

**Biennial Report of the  
Texas Department of Insurance  
To the 81st Legislature**

Division of Workers' Compensation

**December 2008**



**Rod Bordelon**

Commissioner of Workers' Compensation

**Mike Geeslin**

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## Texas Department of Insurance

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December 1, 2008

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 legislative recommendations that we believe will improve our ability to effectively and efficiently regulate the workers' compensation system.

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

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

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Rod Bordelon".

Rod Bordelon  
Commissioner of Workers' Compensation

A handwritten signature in black ink, appearing to read "Mike Geeslin".

Mike Geeslin  
Commissioner of Insurance

## **Overview of the Status of the Texas Workers' Compensation System**

More than three years since the passage of House Bill (HB) 7 by the 79th Legislature, the Texas workers' compensation system has undergone significant changes. These changes are reflected in the abolishment of the former Texas Workers' Compensation Commission and transfer of duties to the newly created Division of Workers' Compensation at the Texas Department of Insurance, as well as the frequency, cost and return-to-work rates of claims filed within the system.<sup>1</sup>

Most of the key provisions of HB 7 have been implemented by the Texas Department of Insurance (Department), Division of Workers' Compensation (Division); however it is still too early to effectively gauge the full impact of this legislation. Nevertheless, it is important to continuously assess the operational effectiveness of the Texas workers' compensation system to establish a baseline by which policymakers and system participants may measure the relative impact of HB 7 and other legislative or regulatory reforms in the future.

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

- injury and claim frequency rates;
- employer participation in the Texas workers' compensation system;
- medical costs, including pharmacy costs and utilization;
- claim and medical billing denial rates;
- return-to-work rates;
- impairment ratings and the frequency of permanent partial disability benefits; and
- the implementation of workers' compensation health care networks.

It should be noted that in addition to these highlighted trends, the agency is also tracking other important issues such as dispute and complaint resolution trends, access to care, usage of medical peer reviews by insurance carriers and improvement to customer service operations. The system trends presented in this report allow the Department, 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.

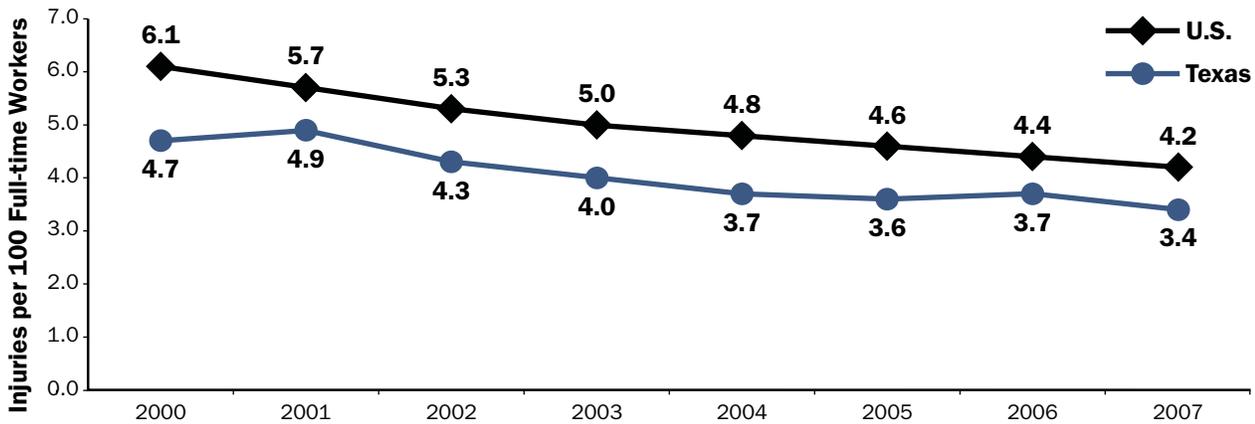
### **Injury Rates and Claim Frequency Continues to Decrease**

The Texas workers' compensation system continues to experience marked reductions in both the non-fatal occupational injury and illness rate and the overall number of reportable claims filed with the Division. Between 2000 and 2007, the nonfatal occupational injury and illness rate in Texas decreased 28 percent from 4.7 to 3.4 injuries per 100 full-time employees. Workplace injury and illness rates vary widely by industry; however, several industry sectors including manufacturing, wholesale trade, transportation, warehousing, utilities, financial activities, educational services, and health care and social assistance experienced their lowest nonfatal injury and illness rate in the last five years. The industry sectors with the highest rates include: transportation and warehousing (5.8 injuries/illnesses per 100 full-time employees),

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<sup>1</sup> For a complete description of HB 7, see <http://www.tdi.state.tx.us/wc/transition/hb7changes.html>.

**Figure 1: Texas and U.S. Nonfatal Occupational Injury and Illness Rates Per 100 Full-time Employees (2000-2007)**



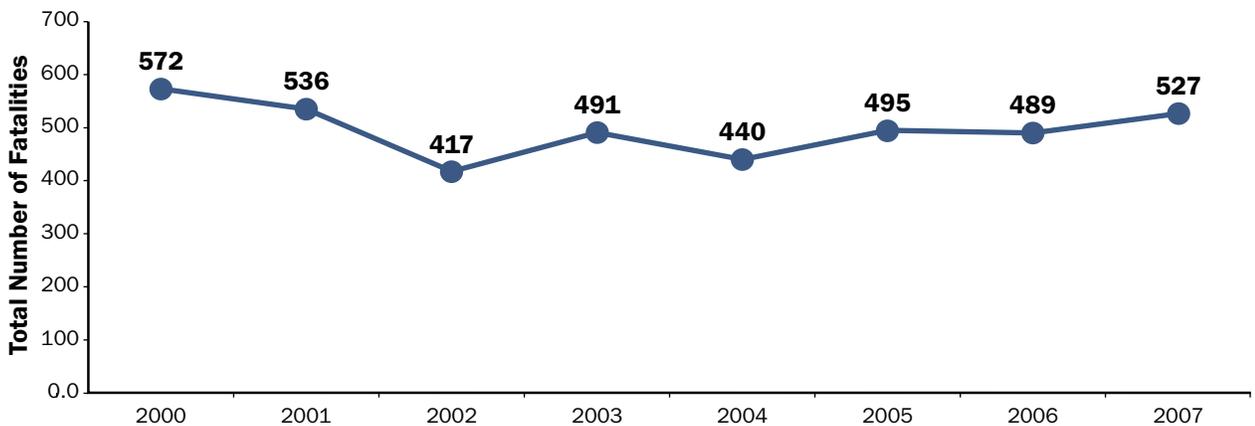
Source: Texas Department of Insurance, Division of Workers' Compensation and U.S. Department of Labor, Bureau of Labor Statistics, Annual Survey of Occupational Injuries and Illnesses, 2008.

agriculture/forestry/fishing/hunting (5.3), manufacturing (4.4), retail trade (4.3), and leisure and hospitality (4.2). Compared with the rest of the nation, the injury rate in Texas has been consistently below the national average (see Figure 1).

Although the non-fatal occupational injury and illness rate in Texas and nationwide has seen a continuous decrease over time, the number of fatal occupational injuries in Texas continues to fluctuate (see Figure 2). Transportation incidents continue to be the leading cause of work-related fatalities in Texas (192 in 2007), and an increasing number of fatalities can be attributed to assaults and violent acts against employees (86 fatalities in 2007 – a 46 percent increase from 2006). Nearly one-third (29 percent) of all fatalities reported in 2007 occurred in the construction and extraction occupation group.

Similar to the non-fatal occupational injury and illness rates seen in Figure 1, the number of workers' compensation claims actually reported to the Division has declined steadily since 2000 (see Figure 3). The reasons for these reported declines, both nationally and in Texas, stem from

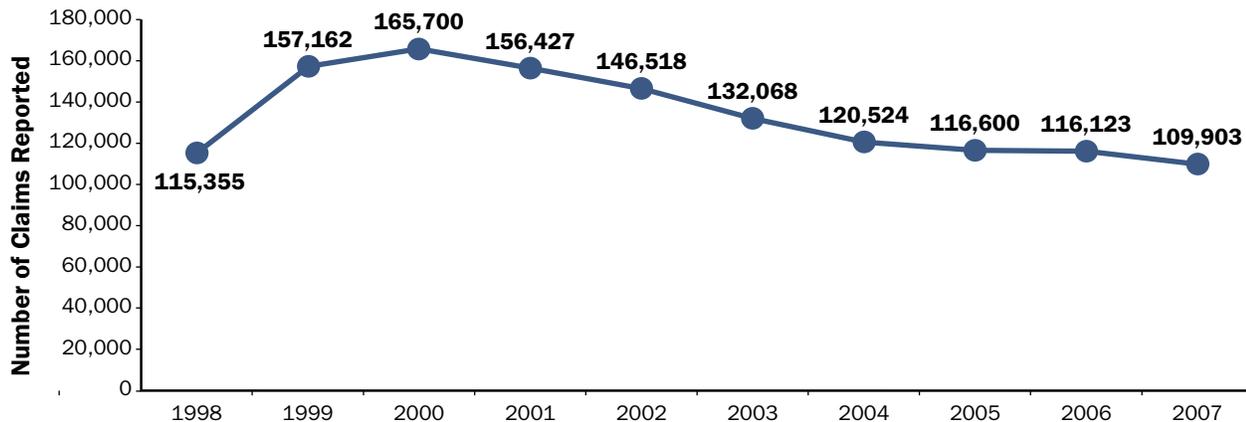
**Figure 2: Number of Fatal Injuries in Texas by Year, 2000-2007**



Source: Texas Department of Insurance, Division of Workers' Compensation and U.S. Department of Labor, Bureau of Labor Statistics, Census of Fatal Occupational Injuries, 2008.

a variety of factors, including increased safety awareness among employers and employees, enhanced health and safety outreach and monitoring efforts at the federal and state level, improvements in technology, globalization, increased use of independent contractors, and the possibility of under-reporting of workplace injuries and illnesses.

**Figure 3: Number of Workers’ Compensation Claims Reported to the Division of Workers’ Compensation, Injury Years 1998-2007**



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

Source: Texas Department of Insurance, Division of Workers’ Compensation, 2008.

### **Employer Participation Rates Have Improved, but Employee Coverage Rates Have Declined**

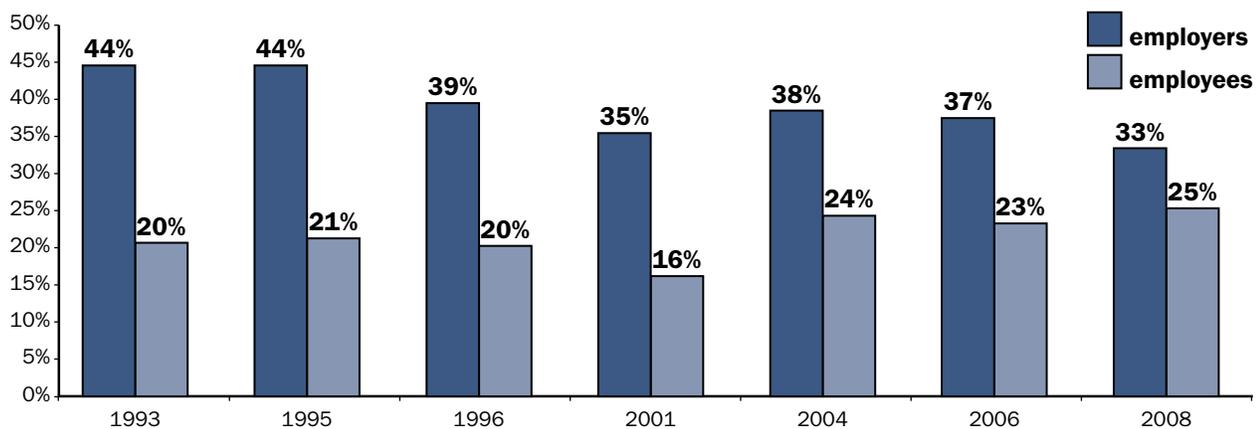
Texas is currently the only state where private-sector employers (regardless of employer size or industry) are allowed the option of obtaining workers’ compensation coverage or becoming “non-subscribers” to the workers’ compensation system.<sup>2</sup> Employers who choose to not obtain workers’ compensation coverage (either through purchasing a commercial policy, becoming a certified self-insured employer or a member of a certified group of self-insured employers) lose the protection of statutory limits on liability and may be sued for negligence by their injured employees.

The non-subscription rate remains 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 non-subscribers to the workers’ compensation system decreased to 33 percent in 2008 – the lowest percentage since 1993 (an estimated 106,308 employers). However, an estimated 25 percent of year-round Texas employees (representing approximately 3 million employees) worked for non-subscribing employers – the highest percentage since 1993 (see Figure 4).

While the percentage of Texas employers who have workers’ compensation coverage has increased since 2006, due primarily to lower insurance premiums and the increased availability

<sup>2</sup> 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 4: Percentage of Texas Employers that are Non-Subscribers and the Percentage of Texas Employees that are Employed by Non-Subscribers, 1993-2008**



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

of workers' compensation health care networks, the results from the 2008 analysis continue to highlight the trend of larger employers (i.e., employers with 500+ employees) making the decision to opt out of the Texas workers' compensation system (an estimated 26 percent of large employers are non-subscribers in 2008 compared to 21 percent in 2006). These larger employers continue to cite the high cost of participating in the workers' compensation system and the ability to more effectively manage medical costs as their primary reasons for opting out.<sup>3</sup>

### **Compliance Efforts Regarding Reporting Requirements for Non-Subscribing Employers**

While the types and amounts of benefits provided to injured employees who work for non-subscribing employers as well as the administration of those benefit programs fall outside of the jurisdiction of the Department's and the Division's regulation, non-subscribers are still subject to certain reporting requirements under the Workers' Compensation Act and Rules. Non-subscribers are required to report to the Division annually (using the DWC-5 Form) that they have elected to opt out of the workers' compensation system.<sup>4</sup> Additionally, non-subscribers who employ at least five employees are required to file a notice with the Division (using the DWC-7 form) for every fatality, occupational disease, and every work-related injury that results in more than one day of lost time.<sup>5</sup> Failure to comply with these reporting requirements may result in enforcement action and administrative penalties levied up to \$25,000 per day per occurrence.

<sup>3</sup> For more information about non-subscription rates and employers' reasons for participating or not participating in the Texas workers' compensation system, see Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, *Employer Participation in the Texas Workers' Compensation System: 2008 Estimates*, which can be viewed at [http://www.tdi.state.tx.us/reports/wcreg/documents/2008\\_Employer\\_Particip.ppt](http://www.tdi.state.tx.us/reports/wcreg/documents/2008_Employer_Particip.ppt).

<sup>4</sup> See Section 406.004, Labor Code.

<sup>5</sup> See Section 411.032, Labor Code.

Last session, the 80th Legislature added Appropriation Rider 19 to the Department's budget, which requires the Division to submit, as part of its biennial report to the legislature, a report regarding the compliance of non-subscribing employers with these reporting requirements as well as any administrative penalties levied against non-complying employers. Prior to the 2007 legislative session, non-subscriber reporting compliance efforts on behalf of the agency were primarily complaint driven. Since 2000, the Division and its predecessor – the Texas Workers' Compensation Commission – received 14,428 DWC-5 filings by non-subscribers; however, since 1992, the agency has only received 35 complaints regarding non-subscriber reporting compliance and initiated seven enforcement actions as a result of those complaints.

Since last session, the Division commenced efforts to not only increase employer awareness about non-subscriber reporting requirements, but also to proactively identify potential non-complying employers. In addition to providing information about these reporting requirements on the agency website, the Division has included this information in multiple agency-sponsored educational conferences; published articles in the agency's newsletter, the *Workers' Comp Update*; issued a Commissioner memo to system stakeholders in December 2007; issued a press release and submitted an article to the Comptroller's quarterly newsletter – the *Sales Tax Update*. At the same time, using workers' compensation policy data collected by the National Council on Compensation Insurance (NCCI) on behalf of the Division, as well as information collected by the Texas Workforce Commission (TWC) regarding the identity of employers who participate in the Unemployment Insurance program, the Division identified a list of employers who were potential non-subscribers. This list of employers was then compared with the list of non-subscribers who submitted a DWC-5 form to the Division to develop a list of potential non-complying employers.

Given the large volume of potential non-complying employers, the Division prioritized its notice and compliance efforts first on the largest employers (i.e., employers with 500+ employees) and sent letters to 300 of these employers. In the letters, the Division asked these large employers to provide information regarding their current workers' compensation coverage status or to file the required reports with the Division. Of the 300 large employers who received letters, almost one-third (86) indicated they were non-subscribers who had not reported their coverage status to the Division. The remaining 214 employers either had workers' compensation coverage, were no longer in business (returned mail), or were able to show they had filed the required notice with the Division.

Additionally, the Division sent letters to 300 randomly selected employers who had filed the DWC-5 form to inquire whether these employers had any occupational injuries, illnesses or fatalities during calendar year 2008 that should be reported to the Division using the DWC-7 form. As of November 1, 130 of these employers indicated that they had no reportable injuries and illnesses for calendar year 2008, 18 reported injuries and illnesses that they had not previously reported, 16 indicated they now had workers' compensation coverage, 40 reported having fewer than five employees and are exempt from these reporting requirements, and the remaining employers (94) have not yet responded to the Division's letter or are no longer in business.

The Division is currently in the process of taking enforcement action against those employers who have not complied with the non-subscriber reporting requirements or who have not

responded to the Division's letters of inquiry regarding coverage status or notice of occupational injuries and illnesses. Warning letters have been sent to those employers who failed to respond to the Division's letters of inquiry and the Division is in the process of determining administrative penalties for the non-compliant employers. However, despite the Division's recent compliance and education efforts regarding these reporting requirements, overall non-subscriber compliance with existing reporting requirements remains low (less than 10 percent of non-subscribers are estimated to be in compliance with the DWC-5 form filing requirement).

This enforcement effort has proved to be challenging for the agency for several reasons, including the volume of potentially non-subscribing employers and the completeness, accuracy and timeliness of workers' compensation policy data and employer identifying data collected by the Division and other Texas state agencies. For example, an employer may have filed for unemployment insurance purposes with the TWC using the Federal Employment Identification Number (FEIN) of the parent organization, but may have different workers' compensation insurance policies under various FEINs and names of subsidiaries of the parent organization. As a result, it is somewhat difficult for the Division to identify individual employers that may be non-subscribers and to check for these employers' compliance with reporting requirements. Another issue is the fact that most non-subscribers, with some exceptions, are small employers who are unfamiliar with the reporting requirements under the Act and Rules. Educating these small employers will require a significant and continuing effort on the part of the Division. Over the next biennium, the Division will be exploring ways to partner with state agencies such as the TWC and employer trade organizations to distribute information about these requirements and to identify more efficient ways to consolidate employer reporting requirements across state agencies. Additionally, the Division will be taking steps to consolidate workers' compensation policy data collection under a single statistical agent, which will enhance the Division's abilities to monitor the completeness of this data and allow the Division to better examine discrepancies in employer identification across state agency databases.

### **Medical Costs Have Stabilized, While Denials of Both Claims and Medical Services Have Increased Over Time**

Since the 76th Legislature passed HB 3697 in 1999 mandating a series of studies comparing the cost, quality and utilization of medical care provided to injured employees in Texas with injured employees in other states and other health care delivery systems, medical costs have been a concern in the Texas workers' compensation system. The results from these and other studies showed that Texas had some of the highest average medical costs per claim and that these costs were primarily driven by the amount of medical care provided to injured employees (also known as the utilization of care).<sup>6</sup> Compared with similarly injured employees in other states,

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<sup>6</sup> 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.

these studies also highlighted that Texas injured employees had poorer return-to-work outcomes and satisfaction with care. Growing concerns from policymakers and system participants about high medical costs and poor outcomes led to the passage of HB 2600 by the 77th Legislature in 2001, which included key components, such as:

- abolishing the former Texas Workers' Compensation Commission's consensus-based treatment guidelines;
- eliminating the spinal surgery second opinion process and requiring preauthorization for spinal surgeries;
- requiring medical necessity and preauthorization disputes to be reviewed by Independent Review Organizations (IROs) (i.e., panels of independent doctors certified by the Department);
- instituting a registration and training requirement for doctors treating injured employees (i.e., the Approved Doctor's List or ADL);
- increasing training and testing 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 employees. The issue of reducing medical costs and improving the quality of medical care provided to injured employees was also a key component driving the passage of a new health care delivery model for workers' compensation in HB 7 – workers' compensation health care networks. The system has just begun to fully realize the effects of some of the various legislative and regulatory reforms enacted by HB 2600. It is still too early to effectively gauge the impact that HB 7 will have on medical costs in the future, especially the implementation of treatment guidelines and certified health care networks.

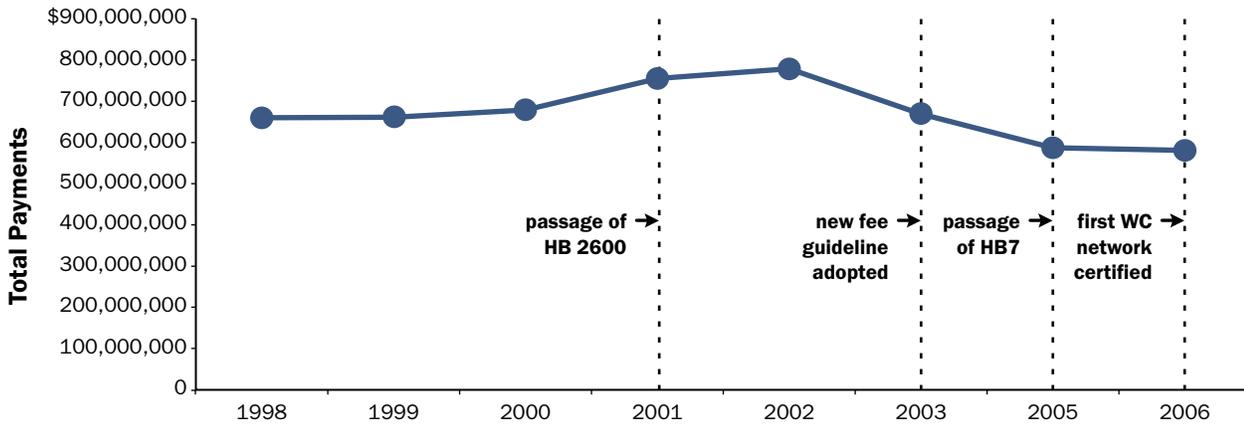
Figures 5 and 6 illustrate the medical cost trends that the system was experiencing prior to and just after the implementation of HB 2600 in 2001. Overall, total medical payments in the system have continued to decline since 2003 due to a variety of factors, including fewer claims being filed, reductions in medical reimbursement amounts, and reductions in the amount of care being rendered for new claims (see Figure 5).<sup>7</sup>

As injury rates continue to decline in Texas, there have been some changes in the types of injuries and the proportion of lost-time claims that receive medical treatment in the workers' compensation system. Looking at Figure 6, it appears that after controlling for differences in injuries and types of claims over time, the average medical cost per claim has begun to stabilize since the passage of HB 2600, compared to the double-digit percentage increases in medical costs that the system was experiencing in the late 1990's.

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<sup>7</sup> On August 1, 2003, the system's first Medicare-based professional service fee guideline took effect. While this fee guideline increased reimbursement for some categories of services, including primary care, reimbursements for specialty surgery services were significantly reduced. On the whole, the reimbursement rates for professional medical services in the Texas workers' compensation system went from approximately 140 percent of Medicare to approximately 125 percent of Medicare.

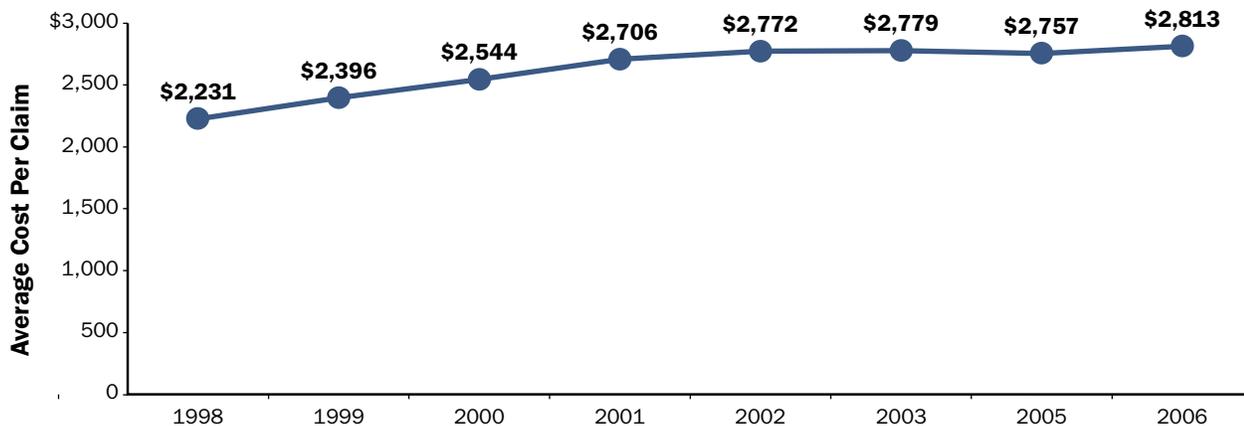
**Figure 5: Total Medical Payments (Professional and Hospital), One-Year Post Injury, Unadjusted, Injury Years 1998-2006**



Note: Injury year 2004 was excluded from this analysis due to missing data.

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2008.

**Figure 6: Average Medical Cost Per Claim (Professional and Hospital), One-Year Post Injury, Adjusted, Injury Years 1998-2006**



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

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2008.

One possible explanation for 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 7 and 8). In particular, denials of professional medical services increased significantly after the adoption of a new Medicare-based medical fee guideline in August 2003, which included the adoption, by reference, of the Medicare billing rules and payment policies into the Texas workers' compensation system.<sup>8</sup>

<sup>8</sup> 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.

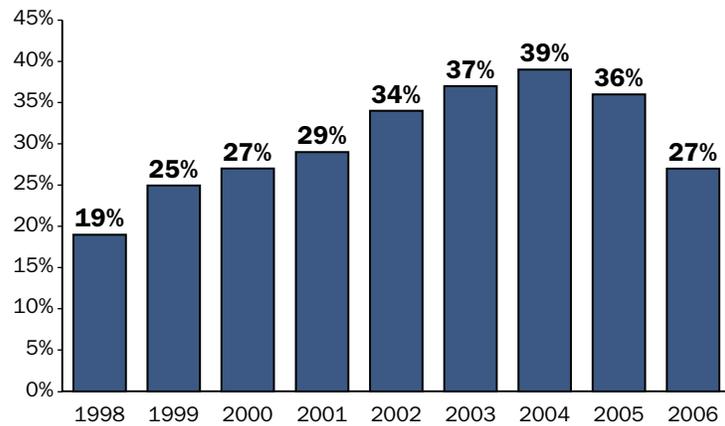
## Pharmacy Costs and Utilization Garner More Focus in the System with the Upcoming Adoption of a Closed Pharmacy Formulary and New Pharmacy Fee Guideline

Balancing concerns about rising pharmacy costs, while ensuring that injured employees have adequate access to the pharmaceutical drugs that are medically necessary continues to be a challenge in the Texas workers' compensation system. In an effort to bring greater certainty in payment for those pharmacies that dispense pharmaceutical drugs to injured employees, as well as to emphasize the use of evidence-based medicine by prescribing doctors, the legislature required the Division, as part of HB 7, to adopt a closed pharmacy formulary and a new pharmacy fee guideline.

The Division is developing a proposed closed pharmacy formulary, which will not only provide guidance in terms of which drugs are medically necessary for certain medical conditions, but also, provide guidance regarding the evidence-based usage of those drugs. Once the formulary has been adopted, the Division plans to propose a new pharmacy fee guideline that will reinforce the usage of those drugs that are part of the Division's closed formulary.

Closed pharmacy formularies (i.e., lists of pharmaceutical drugs that are covered by health plans) are somewhat unique in state workers' compensation programs, although they have been used for years in the Federal Medicaid program. Understanding the types of drugs most frequently prescribed to injured employees as well as the types of injuries that are receiving these prescriptions was an important part of the Division's efforts to develop a pharmacy formulary that would best meet the needs of the injured employee population. Additionally, the Division has been examining the use of closed formularies in other state workers' compensation systems and other health care delivery systems to determine if there are "best practices" that can be incorporated into the Division's rulemaking efforts.

**Figure 7: Percentage of Reportable Claims that are Initially Denied/Disputed for the Top 25 Workers' Compensation Insurance Carriers, Injury Years 1998-2006<sup>9</sup>**



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2008.

Note 1: The 2006 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.

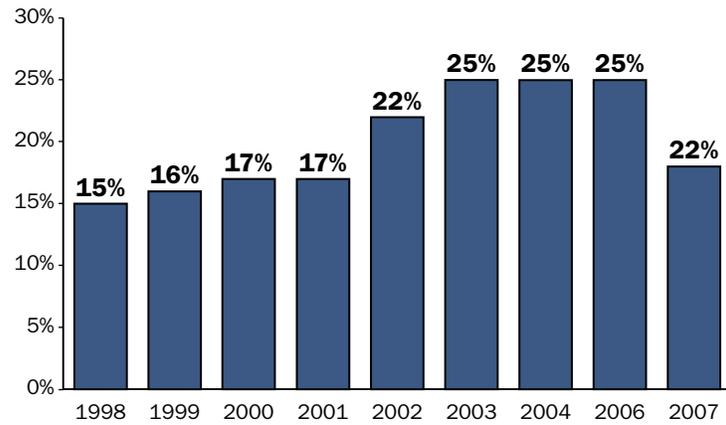
<sup>9</sup> The top 25 insurance carriers represented over 90 percent of the workers' compensation premiums in 2006 and accounted for 60-70 percent of the total amount of medical payments made during 1998-2004. For the purpose of this analysis, the same 25 insurance carriers were used in each year to calculate both the claim and medical billing denial rates.

As Table 1 shows, pharmacy payments represented approximately 14 percent of the total medical payments made by insurance carriers during 2006 (the latest data available as of this report).

In terms of the types of claims that receive the most pharmaceutical drugs in the Texas workers' compensation system, employees with older injuries (pre-2000) represent approximately 13 percent of employees receiving drugs, but they constitute a disproportionate percentage of prescriptions (33 percent) and payments (46 percent) in the system (see Table 2).

Given that the vast majority of work-related injuries are strains and sprains (soft tissue injuries); it is not surprising that the types of drugs most frequently prescribed to injured employees are highly concentrated into seven of the eighty-nine major pharmacy classification groups. As Table 3 indicates, seven major pharmacy classification groups represent 79 percent of the prescriptions and 84 percent of the pharmacy payments made in the Texas workers' compensation system in 2006. These seven major pharmacy classification groups will be the focus of the new closed pharmacy formulary rule, which will be proposed some time next year. In addition, this rule proposal will also include an appeal process by which an injured employee can continue to receive drugs that are not part of the Division's closed formulary if these drugs are medically necessary.

**Figure 8: Percentage of Professional Medical Services Denied for the Top 25 Workers' Compensation Insurance Carriers, Service Years 1998-2006**



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2008.

Note 1: Denial rates for 2007 should be interpreted with caution since these numbers are tentative.

Note 2: House Bill (HB) 2600, a workers' compensation reform bill aimed at reducing medical costs, was passed in 2001.

Note 3: In August 2003, the most recent professional medical fee guideline, which incorporated Medicare's payment policies, went into effect.

**Table 1: Distribution of Medical Payments by Type of Medical Care, Service Year 2006**

Medical Type	Service Year 2006	
	Percent of Total Payments	Total Payments
Professional	\$535,603,000	57%
Hospital	\$275,923,000	29%
Pharmacy	\$131,647,000	14%
Dental	\$1,049,000	<1%

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2007.

**Table 2: Distribution of Pharmaceutical Utilization and Payments, by Injury Year, Prescription Year 2006**

Injury Years	Number and (%) of Injured Employees	Number and (%) of Prescriptions	Number and (%) of Drug Days	Total and (%) of Payments
1991 - 2000	21,094 (13%)	545,591 (33%)	12,749,849 (40%)	\$61,061,807 (46%)
2001- 2004	25,666 (15%)	457,480 (28%)	9,770,829 (31%)	\$38,651,958 (29%)
2005	23,766 (14%)	252,673 (15%)	4,288,462 (14%)	\$14,898,811 (11%)
2006	97,699 (58%)	392,822 (24%)	4,759,971 (15%)	\$17,034,883 (13%)
<b>Total</b>	168,225	1,648,566	31,565,111	\$131,647,459

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2007.

Note 1: Percent of Total Payments may not add up to 100 percent because of rounding.

**Table 3: Distribution of Pharmaceutical Prescriptions by Therapeutic Classification Group, Prescription Year 2006**

Therapeutic Classification Group	Number of Prescriptions	Cumulative Percentage of Prescriptions	Total and (%) of Payments	Cumulative Percentage of Payments
Analgesics - Opioids	522,521 (32%)	32%	\$43,046,837 (33%)	33%
Analgesics - Anti-Inflammatories	257,092 (16%)	48%	\$18,637,705 (14%)	47%
Musculoskeletal Therapy	225,173 (14%)	62%	\$17,141,168 (13%)	60%
Antidepressants	99,189 (6%)	68%	\$9,164,644 (7%)	67%
Anticonvulsants	96,298 (5%)	73%	\$14,362,712 (11%)	78%
Hypnotics	64,116 (4%)	77%	\$6,315,282 (5%)	82%
Anti-anxiety Agents	40,668 (2%)	79%	\$2,030,153 (2%)	84%
Other Pharmacy Types	343,509 (21%)	100%	\$20,948,958 (16%)	100%

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2007.

Note: Texas WC prescriptions in 2006 were for 6,001 unique Drug Names from 626 subclasses. The subclasses fall into 89 distinct Therapeutic Classification Groups as defined by the Medi-Span classification system.

## **Return-to-Work Rates Continue to Improve**

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

Previous studies by both the Research and Oversight Council on Workers' Compensation (ROC) and the Workers' Compensation Research Institute (WCRI) indicated that compared to similarly injured employees in other states, Texas injured employees were generally off work for longer periods of time and were more likely to report that their post-injury take-home pay was less than their pre-injury pay.<sup>10</sup> Armed with these study findings, policymakers and system participants have placed considerable attention on improving return-to-work outcomes in recent years.

Several components of HB 7 placed significant focus on the importance of return to work, including a requirement for the Division to adopt return-to-work guidelines;<sup>11</sup> 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); improvements in return-to-work outreach efforts; and the ability for the Division to adopt rules to implement changes in the work-search requirements for injured employees who qualify for Supplemental Income Benefits (SIBs) and disability management rules that include the coordination of treatment plans and return-to-work planning.

Since 2001, there has been a steady increase in the percentage of injured employees receiving Temporary Income Benefits (TIBs) (i.e., injured employees with more than seven days of lost time) who have initially returned to work post-injury. Of those employees injured in 2001 receiving TIBs, 70 percent initially returned to work within six months post-injury, compared to 78 percent of employees injured in 2006 (see Table 4).<sup>12</sup>

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10 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.

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

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.

**Table 4: Percentage of Injured Employees Receiving TIBs Who Have Initially Returned to Work (6 months to 3 years post-injury)**

Injury Year	Within 6 Months Post Injury	Within 1 Year Post Injury	Within 1.5 Years Post Injury	Within 2 Years Post Injury	Within 3 years Post Injury
2001	70%	79%	83%	85%	88%
2002	71%	80%	84%	86%	89%
2003	72%	81%	85%	87%	90%
2004	74%	83%	86%	91%	93%
2005	75%	87%	90%	92%	
2006	78%	88%	90%		

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2008.

Note 1: The study population includes 392,331 employees injured in 2001-2006 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.

While the percentage of injured employees who initially return to work is an important benchmark of system performance, whether these injured employees remain employed once they go back to work is a more accurate measure of the system's ability to promote "successful" return to work. As Table 5 indicates, the percentage of injured employees receiving TIBs who have initially returned to work and remained employed for at least three successive quarters (or nine months) has also improved since 2001. Roughly 72 percent of employees injured in 2006 who initially returned to work within the first six months of their injuries remained employed for three consecutive quarters, compared to only 61 percent of employees injured in 2001.

**Table 5: Percentage of Injured Employees Receiving TIBs Who Have Initially Returned to Work and Remained Employed for Three Successive Quarters (6 months to 3 years post-injury)**

Injury Year	Within 6 Months Post Injury	Within 1 Year Post Injury	Within 1.5 Years Post Injury	Within 2 Years Post Injury	Within 3 years Post Injury
2001	61%	68%	73%	76%	80%
2002	62%	70%	74%	77%	81%
2003	64%	71%	76%	79%	86%
2004	66%	73%	78%	84%	88%
2005	68%	77%	84%	86%	
2006	72%	77%			

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

Note 1: The study population includes 392,331 employees injured in 2001-2006 who also received Temporary Income Benefits (TIBs).

Note 2: Employees injured in 2007 were excluded from this portion of the analysis due to insufficient data.

Not only have the percentage of injured employees who returned to work and remained employed improved slightly since 2001, but the amount of time the average injured employee who received TIBs is off work after an injury has decreased since 2001 (see Table 6).

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

**Fewer Injured Employees Are Receiving Permanent Partial Disability Benefits**

Along with the trend of lower injury rates and better return-to-work outcomes in Texas, the system has also begun experiencing another important cost trend – fewer injured employees receiving the second and third tier of income benefits payable in Texas – Impairment Income Benefits (IIBs) and Supplemental Income Benefits (SIBs). IIBs and SIBs (also known as Permanent Partial Disability Benefits in other states) are payable to injured employees with permanent impairments directly resulting from their work-related injuries.

IIBs are payable after the first tier of income benefits (Temporary Income Benefits – TIBs – which are payable while the employee is off work) are exhausted. IIBs were designed to compensate employees with serious injuries and are payable regardless of whether the employee has returned to work or not. The amount of time an employee may receive IIBs is directly related to that employee's impairment rating, which measures the percentage of the employee's body that is permanently impaired. Doctors, including the employee's treating doctor, the Division's designated doctor, or the insurance carrier's required medical examiner (RME) may assign employee's impairment rating using the American Medical Association's *Guides to the Evaluation of Permanent Impairment, Fourth Edition*. Each percentage point assigned translates into three weeks of IIBs (ex: a 10 percent impairment rating would result in 30 weeks of IIBs).

**Table 6: Mean and Median Days Off Work for Injured Employees Who Returned to Work At Some Point Post-Injury, Injury Years 2001-2005**

Injury Year	Mean days off work	Median days off work
2001	153	34
2002	145	33
2003	139	31
2004	127	29
2005	124	28

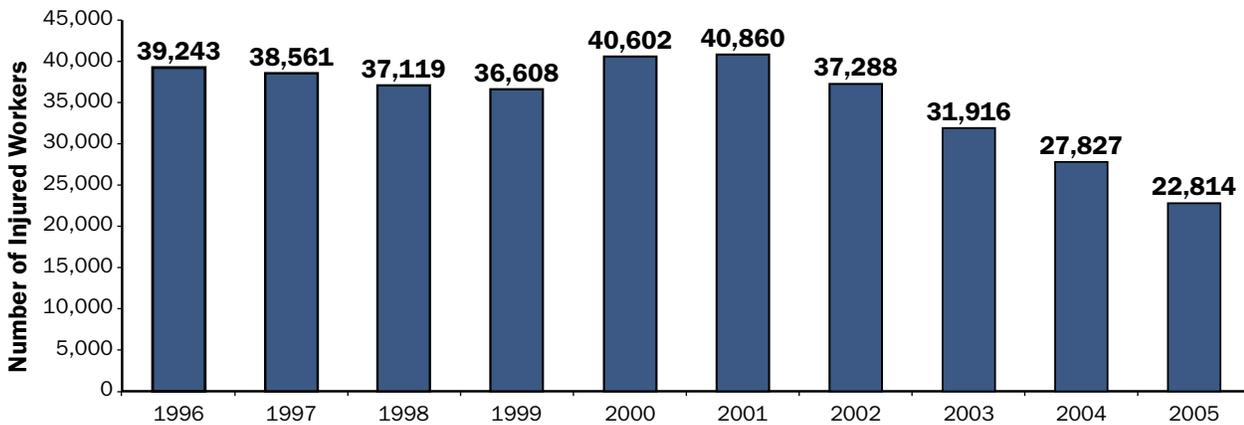
Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2008.

Note 1: "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 2: 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 2007. Injury year 2006 was excluded because of insufficient data.

As Figures 9 and 10 illustrate, fewer injured employees are receiving IIBs and the average duration of these benefits has decreased over time. These decreases resulted primarily from fewer injuries and claims in the Texas workers' compensation system over the same time period. Moreover, improvements in return-to-work rates and legislative changes in 1999<sup>13</sup>, 2001<sup>14</sup> and 2003<sup>15</sup> affecting the way impairment ratings are issued and finalized have also impacted the number of employees receiving these benefits as well as the duration of these benefits.

**Figure 9: Total Number of Injured Employees Who Received IIBs, Injury Years 1996-2005**



Source: Texas Department of Insurance Workers' Compensation Research and Evaluation Group, 2008.

Note 1: Injury year 2005 data should be interpreted with caution since data may not be complete.

Note 2: Claims that did not have a valid claim, benefit and impairment rating record on file with the Division of Workers' Compensation were excluded from this analysis.

Additionally, the number of injured employees who qualify and receive the third tier of income benefits - Supplemental Income Benefits (SIBs) – after their IIBs are exhausted – have also declined (see Figure 11). SIBs are payable to injured employees who have at least a 15 percent impairment rating, have not returned to work or are underemployed, can show that their inability to work is a direct result of their work-related injury, and have made a “good faith effort” to find employment commensurate with their ability to work. SIBs eligibility is determined quarterly (the first quarter is determined by the Division and subsequent quarters are deter-

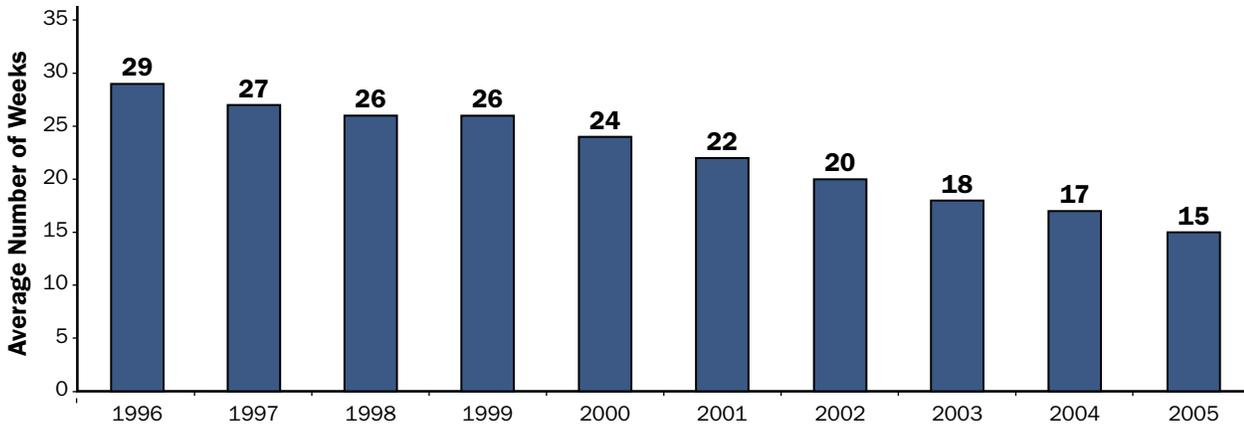
13 The 76th Legislature passed HB 2510 which allowed the Texas Workers' Compensation Commission to adopt the 4th Edition of the *AMA Guides* for the calculation of impairment ratings (effective for exams conducted after 10/15/01). Impairment rating exams conducted prior to 10/15/01 were based on the 3rd Edition, Second Printing of the *AMA Guides*.

14 The 77th Legislature passed HB 2600, which required all doctors who assign impairment ratings to be trained and tested in the use of the *AMA Guides* and required insurance carriers who wanted to dispute an impairment rating or seek an impairment rating to request a rating from a designated doctor (i.e., an independent doctor assigned by the agency). Carriers are allowed to request an exam from their own doctor to rebut the designated doctor's findings; however, by statute, designated doctor exams have presumptive weight in agency dispute proceedings.

15 The 78th Legislature passed HB 2198, HB 3168 and SB 820, which provided a maximum 90 day limit on the time-frame for a party to dispute an injured employee's maximum medical improvement (MMI) or impairment rating. This statutory change resulted from a court decision in March 2002 (*Fulton vs. Associated Indemnity*), in which a previous agency rule specifying a 90-day limit to disputes over the first MMI or impairment rating was struck down due to lack of statutory authority.

mined by the insurance carrier); and as a result, SIBs eligibility disputes are some of the most frequent types of disputes resolved by the Division.<sup>16</sup>

**Figure 10: Average Impairment Income Benefit Duration Per Employee, Injury Years 1996-2005**



Source: Texas Department of Insurance Workers' Compensation Research and Evaluation Group, 2008.

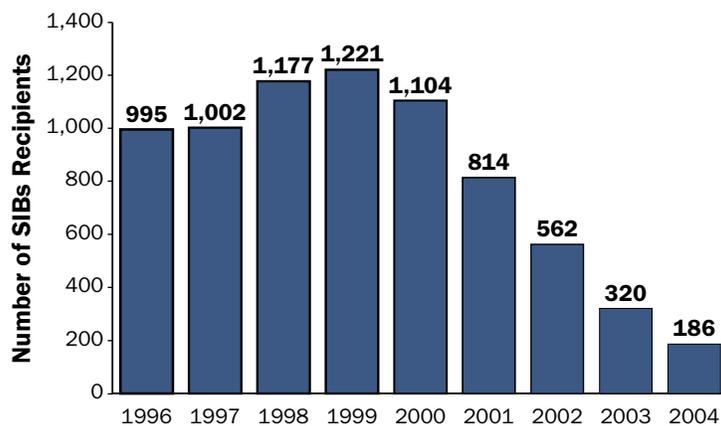
Note 1: Injury year 2005 data should be interpreted with caution since data may not be complete.

Note 2: Claims that did not have a valid claim, benefit and impairment rating record on file with the Division of Workers' Compensation were excluded from this analysis.

**Workers' Compensation Networks Continue to Grow in Texas; However, It is Too Early to Gauge the Impact of These Networks on Costs and Quality of Care**

The Department began accepting applications for the certification of workers' compensation health care networks on January 2, 2006. As of November 1, 2008, the Department has certified 32 networks extending over 234 counties. Of these, 18 networks were actually treating injured employees as of February 1, 2008. The shaded counties shown in Figure 12 are Texas counties included in the service area of at least one certified network as of October 23, 2008.

**Figure 11: Total Number of Injured Employees Who Received SIBs Injury Years 1996-2004**



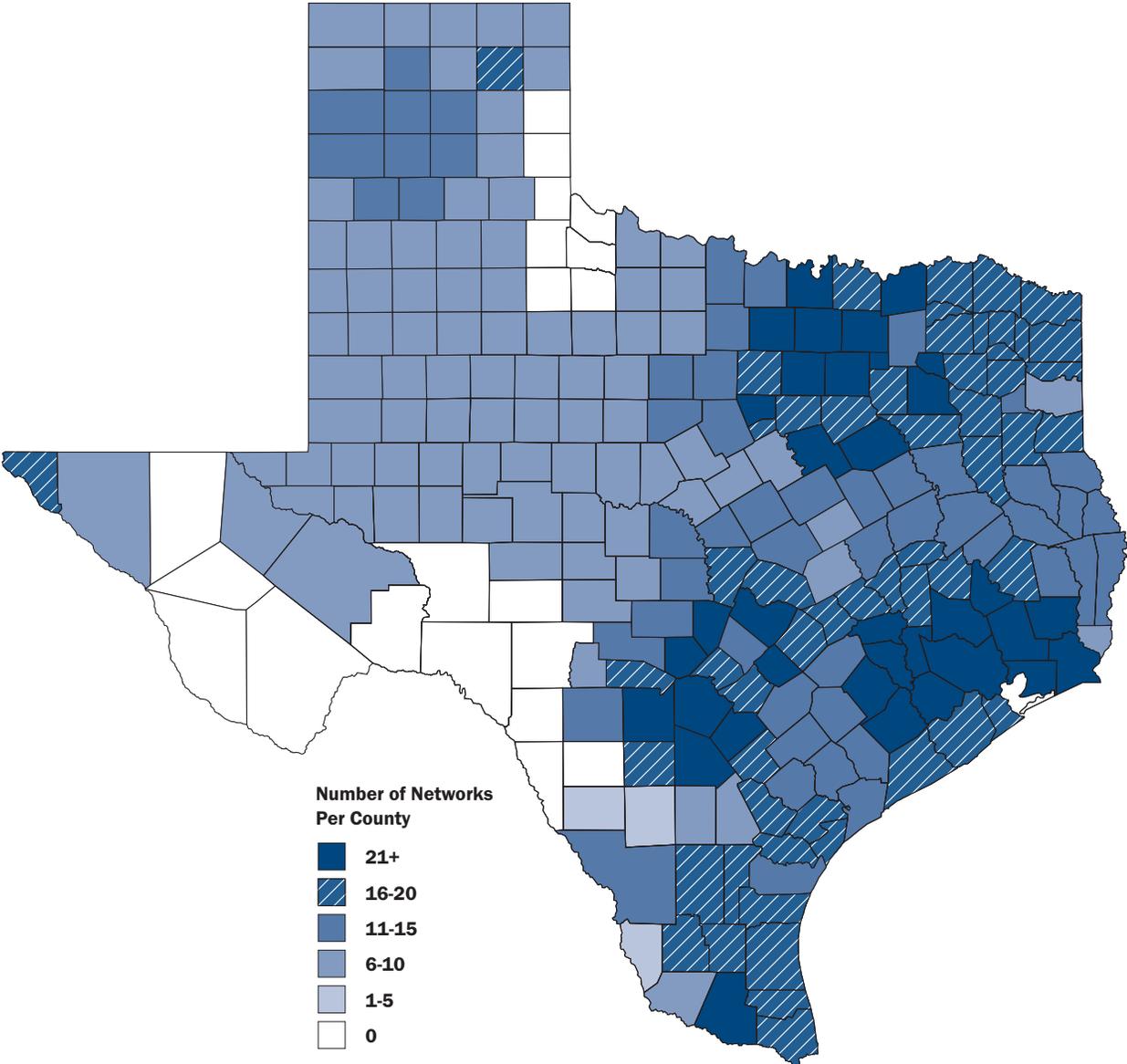
Source: Texas Department of Insurance Workers' Compensation Research and Evaluation Group, 2008.

Note: Injury year 2004 data should be interpreted with caution since data may not be complete. Injury Year 2005 was excluded from this analysis since few employees injured in 2005 have exhausted their IIBs and are eligible to receive SIBs.

<sup>16</sup> The Workers' Compensation Act caps an injured employee's eligibility for income benefits, with the exception of Lifetime Income Benefits, Death Benefits and Burial Benefits at 401 weeks from the employee's date of injury. See Section 408.083, Labor Code.

**Figure 12: Counties with Certified Workers' Compensation Networks**

Total number of covered counties=234



Currently, certified networks cover the vast majority of Texas counties, with the exception of a handful of counties in the Panhandle, the Valley and West Texas. Most Texas counties with network coverage support multiple networks, allowing insurance carriers and their policyholders various options for network coverage, and larger metropolitan areas such as Houston, Dallas-Ft Worth and Austin-San Antonio support more than 21+ networks (see Figure 12).

The Department continues to track the participation of both Texas policyholders (employers) and injured employees in workers' compensation health care networks created by HB 7. According to the results of a July, 2008 data call with thirteen of the largest workers' compensation insurance carrier groups (representing 84 percent of the direct workers' compensation premium written in Texas), approximately 34,040 policyholders, most of whom are small and mid-sized employers, have agreed to participate in workers' compensation networks in exchange for premium credits that range between 5-15 percent.

While twelve of the top thirteen insurance carrier groups have contracted with or established a certified network for their policyholders, usage of networks among insurance carriers varies widely. As of July 2008, only four of the twelve insurance carrier groups offering a network option reported that more than 20 percent of their policyholders have agreed to participate in their workers' compensation network. While network participation among Texas policyholders has grown considerably since 2006 (34,040 policyholders in 2008 compared to 7,500 policyholders in 2006), it remains to be seen how differences in carrier marketing strategies, the concentration of high deductible policies within a carrier's book of business, the level of premium credits offered for network participation, employer requirements to provide employee network notices, and the impact of the economy on carrier profitability and market competition will affect the participation rates for Texas policyholders over the next biennium.

In addition to tracking the participation of Texas policyholders in workers' compensation networks, the Department also tracks the number of injured employees who have been treated by networks through separate data calls with each certified network. As of February 1, 2008, approximately 39,991 injured employees had been treated by a certified network – a roughly five hundred percent increase from a year earlier. While the number of injuries being treated by certified networks continues to grow, the overall percentage of injuries being treated by networks is still relatively low. The Department estimates that roughly 16 percent of all new injuries and nine percent of all new lost-time claims are being treated by certified networks. Additionally, the population of injuries being treated by networks (roughly 70 percent) is highly concentrated in one certified network associated with the largest workers' compensation carrier in Texas.

Given that many certified networks are still in the early stages of implementation, it is still too early to fully evaluate the impact of networks on claims costs and quality of care. However, initial information from the annual workers' compensation network report card produced by the Department in September 2008 provides some insight into the early implementation of networks.<sup>17</sup>

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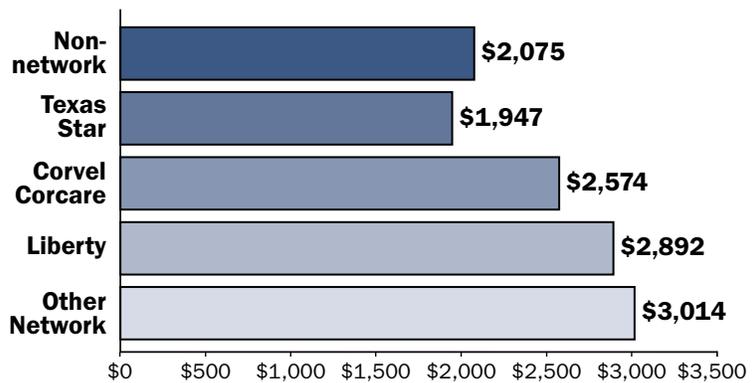
17 For more information about how individual networks compare with each other and with non-network claims on a variety of cost, utilization, access to care, satisfaction with care, return-to-work, and health outcomes measurements, see Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, *2008 Workers' Compensation Network Report Card Results*, 2008 (<http://www.tdi.state.tx.us/reports/report9.html>).

Only three certified networks: Texas Star, Liberty HCN and Corvel CorCare had sufficient claim volume to be compared with each other and with non-network claims. The remaining 15 certified networks that had reported treating injured employees according to the February Department data call were combined into an “other networks” category for comparison purposes.

In general, differences have begun to emerge among individual networks. As Figure 13 shows, at six-months post-injury, Texas Star’s average medical cost per claim was lower than other networks and non-network claims; however, with the exception of Texas Star, the average medical cost per claim for the other certified networks was higher than non-network claims. Medical cost differences between network and non-network claims at this early stage in network implementation appear to be driven primarily by higher hospital fees, higher pharmacy utilization and higher utilization of certain physical medicine services and diagnostic tests than non-network claims with similar types of injuries.

Generally, injured employees who received medical care in certified networks had poorer perceptions regarding access to care and satisfaction with care than non-network employees (see Figure 14). However, it should be noted that the perceptions of employees being treated in certified networks are similar to those employees analyzed by the Department in 2005 (before the implementation of certified net-

**Figure 13: Average Medical Cost Per Claim, Network and Non-Network Claims, 6 Months Post Injury**

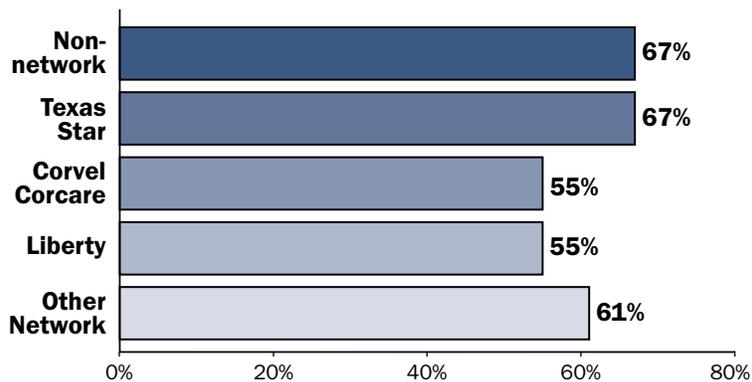


Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2008.

Note: Medical cost differences between non-network and Corvel CorCare, Liberty HCN, and other networks are statistically significant. The figures presented above are adjusted for injury type and type of claim differences that may exist between the groups.

**Figure 14: Getting Needed Care**

Percent of injured workers who reported no problem getting • a personal doctor they like • to see a specialist • necessary tests or treatment • timely approvals for care:



Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2008.

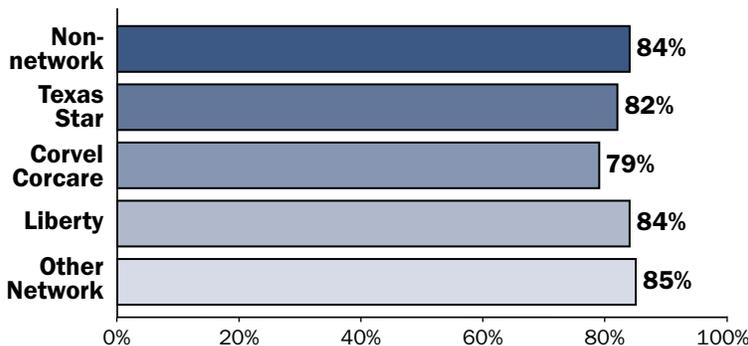
Note: Differences between non-network and Corvel CorCare, Liberty HCN, and other networks are statistically significant. The figures presented above are adjusted for injury type, and type of claim, race/ethnicity, gender, age, education, age of injury at the time of the survey, medical insurance, and self-rated health differences that may exist between the groups.

works) who reported choosing a doctor recommended to them by their employer or insurance carrier.<sup>18</sup>

In addition to medical costs, it is still too early to determine what impact, if any, that certified networks will have on return-to-work outcomes and resulting indemnity costs. As Figure 15 indicates, the 2008 report card shows that there is little difference between network and non-network claims in the percentage of injured employees who reported that they had returned to work at some point after their injury. These differences may become more pronounced over time.

**Figure 15: Return to Work**

Percent of injured employees who indicated that they had returned to work at some point after they were injured



Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2008.

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

### Concluding Remarks

Since the passage of HB 2600 in 2001 and HB 7 in 2005, the workers' compensation system has changed significantly and continues to show signs of progress. Although it is too early to fully evaluate the impact of many of the HB 7 reforms, including health care networks, there are many indications that costs have stabilized and return-to-work rates continue to improve in the system. However, certain trends, including an increasing percentage of employees who aren't covered by workers' compensation remain troubling. Going into the 81st Legislative Session, it is clear that significant changes to the Workers' Compensation Act are not necessary given the upcoming Sunset Review of the Division of Workers' Compensation scheduled for 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. For these reasons, the legislative recommendations presented as part of this biennial report 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.

<sup>18</sup> For a summary of the 2005 injured worker survey findings, see *Biennial Report of the Texas Department of Insurance To the 80th Legislature: Division of Workers' Compensation*, which can be viewed at <http://www.tdi.state.tx.us/reports/report9.html>.

## **Workers' Compensation Legislative Recommendations**

### **Continue the Availability of the Return-to-Work Reimbursement Program and Improve Communication between Insurance Carriers and Employers about Return-to-Work Coordination Services**

**BACKGROUND:** As part of HB 7, the 79th Texas Legislature enacted Texas Labor Code §413.022 which required the Commissioner of Workers' Compensation to establish a return-to-work pilot program designed to assist small employers (i.e., private-sector employers who employ at least two but not more than 50 employees) to make necessary workplace modifications to facilitate an injured employee's return to work after a work-related injury. Employers participating in the pilot program may be reimbursed up to \$2,500 annually for expenses they incurred by making workplace modifications (e.g., purchasing new equipment, furniture or technology) in order to accommodate an injured employee's physical restrictions and return the employee to full or modified duty. In 2007, the 80th Legislature amended §413.022 to allow the employer to submit a proposal that describes the required workplace modifications, and request and receive a guarantee of reimbursement of expenses incurred up to the \$2,500 limit. The pilot program expires September 1, 2009.

Additionally, the 77th Legislature as part of the HB 2600 reforms (2001) enacted Texas Labor Code §413.021 which requires insurance carriers to provide their employers, upon agreement, with return-to-work coordination services (e.g., job analyses to identify physical demands of jobs, assessments of workplace modifications, or vocational and medical case management services). In 2005, HB 7 added new language to §413.021 to require insurance carriers to evaluate injuries that may result in lost time and initiate skilled case management if necessary to improve return-to-work outcomes. While §413.021 does not require employers to participate in return-to-work coordination services or require insurance carriers to provide actual workplace modifications for employers, this section does establish the legislature's expectations that insurance carriers and employers communicate about methods to improve return-to-work outcomes for injured employees.

**PROBLEM:** To date, few employers have submitted applications to seek reimbursements under the small employer return-to-work pilot program (a total of 7 applications have been received as of October 1, 2008) despite the agency's efforts to educate employers about the availability of this program. However, research shows that small employers are less likely to have established return-to-work programs and are less likely to have sufficient resources to make workplace modifications that may be necessary to return an injured employee to productive employment. While insurance carriers are currently required to offer return-to-work coordination services to employers and are encouraged to target these services for employers without return-to-work programs or employers with lost-time claims, it is not clear to what extent these communications between insurance carriers and employers are taking place. Additionally, since these return-to-work coordination services may entail insurance carrier assessments of workplace modifications, there may be opportunities to educate employers about the availability of the small employer return-to-work reimbursement program in "real-time," which may encourage increased participation in this program by Texas employers.

**RECOMMENDATION:**

- Delete §413.022 (g) and rename this section as “Return-to-Work Reimbursement Program for Employers;”
- Amend §413.022 (a) (2) to allow the Commissioner of Workers’ Compensation to define the types of employers who would be eligible to participate in this program. This would provide the Division with the flexibility to open up this reimbursement program to employers who have more than 50 employees or to target these reimbursements for the specific industries that have lower return-to-work rates;
- Increase the current maximum reimbursement amount for workplace modifications from \$2,500 to \$5,000;
- Allow employers to receive a portion of the preauthorized reimbursement in advance;
- Clarify §413.021 to require insurance carriers to offer return-to-work coordination services to employers who have workers’ compensation claims in which the injured employee qualifies for Temporary Income Benefits (TIBs) (i.e., the employee misses more than seven days of work) and require insurance carriers to maintain documentation of their communication with employers about these services. This recommendation does not contemplate that an employer would be required to return the employee to work; rather it will ensure that insurance carriers and employers engage in timely communications about the benefits of return-to-work, and if appropriate, the availability of financial assistance from the State to help make recommended workplace modifications;
- Provide the Commissioner of Workers’ Compensation with the authority to establish documentation requirements and minimum standards for return-to-work coordination services by rule if necessary; and
- Require insurance carriers to provide information to eligible employers about the Division’s employer return-to-work reimbursement program as part of the return-to-work coordination services they provide under §413.021.

**Clarifications**

***The following recommendations to the Texas Labor Code clarify existing statutory requirements.***

**Remove References in the Labor Code to the Expired Approved Doctors’ List (ADL)**

**BACKGROUND:** The 79th Legislature, as part of the HB 7 reforms, amended Texas Labor Code §408.023 to eliminate the requirement that doctors register to participate on the Division’s Approved Doctors’ List (ADL) after September 1, 2007. The ADL is no longer in existence; however, existing references in this and other sections of the Texas Labor Code cause confusion for system participants, especially for those participants trying to understand the current statutory requirements for doctors who provide medical care for work-related injuries.

**RECOMMENDATION:**

- Revise §408.023 to delete subsections (a) through (g) and subsection (i); and
- Delete any other references to the ADL, which expired on September 1, 2007, in other sections of the Texas Labor Code.

## **Correct Statutory Reference for Immunity for Doctors Performing Medical Reviews at the Request of the Division**

**BACKGROUND:** The purpose of Texas Labor Code §413.054 is to provide doctors performing medical reviews at the request of the Division, including designated doctors, independent medical examiners, doctors performing a medical case review, and members of a peer review panel the same immunity from liability as the Commissioner of Workers' Compensation. These reviews may be requested by the Division in an effort to resolve a medical dispute or in a review of an individual health care provider's or insurance carrier's activities on a particular claim. Prior to HB 7, §413.054 referenced the immunity provision for a member of the Texas Workers' Compensation Commission, the Division's predecessor agency, located in §402.010, "Civil Liability of Member." When HB 7 eliminated the Texas Workers' Compensation Commission and created the Division, the statute amended §413.054, changing the immunity reference for doctors performing reviews at the request of the Division from §402.010 to §402.0024, which does not exist in the Texas Labor Code. However, §402.00123, "Civil Liability of Commissioner," rather than §402.0024, is the correct statutory citation for the Commissioner of Workers' Compensation's statutory immunity from liability.

### **RECOMMENDATION:**

- Modify §413.054 to reference §402.00123, and delete the reference to §402.0024.