IIBs recipients receive SIBs.
- Employees injured in 2009 received approximately 25 percent more in TIBs than those injured in 2007 and 75 percent more than those injured in 2011 (*2011 is subject to change*).
- The number of injured employees receiving IIBs has decreased more than 10 percent each year since 2008.
- The amount paid for SIBs in 2008 was more than double the amount in 2007. However, the amount paid in 2009 decreased more than the previous year's increase.

<b>Table of Number of Claims and Amount Paid by Benefit Type and Calendar Year of Injury</b>						
<b>Benefit Type</b>	<b>Number / \$</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>Temporary Income Benefits</b>	<b>Number of Claims</b>	52,698	53,595	48,200	50,610	49,219
	<b>\$ Amount Paid</b>	\$350,159,254	\$429,000,607	\$399,666,837	\$369,136,017	\$231,996,321
	<b>Average \$ per Claim</b>	<b>\$6,645</b>	<b>\$8,004</b>	<b>\$8,292</b>	<b>\$7,294</b>	<b>\$4,714</b>
<b>Impairment Income Benefits</b>	<b>Number of Claims</b>	26,124	27,436	24,409	21,771	14,285
	<b>\$ Amount Paid</b>	\$166,765,915	\$178,117,322	\$150,909,231	\$127,083,223	\$58,517,142
	<b>Average \$ per Claim</b>	<b>\$6,384</b>	<b>\$6,492</b>	<b>\$6,183</b>	<b>\$5,837</b>	<b>\$4,096</b>
<b>Supplemental Income Benefits</b>	<b>Number of Claims</b>	199	191	73	19	0
	<b>\$ Amount Paid</b>	\$2,523,030	\$5,056,300	\$2,043,182	\$313,142	\$0
	<b>Average \$ per Claim</b>	<b>\$12,679</b>	<b>\$26,473</b>	<b>\$27,989</b>	<b>\$16,481</b>	<b>N/A</b>
<b>Lifetime Income Benefits</b>	<b>Number of Claims</b>	141	138	116	64	46
	<b>\$ Amount Paid</b>	\$2,961,420	\$1,360,150	\$1,403,139	\$493,169	\$243,010
	<b>Average \$ per Claim</b>	<b>\$21,003</b>	<b>\$9,856</b>	<b>\$12,096</b>	<b>\$7,706</b>	<b>\$5,283</b>
<b>Death Benefits</b>	<b>Number of Claims</b>	209	243	182	190	166
	<b>\$ Amount Paid</b>	\$10,797,157	\$13,618,163	\$9,802,639	\$5,676,293	\$2,176,022
	<b>Average \$ per Claim</b>	<b>\$51,661</b>	<b>\$56,042</b>	<b>\$53,861</b>	<b>\$29,875</b>	<b>\$13,109</b>
<b>Total Claims Receiving Any Benefit Above</b>		<b>59,055</b>	<b>60,006</b>	<b>54,089</b>	<b>55,830</b>	<b>53,345</b>
<b>Total Benefits Paid</b>		<b>\$533,206,777</b>	<b>\$627,152,542</b>	<b>\$563,825,028</b>	<b>\$502,701,843</b>	<b>\$292,932,495</b>

*Benefits Lower in Texas Compared to Other States Resulting in Costs Reduction.* A 2012 study from the Workers' Compensation Research Institute's (WCRI) *Monitoring the Impact of Reforms and Recession in Texas: CompScope Benchmarks, 13th edition*,<sup>19</sup> reported that indemnity benefits per claim are lower in Texas than other states. The average of \$11,272 in Texas was 31 percent lower than the median of other states. The study showed that the lower average of IIBs and SIBs benefits per claim was the main reason for the lower-than-typical average indemnity benefit per claim in Texas. The table below compares the average indemnity benefit per claim in Texas to the median of 16 other states.

<b>Comparison of Average Indemnity Benefit Claim in Texas to the Median of WCRI's 16 Study-States</b>				
<b>2008 through 2011 claims with more than 7 days of lost time</b>				
	<b>Texas</b>	<b>Median State</b>	<b>Difference</b>	<b>Ranking</b>
<b>Average Indemnity Benefit/Claim</b>	\$11,272	\$16,227	-31%	Lower
<b>Temporary Disability Duration</b>	16.1 weeks	13.7 weeks	+2.5 weeks	Higher
<b>% of Claims with IIBs/SIBs/Lump sum</b>	45%	45%	Same	Typical
<b>Average IIBs/SIBs/Lump sum Payment per Claim</b>	\$6,998	\$14,605	-52%	Lower

The study indicated that total costs per workers' compensation claim in Texas decreased 4 percent in 2010 for claims with an average 12 months of experience. Costs per claim decreased or were stable in many of the 16 study-states in 2010, but *Texas decreased more than most states*. The three main components of total costs, medical, indemnity, and expenses, contributed to that decline to varying degrees. Indemnity benefits accounted for slightly over half of the decrease in costs per claim driven by a drop in duration of temporary disability. Medical and benefit delivery expenses contributed equally to the remainder of the decrease.

The study reported that one in seven injured employees in Texas had benefits limited by the statutory maximum based on 2010-2011 claims. Fourteen percent of injured employees had weekly TIBs benefits that were constrained by the statutory maximum weekly TIBs benefit in Texas compared to 9 percent in the median of the study-states. WCRI results are comparable to TDI studies regarding benefit replacement rates in Texas.

*Rate of Timely First Report of Injury and First Benefit Payment Increases in Texas.* The WCRI study also found that timely first report of injury reporting improved approximately 2 percent in Texas. As a result, the rate of the first indemnity payment within 21 days of injury was higher in Texas than in most study-states at 55 percent, which is a 4 percent increase from 2009/10 to 2010/11. The percent of claims with the first indemnity payment within 14 days of notice of injury was 50 percent. The 16-state median was 44 percent.

<sup>19</sup> Source: Workers' Compensation Research Institute's (WCRI) *Monitoring the Impact of Reforms and Recession in Texas: CompScope Benchmarks, 13th edition*.

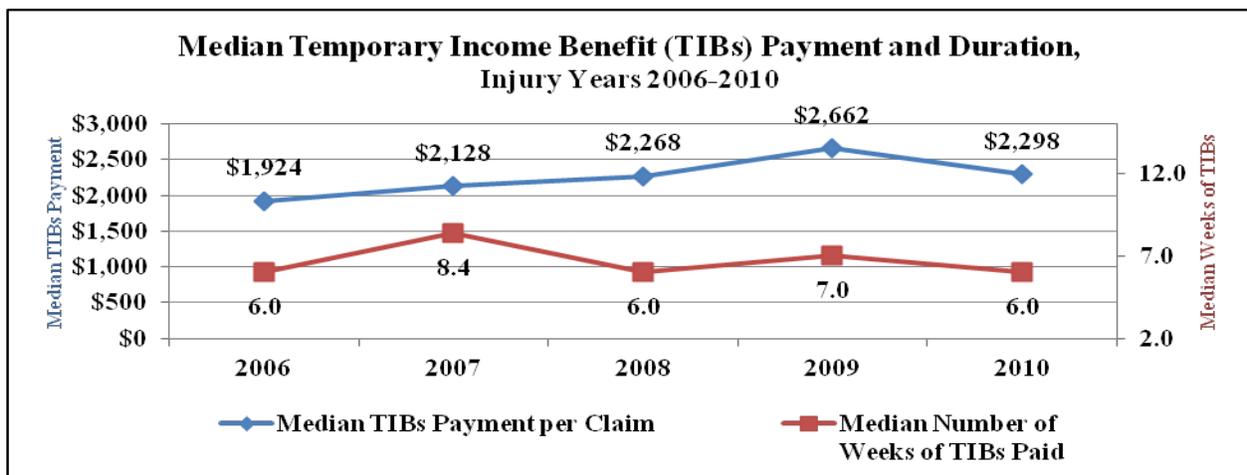
An analysis of each type of income benefit and medical benefits is provided on the next few pages.

## Temporary Income Benefits (TIBs)

TIBs are paid to injured employees while they are off work for a maximum of 104 weeks from the date that these benefits begin to accrue (on the eighth day of disability).

*TIBs Payment Amount and Duration.* As shown in the next chart, the median number of weeks of TIBs paid to injured employees peaked at 8.4 weeks per claim for 2007 injuries and is 6.0 weeks per claim for 2010 injuries.<sup>20</sup>

The median TIBs payments per claim increased from \$1,924 for injuries sustained in 2006 to \$2,662 for 2009 injuries and is most likely explained by a combination of wage inflation over time as well as the statutory increase in the TIBs maximum benefit amount (from a set \$540 a week in 2006 to \$750 a week in 2009). The median TIBs payment in 2010, however, decreased to \$2,298.



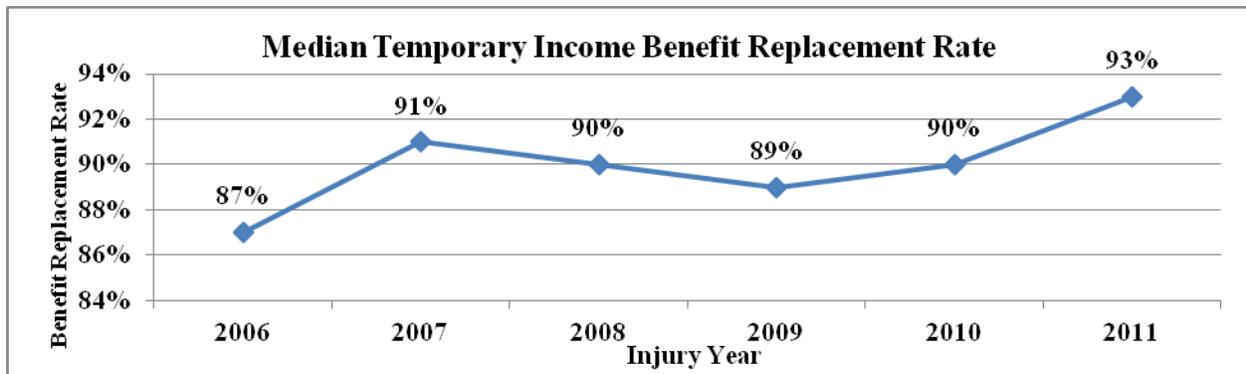
*TIBs Replacement Rate.* According to an August 2010 report from TDI<sup>21</sup>, the difference in replacement rates for all income levels is significant. Higher-wage earners regain a smaller percentage of lost wages than lower-wage earners. For injured employees injured in 2007 with earnings of \$249 or less per week, TIBs replaced 87 percent of their lost wages while for the highest-wage earners with \$2,000 or more in weekly earnings, TIBs replaced 44 percent. The replacement rate of the highest-wage earners increased from 34 percent in 2000 to 44 percent in 2007 as a result of increases in the maximum compensation rate as reflected in the next table.

<sup>20</sup> Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group; Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System, 2012 Results.

<sup>21</sup> Source: *Income Replacement Adequacy in the Texas Workers' Compensation System*; Texas Department of Insurance, Workers' Compensation Research and Evaluation Group; August 2010.

Median TIBs Replacement Rate by Injury Year and Weekly Wage, 2000-2007								
Weekly Wage	Injury Year							
	2000	2001	2002	2003	2004	2005	2006	2007
\$0-\$249	92%	92%	91%	89%	90%	90%	89%	87%
\$250-\$499	89%	88%	91%	91%	91%	92%	92%	91%
\$500-\$749	88%	88%	89%	89%	91%	91%	91%	92%
\$750-\$999	89%	88%	87%	86%	86%	86%	88%	93%
\$1,000-\$1,249	73%	73%	72%	69%	70%	70%	72%	87%
\$1,250-\$1,499	63%	62%	61%	59%	59%	58%	59%	71%
\$1,500-\$1,749	54%	54%	54%	53%	52%	51%	52%	63%
\$1,750-\$1,999	47%	46%	46%	45%	45%	45%	47%	57%
\$2,000 +	34%	34%	30%	32%	33%	35%	37%	44%

The maximum amount of TIBs has increased approximately 21 percent since 2007 (from \$674 in 2007 to \$818 in 2013; *See* table on page 57). TDI's 2012 study indicated that the median TIBs replacement rate has increased from 87 percent in 2006 to 93 percent in 2011 as shown in the next chart.



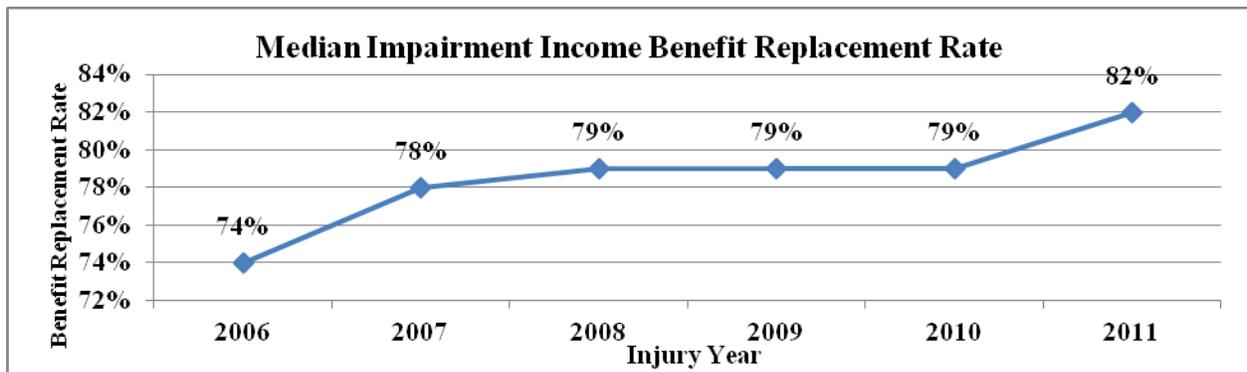
### Impairment Income Benefits (IIBs)

IIBs are paid to injured employees for permanent impairment when the injured employee reaches maximum medical improvement and after TIBs are exhausted. Additionally, IIBs are paid regardless of whether the injured employee has returned to work. The time period for which an injured employee may receive IIBs is directly related to their impairment rating. Each percentage point of impairment rating equals three weeks of IIBs. For example, an injured employee that receives an impairment rating of 12 percent will receive IIBs for 36 weeks.

**IIBs Replacement Rate.** The difference in replacement rates for all income levels is significant for IIBs as reported in TDI's August 2010 report.<sup>22</sup> Higher-wage earners regain a smaller percentage of lost wages than lower-wage earners. For employees injured in 2007 and receiving IIBs with an average weekly wage of \$249 or less per week, IIBs replaced 76 percent of their lost wages (approximately \$189) while for the highest-wage earners with \$1,000 or more in weekly earnings, IIBs replaced only 50 percent (approximately \$500) in part because of the maximum benefits cap. Injured employees earning up to \$750 a week, in contrast, regain 80 to 85 percent of lost wages as shown in the table below.

Median IIBs Replacement Rate by Injury Year and Weekly Wage, 2000-2007								
Weekly Wage	Injury Year							
	2000	2001	2002	2003	2004	2005	2006	2007
\$0.00-\$249.00	83%	81%	81%	80%	78%	76%	76%	76%
\$250.00-\$499.00	85%	85%	85%	86%	86%	86%	85%	85%
\$500.00-\$749.00	81%	80%	79%	79%	79%	78%	82%	88%
\$750.00-\$999.00	62%	61%	60%	59%	59%	59%	61%	71%
\$1,000.00 and above	46%	46%	45%	44%	44%	44%	44%	50%

The maximum amount of IIBs has increased approximately 21 percent since 2007 (from \$472 in 2007 to \$573 in 2013; *See* table on page 57), and the overall replacement rate has increased. TDI's 2012 study indicated that the median IIBs replacement rate has increased from 74 percent in 2006 to 82 percent in 2011 as shown in the next chart.



<sup>22</sup>Source: *Income Replacement Adequacy in the Texas Workers' Compensation System*; Texas Department of Insurance, Workers' Compensation Research and Evaluation Group; August 2010.

## Supplemental Income Benefits (SIBs)

SIBs are paid to injured employees for ongoing disability after IIBs are exhausted. Only employees with at least a 15 percent impairment rating and who are unemployed or underemployed as a result of their work-related injuries are eligible to receive SIBs.

*SIBs Replacement Rate.* To develop a complete picture of SIBs income replacement adequacy, a sufficient length of time must pass, which in the case of SIBs is 401 weeks or almost eight years. Consequently, the ability to report accurate income replacement rates is limited to earlier injury years, which have had the requisite amount of time to mature. Therefore, SIBs outcomes beyond injury year 2002 must be interpreted with caution.

TDI's study<sup>23</sup> found that the replacement rate differences between wage groups over time are statistically significant in the SIBs replacement rate. In 2001, 78 percent of the income lost by injured employees earning between \$250 and \$499 a week is replaced by SIBs while only 43 percent of income lost is replaced by SIBs for those earning \$1,000 or more as shown in the table below.

Median SIBs Replacement Rate by Weekly Wage and Injury Year, 2000-2005						
Weekly Wage	Injury Year					
	2000	2001	2002	2003	2004	2005
\$0-\$249	70%	73%	71%	72%	78%	69%
\$250-\$499	78%	78%	79%	79%	78%	77%
\$500-\$749	74%	72%	75%	74%	71%	75%
\$750-\$999	55%	55%	57%	57%	55%	64%
\$1,000 and above	43%	43%	41%	41%*	53%*	33%*

\* The percentage is based on less than 30 cases and therefore inconclusive.

## Lifetime Income Benefits (LIBs)

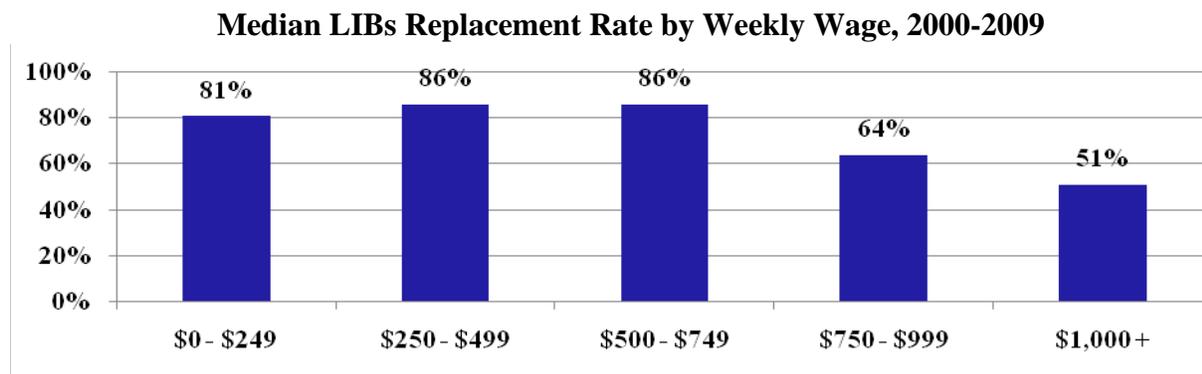
An injured employee becomes eligible for LIBs when the work-related injuries result in one of the qualifying conditions:

- total and permanent loss of sight in both eyes;
- loss of both feet at or above the ankle;
- loss of both hands at or above the wrist;
- loss of one foot at or above the ankle and the loss of one hand at or above the wrist;
- certain spinal injuries that result in paralysis;
- a physically traumatic brain injury;
- third-degree burns over 40 percent of the body; or
- third-degree burns covering the majority of either both hands or one hand and the face.

<sup>23</sup> Source: *Income Replacement Adequacy in the Texas Workers' Compensation System*; Texas Department of Insurance, Workers' Compensation Research and Evaluation Group; August 2010.

LIBs are paid at 75 percent of the average weekly wage with a 3 percent increase each year. The maximum changes each year depending on the State average weekly wage. Benefits begin from the time it is determined that the injury has resulted in a condition that meets one of the qualifying conditions for lifetime income benefits and continue for the life of the injured employee.

*LIBs Replacement Rate.* The chart below indicates that injured employees earning less than \$750 have their lost wages replaced by up to 86 percent in LIBs while the highest-wage earner replacement benefit is approximately 51 percent of their lost wages. TDI noted in the 2010 study<sup>24</sup> that there were relatively few injured employees receiving LIBs who met all the requirements to be included in the study; therefore, the LIBs income replacement outcomes are presented as the total LIBs recipients during the years 2000 through 2009 regardless of the year of injury.



The weekly maximum LIBs payment remained virtually unchanged from 2000 to 2006 (from \$531 to \$540).

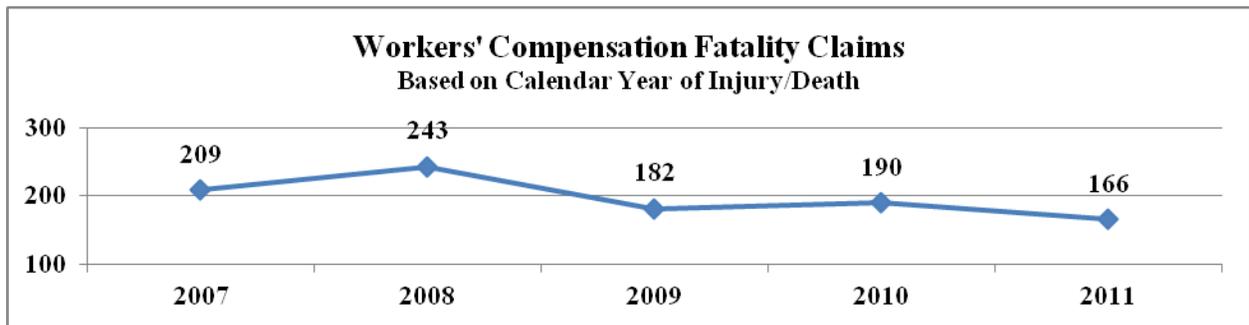
## Death Benefits

---

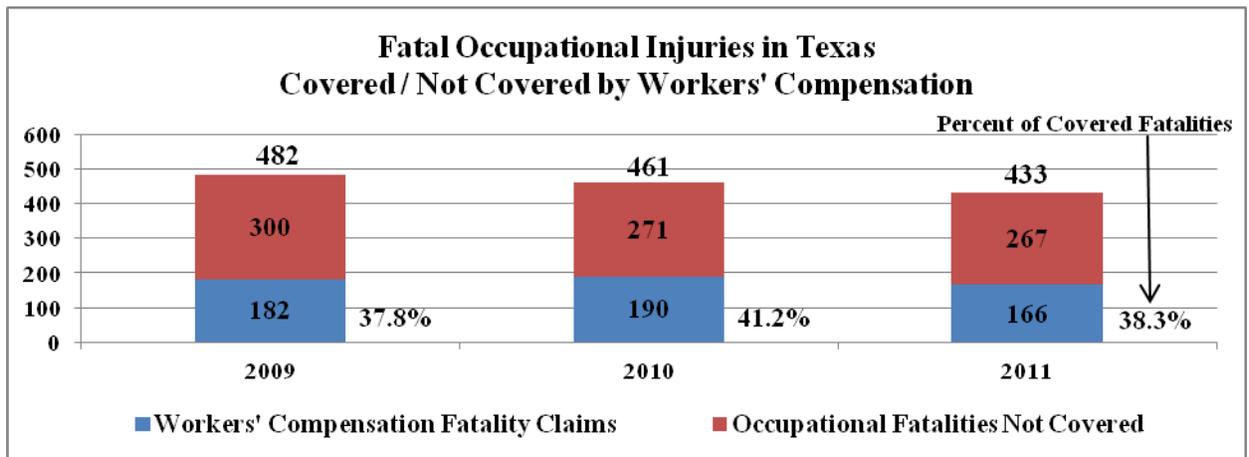
The number of workers' compensation fatality claims decreased in 2011. The next chart indicates such, showing that the number of fatality claims in 2011 (166) decreased approximately 13 percent from 2010. There was an increase in the number of fatality claims in 2010 (190) compared to 2009 (182).

---

<sup>24</sup> Source: *Income Replacement Adequacy in the Texas Workers' Compensation System*; Texas Department of Insurance, Workers' Compensation Research and Evaluation Group; August 2010.



The chart below reflects the number of fatal occupational injuries in Texas that are covered by workers' compensation compared to fatal occupational injuries that are not covered by workers' compensation in Texas in 2009, 2010, and 2011.<sup>25</sup>



Although approximately 81 percent of employees in Texas work for employers who are covered by workers' compensation insurance, less than 40 percent of the job-related fatalities that occurred in 2011 had a workers' compensation claim filed.

<sup>25</sup> Source: TDI-DWC, Census of Fatal Occupational Injuries (CFOI) Section in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics.

## Medical Benefits

---

*Workers' Compensation Health Care Network Coverage Increases.* In Texas, an employer may elect to use a certified workers' compensation health care network, but it is not required. If an employer purchases a workers' compensation insurance policy that requires the use of a network, the network generally provides all the health care associated with any work-related injuries or illnesses suffered by the employer's workers.

TDI began accepting applications for the certification of workers' compensation health care networks on January 2, 2006. According to TDI's 2012 Network Report Card<sup>26</sup>, as of February 1, 2012, there were 30 TDI-certified networks, 27 of which have treated 327,373 injured employees since the first network was certified in May 2006. The table below shows the number of injured employees who have been treated by a certified health care network since the first network was certified.

<b>Total Number of Injured Employees Treated by Workers' Compensation Health Care Networks Since the First Network Was Certified</b>	<b>As of February 1,</b>	
	<b>2010</b>	<b>2012</b>
Total Number of Employees Treated	142,214	327,373
Total Number of Networks Treating Injured Employees	27	27

Currently, 250 counties are covered by health care networks. Counties not covered by a network include Culberson, Jeff Davis, Presidio, and Brewster. The 2012 Report Card indicated that Texas Star had the largest share of network claims with 33 percent of all claims treated in networks, which was down from 36 percent a year ago, the result of smaller networks treating an increasing share of injured employees.

*Injured Employee Access to Medical Care Stable.* Results from a 2012 study conducted by TDI's Workers' Compensation Research and Evaluation Group regarding an injured employee's access to medical care<sup>27</sup> indicated that the number of physicians participating in the workers' compensation system is stable, and the total number of doctors practicing in Texas is increasing. The 2012 study reported that the number of active physicians grew from 29,579 in 1999 to 40,724 in 2010, a 38 percent increase at a steady pace of 3 percent a year. During the same period, workers' compensation participating physicians grew from 17,150 to 18,284, an increase of 7 percent. The result is a decreasing participation rate for doctors in the workers' compensation system (from 58 percent in 1999 to 45 percent in 2010).

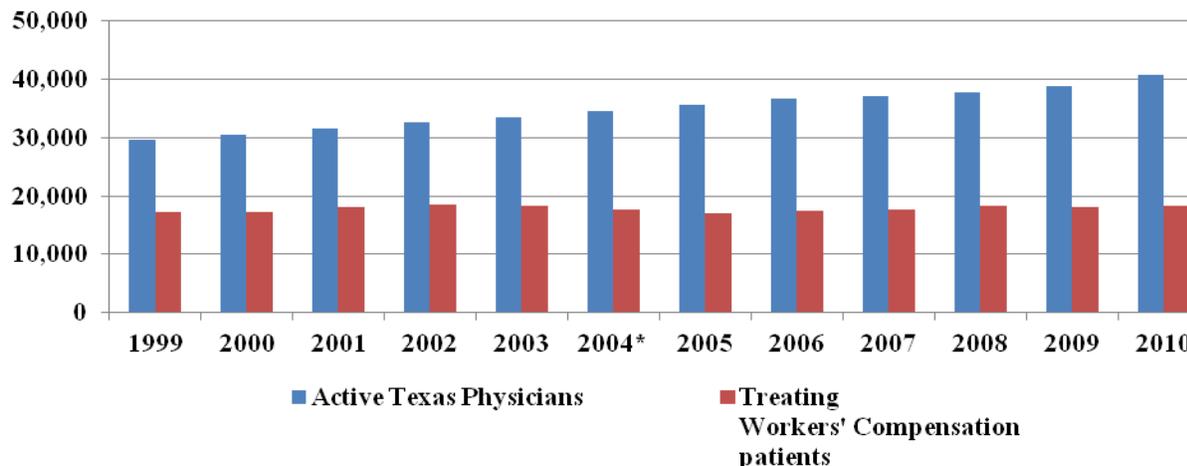
The next chart illustrates the number of physicians participating in the Texas Workers' Compensation System compared to the number of active physicians licensed in the State.

---

<sup>26</sup> Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group; *Workers' Compensation Network Report Card Results; 2012.*

<sup>27</sup> Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group; "Access to Medical Care in the Texas Workers' Compensation System, 1998-2010 – 2012 Results," April 2012.

### Number of Physicians Participating in the Texas Workers' Compensation System Compared to the Number of Active Physicians Licensed in Texas



The study also showed that some non-metro areas and border regions have a higher number of workers' compensation patients per physician. Any lack of physician access may be primarily due to the low total number of physicians practicing in these areas rather than a low workers' compensation participation rate.

According to a report by the Texas Legislative Study Group on the State of Our State,<sup>28</sup> by 2015 Texas would need more than 4,500 additional primary care doctors and other medical professionals in order to serve all of the State's medically disenfranchised population.

The lack of physicians in a particular area may be harmful to an injured employee. An injured employee may seek medical care from a doctor that is not permitted to treat workers' compensation patients, especially in border regions. Only doctors licensed in Texas can legally treat injured employees in Texas. Out-of-state doctors must be licensed in the jurisdiction where health care is being provided.

The Texas Medical Board, responsible for licensing doctors to practice in Texas, reviews a doctor's malpractice and disciplinary action when it renews a license but is not required to review or disclose cases of medical malpractice when a doctor moves from another state. All state medical boards have full access to the National Practitioner Data Bank, which lists malpractice cases and disciplinary actions taken against doctors. Because the Data Bank charges for queries, it would be costly for the State to check on every doctor licensed in Texas.<sup>29</sup>

OIEC empathizes with injured employees' challenge in locating a doctor to provide sufficient health care for their injury. OIEC educational presentations and information provided to injured employees and health care providers across the State may alleviate some of the problems. Additionally, OIEC is working with health care providers to alleviate problems that may occur during the dispute resolution process involving extent-of-injury disputes.

<sup>28</sup> Source: Report by the Texas Legislative Study Group on the State of Our State, *Texas on the Brink: Fifth Edition*, February 2011.

<sup>29</sup> Source: <http://www.texaswatch.org/2011/08/trail-of-tears-leads-to-texas/>. Viewed April 5, 2012.

*Pharmaceutical Utilization Decreases.* In response to the overutilization of unnecessary prescription drugs in the workers' compensation system, TDI-DWC implemented a pharmacy closed formulary (mandated by HB 7, 79th Texas Legislature, Regular session, 2005), which includes all FDA-approved drugs except for investigational and experimental drugs and excludes drugs listed as "N" drugs (or "not recommended" drugs) in Appendix A of TDI-DWC's adopted treatment guidelines. The formulary became effective September 1, 2011 for claims on and after that date, and becomes effective for legacy claims (claims in effect before September 1, 2011) on September 1, 2013.

According to the TDI Research and Evaluation Group's 2012 study on the impact of the *Texas Pharmacy Closed Formulary*<sup>30</sup>, the number of injured employees receiving N-drugs has decreased. Injured employees may receive N-drugs through a health care provider recommendation and insurance carrier agreement to pay for the prescription prior to dispensing, referred to as preauthorization in the workers' compensation system.

The number of injured employees receiving N-drugs during the three months after the formulary took effect (September 1, 2011) totaled 1,870 compared to 4,661 for the same three months in 2010 and 4,326 during the same period in 2009. The number of injured employees receiving other drugs fell by 5 percent, and the share of N-drug claims among all claims fell by 56 percent as reflected in the table below.

<b>Number of Claims Receiving Pharmaceuticals, by injury year September - November</b>				
<b>Injury Year</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2010-2011 Percentage Change</b>
<b>N-drugs</b>				
Number of claims	4,326	4,661	1,870	-60%
Percent of all claims	18%	18%	8%	-56%
<b>Other Drugs</b>				
Number of claims	23,752	25,649	24,392	-5%
Percent of all claims	98%	97%	99%	+2%

Since the implementation of the Texas pharmacy closed formulary:

- N-drug costs fell by 81 percent, and N-drug costs as a percentage of all drug costs decreased by 75 percent.
- The number of prescriptions for the ten most-prescribed N-drugs decreased by 71 percent.
- The number of all opioid prescriptions decreased by 10 percent.
- The number of N-drug opioid prescriptions decreased by 57 percent.
- The average number of N-drug prescriptions per claim decreased by 32 percent.
- The generic substitution rate for N-drugs increased from 52 percent in 2010 to 71 percent in 2011.

<sup>30</sup> Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group; *Impact of Texas Pharmacy Closed Formulary: A Preliminary Report*; 2012.

The next table shows the decrease in utilization by drug group. The total number of prescriptions for N-drugs fell by 68 percent. The total number of prescriptions for other drugs fell by 7 percent.

<b>N-drug Status</b>	<b>Drug Group</b>	<b>2010</b>	<b>2011</b>	<b>2010-2011 Percentage change</b>
<b>N-drug</b>	Analgesics - Anti-Inflammatory	2,930	1,158	-60%
	Analgesics - Opioid	942	409	-57%
	Central Nervous System Drugs	1,475	404	-73%
	Musculoskeletal Therapy Agents	2,601	477	-82%
	Others	1,567	504	-68%
	<b>Total</b>	<b>9,515</b>	<b>2,952</b>	<b>-68%</b>
<b>Other</b>	Analgesics - Anti-Inflammatory	25,934	24,398	-6%
	Analgesics - Opioid	33,303	30,280	-9%
	Central Nervous System Drugs	2,774	2,420	-13%
	Musculoskeletal Therapy Agents	14,511	13,987	-4%
	Others	19,231	18,177	-5%
	<b>Total</b>	<b>95,753</b>	<b>89,262</b>	<b>-7%</b>

Although it appears that drug utilization is decreasing, it is important that it continues to be studied and monitored to ensure injured employees obtain timely and appropriate health care.

*Injured Employee Physical and Mental Functioning Shows Improvement.* Injured employees have improved their physical and mental functioning status measurably since 2005 according to a survey conducted by TDI.<sup>31</sup> Injured employees were asked to rate their current mental health as well as their current abilities to perform certain daily life activities. As shown in the table below, injured employees in Texas have improved their physical and mental functioning status measurably since 2005. The mental functioning score of 50.1 for injured employees is higher than the physical functioning score (41) but also higher than the mental functioning score of the general U.S. population.

<b>Comparison of Injured Employee Self-reported Physical and Mental Functioning Scores, 17–21 Months Post Injury</b>		
<b>Year</b>	<b>Physical</b>	<b>Mental</b>
<b>2005</b>	38.4	46.6
<b>2008</b>	38.9	46.3
<b>2010</b>	42.8	50.0
<b>2012</b>	41.0	50.1
<b>U.S. Population</b>	50.0	50.0

<sup>31</sup> Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group; *Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System, 2012 Results.*

*A Comparison of Network/Non-Network Medical Care Provided to Injured Employees.* The tables on the next three pages are based on selected measures from TDI's 2012 Network Report Card.<sup>32</sup> Each table provides an overall assessment of medical care received by injured employees in the workers' compensation system compared to medical care received outside a network and within a network. Note that non-network results in the tables below may not reflect non-network results in TDI's 2012 Network Report Card due to different weighting schemes used to calculate the numbers for network and overall totals.

### **Timeliness of Medical Care**

<b>Duration from date of injury to date of first non-emergency service</b>		
<b>Overall Total</b>	<b>Non-Network</b>	<b>Network</b>
6.9 days	8.2 days	6.7 days

<b>Percent of injured employees who reported always:</b>			
	<b>Overall Total</b>	<b>Non-Network</b>	<b>Network</b>
• receiving care as soon as they wanted			
• getting an appointment as soon as they wanted	48%	46%	49%
• taken to the exam room within 15 minutes of their appointment			

### **Satisfaction of Medical Care**

<b>Injured employees' perceptions regarding medical care for their work-related injuries compared to the medical care they normally receive when injured or sick</b>			
	<b>Overall Total</b>	<b>Non-Network</b>	<b>Network</b>
<b>Better</b>	25%	26%	24%
<b>Same</b>	54%	51%	55%
<b>Worse</b>	21%	23%	21%

<sup>32</sup> Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group. Additional data requested in reference to TDI's 2012 Network Report Card Results.

<b>Percent of injured employees who reported no problem getting:</b>			
<ul style="list-style-type: none"> <li>• a personal doctor they like</li> <li>• to see a specialist</li> <li>• necessary tests or treatment</li> <li>• timely approvals for care</li> </ul>	<b>Overall Total</b>	<b>Non-Network</b>	<b>Network</b>
		68%	64%

<b>Percent of injured employees who indicated that they were “satisfied” with the quality of the medical care received for their work-related injury</b>		
<b>Overall Total</b>	<b>Non-Network</b>	<b>Network</b>
67%	70%	67%

### Treating Doctor

<b>Percent of injured employees who indicated that they had changed treating doctors</b>		
<b>Overall Total</b>	<b>Non-Network</b>	<b>Network</b>
17%	20%	17%

<b>Most frequent reasons why injured employees said they changed treating doctors</b>			
	<b>Overall Total</b>	<b>Non-Network</b>	<b>Network</b>
<b>Worker was dissatisfied with the doctor’s manner and caring</b>	41%	45%	40%
<b>Worker felt that the treatment was not helping</b>	44%	43%	44%
<b>Doctor released worker to go back to work and worker didn’t feel ready to return</b>	22%	17%	23%
<b>Doctor was no longer seeing workers’ compensation patients</b>	11%	10%	10%
<b>Worker saw an emergency or urgent care doctor for first visit</b>	50%	52%	49%
<b>Worker saw a company doctor for first visit</b>	37%	30%	39%

**Percent of injured employees who indicated that they “agreed” or “strongly agreed” that their treating doctor:**

	Overall Total	Non-Network	Network
<ul style="list-style-type: none"> <li>• took their medical condition seriously</li> <li>• gave them a thorough exam</li> <li>• explained medical condition</li> <li>• was willing to answer questions</li> <li>• talked to them about a RTW date</li> <li>• provided good medical care that met their needs</li> </ul>	83%	83%	85%

**Percent of injured employees who indicated that they were “satisfied” with the quality of the medical care received from their treating doctor**

Overall Total	Non-Network	Network
68%	70%	67%

**Pharmaceutical Utilization**

**Percentage of injured employees who received pharmacy services, six months post injury**

Overall Total	Non-Network	Network
45%	43%	47%

**Average number of prescription days per injured employee, six months post injury**

Overall Total	Non-Network	Network
57	58	54

**Hospital Services**

**Percentage of injured employees who received hospital services, six months post injury**

Overall Total	Non-Network	Network
34%	36%	32%

## Indemnity Dispute Resolution

---

An injured employee's benefits may be adversely affected when a dispute arises in their workers' compensation claim although only approximately 5 percent of all claims involve a dispute. Once a dispute is identified and the injured employee and insurance carrier cannot come to an agreement, the dispute enters TDI-DWC's dispute resolution process. There are several steps that may occur in the dispute resolution process: 1) benefit review conference, 2) contested case hearing, and 3) Appeals Panel. If a party disputes an Appeals Panel decision, a request for judicial review may be filed.

*Average Time to Resolve a Dispute Increases.* The period of time from the initial determination of a disputed issue until the time of resolution can be months during which time many injured employees may not be working and able to provide for their families.

Many disputes are resolved by OIEC prior to a proceeding as discussed on page 13 of this report. It is important for a dispute to be resolved as early as possible to avoid adverse consequences to the injured employee. However, the average time to resolve a dispute is becoming longer. The average days to resolve a dispute through proceedings is approximately 120 or four months. The table below indicates the average number of days to resolve an indemnity dispute through TDI-DWC's dispute resolution proceedings.

<b>Average Time to Resolve an Indemnity Dispute</b>			
<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012 (Estimated)</b>
<b>112</b>	<b>110</b>	<b>104</b>	<b>140</b>

*Number of Proceedings Increase.* One reason for the increase in the average time to resolve a dispute may be the increase in the number of proceedings held. TDI-DWC Rules 141.2 and 141.3 define "good cause" for rescheduling a benefit review conference and establish deadlines for requesting to reschedule a benefit review conference. These were implemented based on legislative changes made by HB 2605, 82nd Texas Legislature, Regular Session, 2011. These rules attempted to limit the length of time to resolve a dispute; however, the number of proceedings significantly increased in FY 2012 as shown in the table below.

<b>Number of TDI-DWC Proceedings Held</b>			
<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>16,244</b>	<b>14,555</b>	<b>14,619</b>	<b>20,690</b>

*Number of Disputed Issues Increase.* In addition to the increase in the number of proceedings, the number of disputed issues has also increased. The number of issues at a benefit review conference increased approximately 41 percent from 2011 to 2012. Approximately 55 percent more issues were disputed in FY 2012 (11,995) than in FY 2011 (7,757) at a contested case hearing. The next table shows the increase in the number of disputed issues at benefit review conferences and contested case hearings since FY 2009.

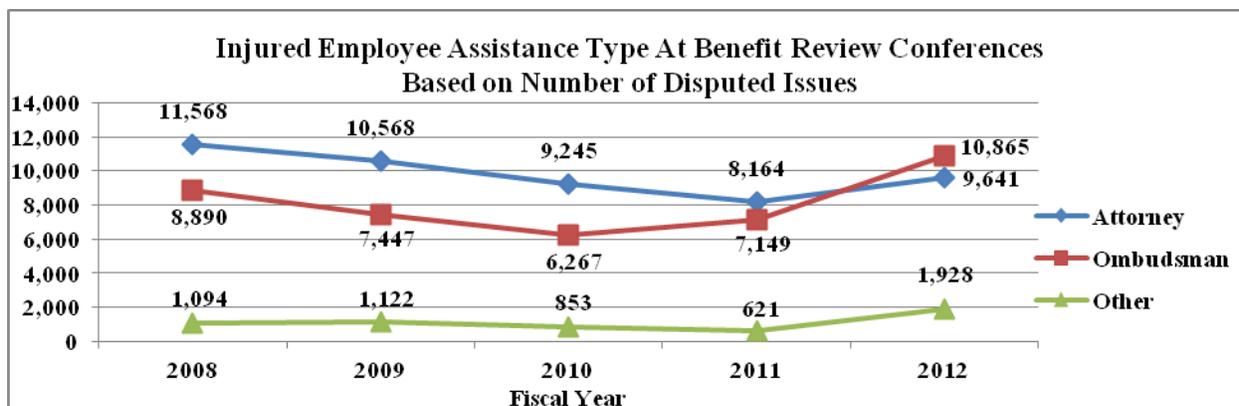
Number of Disputed Issues at Benefit Review Conferences and Contested Case Hearings				
Type of Proceeding	FY 2009	FY 2010	FY 2011	FY 2012
Benefit Review Conference	19,137	16,365	15,934	22,434
Contested Case Hearing	9,454	8,352	7,757	11,995

*Most Frequently Disputed Types of Issues.* Disputes arise for various reasons during the life of a workers' compensation claim. More than 70 different types of issues were disputed in FY 2012. The top five most frequently disputed issues include the following:

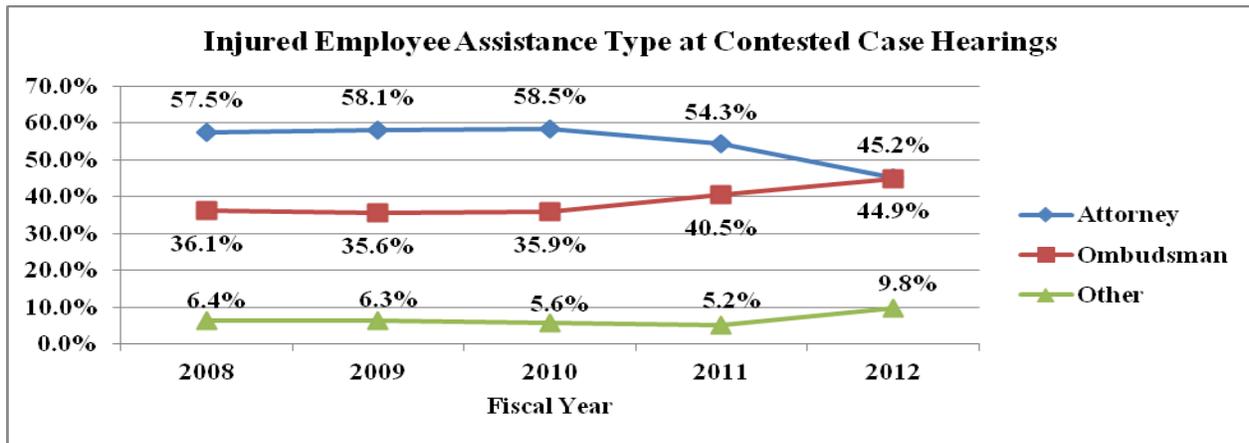
- designated doctor's date of maximum medical improvement;
- designated doctor's impairment rating;
- extent of the injury;
- existence of a compensable injury; and
- existence/duration of the disability.

The date of maximum medical improvement identified by the designated doctor was the most often disputed issue in FY 2012 at benefit review conferences. At the contested case hearings, the most often disputed issue in FY 2012 was the injured employee's extent of the injury.

*New Trend in Assistance Type at Proceedings.* Ombudsman assistance is being requested more often at proceedings. The chart below shows the number of disputed issues each year and the type of assistance for the injured employee.



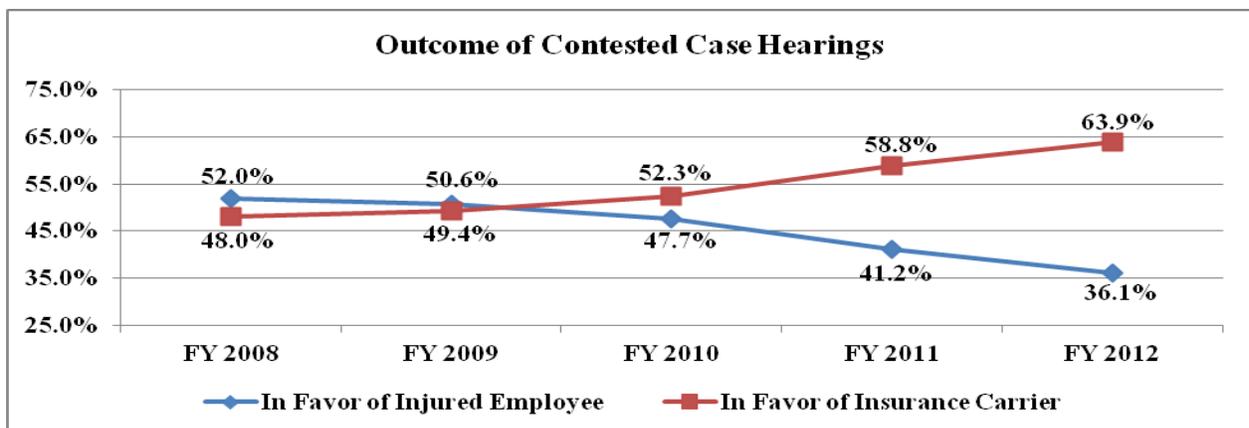
The percentage of contested case hearings where an injured employee requests the assistance of an ombudsman has been increasing since FY 2009. In FY 2009, injured employees were represented by an attorney in more than 58 percent of contested case hearings and were assisted by an ombudsman in less than 36 percent of contested case hearings. In FY 2012, the percentage of attorney representation decreased to 45 percent while ombudsman assistance increased to over 45 percent. The next chart illustrates the changing trend in the type of assistance provided to injured employees at contested case hearings.



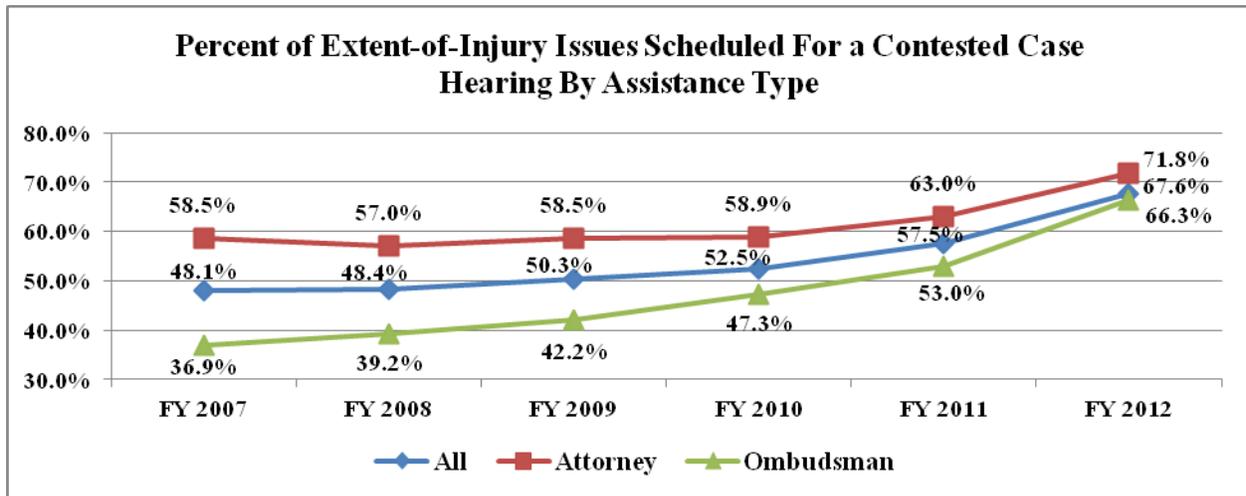
*Common Experience versus Evidence-Based Medicine.* Originally, the workers' compensation system was designed so that an injured employee was able to prove a case without expert evidence in most cases. If an injured employee could convince the fact finder that the injury was caused by the work without an expert's opinion, the injured employee could prevail without the expense of providing expert evidence. The only limitation placed upon this was when the nature of the injury was so beyond the realm of common experience, such as the work causing cancer, that scientific evidence was required.

Because some experts in cases requiring expert evidence were relying on junk science, the courts and Legislature began restricting expert evidence to evidence-based medicine. The problem is now that the workers' compensation system is requiring expert evidence of causation in nearly all cases, not just in cases where the injury is beyond common experience. This has put additional burden on injured employees to produce expert testimony even in cases where such evidence traditionally has not been required. Even worse, the workers' compensation system is requiring evidence-based medicine for propositions – such as one can sustain a back injury from falling – for which there are no relevant scientific studies.

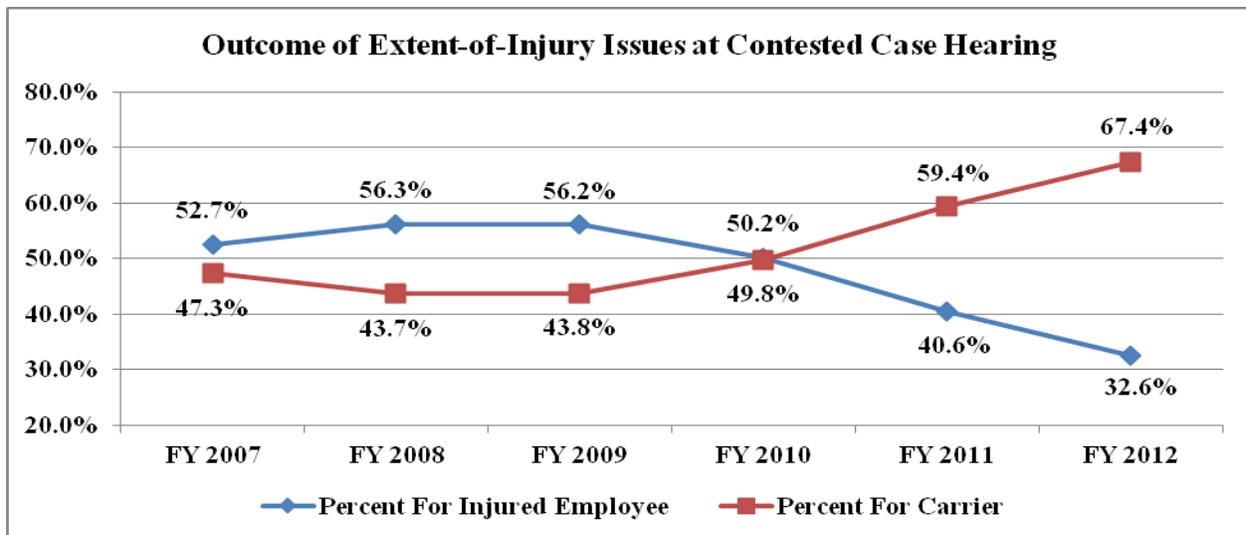
*Injured Employee Prevail Rate Decreases.* During the past few years, the injured employee prevail rate has continued to decrease regardless of the type of assistance. In FY 2009, injured employees won approximately 50 percent of their cases. In FY 2012, injured employees win only approximately 36 percent of the time as shown in the chart below.



*Extent-of-Injury Issues – Number of Disputes Increase/ Prevail Rate Decreases.* Extent-of-injury was the most often disputed issue at contested case hearings in FY 2012, at 2,276, approximately 20 percent of all disputed issues. An extent-of-injury dispute often occurs when the insurance carrier does not agree to provide benefits to body parts related to the compensable injury, such as an injury to a foot that extends to the ankle. Due to the difficulty in proving an injured employee’s extent-of-injury dispute, few disputes of this type are resolved at a benefit review conference and thus are scheduled for a contested case hearing. The next chart reflects the increase in the percent of extent-of-injury disputes that are not resolved at the benefit review conference and are scheduled for a contested case hearing.

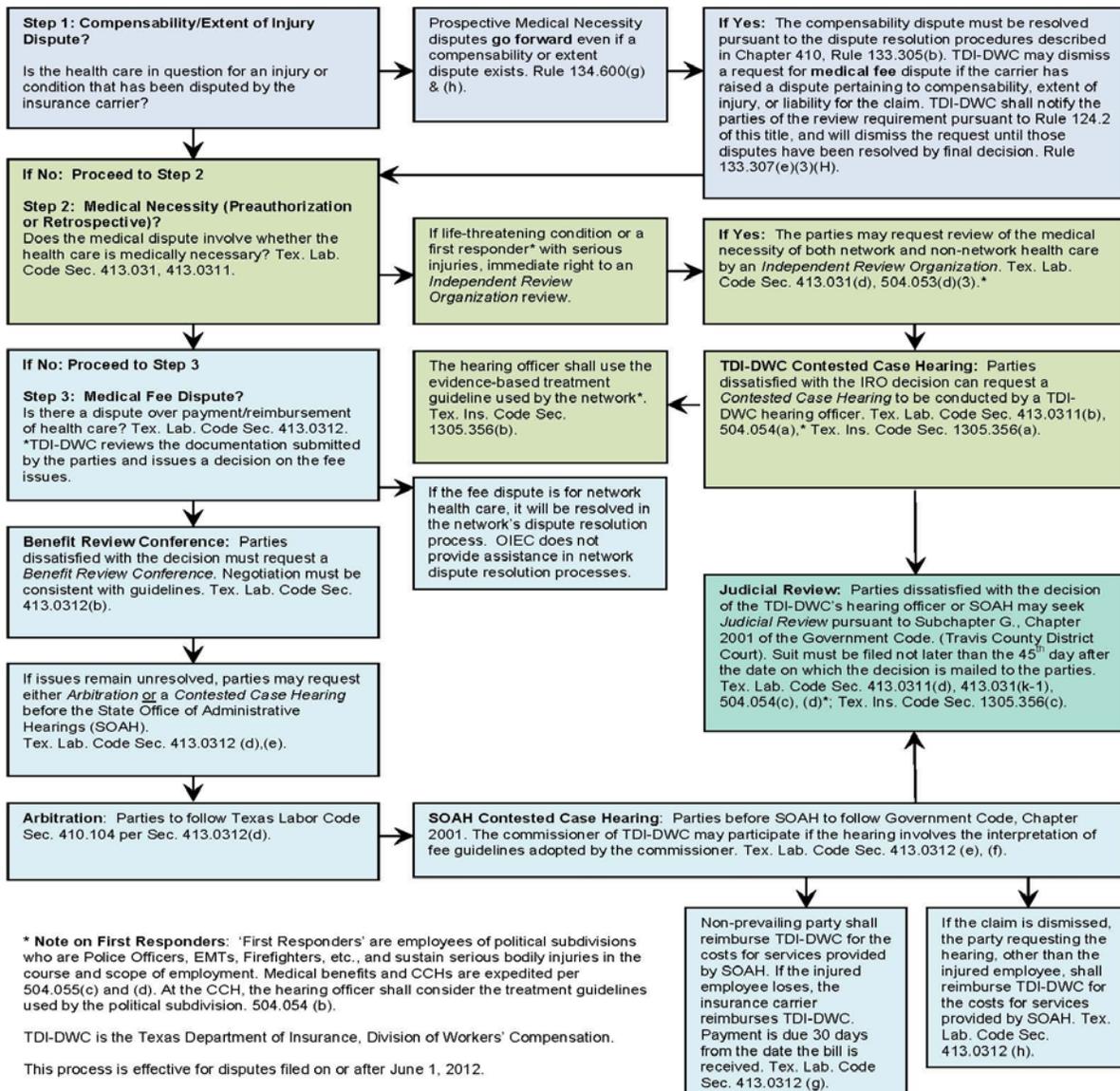


The chart below illustrates the decline in the injured employee’s ability to prevail when the extent of injury is at issue at a contested case hearing. In FY 2007 through FY 2010, the injured employee prevailed in approximately one-half of the extent-of-injury disputes at contested case hearings. In FY 2012, the prevail rate for an injured employee decreased to approximately one-third of the extent-of-injury disputes at contested case hearings.



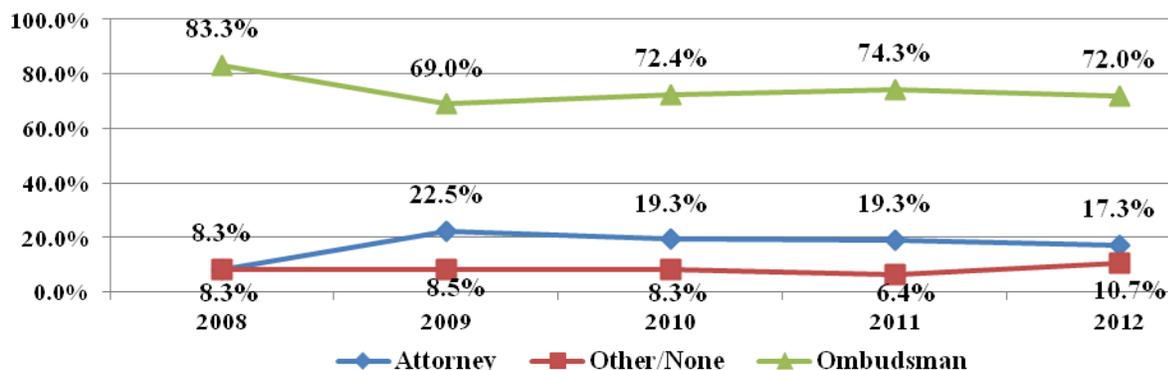
## Medical Dispute Resolution

Workers' compensation medical benefits pay for reasonable and necessary medical care to treat an injured employee's compensable work-related injury or illness. Injured employees may request dispute resolution for preauthorization, concurrent medical necessity, and retrospective medical necessity when reimbursement is denied for health care paid by the injured employee. Below is a flowchart of the medical dispute resolution process.



*Ombudsman Assistance is Requested More Often in Medical Disputes.* Ombudsman assistance is particularly needed in disputes where the only issue is denial of medical benefits because attorneys are prohibited from obtaining payment for representing injured employees in the medical dispute resolution system. Attorneys are reimbursed for services by taking up to 25 percent of the injured employee’s income benefits. Because ombudsman services are provided at no cost to the injured employee, injured employees request ombudsman assistance in approximately 75 percent of all medical necessity disputes as shown in the chart below.

**Injured Employee Assistance Type  
at Medical Necessity Dispute Resolution**



It may also be difficult for an injured employee to find attorney representation because attorneys are able to select their cases while ombudsmen are required to assist all non-represented injured employees that have a dispute regardless of the circumstances and difficulty of successfully resolving the case in the injured employee’s favor.

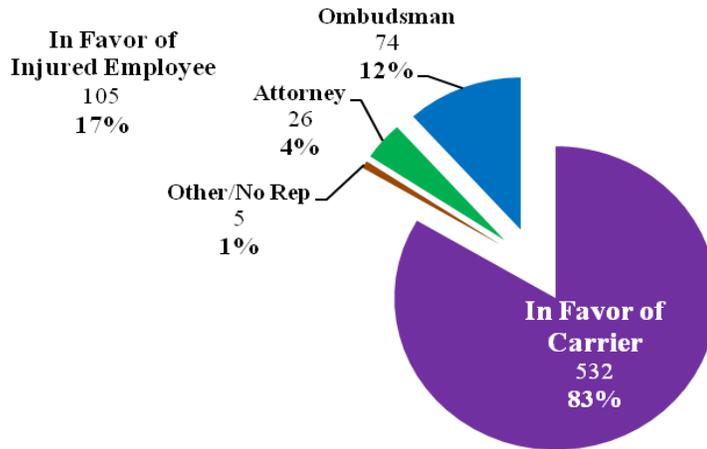
*Low Prevail Rate for Injured Employee in Medical Dispute Resolution.* Due to evidentiary requirements and other reasons such as the lack of expert testimony, it is difficult for the injured employee to prevail in medical necessity disputes regardless of the type of representation as illustrated in the table below.

Number and Percent of Disputes Where the Injured Employee Prevails in Medical Necessity Dispute Resolution by Assistance Type										
Type of Assistance	FY 2008		FY 2009		FY 2010		FY 2011		2012 (through March 2012)	
<b>Attorney</b>	3	42.9%	5	10.4%	8	22.9%	4	19.0%	6	42.9%
<b>Other/None</b>	2	33.3%	0	0.0%	0	0.0%	2	33.3%	1	11.1%
<b>Ombudsman</b>	14	20.0%	22	15.0%	15	11.5%	11	13.6%	12	21.1%
<b>Total</b>	19	22.6%	27	12.7%	23	12.7%	17	15.6%	19	23.8%

Since FY 2008, an injured employee has prevailed in only 17 percent of all medical necessity disputes as shown in the next chart.

**Outcome of Medical Necessity Dispute Resolution**

FY 2008 through March FY 2012



An injured employee has been represented at a proceeding in only 20 percent of the medical fee disputes since FY 2008 with a prevail rate of approximately 32 percent.

**Return-to-Work Rates Mixed**

According to TDI’s biennial report, *Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers’ Compensation System, 2012 Results*<sup>33</sup> the percentage of injured employees who returned to work within six months of their injury in 2010 (78 percent) is 2 percent higher than the rate in 2007 (76 percent). However, the 2010 rate is 3 percent lower than the rate in 2009 (81 percent) as shown in the table below. The report indicated that this reduction is likely a reflection of the economic downturn, higher unemployment rates, or the type and severity of injuries sustained during 2010. Injured employees returning to work within 1.5 years after their injury remained the same at 90 percent.

<b>Initial Return-to-Work Rates – Percentage of Injured Employees Receiving Temporary Income Benefits Who Returned to Work 6 Months to 3 Years After Their Injury</b>					
<b>Injury Year</b>	<b>Within 6 Months Post Injury</b>	<b>Within 1 Year Post Injury</b>	<b>Within 1.5 Years Post Injury</b>	<b>Within 2 Years Post Injury</b>	<b>Within 3 Years Post Injury</b>
<b>2006</b>	75%	86%	90%	92%	94%
<b>2007</b>	76%	87%	91%	93%	96%
<b>2008</b>	78%	88%	93%	94%	94%
<b>2009</b>	81%	89%	90%	91%	
<b>2010</b>	78%	88%	90%		

Notes:

- The study population is a subset of 225,256 employees injured in 2006–2010 who also received TIBs.
- The third year of 2009, and the second and third years of 2010 are excluded due to insufficient data.

<sup>33</sup> Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group; *Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers’ Compensation System, 2012 Results*.

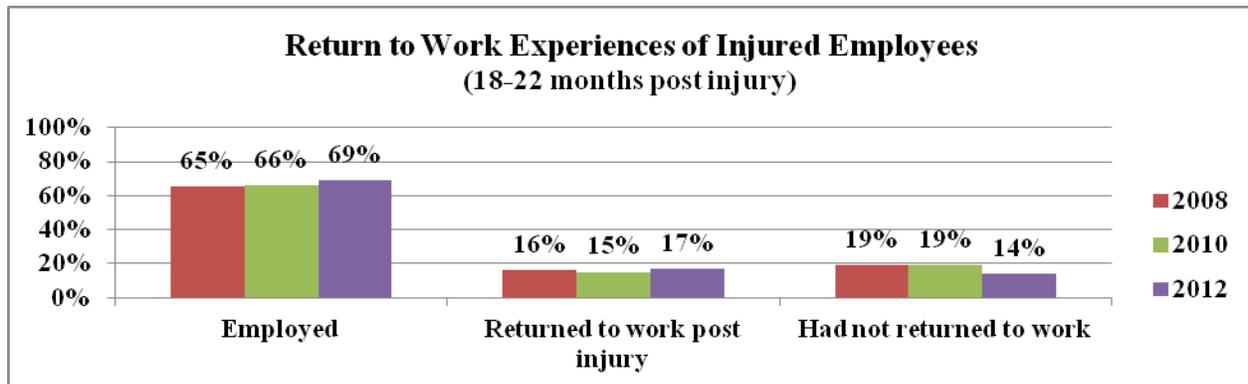
The percentage of injured employees who returned to work within six months of their injury and remained employed for nine consecutive months increased from 70 percent in 2006 to 76 percent in 2009 but declined to 72 percent in 2010 as reflected in the table below. Similar to the decrease in the initial return-to-work rate, the reduction is likely a reflection of the economic downturn, higher unemployment rates, or the type and severity of injuries sustained during 2010.

<b>Sustained Return-to-Work Rates – Percentage of Injured Employees Receiving TIBs Who Have Initially Returned to Work and Remained Employed for Three Consecutive Quarters (6 Months to 3 Years Post Injury)</b>					
<b>Injury Year</b>	<b>Within 6 Months Post Injury</b>	<b>Within 1 Year Post Injury</b>	<b>Within 1.5 Years Post Injury</b>	<b>Within 2 Years Post Injury</b>	<b>Within 3 Years Post Injury</b>
<b>2006</b>	70%	77%	81%	83%	86%
<b>2007</b>	71%	77%	81%	84%	87%
<b>2008</b>	75%	79%	82%	84%	83%
<b>2009</b>	76%	78%	80%	82%	
<b>2010</b>	72%	78%	79%		

Notes:

- The study population is a subset of 225,256 employees injured in 2006–2010 who also received TIBs.
- The third year of 2009, and the second and third years of 2010 are excluded due to insufficient data.
- Sustained return-to-work for 2010 are subject to change as more wage data is made available for injuries occurring in the latter quarters of 2010.

TDI’s biennial report<sup>34</sup> also indicated that 69 percent of employees surveyed in 2012 reported that they were currently employed at the time of the survey compared with 65 percent in 2008 and 66 percent in 2010. Only 14 percent of employees surveyed in 2012 reported that they had not yet returned to work compared to 19 percent in 2008 and 2010.



<sup>34</sup> Ibid.

## Conclusion

---

Changes made to the workers' compensation system have helped reduce system costs, pharmacy utilization, and costs to the employers that choose to carry workers' compensation insurance. However, fewer employers choose to carry the insurance and fewer employees are covered than two years ago. Although, employers participating in the workers' compensation system reported higher satisfaction levels with their workers' compensation coverage than non-subscribers with their alternative occupational benefit programs.

Increases to the maximum indemnity benefit amount for each type of benefit have helped reduce the differences in the replacement rates; however, higher-wage earners continue to regain a significantly smaller percentage of lost wages than lower-wage earners. One in seven injured employees has benefits limited by the statutory maximum. However, injured employees in Texas are receiving their first benefit payment sooner than those in other states.

Access to medical care is stable for injured employees, and the new pharmacy closed formulary appears to be helping to reduce overutilization of N-drugs, including opioids. Injured employees have reported that their physical and mental functioning status has improved, and most are satisfied with the quality of their medical care.

The number of disputed issues has increased considerably within the past two years as well as the number of proceedings held to resolve the issues. The percentage of disputes in which the injured employee prevails has significantly declined within the past few years. The evidence of causation that is required has put an additional burden on injured employees to produce expert testimony even in cases where such evidence traditionally has not been required. Additional research may be required to identify solutions to improve injured employee outcomes in the administrative dispute resolution process.

*In preparing this report, the agency coordinated with the Texas Department of Insurance Workers' Compensation Research and Evaluation Group, the Division of Workers' Compensation, and various other resources to obtain information. We appreciate the research and data support that was provided, and have made every effort to obtain current information to make this report a meaningful analysis of the ability of the workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers.*

*Please contact Brian White (512) 804-4170 with any questions about this report.*