

**Biennial Report of the
Texas Department of Insurance
To the 82nd Legislature**

Division of Workers' Compensation

December 2010



Rod Bordelon

Commissioner of Workers' Compensation

Mike Geeslin

Commissioner of Insurance



Texas Department of Insurance

Commissioner of Insurance, Mail Code 113-1C
333 Guadalupe • P. O. Box 149104, Austin, Texas 78714-9104
512-463-6464 telephone • 512-475-2005 fax • www.tdi.state.tx.us

December 1, 2010

The Honorable Rick Perry, Governor
The Honorable David Dewhurst, Lieutenant Governor
The Honorable Joe Straus, Speaker

Dear Governors and Speaker:

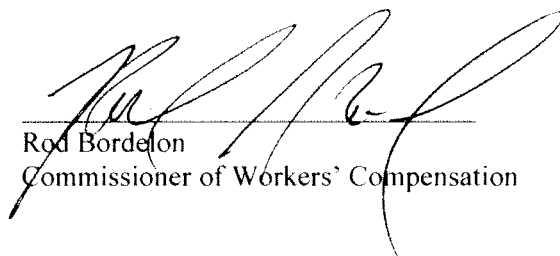
In accordance with Sections 402.066 and 402.074, Labor Code, we are pleased to submit the workers' compensation portion of the Department's biennial report to the Legislature. This report provides an update on the Texas workers' compensation market and a brief description of a legislative recommendation that we believe will improve our ability to effectively and efficiently regulate the workers' compensation system.

We are available to discuss any of the issues contained in the report and to provide you with technical assistance. This report will be incorporated into the Department's forthcoming report to the Legislature required by Insurance Code 32.022 which will cover other lines and financial aspects of insurance in Texas.

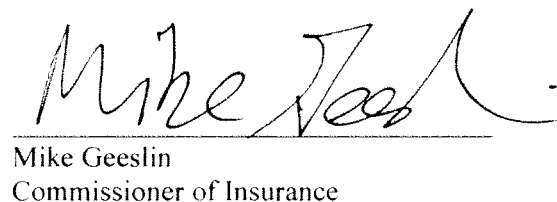
Please contact either of us or Carol Cates, Director of Government Relations, at 463-6651 if you have any questions or need any additional information.

Thank you for your consideration.

Sincerely,



Rod Bordelon
Commissioner of Workers' Compensation



Mike Geeslin
Commissioner of Insurance

Overview of the Status of the Texas Workers' Compensation System

The Texas workers' compensation system has undergone significant changes in the five years since the passage of House Bill (HB) 7 by the 79th Legislature in 2005. Since 2005, the Texas Department of Insurance (TDI), Division of Workers' Compensation (TDI-DWC) has implemented a considerable number of initiatives designed to reduce and/or stabilize costs and improve injured employee outcomes (such as quality of care, access to care, return-to-work outcomes, etc.). These initiatives include:

- the adoption of evidence-based treatment and return-to-work guidelines for non-network claims;
- the certification and continued monitoring of workers' compensation health care networks certified by TDI;
- the adoption and implementation of Medicare-based fee guidelines for professional services, inpatient and outpatient hospital services and ambulatory surgical center services;
- the development of a closed pharmacy formulary proposal – one of the first in the nation for workers' compensation;
- the implementation of new income benefit changes, including new work-search requirements for employees eligible for Supplemental Income Benefits and changes in the calculation of the State Average Weekly Wage, which affect the maximum amount in income benefits received by injured employees;
- the implementation of rules and processes to streamline dispute resolution and reduce the amount of time it takes to resolve income and medical fee and necessity disputes;
- the utilization of a new enforcement structure to help align the enforcement activities of TDI-DWC with the rest of TDI;
- the development and implementation of a return-to-work reimbursement program for Texas employers;
- the implementation of Performance Based Oversight (PBO), which assesses the performance of insurance carriers and health care providers in meeting the key regulatory goals established by the Commissioner of Workers' Compensation;
- ongoing monitoring of reform efforts through the development of several statutorily required biennial reports and rate hearings; and
- the utilization of consensus-based rulemaking procedures that promote communication and foster greater coordination with stakeholders about proposed rules.

While almost all of the key provisions of HB 7 have been implemented by TDI and TDI-DWC, it is too early to effectively gauge the full impact of this legislation. However, the data collected thus far has indicated that the reforms both in 2001 by HB 2600 and in 2005 by HB7 have made significant improvements in the system as a whole. While the long-term effect of certain components of these reforms, such as the impact of certified workers' compensation health care networks, may not yet be fully realized, it is important to establish a baseline by which policymakers and system participants may measure the relative health of the system and the impact of legislative or regulatory reforms in the future.

The following assessment provides a high-level picture of several important system trends that TDI and TDI-DWC continue to track, including:

- injury and claim frequency rates;
- employer participation in the Texas workers' compensation system;
- insurance rates and premiums;
- medical costs;
- injured employee access to medical care;
- return-to-work rates;
- income benefit replacement rates; and
- the implementation of workers' compensation health care delivery networks.

It should be noted that in addition to these highlighted trends, the agency is also tracking other important issues such as claim and medical bill denial rates and dispute resolution trends. The system trends presented in this report allow TDI-DWC, policymakers, and system participants to gauge the relative “health” of the system and consider whether legislative changes, other than those recommended by the Sunset Advisory Commission as part of its review of TDI-DWC, are necessary to “fine-tune past reform efforts, improve major program areas, and address lingering statutory questions needing further directive.”¹

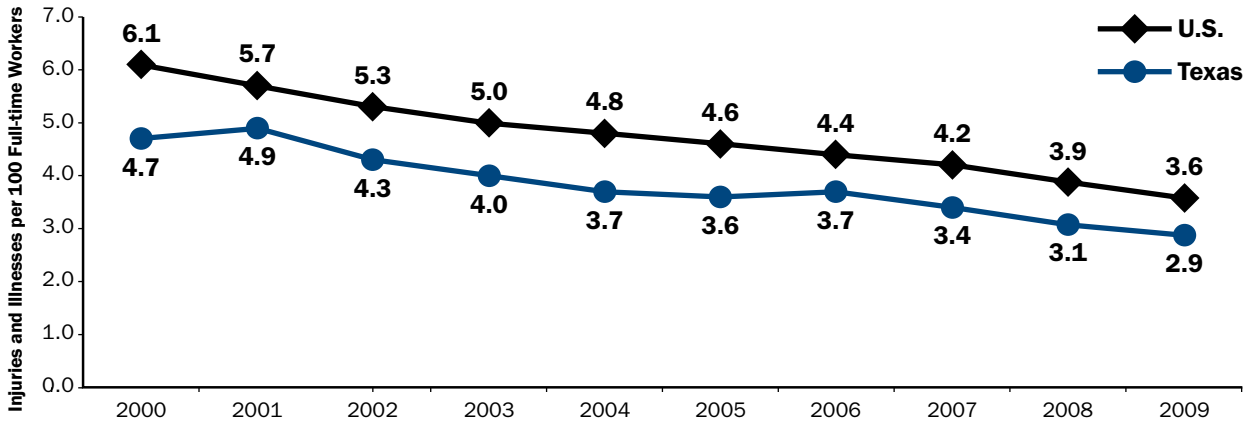
Injury Rates and Claim Frequency Continues to Decrease

The Texas workers' compensation system continues to experience marked reductions in both the non-fatal occupational injury and illness rate and the overall number of reportable claims filed with TDI-DWC. Since the passage of HB 7 in 2005, the nonfatal occupational injury illness rate in Texas decreased 19 percent from 3.6 to 2.9 injuries per 100 full-time employees. Workplace injury and illness rates vary widely by industry; however, the incidence rates for industries such as agriculture, forestry, fishing and hunting, wholesale trade, construction, transportation and warehousing and manufacturing experienced significant declines from 2008 (between 10 percent and 33 percent decline for each industry sector listed). The industry sectors with the highest rates include: transportation and warehousing (4.6 injuries/illnesses per 100 full-time employees), retail trade (4.1), health care and social assistance (3.9), education and health services (3.8), and manufacturing (3.5). Compared with the rest of the nation, the injury rate in Texas has been consistently below the national average (see Figure 1).

Although the non-fatal occupational injury and illness rate in Texas and nationwide has seen a continuous decrease over time, the number of fatal occupational injuries in Texas continues to fluctuate (see Figure 2). Transportation incidents continue to be the leading cause of work-related fatalities in Texas (163 in 2009 - a 21 percent decline from 2008). Following transportation incidents, assaults and violent acts against employees was the second highest cause of fatalities (93 fatalities in 2009 – a 22 percent increase from 2008) and falls was the third highest cause (82 fatalities – a 44 percent increase from 2008). Hispanics or Latinos were involved in 60 percent of the falls and more than two-thirds of the falls occurred in the construction industry (67 percent). The construction trades occupation group accounted for over one-fifth (21 percent) of all fatalities reported in 2009.

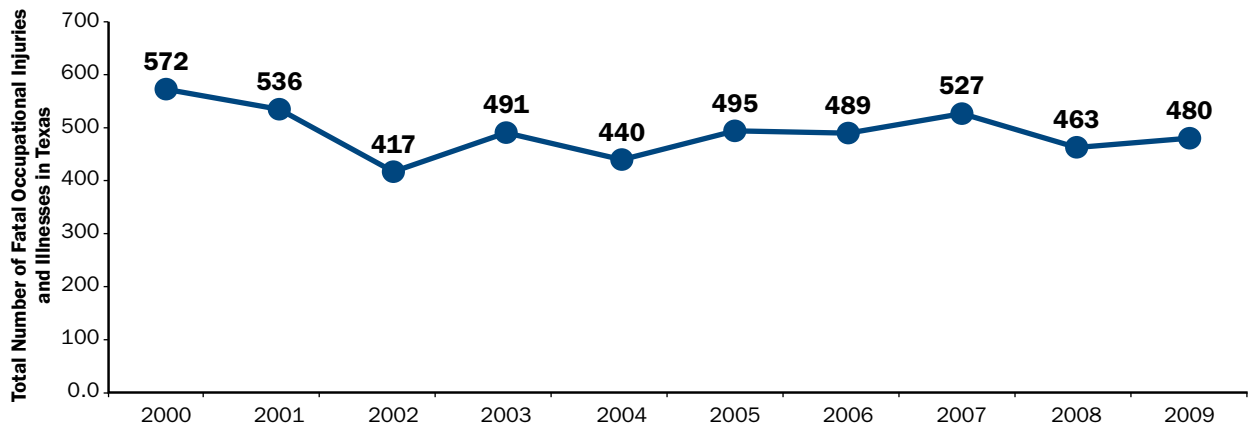
¹ For additional information regarding the Sunset Advisory Commission's statutory and management recommendations regarding TDI-DWC as well as information regarding the Sunset process, see <http://www.sunset.state.tx.us/>.

Figure 1: Texas and U.S. Nonfatal Occupational Injury and Illness Rates Per 100 Full-time Employees (2000-2009)



Source: Texas Department of Insurance, Division of Workers' Compensation and U.S. Department of Labor, Bureau of Labor Statistics, Annual Survey of Occupational Injuries and Illnesses, 2010.

Figure 2: Number of Fatal Injuries and Illnesses in Texas by Year, 2000-2009



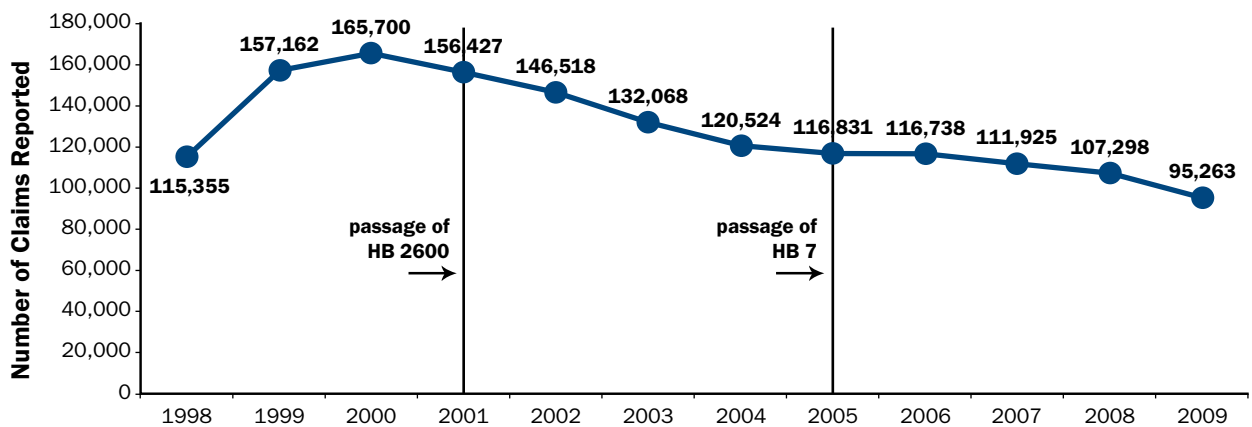
Source: Texas Department of Insurance, Division of Workers' Compensation and U.S. Department of Labor, Bureau of Labor Statistics, Census of Fatal Occupational Injuries, 2010.

Similar to the non-fatal occupational injury and illness rates seen in Figure 1, the number of workers' compensation claims actually reported to TDI-DWC has declined steadily since 2000 (see Figure 3). The reasons for those reported declines, both nationally and in Texas, stem from a variety of factors, including increased safety awareness among employers and employees, enhanced health and safety outreach and monitoring efforts at the federal and state level, improvements in technology, globalization, increased use of independent contractors, and the possibility of under-reporting of workplace injuries and illnesses.

Insurance Rates and Premiums Continue to Decline

HB 7 requires the Commissioner of Insurance to report on the affordability and availability of workers' compensation insurance for Texas employers. The Property and Casualty Actuarial Division of TDI monitors insurance rate filings and reports workers' compensation insurance

Figure 3: Number of Workers' Compensation Claims Reported to TDI-DWC, Injury Years 1998-2009



Note: These numbers include the claims that are required to be reported to TDI-DWC, including fatalities, occupational diseases, and injuries with at least one day of lost time. Medical-only claims are not required to be reported to TDI-DWC.

Source: Texas Department of Insurance, Division of Workers' Compensation, 2010.

metrics as part of a biennial report to the Texas Legislature on the impact of HB 7 on insurance rates and premiums.²

Two important measures of the financial health of the Texas workers' compensation insurance market are the loss ratio and the combined ratio.³ The loss ratio is the relationship between premium collected and the losses incurred (i.e., amounts already paid out plus amounts set aside to cover future payments) by insurance companies. The combined ratio is similar to the loss ratio, except that it compares the premiums collected with both the losses and expenses incurred by the insurance company. A combined ratio of less than 100 percent indicates that an insurance company earned a profit on its insurance operations (also known as an underwriting profit). A ratio of over 100 percent indicates a loss on insurance operations, although this loss may be more than offset by earnings on investments. For example, if the projected ultimate combined ratio is 110.0 percent, then for every \$1.00 in premium that is collected by the insurance company it is projected that \$1.10 will be used to pay losses and expenses incurred by the insurance company. The insurance company will need to find other sources to pay the 10 cents that is not covered by the premium. This may come from investments or even a direct charge against the insurance company's surplus. In 2009, the projected accident year combined ratio was 87 percent. This means for every dollar in premium collected by the insurance company, it is estimated that they will pay 87 cents to cover losses and expenses.

Table 1 shows the loss ratio and the combined ratio, both of which reflect that the last seven

² For additional information on the effect of the reforms on the workers' compensation insurance market, see Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System, 2010 Results.

³ Each year TDI analyzes historical loss ratios and combined ratios on an accident year basis. In an accident year analysis, the losses are tied back to the year in which the accident occurred, regardless of when they are reported or actually paid. For example, accident year 2004 would reflect claims or losses from all accidents that happened in 2004 even if, for example, a loss was initially reported in 2005 and/or paid at an even later date.

years have been very profitable for workers' compensation insurance companies. In 2008 and 2009, the accident year combined ratios deteriorated relative to the prior five years, but still remains very profitable.

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

CALENDAR YEAR	DIRECT EARNED PREMIUM	ULTIMATE LOSSES	LOSS RATIO	COMBINED RATIO
2003	\$2,192,674,882	\$946,561,376	43.2%	75.8%
2004	\$2,100,671,029	\$840,764,437	40.0%	73.5%
2005	\$2,131,103,682	\$803,907,603	37.7%	75.1%
2006	\$2,201,772,594	\$830,963,004	37.7%	72.2%
2007	\$2,202,372,772	\$897,211,083	40.7%	75.9%
2008	\$2,210,598,533	\$1,049,206,981	47.5%	88.2%
2009	\$1,945,212,721	\$885,065,699	45.5%	87.0%

Source: Texas Workers' Compensation Financial Data Call, Texas Compilation of Statutory Page 14, and Texas Compilation of the Insurance Expense Exhibit. Loss development factors used in determining the ultimate losses are from the Financial Data Call Package as of December 2009.

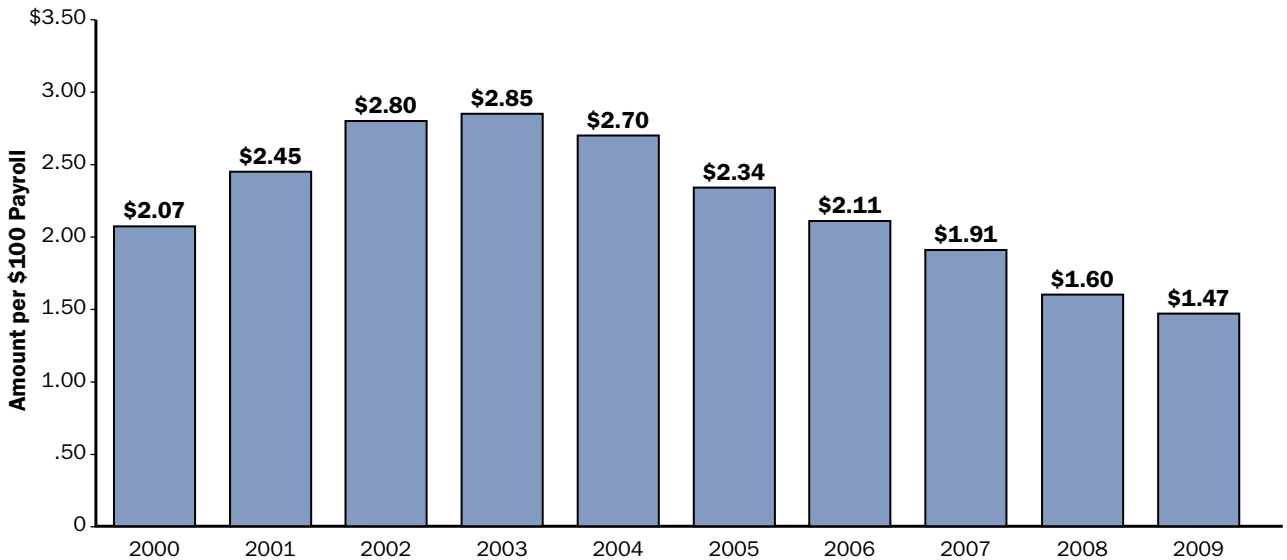
Since 2003, workers' compensation insurance rates have come down about 40 percent. This number includes changes in insurance companies own deviations to the workers' compensation classification relativities set by TDI, as well as changes made to the overall classification relativities by TDI. In preparation for the 2010 biennial rate hearing on workers' compensation insurance, TDI requested that insurance companies provide their "rate indications," which is the actuarial determination of how its rate or premium level should change going forward. For companies large enough to have reasonably credible data, the companies own indications ranged from about -40 to near +40 percent. These indications are based on the insurance companies' own calculations and do not reflect any judgments or assumptions made by TDI. For the 210 companies that filed indications, the average premium-weighted indication is -7.3 percent. This suggests that premium levels on average can be lowered by 7.3 percent.

While the rate changes filed by the insurance companies in the last few years and the indications filed in August 2010 show how much rates have come down and could conceivably come down further, these rates and indications are just the start of the workers' compensation insurance pricing process. What employers actually pay, the premium, reflects not only rates, but also mandated rating programs (such as experience rating and premium discounts) as well as optional rating tools (such as scheduled rating plans and negotiated experience modifiers) to recognize individual employer risk variations. These rating tools can be used to achieve desired premium levels. Figure 4 shows the average premium per \$100 of payroll for policy years 2000 – 2009, reflecting year to year changes in premiums charged. Since policy year 2003, the average premium per \$100 of payroll has continued to decline from \$2.85 in policy year 2003 to \$1.47 in policy year 2009.

Employer Participation and Employee Coverage Rates Have Improved

Texas is the only state where private-sector employers (regardless of employer size or industry) are allowed the option of obtaining workers' compensation coverage or becoming "non-sub-

Figure 4: Average Premium per \$100 of Payroll by Policy Year



Source: *The Texas Workers' Compensation Financial Data Call and TDI's 2010 Classification Relativity Study.*

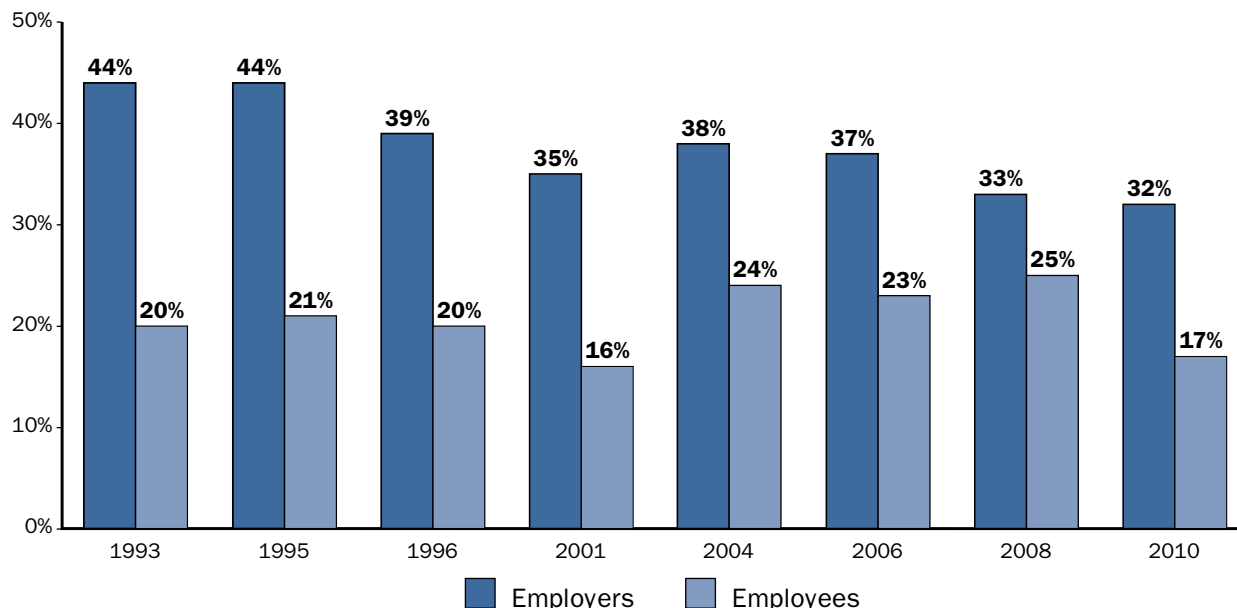
scribers” to the workers’ compensation system.⁴ Employers who choose to not obtain workers’ compensation coverage (either through purchasing a commercial policy or becoming a certified self-insured employer or a member of a certified group of self-insured employers) lose the protection of statutory limits on liability and may be sued for negligence by their injured employees.

Non-subscription rates remain an important performance measure in the workers’ compensation system since it generally measures employers’ perspectives regarding whether the benefits of participating in the workers’ compensation system are greater than the costs of obtaining the coverage. The percentage of Texas employers that are non-subscribers to the workers’ compensation system decreased to 32 percent in 2010 – the lowest percentage since 1993 (an estimated 106,137 employers). However, an estimated 17 percent of Texas employees (representing approximately 1.7 million employees) worked for non-subscribing employers, a significant decline from 2008 (see Figure 5).

The percentage of Texas employers who have workers’ compensation coverage has increased since the passage of HB 7 in 2005 (from 62 percent of Texas employers in 2004 to 68 percent of Texas employers in 2010), due primarily to lower insurance premiums and the increased availability of workers’ compensation health care networks. The most recent set of estimates shows a significant shift in the percentage of employees who are employed by non-subscribing employers (from 25 percent in 2008 to 17 percent in 2010). This shift appears to be the result of a lower percentage of larger employers (i.e., 500+ employees) that are non-subscribers. In fact, the non-subscription rates for all employer size categories, except employers with 1-4 employees declined from 2008-2010 (see Table 2). It is important to note that the most recent economic recession is likely to have affected these percentages, similar to the changes experienced during

⁴ In New Jersey all employers are required to have coverage or be self-insured. Non-compliant employers are fined and their injured employees receive income and medical benefits through the Uninsured Employers’ Fund (UEF).

Figure 5: Percentage of Texas Employers That Are Nonsubscribers and the Percentage of Texas Employees That Are Employed by Nonsubscribers, 1993-2010



Source: Survey of Employer Participation in the Texas Workers' Compensation System, 1993 and 1995 estimates from the Texas Workers' Compensation Research Center and the Public Policy Research Institute (PPRI) at Texas A&M University; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004, 2006, 2008 and 2010 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

the 2001 recession. The industries that have higher non-subscription rates (such as Arts/Entertainment/Accommodation/Food Services, Finance/Real Estate/Professional Services, Health Care/Educational Services and Wholesale Trade/ Retail Trade/Transportation) may have been disproportionately affected, meaning that their workforce has been temporarily reduced, which lowered the overall number of employees employed by non-subscribers. Further monitoring will be necessary to determine whether workforce levels will bounce back in 2012 and the impact that economic recovery will have on non-subscription rates.⁵

Table 2: Percentage of Texas Employers That Are Non-subscribers, by Employment Size

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

Source: Survey of Employer Participation in the Texas Workers' Compensation System, 1993 and 1995 estimates from the Texas Workers' Compensation Research Center and the Public Policy Research Institute (PPRI) at Texas A&M University; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004, 2006, 2008 and 2010 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

⁵ For more information about nonsubscription rates and employers' reasons for participating or not participating in the Texas workers' compensation system, see Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, Employer Participation in the Texas Workers' Compensation System: 2010 Estimates, which can be viewed at http://www.tdi.state.tx.us/reports/wcreg/documents/Non-sub_2010.pdf.

Compliance Efforts Regarding Reporting Requirements for Nonsubscribing Employers

While the types and amounts of benefits provided to injured employees who work for non-subscribing employers as well as the administration of those benefit programs fall outside of the jurisdiction of TDI's and TDI-DWC's regulation, non-subscribers are still subject to certain reporting requirements under the Workers' Compensation Act and Rules. Non-subscribers are required to report annually to TDI-DWC that they have elected to opt out of the workers' compensation system by filing the DWC-5 form with TDI-DWC.⁶ Additionally, non-subscribers who employ at least five employees are required to file a notice with TDI-DWC (using the DWC-7 form) for every fatality, occupational disease, and every work-related injury that results in more than one day of lost time.⁷ Failure to comply with these reporting requirements may result in enforcement action and administrative penalties levied up to \$25,000 per day per occurrence.

Two sessions ago the 80th Legislature added an appropriation rider to TDI's budget, which requires TDI-DWC to submit, as part of its biennial report to the legislature, a report regarding the compliance of non-subscribing employers with these reporting requirements as well as any administrative penalties levied against non-complying employers. Prior to the 2007 legislative session, non-subscriber reporting compliance efforts on behalf of the agency were primarily complaint driven; however, historically, TDI-DWC (and its predecessor the Texas Workers' Compensation Commission) has only received a relatively small number of complaints regarding non-subscriber reporting compliance. In recent years, there have not been any external complaints received; however, in calendar years 2009 and 2010 a small number of internal referrals were identified (a total of 295 complaints were filed in 2009 and 228 complaints were filed in 2010 and 12 of these complaints resulted in warning letters issued by TDI-DWC's System Monitoring and Oversight).

Over the last four years, TDI-DWC has undertaken efforts to not only increase employer awareness about non-subscriber reporting requirements, but also to proactively identify potential non-complying employers. Using workers' compensation policy data collected by TDI-DWC's Statistical Agent - the National Council on Compensation Insurance (NCCI), as well as information collected by the Texas Workforce Commission (TWC) regarding the identity of employers who participate in the Unemployment Insurance program, TDI-DWC compiled a list of employers who were potential non-subscribers. This list of employers was then compared with the list of non-subscribers who submitted a DWC-5 form to TDI-DWC to develop a list of potential non-complying employers.

Given the large volume of potential non-complying employers, TDI-DWC prioritized its notice and compliance efforts starting with the largest employers (i.e., those with more than 500 employees) and each quarter expanding that notice to smaller and smaller employers. Each quarter TDI-DWC sends a batch of letters to potentially non-compliant employers. In these letters, TDI-DWC asks these employers to provide information regarding their current workers' com-

⁶ See Section 406.004, Labor Code.

⁷ See Section 411.032, Labor Code.

pensation coverage status. To date, TDI-DWC has contacted approximately 1,455 employers, with the following results:

- 51 percent had workers' compensation coverage;
- 31 percent filed their DWC Form 5 upon the notification;
- 13 percent returned mail (out of business);
- 2 percent did not respond and were referred to Enforcement for failure to respond to a request by TDI-DWC; and
- 3 percent pending responses from the most recent mail out.

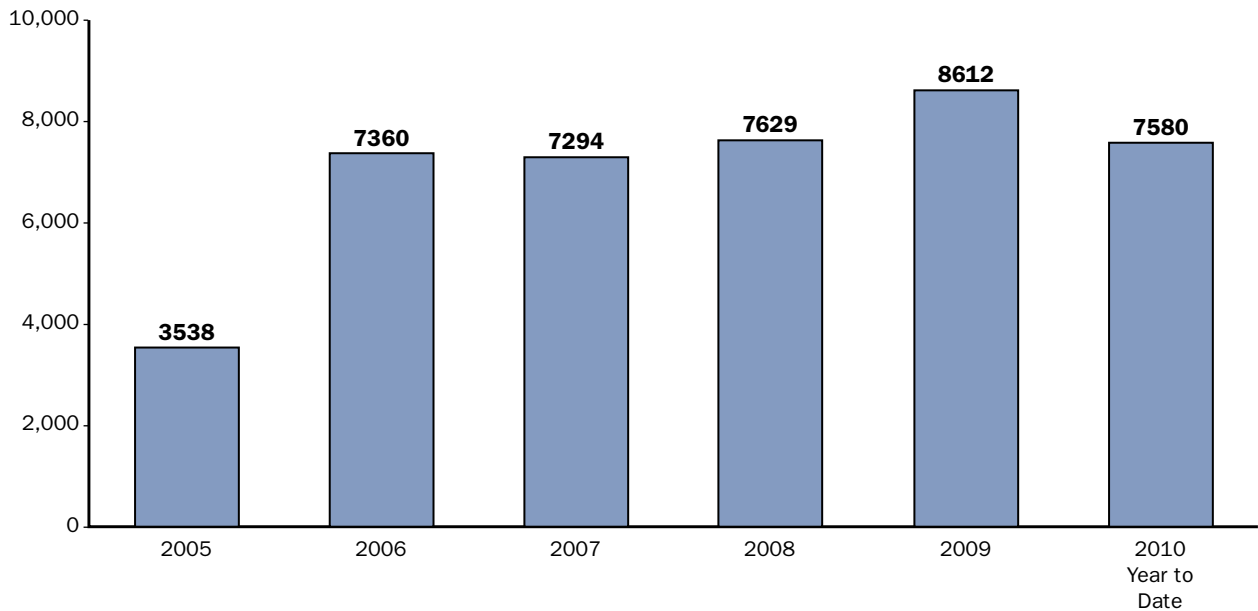
Identifying potential non-complying employers has proved to be challenging for the agency for several reasons, including the completeness, accuracy and timeliness of workers' compensation policy data and employer identifying data collected by TDI-DWC and other Texas state agencies. For example, an employer may have filed for unemployment insurance purposes with the TWC using the Federal Employment Identification Number (FEIN) of the parent organization, but may have different workers' compensation insurance policies under various FEIN's and names of subsidiaries of the parent organization. As a result, it is somewhat difficult for TDI-DWC to identify individual employers that may be non-subscribers and to check for these employers' compliance with reporting requirements.

Additionally, each quarter TDI-DWC sends letters to 300 randomly selected employers who had filed the DWC-5 form to inquire whether these employers had any occupational injuries, illnesses and fatalities during the previous six months that should be reported to the Division using the DWC-7 form. Since 2008, TDI-DWC has contacted approximately 1,200 Texas employers – 543 of these employers indicated that they had no reportable injuries and illnesses to report (46 percent) ; 282 reported injuries and illnesses that they had not previously reported (23 percent); 110 indicated they now had workers' compensation coverage (9 percent); 102 reported having fewer than five employees and are exempt from these reporting requirements (8 percent); and the remaining 163 employers either were out of business or did not respond to TDI-DWC's request (14 percent).

TDI-DWC recognizes that Texas employers may not be knowledgeable about these reporting requirements and its enforcement efforts have been focused more on getting employers into compliance than levying administrative penalties. To date TDI-DWC has issued approximately 135 warning letters to employers who either have not responded to the agency's letters of inquiry regarding coverage status or notice of occupational injuries and illnesses or have been found in non-compliance with the DWC-5 or DWC-7 filing requirements. Despite TDI-DWC's recent compliance and education efforts about these reporting requirements, the volume of DWC-5 forms filed with TDI-DWC has not significantly increased (see Figure 6). Overall non-subscriber compliance with existing reporting requirements remains low - less than 10 percent of non-subscribers are estimated to be in compliance with the DWC-5 form filing requirement.

In an effort to make it easier for Texas employers to report their non-subscriber status with TDI-DWC, the agency has recently automated the DWC-5 form (see <http://www.tdi.state.tx.us/wc/employer/index.html#nocov>), which allows employers to directly enter their information and obtain a verification of submission online at no charge. TDI-DWC has also recently re-organized its employer resources website to better assist employers in locating pertinent

Figure 6: Total Number of DWC-05 Forms Received by TDI-DWC by Calendar Year



Source: Texas Department of Insurance, Division of Workers' Compensation, 2010.

workers' compensation information. The employer resources website (see www.tdi.state.tx.us/wc/employer/index.html) now features a direct link to the automated DWC-5 form as well as Online Reporting Help and Frequently Asked Questions. Additionally, in response to the Sunset Advisory Commission recommendation that TDI-DWC should closely coordinate with other state agencies to include non-subscription reporting requirements in their print and electronic publication, TDI-DWC has begun identifying other state agency websites that contain employer resource information (such as the Comptroller's, Texas Workforce Commission's and Secretary of State's websites) and will work to update those websites with the new TDI-DWC employer resource information. Once those websites are updated, TDI-DWC will initiate discussions with those agencies to increase the presence of TDI-DWC requirements in their printed publications. The goal of these communications is to increase employer awareness of these non-subscriber reporting requirements and to more effectively enforce these requirements for those employers who have been notified.

Medical Costs Have Stabilized in the System, Despite Continued Medical Inflation

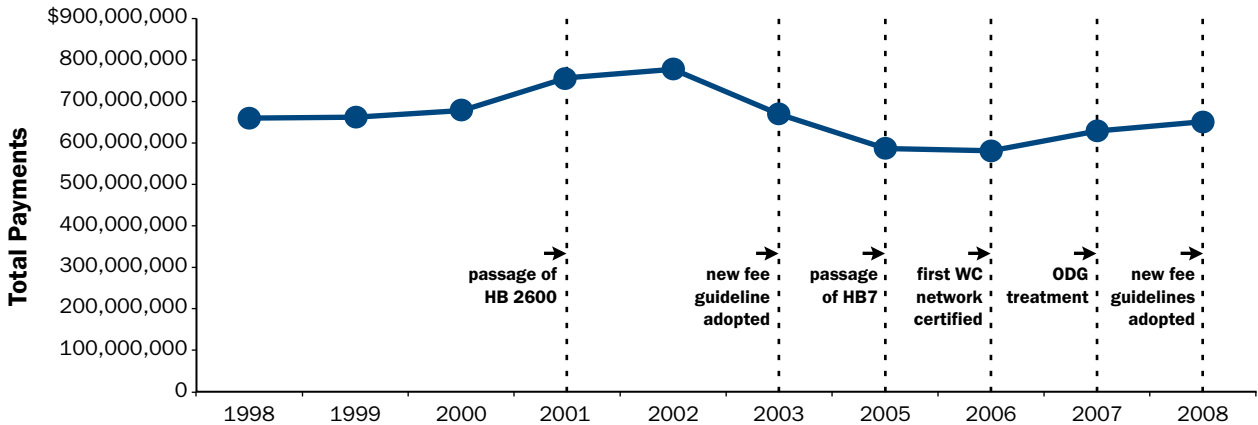
Since the 76th Legislature passed House Bill (HB) 3697 in 1999 mandating a series of studies comparing the cost, quality and utilization of medical care provided to injured employees in Texas with injured employees in other states and other health care delivery systems, medical costs have been a concern in the Texas workers' compensation system. The results from these and other studies showed that Texas had some of the highest average medical costs per claim and that these costs were primarily driven by the amount of medical care provided to injured employees (also known as the utilization of care).⁸ Compared with similarly injured employees in other states, these studies also highlighted that Texas injured employees had poorer return-to-work outcomes and satisfaction with care. Growing concerns from policymakers and system participants about high medical costs and poor outcomes led to the passage of House Bill (HB) 2600 by the 77th Legislature in 2001, which included key components, such as:

- abolishing the former Texas Workers' Compensation Commission's consensus-based treatment guidelines;
- eliminating the spinal surgery second opinion process and requiring preauthorization for spinal surgeries;
- requiring medical necessity and preauthorization disputes to be reviewed by Independent Review Organizations (IROs) (i.e., panels of independent doctors certified by the Department);
- instituting a registration and training requirement for doctors treating injured employees (i.e., the Approved Doctor's List or ADL);
- increasing training requirements for doctors performing impairment rating examinations; and
- requiring the use of Medicare's reimbursement structure, payment policies, and coding requirements for medical billing.

Since the passage of HB 2600, a significant amount of attention has been placed on the issue of lowering medical costs through a reduction in the utilization of medical services provided to injured employees. The issue of reducing medical costs and improving the quality of medical care provided to injured employees was also a key component driving the passage of a new health care delivery model in HB 7 – workers' compensation health care delivery networks. The system has just begun to fully realize the effects of the various legislative and regulatory reforms enacted by HB 2600. Given the relatively small number of claims being treated in networks and the relative immaturity of the claims being treated under the HB 7 reforms, it is still too early to effectively gauge the full impact that HB 7 will have on medical costs, especially the implementation of treatment guidelines, certain statutory pre-authorization requirements for physical and occupational therapy, certified health care networks and the impact of the new pharmacy closed formulary.

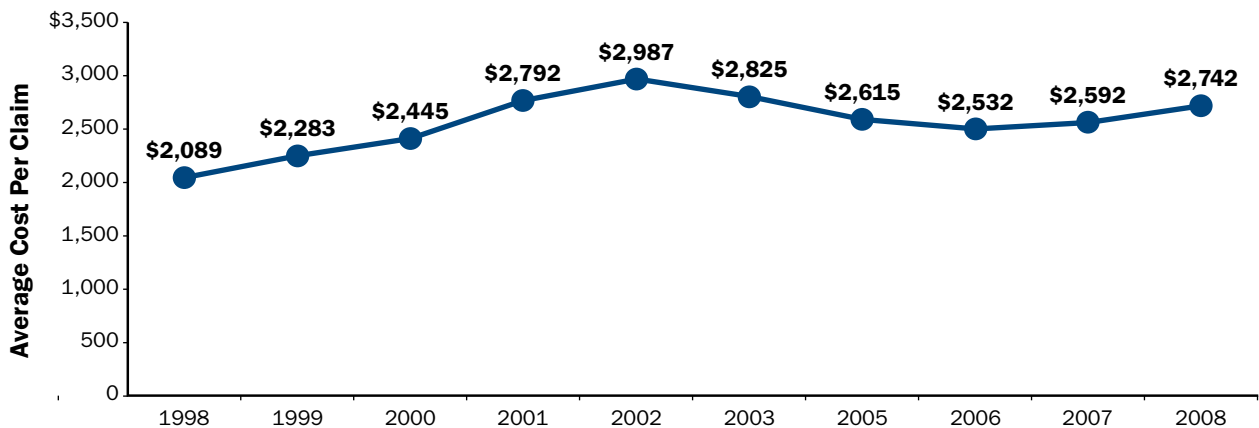
⁸ See Research and Oversight Council on Workers' Compensation, *Striking the Balance: An Analysis of the Cost and Quality of Medical in the Texas Workers' Compensation System: A Report to the 77th Legislature*, 2001; Research and Oversight Council on Workers' Compensation, *Returning to Work: An Examination of Existing Disability Duration Guidelines and Their Application to the Texas Workers' Compensation System: A Report to the 77th Legislature*, 2001; Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, *Medical Cost and Quality of Care Trends in the Texas Workers' Compensation System*, 2004; and Workers' Compensation Research Institute, *CompScope Benchmarks for Texas*, 6th Edition, 2006.

Figure 7: Total Medical Payments (Professional and Hospital), One-Year Post Injury, Unadjusted, Injury Years 1998-2008



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2010.

Figure 8: Average Medical Cost Per Claim (Professional and Hospital), One-Year Post Injury, Adjusted, Injury Years 1998-2008



Note: Injury Year 2004 was excluded from this analysis due to missing data. The figures presented above are adjusted for injury type and type of claim differences that may exist between the groups.

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2010.

Figures 7 and 8 illustrate the medical cost trends that the system was experiencing prior to and just after the implementation of HB 2600 in 2001 and HB 7 in 2005. Overall, total medical payments in the system have stabilized in the Texas workers' compensation system due to a variety of factors, including fewer claims being filed and reductions in the amount of certain types of care being rendered for new claims. Increases in the professional services fee guideline in 2008 in order to improve access to care as well as rising hospital costs have led to recent increases in total medical payments (see Figure 7).⁹

⁹ On August 1, 2003, the system's first Medicare-based professional service fee guideline took effect. While this fee guideline increased reimbursement for some categories of services, including primary care, reimbursements for specialty surgery services were significantly reduced. On the whole, the reimbursement rates for professional medical services in the Texas workers' compensation system went from approximately 140 percent of Medicare to approximately 125 percent of Medicare.

As injury rates continue to decline in Texas, there have been some changes in the types of injuries and the proportion of claims with lost time in the workers' compensation system. Looking at Figure 8, it appears that after controlling for differences in injuries and types of claims over time, the average medical cost per claim has recently begun to increase after several years of declines, but is still relatively stable compared to the double-digit increases in medical costs that the system was experiencing in the late 1990's.

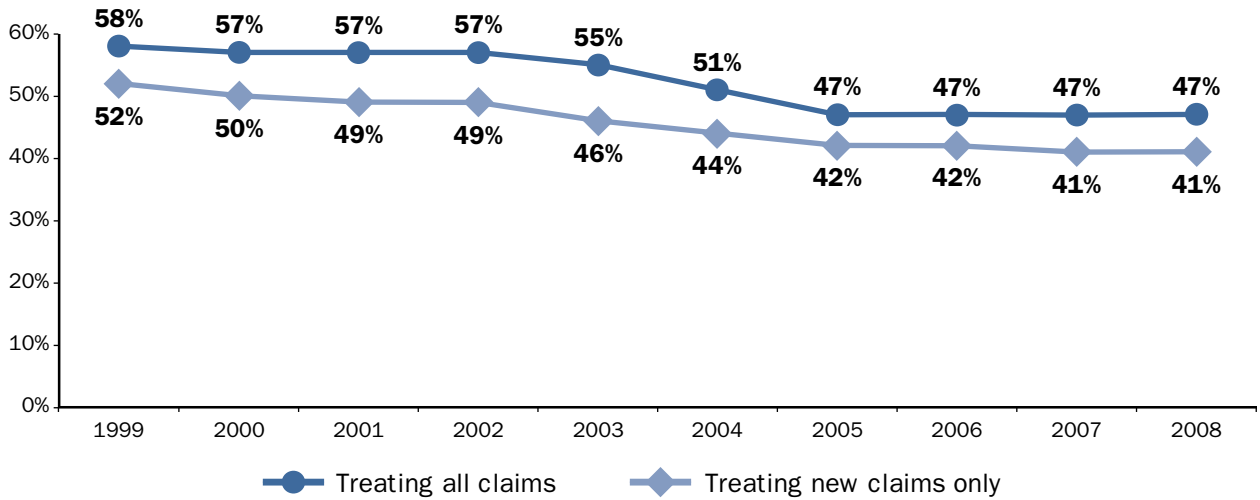
Based on the analysis available to date, the reduction in the total amount of medical payments made in the system between 2002 and 2006 can be attributed mostly to fewer claims being filed, as well as lower utilization of specific types of services. Greater scrutiny on certain types of services through the mandatory preauthorization of physical and occupational therapy services (required by HB 7 in 2005) has led to an estimated 12 percent reduction in professional services costs per claim from 2005-2008. Additionally, the initial implementation of the TDI-DWC adopted treatment guideline – the Official Disability Guidelines: Treatment in Workers' Comp, published by the Work Loss Data Institute and the residual effects from the statutory preauthorization requirements were associated with an additional 5 percent reduction in professional services costs per claim between 2007-2008. Further data analysis is needed to determine if the effects of the statutory preauthorization requirements are lasting and whether the impact of the Official Disability Guidelines is more pronounced as claims mature (since certain services such as surgery and work hardening/work conditioning tend to appear later in the claim).

Access to Care Has Improved

Ensuring that injured employees have adequate access to medical care is an important function of the workers' compensation system. Without sufficient access to care, necessary medical care is delayed, which exacerbates total medical and income benefit costs and unnecessarily prolongs time off of work. System participants have raised concerns in the past that the workers' compensation system was experiencing an "access to care problem" and that many health care providers, particularly physicians were concerned with the "hassle factor" associated with treating injured employees and the compensation rates that accompanied that medical care. Indeed, the passage of the first Medicare-based professional services fee guideline in 2002 (the guideline became effective in August 2003 after a court battle between the former Texas Workers' Compensation Commission and the Texas Medical Association/Texas AFL-CIO) spurred controversy when the compensation rate for workers' compensation professional services was set at 125 percent of Medicare. For some specialty providers, such as surgeons, this was a significant cut in compensation and many providers stated that they would no longer accept injured employees as patients.

An analysis of the medical billing and payment data collected by TDI-DWC combined with the licensing information from the Texas Medical Board indicates that between 2002 and 2005 there was a significant decline in the percentage of active physicians (i.e., those physicians that had an active license and were practicing) who treated workers' compensation claims (see Figure 9). With the passage of tort reform legislation in 2003, more physicians have set up active practices in Texas. This influx of new physicians has resulted in a stable number of physicians treating workers' compensation claims since 2005.

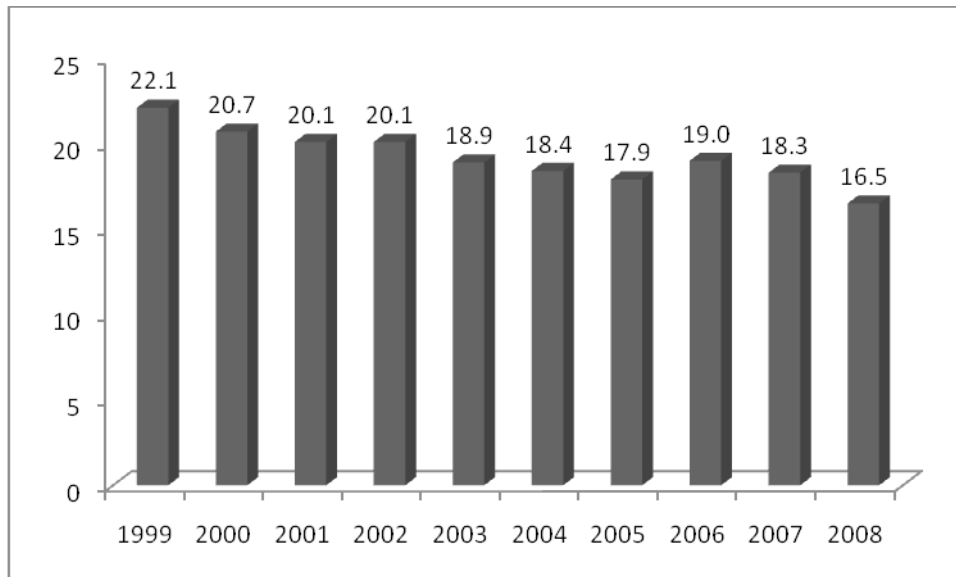
Figure 9: Percentage of Active Physicians Who Treated Workers' Compensation Claims, Service Years 1999-2008



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2010.

*2004 shows an average of 2003 and 2005 due to incomplete data.

Figure 10: Average Number of Claims per Workers' Compensation Participating Physician, 1999-2008



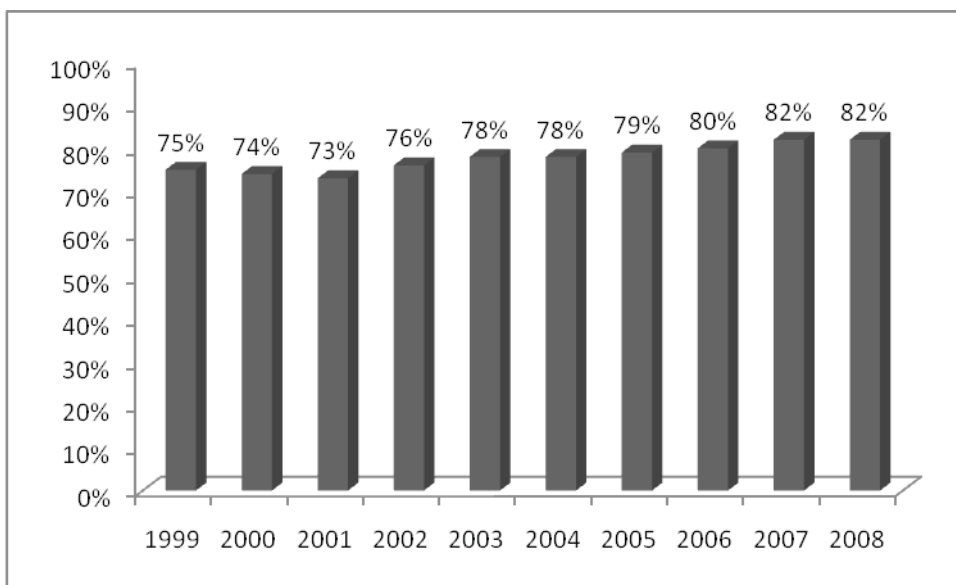
Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2010.

*2004 shows an average of 2003 and 2005 due to incomplete data.

With the consistent decline of injury rates and reported workers' compensation claims along with a stable number of physicians participating in the Texas workers' compensation system since HB 7, the average workers' compensation caseload for each participating physician has declined, resulting in fewer injured employees competing for the same physician (see Figure 10).

Less competition for physicians willing to treat workers' compensation claims has also resulted in a higher percentage of claims receiving the first non-emergency service within seven days after the injury (see Figure 11). Initial research on the connection between access to care and medical costs shows that the median cost per claim increases significantly if the injured employee receives his or her first non-emergency medical service a week or more after the injury.¹⁰

Figure 11: Percentage of Claims Receiving the First Non-Emergency Service Within 7 Days After the Injury, 1999-2008



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2010.
*2004 shows an average of 2003 and 2005 due to incomplete data.

Return-to-Work Rates Continue to Improve

One of the most basic objectives of the Texas workers' compensation system is to return injured employees to safe and productive employment. Effective return-to-work programs can not only help reduce the economic and psychological impact of a work-related injury on an injured employee, but it can also reduce income benefit costs and curb productivity losses for Texas employers.

Previous studies by both the Research and Oversight Council on Workers' Compensation (ROC) and the Workers' Compensation Research Institute (WCRI) indicated that compared to similarly injured employees in other states, Texas injured employees were generally off work for

¹⁰ For more access to care research results, see Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, Access to Medical care 1998-2008, 2010.

longer periods of time and were more likely to report that their take-home pay was less than their pre-injury pay.¹¹ Armed with these study findings, policymakers and system participants have placed considerable attention on improving return-to-work outcomes in recent years.

Several components of HB 7 placed significant focus on the importance of return to work, including a requirement for TDI-DWC to adopt return-to-work guidelines;¹² the institution of a return-to-work reimbursement program for employers;¹³ greater coordination of vocational rehabilitation referrals between TDI-DWC, the Office of Injured Employee Counsel and the Department of Assistive and Rehabilitation Services (DARS); improvements in return-to-work outreach efforts; and TDI-DWC’s adoption of rules to implement changes in the work-search requirements for injured employees who qualify for Supplemental Income Benefits (SIBs).¹⁴

Since the passage of HB 2600 in 2001 and the passage of HB 7 in 2005, there has been a steady increase in the percentage of injured employees receiving Temporary Income Benefits (TIBs) (i.e., injured employees with more than seven days of lost time) who have initially returned to work post-injury. Of those employees injured in 2004 receiving TIBs, only 74 percent initially returned to work within six months post-injury, compared to 80 percent of employees injured in 2009 (see Table 3).¹⁵

Table 3: Percentage of Injured Employees Receiving TIBs Who Have Initially Returned to Work (6 months to 3 years post-injury)

Injury Year	Within 6 Months Post Injury	Within 1 Year Post Injury	Within 1.5 Years Post Injury	Within 2 Years Post Injury	Within 3 years Post Injury
2004	74%	83%	86%	88%	93%
2005	75%	84%	87%	88%	93%
2006	75%	86%	90%	92%	94%
2007	76%	87%	91%	93%	
2008	78%	88%	94%		
2009	80%				

Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2010.

While the percentage of injured employees who initially return to work is an important benchmark of system performance, whether these injured employees remain employed once they go back to work is a more accurate measure of the system’s ability to promote “successful” return to work. As Table 4 indicates, the percentage of injured employees receiving TIBs who have initially returned to work and remained employed for at least three successive quarters (or nine months) also continues to improve. Roughly 71 percent of employees injured in 2008 who ini-

11 See Research and Oversight Council on Workers’ Compensation, *Returning to Work: An Examination of Existing Disability Duration Guidelines and Their Application to the Texas Workers’ Compensation System: A Report to the 77th Legislature*, 2001; and Workers’ Compensation Research Institute, *CompScope Benchmarks for Texas*, 6th Edition, 2006.

12 The Division adopted the Medical Disability Advisor, published by Presley Reed, as its return-to-work guideline, which became effective on May 1, 2007.

13 For more information on the employer return-to-work reimbursement program, see <http://www.tdi.state.tx.us/wc/rtw/documents/smlemployrpilot.pdf>.

14 See 28 Texas Administrative Code §130.102 for details regarding the work search compliance requirements for injured employees seeking eligibility for Supplemental Income Benefits.

15 For more information on these and other return-to-work statistics, see Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, *Return-to-Work Outcomes for Texas Injured Workers*, 2010.

tially returned to work within the first six months of their injuries remained employed for three consecutive quarters, compared to only 66 percent of employees injured in 2004.

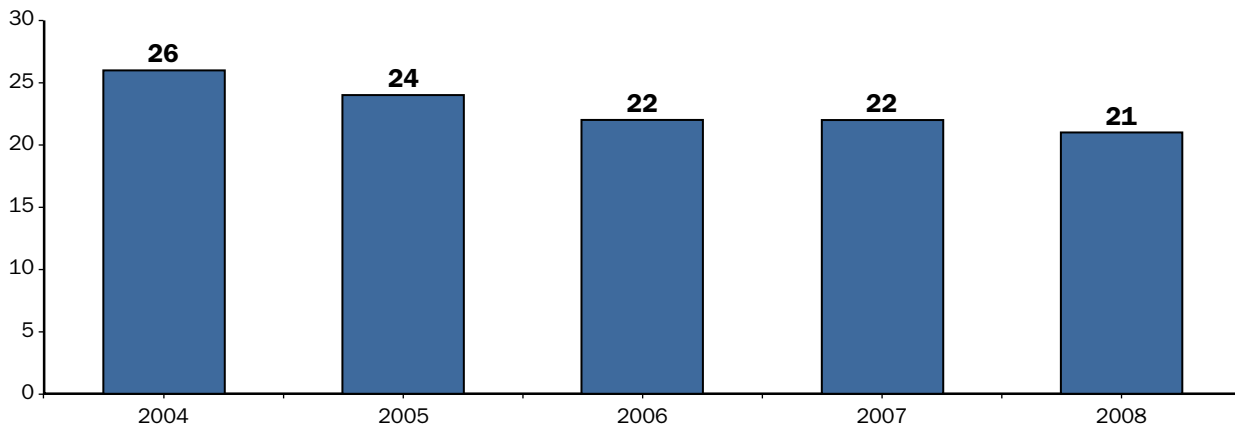
Table 4: Percentage of Injured Employees Receiving TIBs Who Have Initially Returned to Work and Remained Employed for Three Successive Quarters (6 months to 3 years post-injury)

Injury Year	Within 6 Months Post Injury	Within 1 Year Post Injury	Within 1.5 Years Post Injury	Within 2 Years Post Injury	Within 3 years Post Injury
2004	66%	73%	78%	80%	84%
2005	68%	76%	80%	83%	85%
2006	70%	77%	81%	83%	86%
2007	71%	77%	81%	84%	
2008	71%	77%			

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2010.

Not only have the percentage of injured employees who returned to work and remained employed improved over the past few years, but the amount of time the average injured employee who received TIBs is off work after an injury has also decreased (see Figure 12).

Figure 12: Median Days Off Work for Injured Employees Who Returned to Work At Some Point Post-Injury, Injury Years 2004-2008



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2010.

Note: "Days Off Work" was defined as days from the injury date to the initial RTW date. Please note that these numbers do not take into account any additional time off work that may have occurred after the initial return-to-work date.

It is important to continue to monitor these return-to-work measures on a continuous basis to track the impact of the implementation of treatment and return-to-work guidelines and the impact of workers' compensation health care networks on return-to-work outcomes in Texas.

While Income Replacement for Employees Receiving Temporary Total Disability Benefits is High in Texas, Employees Are More Affected by the Statutory Maximum Benefit Caps for Permanent Partial Disability Benefits

With questions arising about the role of third party liability within the workers' compensation system and the exclusive remedy for those employers or general contractors who provide workers' compensation coverage to their employees, the issue of income benefit adequacy has garnered additional focus recently. While system participants have not yet agreed on what con-

stitutes an “adequate income benefit,” some argue that third party liability must be maintained because income benefits are too low, while others argue that raising income benefits will increase system costs unnecessarily and will hinder return-to-work outcomes.

Looking at the data, it appears that while the various tiers of income benefits were designed so that one tier would be exhausted before another tier of benefits begin, the income replacement rates of these benefits (i.e., the extent to which an injured employee’s lost wages are replaced by the income benefit) varies significantly by benefit type. Generally, the benefits designed to compensate injured employees with more serious injuries that do not qualify for Lifetime Income Benefits (such as Impairment Income Benefits - IIBs or Supplemental Income Benefits - SIBs),¹⁶ have poorer income replacement rates and a higher percentage of injured employees capped at the statutory maximum benefit. IIBs and SIBs (also known as Permanent Partial Disability Benefits in other states) are payable to injured employees with permanent impairments directly resulting from their work-related injuries.¹⁷

It should be noted that the majority of injured employees (roughly two-thirds) receiving income benefits generally receive only the first tier of income benefit – Temporary Income Benefits (TIBs – also known as Temporary Total Disability Benefits in other states) and that income benefits are not subject to federal income tax. Since income benefits are not taxable and since they are designed to encourage injured employees to go back to work after a work-related injury, the compensation rates for income benefits are generally set at less than 100 percent of the injured employee’s pre-injury wages (which are calculated using the wages for the most recent 13 weeks prior to the injury if available).

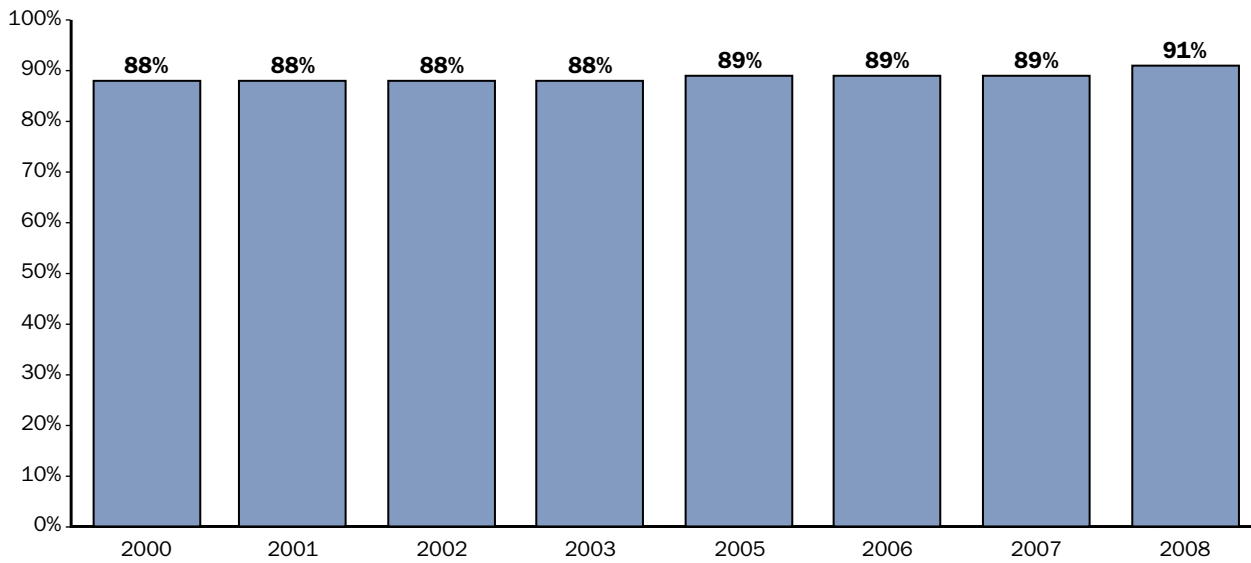
TIBs are designed to temporarily compensate injured employees for lost wages while they are off work. The current compensation rate for TIBs is generally set at approximately 70 percent of the injured employee’s pre-injury wage (the compensation rate may be as high as 75 percent for workers making less than \$8.50/hr). This compensation rate is higher than many state workers’ compensation systems, which generally compensate injured employees at 66 2/3 percent. As a result, the income replacement rate for injured employees in Texas receiving TIBs is relatively high (between 88 and 91 percent) (see Figure 13).

Most state workers’ compensation systems also cap the total weekly benefit an injured employee can receive in order to contain system costs. In Texas, this cap was held constant by statute for several years until the legislature (HB 7 – 2005) changed the calculation method for determining the statutory maximum weekly benefit, which tied the State Average Weekly Wage (i.e., the baseline wage for determining the maximum weekly benefit amount) to 88 percent of the average weekly wage of all employees covered by the state’s Unemployment Insurance program. As Figure 14 indicates, prior to HB 7 almost one quarter of TIBs recipients were capped by the maximum weekly benefit and for employees injured in 2007 – the first year the new calculation method was used, the percentage of TIBs recipients capped was significantly reduced.

16 Lifetime Income Benefits (LIBs) are paid for the life of the injured worker for specific catastrophic injuries (e.g., loss of use of both feet or hands, blindness, severe burns over a majority of the body, etc.) as set forth in Section 408.161 of the Texas Labor Code.

17 For more income replacement research results, see Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, Income Benefit Adequacy in the Texas Workers’ Compensation System, 2010.

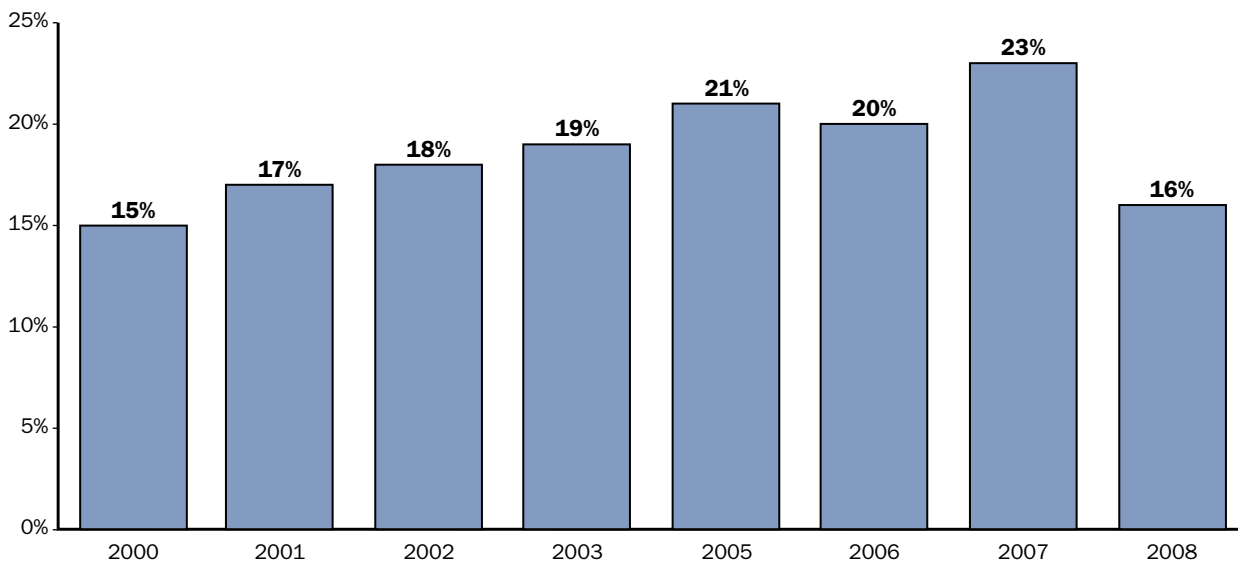
Figure 13: Median Temporary Income Benefit Replacement Rate, by Injury Year



Source: Texas Workers' Compensation Research and Evaluation Group, 2010.

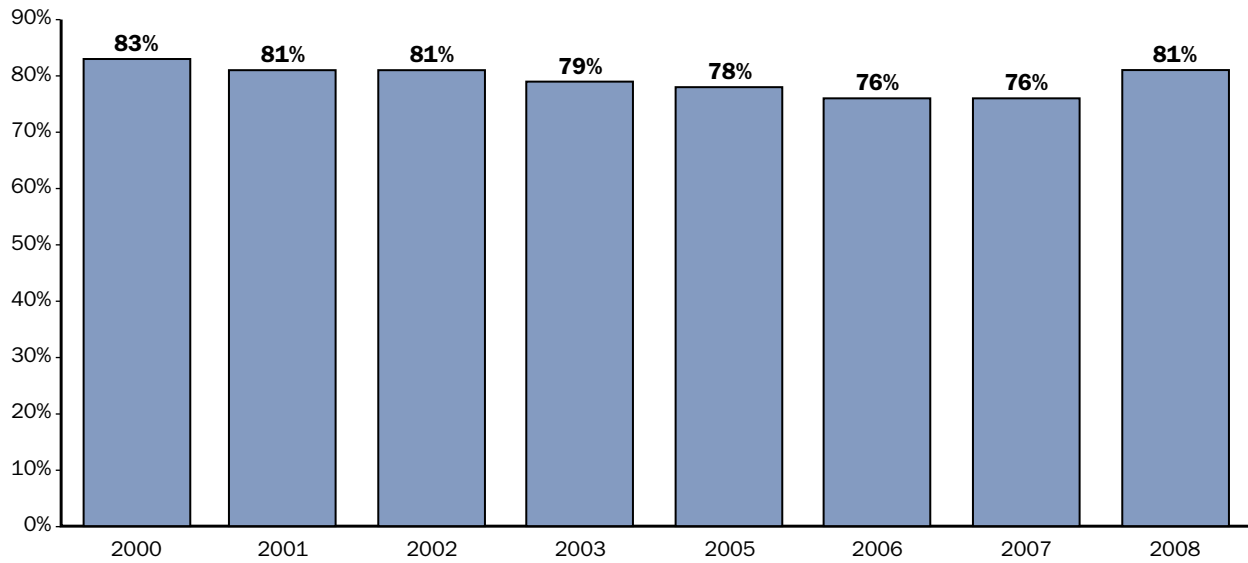
IIBs are payable after TIBs are exhausted. IIBs were designed to compensate employees with serious injuries and are payable regardless of whether the employee has returned to work or not. The amount of time an employee may receive IIBs is directly related to that employee's impairment rating, which measures the percentage of the employee's body that is permanently impaired. Doctors, including the employee's treating doctor, the Division's Designated Doctor, or the insurance carrier's Required Medical Examiner (RME) may assign employee's impairment rating using the American Medical Association's Guides to the Evaluation of Permanent Im-

Figure 14: Percentage of Injured Employees Capped at Statutory Maximum Benefit Amount for Temporary Income Benefits, by Injury Year



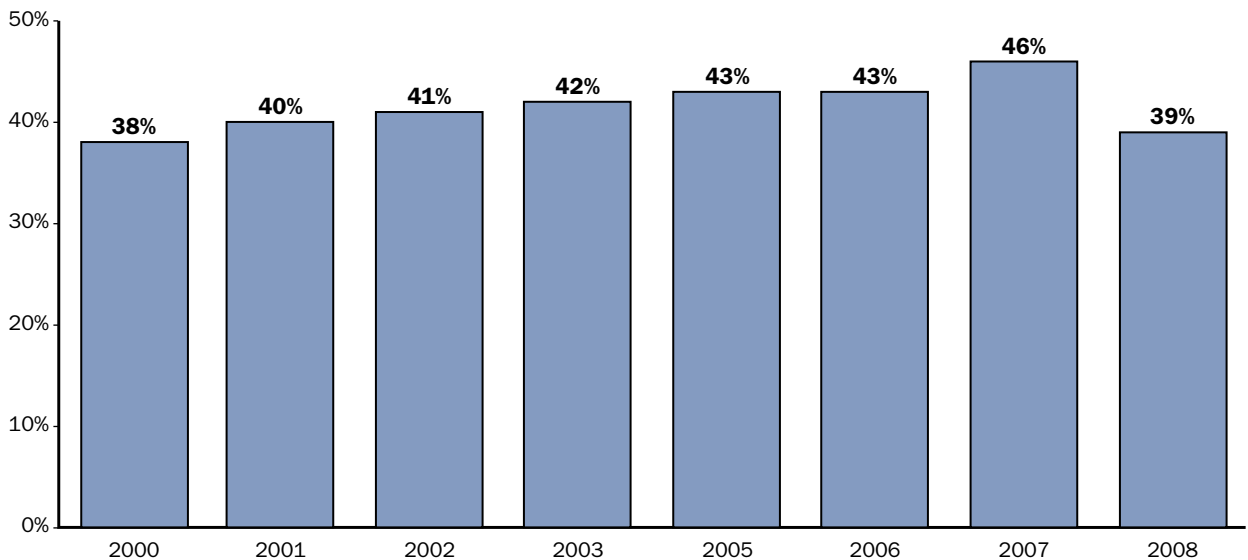
Source: Texas Workers' Compensation Research and Evaluation Group, 2010.

Figure 15: Impairment Income Benefit Replacement Rate, by Injury Year



Source: Texas Workers' Compensation Research and Evaluation Group, 2010.

Figure 16: Percentage of Injured Employees Capped at Statutory Maximum Benefit Amount for Impairment Income Benefits, by Injury Year



Source: Texas Workers' Compensation Research and Evaluation Group, 2010.

pairment, Fourth Edition. Each percentage point assigned translates into three weeks of IIBs (ex: a 10 percent impairment rating would result in 30 weeks of IIBs).

The current compensation rate for IIBs is set at approximately 70 percent of the injured employee's pre-injury wage. This compensation rate is higher than many state workers' compensation systems, which generally compensate injured employees for permanent partial disability benefits at 66 2/3 percent. As a result, the income replacement rate for injured employees in Texas receiving IIBs is relatively high (between 76 and 81 percent), but lower than the income replacement rate for TIBs because a higher percentage of injured employees receiving IIBs are capped by the statutory maximum benefit (see Figure 15).

The statutory maximum benefit amount for injured employees receiving IIBs and SIBs is lower than the statutory maximum for TIBs (70 percent of the SAWW for IIBs and SIBs and 100 percent of the SAWW for TIBs). As such, a much higher percentage of injured employees receiving IIBs or SIBs have their benefits capped. Similar to TIBs, the percentage of IIBs recipients capped at the statutory maximum was significantly reduced in 2007 when the new calculation method for the SAWW was implemented (see Figure 16).

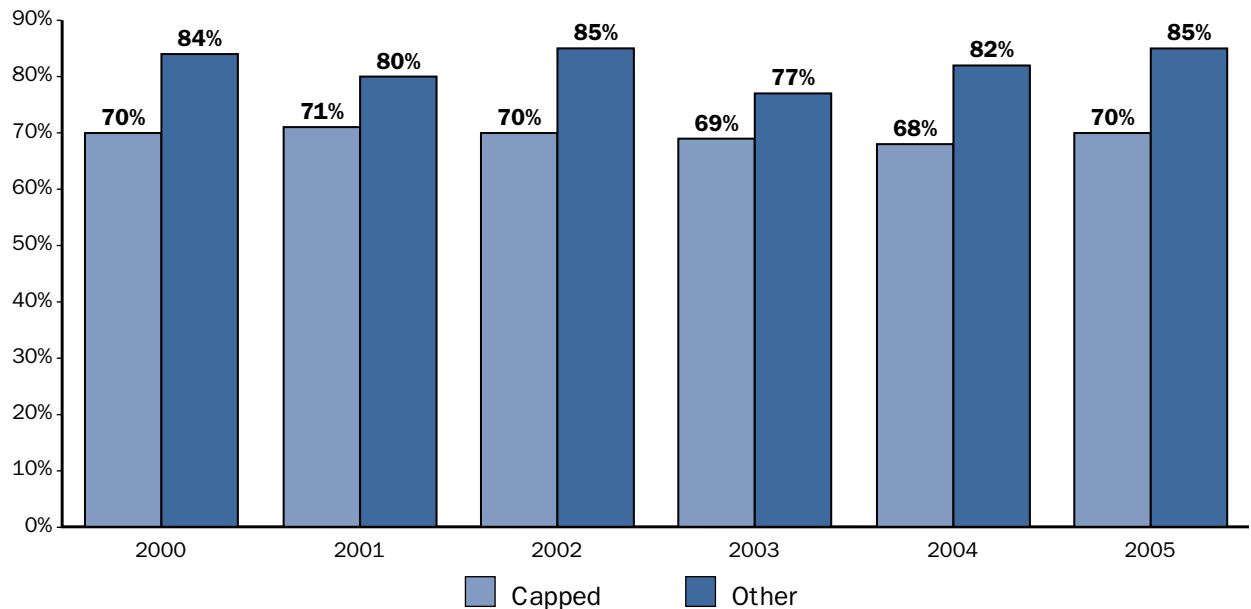
Injured employees who have at least a 15 percent impairment rating and have not gone back to work or are underemployed may become eligible to receive SIBs once IIBs are exhausted. The compensation rate for SIBs is different than other benefit types – 80 percent of the difference between 80 percent of the injured employee's pre- and post-injury wages. This compensation rate is a bit lower than other states, which generally compensate injured employees for permanent partial disability benefits at 66 2/3 percent. Based on the available data, between 30-40 percent of SIBs recipients injured before 2005 were capped at the statutory maximum benefit. Since SIBs benefits generally do not start until at least 3+ years after the injury, it is impossible to determine what impact the changes in the calculation of the SAWW starting in 2007 will have on these recipients. However, the income replacement rate for SIBs varies widely depending on whether an injured employee has had their benefits capped or not. As Figure 17 shows, injured employees who have had their benefits capped only replace approximately 70 percent of their pre-injury wages with SIBs, compared to an income replacement rate of between 77 percent and 85 percent for employees who have not had their SIBs capped at the statutory maximum.

Workers' Compensation Networks Continue to Grow in Texas; However, the Initial Impact of Certified Networks on Cost and Outcomes Appear to Mixed

TDI began accepting applications for the certification of workers' compensation health care networks on January 2, 2006. As of November 1, 2010, there are 30 certified networks extending over 249 counties. Currently, certified networks cover the vast majority of Texas counties, with the exception of a handful of counties in the Panhandle, the Valley and West Texas. Most Texas counties with network coverage support multiple networks, allowing insurance carriers and their policyholders various options for network coverage.

TDI continues to track the participation of both Texas policyholders (employers) and injured employees in workers' compensation health care networks created by HB 7. According to the results of a July, 2010 data call with twelve of the largest workers' compensation insurance carrier groups (representing 83 percent of the direct workers' compensation premium written in

Figure 17: Median Supplemental Income Benefit Replacement Rate, by Injury Year



Source: Texas Workers' Compensation Research and Evaluation Group, 2010.

Texas in 2009), approximately 39,643 policyholders, most of whom are small and mid-sized employers, have agreed to participate in workers' compensation networks in exchange for premium credits that range between 1-20 percent.

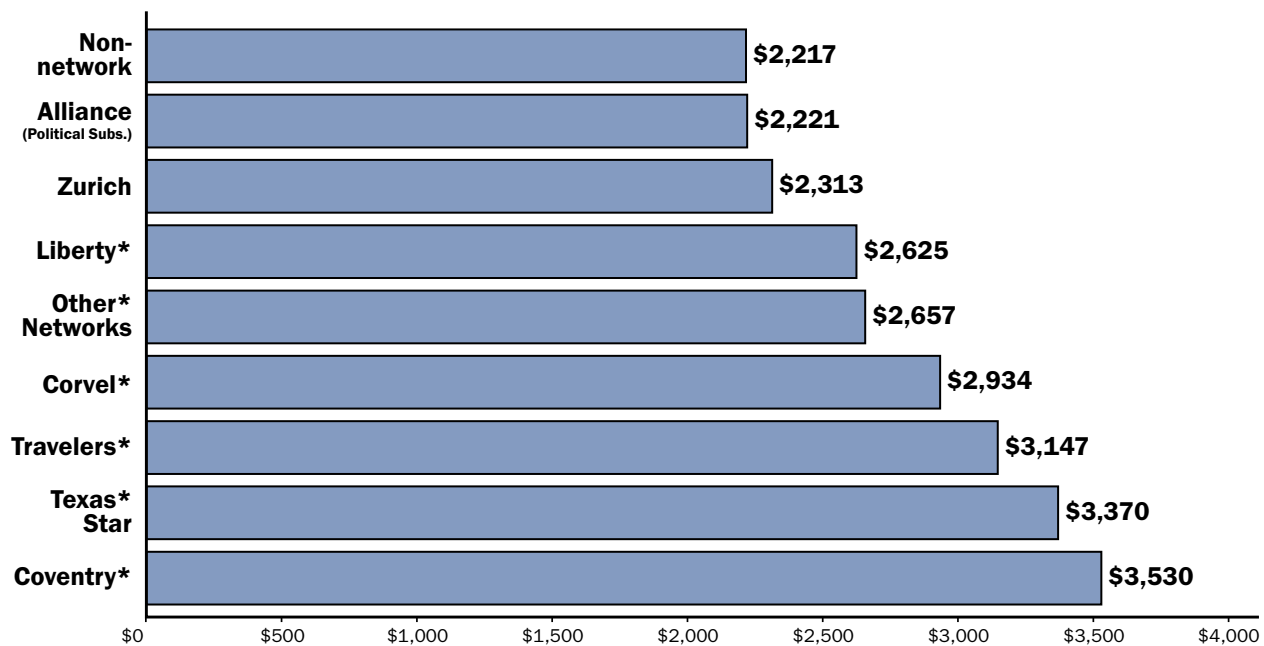
While eleven of the top twelve insurance carrier groups have contracted with or established a certified network for their policyholders, usage of networks among insurance carriers varies widely. As of July, 2010, only five of the eleven insurance carrier groups offering a network option reported that more than 25 percent of their policyholders have agreed to participate in their workers' compensation network. While network participation among Texas policyholders has grown considerably since 2006 (39,643 policyholders in 2010 compared to 7,500 policyholders in 2006), it remains to be seen how differences in carrier marketing strategies, the concentration of high deductible policies within a carrier's book of business, the level of premium credits offered for network participation, employer requirements to provide employee network notices, and the impact of the economy on carrier profitability and market competition will affect the participation rates for Texas policyholders over the next biennium.

In addition to tracking the participation of Texas policyholders in workers' compensation networks, TDI also tracks the number of injured employees who have been treated by networks through separate data calls with each certified network. As of February 1, 2010, approximately 142,000 injured employees had been treated by 27 certified networks. While the number of injuries being treated by certified networks continues to grow, the overall percentage of injuries being treated by networks is still relatively low. The TDI Workers' Compensation Research and Evaluation Group estimates that approximately 21 percent of all new injuries are being treated by certified networks. Additionally, the population of injuries being treated by networks (roughly 47 percent) is highly concentrated in one certified network associated with the largest workers' compensation carrier in Texas; however, this concentration has decreased since 2008 when roughly 70 percent of network claims were treated by one certified network.

Given that many certified networks are just beginning to treat a sufficient volume of injured employees to be analyzed and the workers' compensation claims being treated in these networks are relatively immature, it is still too early to fully evaluate the impact of networks on claims costs and quality of care. However, information from the annual workers' compensation network report card produced by TDI's Workers' Compensation Research and Evaluation Group in September, 2010 provides some insight into the early implementation of networks.¹⁸ Six certified networks: Texas Star, Liberty HCN, Corvel CorCare, Zurich, Travelers, and Coventry had sufficient claim volume to be compared with each other and with non-network claims. Additionally, the report card compares the outcomes of certified networks with the experiences of several large intergovernmental risk pools that have joined together to directly contract with health care providers under Chapter 504, Labor Code – the Alliance. The remaining certified networks that had reported treating injured employees according to the February network data call were combined into an “other networks” category for comparison purposes.

In general, differences have begun to emerge among individual networks. As Figure 18 shows, with the exception of the Alliance and Zurich, the average medical cost per claim for the other certified networks was higher than non-network claims. Medical cost differences between network and non-network claims at this early stage in network implementation appear to be driven

Figure 18: Average Medical Cost per Claim, Network and Non-Network Claims, 6 Months Post Injury



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2010.

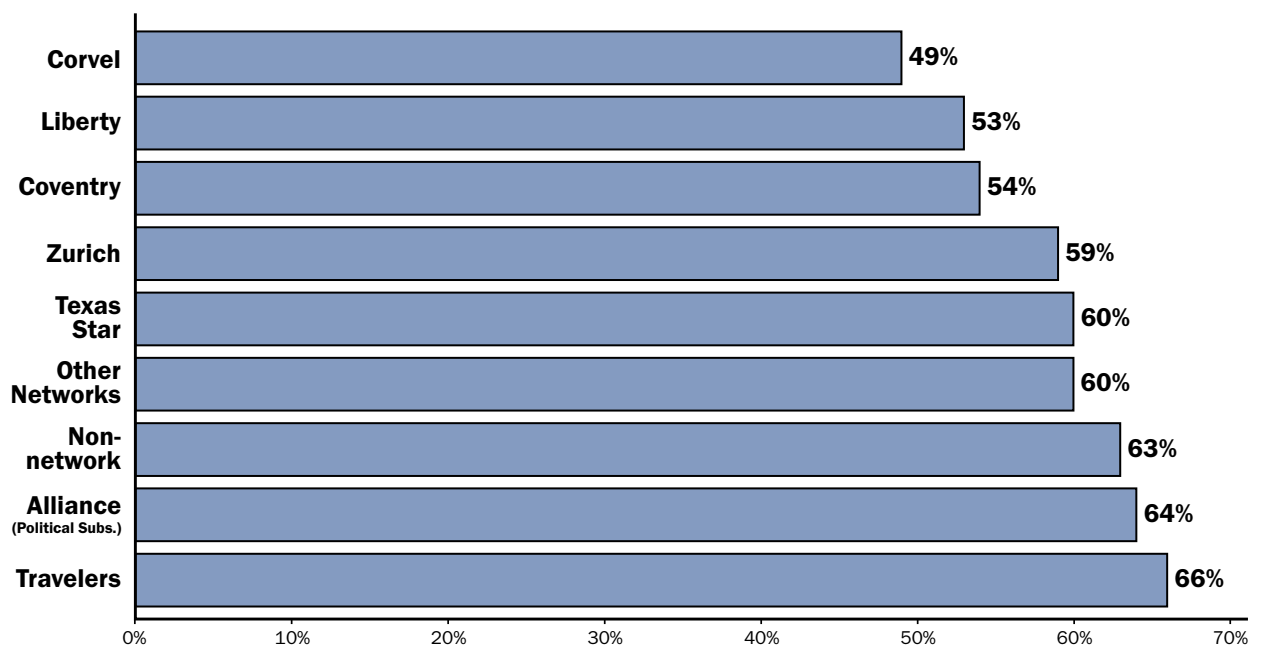
* The figures presented above are adjusted for injury type and type of claim differences that may exist between the groups.

18 For more information about how individual networks compare with each other and with non-network claims on a variety of cost, utilization, access to care, satisfaction with care, return-to-work, and health outcomes measurements, see Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2010 Workers' Compensation Network Report Card Results, 2010 (<http://www.tdi.state.tx.us/reports/report9.html>).

primarily by higher hospital fees, higher pharmacy utilization and higher utilization of certain physical medicine services and diagnostic tests than non-network claims with similar types of injuries.

Generally, injured employees who received medical care in certified networks had poorer perceptions regarding access to care and satisfaction with care than non-network employees (see Figure 19). However, it should be noted that the perceptions of employees being treated in certified networks are similar to those employees analyzed by the TDI Workers' Compensation Research and Evaluation Group in 2005 (before the implementation of certified networks) who reported choosing a doctor recommended to them by their employer or insurance carrier.¹⁹

Figure 19: GETTING NEEDED CARE
percent of injured employees who reported no problem getting: a personal doctor they like • to see a specialist • necessary tests or treatment • timely approvals for care



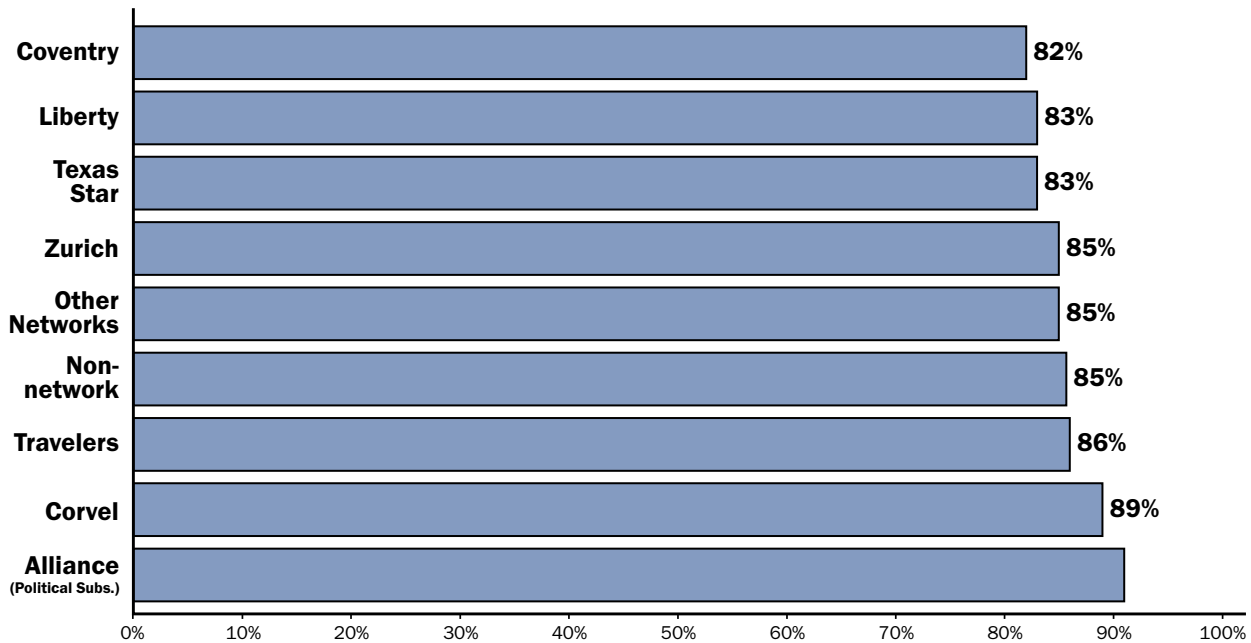
Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2010.

Note: The figures presented above are adjusted for injury type, type of claim, race/ethnicity, gender, age, education, age of injury at the time of the survey, insurance coverage, and self-rated health differences that may exist between the groups.

19 For a summary of the 2005 injured worker survey findings, see Biennial Report of the Texas Department of Insurance To the 80th Legislature: Division of Workers' Compensation, which can be viewed at <http://www.tdi.state.tx.us/reports/report9.html>.

In addition to medical costs, it is still too early to determine what impact, if any, that certified networks will have on return-to-work outcomes and resulting income benefit costs. As Figure 20 indicates, the 2010 report card shows that there is little difference between network and non-network claims in the percentage of injured employees who reported that they had returned to work at some point after their injury. These differences may become more pronounced over time as claims continue to mature. It is important to note that the income benefit cost data currently collected by TDI-DWC is somewhat limited since it collects data when benefits are initiated, changed or terminated, instead of transaction-level income benefit payments so calculating income benefit savings is difficult. In order to more accurately estimate the impact of certified health care networks on income benefit costs, particularly Temporary Income Benefit costs, additional data will be required.

Figure 20: RETURN TO WORK
percent of injured employees who indicated that they had returned to work at some point after they were injured



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2010.

Note: The figures presented above are adjusted for injury type, type of claim, race/ethnicity, gender, age, education, age of injury at the time of the survey, insurance coverage, and self-rated health differences that may exist between the groups.

Concluding Remarks

Since the passage of HB 2600 in 2001 and HB 7 in 2005, the workers' compensation system has changed significantly and continues to show signs of progress. Early indications show that the HB 2600 and HB 7 reforms have helped to stabilize claims costs, improve return-to-work rates, and improve injured employee outcomes such as access to and satisfaction with medical care. The number of medical fee and income benefit disputes filed with TDI-DWC is down and non-fatal occupational injury and illness rates as well as workers' compensation claim frequency continues to decline. These improvements in system outcomes have helped reduce workers' compensation insurance costs in Texas since 2005, which has resulted in more employers participating in the workers' compensation system in Texas. However, the impact that certified workers' compensation health care networks have had on the system as a whole is unclear and needs further monitoring. The TDI Workers' Compensation Research and Evaluation Group will continue to evaluate and compare the outcomes of certified networks with each other and with non-network claims to determine if networks have more of a long-term impact on cost and outcomes.

The 2010 Sunset Review of TDI-DWC by the Sunset Advisory Commission contains many legislative recommendations to further improve TDI-DWC's ability to effectively administer and enforce the Workers' Compensation Act and Rules. These recommendations cover a multitude of issues, including dispute resolution, enforcement, the Medical Quality Review Panel, designated doctors, and non-subscriber compliance with reporting requirements, among others.²⁰ In addition, the Sunset Advisory Commission recommended the continuation of TDI-DWC for six more years and under this recommendation TDI-DWC would continue to have a separate Sunset date from the rest of TDI. Given the importance and the comprehensiveness of the Sunset recommendations regarding TDI-DWC, TDI-DWC is only recommending one legislative change for consideration by the 82nd Legislature - to modify the statutory authority for the designation of a statistical agent to collect workers' compensation data under Section 401.024, Labor Code.

Workers' Compensation Legislative Recommendation

Align the Statutory Authority for the Commissioner of Workers' Compensation to Designate a Statistical Agent for the Collection of Data with Similar Authority Currently Utilized by the Commissioner of Insurance

BACKGROUND: In 1999, the Texas Legislature passed HB 2511 (76th Legislature, Regular Session), which added a provision to Section 401.024, Labor Code, allowing the Texas Workers' Compensation Commission to contract with a data collection agent to fulfill the data collection requirements of the Workers' Compensation Act if deemed cost-effective. The Workers' Compensation Act requires the collection of a variety of data, including: claims information; income benefit payments; the types of medical treatment rendered on individual claims, including diagnoses, treatments, billed charges and actual payments; and workers' compensation

²⁰ A copy of the Sunset Advisory Commission's decisions regarding TDI-DWC can be found here: http://www.sunset.state.tx.us/82ndreports/wcd/wcd_dec.pdf.

insurance coverage information. This data is vital to TDI-DWC's ability to effectively monitor the system; complete its statutorily required Performance Based Oversight activities; conduct objective research; produce agency performance measures and legislatively required reports; and select health care providers or other system participants for quality of care audits by the Medical Quality Review Panel.

Since 1999, TDI-DWC and its predecessor have not fully explored the possibility under Section 401.024, Labor Code to designate a data collection agent/statistical agent, partly because the Labor Code does not clarify the payment of fees to data collection agents and does not lay out minimum qualifications for these agents. Given stakeholders' interests in aligning workers' compensation data collection requirements across states and the creation of national standards for the reporting of claim, income benefit, proof of coverage, and medical billing and payment data, TDI-DWC is interested in having the flexibility to determine whether it is more cost-effective to collect data in house or utilize a data collection/statistical agent to collect needed data. Before TDI-DWC would engage in the designation of data collection/statistical agent, it would obtain input from system participants to ensure that the designation of a data collection/statistical agent is indeed cost-effective and meets the needs of system participants who are responsible for reporting data to TDI-DWC.

RECOMMENDATION:

- Amend Section 401.024, Labor Code to incorporate the requirements relating to the qualifications of statistical agents and the payment of statistical agent fees with similar provisions found in Sections 38.203, 38.206 and 38.207, Insurance Code.