

# Health Care Provider Quarterly Meeting

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Sept. 20, 2023 – 10 to 11:30 a.m.

**TDI** Division of Workers'  
Compensation

# Agenda items

- Welcome.
- Compliance and Investigations update.
- Health and Safety update.
- Legislative update.
- Legal Services update.
- Workers' Compensation Research & Evaluation Group (REG) update.
- Q&A.
- Closing remarks.

An aerial view of a city, likely Denver, Colorado, featuring a large central park area with a prominent domed building in the background. The image is overlaid with a blue tint.

# **Compliance and Investigations update**

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**Nikki Karr, Director of Enforcement**

# CY2023 complaints

**1,332 complaints received**

|            |                            |
|------------|----------------------------|
| <b>17</b>  | attendance                 |
| <b>453</b> | communications             |
| <b>375</b> | indemnity benefit delivery |
| <b>317</b> | medical benefit delivery   |
| <b>103</b> | other                      |
| <b>67</b>  | quality of care            |

**1,496 complaints closed**

|            |                                 |
|------------|---------------------------------|
| <b>599</b> | confirmed                       |
| <b>279</b> | DWC education letter (low risk) |
| <b>618</b> | not confirmed                   |

*Based on complaint data as of 8/31/2023.*

# CY2023 – complaints received by respondent type

| Type of complaint         | Injured employee | Insurance carrier | Health care provider | Employer | Attorney | Other |
|---------------------------|------------------|-------------------|----------------------|----------|----------|-------|
| <b>Attendance</b>         | 4                | 5                 | 2                    | 0        | 6        | 0     |
| <b>Communications</b>     | 2                | 186               | 115                  | 82       | 64       | 4     |
| <b>Indemnity benefits</b> | 4                | 354               | 5                    | 8        | 1        | 3     |
| <b>Medical benefits</b>   | 0                | 247               | 68                   | 0        | 0        | 2     |
| <b>Quality of care</b>    | N/A              | 1                 | 66                   | N/A      | N/A      | 0     |
| <b>Other</b>              | 2                | 48                | 8                    | 41       | 1        | 3     |

Based on complaint data as of 8/31/2023.

# 2023 health care provider performance based oversight (PBO)

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**August 2023**

Preliminary findings distributed for both DWC Form-073 and DWC Form-069 categories.



**September 2023**

Response to findings are due.



**December 2023**

Results will be published.

# 2023 health care provider PBO

Measure details can be found in the health care provider [PBO methodology document](#).

Contact [PBO@tdi.texas.gov](mailto:PBO@tdi.texas.gov) if you have questions about the assessment.

## Texas Department of Insurance, Division of Workers' Compensation Health Care Provider Performance Based Oversight 2023 Assessment

Texas Labor Code Section 402.075 requires the Texas Department of Insurance, Division of Workers' Compensation (DWC) to assess system participants' performance in meeting the key regulatory goals established by the commissioner of workers' compensation.

DWC monitors workers' compensation system participants' compliance with the Texas Labor Code and DWC rules. DWC achieves its compliance objectives through data monitoring, complaint handling, audits, enforcement actions, and the performance based oversight (PBO) assessment.

As part of the PBO assessment, DWC places health care providers into regulatory tiers: poor, average, and high performers. DWC focuses its regulatory oversight on the poor performers. The Texas Labor Code also provides incentives for system participants:

- Limited audit exemption: Health care providers who are high and average performers may benefit from limited audits. DWC focuses its annual audit plan on poor performers. If we identify a compliance problem, such as an increase in complaints, we may also audit average and high performers.
- Modified penalties: DWC considers high-performer designation as a factor when determining appropriate enforcement action for compliance issues outside of the PBO process. We may assess lower penalties for high performers.
- Public recognition of high performers: We publish PBO results on our website.
- High performer logo: High performing health care providers may use a highperformer logo as a marketing tool.
- Reduced penalties: DWC may assess reduced penalties for self-disclosure of noncompliance.

No administrative penalties will result directly from negative findings in the PBO assessment.

The 2023 PBO assessment will evaluate health care providers on these categories:

- DWC Form-073, *Work Status Report* (DWC Form-073); and
- DWC Form-069, *Report of Medical Evaluation* (DWC Form-069).

# **CY2023 DWC Fraud Unit**

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**900 fraud referrals received**

- 43** fraud cases open
- 46** fraud cases closed
- 2** fraud referrals for prosecution

*Based on data as of 8/31/2023.*



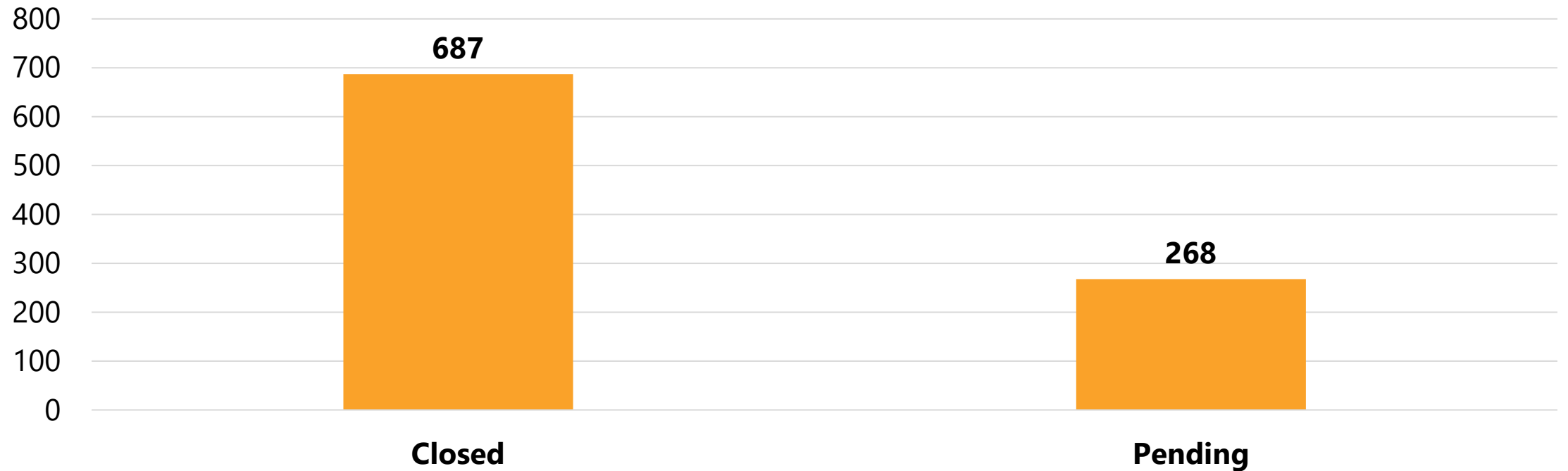
# CY2023 DWC Fraud & Prosecution Units

## 2 convictions

- 1 claimant
- 1 attorney

*Based on data as of 8/31/2023.*

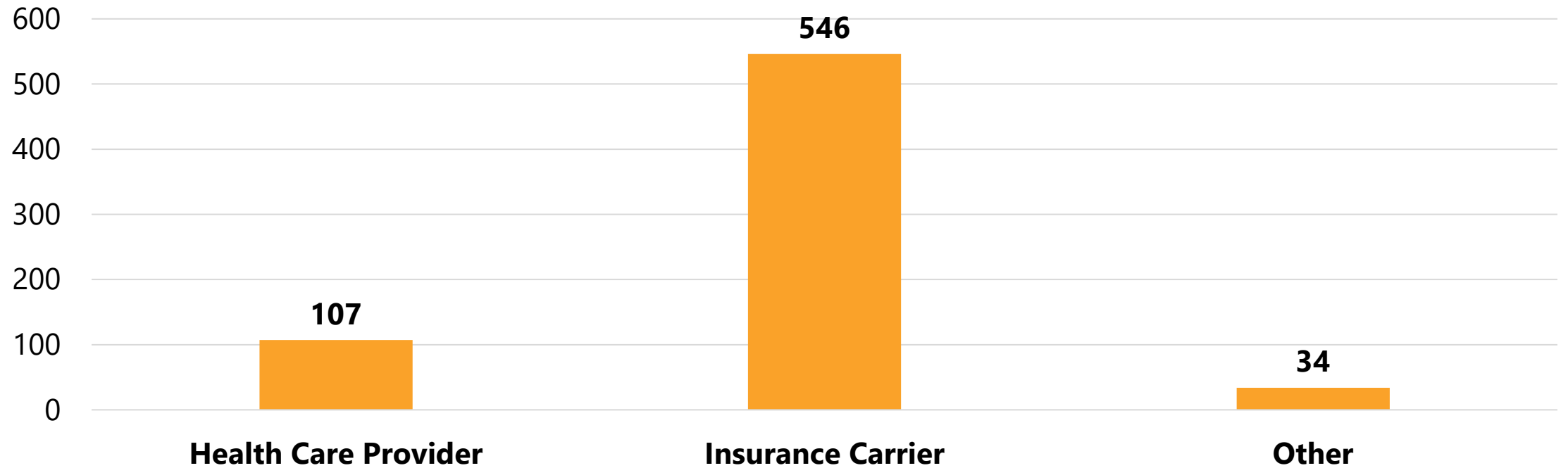
# CY2023 – Enforcement case status



| 2023  | Closed cases | Pending cases |
|-------|--------------|---------------|
| Cases | 687          | 268           |

Based on enforcement data as 9/8/2023.

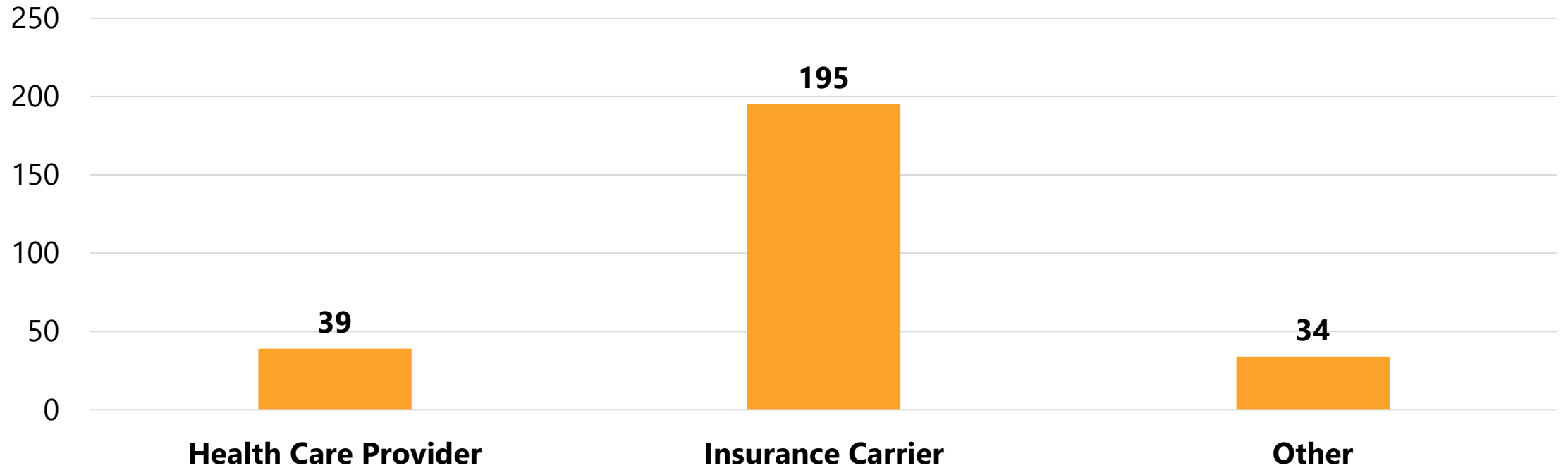
# CY2023 – cases closed by subject type



| 2023         | Health Care Provider | Insurance Carrier | Other |
|--------------|----------------------|-------------------|-------|
| <b>Cases</b> | 107                  | 546               | 34    |

*Based on enforcement data as 9/8/2023.*

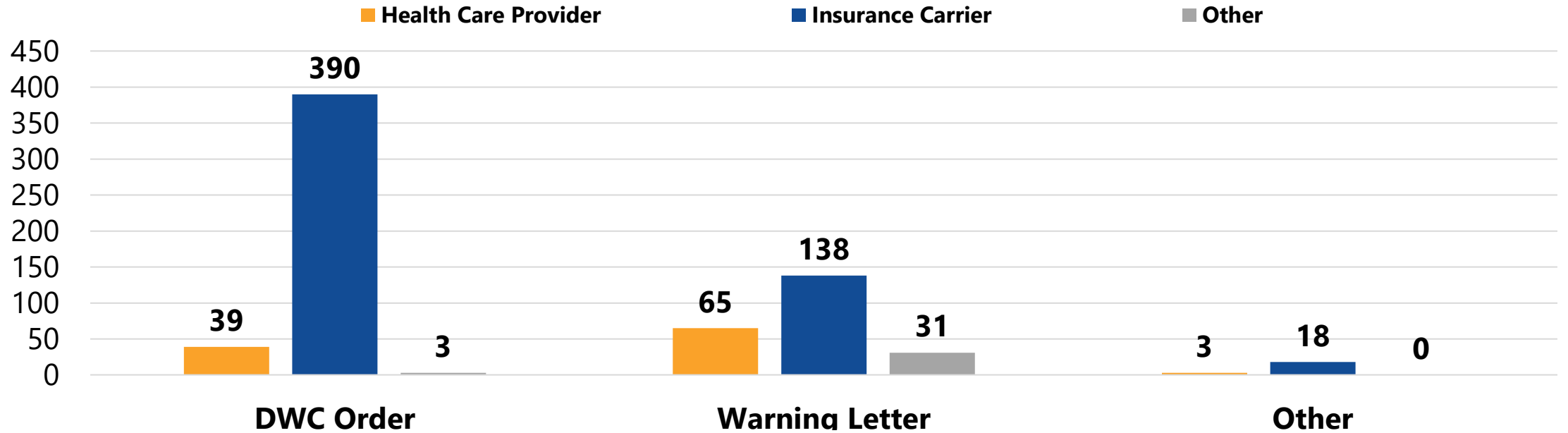
# CY2023 – cases pending by subject type



| 2023         | Health Care Provider | Insurance Carrier | Other |
|--------------|----------------------|-------------------|-------|
| <b>Cases</b> | 39                   | 195               | 34    |

*Based on enforcement data as 9/8/2023.*

# CY2023 – cases closed by disposition type



| 2023           | Health Care Provider | Insurance Carrier | Other |
|----------------|----------------------|-------------------|-------|
| DWC Order      | 39                   | 390               | 3     |
| Warning Letter | 65                   | 138               | 31    |
| Other          | 3                    | 18                | 0     |

Based on enforcement data as 9/8/2023.

# Violations to watch

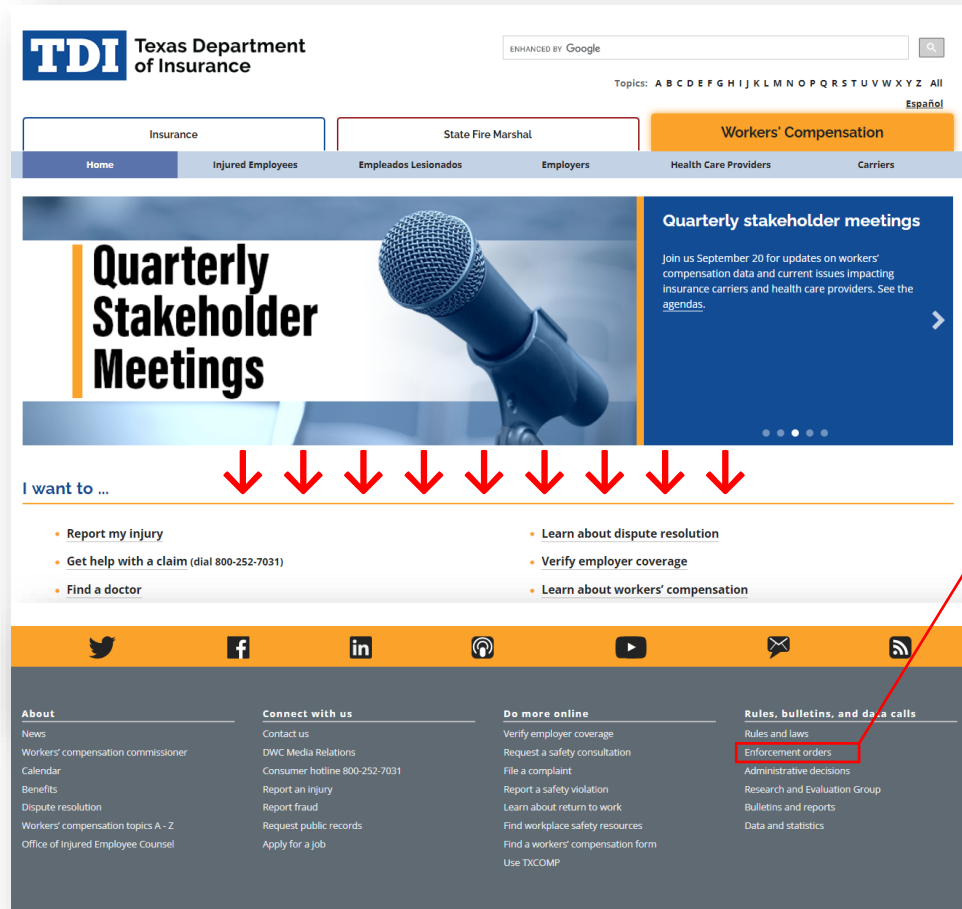
## **Texas Labor Code §408.0271(c)**

A health care provider (HCP) shall reimburse the insurance carrier for payments received by the HCP for inappropriate charges not later than the 45<sup>th</sup> day after the date of the carrier's notice. The failure by the HCP to timely respond to the carrier constitutes an administrative violation.

## **28 TAC §133.260(c)**

A HCP shall respond to a request for a refund from an insurance carrier by the 45<sup>th</sup> day after receipt of request, either by paying the requested amount or submitting an appeal to the insurance carrier with a specific explanation stating the reason the HCP has failed to pay.

# Enforcement orders webpage



Scroll to bottom of [DWC homepage](#) and click "Enforcement orders".

or

Visit [www.tdi.texas.gov/wc/orders/index.html](http://www.tdi.texas.gov/wc/orders/index.html).

An aerial photograph of a city campus, likely in Madison, Wisconsin, featuring a central greenway with multiple rectangular lawns and walkways. A prominent domed building is visible on the right side, and the Wisconsin State Capitol is in the background. The entire image is overlaid with a semi-transparent blue filter.

# Questions?

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An aerial, blue-tinted photograph of a city street. The street is wide and has a central greenway with multiple rectangular grass patches. On the right side, there is a large, classical-style building with a prominent dome. In the background, a city skyline is visible, including a large domed building that appears to be a state capitol. The overall scene is urban and well-maintained.

# Health and Safety update

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**Mary Landrum, Deputy Commissioner of Health and Safety**

# Health and Safety update

Office of the  
Medical  
Advisor

Health Care  
Provider  
Outreach

Designated  
Doctor  
Program

Medical Fee  
Dispute  
Resolution

An aerial view of a city campus, likely the University of California, Berkeley. The image shows a central greenway with multiple rectangular lawns and walkways. To the left are modern glass-walled buildings, and to the right is a large, classical-style building with a prominent dome. In the background, a city skyline is visible, including the California State Capitol building. The entire image is overlaid with a semi-transparent blue filter.

# **Designated Doctor Program update**

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**Santiago Calderon, Director of Designated Doctor Operations**

# **DD rule update**

## **Amendments to 28 Texas Administrative Code (TAC) Chapter 127 and §180.23**

- DD's and doctors with MMI/IR certifications.

# DD applications

**55** DD applications  
received from

Jan. 1, 2023 – April 29, 2023

**117** DD applications  
received after

April 30, 2023

**274** DDs currently  
on DDL

**78** MD/DO

# **Billing and reimbursement update**

- Survey sent to system participants.
- Goal is formal proposal to be published for comment in the coming weeks.
- Goal is to adopt rule by end of CY2023. Effective date may be towards end of 1<sup>st</sup> quarter.

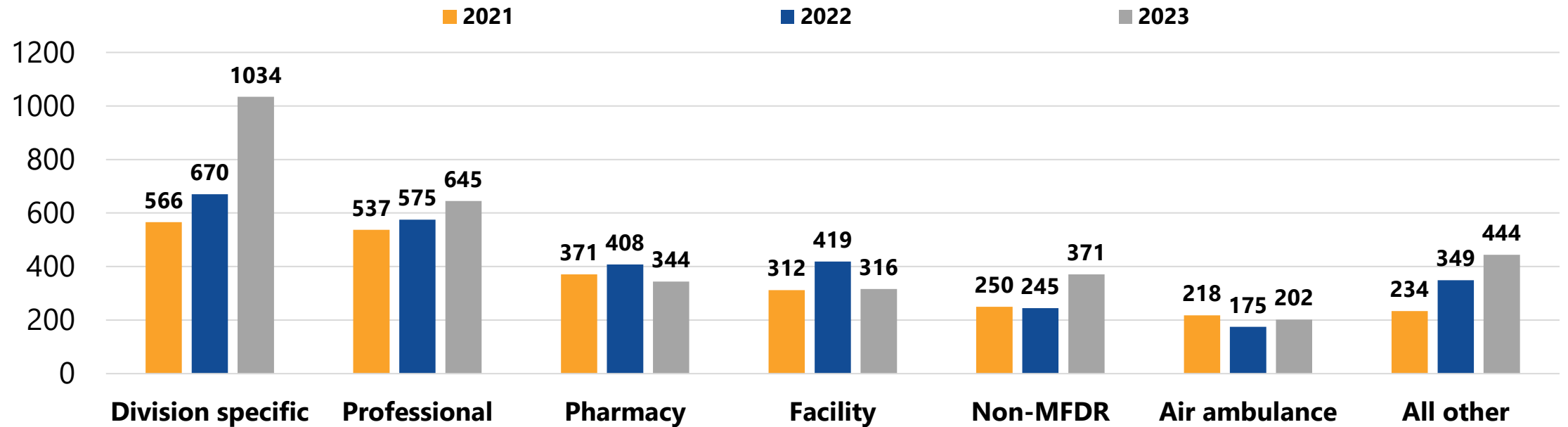


# MFDR update

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**Greg Arendt, Director of Medical Fee Dispute Resolution**

# Disputes by type – FY2021 - FY2023



|      | Division specific | Professional | Pharmacy | Facility | Non-MFDR | Air ambulance | All other |
|------|-------------------|--------------|----------|----------|----------|---------------|-----------|
| 2021 | 566               | 537          | 371      | 312      | 250      | 218           | 234       |
| 2022 | 670               | 575          | 408      | 419      | 245      | 175           | 349       |
| 2023 | 1034              | 645          | 344      | 316      | 371      | 202           | 444       |



# Fee dispute submission issues

Reconsideration as set out in TAC §133.250 is required prior to medical fee dispute.

Disputes without reconsideration may be dismissed.

Submit a position statement as set out in TAC §133.307(c)(2)(N).

Explain **how** DWC's rules support your request for payment.

Submit a **complete** copy of all explanations of benefits.

Payment of interest is often on a separate check.



# Legislative update

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**Kate Sidora, Director of External and Media Relations**

# Senate Bill 1122

## About

Amends the definition of “insurance services” in Tax Code §151.0039(b) to exclude a medical examination, service or test performed to determine the appropriate level of benefits under Labor Code, Title 5, Subtitle A, Chapter 408.

## Implementation

**No implementation** – Comptroller ruling no longer applies.

## Effective date

June 18, 2023

# House Bill 2314

## About

Allows for death benefit filing to both carriers and DWC.

## Implementation

- Updating the DWC-042 Form.
- Proposal will publish September 29 in Texas Register. Deadline to submit comments is 5 p.m., Central time, on October 30, 2023.

## Effective date

Effective for death benefit claims on or after June 10, 2023.

# House Bill 90 – Texas Military Forces

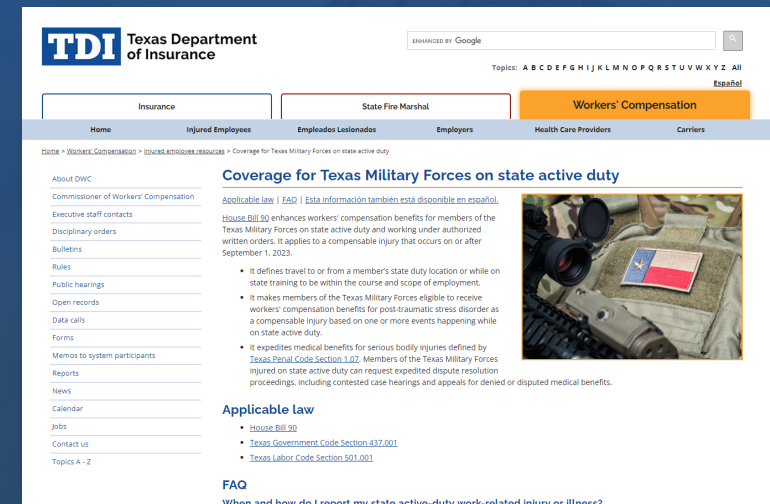
## About

- Texas Military Forces on state active duty and working under authorized written orders.
- Applies to a compensable injury occurring on or after September 1, 2023.
- Defines travel to or from a member's state duty location or while on state training to be within the course and scope of employment.
- Eligible to receive workers' compensation benefits for post-traumatic stress disorder as a compensable injury based on **one or more** events happening while on state active duty.
- Expedites medical benefits and dispute proceedings for serious bodily injuries defined by Texas Penal Code §1.07.

# House Bill 90 – continued

## Implementation

- New topic webpage for Texas Military Forces coverage.
- Call Claims and Customer Service at 800-252-7031, Opt. 1 for questions.



The screenshot shows the Texas Department of Insurance (TDI) website. The main navigation bar includes 'Insurance', 'State Fire Marshal', and 'Workers' Compensation'. The 'Workers' Compensation' section is active, and a new article titled 'Coverage for Texas Military Forces on state active duty' is highlighted. The article text states: 'House Bill 90 enhances workers' compensation benefits for members of the Texas Military Forces on state active duty and working under authorized written orders. It applies to a compensable injury that occurs on or after September 1, 2023.' The article lists three key points: 1) It defines travel to or from a member's state duty location or while on state training to be within the course and scope of employment. 2) It makes members of the Texas Military Forces eligible to receive workers' compensation benefits for post-traumatic stress disorder as a compensable injury based on one or more events happening while on state active duty. 3) It expedites medical benefits for serious bodily injuries defined by Texas Penal Code Section 1.02. Members of the Texas Military Forces injured on state active duty can request expedited dispute resolution proceedings, including contested case hearings and appeals for denied or disputed medical benefits. The article also lists applicable laws: House Bill 90, Texas Government Code Section 432.001, and Texas Labor Code Section 501.001. A FAQ section is also visible at the bottom of the page.

# House Bill 2468 – lifetime income benefits

## About

- New traumatic brain injury LIBs eligibility standard “a major permanent neurocognitive disorder...for which the employee requires occasional supervision in the performance of routine daily tasks of self-care **and**...that renders the injured employee permanently unemployable.”
- Expands coverage for third degree burns.

## Effective date

Effective for eligible claims on or after September 1, 2023.

# House Bill 2468 – continued

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## About

### Certain first responders:

- Adds serious bodily injuries (Penal Code §1.07) that renders the employee permanently unemployable as a qualifying condition.
- Creates a right to review by the insurance carrier.
- Requires annual certification that the first responder has not been employed in the previous year.
- Provides expedited dispute resolution proceedings for first responder LIBs claims on new Labor Code §408.1615 (serious bodily injury).



# House Bill 2468 – continued

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## Implementation

Rules:

- required annual employee certification.
- process for 5-year review and designated doctor exam.

Looking at potential new or updated forms.

Two updated web resources until final rules are adopted.

Call Claims and Customer Service at 800-252-7031, Opt. 1 for questions.

# House Bill 2468 – continued

## LIBs topic page

The screenshot shows the TDI Texas Department of Insurance website. The top navigation bar includes "Home", "Injured Employees", "Empleados Lesionados", "Employers", "Health Care Providers", and "Carriers". The "Workers' Compensation" tab is highlighted. The main content area is titled "Lifetime income benefits (LIBs)". It includes a sidebar with links to "About DWC", "Commissioner of Workers' Compensation", "Executive staff contacts", "Disciplinary orders", "Bulletins", "Rules", "Public hearings", "Open records", "Data calls", "Forms", "Memos to system participants", "Reports", "News", "Calendar", "Jobs", "Contact us", and "Topics A - Z". The main text explains that HB 2468, effective September 1, 2023, made changes to LIBs eligibility requirements. It lists several conditions for eligibility, such as total and permanent loss of sight in both eyes, loss of both feet or hands, or a third-degree burn covering at least 40 percent of the body. A box on the right provides links to "Read more about other types of workers' compensation benefits" and "See historical benefits data".

## First responder FAQ page

The screenshot shows the TDI Texas Department of Insurance website. The top navigation bar is identical to the previous page. The main content area is titled "First responder FAQ". It includes a sidebar with the same links as the previous page. The main text explains that the Division of Workers' Compensation (DWC) makes sure everyone follows the workers' compensation rules and laws in Texas. It lists several frequently asked questions, such as "Who is a first responder?", "When and how do I report my work-related injury or illness?", "What will workers' compensation cover?", "Who should I call if I have questions about my claim or benefits?", "What conditions are presumed to be work-related?", "Who should I call if the insurance carrier denied my claim?", and "Do I have rights under workers' compensation?". A section titled "Who is a first responder?" lists various professions like peace officers, paramedics, firefighters, and detention officers. Another section titled "When and how do I report my work-related injury or illness?" states that you must report your injury or illness to your employer within 30 days from the date of injury or the date you knew it was work-related.

# Updates and rules recap

## Expired

- Presumption under Texas Government Code §607.0545 for COVID-19 claims (SB 22, 87th session).

## Recently adopted

- Teledentistry.
- MQRP.

## Current

- Designated doctor billing and reimbursement.

An aerial photograph of a city campus, likely in Madison, Wisconsin, featuring a central greenway with multiple rectangular lawns and walkways. A prominent domed building is visible on the right side, and the Wisconsin State Capitol is in the background. The entire image is overlaid with a semi-transparent blue filter.

# Questions?

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# **Legal Services update**

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**Kara Mace, General Counsel**


# Fast-track rules

## What are they?

Fast-track rules make nonsubstantive or editorial changes to the Texas Administrative Code.

## Why do we do them?

To clean up the code and update for style and plain language.



(c) Information required by subsection (b) of this section must [~~shall~~] be mailed to the Texas Mutual Insurance Company at 2200 Aldrich Street, Austin, Texas 78723-3474 [~~the appropriate address~~].

# 2023 adopted fast-track rules

## 28 TAC §55.15

### Lump sum payments

- Updated obsolete submission method requirements and obsolete references to the Industrial Accident Board, a predecessor agency of DWC.
- Eliminated the use of colored or carbon copy paper when submitting settlement agreements to DWC.
- Updated the agency's name.

## 28 TAC §102.11

### Electronic formats for electronic claim data request and report

- Corrected a reference.
- Made updates for plain language and agency style.
- Ensured that the rule provides DWC's current website address.

## 28 TAC §165.1

### Identification and notification of certain policyholders insured by the Texas Mutual Insurance Company acting as the insurer of last resort

- Updated obsolete Insurance Code references.
- Added Texas Mutual Insurance Company's physical address.
- Made updates for plain language and agency style.
- Updated Insurance Code references.

# Updates to our rules webpage

## 2023 DWC proposed and adopted rules

[2022](#) | [2021](#) | [2020](#) | [2019](#) | [2018](#) | [2017](#) | [2016](#) | [2015](#) | [adoptions prior to March 2015](#)

Rules marked with a star ★ are open for comment.

Need to search the page? Select **Open all** first.

Open all

Close all

★ Death benefits (HB 2314) ▾

Teledentistry ▾

Medical Quality Review Panel ▾

Designated doctor billing and reimbursement rules ▾

Designated doctor procedures and requirements; division-required training for doctors ▾

Electronic formats for electronic claim data request and report ▾

Lump sum payments ▾

Identification and notification of certain policyholders insured by the Texas Mutual Insurance Company acting as the insurer of last resort ▾

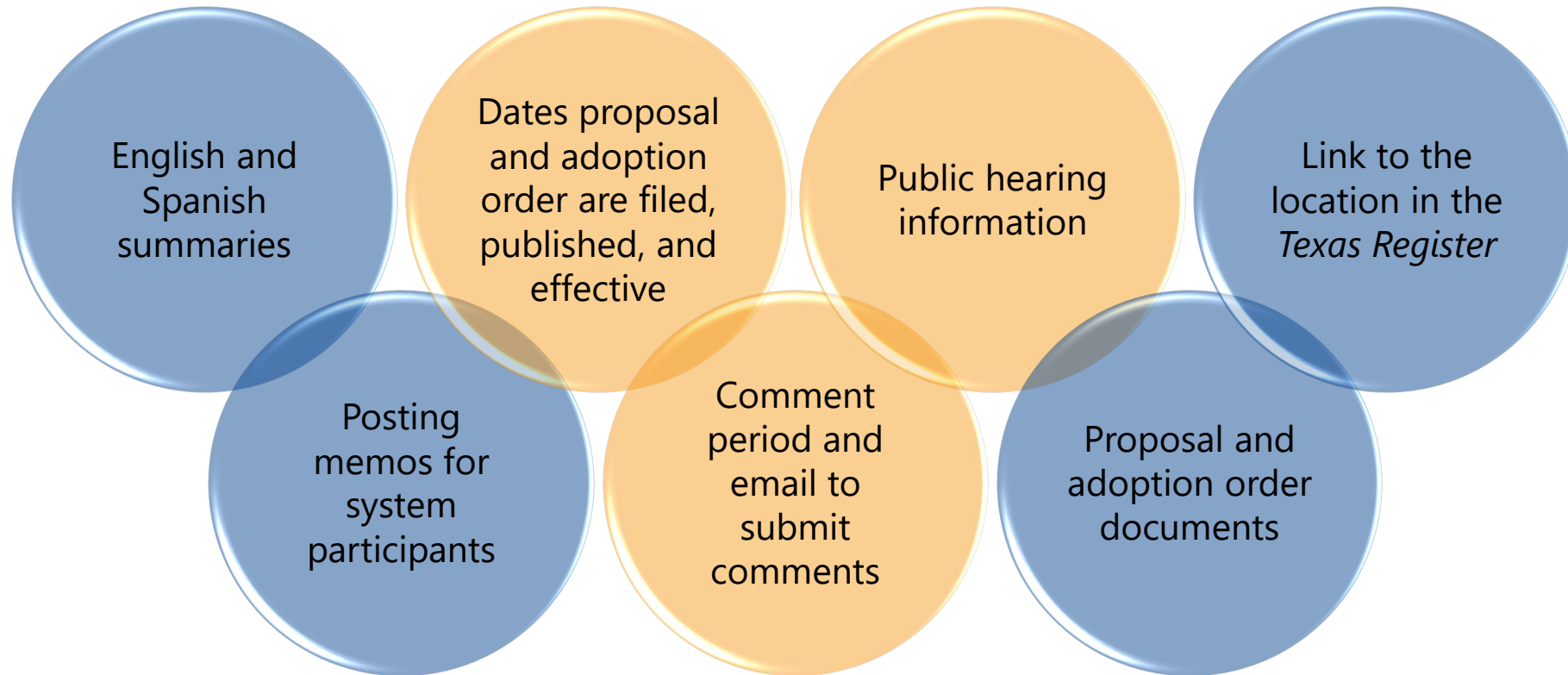
If you see a ★, the rule comment period is open. Email your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov).

<https://www.tdi.texas.gov/wc/rules/index.html>



# Updates to our rules webpage

You can find:



## Lump sum payments ▾

### Summary

28 TAC Section 55.15 (which has been in effect since November 20, 1977) implements requirements for the contents of compromise settlement agreements. The amendments remove the requirement that “old law” settlement agreements be submitted on multi-colored carbon or carbonless paper. The amendments require that “old law” settlement agreements be submitted in the form and manner prescribed by DWC. The amendments also replace references to “the board” with “the division.” This rule does not change the people the rule affects or impose a cost on stakeholders, DWC, or the state.

### Resumen

La Sección 55.15 del 28 TAC (la cual ha estado vigente desde el 20 de noviembre de 1977) implementa los requisitos para el contenido de los acuerdos de compromiso de pago (compromise settlement agreements, por su nombre en inglés). Las enmiendas eliminan el requisito que indica que los acuerdos de pago (settlement agreements, por su nombre en inglés) de la “ley antigua” sean presentados en papel carbón o en papel de copia sin carbón multicolor. Las enmiendas requieren que los acuerdos de pago de la “ley antigua” sean presentados en la forma y manera prescrita por DWC. Las enmiendas también reemplazan las referencias a “la junta” (the board, por su nombre en inglés) con “la división”. Este reglamento no cambia las personas a las que afecta el reglamento ni impone un costo a las partes interesadas, a DWC, o al estado.

### Proposal

- [Posting memo for proposal](#)
- Proposal: [28 TAC §55.15](#)
- Proposal filed: 1/27/23
- Proposal published: 2/10/2023 at [48 TexReg 639](#)
- Comments: email [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov) by 5:00 pm, Central time, on March 13, 2023

### Adoption

- [Posting memo for adoption](#)
- Adoption: [28 TAC §55.15](#)
- Adoption filed: 6/13/23
- Adoption published: 6/30/23
- Effective date: 7/3/23





# REG update

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**Kimberly Donovan, Deputy Commissioner of Operations and External Relations**

# 2023 Return to Work report



**92%**

of employees  
back at work  
within 1 year of  
their injury



**69%**

of employees  
back at work  
within 6 months  
stay at work



**2 years**

for employees  
who RTW within 6  
months to get back  
to pre-injury wage



**43 days**

on average for  
employees to  
return to work

Snapshot: [www.tdi.texas.gov/wc/reg/rtw2023.html](http://www.tdi.texas.gov/wc/reg/rtw2023.html)

# Upcoming reports

**Pharmacy cost  
and utilization**

**Medical cost  
and utilization**

**Access to care**

# **FY2024 research agenda**

## **Proposed research projects:**

- Completion and publication of the seventeenth edition of the Workers' Compensation Health Care Network Report Card (required under Insurance Code §1305.502(a)-(d) and Labor Code §405.0025(b)).
- An update of the 2022 biennial study to estimate employer participation in the Texas workers' compensation system.
- An update of key workers' compensation system trends to meet the requirements for the DWC biennial report required under Labor Code §402.066, including medical costs and utilization of care, return-to-work rates for injured employees, access to care for injured employees, and medical dispute resolution trends.
- Income Benefit Adequacy in the Texas Workers' Compensation System.
- An update of medical costs and utilization in the Texas workers' compensation system.

Comments due in writing by 5 p.m., Central time, on October 16, 2023.

# Find everything REG-related

The screenshot displays the Texas Department of Insurance (TDI) website. At the top left is the TDI logo and the text "Texas Department of Insurance". To the right is a search bar labeled "ENHANCED BY Google" and a navigation menu with letters A-Z and "All". Below the search bar is a secondary navigation bar with "Español" on the right and three main menu items: "Insurance", "State Fire Marshal", and "Workers' Compensation" (which is highlighted in orange). Underneath is a horizontal navigation bar with links for "Home", "Injured Employees", "Empleados Lesionados", "Employers", "Health Care Providers", and "Carriers". The main content area features a breadcrumb trail: "Home > Workers' Compensation > WC Research and Evaluation Group". A prominent orange box contains the text "Data call results" and a list of dates: "COVID-19 in the Texas Workers' Compensation System 6/2/23 | 3/29/23 | 12/20/22 | 8/29/22 | 5/31/22 | 3/2/22 | 12/8/21 | 8/30/21 | 6/2/21 | 3/4/21 | 12/17/20 | 11/10/20 (pdf)". To the left of the main content is a sidebar with a "Research & Evaluation" section containing links for "Website for Injured Workers", "Information for Employers", "Information for Employees", "Policy/Premium", "Rate Guide - Relativities", and "Rate Guide - By Company". The main content area has a heading "Workers' Compensation Research and Evaluation Group - REG" followed by a paragraph explaining the group's history and purpose. A "Stay connected!" button with a bell icon and the text "Sign up for updates." is positioned to the right. Below the main text is a "Learn more" section with three bullet points: "Annual Research Agenda", "REG Reports and Studies page", and "Texas Monitor".

[www.tdi.texas.gov/wc/reg/index.html](http://www.tdi.texas.gov/wc/reg/index.html)

An aerial photograph of a city campus, likely in Madison, Wisconsin, featuring a central green courtyard with a grid of walkways and a prominent domed building on the right. The image is overlaid with a semi-transparent blue filter. The word "Questions?" is centered in white text with a horizontal orange line underneath it.

# Questions?





# Closing remarks

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**Jeff Nelson, Commissioner of Workers' Compensation**