

Division of Workers' Compensation

Biennial Report to the 88th Legislature



December 2022



PO Box 12050 | Austin, TX 78711 | 800-252-7031 | tdi.texas.gov/wc

December 1, 2022

The Honorable Greg Abbott, Governor
The Honorable Dan Patrick, Lieutenant Governor
The Honorable Dade Phelan, Speaker of the House
The Honorable Members of the Texas Legislature

Dear Governors, Speaker, and members of the Texas Legislature:

In accordance with [Texas Labor Code Section 402.066](#), I am pleased to submit the Texas Department of Insurance, Division of Workers' Compensation's (DWC) biennial report to the 88th Texas Legislature. This report provides an update on the Texas workers' compensation system and briefly describes legislative recommendations that I believe will improve the state's ability to effectively and efficiently regulate the workers' compensation system.

I am available to discuss any of the issues in the report and provide you with technical assistance. Please contact Deputy Commissioner for Operations and External Relations Kimberly Donovan at 512-804-4405 if you have any questions or need any additional information. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Nelson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

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Introduction

The Texas workers' compensation system has evolved over the past 17 years – from an expensive system for employers that did not provide positive outcomes for injured employees to a system that many other states now look to as a model. Claim and system costs are down, primarily driven by:

- fewer injuries and claims;
- more efficient and effective medical care;
- fewer disputes; and
- better return-to-work rates for injured employees.

As a result, workers' compensation insurance rates have significantly declined, encouraging more Texas employers to provide workers' compensation coverage for their employees.

Our focus this coming biennium will be continuing to find new ways to leverage technology through existing resources to improve administrative efficiencies for both DWC and system stakeholders.

This includes continuing technology improvements to make interactions with stakeholders more user-friendly, working to resolve disputes more quickly, and using systems to ensure cohesive internal coordination across program areas.

This report presents system trends that allow DWC, policymakers, and system stakeholders to gauge the relative health of the Texas workers' compensation system and consider whether additional legislative changes are necessary.

Key Findings

Workers' compensation insurance market:

Since 2003, workers' compensation insurance rates have dropped nearly 77%, while insurance companies writing in Texas averaged a 10% return on net worth.

Employer participation: In 2022, the percentage of employers that were non-subscribers (25%) was the lowest in six years. The percentage of Texas employees working for non-subscribing employers (17%) was the lowest in 12 years.

Medical costs: Texas' cost per claim with 12 months maturity is about 22% less than the median cost of 18 states analyzed in a recent study.

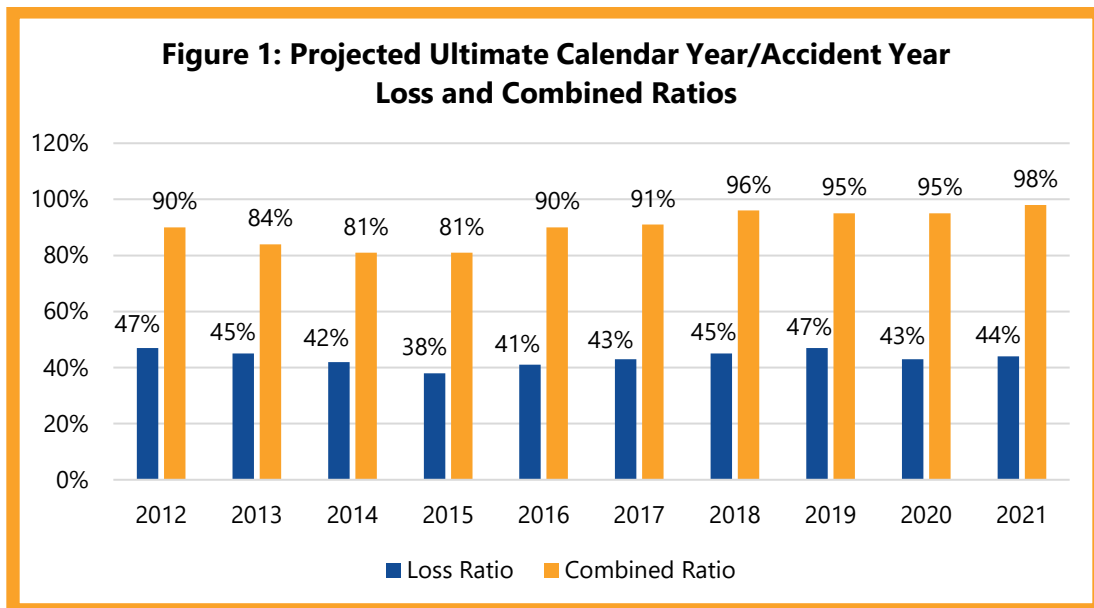
Return to work: There have been steady improvements in return-to-work rates for Texas injured employees in the last decade. 83% of employees injured in 2020 returned to work within six months, and 92% went back to work within the first year after their injury.

Update on Insurance Rates/Premiums

A successful workers' compensation system ensures that employers have access to affordable workers' compensation insurance to cover their employees. This is even more important in Texas, since workers' compensation insurance coverage is voluntary for private employers. In 2021, 317 insurance companies wrote workers' compensation insurance in Texas, and the total direct written premium for the Texas workers' compensation insurance market was about \$2.2 billion. The top 10 insurance company groups wrote about 73% of the market. The top writer, Texas Mutual Insurance Company, had 42% of the market share.

Texas continues to have a healthy workers' compensation insurance market, which encourages competition from insurance companies and allows employers to purchase workers' compensation coverage at affordable rates. One important measure of market health is the size of the residual market (policies written by the insurer of last resort). In 2021, the residual market represented only about 0.49% of the Texas workers' compensation insurance market. In fact, the residual market has been consistently less than 1% of the market for over 20 years.

The last decade has been profitable for insurance companies writing workers' compensation insurance in Texas. In 2021, the projected accident year combined ratio for workers' compensation in Texas was 98%. This means that, for every dollar an insurance company collects, it will pay an estimated 98 cents to cover losses and expenses and keep the remainder as profit. Figure 1 shows the projected workers' compensation loss ratio and the combined ratio for the last decade. Insurance companies writing in Texas averaged a 10% return on net worth (net income after taxes to net worth) over the last decade, outperforming the national average of 8.8%.



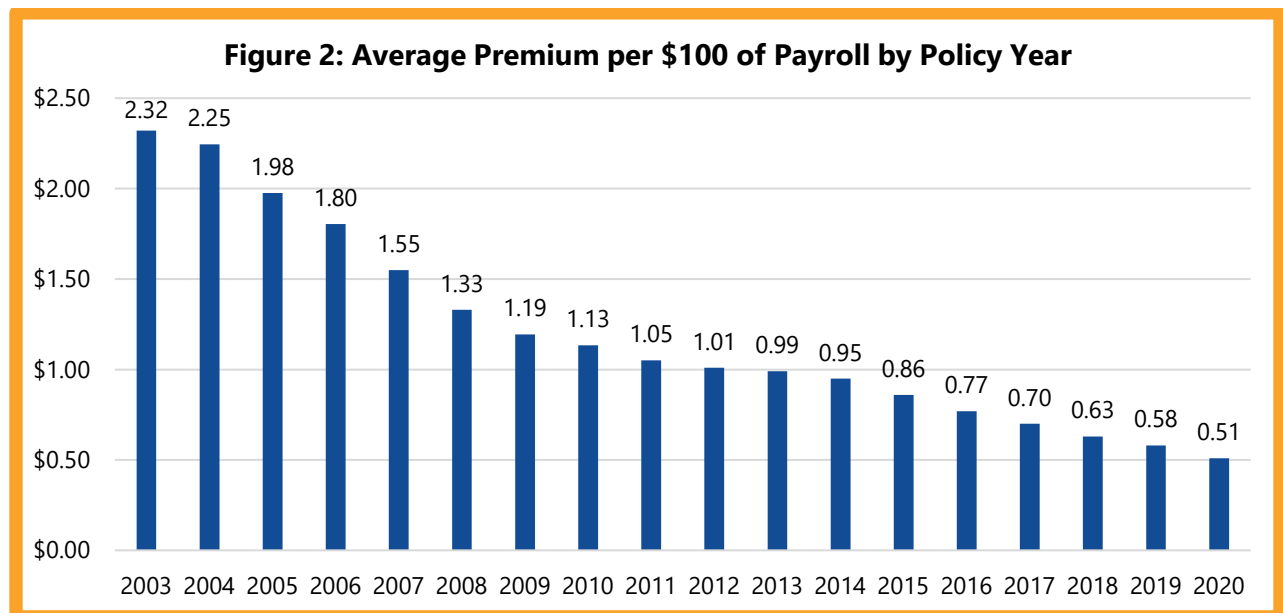
Source: National Council of Compensation Insurance's Underwriting Results by State, 2022.

Since 2003,
workers' compensation
insurance rates have
dropped nearly **77%**.

Insurance rates have declined significantly over time, making insurance coverage more affordable. Since 2003, workers' compensation insurance rates have dropped nearly 77%. While insurance rates have continued to decline in the last decade, these rates are just the start of the workers' compensation insurance pricing process. What employers pay—the insurance premium—reflects not only rates, but also mandated rating programs, such as experience ratings and premium discounts, as well as optional rating tools, such as schedule rating plans and negotiated deductibles.

Figure 2 shows the average premium per \$100 of payroll for policy years 2003-2020, reflecting year-to-year changes in premiums charged. Beginning with policy year 2004, the average premium per \$100 of payroll began to decrease steadily as insurance companies lowered rates and increased the use of optional rating tools. As of policy year 2020, the average premium per \$100 of payroll was 51 cents – a 78% reduction since 2003.

Since 2003,
average workers'
compensation premium
costs per \$100 of
payroll declined about
78%.

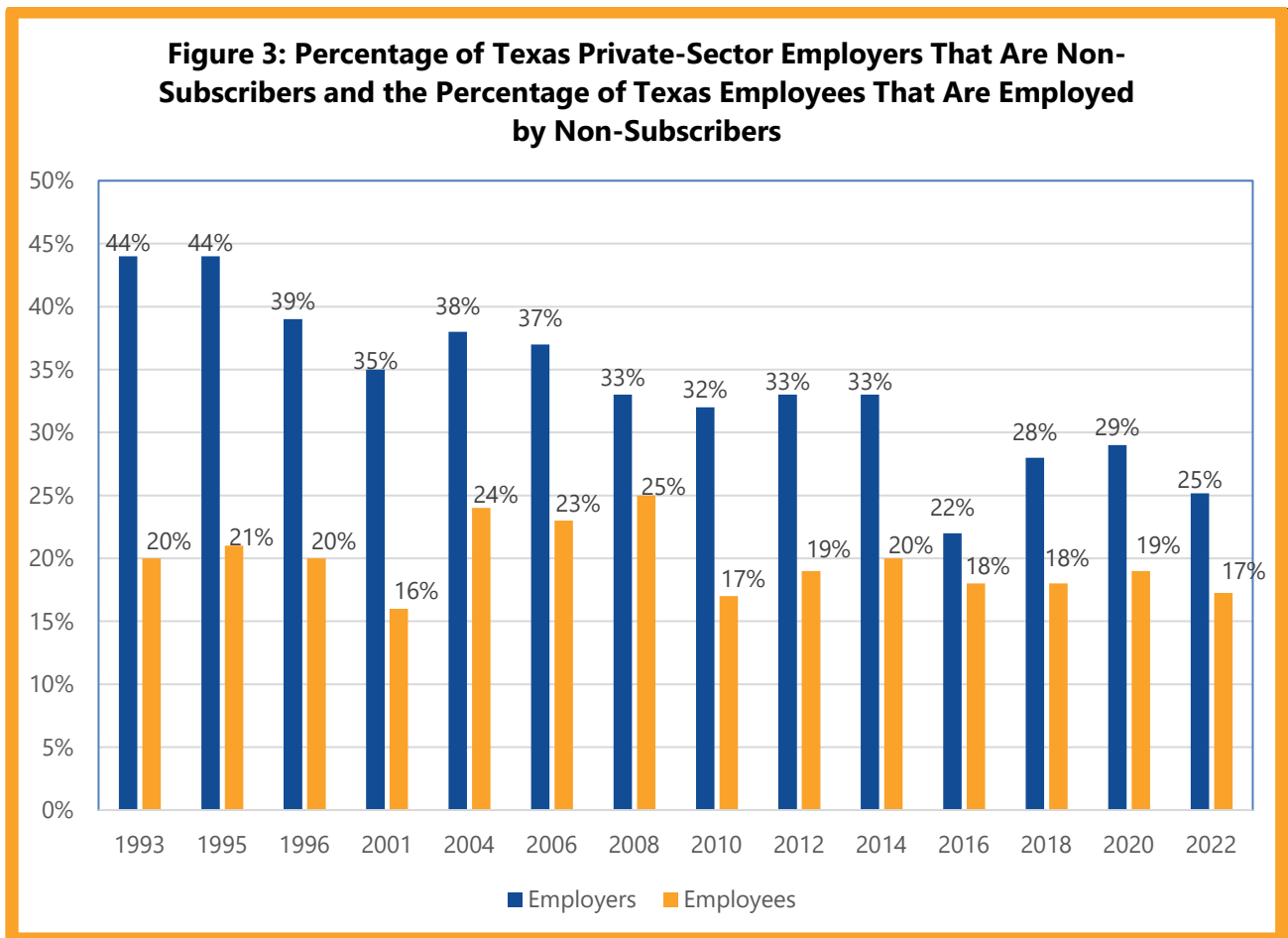


Source: The Texas Workers' Compensation Financial Data Call and data compiled by the National Council on Compensation Insurance, 2022.

Employer Participation in the Workers' Compensation System

Texas is the only state that allows private-sector employers the option of not purchasing workers' compensation insurance or becoming "non-subscribers" to the state system. It has been this way since 1913.

In 2022, the percentage of employers that were non-subscribers (25%) was the lowest in six years (Figure 3). The percentage of Texas employees working for non-subscribers (17%) was the lowest in 12 years. Table 1 shows the percentage of private Texas employers who are non-subscribers according to the number of employees they have.



Source: Survey of Employer Participation in the Texas Workers' Compensation System, Public Policy Research Institute at Texas A&M University and the Texas Department of Insurance, Division of Workers' Compensation Research and Evaluation Group, 2022.

Note: DWC did not update reports biennially with this data before 2004.

Table 1: Percentage of Texas Private-Sector Employers That Are Non-Subscribers by Employment Size: 1995-2022

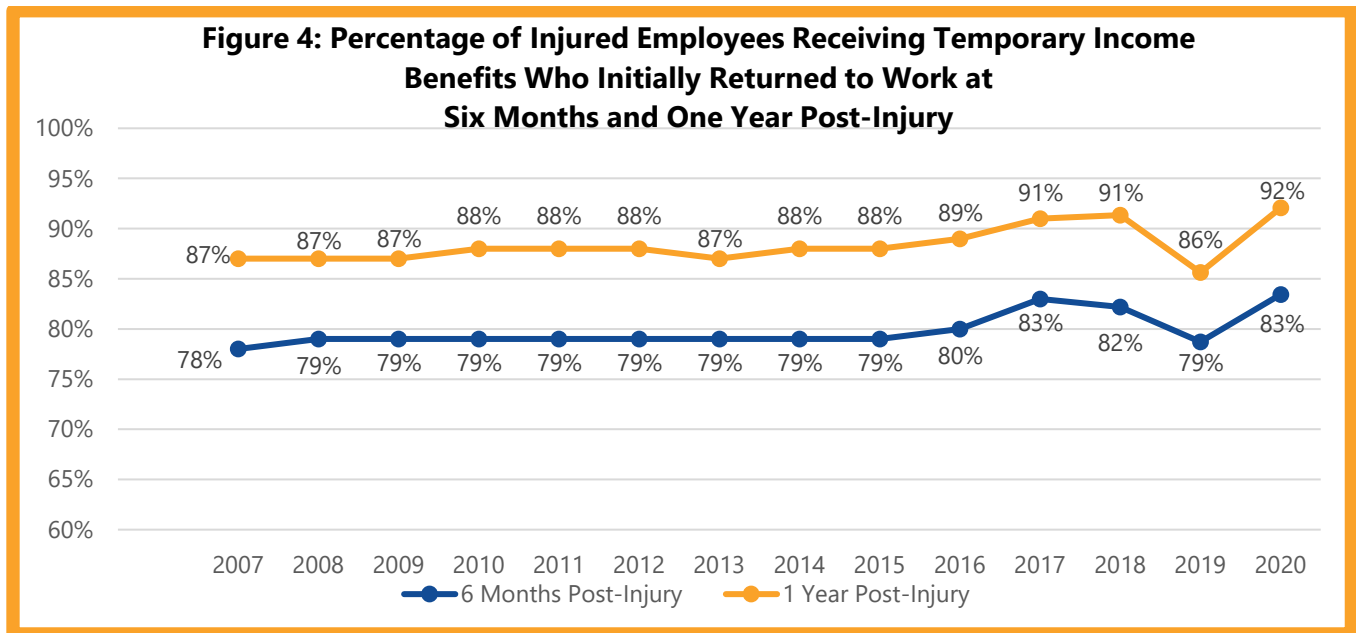
Employment Size	1995	1996	2001	2004	2006	2008	2010	2012	2014	2016	2018	2020	2022
1-4 Employees	55%	44%	47%	46%	43%	40%	41%	41%	43%	31%	36%	40%	31%
5-9 Employees	37%	39%	29%	37%	36%	31%	30%	29%	27%	19%	27%	21%	18%
10-49 Employees	28%	28%	19%	25%	26%	23%	20%	19%	21%	10%	16%	16%	13%
50-99 Employees	24%	23%	16%	20%	19%	18%	16%	19%	18%	10%	10%	9%	7%
100-499 Employees	20%	17%	13%	16%	17%	16%	13%	12%	14%	11%	10%	10%	12%
500+ Employees	18%	14%	14%	20%	21%	26%	15%	17%	19%	19%	20%	22%	20%

Source: Survey of Employer Participation in the Texas Workers' Compensation System, Public Policy Research Institute at Texas A&M University and the Texas Department of Insurance, Division of Workers' Compensation Research and Evaluation Group, 2022.

Note: DWC did not update reports biennially with this data before 2004.

Return to Work

Return-to-work rates have steadily improved for Texas injured employees in the last decade. Figure 4 shows that 83% of employees injured in 2020 returned to work within six months, and 92% returned within the first year after their injury.

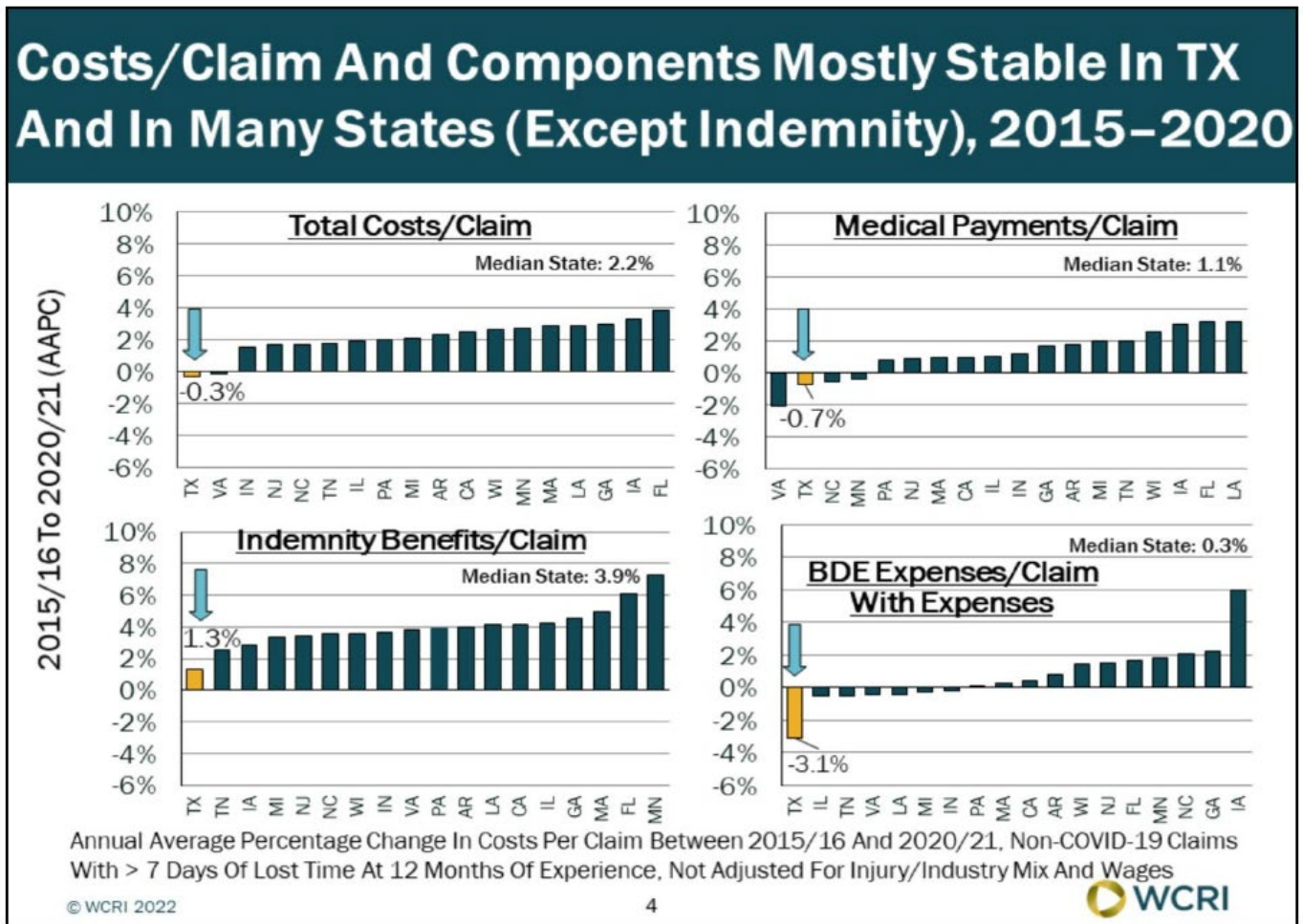


Source: Texas Department of Insurance, Division of Workers' Compensation Research and Evaluation Group, 2022.

Total Claims Costs: Texas vs. Other States

Total Claims Cost Mostly Stable

Recent data from the Workers' Compensation Research Institute's annual Benchmarks for Texas report shows that total costs per non-COVID-19 claims with more than seven days of lost time at 12 months post-injury decreased 3% per year from 2015 to 2016, followed by an increase of 4% per year from 2017 to 2019, and a 3% decline in 2020. There has been little change in cost components from 2015 to 2020. Medical payments per claim and indemnity benefits per claim were stable, while benefit delivery expenses per claim have decreased moderately at about 3% per year. Benefit delivery expenses (BDE Expenses) include expenses for managing medical costs and litigation-related expenses on individual claims.



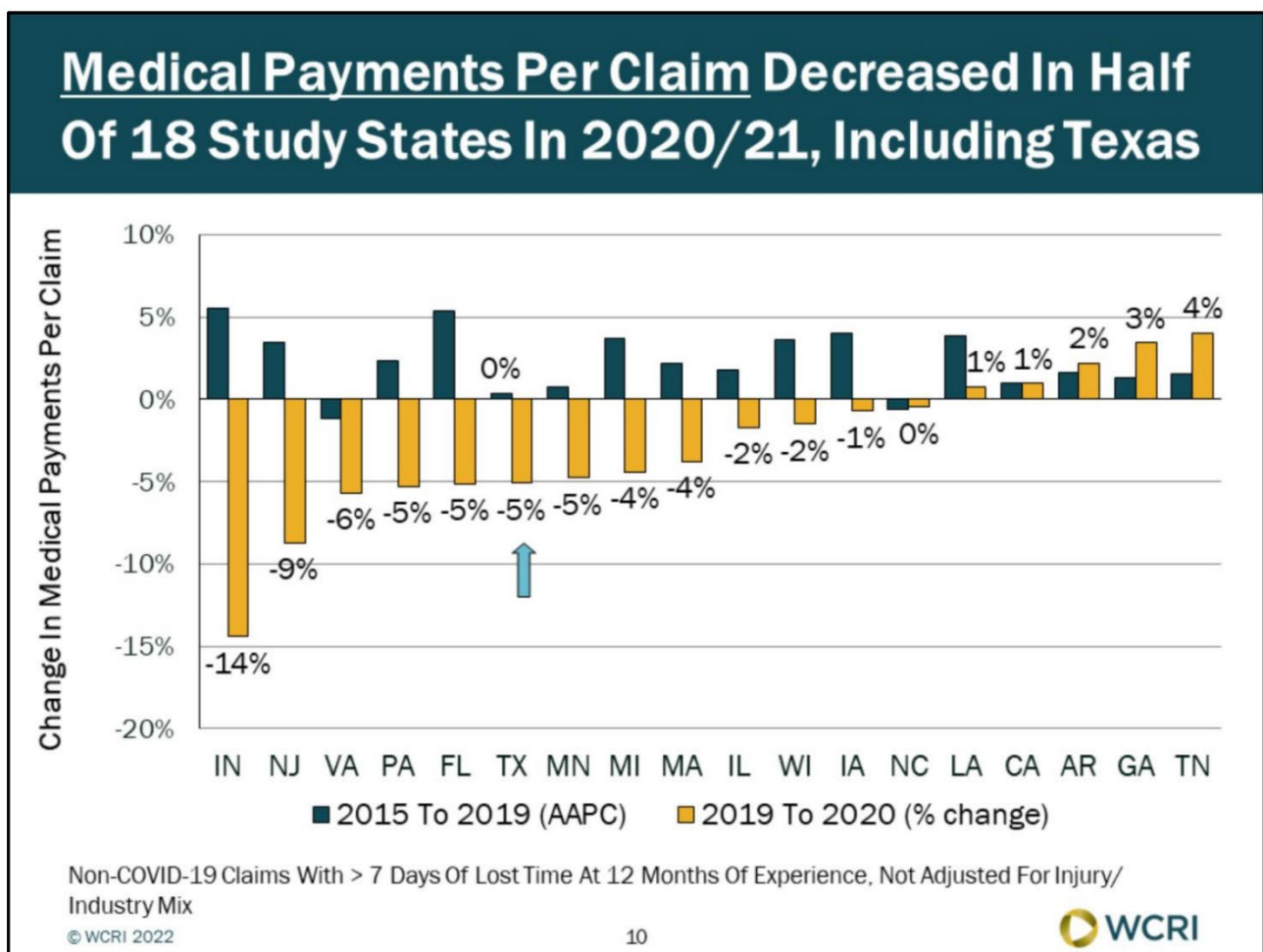
Source: Workers' Compensation Research Institute, 22nd Edition, CompScope™ Benchmarks for Texas, 2022.

Medical Payments per Claim

In 2005, the Texas Legislature made several statutory changes to address Texas' high medical costs and poor outcomes for injured employees including:

- adopting evidence-based treatment guidelines;
- creating a pharmacy closed formulary; and
- certifying workers' compensation health care networks.

Since then, total medical payments have declined in the system. This is primarily due to fewer claims needing treatment and less costly medical care. Texas was 22% lower than the 18-state median for 2018 claims at 12 months post-injury, declining by 5% in 2020 alone. The decrease was driven mainly by a decrease in the share of claims with payments greater than \$100,000.



Source: Workers' Compensation Research Institute, 22nd Edition, CompScope™ Benchmarks for Texas, 2022.

Success of the Pharmacy Closed Formulary

A major component of the 2005 legislative reforms was DWC's adoption of a pharmacy closed formulary for injured employees in the Texas workers' compensation system. DWC first implemented a pharmacy closed formulary in 2011 to manage drug prescriptions to injured employees. The closed pharmacy formulary includes all Food and Drug Administration-approved drugs. It excludes drugs listed as N-drugs (or "not recommended" drugs) in the adopted treatment guidelines, compounded drugs, and investigational and experimental drugs.

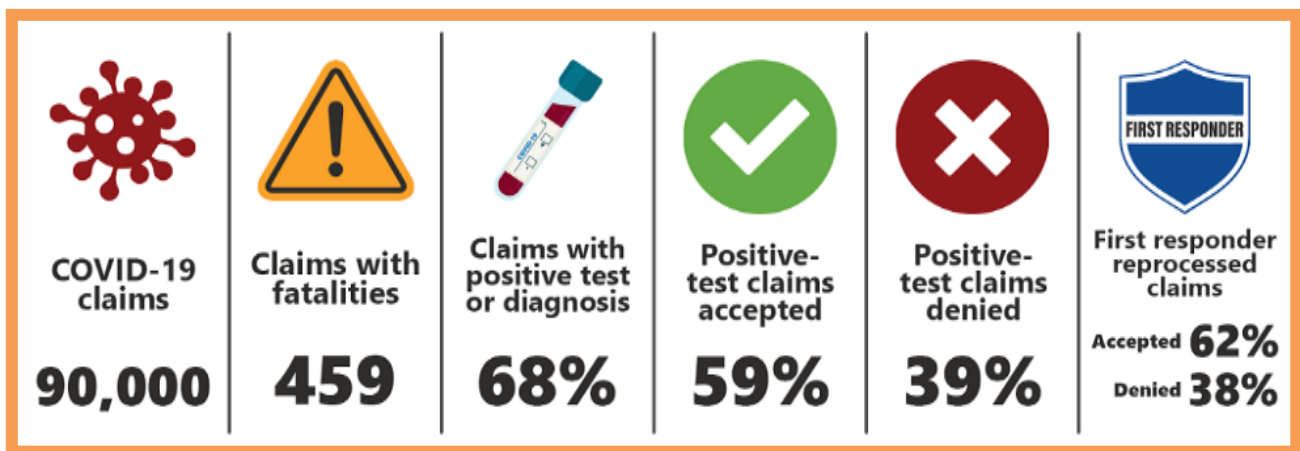
The formulary significantly reduced drug costs and improved injured employee outcomes and return-to-work rates. Most importantly, it has measurably reduced opioid use in Texas.

For example, between September 1, 2021, and August 31, 2022, only 42 injured employees received a fentanyl prescription. Before the formulary, about 575 injured employees received prescriptions for opioids including fentanyl.

System prescription costs continue to fall totaling only \$46.9 million in calendar year (CY) 2021, which is a decrease of \$3.1 million from 2020. This seems to be due to a decrease in prescriptions per claim compounded by a substantial decrease in the number of injured employees receiving prescriptions over the past several years (112,653 in CY 2017 to 72,722 in CY 2021). DWC's Research and Evaluation Group will conduct a significant review of pharmacy activity and metrics during fiscal year 2023.

COVID-19 and the Impact on the Workers' Compensation System

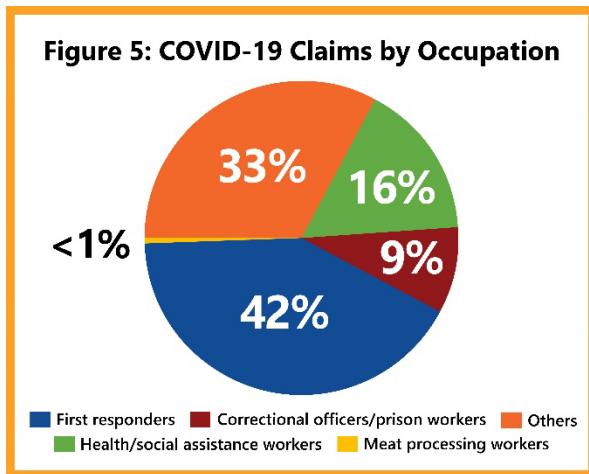
Since 2020, oversight of COVID-19 claims became crucial for DWC to understand the impact of the pandemic on the state's workers' compensation system. After the COVID-19 emergency declaration on March 13, 2020, DWC began creating quarterly reports on claim information collected from DWC administrative data, insurance carrier data calls, and statistics from the Texas Department of State Health Services.



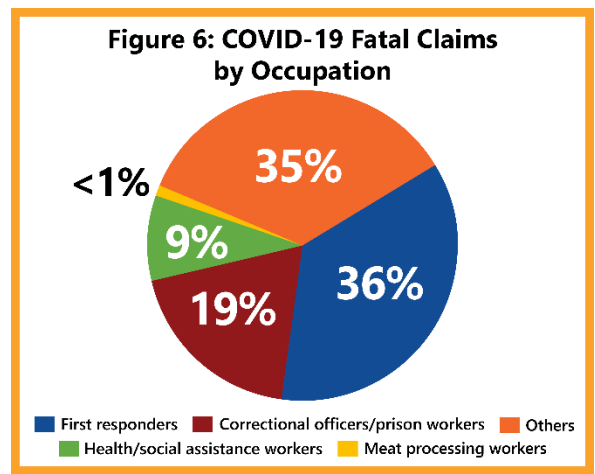
COVID-19 claims: As of early August 2022, insurance carriers reported more than 90,000 COVID-19 claims and 459 fatalities to DWC.

COVID-19 claims with positive test/diagnosis and their disposition: More than two-thirds of COVID-19 claims (68%) involved injured employees who tested positive or were diagnosed with COVID-19. Among those claims, insurance carriers accepted more than half (59%), denied less than half (39%), and are still investigating 2% of the claims. Despite more than 22,000 denials of COVID-19 claims with positive tests or diagnoses, only 207 disputes were filed with DWC.

Claims by occupation: More than half of COVID-19 claims (51%) and COVID-19 fatal claims (55%) involved first responders and correctional officers (Figures 5 and 6).



Note: Due to rounding, percentages may not add to 100.



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These statistics indicate that the proportion of first responder and correctional officer COVID-19 fatal claims were higher than that of the proportion of COVID-19 claims in these other occupations. A lower proportion of health/social assistance workers had COVID-19 fatal claims (9%) and COVID-19 claims (16%).

COVID-19 claims with benefits paid: Slightly more than one-third of COVID-19 claims (35%) had medical, indemnity, or both types of benefit payments associated with them. A total of \$121.6 million was paid on COVID-19 claims—64% were indemnity benefits and 36% were medical benefits.

COVID-19 claimants' access to medical services: The median number of days from the date of injury to the first medical service was seven days; the mean was 11.2 days. More than half of injured employees received medical services on the same day or within one week of injury (54%), and four out of five (80%) received their first medical service within two weeks of injury.

Reprocessed First Responder COVID-19 Claims Due to the Passage of Senate Bill 22

Senate Bill (SB) 22, 87th Legislature, Regular Session (2021), created a rebuttable presumption that a COVID-19 death or injury is work-related for certain first responders, including detention officers, custodial officers, firefighters, peace officers, and emergency medical technicians for claims filed on or after June 14, 2021. SB 22 also provided a process for certain first responders, whose benefits were denied, to request that the insurance carrier reprocess the claim. After the bill passed, DWC started receiving Plain Language Notice 15s, *Notice of Request to Reprocess a SARS-CoV-2 or COVID-19 Claim Subject to Texas Government Code Section 607.0545* (PLN-15s), from insurance carriers. This form is how insurance carriers notify injured employees of their decision on the reprocess request.

As of the first week of August 2022, first responders and correctional officers filed 45,927 claims. One-third (33%) were initially denied (Table 2). Among these denied claims, a very small percentage of claimants (<1%) filed a PLN-15 to reprocess their claim. Insurance carriers accepted most reprocessed claims (62%), and they denied slightly more than one-third (38%). A higher proportion of fatal claims were denied (42%) on reconsideration. Insurance carriers cited several reasons for denials, including:

- Contact with the virus was not work-related, or no causal connection between employment and COVID-19.
- Lack of medical evidence that COVID-19 did actual damage or harm to the body.
- Claim did not meet requirements under the law for reconsideration, or the presumption made under SB 22 did not apply.
- Lack of evidence to support a sustained occupational injury.

Eleven of the first responders whose claims were reconsidered and denied filed disputes with DWC. Seven claims are ongoing in dispute resolution, and four ended in favor of the injured employee.

Table 2: Number of First Responder Claims Initially Denied, Then Accepted or Denied after Reconsideration

Claims	Overall Claims		Fatal Claims	
	#	%	#	%
First responders all claims	45,927		254	
Initially denied claims	15,124	33%	119	47%
PLN-15 filed for reprocess	178	1%	36	30%
PLN-15 accepted	111	62%	21	58%
PLN-15 denied	67	38%	15	42%

Note: Due to rounding, percentages may not add to 100.

Claims the Insurance Carrier Reprocessed

Of the 12,481 first responder claims eligible to be reprocessed under SB 22, insurance carriers only received 178 requests. This was despite DWC’s robust communication effort that included sending communications to all eligible injured employees or their beneficiaries.

The State of Texas* reprocessed two-thirds of the claims (67%), including more than half of fatal claims (53%). This was followed by political subdivisions (Table 3). Nearly two-thirds of reprocessed claims were accepted by the State of Texas (65%) and political subdivisions (62%), which is higher than commercial insurance carriers (17%). However, this trend changes for fatal reprocessed claims. The State of Texas accepted more than three-quarters of these fatal claims (84%). Political subdivisions accepted 29%.

Table 3: Outcomes of Reprocessed Claims by Insurance Carrier Types

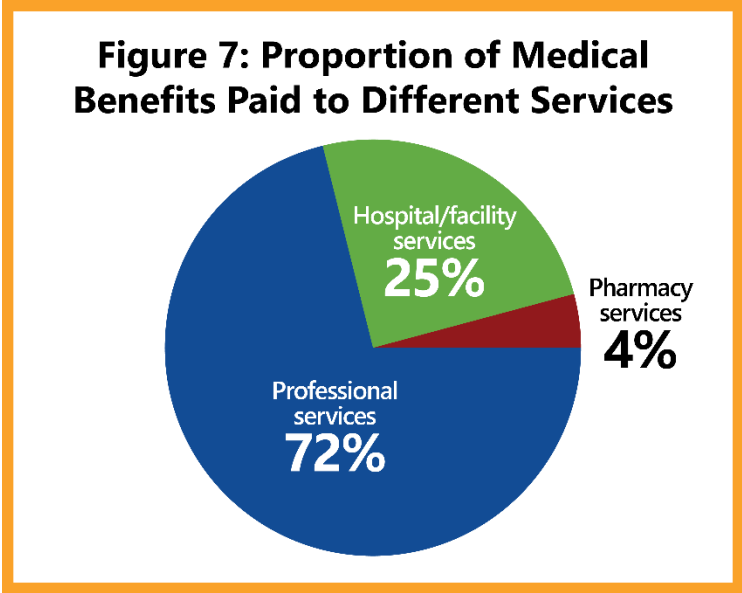
Insurance Carriers	# of PLN-15 Filed (% by carriers)	# of PLN-15 Accepted (%)	# of PLN-15 Denied (%)	# of Fatal PLN-15 Filed (% by carriers)	# of Fatal PLN-15 Accepted (%)	# of Fatal PLN-15 Denied (%)
Commercial insurance carriers	6 (3%)	1 (17%)	5 (83%)	3 (8%)	1 (33%)	2 (67%)
Political subdivisions	52 (29%)	32 (62%)	20 (38%)	14 (39%)	4 (29%)	10 (71%)
State of Texas	120 (67%)	78 (65%)	42 (35%)	19 (53%)	16 (84%)	3 (16%)
All insurance carriers	178	111 (62%)	67 (38%)	36	21 (58%)	15 (42%)

*The State Office of Risk Management accounts for almost all State of Texas claims, although the University of Texas, Texas A&M, and Texas Department of Transportation have their own workers’ compensation programs.

Note: Due to rounding, percentages may not add to 100.

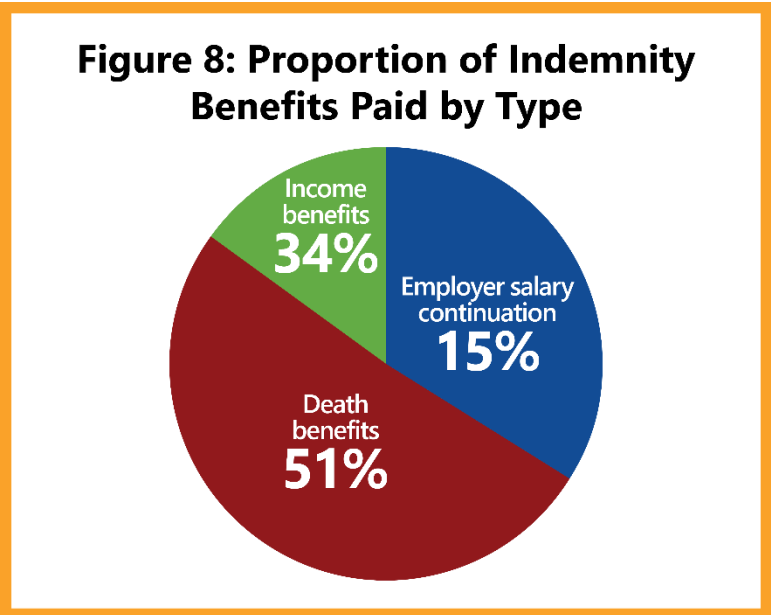
Benefits Paid on Reprocessed Claims

As of August 10, 2022, \$1.9 million has been paid as medical or indemnity benefits for reprocessed COVID-19 claims, which makes up about 1.6% of total benefits paid for overall COVID-19 claims (i.e., \$121.6 million). While 19% of benefits paid were medical benefits (\$353,000), 81% were indemnity benefits (\$1.5 million). Of medical benefits, nearly three-quarters were paid for professional services (72%), followed by hospital/facility services (25%), and pharmacy services (4%) (Figure 7).



Note: Due to rounding, percentages may not add to 100.

Of indemnity benefits, slightly more than half were paid as employer salary continuation (51%), followed by income benefits (34%), and death benefits (15%) (Figure 8).



Note: Due to rounding, percentages may not add to 100.

Almost all medical benefits (96%) and most indemnity benefits, including employer salary continuation and income benefits (82%), were paid on the claims filed with political subdivisions (Table 4). More than half of death benefits (56%) were paid to claims filed with the State of Texas. Note that death benefits are not a lump-sum payment, so indemnity costs are expected to continue to increase.

Table 4: Medical and Indemnity Benefits Paid by Type of Insurance Carrier

Insurance Carriers	Medical Benefits	Indemnity Benefits	Death Benefits
Commercial insurance carriers	< 1%	0%	0%
Political subdivisions	96%	82%	44%
State of Texas	4%	18%	56%
All insurance carriers	100%	100%	100%

Note: Due to rounding, percentages may not add to 100.

DWC Modernization Efforts

In the past biennium, DWC has increased efforts to modernize outdated technology. DWC continues to move functions from its legacy claims management system, COMPASS, to a more modern and supportable platform.

Replacement of DWC legacy system: During the past biennium, DWC moved several key claim functions from COMPASS, including tracking impairment rating outcomes for injured employees and processing injured employees' applications for supplemental income benefits. These key regulatory processes moved to TXCOMP, DWC's web-enabled claims management system, and are the foundation for other processes that must also move. DWC continues to develop the project to move all functions to TXCOMP and other systems and eventually shut down COMPASS.

New services for external customers: DWC recently offered new electronic filing services for external customers. Any DWC customer can now create an online account in TXCOMP, file electronic documents through a secure portal, and get a receipt of the documents they filed. This new technology reduces reliance on fax and paper delivery and provides a more secure electronic method for customers to file documents. DWC also provided new online services for designated doctors. DWC assigns designated doctors to examine injured employees and answer questions about their claim. Now, designated doctors can respond to appointment offers online, and request help in getting medical records. Designated doctors can also report rescheduled exams, request more time to complete a report, and upload their reports.

New electronic claim reporting standards: The Texas Labor Code requires insurance carriers to electronically report injured employee claim information, including income and medical benefits paid to these employees. The data allows DWC to effectively monitor the system, complete its statutorily required performance-based oversight activities, and conduct objective research. During the last biennium, DWC

updated rules for a more modern reporting standard from the International Association of Industrial Accident Boards and Commissions (IAIABC). The IAIABC claim electronic data interchange release 3.1 is the most current reporting standard. The new standard will increase efficiencies for insurance carriers that must report data in multiple jurisdictions and will also enhance the accuracy of the reported data.

New electronic filing of reports for employers: All employers, with or without workers' compensation insurance coverage, must comply with reporting and notification requirements under the Texas Workers' Compensation Act. Each year, non-subscribers must report to DWC that they elect not to get workers' compensation insurance by submitting the DWC Form-005, *Employer Notice of No Coverage or Termination of Coverage* (DWC Form-005). Non-subscribers with five or more employees must report each work-related fatality, occupational disease, and injury that results in more than one day of lost time to DWC by submitting the DWC Form-007, *Employer's Report of Noncovered Employee's Work-Related Injury or Illness* (DWC Form-007). The DWC Form-005 can now be easily filed electronically from our website, and work is underway to do the same for the DWC Form-007.

DWC Simplifies Communication for System Participants

Revised DWC forms and letters: During the past biennium, DWC updated notices and forms with a new letterhead and mailing address due to our move to the Austin Capitol Complex in the summer of 2022. DWC also took the opportunity to modernize many of these notices and forms in English and Spanish for content, font size, and plain language. Our forms are a primary communication tool between system participants and DWC for requesting services from the agency, and they provide information to injured employees about the status of their claims. DWC reduced the complexity of these forms by removing unnecessary information and simplifying language.

DWC has also been working on an automation project to update claim-specific notices, orders, and correspondence produced from TXCOMP. The letters and notices provide required material, such as information about vocational rehabilitation services. They also order system participants to take actions, such as attending designated doctor examinations, and provide information about disputes. DWC edited these letters and notices to make them clearer and more understandable for injured employees. Many of the letter changes from the project will be implemented in 2023.

Updated DWC website: DWC streamlined and made plain language revisions to hundreds of our web pages, making workers' compensation and our dispute resolution process easier to understand. DWC also created new tools to make information easier to find online. This includes a new searchable online video library with more than 900 links to workplace safety trainings from government, educational, and safety organizations. A similar new online tool was created for those needing information about decisions on medical fee disputes, with results that you can filter, sort, and export.

Updated training methods: DWC expanded its outreach and training efforts through “live” and “on-demand” webinars for workplace safety, health care providers, and designated doctors working toward certification. We:

- Increased the number of on-demand videos for health care providers with almost 8,000 views.
- Presented at medical conferences and provided curriculum for continuing education.
- Recruited for specialists, treating doctors, and the designated doctor program.
- Enhanced DWC’s Texas OSHA consultations for employers. Texas led an effort with OSHA to develop a national program for virtual training soon after the pandemic began. Texas trained other states on how to conduct virtual visits and leads the nation in virtual visits conducted with more than 1,200 to date.

New Claims and Customer Services outreach efforts: The Texas Labor Code requires DWC to establish a single point of contact (SPOC) for injured employees receiving services from DWC. This team of claims examiners processes a variety of DWC forms that injured employees and insurance carriers submit and establishes contact with injured employees or their beneficiaries at various points in their claim. The DWC SPOC team educates injured employees and promotes communication between parties to facilitate proper benefit payments and informal dispute resolution.

- **COVID-19:** In March 2020, Claims & Customer Services implemented a DWC SPOC referral process for injured employees with COVID-19-related claim questions. The SPOC communicates with injured employees and insurance carriers to verify status of claims and any denials. They also get and share information with parties to promote informal dispute resolution.
- **First responders:** First responders or their beneficiaries may be entitled to additional workers’ compensation benefits, including accelerated medical benefits, expedited medical disputes, death benefits, and statutory presumptions for certain conditions. The DWC SPOC educates first responders about these benefits and the workers’ compensation claim process.
- **Beneficiaries:** The DWC SPOC reaches out to potential beneficiaries on notification of a death and receipt of a claim for death benefits to provide information about the claim process, death and burial benefits, and other benefits or resources they may be eligible to receive.
- **Uvalde:** After the Uvalde event, DWC deployed Claims & Customer Services staff to the Uvalde Resiliency Center to help injured employees or beneficiaries file claims for workers’ compensation benefits and answer any questions. DWC’s designated SPOC has been in routine contact with the injured employees, beneficiaries, and insurance carriers involved in these claims.

Concluding Remarks

Overall, the state of the Texas workers’ compensation system is strong. Injury rates, claims, medical costs, income disputes, and medical disputes are down significantly from pre-2005 reform levels, which has resulted in lower insurance rates and more affordable insurance coverage for Texas employers. More employees and employers now have workers’ compensation coverage than before the reforms.

Texas remains a model for other state workers' compensation systems because of its ability to identify and implement targeted reforms designed to not only reduce system costs, but also improve outcomes for injured employees.

DWC has two legislative recommendations for the 88th Texas Legislature to consider. We'll also highlight an emerging issue that will likely be discussed during the upcoming legislative session.

DWC Legislative Recommendations

1) Exempt Designated Doctor and Other Related Exams from State Sales Tax

Recommendation

Amend [Texas Tax Code Section 151.0039\(b\)](#) to exempt from sales and use tax any medical examination or service performed to determine the appropriate level of benefits under the Texas Workers' Compensation Act.

Issue

Designated doctors play a critical role in the Texas workers' compensation system. Under [Texas Labor Code Section 408.1225](#), a designated doctor is a neutral and independent doctor selected, certified, and trained by DWC to answer complex medical questions about work-related injuries or occupational illnesses that help determine what benefits an injured employee is entitled to. [Texas Labor Code Sections 408.0041](#).

On October 20, 2022, the Texas Comptroller of Public Accounts issued [Private Letter Ruling No. PLR20220516113922](#). The ruling states that charges for designated doctor exams performed under [Texas Labor Code Section 408.0041](#) are considered "insurance services" and are subject to Texas sales and use tax. This ruling imposed an unanticipated requirement for doctors to collect sales tax when performing exams that are ordered by DWC. This ruling may not just affect designated doctors but also other doctors performing similar exams.

Fortunately, on November 10, 2022, the comptroller issued a [memo](#) delaying implementation of the guidance provided in the private letter ruling until after the 2023 legislative session to allow DWC and workers' compensation system participants time to seek a legislative change.

Background

The Texas workers' compensation system relies on the participation of qualified doctors to ensure a healthy and well-functioning system for all. Many doctors in our system, including designated doctors, also perform other specialty exams, including required medical exams, maximum medical improvement, and impairment rating exams.

These other types of exams may also be considered taxable insurance services based on the private letter ruling. Generally, treating doctors are unfamiliar with sales tax collection activities, so having to collect and remit taxes for a small portion of their overall business disincentivizes them from participating in the workers' compensation system in any capacity. Many doctors have already expressed their intent to leave the system if this sales tax ruling stays in effect. This ruling also impacts insurance carriers, which pay for these exams, requiring changes to their business processes and other new administrative costs.

DWC has been working continuously on improvements to the designated doctor program to attract and

retain more doctors. We have made process changes to how we assign and schedule exams. We also offer trainings online and are proposing new rules that ease training and testing and increase fees for exams. While we continually work to meet designated doctor needs, we are concerned that additional reporting and billing requirements to comply with the comptroller ruling will likely drive more doctors to leave the program.

2) Protect the Working Papers and Electronic Communications of Workers' Compensation Administrative Law Judges and Appeals Panel Judges

Recommendation

Amend [Texas Labor Code Chapter 410](#) to add a limited public information exception for working papers and electronic communications for DWC administrative law judges (ALJs) and Appeals Panel judges. Amending the statute will empower DWC ALJs and Appeals Panel judges to remain impartial fact finders while presiding over dispute proceedings and safeguard the integrity of DWC's dispute resolution process. It will also afford them the same protections as ALJs at the State Office of Administrative Hearings (SOAH).

Issue

Recently, DWC received open records requests for working papers of ALJs from parties actively involved in ongoing disputes. If left unchecked, this practice makes it increasingly difficult for ALJs and Appeals Panel judges to fully develop and analyze the facts of the case. This will have a chilling effect on our judges' ability to make impartial determinations free from outside influence.

Working papers and electronic communications of ALJs should be afforded strong protection from being subject to discovery or open records requests to explain judicial reasoning. This protection is currently provided to ALJs at SOAH by [Texas Government Code Section 552.144](#), which exempts drafts of orders and proposals, as well as "notes and electronic communications recording the observations, thoughts, questions, deliberations, or impressions of an administrative law judge" from open records requests.

Unfortunately, these same protections are not afforded to DWC ALJs and Appeals Panel judges. According to a [2012 Attorney General Opinion](#) (OR2012-00918), working papers and other deliberative materials of ALJs, other than those of SOAH ALJs, are not afforded the same protections.

Background

Dispute Process: DWC ALJs and Appeals Panel judges serve the same function as SOAH ALJs, but their sole focus is on workers' compensation disputes. The first step in a dispute is an informal mediation conducted by a DWC benefit review officer to try to reach an agreement. If there is no agreement, the next step is a contested case hearing (CCH). The CCH is a formal hearing that a DWC ALJ conducts. At a CCH, the parties may present sworn testimony and documents (often medical records), cross-examine witnesses, and present arguments before the ALJ. At the conclusion of the CCH, the ALJ will issue a formal written decision and order to the parties. If a party is dissatisfied with the decision, they may appeal to the DWC Appeals Panel. Appeals Panel judges review appeals of CCH decisions and issue written decisions either affirming or reversing a decision of the ALJ. The Appeals Panel is the final level within the state's workers' compensation administrative dispute resolution process. However, a party may still appeal in district court.

Limited Exception: The Texas Public Information Act (Government Code Chapter 552) is an important tool for citizens to get information on how their government works and ensure public officials are accountable

to those they serve. This oversight is necessary in the review of ordinary administration of a public entity. However, a CCH or Appeals Panel review is not of ordinary administration. It is a proceeding with a statutory requirement to “fully develop the facts” ([Texas Labor Code Section 410.163](#)), by swearing in witnesses, receiving testimony, and allowing the presentation of evidence by affidavit, that more closely resembles a judicial proceeding.

Emerging Issue

Workers' Compensation Maintenance Tax Financing

Issue

The maintenance tax in [Labor Code 403.002](#), which funds DWC and the Office of Injured Employee Counsel (OIEC), is not generating adequate collections to match the amount appropriated to those organizations. The tax funds DWC and OIEC and is estimated to generate \$9.4 million less than the legislature appropriated for DWC and OIEC for fiscal year 2023 in the General Appropriations Act (GAA).

TDI has some tools to accommodate this shortfall in the near term, however the tax in its current form is unlikely to generate sufficient revenues in future years. While the tax is meant to be self-leveling to match the amount appropriated by the Legislature, the current 2% statutory cap does not accommodate this.

This revenue collection shortfall is a side-effect of a healthy workers' compensation system. Claim and system costs are down, along with more efficient and effective medical care, fewer disputes, and a better injured employee return-to-work rate.

Even with a growing labor market and more policy enrollees, the tax base has fallen 49.9% since 2003, primarily driven by workers' compensation insurance premiums declining 77%. We expect premium rates and the tax base to continue declining. The maintenance tax under Labor Code Section 403.002 will not generate enough revenue to fund DWC and OIEC's appropriations in the future.

Background

The administration and regulation of the Texas workers' compensation system is funded by maintenance taxes authorized by statute. The tax rates are set by the Commissioner of Insurance. This year the maintenance tax rate under [Labor Code Section 403.002](#) is set at the workers' compensation insurance premium statutory cap of 2%.

DWC is the system regulator, and OIEC assists injured employees that have a workers' compensation dispute. The taxes are added to all Texas workers' compensation insurance premiums. Employers certified by DWC to self-insure also pay a tax. The comptroller collects revenue from insurance carriers and certified self-insured employers, and the legislature appropriates that revenue to DWC and OIEC in the GAA.



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Texas Department of Insurance, Division of Workers' Compensation
1601 Congress Avenue | Austin, Texas 78701
800-252-7031 | tdi.texas.gov/wc