



Office of Injured Employee Counsel

Our mission is to assist, educate, and advocate on behalf
of the injured employees of Texas.

Biennial Report

TO THE 85th Legislature

Jessica Barta
PUBLIC COUNSEL
DECEMBER 2016

oieec

For more information visit www.oiec.texas.gov



Office of Injured Employee Counsel



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December 30, 2016

The Honorable Greg Abbott, Governor
The Honorable Dan Patrick, Lieutenant Governor
The Honorable Joe Straus, III, Speaker of the House of Representatives
The Honorable Rene O. Oliveira, Chair, Business & Industry Committee
The Honorable Kelly Hancock, Chair, Business & Commerce Committee

Dear Governor, Lieutenant Governor, 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 2017 Legislative Report.

This report provides an update of the activities of the agency, recommendations for legislative action and other issues for consideration. OIEC's mission is to assist, educate and advocate for the injured employees of Texas. As such we are providing an analysis of the ability of the Texas 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.Barta@oiec.texas.gov with any questions or if you need additional information.

Respectfully submitted,

Jessica Barta
Public Counsel

Agency Overview & Activities

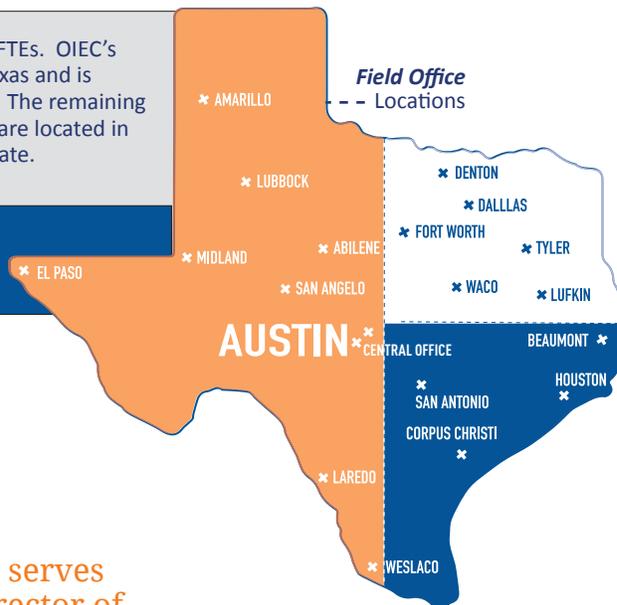
The agency currently resolves approximately 5,000 disputed issues each year...

Agency Overview¹

Chapter 404 of the Texas Labor Code provides the statutory authority for the Office of Injured Employee Counsel (OIEC). OIEC is administratively attached to the Texas Department of Insurance (TDI) as provided by Labor Code Section 404.002(b). TDI provides: administrative assistance and services to OIEC, including budget planning and purchasing; personnel services; facilities; and information technology. OIEC and the Division of Workers' Compensation (DWC) share office space in all 21 offices/locations.

OIEC is appropriated 175 FTEs. OIEC's central office is in Austin, Texas and is home to 15% of OIEC's staff. The remaining 85% of OIEC staff members are located in 20 offices throughout the state.

Figure 1: OIEC's central office is located in Austin with 20 field offices around the state.



in cases pending before appellate courts and the Texas Supreme Court; and addressing systemic issues through the legislative and rulemaking processes. Legal Services attorneys counsel and train OIEC staff on: workers' compensation law; administrative dispute resolution; and hearing skills. Attorneys identify training issues and develop agency-wide and individual training for field office staff.

The Ombudsman Program consists of highly-trained staff who assist unrepresented injured employees with disputes relating to their workers' compensation claim at no cost to the injured employees of Texas. Ombudsmen may assist unrepresented injured employees at any phase of the dispute resolution process held before DWC. This includes assistance before and during Benefit Review Conferences (BRCs), Contested Case Hearings (CCHs), Appeals Panel, and administrative proceedings pending before the State Office of Administrative Hearings.

The Public Counsel serves as the executive director of the agency and is appointed by the Governor with the consent of the Senate.

The Public Counsel serves a two-year term that expires on February 1st of each odd-numbered year. The current Public Counsel, Jessica Barta (Corna), was reappointed by Governor Abbott on April 4, 2016. Since her appointment OIEC, TDI and DWC have worked closely to streamline policies and procedures to ensure the administrative attachment is as efficient and cost effective as possible.

OIEC Customer Support Specialists answer questions injured employees have about the workers' compensation system and educate them about their rights and responsibilities within the workers' compensation system. Customer Support Specialists also refer injured employees to local, state and federal social services agencies for additional assistance.

OIEC's Legal Services Program advocates for injured employees as a class by commenting on rules proposed by the DWC; filing briefs

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.

DISPUTE RESOLUTION PROCESS

The step-by-step guide to resolving your workers' compensation dispute



01

CONTACTING OIEC

The injured employee's first contact with OIEC is with a customer support specialist (CSS) who helps answer questions and educate the injured employee about their rights and responsibilities. The CSS can contact the insurance carrier to attempt to resolve disputes and makes referrals to other local, state, and federal agencies.



02

EARLY INTERVENTION

If the dispute is not resolved by the CSS, the injured employee is referred to an OIEC ombudsman, who is a licensed insurance adjuster trained in workers' compensation law.



03

BENEFIT REVIEW CONFERENCE (BRC)

The ombudsman may request a benefit review conference (BRC) on behalf of the injured employee. Prior to the BRC, the ombudsman assists the injured employee with obtaining all the necessary documents and information relevant to the dispute. The ombudsman assists in presenting the injured employee's position at the BRC.



04

CONTESTED CASE HEARING (CCH)

If a dispute remains unresolved, a contested case hearing (CCH) may be held. The OIEC ombudsman helps the injured employee by assisting with presenting evidence and making arguments at the hearing. An administrative law judge issues a written decision within ten days of the hearing.



05

APPEALS PANEL

Either side can file a written appeal of the contested case hearing (CCH) decision. An OIEC ombudsman can help the injured employee file an appeal by requesting a review by the Appeals Panel. Ombudsmen also assist injured employees with filing responses to appeals by insurance carriers. This is the last step in the dispute resolution process that OIEC assistance is available.



06

JUDICIAL REVIEW

Judicial review is the final step in the dispute resolution process. OIEC is statutorily prohibited from assisting at this point. The court's decision is final, pending an appeal.

Office of Injured Employee Counsel

Our mission is to assist, educate, and advocate on behalf of the injured employees of Texas.

Infograph provided by Office of Injured Employee Counsel
For more information visit www.oiec.texas.gov

12/2016

Agency Overview & Activities

Customer Service Program

The Customer Service Program is the first point of contact at the Office of Injured Employee Counsel. The program educates injured employees on their rights and responsibilities and answers questions about the dispute resolution process. Additionally,

the program identifies disputes and assists the injured employees in attempting to resolve the dispute. The Customer Service Program also refers injured employees to local, state, federal or social services agencies. Finally, the program provides educational outreach

presentations regarding injured employee rights within the workers' compensation system. OIEC Customer Service staff schedule all statutory required prep appointments for the Ombudsman Program and ensures any ombudsman schedule conflicts are addressed.

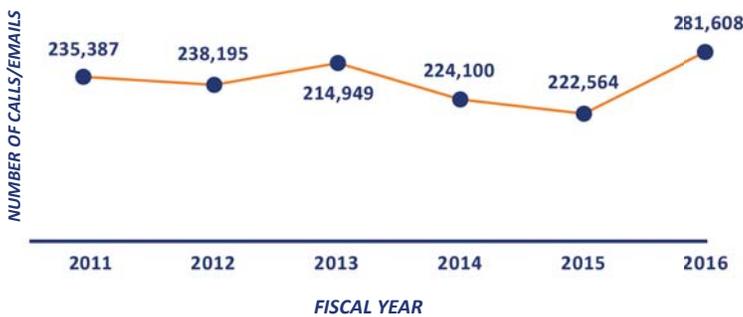


Figure 2: Shows the number of calls/emails to educate or assist injured employees.

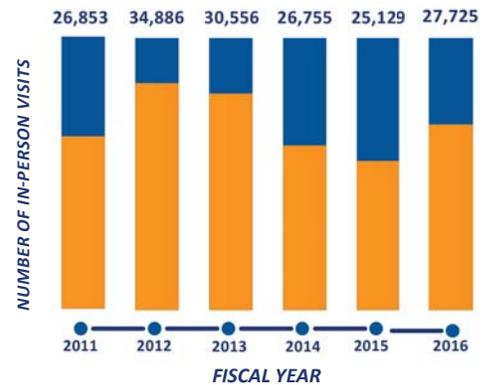


Figure 3: Shows the number of in-person visits (walk-ins) by injured employees assisted at local field offices.

Language Line Services

OIEC assists a significant number of non-English speaking injured employees. OIEC provides assistance in person or over the telephone to injured employees in both English and Spanish and utilizes language line, translation services for injured employees who speak a language other

than English or Spanish.

Figure 4 reflects the various languages provided to OIEC's customers through language line services in FY 2016.

67% of OIEC's Customer Support Specialists speak both

English & Spanish

Agency Overview & Activities

OIEC Language Line Services Summary for FY 2016

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, OIEC also uses WorldLingo, a service that translates OIEC’s website into 15 different languages.



Figure 4: Shows Summary for Language Line Services

Language	Calls	Minutes	Average
SPANISH	3,793	63,048	16.6
FARSI (Afghanistan)	26	555	21.3
AMHARIC (Ethiopia)	22	577	26.2
VIETNAMESE	26	561	21.6
TIGRINYA (Ethiopia)	21	439	20.9
BURMESE (Myanmar/Burma)	19	291	15.3
ARABIC (Western Asia & North Africa)	15	347	23.1
FRENCH	9	114	12.7
RUNDI (Burundi, SE Africa)	5	87	17.4
THAI	4	15	3.8
RUSSIAN	6	152	25.3
MANDARIN (China)	3	93	31.0
SOMALI (Somalia, East Africa)	3	70	23.3
SWAHILI (Tanzania, SE Africa)	3	77	25.7
SINHALESE (Sri Lanka)	2	57	28.5
SERBIAN (Serbia, Bosnia & Kosovo)	1	51	51.0
LAOTIAN (Laos)	1	50	50.0
KINYARWANDA (Rwanda, Eastern Congo)	1	23	23.0
KOREAN	1	6	6.0
ILOCANO (Philippines)	1	4	4.0
BOSNIAN	1	23	23.0
TOTALS	3,963	66,640	16.8

Early Intervention Efforts

OIEC strives to resolve disputed issues as quickly as possible.

The agency currently resolves approximately 5,000 disputed issues each year prior to entering the administrative dispute resolution process at the Texas Department of Insurance, Division of Workers’ Compensation (DWC). A significant number of these disputes are resolved by Customer Support Specialists. This results in fewer dispute resolution proceedings held by DWC, has a positive financial impact for the State of Texas, and allows injured employees to receive benefits they are entitled to sooner.

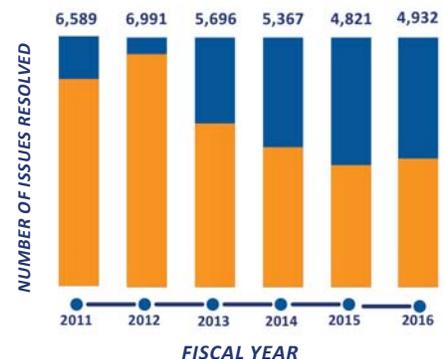


Figure 5: Shows number of issues resolved prior to entering the DWC administrative dispute resolution system

Agency Overview & Activities

Legal Services Program

The Legal Services Program provides legal counsel to the Ombudsman Program and Customer Service Program regarding workers' compensation laws and rules.

Staff review complicated cases with field office staff through file review meetings and work closely with ombudsman who assist injured employees to craft cohesive, valid legal arguments used in BRCs, CCHs and appeals

before the Appeals Panel. They also identify training issues and develop training programs.

The Legal Services Program ensures that injured employees are advocated for as a class during the DWC rulemaking process by participating in stakeholder meetings and commenting on proposed rules. The Legal Services Program is also responsible for advising executive management on applicable policies, rules and State

and Federal laws.

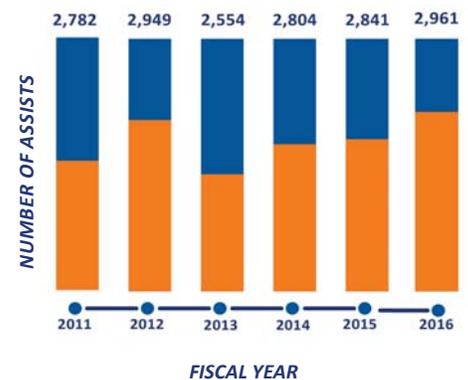


Figure 6: Shows number of assists regional attorneys provides to an ombudsman



Injured employees request ombudsman assistance in more than **44 percent** of the administrative dispute resolution proceedings .

Ombudsman Program

The Ombudsman Program assists unrepresented injured employees with their workers' compensation claims. The Ombudsman program helps to identify disputed issues, gathers supporting documentation and attempts to resolve the issues.

If they are unable to resolve the dispute, the ombudsman requests a proceeding on behalf

of the injured employee and assists them in preparing their case. Ombudsman actively assist injured employees in BRCs and CCHs. The program also conducts educational outreach presentations regarding injured employee rights within the workers' compensation system and refers injured employees to local, state, federal or social service agencies.

In addition to providing early intervention assistance, injured employees requested ombudsman assistance in more than 44 percent of the administrative dispute resolution proceedings in 2016.



Agency Overview & Activities

Ombudsman Assistance at a Benefit Review Conference (Mediation)

A **benefit review conference (BRC)** is an informal mediation held to attempt to resolve a workers' compensation dispute usually between the injured employee and the insurance company. If requested, an ombudsman may assist the injured employee and present the injured employee's position on the dispute.

Although OIEC resolves a significant number of disputed issues prior to entering DWC's administrative dispute resolution process, many issues advance to a BRC.



Figure 7: Shows the number of BRCs with ombudsman assistance.

Ombudsman assisted injured employees in 5,920 BRCs in 2015 and 6,887 in FY 2016. Figure 7 shows the number of BRCs held with ombudsman assistance from FY 2010 to FY 2016. Along with the number of BRCs with ombudsman assistance increasing, the number of issues with ombudsman assistance also increased in FY 2016 from FY 2015 (see Figure 8). More than one issue may be included in each BRC.

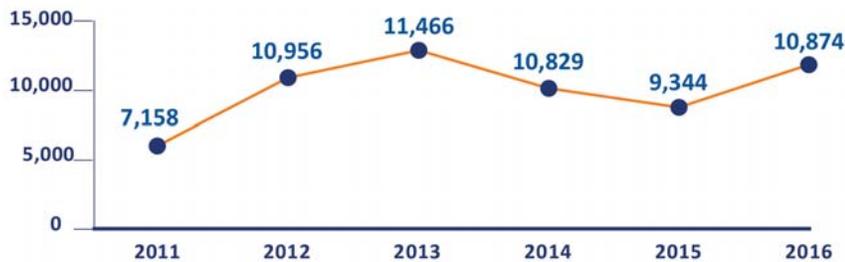


Figure 8: Shows the number of Issues that an ombudsman assisted with at a BRC.



Agency Overview & Activities

Ombudsman Assistance at a Contested Case Hearing (Administrative Hearing)

A contested case hearing (CCH) is a formal hearing which the injured employee and insurance company present evidence before a hearing officer, who is an administrative law judge. A record of the hearing, including sworn testimony is created. If requested, an ombudsman may assist the injured employee by presenting evidence and arguments supporting the injured employee's position.

In FY 2015, the number of contested case hearings held with ombudsman assistance was 2,442 and included 5,820 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 2016 was 2,737 and included 6,109 disputed issues. Figure 9 shows the number of contested case hearings held with ombudsman assistance from FY 2011 through FY 2016.

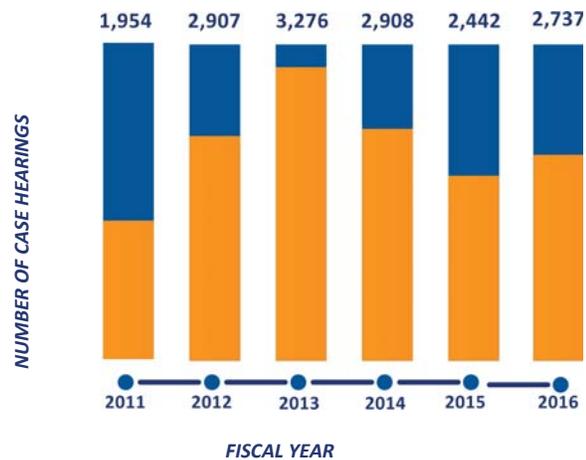


Figure 9: Shows the number of CCHs with ombudsman assistance.

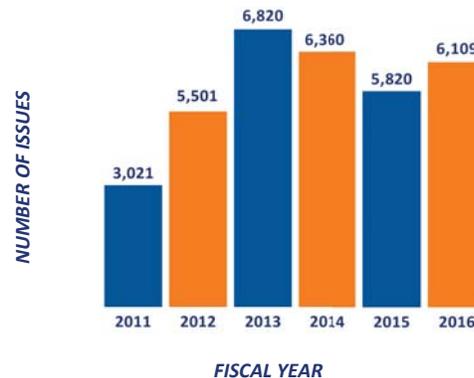


Figure 10: Shows the number of issues that ombudsman assisted with in CCHs.

Ombudsman Assistance in the Administrative Dispute Resolution Process

The demand for ombudsman assistance is due in part to ombudsman services being provided at no cost to the injured employee. An injured employee may choose to hire an attorney; however, attorneys can charge up to 25 percent of an injured employee's indemnity benefits.

Agency Overview & Activities

OIEC assisted in 44 percent of the dispute resolution proceedings in 2016, an increase from 2015. In addition to an increase in the number of proceedings, there was also an increase in the number of issues per proceeding.

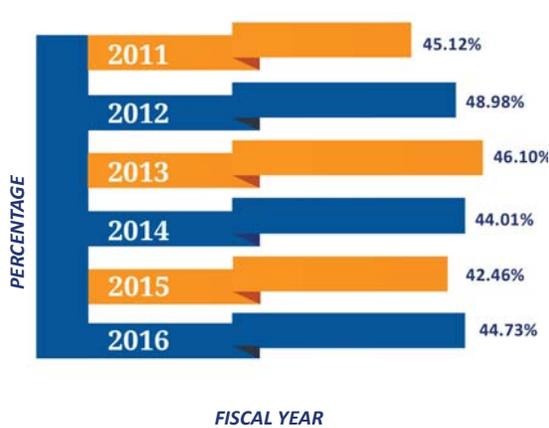


Figure 11: Percentage of BRCS and CCHS held with ombudsman assistance

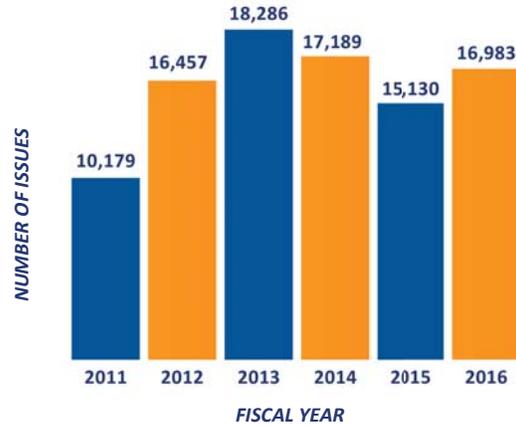


Figure 12: Number of issues OIEC ombudsman assisted with in BRCS & CCHs

Ombudsman Assistance at the Appeals Panel Level

The appeal is the last step in the DWC administrative dispute resolution process. A party who wishes to appeal the decision from a CCH must file a written appeal with DWC's Appeals Panel no later than 15 days after the hearing officer's decision is received. If requested, an ombudsman may assist the injured employee with writing and filing their appeal.

The number of injured employees prepared for an appeal by an ombudsman has more than doubled since FY 2011. In FY 2011, there were 636 injured employees, with 1,851 issues, assisted with their appeal by an ombudsman. In FY 2016, there were 1,348 injured employees, with 3,178 issues, assisted with their appeal by an ombudsman. More than one issue may be included in each appeal. Figure 13 reflects the number of injured employees with ombudsman assistance at the appeals panel level.

Any party that disagrees with the DWC Appeals Panel decision may appeal the decision by filing suit in a court. The Labor Code prohibits OIEC from assisting injured employees with filing suit in a court.



Figure 13: Shows the number of injured employees with ombudsman assistance at the appeals panel level.

Agency Overview & Activities

Outreach Efforts

Outreach has been a major initiative for the current Public Counsel and agency. Each of OIEC’s 20 field offices offer presentations to educate injured employees and other system participants on workers’ compensation. 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.

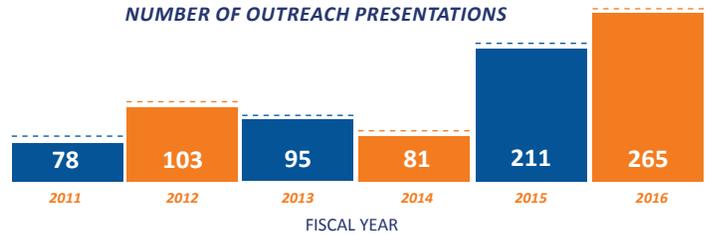


Figure 14: Shows the number of presentations performed by OIEC.

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. The chart above shows the increase in the number of outreach presentations from 78 in FY 2011 to 265 in FY 2016.

Below Is a List of a Few of the Organizations OIEC Partnered with in FY16

- DWC Safety Summit
- Executive Women in TX Government
- Good Shepherd Occupational Clinic
- Injury One Clinic Training
- Labor Rights Week -
Dallas, Houston, San Antonio, El Paso
- Lake Ridge Primary Health Center



- Rehab Without Walls
- TAMU Veterans Career Fair
- Tex Med
- Texas A&M University
- San Antonio Career Fair
- Texas Labor
Management Conference



OIEC makes approximately 5,000 referrals each year.

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 assistance resources; rehabilitation and work placement programs; and other social services.

Legislative Recommendation

Elimination of One Year of Workers' Compensation Requirement

Legislative Recommendation:

Modify the statute to eliminate or at minimum decrease the one year of workers' compensation requirement.

- ★ Texas Labor Code §404.152 requires an ombudsman to have at least one year of experience in workers' compensation.

Issue:

In 1997, during the 75th Legislative Session, the ombudsman requirements were amended to eliminate the three-year experience requirement for the ombudsmen who assist workers with their claims because it was proven to be a barrier to finding qualified people. Proponents reasoned that workers' compensation experience is far less important than the training the commission at the time provided and recommend that the workers' compensation requirement be changed from three years to one year. During the 79th Legislative Session in 2005, the Office of Injured Employee (OIEC) was created. Ombudsman qualifications were not changed at that time.

Problem:

The one year requirement inhibits the agency from being fully staffed in a timely manner and costs taxpayers a significant amount.

- ★ When OIEC experiences an ombudsman vacancy in nearly every situation it takes a minimum of 15 months to be fully staffed. (Posting the position, interviewing, hiring, training and releasing a new ombudsman.)
- ★ Historically, and currently, there is a limited pool of applicants in Texas with one year of workers' compensation experience. With an already limited applicant pool, it becomes increasingly difficult when we must find an individual geographically located where the vacancy exists (OIEC has 21 offices throughout Texas) who also possesses 1 year of workers' compensation experience.

Benefits to Injured Employees:

This recommendation would result in increased customer service, reduction in employee turnover, and tangible savings of taxpayer dollars.

*OIEC has 21 field offices throughout the state that must be staffed at all times. By statute an injured employee must be able to have mediation and hearings held within 75 miles of their residence. Thus, if an ombudsman position is vacant for the entire year while the new employee is training OIEC has no choice but to travel other agency staff to cover their workload. While traveling helps to cover the workload, OIEC also has to shift the workload to other employees in the office. This results in decreased morale which leads to additional turnover.

Legislative Recommendation

Compensation for Medical Causation Letter/Narrative

Legislative Recommendation:

Modify the Texas Labor Code §408.027 to allow injured employees, their representatives or OIEC on behalf of an injured employee, to request a medical causation letter from a physician. If the physician provides a medical causation letter the physician will be paid by the carrier, but this recommendation does not mandate that a physician must provide a medical causation letter.

- ★ 28 Administrative Code Rule §134.120 - Reimbursement for Medical Documentation

Issue:

Currently if a carrier requests a medical causation letter the carrier will compensate the physician for said causation, but if an injured employee or their representative (including OIEC) requests the same letter they must compensate the physician. Other than attorney fees, if they choose to retain one, this is the only instance in the Texas Workers' Compensation System where an injured employee must pay out of pocket expenses. Most injured employees who need such documentation do not have the financial means to compensate a physician therefore, they rely on a physician to do the work pro-bono.

In 2006, 28 Administrative Code Rule §134.120 - Reimbursement for Medical Documentation was adopted and despite comment by OIEC to allow physician reimbursement for medical causation narratives the Division of Workers' Compensation specifically declined to include such a provision with respect to OIEC. There is no historical information available on why this decision was made.

Problem:

Interpretation of case law over the last several years has resulted in the increased burden of proof for injured employees to prevail in the dispute resolution process. In order to overcome the presumptive weight that the Designated Doctor's (DD) (Division of Workers' Compensation appointed doctors) possess, an injured employee or carrier need a medical causation letter to refute the DD's opinion. If a physician does provide a medical causation letter via his/her pro-bono services they are often not detailed enough to overcome the DD's opinion.

Benefits to Injured Employees:

This recommendation attempts to level the playing field for injured employees who are trying to overcome an increased burden of proof in the dispute resolution process.

Other Issues for Consideration

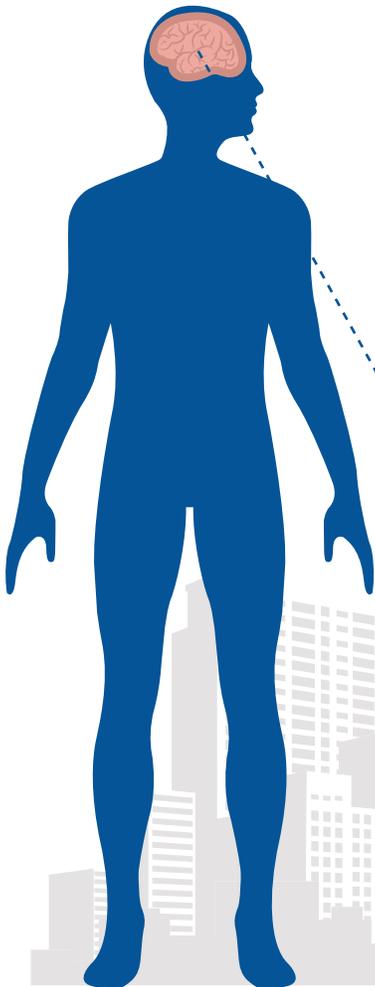
Lifetime Income Benefits (LIBs) for Certain Traumatic Brain Injuries

Under the current workers' compensation system, injured employees who suffer certain types of catastrophic injuries are entitled to LIBs. LAB. CODE § 408.161(a)-(b).

The terms “incurable insanity” and “imbecility” are currently used to describe the degree of a brain injury that qualifies an injured employee to be eligible for LIBs. LAB. CODE § 408.161(a)(6). However, the terms are not currently defined in the Labor Code. As a result, the definition of imbecility has been left to the regulator and the courts. As a recent appellate court decision noted, the terms are outdated, offensive, and lack guidance to stakeholders and DWC in determining eligibility for LIBs for brain injuries.²

The list of injuries triggering liability has remained largely unchanged since the first workers' compensation laws were enacted in Texas over 100 years ago, and it includes a physically traumatic injury to the brain that results in “incurable insanity and imbecility.”³

These terms have little medical significance and are not used by the medical profession. As a result, injured employees and insurance carriers often find it difficult to obtain medical opinions from doctors regarding whether an injured employee has “a physically traumatic injury to the brain resulting in incurable insanity or imbecility” and DWC’s presiding officers have difficulty interpreting the statute when there is a dispute over an injured employee’s eligibility to LIBs.



The terms “*incurable insanity*” and “*imbecility*” are currently used to describe the degree of a brain injury that qualifies an injured employee to be eligible for LIBs.

² See *Chamul v. Amerisure Mutual Ins. Co.*, 486 S.W.3d 116 (Tex. App.—Houston [1st Dist.] 2016, pet. filed.) In April 2016, Amerisure Mutual asked the Texas Supreme Court to define “imbecility” to help settle its dispute with a man seeking LIBs after contending that the appeals court had discarded a definition that has been used in similar cases.

³ In 1997, the Texas Legislature passed House Bill (HB) 3522, which eliminated the eligibility requirement “an injury to the skull resulting in incurable insanity and imbecility” and replaced it with “a physically traumatic injury to the brain resulting in incurable insanity and imbecility” after an injured employee failed to qualify for LIBs because of an electrocution that resulted in a severe brain injury, but did not affect the employee’s skull. In 2001, the Texas Legislature passed HB 2600, which added “third degree burns that cover at least 40 percent of the body and require grafting, or third-degree burns covering the majority of either both hands or one hand and the face.”

Analysis of the Texas Workers' Compensation System

Texas had a lower workers' compensation premium rate in 2016 than 39 other states...

Analysis Overview

OIEC's mission is to assist, educate and advocate for the injured employees of Texas. As such we are providing an analysis of the ability of the Texas Workers' Compensation System to provide adequate, equitable and timely benefits to injured employees at a reasonable cost to employers.

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 competitive.

Texas had a lower workers' compensation premium rate in 2016 than 39 other states, and Texas' premium rate is approximately 21 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) 2016 Biennial Report indicates that the average workers' compensation premium cost for Texas employers per \$100 of payroll was \$0.96 in 2014 and has decreased since 2012 when the premium cost was \$1.02.⁵



Figure 15: Shows the average premium per \$100 of payroll by policy year

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

Increase in Number of Employees Covered in Texas

Texas is the only state in which workers' compensation insurance is not mandatory for private-sector employers. According to the TDI-DWC 2016 Biennial Report, 78 percent of Texas employers carry workers' compensation insurance in 2016. This is an increase compared to 67 percent in 2014.⁶

⁴ Source: Oregon Department of Consumer & Business Services Workers' Compensation Premium Rate Ranking bi-annual studies <http://www4.cbs.state.or.us/ex/ind/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 85th Legislature, December 2016.

⁶ Source: Texas Department of Insurance, Division of Workers' Compensation Biennial Report to the 84th Legislature, December 2014

Analysis of the Texas Workers' Compensation System

Increase in Number of Employees Covered in Texas cont.

According to the TDI-DWC 2016 Biennial Report the percentage of employees covered by a workers' compensation plan in Texas has actually increased. In 2016, approximately 96 percent of the private sector workforce, are covered in the case of a work related injury in Texas (either workers' compensation coverage or coverage from a non-subscriber occupational benefit plan).

Nearly 414,000 employees (about 4 percent) are without any coverage in the case of a work-related injury in Texas. This is down from an estimated 5 percent of private sector employees (about 470,000 employees) in 2014.⁷

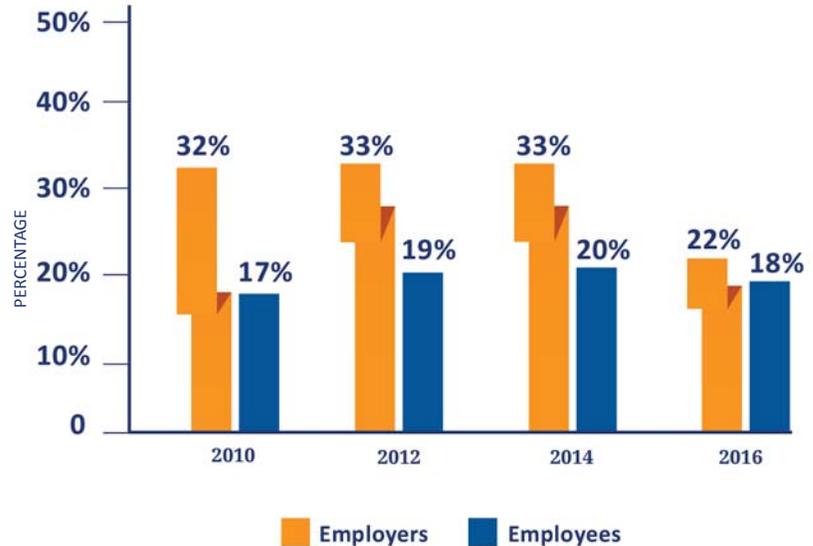


Figure 16: Shows the percentage of Texas employers that are non-subscribers and the percentage of Texas employees employed by non-subscribers, 2010-2016

Figure 16 shows the percentage of non-subscribing employers in Texas decreased from 33 percent in 2014 to 22 percent in 2016.⁸ While the number of non-subscribing employers has decreased by approximately 10 percent unfortunately the number of employees has remained relatively the same since 2010.

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.

⁷ Source: Texas Department of Insurance, Division of Workers' Compensation Biennial Report to the 85th Legislature, December 2016.

⁸ Source: Ibid.

Analysis of the Texas Workers' Compensation System

Income Benefits Adequacy

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 a 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 17 shows minimum and maximum weekly benefit amounts paid in the Texas workers' compensation system since FY 2015⁹.

Figure 17: Minimum and Maximum Weekly Benefit Amounts Paid

Fiscal Year	(SAWW) State Average Weekly Wage ¹⁰	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
2017 (10/1/14-09/30/15)	\$912.69	\$913.00	\$137.00	\$639.00	\$137.00	\$639.00	N/A	\$913.00	\$137.00	\$913.00	N/A
2016 (10/1/13-09/30/14)	\$895.08	\$895.00	\$134.00	\$627.00	\$134.00	\$627.00	N/A	\$895.00	\$134.00	\$895.00	N/A
2015 (10/1/12-09/30/13)	\$860.52	\$861.00	\$129.00	\$602.00	\$129.00	\$602.00	N/A	\$861.00	\$129.00	\$861.00	N/A

⁹Source: Texas Department of Insurance, Division of Workers' Compensation website <http://www.tdi.texas.gov/wc/employee/maxminbens.html>.

¹⁰The 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)].

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Income Benefits Adequacy cont.

According to a 16-state study by the Workers' Compensation Research Institute (WCRI) in 2015¹¹, claims with income benefits being paid for an average of three years in Texas were 40 percent lower than most states. This was an increase of 10 percentage points from 2013. The study suggests that setting the maximum benefit less than 100 percent of the state average weekly wage may be one contributing factor.

Timeliness of Income Benefits

In 54 percent of the claims in Texas the first income benefit payment was made within 21 days of an injury, that is a higher percentage than many states, indicating faster first income benefit payments on average.¹² Notice of injury to the insurance carrier and the injury reporting time are two main contributing factors to the time of the first income benefit payment.

The WCRI 2015 16-state study also shows continued improvement in Texas time to the first income payment from 2008/09 to 2013/14. During this period the time to the first income payment has increased by nearly 8 percentage points. The main reason cited for the increase has been an increase in the speed of payment once the insurance carrier was notified of the injury.

Medical Benefits – Utilization, Participation, and Access to Care

Medical benefits pay necessary medical care to treat a work-related injury or illness. A 2015 study by TDI's Research and Evaluation Group (REG) *Health Care Cost & Utilization in Texas Workers' Compensation System 2000-2014*, shows that health care costs accounted for 68 percent of the total benefits in the workers' compensation system in 2014.¹³ Income benefits accounted for the remaining 32 percent. The study also shows that in 2014, 94 percent of all claims received one or more professional services; 28 percent of claims received hospital/institutional services; and 43 percent received pharmacy services.

It is important that all injured employees have adequate access to the medical care they need to recuperate and return to work. According to the TDI-DWC 2016 Biennial Report there has been a significant increase in the number of active physicians in Texas over the last decade. Despite the number of physicians increasing in Texas by 10,000 since 2010, the physicians treating workers' compensation patients has been decreasing each year since 2011 (see Figure 18).

¹¹Source: Workers' Compensation Research Institute; CompScope™ Benchmarks for Texas, 15th Edition; WC-15-19; April 2015.

¹² Source: Ibid.

¹³Source: Texas Department of Insurance Research and Evaluation Group; Health Care Cost and Utilization in the Texas Workers' Compensation System 2000-2014; December 2015

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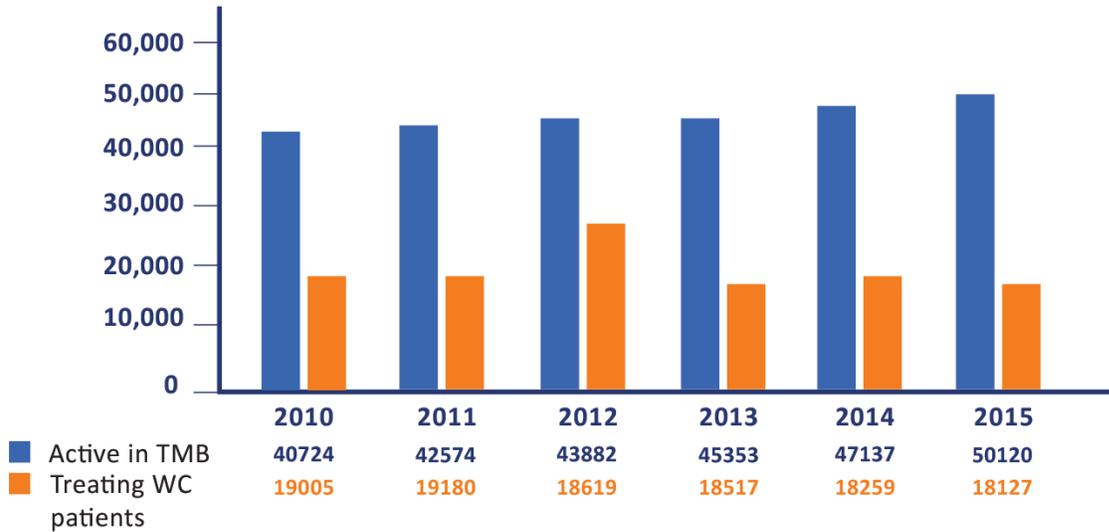


Figure 18: Shows the total number of active physicians who treated workers' compensation claims, service years 2000-2015

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2016.

Notes: 'Active in TMB' refers to the total number of active physicians licensed by the Texas Medical Board. 'Treating WC patients' refers to the number of participating physicians who billed at least one service in a given service/calendar year according to the medical billing data. *2004 shows an average of 2003 and 2005 due to incomplete data.

According to TDI's 2016 report, *Setting the Standard*, based on the results of recent injured employee receiving surveys, 53 percent of employees surveyed in 2016 reported "no problem" in getting the medical care they felt they needed for their work-related injury, a small improvement from 56 percent of workers surveyed in 2014.¹⁴ The availability of doctors who are accepting workers' compensation patients continues to be an issue that should be monitored closely.

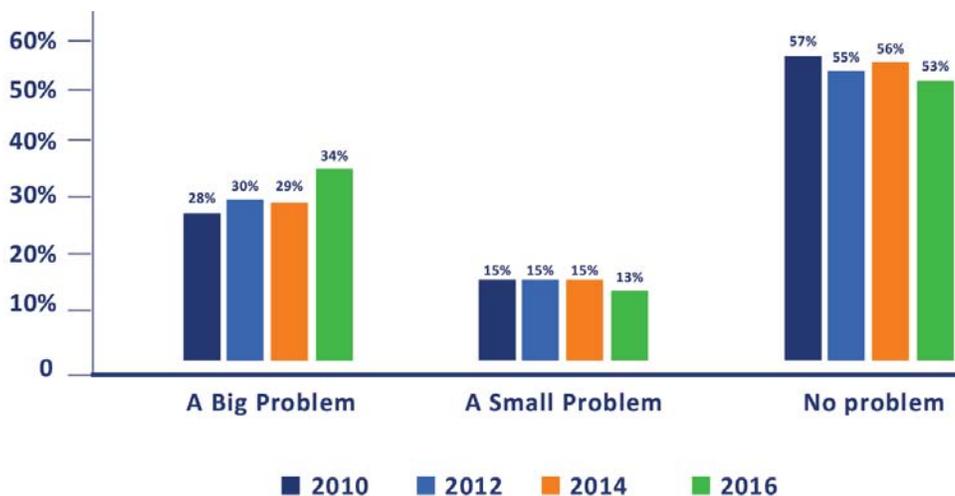


Figure 19: Shows the percentage of injured employees who reported having problems getting medical care for their injury

¹⁴Source: 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*, 2016 Results

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Timeliness of Medical Care

About 84 percent of injured employees received initial medical care within seven days in 2015.¹⁵ Several REG studies have shown that delayed access to initial medical treatments increases overall claim costs and reduces the likelihood of injured employees returning to productive employment. In 2015, approximately five percent of claims failed to receive medical care within the first 29 days or more from the date of injury to the first non-emergency medical treatment.¹⁶

The TDI-DWC 2016 Biennial Report specifies that the introduction of certified networks appears to have improved the timeliness of medical care for injured employees. Non-network claims averaged approximately five days from the date of injury to first non-emergency medical treatment in 2015, compared to three to five 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.¹⁷

Decrease in the Prescription Frequency of "N" Drug Opioids

The U.S. Surgeon General deemed the use of opioid painkillers among Americans an epidemic and initiated a nationwide campaign in 2016 to focus attention on overuse of prescription opioids to treat pain.

The TDI-DWC 2016 Biennial Report details how DWC's 2011 implementation of the closed formulary for Texas workers' compensation claims has begun to address this issue and progress has been made. The closed formulary took effect for new claims with dates of injury on or after September 1, 2011 and for older claims on September 1, 2013.

The closed pharmacy formulary includes all FDA-approved drugs, except investigational and experimental drugs and excludes drugs listed as "N" drugs (or "not recommended" drugs). Drugs excluded from the formulary require pre approval by the insurance carrier.

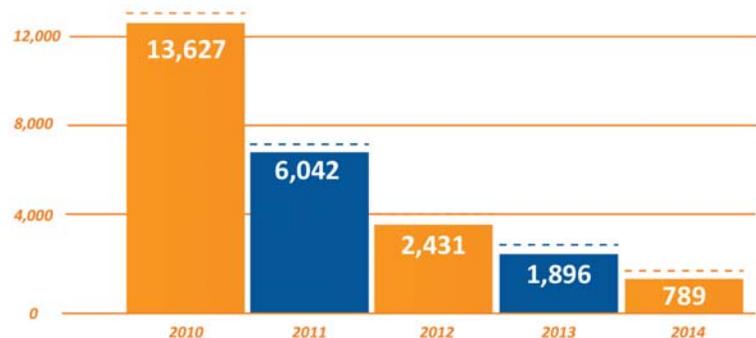


Figure 20: Shows the number of claims receiving "N" drug opioid prescriptions with 90+ MMEs/Day, service years 2009-2014

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2016.

¹⁵ Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, Access to Medical Care in the Texas Workers' Compensation System, 2012 and 2015

¹⁶ 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, 2016 Results.

¹⁷ Source: Texas Department of Insurance, Division of Workers' Compensation Biennial Report to the 85th Legislature, December 2016.

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As a result of the closed formulary, the frequency of all opioid prescriptions was reduced by 11 percent and the frequency of “N” drug opioids was reduced by 81 percent between 2011 and 2012. In addition, the closed formulary has significantly reduced the number of injured employees receiving extremely high dosages of “N” drug opioids from almost 15,000 in service year 2009 to less than 800 by service year 2014 (see Figure 20). The U.S. Centers for Disease Control (CDC) defines an extremely high dose as more than 90 Morphine Milligram Equivalent (MME) per day.¹⁸

Return to Work

In 2013, the most recent data available from TDI-DWC, 83 percent of injured employees receiving Temporary Income Benefits (TIBs) went back to work within six months. That’s an increase from the 76 percent in 2012 (see Figure 21). The TDI-DWC 2016 Biennial Report attributes the significant rebound in the 2013 initial return-to-work rate to a significant increase in statewide oil and gas jobs. Figure 21 also shows that temporary income benefit recipients who initially returned to work and remained employed declined from 2009 to 2011, due mainly to the economic decline and high unemployment rates.¹⁹

According to results from the 2016 Workers’ Compensation Network Report Card produced by the TDI Workers’ Compensation Research Evaluation Group injured employees who receive medical care from networks reported higher return-to-work rates than workers with non-network claims. They also had less time away from work.

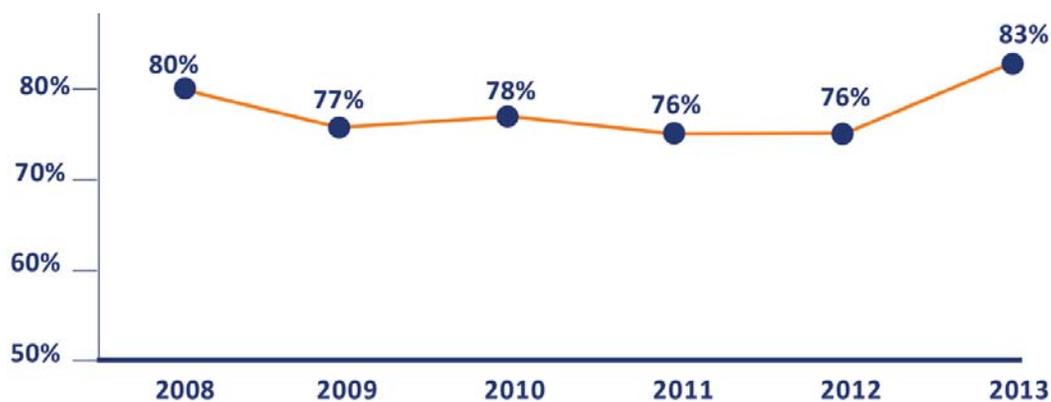


Figure 21: Shows the percentage of injured employees receiving TIBs who initially returned to work within 6 months post-injury.

Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2015.

¹⁸ Source: Texas Department of Insurance, Division of Workers’ Compensation Biennial Report to the 85th Legislature, December 2016.

¹⁹ Source: Ibid.

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Claim Denial Rates and Requests for Indemnity Dispute Resolution

According to the TDI-DWC 2016 Biennial Report the number of workers' compensation claims initially denied or disputed by the insurance carrier as not work-related remained the same in 2015 and 2014 at 13 percent, and has remained relatively constant for the past five years.

The TDI-DWC 2016 Biennial Report also states 5 percent of workers' compensation claims ended up in a dispute at DWC in 2015, this is down from seven percent in 2014. Along with the number of claims filed with DWC decreasing the number of BRC requests decreased as well. Despite the overall BRC requests decreasing for DWC the number of BRCs and CCHs with OIEC assistance increased in 2016. Overall OIEC assistance in proceedings increased in 2016 to 44.7 percent.

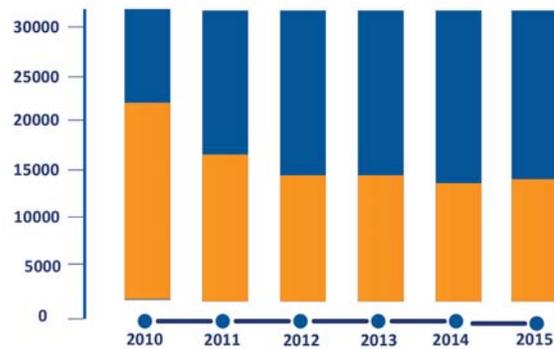


Figure 22: Shows the number of BRC requests received, 2009-2015

Source: Texas Department of Insurance, Division of Workers' Compensation, System Data Report, and Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2016



TDI-DWC 2016 Biennial Report acknowledged there has been a shift in the types of disputes they typically handle.

While there has been a decline in the overall number of BRC's, the TDI-DWC 2016 Biennial Report acknowledged there has also been a shift in the types of disputes they typically handle.

Since 2011, a higher proportion of the disputes requested included issues involving the extent of an employee's injury, the designated doctor's determination regarding the date of the injured employee's maximum medical improvement (MMI) or the impairment rating assigned to an injured employee's claim by the designated doctor. OIECs assistance in extent of injury disputes has also increased.

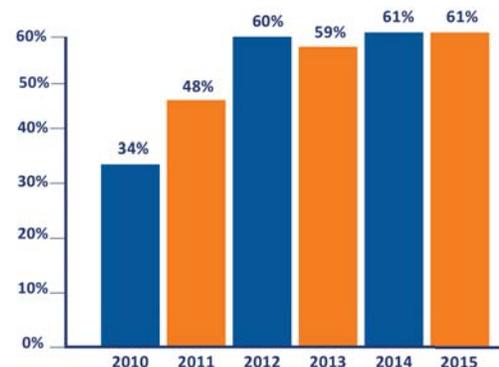


Figure 23: Shows the percentage share of total BRC issues involving disputes over extent-of-injury, designated doctor impairment rating, and designated doctor MMI date, calendar year 2009-2015

Source: Texas Department of Insurance, Division of Workers' Compensation, System Data Report, and Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2016.

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Conclusion

Since the major legislative reforms within the workers' compensation system in 2005 the Texas Workers' Compensation System has continued to see improvement in many areas. Premiums and costs to employers have dropped significantly resulting in more employees being covered by a workers' compensation plan. There has been an improved access to medical care, timeliness of treatment and earlier return to work timeframes.

OIEC assists injured employees in nearly half of all proceedings within the workers' compensation system and continues to see an increase in the number of disputed issues per proceeding. Additionally, OIEC has seen a noticeable shift in the nature and complexity of disputes, specifically a significant increase in disputes in which medical causation reports are necessary. For this reason OIEC has recommended to the 85th Texas Legislature that doctors may request compensation for the creation of such reports when a dispute arises.

While the Texas Workers' Compensation System in many respects is a model for other state workers' compensation systems, OIEC and the services it provides are unique to Texas. No other state offers the level of assistance, education and advocacy available to injured employees facing a dispute with their workers' compensation claim that OIEC is able to provide. OIEC looks forward to continuing to work with the 85th Texas Legislature and to continue to set the standard for injured employee assistance in the nation.

