

Office of Injured Employee Counsel



**Biennial Report to
the 84th Legislature**

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OFFICE OF INJURED EMPLOYEE COUNSEL

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December 22, 2014

The Honorable Rick Perry, Governor
The Honorable Greg Abbott, Governor-Elect
The Honorable David Dewhurst, Lieutenant Governor
The Honorable Dan Patrick, Lieutenant Governor-Elect
The Honorable Joe Straus, III, Speaker of the House of Representatives
The Honorable Rene O. Oliveira, Chair, Business & Industry Committee
The Honorable Craig Estes, State Affairs Committee

Dear Governors, Speaker, and Chairmen:

In accordance with Section 404.106 of the Texas Labor Code, I am pleased to submit the Office of Injured Employee Counsel's 2015 Legislative Report.

This report provides an update of the activities of the agency, recommendations for legislative action and other issues for consideration. Appendix A 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 am available to discuss any of the issues contained in the report and to provide technical assistance. Please contact me at (512) 804-4170 or Jessica.Corna@oiec.texas.gov with any questions or if you need additional information.

Respectfully submitted,

A handwritten signature in blue ink that reads "Jessica Corna".

Jessica Corna
Public Counsel

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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.

AGENCY OVERVIEW AND ACTIVITIES

Agency Overview¹

Chapter 404 of the Texas Labor Code provides the statutory authority for the Office of Injured Employee Counsel (OIEC). The agency's mission is to assist, educate and advocate for the injured employees of Texas. OIEC has 20 field offices throughout the state and a central office located in Austin.

OIEC Ombudsmen assist unrepresented injured employees and beneficiaries – at no cost – with disputes relating to workers' compensation income or medical benefits.

OIEC Customer Service Representatives educate injured employees about their rights and responsibilities and respond to questions they have about the workers' compensation system. Customer Service Representatives also refer injured employees to federal, state, or local financial or social services agencies.

OIEC's Legal Services Division advocates on behalf of injured employees as a class by analyzing and participating in workers' compensation system initiatives and encouraging the simplification of the system's procedures and forms. Our attorneys identify systemic issues that may increase burdens or create problems for injured employees and address those issues in the legislative and rulemaking processes.

OIEC is administratively attached to the Texas Department of Insurance (TDI) as provided by Labor Code Section 404.002(b). TDI provides: 1) administrative assistance and services to OIEC, including budget planning and purchasing; 2) personnel services; 3) facilities; and 4) information technology.

The Public Counsel serves as the executive director of the agency 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).

Early Intervention Efforts

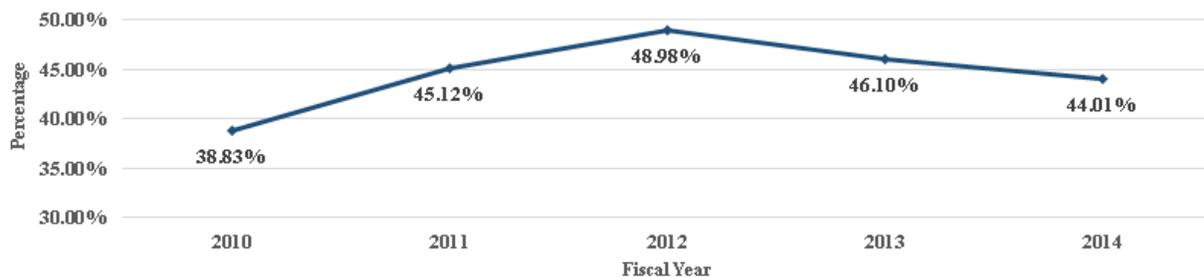
OIEC strives to resolve disputed issues as quickly as possible to ensure that injured employees receive their benefits in a timely manner. The agency currently resolves more than 5,000 disputed issues each year prior to entering the administrative dispute resolution process at the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC). A significant number of these disputes are resolved by Customer Service Representatives. This results in fewer dispute resolution proceedings held by TDI-DWC, has a positive financial impact for the State of Texas, and allows injured employees to receive benefits they are entitled to sooner.

¹ Source: Data reported in Agency Overview and Activities is from the Office of Injured Employee Counsel's annual performance measures submitted to the Legislative Budget Board and Governor's Office of Budget, Planning and Policy.

Ombudsman Assistance in the Administrative Dispute Resolution Process

Injured employees request ombudsman assistance in more than 40 percent of the administrative dispute resolution proceedings held at TDI-DWC in the last several years. Figure 1 indicates the percent of administrative dispute resolution proceedings held at TDI-DWC where the injured employee was assisted by an ombudsman since fiscal year (FY) 2010. The demand for ombudsman assistance is due in part to ombudsman services being provided at no cost to the injured employee. An injured employee can choose to hire an attorney; however, attorneys can charge up to 25 percent of an injured employee's indemnity benefits. The choice of ombudsman assistance instead of attorney representation resulted in an average savings of \$1,820 in FY 2013 per injured employee claim. In FY 2014, the average savings was \$1,885 per injured employee claim.

Figure 1: Percentage of Benefit Review Conferences and Contested Case Hearings Held With Ombudsman Assistance

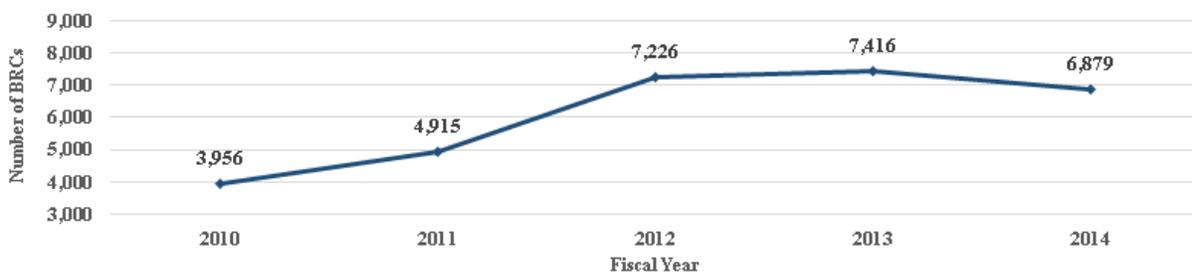


Ombudsman Assistance at a Benefit Review Conference (Mediation)

Although OIEC resolves a significant number of disputed issues prior to entering TDI-DWC's administrative dispute resolution process, many issues advance to a benefit review conference. More than one issue may be included in each benefit review conference. Ombudsmen assisted injured employees in 7,416 benefit review conferences in FY 2013 and 6,879 in FY 2014. Figure 2 shows the number of benefit review conferences held with ombudsman assistance in FY 2010 through FY 2014.

Disputed issues that are not resolved at a benefit review conference may then be scheduled for a contested case hearing.

Figure 2: Number of Benefit Review Conferences with Ombudsman Assistance

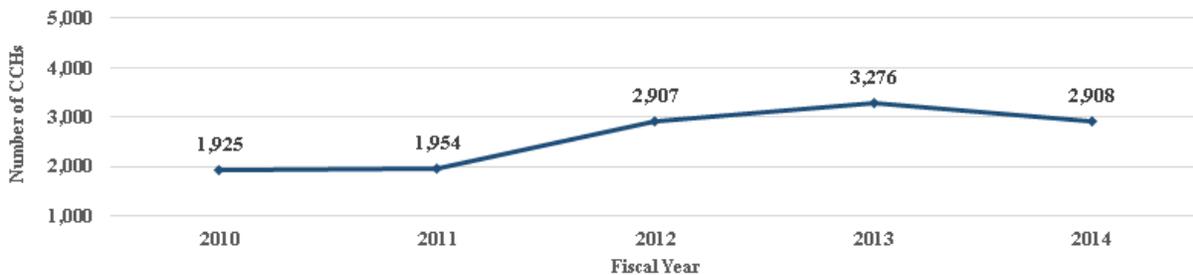


Ombudsman Assistance at a Contested Case Hearing (Administrative Hearing)

In FY 2013, the number of contested case hearings held with ombudsman assistance rose to 3,276 and included 6,804 disputed issues. Similar to a benefit review conference, more than one issue may be included in each contested case hearing. The number of contested case hearings held with ombudsman assistance in FY 2014 was 2,908 and included 6,374 disputed issues. Figure 3 shows the number of contested case hearings held with ombudsman assistance from FY 2010 through FY 2014.

Any party may appeal the Hearing Officer's decision. The appeal is submitted to TDI-DWC's Appeals Panel.

Figure 3: Number of Contested Case Hearings with Ombudsman Assistance

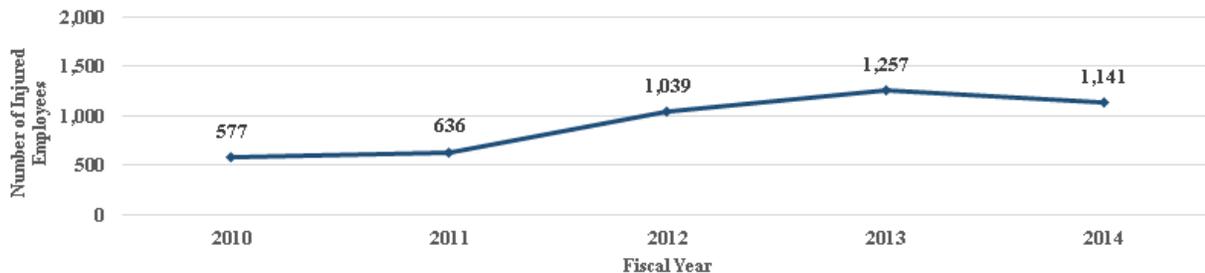


Ombudsman Assistance at the Appeals Panel Level

The number of injured employees prepared for an appeal by an ombudsman has more than doubled since FY 2010. In FY 2010, there were 577 injured employees, with 1,851 issues, assisted with their appeal by an ombudsman. In FY 2014, there were 1,141 injured employees, with 3,092 issues, assisted with their appeal by an ombudsman. More than one issue may be included in each appeal. Figure 4 reflects the number of injured employees with ombudsman assistance at the Appeals Panel level.

Any party that disagrees with the TDI-DWC Appeals Panel decision may appeal the decision by filing suit in district court. The Labor Code prohibits OIEC from assisting injured employees in appeals to the judicial system.

Figure 4: Number of Injured Employees with Ombudsman Assistance at the Appeals Panel Level



Outreach Efforts

Each of OIEC's 20 field offices offers presentations to educate injured employees and other system participants on a given topic. In addition, this is also an opportunity to inform the public about the role that OIEC plays, and answer questions about the Texas workers' compensation system. Recent topics include the following:

- Ten Things to Know About Compensability and Extent of Injury;
- Steps in the Dispute Resolution Process;
- Ten Things to Know About Medical Bills;
- Making Preauthorization for Treatment More Successful; and
- Ten Tips to Navigate Your Claim.

OIEC works with non-profit organizations and workers' advocacy groups as an additional avenue to educate injured employees in the workers' compensation system about OIEC's role and services. OIEC conducts an average of 93 outreach presentations per year.

OIEC routinely 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 exhibition booths free of charge at various organizations' conventions.

Referral Services

One of the statutory duties of OIEC, pursuant to Section 404.103 of the Labor Code, is to refer injured employees to local, state, and federal financial assistance resources; rehabilitation and work placement programs; and other social services. Referrals are made to the Texas Department of Assistive and Rehabilitative 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, and other social and regulatory services as needed. OIEC makes approximately 5,000 referrals each year.

Workers' Compensation Rule and Forms Activity

One of OIEC's core functions is to advocate on the behalf of injured employees in Texas. OIEC does this by reviewing all rule and form proposals, as well as providing written comments on those that may impact injured employees. OIEC's goal in rule and form review is to make it easier for injured employees to navigate the system while ensuring they receive all the benefits to which they are entitled.

OIEC has been successful in recommending changes for the benefit of injured employees on many rules and forms that would have impacted injured employees had the agency not intervened.

Expert Witness Program

In order to assist injured employees in gathering and presenting medical evidence, OIEC initiated a pilot project in FY 2012 to find qualified medical experts to review cases and issue medical opinions. The catalyst for developing this project was the increasing burden of proof placed on

injured employees to present supporting medical evidence. The Expert Witness Program, or Exwit, has now been in operation for over two years. In FY 2013, Exwit was utilized in nine cases, and in FY 2014, Exwit was utilized in 12 cases with a 56 percent win rate. OIEC continues to grow the Exwit program.

Language Line Services

OIEC has many non-English speaking customers. 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 through DWC for injured employees at the contested case hearing level. OIEC utilizes Language Line Services which provides non-English speaking injured employees with a quicker response time in answering their questions telephonically and in-person. Funding for this service was appropriated to the agency in the 83rd Legislative Session. Figure 5 reflects the many languages provided to OIEC’s customers through Language Lines Services in FY 2013 and FY 2014.

**Figure 5: OIEC Language Line Services Summary
FY 2013 and FY 2014**

Language	Calls	Minutes	Average
Spanish	4,205	76,330	18.2
Vietnamese	75	1,544	20.6
Burmese	21	224	10.7
Somali	15	217	14.5
Korean	8	177	22.1
Amharic	7	85	12.1
Arabic	6	222	37.0
Farsi	6	147	24.5
Bosnian	6	144	24.0
Karen	6	48	8.0
French	4	163	40.8
Haitian Creole	2	43	21.5
Portuguese	1	63	63.0
Gujarati	1	46	46.0
Urdu	1	46	46.0
Romanian	1	19	19.0
Oromo	1	17	17.0
Total	4,366	79,535	18.2

OIEC is committed to continue efforts to improve and expand its offerings to non-English speakers in the state. In addition to OIEC’s efforts to reduce language barriers, the agency is also taking steps to ensure access to its website, including documents that are accessible to individuals with impaired vision and other disabilities.

LEGISLATIVE RECOMMENDATION

TEMPORARY INCOME BENEFITS (TIBS)

Background:

An injured employee is entitled to temporary income benefits (TIBs) if the employee has disability and has not attained maximum medical improvement. Labor Code Section 408.103 defines the amount of TIBs that the employee receives. TIBs are calculated as a portion of the injured employee's average weekly wage less post-injury earnings.

For the first 26 weeks of TIBs payments, the amount varies depending on the employee's hourly wage. If the employee earns less than \$8.50 an hour, the TIBs amount is 75 percent of the employee's average weekly wage less post-injury wages. For those making \$8.50 an hour or more, the TIBs amount is 70 percent of the employee's average weekly wage less post-injury wages. The calculation methods are illustrated below:

- Pre-injury average hourly rate of \$8.49 or less (in first 26 weeks only*)
 $75\% \times (\text{Average Weekly Wage} - \text{Post-injury wages}) = \text{weekly TIBS rate}$
- Pre-injury average hourly rate of \$8.50 or more
 $70\% \times (\text{Average Weekly Wage} - \text{Post-injury wages}) = \text{weekly TIBS rate}$

*after the first 26 weeks of TIBS, all TIBS calculations use 70% regardless of the hourly rate.

Issue:

Labor Code Section 408.103(a)(2), which establishes the benchmark hourly earnings rate of \$8.50, became effective September 1, 1993 – more than 20 years ago. This section has never been updated. Conversely, the minimum wage in Texas and the poverty level hourly wage have continued to increase. The minimum wage has increased four times since 1993 for a total increase of 116 percent, going from \$3.35 an hour to the current rate of \$7.25 an hour. The state poverty level hourly wage for a family of four is computed annually and has increased 60 percent, from \$7.05 an hour in 1993 to the current rate of \$11.47 an hour.

Legislative Recommendation:

OIEC recommends amending Labor Code Section 408.103(a)(2) to allow all injured employees who earn \$9.99 or less be entitled to 75 percent of their average weekly wage less post-injury wages for the first 26 weeks.

This legislative change would provide additional income benefits to some of the lowest paid injured employees and necessary financial assistance for the first 26 weeks post injury or until the injured employee returns to work.

Examples and estimates are below illustrating the impact that the recommended change would have on injured employees earning \$8.50 to \$9.99 an hour whose injury/illness causes them to lose all of their income:²

Current:

Pre-injury average weekly wage of \$8.50 an hour

$$70 \text{ percent} \times (340.00 - \text{Post-injury wages}) = \$238.00$$

Pre-injury average weekly wage of \$9.99 an hour

$$70 \text{ percent} \times (399.60 - \text{Post-injury wages}) = \$279.72$$

The TIBs payments are \$102.00 and \$119.88, respectively, less per week than they received prior to the injury.

Recommended Change:

Pre-injury average weekly wage of \$8.50 an hour

$$75 \text{ percent} \times (340.00 - \text{Post-injury wages}) = \$255.00$$

Pre-injury average weekly wage of \$9.99 an hour

$$75 \text{ percent} \times (399.60 - \text{Post-injury wages}) = \$299.70$$

The TIBs payments are \$85.00 and \$99.90, respectively, less per week than they received prior to the injury.

Impact on Individual Injured Employee:

It is estimated that the change would add an additional \$17.00 to \$19.98 per week in TIBs for an injured employee making \$8.50 to \$9.99 an hour.³

² Examples assume \$0 post-injury wages.

³ Calculated by the Office of Injured Employee Counsel.

OTHER ISSUES FOR CONSIDERATION

COMPENSATION FOR CAUSATION NARRATIVES

During the last several years, the Division has raised the evidentiary requirement to prove causation. In the past, the claimant's testimony alone had been sufficient to prove the cause of an injury where it was within common experience that the mechanism of injury could cause the injury. It had been held by the courts and the Appeals Panel that the cause of many injuries was within common experience, such as lifting a heavy object causing a back injury or a fall causing a broken bone. However, in a string of decisions, the Appeals Panel has significantly limited the type of injuries that are within common experience. As a result, expert evidence of causation is now required for the majority of injuries. Those decisions have also established requirements that the expert opinion not be "conclusory" and that expert evidence of causation provide a specific detailed explanation of how the work-related injury caused the claimed condition. As a result, it is no longer sufficient for a doctor to say that within reasonable medical probability a condition/injury was caused by a work-related injury. If such a statement is not accompanied by a detailed discussion of causation, it is rejected. Thus, as a practical matter, the medical evidence that injured employees commonly obtain, if they are able to obtain any evidence of causation, is determined to be insufficient to prove causation.

This new higher evidentiary standard has made it necessary for injured employees to try to obtain detailed expert medical evidence in nearly every case where causation is in issue. This has proven daunting, particularly because, while carriers will hire doctors to testify that injuries are not causally related to the compensable injury, they will not pay for doctors to testify to establish causation. Since detailed medical evidence of causation is required in a much broader spectrum of cases, it may be necessary to consider amending the statute to include language requiring insurance carriers to compensate the treating doctor (or a designated doctor in a disputed claim where there is no treating doctor) for the time necessary to prepare the report with the detailed causation opinion. It may also be necessary to consider compensating the doctor for his or her time for providing testimony at the contested case hearing on the issues of causation and extent of injury. Such a change would provide injured employees a better opportunity to meet their burden of proof on causation and to establish their entitlement to income and medical benefits.

APPENDIX A

THE TEXAS WORKERS' COMPENSATION SYSTEM'S ABILITY TO PROVIDE BENEFITS TO INJURED EMPLOYEES

Texas Workers' Compensation Premiums Continue to Decrease

In order for employers to be able to provide workers' compensation insurance coverage for their employees, it is important that workers' compensation insurance premiums are low.

Texas had a lower workers' compensation premium rate in 2014 than 35 other states, and Texas' premium rate is approximately 13 percent below the median premium rate in the nation, according to Oregon's Workers' Compensation Premium Rate Ranking Summary.⁴ The Oregon study is considered the definitive ranking for workers' compensation costs in the nation. It compares the average premium rates for all 50 states and the District of Columbia.

The Texas Department of Insurance-Division of Workers' Compensation's (TDI-DWC) 2014 Biennial Report⁵ indicates that the average workers' compensation premium cost for Texas employers per \$100 of payroll was \$1.02 in 2012 and has decreased steadily since 2003 when the premium cost was \$2.34.

Slight Increase in Employees Covered in Texas

Texas is the only state in which workers' compensation insurance is not mandatory for private-sector employers. According to a 2014 report on employer participation in the workers' compensation system by the Texas Department of Insurance's Research and Evaluation Group (REG), approximately 67 percent of Texas employers carry workers' compensation insurance in 2014, which is the same percentage that was estimated in 2012.⁶

The report shows that an increasing number of the largest employers in Texas have become non-subscribers in the workers' compensation system, while an increasing number of small and mid-sized employers have increased their workers' compensation coverage rates.

While several large employers have been non-subscribers, the number/percentage of employees covered by a workers' compensation plan in Texas has actually increased. In 2014, approximately 7.7 million employees in the private sector, which is 80 percent of the private sector workforce, are covered by workers' compensation insurance – up from 79 percent in 2012.

⁴ Source: Oregon Department of Consumer & Business Services Workers' Compensation Premium Rate Ranking bi-annual studies <http://www4.cbs.state.or.us/ex/imd/reports/rpt/index.cfm?ProgID=FEARA012>. Oregon produces a bi-annual study of a comparison of workers' compensation premium rates of all states and the District of Columbia.

⁵ Source: Texas Department of Insurance, Division of Workers' Compensation *Biennial Report to the 84th Legislature*, December 2014.

⁶ Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group; *Employer Participation in the Texas Workers' Compensation System: 2014 Estimates*; November 2014.

Conversely, approximately 1.9 million employees in Texas are not covered by workers' compensation insurance. Of the 1.9 million, approximately 1.43 million employees, or 75 percent, are covered in a non-subscriber alternative plan, leaving approximately 470,000 employees without any coverage for an occupational injury.

Benefits for Covered Employees

For employees who are injured on the job and are covered under their employer's workers' compensation insurance, there are four types of workers' compensation benefits:

- **Income benefits** (other than *impairment income benefits*) replace a portion of wages lost because of a work-related injury or illness.
- **Medical benefits** pay for necessary medical care to treat a work-related injury or illness.
- **Death benefits** replace a portion of lost family income for eligible family members of employees killed on the job.
- **Burial benefits** pay for some of the deceased employee's funeral expenses to the person who paid the funeral expenses.

Income Benefits

Except for Lifetime Income Benefits, an injured employee is eligible for income benefits for a maximum of 401 weeks after the date of injury, approximately 7 ½ years. The types of income benefits are:

- **Temporary Income Benefits (TIBs)** – TIBs are paid during the period of temporary disability (lost time from work or underemployment) while the injured employee is recovering from an on-the-job injury;
- **Impairment Income Benefits (IIBs)** – IIBs are paid to compensate injured employees for permanent impairment when the injured employee reaches maximum medical improvement;
- **Supplemental Income Benefits (SIBs)** – SIBs are paid to injured employees for ongoing disability after IIBs have been exhausted. Only employees with at least 15 percent impairment rating and who are unemployed or underemployed as a result of their work-related injuries are eligible to receive SIBs; and
- **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.

The maximum and minimum benefit rates for workers' compensation income benefits are set pursuant to Labor Code Sections 408.047. These figures are adjusted annually. Figure 6 shows minimum and maximum weekly benefit amounts paid in the Texas workers' compensation system since FY 2013.⁷

⁷ Source: Texas Department of Insurance, Division of Workers' Compensation website <http://www.tdi.texas.gov/wc/employee/maxminbens.html>.

Figure 6: Minimum and Maximum Weekly Benefit Amounts Paid

Fiscal Year	SAWW State Average Weekly Wage ⁸	Temporary Income Benefits (TIBs) max (100% of SAWW)	TIBs min	Impairment Income Benefits (IIBs) max (70% of SAWW)	IIBs min	Supplemental Income Benefits (SIBs) max (70% of SAWW)	SIBs min	Lifetime Income Benefits (LIBs) max (100% of SAWW)	LIBs min	Death Benefits max (100% of SAWW)	Death Benefits min
2015 (10/1/14-09/30/15)	\$860.52	\$861.00	\$129.00	\$602.00	\$129.00	\$602.00	N/A	\$861.00	\$129.00	\$861.00	N/A
2014 (10/1/13-09/30/14)	\$849.89	\$850.00	\$127.00	\$595.00	\$127.00	\$595.00	N/A	\$850.00	\$127.00	\$850.00	N/A
2013 (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

According to a 16-state study by the Workers' Compensation Research Institute in 2013,⁹ claims with income benefits being paid for an average of three years in Texas were 30 percent lower than most states. The study suggests that setting the maximum benefit less than 100 percent of the state average weekly wage may be one contributing factor.

REG reported on the income replacement rate (IRR) of income benefits in 2013.¹⁰ IRR is the extent to which lost wages are replaced by income benefits received by injured employees during the injury period. The IRR is calculated as the amount of income benefits paid to the injured employee during the calendar year divided by the amount of after-tax wages that would have been earned during that benefit payment period if the employee had not been injured.

$$IRR = \frac{\text{Amount of income benefits}}{\text{Amount of after-tax wages}}$$

Major findings of the 2013 REG study include:

- The TIBs income replacement rate rose from 86 percent in injury year 2000 to 93 percent in injury year 2011, which indicates that TIBs replaced 93 percent of an injured employee's annual pre-injury wages in 2011.
- The IIBs income replacement rate increased from 73 percent in 2005 to 79 percent in 2010, which indicates that IIBs replaced 79 percent of an injured employee's annual pre-injury wages.
- The SIBs replacement rate increased from approximately 69 percent of after-tax income in injury year 2006 to 76 percent in injury year 2008.

These findings show an improvement in workers' compensation benefit replacement and are key steps forward in helping injured employees meet their financial obligations for themselves and their families while they are recuperating and unable to earn wages equivalent to their pre-injury wages.

⁸ The state average weekly wage (SAWW) is 88 percent of the average weekly wage in covered employment for the preceding year as computed by the Texas Workforce Commission [(Texas Labor Code Section 207.002(c)].

⁹ Source: Workers' Compensation Research Institute; *CompScope™ Benchmarks for Texas, 14th Edition*; WC-13-36; October 2013.

¹⁰ Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group; *Income Benefit Adequacy in the Texas Workers' Compensation System, 2000-2011 – Fiscal Year 2012 Results*; 7/3/2013.

Figure 7 includes the number of claims with at least one day of lost time reported to TDI-DWC and the amount paid by benefit type as reported in TDI-DWC's System Data Report.¹¹ Figure 7 also includes the average benefit amount paid per claim as calculated by OIEC. All data is based on the calendar year of the injury. Note that data included in the table will continue to change as employees injured in those years receive the next level or new type of benefit.

Figure 7: Number of Claims and Amount Paid by Benefit Type and Calendar Year of Injury

Benefit Type	Number / Amount Paid	2009	2010	2011	2012	2013
Temporary Income Benefits (TIBs)	Number of Claims	48,268	50,819	50,350	48,031	40,783
	Amount Paid	\$406,208,617	\$417,580,533	\$358,640,411	\$266,765,160	\$124,604,383
	Average Paid per Claim	\$8,416	\$8,217	\$7,123	\$5,554	\$3,055
Impairment Income Benefits (IIBs)	Number of Claims	24,712	23,674	22,398	18,493	*
	Amount Paid	\$163,015,078	\$160,051,192	\$134,646,142	\$95,421,757	*
	Average Paid per Claim	\$6,597	\$6,761	\$6,012	\$5,160	*
Supplemental Income Benefits (SIBs)	Number of Claims	171	117	*	*	*
	Amount Paid	\$3,788,490	\$1,303,028	*	*	*
	Average Paid per Claim	\$22,155	\$11,137	*	*	*
Lifetime Income Benefits (LIBs)	Number of Claims	132	80	76	58	*
	Amount Paid	\$2,864,154	\$3,316,442	\$645,754	\$514,791	*
	Average Paid per Claim	\$21,698	\$41,455	\$8,497	\$8,876	*
Death Benefits	Number of Claims	185	201	200	240	*
	Amount Paid	\$12,429,598	\$11,004,053	\$8,178,621	\$6,317,714	*
	Average Paid per Claim	\$67,187	\$54,747	\$40,893	\$26,324	*

Note: Payment data is reported when benefits are initiated, or suspended, and when there is a change in the type or amount of benefit. As a result, TDI-DWC may not have records of all payments made to date.

** Complete data not available because claims are not yet mature for this benefit type.*

Key findings pertaining to Figure 7 include the following:

- Approximately half of all injured employees who receive TIBs also receive IIBs.
- Less than one percent of IIBs recipients go on to receive SIBs.

¹¹ Source: Texas Department of Insurance, Division of Workers' Compensation *System Data Report*; Workers' compensation claim data updated through December 2013.

- The total amount of TIBs paid for 2010 injuries was 2.8 percent higher than the total amount of TIBs paid for 2009 injuries. However, the average TIBs paid per claim in 2010 was 2.4 percent lower than the average TIBs paid per claim in 2009.
- The total amount of LIBs paid for 2010 injuries was almost double the amount of LIBs paid for 2009 injuries, although there were fewer claims receiving LIBs.

Although the maximum and minimum benefits have increased fairly consistently within the past few years, OIEC has determined that the TIBs benchmark hourly earnings rate is insufficient to meet the needs of many low-wage earners.¹²

In 2012, approximately 77 percent of injured employees receiving TIBs went back to work within six months, according to TDI-DWC's 2014 Biennial Report.¹³ The report shows that return-to-work outcomes continue to improve – approximately 74 percent of those injured employees that went back to work within six months after the injury remained employed for at least nine successive months, compared to only 66 percent in 2004.

Timeliness of Income Benefits

A recent article written by the previous Commissioner of the Division of Workers' Compensation, Rod Bordelon, stated that 90 percent of TIBs (the most common type of income benefit in the system) are paid in a timely manner.¹⁴

Additionally, according to a 16-state study by the Workers' Compensation Research Institute in 2013,¹⁵ Texas had a higher percentage of claims with the first income benefit payment made within 21 days of an injury than most states, indicating faster first income benefit payments on average. Faster payment after notice to the insurance carrier was the main reason, with noticeable improvement after 2009.

TDI-DWC's enforcement efforts for failure to timely pay income benefits to injured employees and other administrative violations have proven effective in increasing the timeliness of income benefits. Disciplinary orders for 2014 can be found on TDI's website at <https://wwwapps.tdi.state.tx.us/inter/asproot/commish/da/dwcclips2014.asp>.

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 to the person who paid the funeral expenses.

In 2012, the median cost of an adult funeral was \$8,343 (vault included). This cost, however, which is calculated by the National Funeral Directors Association, does not take into account

¹² Additional information regarding OIEC's legislative recommendation is available in this report on page 9 or by contacting OIEC at 1-512-804-4170.

¹³ Source: Texas Department of Insurance, Division of Workers' Compensation *Biennial Report to the 84th Legislature*, December 2014.

¹⁴ Source: TribTalk article by Rod Bordelon, previous commissioner of the Division of Workers' Compensation, *A Workers' Comp System That Works For Texas*; June 27, 2014; <http://www.tdi.texas.gov/wc/dwc/documents/opedtribtalk.pdf>.

¹⁵ Source: Workers' Compensation Research Institute; *CompScopeTM Benchmarks for Texas, 14th Edition*; WC-13-36; October 2013.

cemetery, monument or marker costs, crematory fees (if cremation is selected), or cash-advance items such as flowers and obituaries.¹⁶

TDI-DWC is recommending legislation that will increase the maximum reimbursement for burial benefits to \$10,000. OIEC supports this important recommendation and will monitor the outcome through the 84th Legislative Session. OIEC educates injured employees on death and burial benefits and remains available to assist TDI-DWC and the legislature with matters concerning the benefits.

Medical Benefits – Utilization, Participation, and Access to Care

Medical benefits pay necessary medical care to treat a work-related injury or illness. A 2013 study by REG shows that health care costs accounted for 68 percent of the total benefits in the workers’ compensation system in 2011.¹⁷ Income benefits accounted for the remaining 32 percent. The study also shows that in 2012, 95 percent of all claims received one or more professional services; 30 percent of claims received hospital/institutional services; and 46 percent received pharmacy services.

According to TDI’s 2014 report, *Setting the Standard*, there have been significant reductions in the utilization of evaluation and management (E/M) services, physical medicine services, and other services since the adoption of the 2003 Medical Fee Guideline. Spinal surgeries also decreased but at a more moderate rate. Conversely, impairment rating (IR) examination and report services and durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) services increased significantly. Figure 8 shows the average number of professional services per claim by service type in 2010 through 2012. Note that lost-time claims have more visits per claim than medical-only claims because of their more serious injuries and longer service period.¹⁸

Figure 8: Average Number of Services per Claim Receiving Certain Professional Services by Claim Type, by Injury Year at 12 Months Post Injury¹⁹

Service Year	DMEPOS	Diag/Path/Lab	E/M	IR Exam & Report	Other Services	Physical Medicine	Surgery - Other	Surgery - Spinal
Lost-time Claims								
2010	9.0	8.8	10.1	8.3	3.6	68.2	5.1	4.2
2011	8.9	9.6	10.0	8.3	3.6	67.0	5.3	3.9
2012	8.3	9.6	9.9	8.3	3.5	68.4	5.3	4.2
Medical-only Claims								
2010	3.3	2.6	2.9	2.8	1.9	25.4	1.6	2.8
2011	3.2	2.7	2.9	2.9	1.9	25.7	1.7	2.8
2012	3.0	2.6	2.9	2.9	1.9	26.7	1.7	2.6

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

¹⁶ Source: National Funeral Directors Association; <http://nfda.org/about-funeral-service-/trends-and-statistics.html>.

¹⁷ Source: Texas Department of Insurance Research and Evaluation Group; *Health Care Cost and Utilization in the Texas Workers’ Compensation System 1998-2012*; December 2013.

¹⁸ Source: Texas Department of Insurance, *Setting the Standard - An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers’ Compensation System, 2014 Results*; December 2014.

¹⁹ Ibid.

It is important that all injured employees have adequate access to the medical care they need to recuperate and return to work. The number of physicians treating workers' compensation injuries appears to have decreased in 2013, which may be the result of immature data, according to TDI-DWC's 2014 Biennial Report.²⁰ The decrease follows an increase from 17,219 in 2005 to 18,063 in 2012. The report also indicates that about 40 percent of active Texas physicians participate in the workers' compensation system and 73 percent of these physicians are located in the five largest metro areas: Austin, Dallas, Fort Worth, Houston, and San Antonio.

Timeliness of Medical Care

TDI-DWC's 2014 Biennial Report shows that approximately 81 percent of injured employees received initial medical care either on the same date of injury or within seven days in 2013. Approximately six percent of claims are delayed 29 days or more from the date of injury to the first non-emergency medical treatment, resulting mainly from disputed and/or denied claims.²¹

The report also indicates that the introduction of certified networks appears to have improved the timeliness of medical care for injured employees. Non-network claims averaged approximately eight days from the date of injury to first non-emergency medical treatment in 2013, compared to five to six days for most certified networks. A certified workers' compensation health care network is a health care delivery system that is composed of contracted physicians and providers for the purpose of delivering necessary medical care and health care services to injured employees.

Injured Employee Perspective on Medical Care

The following tables reflect injured employee responses to specific questions regarding medical care provided through certified workers' compensation health care networks compared to outside of the workers' compensation health care network (non-network).

The responses are from TDI's 2014 Network Report Card Results.²² Injured employees in a network appear to experience fewer delays in treatment than injured employees outside of a network. The satisfaction with the quality of medical care was also slightly higher for injured employees in a network.

- **Question:** The treating doctor for your work-related injury or illness gave you a thorough examination.

Response	Non-Network	Network
Strongly Agree/ Agree	81%	80%

²⁰ Source: Texas Department of Insurance, Division of Workers' Compensation Biennial Report to the 84th Legislature, December 2014.

²¹ Ibid.

²² Source: Data from Texas Department of Insurance, Research and Evaluation Group; *2014 Workers' Compensation Network Report Card Results*. Note: The results presented in the report card show a comparison of seventeen groups, sixteen of which are network entities with a total of 92,378 injured employees (42 percent of all claims) for the study period: Texas Star (31,123), 504-Alliance (19,212), Coventry (9,744), Travelers (7,116), Liberty (5,227), Sedgwick (3,006), Forte (2,198), First Health (2,084), Corvel (1,844), 504-Dallas County Schools (1,487), Zenith (1,317), Zurich (1,270), Chartis (1,201), Genex (1,056), 504-Others (834) and all other networks (3,659), relative to the non-network injured employees (126,270).

- **Question:** For your work-related injury or illness, how much of a problem, if any, were delays in health care while you waited for approval from the health care network or insurance carrier? Was it...

Response	Non-Network	Network
Not a Problem	57%	69%

- **Question:** Overall for your work-related injury or illness, how much of a problem, if any, was it to get a specialist you needed to see? Was it...

Response	Non-Network	Network
Not a Problem	62%	67%

- **Question:** Since you were injured, how often did you get care as soon as you wanted when you needed care right away?

Response	Non-Network	Network
Always	48%	54%

- **Question:** Percentage of injured employees who reported always: 1) receiving care as soon as they wanted, 2) getting an appointment as soon as they wanted, and 3) taken to the exam room within 15 minutes of their appointment

Non-Network	Network
43%	48%

- **Question:** Percentage of injured employees who reported no problem getting: 1) a personal doctor they like, 2) to see a specialist, 3) necessary tests or treatment, 4) timely approvals for care

Non-Network	Network
60%	69%

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

Non-Network	Network
65%	66%

- **Question:** Percentage of injured employees who indicated that they were “satisfied” with the quality of the medical care received for their work-related injury

Non-Network	Network
49%	51%

Conclusion

Overall, the Texas workers' compensation system is in good shape. Low premiums continue to make workers' compensation coverage a cost effective option for Texas employees. The number of employees covered by workers' compensation insurance continues to increase.

There is a notable improvement in benefit replacement pay and faster first benefit payment in Texas. The introduction of certified networks appears to have improved the timeliness and satisfaction of medical care for injured employees, and return-to-work outcomes continue to improve.

OIEC's recommendation to raise the TIBs benchmark hourly earnings rate would provide some of the lowest paid injured employees with additional income benefits to provide necessary financial assistance for the first 26 weeks after an injury or until the injured employee returns to work.

OIEC will continue to monitor the adequacy, equity, and timeliness of benefits in the workers' compensation system, and efficiently assist injured employees so that they can return to life outside of the workers' compensation system.

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.