Biennial Report of the Texas Department of Insurance To the 80th Legislature

Division of Workers' Compensation

December 2006

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December 1, 2006

The Honorable Rick Perry, Governor
The Honorable David Dewhurst, Lieutenant Governor
The Honorable Tom Craddick, 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 brief descriptions of three legislative recommendations 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 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,

Albert Betts
Commissioner of Workers' Compensation

Mike Geeslin
Commissioner of Insurance

Overview of the Status of the Texas Workers' Compensation System

The past two years have seen significant changes in the Texas workers' compensation system. Policymaker and system participant concerns about high medical costs, problems with access to medical care and poor return-to-work outcomes, coupled with increased frustration with the administration of the system by the former Texas Workers' Compensation Commission (TWCC) spurred interest in a legislative overhaul of the system. Interest in making legislative changes also coincided with the scheduled Sunset review of TWCC in 2005 by the Sunset Advisory Commission, which resulted in a series of significant management and legislative recommendations.[1] These recommendations covered issues such as: changes in system administration, including the creation of an agency geared towards assisting injured workers; the promotion of managed care networks that would resemble group health regulation as closely as possible; enhancement of certain types of income benefits; streamlining medical and income benefit dispute resolution; and the promotion of key legislative goals, including the importance of ensuring the safe and timely return of injured workers to productive employment.

In response to these Sunset recommendations and with significant input from system participants, the 79th Legislature adopted House Bill (HB) 7 in 2005, which represents the most significant set of reforms to the Texas workers' compensation system since 1989.

Key aspects of these reforms included:

- the abolishment of the former TWCC and the transfer of its administrative duties to the Division of Workers' Compensation (Division) at the Texas Department of Insurance (TDI or Department) headed by a governor-appointed Commissioner of Workers' Compensation (Commissioner Albert Betts – appointed in September 2005);
- the creation of a newly formed Office of Injured Employee Counsel (OIEC) to serve as a voice for injured workers during rulemaking and assist them during dispute resolution headed by a governor-appointed Public Counsel (Public Counsel Norman Darwin – appointed in December 2005);
- the establishment of a mission statement for the Division and legislative goals to provide strategic statutory guidance to the Division's administration of the system;
- the formation of workers' compensation health care delivery networks geared towards improving the quality of medical care received by injured workers at a reasonable cost to Texas employers;
- the creation of a performance-based oversight program administered by the Division to promote incentives for insurance carrier and health care provider compliance and to assist the Division's prioritization of compliance activities;
- the abolishment of the Division's Approved Doctors' List (ADL) starting on September 1, 2007 or earlier if determined by the Commissioner of Workers' Compensation;
- the streamlining of medical and income benefit dispute resolution processes to improve the timeliness of dispute resolution; and
- increased focus on improving return-to-work rates in Texas.

A little more than a year after the effective date of HB 7, most of the key provisions of this legislation are currently being implemented by TDI. However, while it is too early to effectively gauge the full impact of this legislation, it is important to continuously assess the operational effectiveness of the Texas workers'

[1] For more information regarding the Sunset Advisory Commission's recommendations regarding the Texas Workers' Compensation Commission (TWCC) and the rest of the workers' compensation system, see Sunset Advisory Commission, *Sunset Staff Report on the Texas Workers' Compensation Commission*, April 2004, and the Sunset Advisory Commission, *Sunset Decisions for the Texas Workers' Compensation Commission*, September 2004, which can be found at http://www.sunset.state.tx.us/79.htm.

compensation system to establish a baseline by which policymakers and system participants may measure the relative impact of the HB 7 reforms in the future.

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

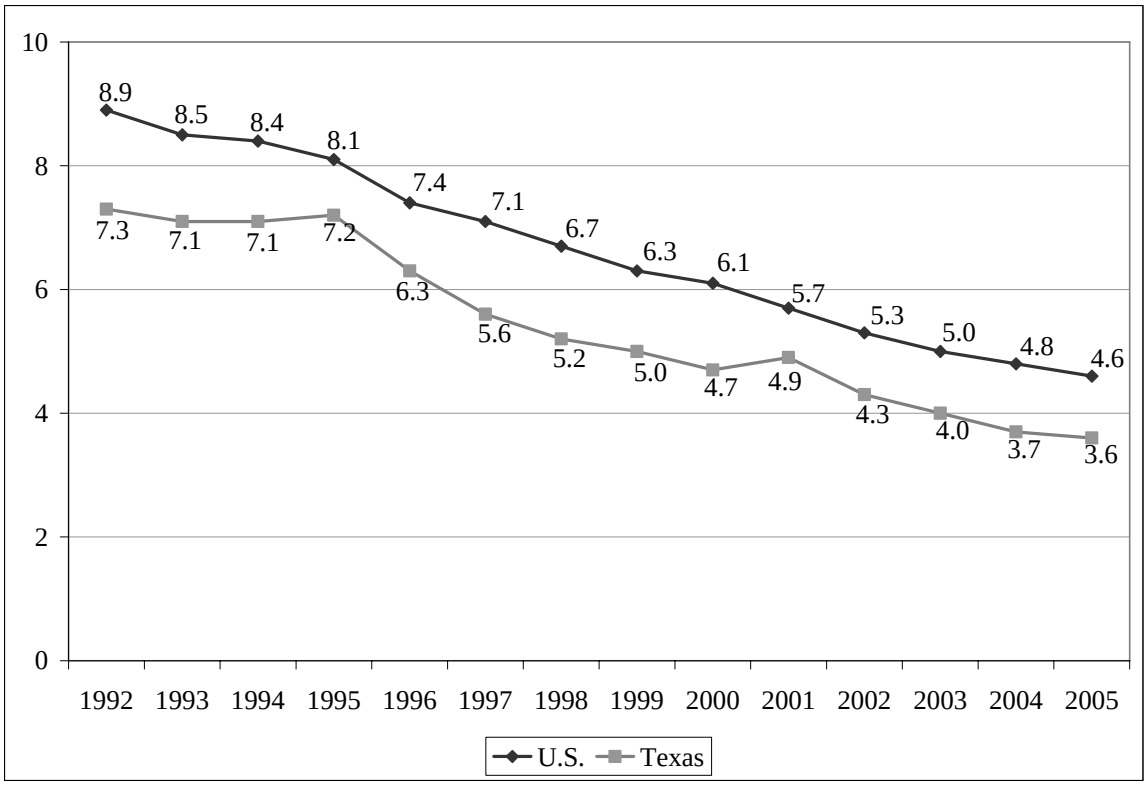
- injury rates;
- employer participation in the Texas workers' compensation system;
- medical costs, as well claim and medical billing denial rates;
- access to medical care;
- income and medical benefit dispute resolution;
- the implementation of workers' compensation health care delivery networks; and
- injured worker perceptions regarding the workers' compensation system.

It should be noted that in addition to these particular trends highlighted, the agency is also tracking other important issues such as complaint resolution, adequacy of income benefits, and improvement of customer service operations. However, the system trends presented in this report allow TDI, other policymakers and system participants to determine the relative "health" of the current system and consider whether minor adjustments in the Texas Workers' Compensation Act are necessary to facilitate the full implementation of the HB 7 reforms.

Injury Rates Continue to Decrease

A key legislative goal identified by HB 7 is the promotion of "safe and healthy workplaces through appropriate incentives, education or other actions." One important statistic in measuring the system's ability to maintain safe workplaces is the nonfatal occupational injury and illness rate. This rate calculation is currently based on an annual survey of Texas employers conducted by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) and the Division. Between 1992 and 2005, the nonfatal occupational injury illness rate in Texas decreased 51 percent from 7.3 to 3.6 injuries per 100 full-time workers. The most significant injury rate declines occurred between 1995 and 2000. The injury rate in Texas has been consistently below the national average (see Figure 1).

Figure 1: Texas and U.S. Nonfatal Occupational Injury and Illness Rates Per 100 Full-time Workers (1992-2005)

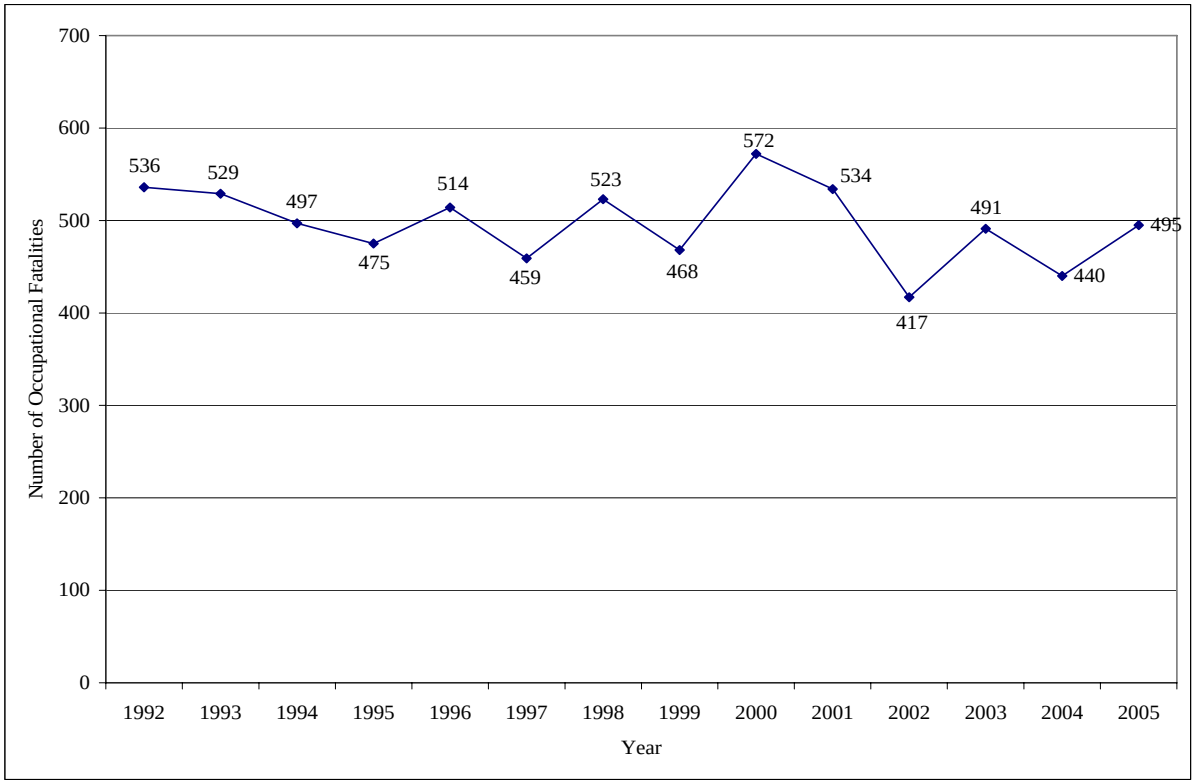


Source: Texas Department of Insurance, Division of Workers' Compensation and U.S. Department of Labor, Bureau of Labor Statistics, *Annual Survey of Occupational Injuries and Illnesses,* 2005.

Although the non-fatal occupational injury and illness rate in Texas and nationwide has seen a continuous decrease since 1992, the number of fatal occupational injuries in Texas has continued to fluctuate over time (see Figure 2). The industries that continue to see the highest number of fatalities in 2005 include construction and extraction (137 fatalities) and transportation and material moving jobs (135 fatalities), altogether accounting for 55 percent of all fatal work-related injuries in Texas.[2]

[2] See also U.S. Department of Labor, Bureau of Labor Statistics, *Texas Workplace Fatalities in 2005*, http://www.bls.gov/ro6/cfoi_tx.htm.

Figure 2: Number of Fatal Injuries in Texas by Year, 1992-2005



Source: Texas Department of Insurance, Division of Workers' Compensation and U.S. Department of Labor, Bureau of Labor Statistics, *Census of Fatal Occupational Injuries*, 2005.

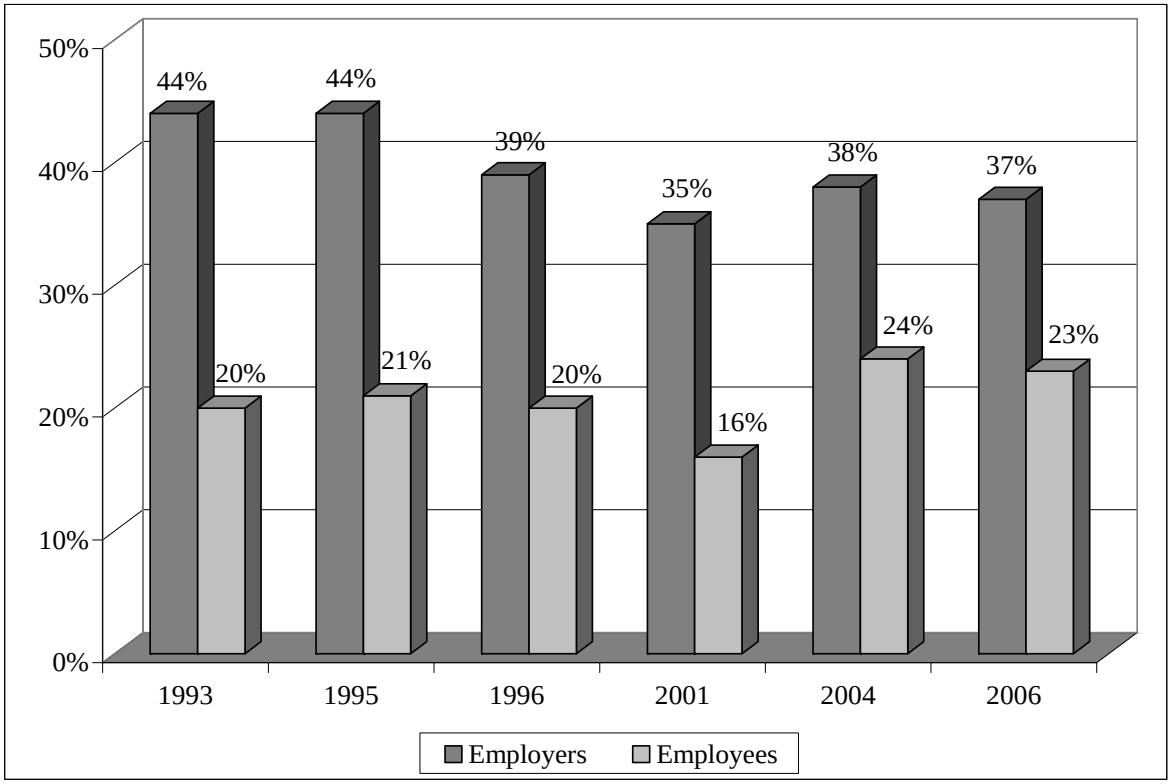
Employer Participation Rates and Employee Coverage Rates Have Begun to Stabilize

Texas is currently the only state where private-sector employers (regardless of employer size or industry) are allowed the option of obtaining workers' compensation coverage or becoming "nonsubscribers" to the workers' compensation system.[3] 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 self-insurance group of employers) lose the protection of statutory limits on liability and may be sued for negligence by their injured workers.

Nonsubscription rates remain an important performance measure in the workers' compensation system since it roughly 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 nonsubscribers to the workers' compensation system fell by one percentage point from 38 percent in 2004 (an estimated 110,200 employers) to 37 percent in 2006 (an estimated 107,300 employers). Approximately 23 percent of Texas employees (representing approximately 1,772,000 employees) work for nonsubscribing employers in 2006 (see Figure 3). This represents a one percentage point drop since 2004, but is the second highest percentage of Texas employees working for nonsubscribing employers since 1993. The 2006 drop, while minimal, is statistically significant and may be due to changing factors in the Texas workers' compensation system such as stabilizing premium costs and lowered concerns about high medical costs.

[3] 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 3: Percentage of Texas Employers That Are Nonsubscribers and the Percentage of Texas Employees That Are Employed by Nonsubscribers, 1993-2006



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 and 2006 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

Results from a recent 2006 analysis highlight the continuing trend of larger employers making the decision to opt out of the Texas workers' compensation system for reasons that centered primarily on high workers' compensation premium costs and an ability to adequately control medical costs for their work-related injuries outside of the workers' compensation system.[4]

Medical Costs Are On the Decline, While Denials of Both Claims and Medical Services Have Increased Over Time

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 workers in Texas with injured workers 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

[4] 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, *An Analysis of the Effect of the 2005 Legislative Reforms on the Affordability and Availability of Workers' Compensation Insurance for Texas Employers: A Report to the 80th Legislature*, 2006; and Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, *Employer Participation in the Texas Workers' Compensation System: 2006 Estimates*, October 2006.

provided to injured workers (also known as the utilization of care).[5] Additionally, compared with similarly injured workers in other states, these studies highlighted that Texas injured workers 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:

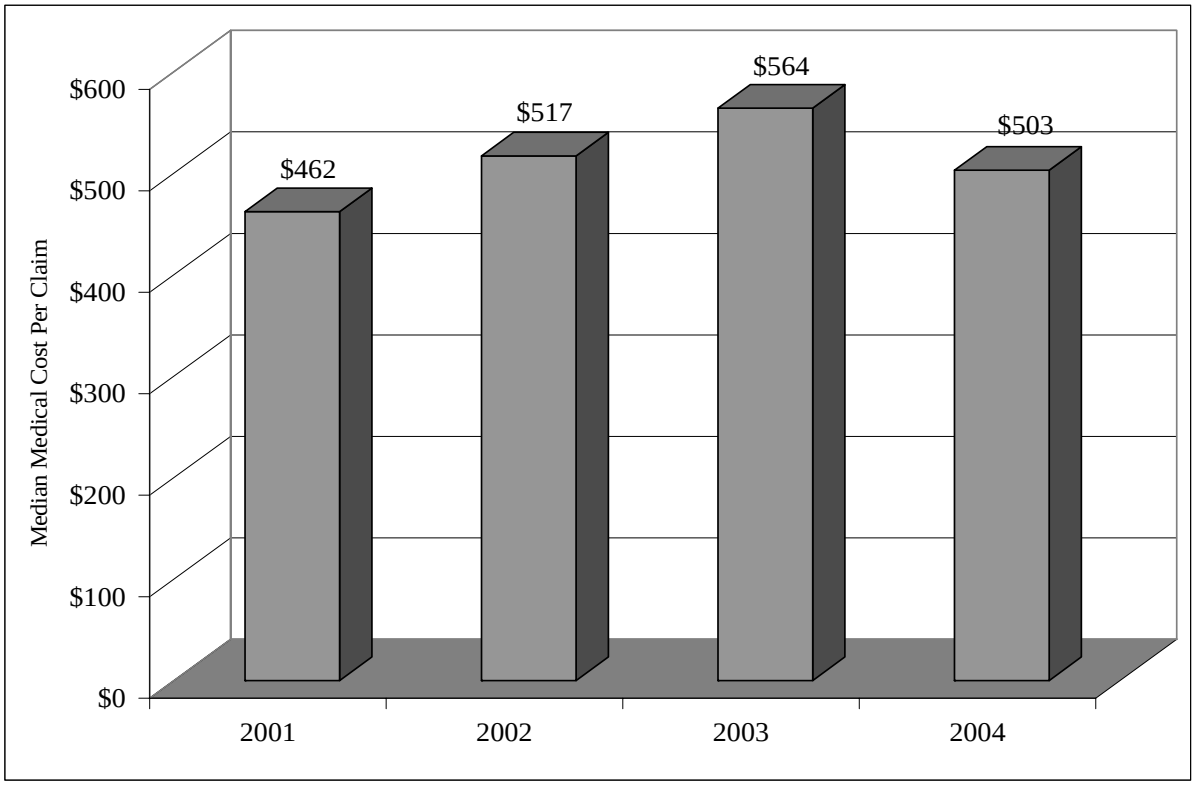
- abolishing the former TWCC's consensus-based treatment guidelines;
- eliminating the spinal surgery second opinion process and requiring preauthorization for spinal surgeries;
- requiring medical necessity and preauthorization disputes to be reviewed by Independent Review Organizations (IROs) (i.e., panels of independent doctors certified by TDI);
- instituting a registration and training requirement for doctors treating injured workers (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 overutilization of medical services provided to injured workers. The issue of reducing medical costs and improving the quality of medical care provided to injured workers was also a key component driving the passage of a new health care delivery model in HB 7 – workers' compensation health care delivery networks.

For injuries occurring in 2001-2003, the median medical costs per claim continued to increase, however, the growth of these medical costs began to slow down compared to the double digit increases seen in prior years. Since 2003, the median medical costs per claim have actually declined for the first time since 1999 (see Figure 4). Continued monitoring is necessary to determine whether this medical cost decline will continue in the future.

[5] 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 4: Median Medical Cost (Professional Services and Hospital Costs) Per Claim, One Year Post Injury, Injury Years 2001-2004

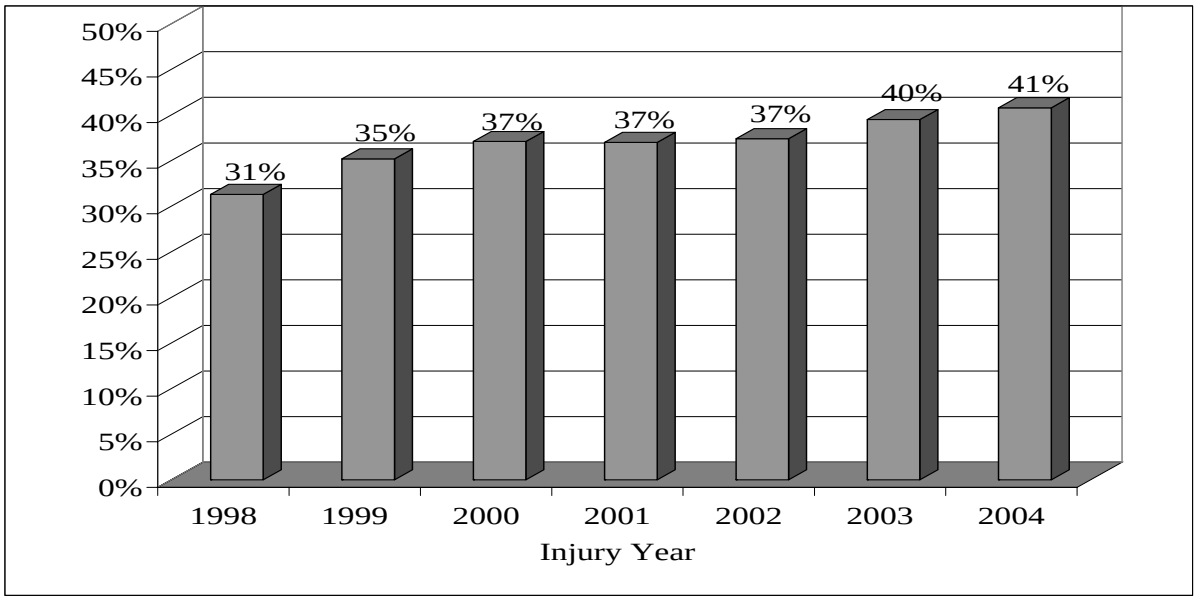


Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.
Note 1: There has also been a decline in the mean (average) medical cost per claim for this time period. However, since injury year data for 2004 is not yet complete, the mean medical cost per claim data has not been presented here.
Note 2: The medical costs presented here do not include pharmacy costs and some durable medical equipment. The Division has just recently begun collecting pharmacy data through the 837 medical billing format.

One possible reason why medical costs have begun to stabilize in Texas can be found by examining insurance carrier denials of both workers' compensation claims and medical services over time. Since 2001, both the percentage of reportable claims and the percentage of professional medical services initially denied/disputed have increased (see Figures 5 and 6). In particular, denials of professional medical services have almost doubled since the passage of HB 2600.[6]

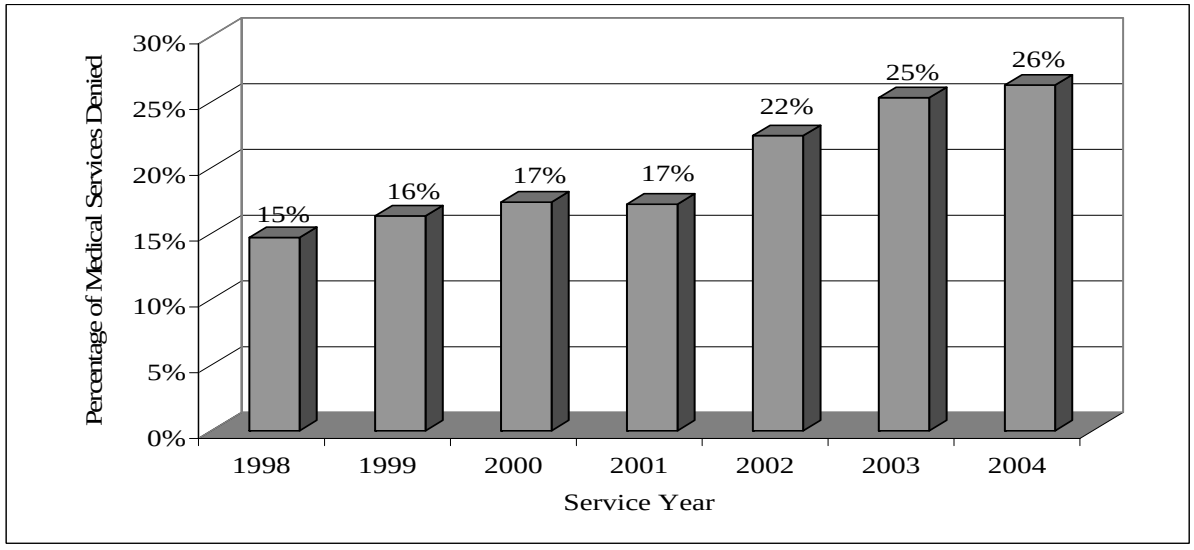
[6] It should be noted that these professional medical denials represent denials for medical treatments and services that have already been rendered. Preauthorization denials are not included in these numbers.

Figure 5: Percentage of Reportable Claims That Are Initially Denied/Disputed for the Top 25 Workers' Compensation Insurance Carriers, Injury Years 1998-2004[7]



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.
Note 1: The 2004 figures should be interpreted with caution since the data are incomplete.
Note 2: HB 2600, a reform bill aimed at reducing medical costs was passed in 2001.

Figure 6: Percentage of Professional Medical Services Denied for the Top 25 Workers' Compensation Insurance Carriers, Service Years 1998-2004



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.
Note: The 2004 figures should be interpreted with caution since the data are incomplete.

[7] The top 25 insurance carriers represent over 90 percent of the workers' compensation premiums in 2003 and 2004 and account for 60-70 percent of the total amount of medical payments made during 1998-2004. For the purpose of this analysis, the same 25 insurance carriers were used in each year to calculate both the claim and medical billing denial rates.

The reasons insurance carriers gave for these medical billing denials have also changed significantly over time. Prior to 2001, the majority of professional medical billing denials were denied because of inappropriate or insufficient medical documentation provided in conjunction with the medical bill and because medical services were required to be preauthorized, but a preauthorization request was not made. Since 2001, the majority of these denials were the result of insurance carriers' determinations that the treatment being billed was not medically necessary (see Table 1). In particular, an increasing percentage of these denials are associated with the results of a peer review doctor's opinion requested by the insurance carrier.

Table 1: Percentage of Denied Professional Medical Services by the Top 10 Denial Reasons, Service Years 1998-2004

	1998	1999	2000	2001[3]	2002	2003	2004[1]
Unnecessary Treatment (without peer review)	10%	12%	12%	13%	25%	26%	22%
Unnecessary Treatment (with peer review)	<1%	<1%	1%	4%	13%	16%	15%
Inappropriate Documentation	36%	42%	39%	26%	21%	14%	10%
Preauthorization Required But Not Requested	19%	17%	16%	16%	3%	2%	2%
Not by Treatment Guidelines	13%	7%	8%	10%	4%	--	--
Entitlement to Benefits	6%	8%	9%	10%	9%	7%	7%
Extent of Injury	7%	6%	6%	7%	8%	8%	8%
Final Adjudication	<1%	<1%	<1%	<1%	<1%	<1%	2%
Unbundling	5%	4%	4%	5%	4%	7%	13%
Payment Policy	<1%	--	<1%	<1%	<1%	4%	11%
Other reasons[2]	4%	4%	5%	9%	13%	16%	11%

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.
Note 1: The 2004 figures should be interpreted with caution since these numbers are tentative and are current as of February 2005.
Note 2: "Other reasons" include "not timely filed," "not treating doctor," "inappropriate health care provider," "final adjudication," preauthorization requested, but denied."
Note 3: The most recent professional medical fee guideline, which incorporated Medicare's payment policies, went into effect in August 2003.

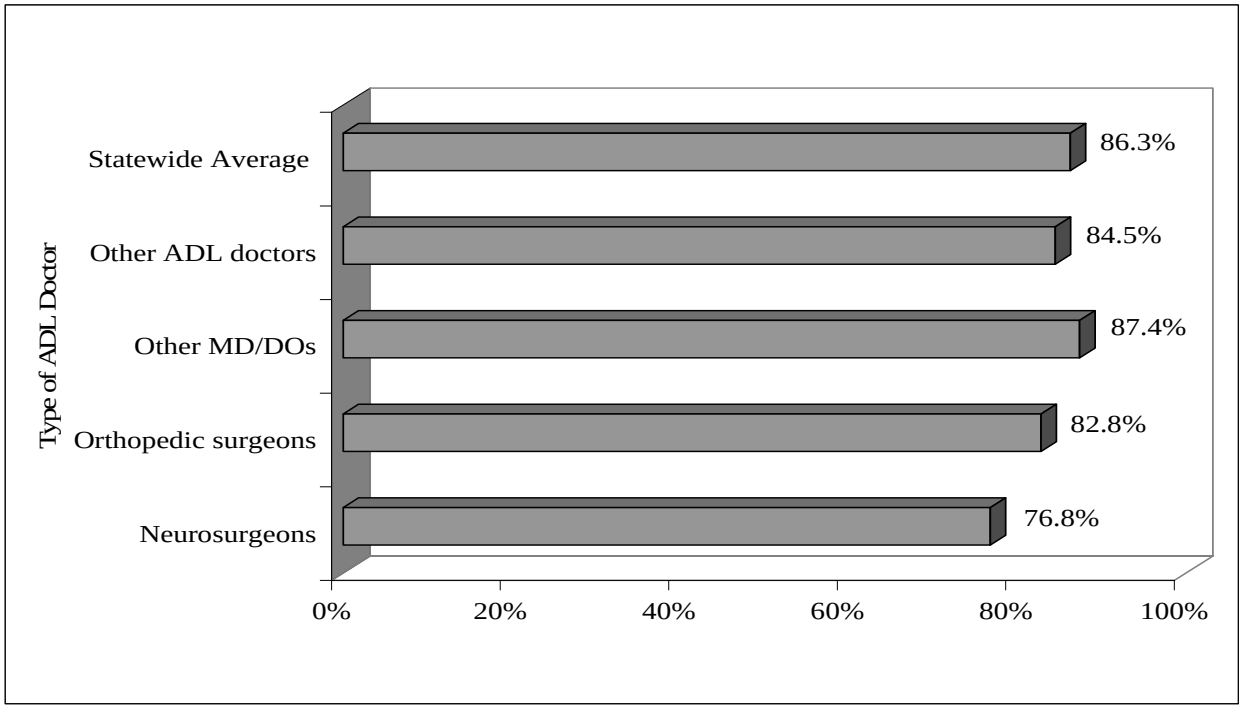
Access to Care Remains a Concern in the System, but Results Are Mixed

Policymakers and system participants continue to express widespread concern that fewer health care providers are treating injured workers in Texas than in earlier years. Anecdotal evidence suggests that health care providers face a barrier of administrative "hassle factors" in the workers' compensation system that they do not generally experience in group health arrangements. Further, 31 percent of injured workers surveyed in 2005 say that getting medical care for their on-the-job injuries is a "big problem" while 12 percent said that their experience in scheduling medical appointments for their work-related injuries was worse than scheduling

appoints for their regular health care.[8] However, recent analyses of medical billing data as well as recent surveys of doctors of the Division's Approved Doctor List (ADL) demonstrate the complex nature of this issue.[9]

Currently there are over 18,000 health care providers registered on the ADL which includes 1,200 providers with temporary exceptions granted so they may treat injured workers. Approximately 86.3 percent of ADL provider offices surveyed by the Division in August 2006 indicated that they were currently accepting workers' compensation patients; however, this does not necessarily mean that they have not placed restrictions on the types of patients they are currently accepting. These surveys revealed that the percentage of ADL providers who say they are accepting workers' compensation patients does vary geographically and by medical specialty. Only about two-thirds of the surveyed ADL providers in West Texas said they were accepting workers' compensation patients, compared to nearly all of the ADL providers surveyed in Central Texas. Generally a lower percentage of ADL "specialist" providers, such as neurosurgeons and orthopedic surgeons indicated that they were accepting workers' compensation patients, compared with "primary care" providers (see Figure 7).

Figure 7: Percentage of Doctors on the Approved Doctors' List (ADL) Who Indicated That They Were Currently Accepting Workers' Compensation Patients by Type of ADL Doctor



Source: Texas Department of Insurance, Division of Workers' Compensation, Survey of the Approved Doctors' List (ADL), August, 2006.

[8] See Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and the Public Policy Research Institute (PPRI) at Texas A&M University, *2005 Injured Worker Survey Results*, 2006.

[9] With the passage of HB 2600 in 2001, all doctors who want to treat injured workers (including medical doctors, doctors of osteopathy, chiropractors, dentists and podiatrists) must register to be on the Division's Approved Doctors' List (ADL). Doctors who register must receive some basic training on workers' compensation billing and reimbursement rules, as well as other workers' compensation issues such as return-to-work. Only doctors who are registered on the ADL or have received a temporary exception from the Division to treat injured workers may be reimbursed for their services in the Texas workers' compensation system.

In the vast majority of geographic locations where ADL providers said they were accepting workers' compensation patients (80 percent), ADL providers indicated that they were accepting both new and existing workers' compensation injuries. For those ADL providers who said they are not currently accepting workers' compensation patients, the most frequent reasons cited for not accepting workers' compensation patients included problems identifying who the insurance carrier is and contacting adjustors; problems with reimbursement delays or denials; fee issues; the amount of paperwork required for workers' compensation claims; and problems with the preauthorization process.

In addition to the results of the Division's ADL provider survey, a recent analysis of the Division's historic medical billing data suggest that from 1999-2004, the number of injuries treated per health care provider changed little over time (see Table 2).[10] It is important to note that this analysis has been restricted to the medical billing records during the first six months of 1999-2004 in an effort to provide an "apples to apples" comparison since medical billing data in late 2004 and all of 2005 are currently incomplete. TDI is currently in the process of collecting this data and plans to update this analysis once data collection has been completed.

Although there are fewer health care providers (both ADL and non-ADL providers) who treated injured workers in 2004 than in previous years (approximately 41,228 providers treated workers during the first six months of 2004 compared to 43,538 providers in 2002), the average patient caseload for most health care provider types did not increase significantly (see Table 2). This is primarily due to the fact that there were fewer injuries reported in the workers' compensation system in 2004 than in previous years, as a result of both decreasing injury rates (see Figure 1 – injury rates) and fewer injured workers covered by workers' compensation coverage (see Figure 3 – nonsub rates).

Table 2 shows that medical doctors treated an average of 15.6 injuries during the first six months of 2004, after slight increases in the previous three years; however, this average caseload was still lower than what the system saw during the first six months of 1999. Similarly, average caseloads for both chiropractors and physical therapists increased from 1999/2000-2001, but then began to decrease starting in 2003. Only osteopaths had a higher ratio of injuries to doctors in 2004 than in any of the previous years in the study.

[10] For more information on access to care, see Texas Department of Insurance Workers' Compensation Research and Evaluation Group, *Access to Medical Care in the Texas Workers' Compensation System*, 2006.

Table 2: (Number of Injuries Treated per Doctor) and Total Number of Injuries by Type of Health Care Provider, Jan – June 1999-2004

Provider Types	Jan - June 1999	Jan - June 2000	Jan - June 2001	Jan - June 2002	Jan - June 2003	Jan - June 2004
Medical Doctors (MD)	(16) 328,720	(15.3) 317,453	(14.4) 304,378	(14.7) 320,977	(15) 314,471	(15.6) 280,419
Chiropractors (DC)	(4.8) 28,199	(5.5) 34,452	(7.2) 42,364	(7.7) 45,197	(7.3) 43,476	(5.6) 26,044
Physical/Occupational Therapists (PT/OT)	(5.8) 48,059	(5.3) 48,561	(6) 58,064	(6.2) 62,780	(6.3) 66,270	(4.1) 63,566
Doctor of Osteopathy (DO)	(20.5) 29,910	(20.4) 30,839	(19.6) 30,141	(20.2) 32,133	(21.3) 32,133	(23.7) 32,209

Source: Texas Department of Insurance Workers' Compensation Research and Evaluation Group, 2006.
Note 1: There may be double counting if the injured worker was treated by multiple providers.
Note 2: The 2004 totals may reflect changes after the implementation of the Approved Doctor List in September 2003.

An important issue driving many of the concerns about access to care is the timeliness of medical care received by injured workers. If there are problems with access to care, injured workers may have to wait longer periods of time in order to receive medical treatment. A review of the Division's medical billing data from 1999-2004 reveals that 80 percent of workers injured in 2004 received medical treatment in the first week after their injuries, compared to 68 percent in 2001. Additionally, 44 percent of workers injured in 2004 who were treated by medical doctors (MDs) for non-emergency injuries were treated on the same day of the injury - up from 36 percent in 1999. Of workers injured in 2004 who were treated by osteopaths (DOs) for non-emergency injuries, 43 percent were treated on the same day of the injury, compared to 38 percent in 1999.

Market concentration analyses also showed that roughly the same percentage of health care providers is actively treating a majority of Texas injured workers. Approximately 16 percent of health care providers (about 7,000 providers, including both ADL and non-ADL providers) treated 80 percent of workers in 2004. This percentage has remained relatively unchanged for the last three consecutive years of the study.

These statistics combined with the Division's ADL survey results suggest that there is not a significant gap in access to basic primary care for most work-related injuries. However, there do appear to be issues with access to care in areas of the state that are traditionally medically underserved (i.e., West Texas) and in specialty care services statewide, particularly services such as neurosurgery and orthopedic surgery. Additionally, roughly 45 percent of workers injured in 2004 received medical treatment from doctors not on the ADL, which may indicate that the ADL alone may not be sufficient to treat the injured worker population.

The Division will continue to monitor the issue of access to care and is evaluating ways to reduce administrative burdens for health care providers who actively participate in the system. Some of these initiatives include the implementation of electronic medical billing rules; the adoption of treatment guidelines and treatment planning rules to bring more certainty to what is considered "medically necessary" for work-related injuries; and the streamlining of medical dispute resolution processes. Additionally, the elimination of the ADL registration requirement by HB 7 starting in September 1, 2007 (or earlier if determined by the Commissioner of Workers' Compensation) will remove another perceived barrier by allowing participation by any health care provider who wishes to treat injured workers and complies with the Division's financial reporting requirements.

It should also be noted that the simultaneous implementation of workers' compensation health care delivery networks will also have an impact on the number of health care providers treating injured workers in the future. Further analyses with more current data will be needed to track the impact of these changes and to identify emerging access to care trends in the Texas workers' compensation system in future years.

Return-to-Work Rates Are Improving Slightly

One of the most basic objectives of the Texas workers' compensation system is to return injured workers to safe and productive employment. 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 workers in other states, Texas injured workers were generally off work for 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.

Additionally, several components of HB 7 place additional focus on the importance of return to work, including a requirement for the Division to adopt return-to-work guidelines; the institution of a return-to-work pilot program geared toward small employers (i.e., less than 50 employees); greater coordination of vocational rehabilitation referrals between the Division and the Department of Assistive and Rehabilitation Services (DARS); changes in the work-search requirements for injured workers who qualify for Supplemental Income Benefits (SIBs); and the ability for the Division to adopt disability management rules that include the coordination of treatment plans and return-to-work planning.

Since 2001, there has been a slight increase in the percentage of injured workers receiving Temporary Income Benefits (TIBs) (i.e., injured workers with more than seven days of lost time) who have initially returned to work post-injury. Of those workers injured in 2001 receiving TIBs, 70 percent initially returned to work within six months post-injury, compared to 74 percent of workers injured in 2004 (see Table 3).[12]

Table 3: Percentage of Injured Workers 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
2001	70%	79%	83%	85%	88%
2002	71%	80%	84%	86%	
2003	72%	81%	85%		
2004	74%				

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.
Note 1: The study population includes 217,498 workers injured in 2001-2003 who also received Temporary Income Benefits (TIBs).
Note 2: Although the increases of initial return-to-work rates were small, they were statistically significant at the 0.01 significance level.

[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] 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*, 2006.

While the percentage of injured workers who initially return to work is an important benchmark of system performance, whether these injured workers 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 workers receiving TIBs who have initially returned to work and remained employed for at least three successive quarters (or nine months) has also increased slightly since 2001.

Table 4: Percentage of Injured Workers 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
2001	61%	68%	73%	76%	80%
2002	62%	70%	74%	77%	
2003	64%	71%			

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.
Note 1: The study population includes 217,498 workers injured in 2001-2003 who also received Temporary Income Benefits (TIBs).
Note 2: Workers injured in 2004 were excluded from this portion of the analysis due to insufficient data.

Not only have the percentage of injured workers who returned to work and remained employed improved slightly since 2001, but the amount of time the average injured worker who received TIBs is off work after an injury has decreased somewhat since 2001 (see Table 5).

It will be important to continue to monitor these return-to-work measures on a continuous basis to track the impact of recent legislative reforms, including the implementation of workers' compensation health care delivery networks, on return-to-work outcomes in Texas.

Table 5: Mean and Median Days Off Work for Injured Workers Who Returned to Work At Some Point Post-Injury, Injury Years 2001-2003

Injury Year	Mean Days	Median Days
2001	150	32
2002	140	31
2003	115*	30*

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.
***Note 1:** The mean and median days off work in 2003 may be under-estimated due to data maturity and should be viewed with caution.*
***Note 2:** "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.*
***Note 3:** The analysis was based on the claimants who returned to work, and did not include those who did not return to work by the end of 2005. Injury year 2004 was excluded because of insufficient data.*

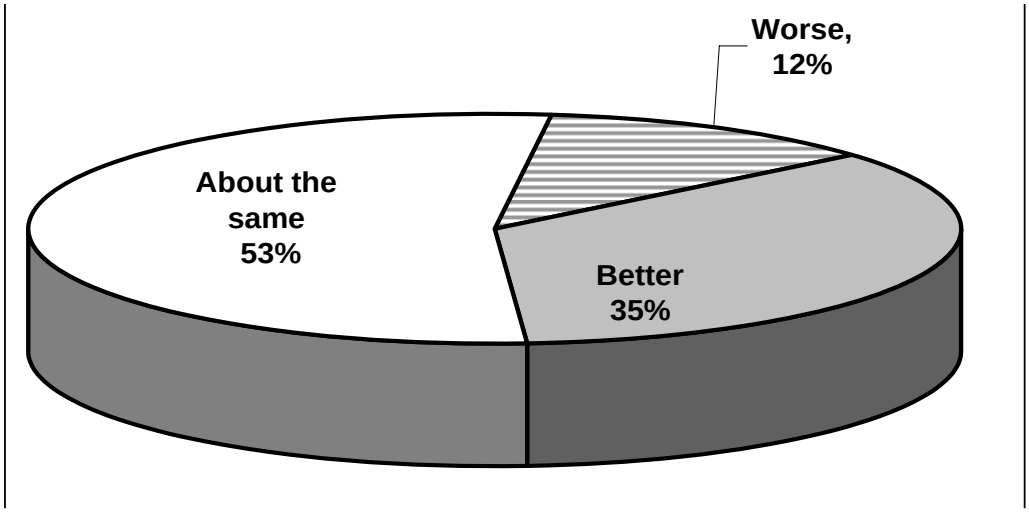
Injured Workers' Perceptions of the System Have Not Significantly Changed Over Time

A key determinant of the health of any workers' compensation system is the perception of the people who are most directly affected by the system itself - injured workers. In an effort to continuously gauge workers' observations about system trends, TDI's Workers' Compensation Research and Evaluation Group (REG) and its predecessor, the ROC conducted a series of surveys with injured workers on issues such as access to care, satisfaction with care, return to work, and workers' physical and mental functioning abilities post-injury (i.e., workers' abilities to physically recover to a state close to where they were pre-injury).[13] Workers were surveyed in 2000, 2002 and most recently in 2005, just prior to the implementation of HB 7.

The results of these surveys are remarkably consistent and show little change in injured workers' perceptions over time. Injured workers' physical and mental functioning remains significantly worse than the general U.S. population and injured workers who had returned to work consistently reported better functioning than workers who had not returned to work.

Additionally, injured workers' evaluations regarding their ability to schedule a doctor's appointment compared to their normal health care have not changed significantly since 2002. Figure 8 shows that 35 percent of injured workers surveyed reported that their ability to schedule a doctor's appointment for their work-related injury was better than their normal health care experiences, while 53 percent reported that it was "about the same" and only 12 percent reported that their ability to schedule a doctor's appointment was "worse" than their normal health care.

Figure 8: Compared to the medical care you usually receive when you are injured or sick, your ability to schedule a doctor's appointment for your work-related injury or illness was:

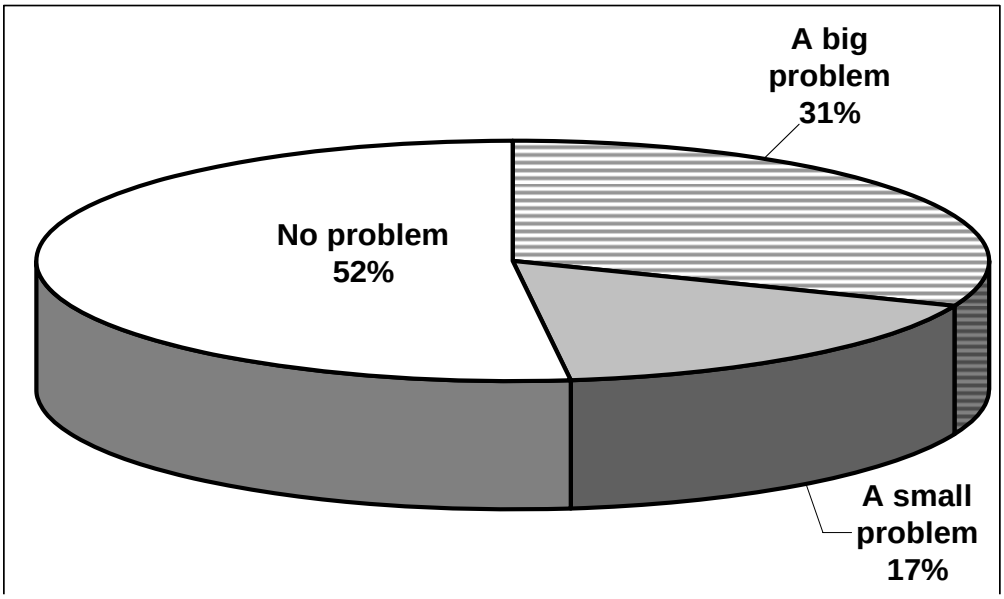


Source: *2005 Injured Worker Survey* from the Texas Department of Insurance Workers' Compensation Research and Evaluation Group and the Public Policy Research Institute (PPRI) at Texas A&M University.

[13] 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, *Survey of Injured Workers Regarding Work-Related Health Problems: Comparison of State and Private Sector Worker Experiences*, 2003; and the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, *2005 Injured Worker Survey Results*, 2006.

Although few injured workers reported problems with the scheduling of doctor appointments, a significant percentage (48 percent) reported having "some" or "big" problems getting the medical care they or their treating doctor felt was necessary (see Figure 9). When questioned further, injured workers attributed these problems to their perception that the insurance carrier did not want the care to be provided (64 percent), that there was difficulty properly diagnosing their injury (35 percent), that they couldn't get an appointment to see a specialist soon enough (33 percent) or that travel to get medical care was too difficult to arrange (20 percent).

Figure 9: Percentage of Injured Workers Surveyed Who Reported Having Problems Getting the Medical Care They Needed for Their Injury

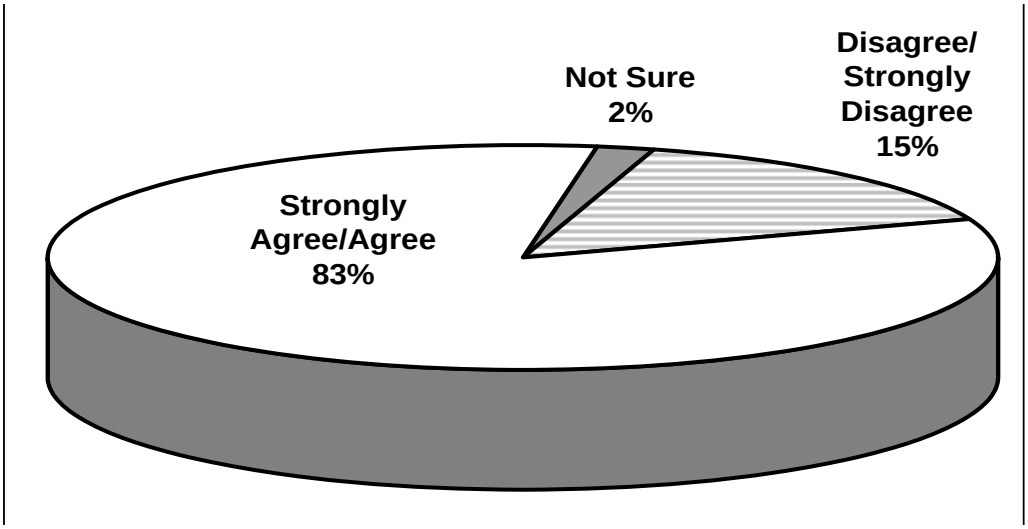


Source: *2005 Injured Worker Survey* from the Texas Department of Insurance Workers' Compensation Research and Evaluation Group and the Public Policy Research Institute (PPRI) at Texas A&M University.

Consistent with survey findings in 2000 and 2002, approximately 83 percent of injured workers surveyed in 2006 reported that they received good medical care that met their needs (see Figure 10). It should be noted that while these percentages appear high, the 2001 ROC *Striking the Balance* study and recent injured worker surveys conducted by WCRI illustrate that Texas injured workers reported less satisfaction with the medical care they received compared to similarly injured workers in other states.[14] Given the constancy of workers' perceptions about the Texas workers' compensation system since 2000, it will be important to see how the implementation of workers' compensation health care delivery networks affects workers' perceptions regarding access to care and satisfaction with care over time.

[14] The *Striking the Balance* study published by the ROC in 2001 found that 81 percent of injured workers from other states reported that they received good medical care that met their needs compared to only 73 percent of injured workers in Texas. 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.

Figure 10: Percentage of Injured Workers Surveyed Who Indicated That the Doctor They Saw Most Often for Their Work-Related Injury Provided Them with Good Medical Care That Met Their Needs



Source: *2005 Injured Worker Survey* from the Texas Department of Insurance Workers' Compensation Research and Evaluation Group and the Public Policy Research Institute (PPRI) at Texas A&M University.

Indemnity and Medical Dispute Trends

One aspect of income and benefit delivery that has been scrutinized in recent years is the process by which indemnity and medical disputes are resolved by the agency. HB 7 made several changes in an effort to help streamline these dispute processes, including the elimination of appeals of medical disputes to the State Office of Administrative Hearings (SOAH) and the limitation of two Benefit Review Conferences (BRCs) per indemnity dispute. Since the implementation of these legislative changes cannot yet be effectively measured, this section examines the status of indemnity and medical dispute resolution just prior to the implementation of HB 7.

As Table 6 illustrates, the top ten most frequently disputed indemnity issues have not changed significantly from 2002-2005.[15] The most frequently disputed issues continue to be disputes over whether the injured worker's disability is related to an on-the-job injury (approximately 20 percent of indemnity disputes); disputes over the extent of the worker's injury (approximately 14 percent of indemnity disputes); disputes over whether the injury is work-related (i.e., compensability) (approximately 12 percent of indemnity disputes); and disputes over the worker's average weekly wage (approximately 9 percent of indemnity disputes).

[15] Workers' compensation indemnity disputes are handled through a multi-tiered administrative dispute resolution process administered by the Division. Staff at the Division's local field offices initially attempt to resolve disputes informally. Approximately 40 percent of disputes are resolved this way. If a dispute cannot be resolved informally, the parties move on to the first step of the administrative dispute process – the Benefit Review Conference (BRC) – which is an informal mediation between the injured worker and the insurance carrier presided by one of the Division's Benefit Review Officers. Disputes that cannot be resolved through BRC mediation move on to the Contested Case Hearing (CCH) level, which consists of a formal hearing presided by one of the Division's Contested Case Hearing Officers. Decisions are rendered at this level. Parties unhappy with the CCH decision may appeal it to the Division's Appeals Panel (AP), which consists of a paper review of the CCH decision by three administrative law judges. Parties still unhappy with the results of the AP review may appeal their dispute to district court. Less than 1 percent of indemnity disputes are appealed to district court each year. Injured workers participating in the Division's indemnity dispute process may be represented by attorneys, assisted by ombudsmen through the OIEC or represent themselves during dispute proceedings.

Table 6: Distribution of Top 10 Most Frequently Disputed Indemnity Issues by Formal Request Year at the Division's Benefit Review Conference (BRC) Level

Issues	BRC Formal Request Year			
	2002	2003	2004	2005
Other issues	22%	22%	22%	22%
Existence/duration/extent of disability raised by other evidence	21%	20%	19%	20%
Extent of injury	12%	13%	14%	14%
Compensability/injury existence	12%	12%	11%	12%
Amount of average weekly wage	10%	10%	9%	9%
Designated doctors impairment rating	7%	8%	8%	7%
Designated doctors MMI date	5%	6%	7%	5%
Reporting injury to employer	3%	3%	3%	3%
SIBs entitlement/subsequent quarters	2%	2%	3%	3%
Compensability/occupational disease	3%	3%	2%	2%
Timely contest by carrier	2%	3%	2%	3%
Total	49,372	49,724	47,325	36,351

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.

One of the issues driving the need to streamline dispute resolution in the workers' compensation system was the amount of time it takes to resolve disputes that proceed all the way through the various levels of the indemnity dispute process. It should be noted that between 70-80 percent of disputes get resolved either prior to a request for a BRC or at the BRC mediation level; however, for the remaining 20-30 percent of disputes that proceed beyond the BRC level, resolution of these disputes may take 5-7 months through the Division's administrative process, depending on whether disputes are appealed to the CCH and then to the AP level of the process.[16] As Table 7 shows, the average number of days to resolve indemnity disputes has increased during 2002-2005.

Starting in 2005, the Division has made efforts to reduce these timeframes while implementing the various provisions of HB 7. Continued monitoring will be necessary to determine the extent to which the HB 7 provisions geared towards reducing dispute resolution timeframes are successful.

[16] Although the vast majority of disputed indemnity issues brought to a BRC are still resolved at the BRC level without being appealed further, recent changes to the way BRCs are handled (i.e., more like mediation) have resulted in an increase in the percentage of these disputes not being resolved at the BRC level.

Table 7: Average Number of Days from Formal BRC Request to Completion of BRC or Issuance of Indemnity Dispute Decision by Year Dispute Was Resolved and Final Resolution Level

Resolution Year	From Formal BRC Request to Completion of BRC (Disputes Stopped at BRC)	From Formal BRC Request to Issuance of Final Decision at CCH (Disputes Stopped at CCH)	From Formal BRC Request to Issuance of Final Decision at AP (All Disputes Appealed to AP)
2002	118	148	217
2003	122	153	227
2004	124	157	238
2005	123	149	235

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.

The distribution of indemnity dispute decisions made by Division CCH Officers has not changed significantly from 2002-2005 (see Table 8). Approximately 44 percent of indemnity disputes brought before a CCH are decided against the injured worker and 43 percent are decided in favor of the injured worker. An additional 12 percent of these disputes are resolved by mutual agreement between the disputing parties.

Table 8: Outcomes of Indemnity Disputes at the Division's Contested Case Hearing (CCH) Level by Year Dispute Was Resolved

Resolution Year	Against Injured Worker	For Injured Worker	Resolved By Agreement
2002	44%	45%	11%
2003	44%	45%	10%
2004	43%	45%	12%
2005	44%	43%	12%

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.

In addition to indemnity disputes, the Division also administers a process for resolving medical disputes, including fee disputes, preauthorization disputes (i.e., disputes regarding the medical necessity of certain medical services that require pre-approval from the insurance carrier), and retrospective medical necessity disputes (i.e., disputes regarding the medical necessity of medical services that have already been rendered to the injured worker).[17] Table 9 provides information on the number and distribution of medical disputes received by the Division from 2002-2005.

[17] In accordance with HB 2600 in 2001 and HB 7 in 2005, medical fee disputes for services not provided by workers' compensation networks are resolved by Division staff, while preauthorization and retrospective medical necessity disputes (for both network and

Table 9: Number and Distribution of Medical Disputes Submitted to the Division by Type of Medical Dispute, 2002-2005 (as of March, 2006)

Received Year	Pre-authorization Disputes	Fee Disputes	Retrospective Medical Necessity Disputes	Total
2002	15%	58%	27%	(8,910) 100%
2003	11%	70%	19%	(17,501) 100%
2004	13%	61%	26%	(14,315) 100%
2005	12%	71%	17%	(13,468) 100%

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.
Note: The number of fee disputes submitted to the Division (formerly TWCC) increased significantly from 2002 to 2003 due to the adoption of a new professional medical fee guideline, which incorporated Medicare's payment policies in August 2003. Additionally, a significant number of pharmacy disputes were submitted in 2003 (approximately 4,000) by a handful of health care providers. Most of these disputes were later withdrawn.

Policymakers and system participants continue to scrutinize the amount of time it takes for medical disputes to be resolved in the workers' compensation system. In particular, policymakers are concerned with the timeframe to resolve preauthorization disputes since these are disputes regarding the medical necessity of care (such as surgery) that has not yet been provided to the injured worker. As Table 10 indicates, the number of days it takes to resolve preauthorization disputes and retrospective medical necessity disputes has significantly improved since 2002, although the agency continues to seek ways to further reduce these dispute durations. The amount of time it takes to resolve fee disputes, on the other hand, has increased since 2002 as the frequency of these disputes increased. Because of the number of fee and retrospective medical necessity disputes that are still unresolved, dispute durations for 2005 are excluded in Table 10.

It will be important to track these dispute frequencies and durations once the implementation of workers' compensation health care delivery networks is in full swing. Since fee disputes for network medical care are handled internally by these networks rather than the Division and since the Division is in the process of adopting new fee guidelines for outpatient and inpatient hospital services, it is expected that fee dispute frequencies will decline in the future.

non-network services) are reviewed by Independent Review Organizations (IROs) (i.e., panels of independent doctors certified by the TDI). Parties dissatisfied with the results of the Division's fee dispute review or the IRO review may appeal the decision directly to district court, rather than to the State Office of Administrative Hearings (SOAH). The constitutionality of eliminating SOAH appeals has been challenged recently in Travis County District Court.

Table 10: Mean and Median Number of Days to Resolve Medical Disputes (Aggregate Duration, as of March, 2006)

Year Dispute Received	Pre-authorization		Fee		Retrospective Medical Necessity	
	Mean	Median	Mean	Median	Mean	Median
2002	107	85	259	218	230	189
2003	58	48	509	559	185	150
2004	53	43	353	347	144	115
2005	57	53	N/A	N/A	N/A	N/A

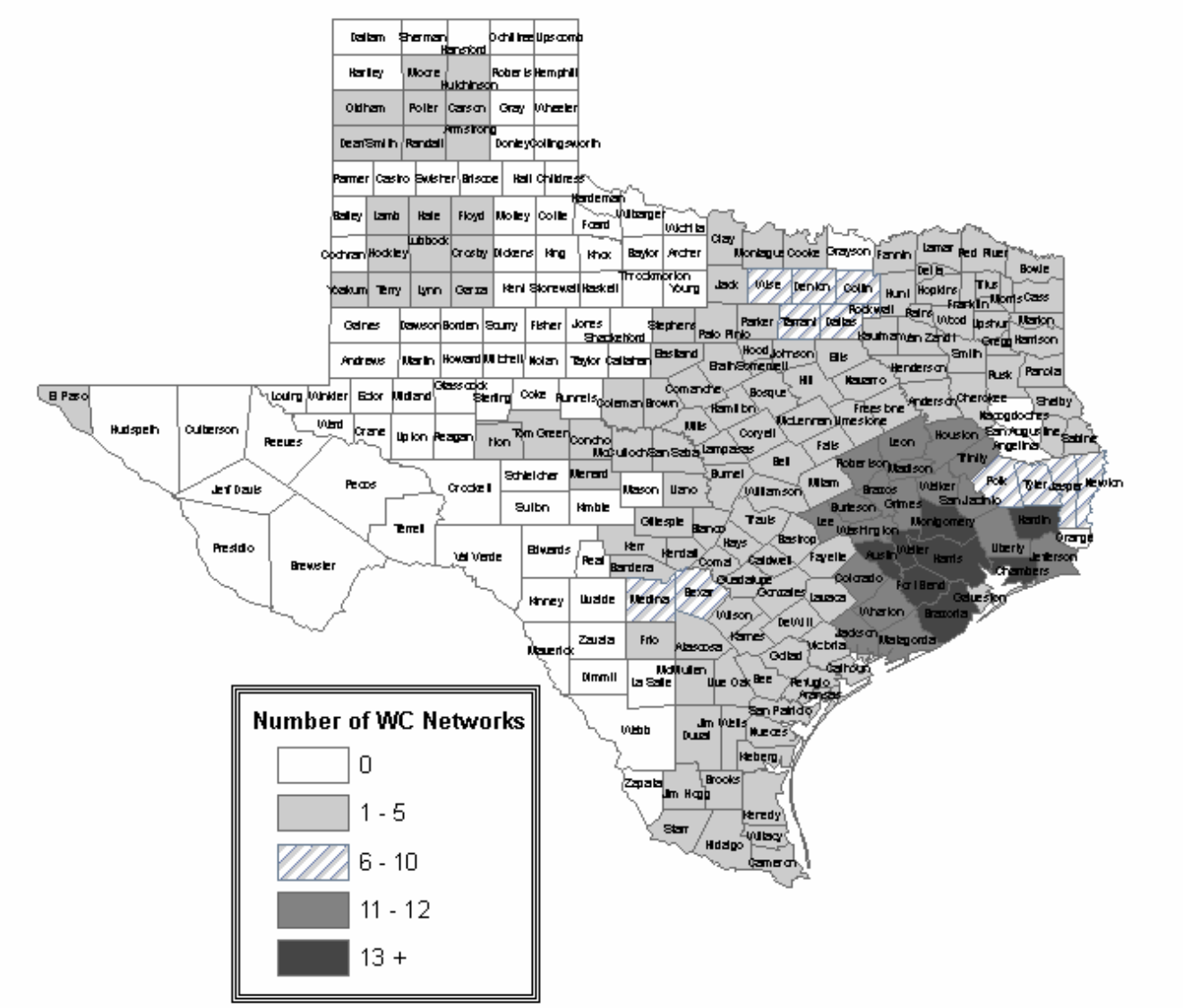
Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.
Note 1: These dispute resolution durations were only calculated for disputes that had been concluded as of March 2006 – disputes that were withdrawn or dismissed were excluded from the analysis. Hospital disputes, disputes submitted without DWC-60 and disputes with incorrect jurisdiction were also excluded. The duration includes the period from IRO decision date to case closure date.
Note 2: Dispute durations for 2005 are incomplete and should be viewed with caution since as of March 2006, there were still 89 preauthorization disputes, 6,473 fee disputes and 218 retrospective medical necessity disputes that were received in 2005 and had not yet been resolved, and therefore the mean and the median durations in 2005 would be significantly understated.

The Implementation of Workers' Compensation Networks Has Begun in Texas

TDI began accepting applications for the certification of workers' compensation health care networks on January 2, 2006. As of November 1, 2006, TDI has certified 17 networks extending over 164 counties. The shaded counties shown in Figure 11 are Texas counties included in the service area of at least one certified network as of November 1, 2006.

Currently, these certified networks are concentrated in counties primarily located in central, northeast, and southeast Texas. In addition, several Texas panhandle counties and one west Texas county have also been incorporated into the service areas of a certified workers' compensation network. As can be inferred from Figure 11, the networks that have been certified as of the writing of this report will primarily cater to injured workers in the larger metropolitan areas.

Figure 11 The Number of Certified Workers' Compensation Networks per Texas County(as of November 1, 2006)



Source: Texas Department of Insurance, Health and Workers' Compensation Network Certification and Quality Assurance Division, 2006.

Although more than one-third of Texas counties do not currently have coverage from a certified network, the concentration of networks in selected Texas metropolitan areas is not surprising given the distribution of reportable claims by the injured worker's residence county. Table 11 shows the distribution of 2004 workers' compensation reportable claims by the county of residence and metropolitan area of residence for the injured worker.[18] In 2004, 86 percent of workers' compensation reportable claims were filed by injured workers living in a major Texas metropolitan area.

[18] 2004 claim data was used for this report since it represents the most current and complete year in which claim data can be analyzed as of November 1, 2006.

Table 11: Distribution of Workers' Compensation Reportable Claims by the Major Metropolitan Statistical Areas (MSA) of Residence for Workers Injured in 2004[1]

Texas Metropolitan Statistical Areas (MSA)	Percentage of Reportable Claims	Number of Reportable Claims	Number of Networks in MSA
Dallas/Fort Worth/Arlington	26.6%	41,558	8
Houston/Sugar Land/Baytown	21.1%	33,084	14
San Antonio	8.7%	13,640	6
Austin/Round Rock	5.6%	8,762	5
El Paso	3.7%	5,746	3
McAllen/Edinburg/Mission	2.9%	4,467	4
Corpus Christi	1.8%	2,778	4
Beaumont/Port Arthur	1.7%	2,623	13
Brownsville/Harlingen	1.7%	2,637	3
Killeen/Temple/Fort Hood	1.4%	2,168	3
Lubbock	1.4%	2,163	4
Waco	1.1%	1,670	3
Amarillo	1.0%	1,508	3
Laredo	0.9%	1,472	0
Tyler	0.9%	1,445	4
College Station/Bryan	0.8%	1,176	11
Longview	0.8%	1,324	4
Odessa	0.7%	1,048	0
Abilene	0.6%	990	0
Wichita Falls	0.6%	936	1
Midland	0.5%	758	0
Sherman/Denison	0.5%	768	0
Victoria	0.5%	838	3
San Angelo	0.4%	639	3
Texarkana	0.3%	474	1
Total	86.2%	134,672	17

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.
[1]Note: Approximately 2,336 (2%) claims were missing information regarding the injured worker's county of residence.

The metropolitan area with the highest number of reportable claims is the Dallas/Fort Worth/Arlington area (26.6 percent). Eight of the seventeen certified WC networks include the Dallas/Fort Worth/Arlington metropolitan area in their service area. The Houston/Sugar Land/Baytown metropolitan area contains the second highest number of reportable claims (21.1 percent). All but three of all the currently certified workers' compensation networks include the Houston/Sugar Land/Baytown metropolitan area in their service area. The San Antonio metropolitan area contains the third highest number of WC reportable claims (8.7 percent). Six of the eighteen certified workers' compensation networks cover the San Antonio metropolitan area in their service area. Together these three metropolitan areas made up approximately 56 percent of workers' compensation reportable claims in 2004. Overall, the current distribution of certified workers' compensation networks is primarily concentrated in the metropolitan areas and surrounding counties with the highest concentration of reportable workers' compensation claims.

To gather some basic information regarding the current usage of certified workers' compensation networks by insurance carriers in Texas and the availability of these network plans to Texas employers, TDI initiated a data call in September 2006 with thirteen of the largest workers' compensation insurance carrier groups. Overall, these 13 insurance carrier groups represent about 84 percent of the direct workers' compensation premium written as of the second quarter of 2006. The purpose of this data call was to collect initial estimates regarding the percentage of insurance carriers that have contracted with or established a certified network, as well as initial estimates regarding the number and percentage of Texas policyholders (employers) and workers' compensation claims (injured workers) that are currently participating or will likely participate in a certified network during 2007 and 2008.

Given the infancy of the implementation of workers' compensation networks, these estimates should be viewed as preliminary and subject to change. Key findings from this data call revealed:

- Nine out of the thirteen insurance carrier groups surveyed reported that they had contracted with or established a certified workers' compensation network as of September 1, 2006.
- Of those insurance carriers that had not contracted with or established a certified network as of September 1, 2006:
    1) Two companies reported being in the final stages of the certification process or waiting for approval;
    2) One company reported that it was very likely that their group as a whole or some of their companies would contract with or establish a certified network within the next six months; and
    3) Only one company reported that they were not sure if their group or any of their member companies would contract with or establish a certified workers' compensation network.
- Six out of the nine insurance carriers with a certified network had already begun offering their networks to policyholders.
- Eight out of the nine insurance carriers with an established certified network were offering or planned to offer a network credit to policyholders who agreed to participate in their network.
- Only three insurance carriers reported that they had policyholders who have agreed to participate in their certified networks as of September 1, 2006.
- Seven of the nine insurance carriers who reported that they had already contracted with or established a network projected that the participation of both policyholders and injured workers in their certified network would increase significantly by the end of 2007.
    - By the end of 2007, nine of the insurance carriers surveyed reported that approximately 29,634 claims (injured workers) would be treated by certified WC networks; and
    - By the end of 2008, nine of the insurance carriers surveyed reported that approximately 50,840 claims (injured workers) would be treated by certified WC networks;

- Two of the insurance carriers surveyed reported that approximately 2,527 injured workers were already being treated in a certified network as of September 1, 2006.[19]

TDI will initiate future data calls on a periodic basis to update this information.

Relatively Few System Participants are Aware of the Recent HB 7 Reforms

Although many of the provisions of HB 7 went into effect on September 1, 2005, several of HB 7's key provisions require agency rulemaking, and in the case of workers' compensation health care networks, network certification before they can be implemented. In an effort to provide system participants with information about the numerous changes to the system brought about by HB 7 during its implementation,

[19] Approximately 12 percent of these injured workers had a "legacy" claim, meaning that they were injured prior to the implementation of HB 7 in September 2005. HB 7 allows insurance carriers to directly enroll injured workers with "legacy" claims into WC networks. These injured workers must still live in the network's service area and receive a copy of the network's notice from the insurance carrier.

various program areas at TDI (including the Division, Consumer Protection, the Research and Evaluation Group, Fraud and Life and Health) have conducted seminars, speeches, "brown-bag" lunches and distributed printed information to injured workers and employer, insurance carrier, attorney and health care provider groups across the state. Additionally, TDI sponsored several meetings of the Workers' Compensation Working Group, which consisted of system participants representing injured workers, employers, insurance carriers, and health care providers. Topics included issues such as return-to-work, performance-based oversight, network certification and report card, overviews of Division rules, and ways to reduce administrative hassles for health care providers in the Texas workers' compensation system.

When asked about their degree of knowledge regarding the abolishment of the TWCC and the transfer of its functions to TDI, only 11 percent of employers surveyed by the REG in 2006 consider themselves "extremely knowledgeable," while 63 percent said that they had "no knowledge at all" about those reforms. Sixty-eight percent of Texas employers reported that they weren't aware that HB 7 created a new state agency (OIEC) to advocate for injured workers. Additionally, 64 percent weren't aware of the most significant aspect of the HB 7 reforms – the creation and use of workers' compensation networks (see Table 12).

Since a significant percentage of Texas employers are not knowledgeable about the HB 7 reforms, it is possible that with increased employer education and greater network availability over time, the HB 7 reforms may improve employers' perceptions about the business climate and economic development opportunities in Texas.

Table 12: Employer Knowledge about the 2005 HB 7 WC Reforms

Main aspects of the 2005 reforms	Employer knowledge about the 2005 Reforms		
	Not at all Knowledgeable	Somewhat Knowledgeable	Extremely Knowledgeable
HB 7 abolished TWCC and transferred its functions to TDI	63%	26%	11%
HB 7 created a new state agency, the OIEC, to assist injured employees with complaints and disputes and advocate for them during rulemaking	68%	25%	7%
Under HB 7, employers who purchase workers' compensation insurance now have the option to participate in a health care network through their insurance carrier	64%	26%	10%
Under HB 7, an injured employee who lives in their carrier's network service area and receives a copy of the network requirements must choose a treating doctor from the network	62%	26%	12%
Under HB 7, small employers who purchase WC insurance and pay for worksite modifications in order to bring their employees back to work may be eligible for a reimbursement from TDI, up to $2,500 annually	75%	19%	6%

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 Workers' Compensation Research and Evaluation Group, 2006.

Concluding Remarks

A little over a year from the effective date of HB 7, implementation of these reforms are underway and showing early signs of progress. Going into the 80th Legislative Session, it is clear that significant changes to HB 7 are not necessary at this juncture and may actually impede the overall implementation of this reform. In considering legislative recommendations for this biennial report, TDI and the Division attempted to be very selective for two main reasons. One is that the implementation of HB 7 reforms is still in its early stages and these reforms have not had time yet to be fully evaluated. Second, TDI and the Division are scheduled for Sunset Review in 2009, which will entail a thorough examination of all areas of the agency's operations as well as the underlying statutory structure that it oversees. The legislative recommendations presented as part of this biennial report, with the exception of the recommendation regarding the licensure of workers' compensation third-party administrators, are generally technical in nature and will assist the agency in its ability to both effectively implement the HB 7 reforms and administer the Texas workers' compensation system.

Workers' Compensation Legislative Recommendations

Workers' Compensation Fraud Penalties

BACKGROUND Chapter 701, Texas Insurance Code establishes the Insurance Fraud Unit (Fraud Unit) within the TDI. The Fraud Unit investigates and refers for prosecution persons engaged in, or suspected of being engaged in, fraudulent insurance activities. In response to the passage of HB 7 (79th Legislature, Regular Session, 2005) and to utilize the Fraud Unit's law enforcement authority and experience, the Commissioner of Workers' Compensation, Commissioner Albert Betts, delegated to the Fraud Unit the task of investigating and referring suspected workers' compensation fraud for prosecution. The types of workers' compensation cases the Fraud Unit investigates include claim fraud, health care provider fraud, premium fraud and also agent/adjuster/company fraud. Chapter 418, Labor Code, addresses criminal penalties to be assigned to workers' compensation fraud.

PROBLEM The maximum penalty for committing workers' compensation fraud under Chapter 418, Labor Code, is a state jail felony. This does not parallel the penalty provisions in the Penal Code which follow the standard value ladder for committing insurance fraud or other similar financial crimes and in which punishment is dependent upon the value of the claim.

Prosecutors should have the flexibility to use the penalty provisions in the Penal Code so that workers' compensation fraud can be punished in the same manner as fraud committed against other lines of insurance. Because the Labor Code statute is specific to workers' compensation fraud, it could be argued that a defendant can only be charged under a Labor Code statute, thus potentially impeding a prosecutor's election of the appropriate penalty provision.

Adding an "Election of Prosecution" provision to the Labor Code would eliminate this arguable double standard and will improve prosecutors' and TDI's ability to obtain a proper judgment against persons who commit criminal insurance fraud in the workers' compensation system. The Insurance Code affords this type of language in §85.052, which offers the election of prosecution for all criminal acts enumerated in the code.

SOLUTION Amend the Labor Code to provide an "Election of Prosecution" provision similar to that found in TIC §85.052, to clarify that a person who commits an offense under the Labor Code may be prosecuted under the Labor Code or any other law of this state under which the person may be prosecuted.

Third Party Administrators

BACKGROUND Under Chapter 4151 of the TIC a certified administrator (Third Party Administrator or TPA) collects premiums from or adjusts or settles claims for annuities, life, health, and accident policies for Texas residents. Workers' compensation insurance is a property and casualty product and individuals adjusting such claims are required to hold a Texas adjuster license; however, the wording of the adjuster licensing in the TIC §4101.001(a) limits the license to an individual. Entities that provide TPA services for workers' compensation are not required to be certified administrators. The result is that TPA entities that handle workers' compensation policies are not subject to any specific licensing requirements.

PROBLEM Although TPA entities that collect premiums from or adjust or settle claims for annuities, life, health, and accident policies are subject to the Department regulatory authority, TPA entities that handle

workers' compensation policies and claims are not subject to Department regulatory authority. Under current law, the Department is limited to taking action against the workers' compensation insurance carrier for actions of the contracted TPA.

SOLUTION Amend the definition of "administrator" in TIC §4151.001(1) to include workers' compensation benefits, and amend TIC §4101.001(b) to clarify that persons adjusting workers compensation claims on behalf of a TPA must maintain an adjuster's license. Such revisions would make the current statutes and regulations applicable to TPAs that handle workers' compensation claims.

Submission of Claims by Health Care Providers

BACKGROUND HB 7 (79th Legislature, Regular Session, 2005) amended §408.027, Labor Code, to align the timeframes regarding the payment of medical services provided in and outside of workers' compensation health care delivery networks, as well as to reflect some of "prompt pay" provisions in the Insurance Code. Subsection (a) of §408.027 requires a health care provider to submit a claim for payment to an insurance carrier not later than the 95th day after the date on which the health care services are provided to the injured employee and subsection (b) requires insurance carriers to pay, reduce, deny, or determine to audit not later than the 45th day after the date of the receipt by the carrier.

PROBLEM When a provider treating a covered injured employee bills a group health carrier in error and later obtains accurate billing information and submits the bill to the appropriate workers' compensation carrier, the carrier denies payment when the bill is submitted later than 95 days from the date the service was provided.

SOLUTION

- Amend §408.027, Labor Code to add language similar to the provisions of TIC §843.337, (a) (b) (e) and (f), which govern the timely submission of a claim to a Health Maintenance Organization (HMO).