



# ANNUAL REPORT

## JULY 1, 2017

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*Annual Report to the General Assembly of the State of Tennessee on the  
Impact of the 2013 Workers' Compensation Reform Act*

A large background image of a welder in a dark blue protective suit and mask, working in a factory. Bright orange sparks are flying from the welding point. The scene is dimly lit, with the primary light source being the welding process.

[TN.GOV/WORKERSCOMP](http://TN.GOV/WORKERSCOMP)



June 30, 2017  
 Honorable Members of 110th Tennessee General Assembly  
 Legislative Plaza  
 320 6th Avenue North  
 Nashville, TN 37243

On April 29, 2013, Governor Bill Haslam signed the bill known as the Workers' Compensation Reform Act of 2013. One section of the new law (T.C.A. § 50-6-134) directed that the Division (renamed "Bureau" in 2015) of Workers' Compensation review the impact of the Reform Act on the Tennessee workers' compensation system and deliver a report on its findings to each member of the General Assembly on or before July 1, 2015, and annually thereafter.

Throughout the implementation of the Reform Act, the Bureau of Workers' Compensation has been true to the intent of the legislation, which was to strike a balance between interests of employees and employers and make Tennessee's workers' compensation system better for both. The Bureau continues to work closely with the General Assembly and stakeholders to develop and implement programs that will meet our mission to "fulfill the promise of workers' compensation today...and tomorrow" in order to better serve the citizens of Tennessee.

***"Throughout the implementation of the Reform Act, the Bureau of Workers' Compensation has been true to the intent of the legislation to strike a balance between interests of employees and employers and make the workers' compensation system better for both."***

The Workers' Compensation Reform Act of 2013 became effective on July 1, 2014. Since that date, the Bureau has implemented the provisions of the bill, and observed the effect of those provisions. Highlighted in this report are the initiatives the Bureau has undertaken to meet the requirements of the provisions of the Act and the reform legislation that has become law since 2013, as well as the effects of those law changes that can be known at this point.

We appreciate the interest of Governor Haslam and the General Assembly in the workers' compensation system and their support of the reform initiative. We hope you will find this report valuable and look forward to discussing the effect of the Reform Act with you in the coming months.

Sincerely,

Abbie Hudgens, Administrator  
 Bureau of Workers' Compensation

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# Executive Summary

Four years ago, the General Assembly passed the most comprehensive workers' compensation reform since the passage of the original Tennessee workers' compensation law in 1919. Public Chapter 289 went into effect July 1, 2014. What led to such a significant change? The answer is the deeply felt complaints from stakeholders in the years leading up to the legislation.

Complaints included: *A need to increase the inherent fairness and predictability of workers' compensation; the workers' compensation system was too complex and needed to be simplified; too many delays in injured employees obtaining benefits and returning to work; injured workers who did not have legal representation needed more assistance; the need for improved delivery of health care to injured workers; the need for a more effective and efficient workers' compensation system; and the higher cost of workers' compensation in Tennessee compared to surrounding states hurt businesses.* In summary, there was a feeling on all sides that the Grand Bargain had eroded over the years as interests competed for advantage.

The administration listened to these concerns and began a study of the workers' compensation system in 2012. In January 2013, legislation was introduced that reflected the findings of that study and the insights gained from numerous meetings with stakeholders. While balancing competing interests between employees, employers, insurers, physicians, and other interested parties is a difficult task, the changes implemented following the Reform Act's passage in 2013 have put Tennessee on the path to achieve outcomes that are more equitable.

***A fairer, simpler workers' compensation system is of benefit to both employees and employers in Tennessee.***

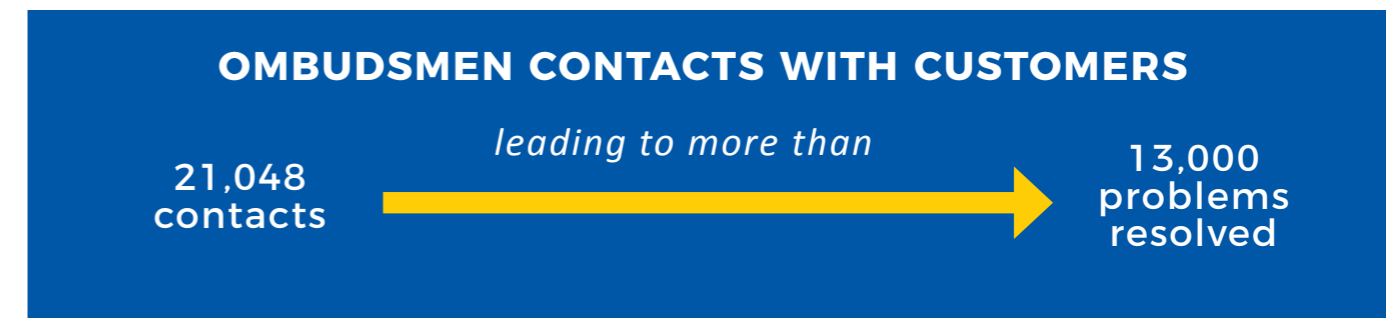
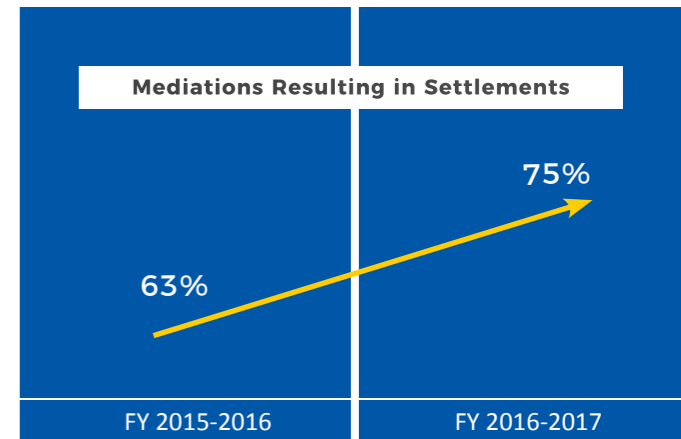
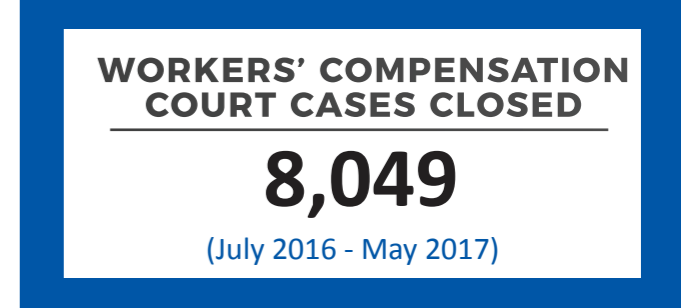
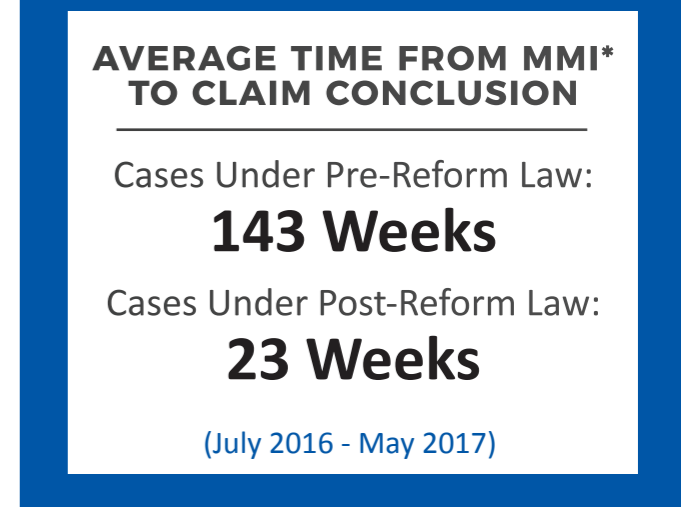
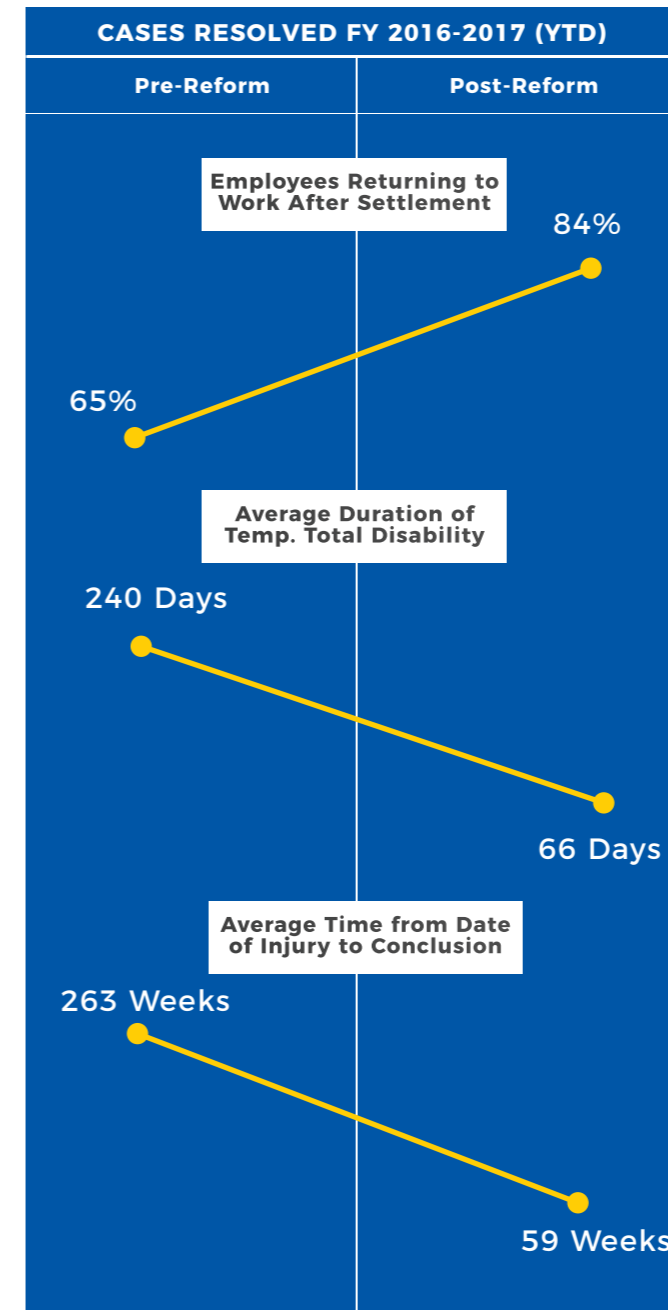
With the reforms implemented in 2014, as well as subsequent passage of laws and rules changes, the Bureau has constantly worked to achieve the best possible outcomes for all parties involved. For employees, this can include an increase in the maximum length of permanent partial disability benefits (from 400 weeks under the old law to 450 weeks under the new system), a shorter period to resolve disputes, and more assistance for self-represented employees. In the event an

employee is injured at work, the ultimate goal is to provide the most effective medical care for that worker and appropriate indemnity benefits in the most efficient way possible. For workers, the challenges of navigating a workers' compensation system can often seem like a daunting task. In order to assist employees, the Bureau has developed a number of resources with which to provide support for an injured worker throughout the process. These resources include the ombudsman program, which provides advice and assistance to self-represented employees, as well as a number of online resources, such as the *Beginner's Guide to Tennessee Workers' Compensation*, the *Guidebook for Employees Without an Attorney*, and a new video explaining the Court of Workers' Compensation Claims, entitled "What to Expect at your Workers' Compensation Hearing."

For employers, savings realized through cost reductions for indemnity cases and greater predictability from clarifying the nature of an on-the-job injury and a special court dedicated to workers' compensation make Tennessee an attractive state in which to do business. For all parties involved, a fairer, simpler, and more predictable adjudication process was envisioned in developing the Court of Workers' Compensation Claims, with those goals becoming realized as each case becomes resolved. Additionally, more streamlined processes achieved through the Bureau's recommended electronic billing rules and treatment guidelines developed in conjunction with the medical community have been designed with the goals of making Tennessee a regional leader in workers' compensation policy. All of these, combined with the Mediation Program and the Workers' Compensation Appeals Board, encompass the Bureau's commitment to ensuring an impartial, objective, and consistent process.

Finally, an important part of the Reform Act of 2013 includes a provision that requires an annual report on the impact of the new law. Each year, the Bureau evaluates the effect that the Reform Act has had in the State of Tennessee and assesses the improvements made since its enactment. This is the third such report, and it has special significance since the General Assembly will consider whether to extend the sunset on the 2013 legislation in the 2018 legislative session. With that in mind, this report will cover the principal provisions of the Act and examine the progress made since the July 1, 2014 implementation date.

# Year Highlights



\*Note: Maximum Medical Improvement

# The 2013 Reform and Dispute Resolution

The first change that comes to mind when the 2013 Reform is discussed is usually the establishment of a Court of Workers' Compensation Claims and a Workers' Compensation Appeals Board. The creation of these two courts moved Tennessee workers' compensation litigation from the state court system to an administrative court that focuses only on workers' compensation. With implementation of this element of the Reform Act, Tennessee moved to the same dispute resolution structure as 48 other states, leaving only Alabama using state courts.

The changes in dispute resolution were more far-reaching than the establishment of the Courts, however. The 2013 Reform brought with it several changes to longstanding principles in Tennessee workers' compensation law.

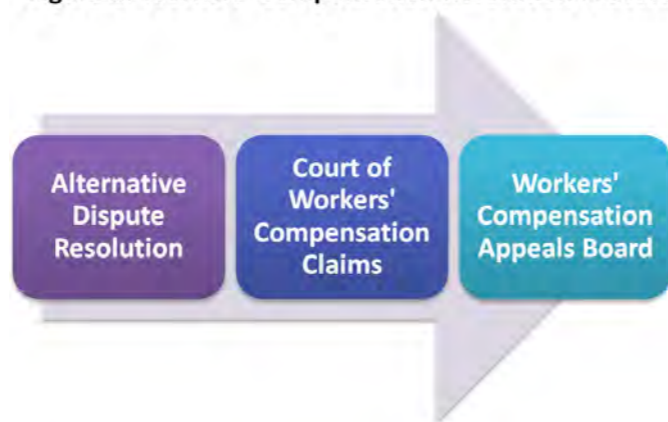
Changes included:

- *The law's interpretation from liberally/remedially favoring the employee to simple language favoring neither the employee nor the employer*
- *A requirement that the cause of injury and/or disease be primarily caused by the worker's employment*
- *Factors in calculating monetary permanent partial disability benefits (PPD)*
- *The assessment of physical impairments to the "body as a whole" as compared to impairments based on individual body parts (fingers, feet, hands, legs, arms, etc).*

Let's take a brief look at each of these revisions. The use of simple language for interpreting the statute impartially leveled the playing field, so to speak. The standard of proof became a "preponderance of the evidence," pure and simple, without a tendency to interpret it in favor of one side over the other. This approach is what it has been in every other area of civil law. Lawyers are accustomed to the standard.

The simplification of the calculation of monetary partial disability benefits resulted, as anticipated, in more predictable results, increased the likelihood of settlements, and produced less litigation. Expressing impairment ratings to the body as a whole, rather than individual body parts, made it easier to arrive at a resolution of benefits than before the Reform.

**Figure 1: Workers' Compensation Resolution Process**



## COURT OF WORKERS' COMPENSATION CLAIMS

The Reform also created the Court of Workers' Compensation Claims, a specialty court hearing workers' compensation claims exclusively. This creation eliminated two unseemly products of the prior law related to the courts – the race to the courthouse and the lengthy resolution process. The race to the courthouse involved attorneys sending associates to a local clerk's office with lawsuit in hand awaiting the issuance of the impasse notice from the Bureau so they could file the lawsuit first and "pick" their judge. Now, there is only one place to file litigation, and all cases are assigned based on the region where the employee lives.

On the other end of the spectrum, lengthy resolution of claims is a thing of the past. Resolutions that used to take years now take only months. Channelling all compensation cases through the Court greatly reduces the timeframe to obtain a decision on the compensability of an injury. Just as importantly, a judge who specializes in workers' compensation law now decides every case. This was not the case under pre-reform law, as state court trial judges frequently found themselves burdened with criminal, domestic, and general civil matters, in addition to workers' compensation law.

The Court remains highly regarded by the practicing bar for its work. An annual survey of the Bar gives the Court ratings of above 4.0 on a scale of 1.0 to 5.0 on criteria in-

cluding the judge's patience, preparedness, promptness and impartiality.

The Court continued to improve upon its high rating from 2016 and was rated higher in 2017 in the categories of decision-writing and impartiality. Also, the Court's orders are periodically reviewed and rated by subject-matter experts

outside of the Bureau for writing style and quality. These experts rate the quality of the Court's orders "above average" or "exceptional" 91% of the time.

91%

of the Court's orders were rated by experts as "above average" or "exceptional."

## THE APPEALS BOARD

The efforts to improve the efficiency and timeliness of Tennessee's workers' compensation system also are reflected in the work of the Workers' Compensation Appeals Board. While the Appeals Board's primary focus continues to be fair, accurate, and meaningful reviews of trial court decisions, it also strives to ensure timely resolution of appeals in every case. The Appeals Board has issued opinions within the statutory deadlines in every appeal it has received to date. Prior to the Reform Act, appeals could take a year or more to run their course. Not anymore. Appeals are now resolved in less than a month.

Timeliness is not the only outcome of the Reform Act. There has been a marked reduction of workers' compensation cases that have been appealed to the Tennessee Supreme Court. In the three years prior to the implementation date of the reform, there were 214 appeals of workers' compensation cases. In the three years after that date, there have been 18 appeals to the Supreme Court. Of these cases, nine went through the Appeals Board. Also, of the 18 cases, five were dismissed by the Supreme Court, one was affirmed, and 11 are still pending. One case that was not appealed to the Appeals Board and went straight to the Supreme Court resulted in the trial court's decision being reversed.

A change affecting the Appeals Board since the reform is the expanded opportunity for parties to participate in oral arguments. Giving parties the opportunity to present oral argument in appropriate cases is particularly important, as it allows an exchange of ideas regarding the facts and the law between the parties and the judges like noth-

ing else does, aiding the Appeals Board significantly in the decision-making process. It also fosters transparency and a sense that the parties had a chance to be heard, regardless of the outcome.

A recent statutory amendment clarifies the standard of review on appeal. The factual findings of a workers' compensation judge are presumed correct, unless the preponderance of the evidence is otherwise. This standard of review is consistent with the standard applied by the Tennessee Supreme Court and the Special Workers' Compensation Appeals Panel in their review of workers' compensation cases. Thus, this amendment ensures that the same standard of review is applied at all levels of appeal, helping to ensure consistency in outcomes.

**24 DAYS**

is the average amount of time it takes the parties to receive a decision from the Appeals Board for an appeal of a compensation hearing order; this is far less time than appeals under pre-reform law.

## IMPROVING ADJUDICATION THROUGH COMMUNICATION

Both the Court of Workers' Compensation Claims and the Appeals Board are engaged in public communication to improve the quality of the court experience. In 2016, the Court completed a video for self-represented litigants outlining how the system operates and what to expect at a hearing. Additionally, the Court issued a Second Edition of its guidebook for employees who do not have an attorney. The Court also maintains a blog, publishing articles on developments in the law, rule changes, and tips on how to present cases effectively. Finally, by the end of this calendar year, all eight locations of the Court will have dedicated courtrooms, serving as visual reminders of the Court's authority and independence, and underscoring the Reform Act's vitality.

Given that more cases now involve self-represented employees than under pre-reform law, the Appeals Board is working to provide additional resources for these litigants. For example, the Appeals Board is finalizing an instructional video that describes the appeals process, which will be available on the Bureau's website. In addition, litigants will be able to review, download, and/or print a guidebook for self-represented parties called "Presenting Your Appeal to the Tennessee Workers' Compensation Appeals Board." These resources help ensure that all citizens of Tennessee are afforded equal and meaningful access to the appeals process.

Further, the Appeals Board and the Court of Workers' Compensation Claims continue to stress transparency and accessibility through publication of all opinions. The written decisions of both are available at no cost through the University of Tennessee's Research and Creative Exchange program ("TRACE"), and the Appeals Board's opinions are also available for review and downloading on the Bureau's website. These free resources are in addition to other forums, including LexisNexis, Westlaw, and Tennessee Attorneys Memo ("TAM"), which publish or summarize all opinions issued

## APPEALS BOARD DECISIONS



Decisions are hosted on the Bureau's website, as well as TRACE, LexisNexis, and Westlaw.

by the Court and the Appeals Board. Since July 1, 2014, decisions of the Appeals Board and the Court of Workers' Compensation Claims have been downloaded over 48,000 times by readers throughout the United States and other countries.

Both the Court and the Appeals Board continue to foster positive relationships in the legal community by participating in legal forums, as well as presenting summaries of procedural changes to various groups. In addition, the Appeals Board offers a summer internship program to law school students. This year, the internship program has been expanded to three of Tennessee's law schools and is providing students the opportunity to develop and enhance writing and advocacy skills in a real-world setting. Prior to the Reform Act, no such opportunities existed within the Bureau.

## QUESTION MARKS

During the three years that the Reform Act has been in place, the Bureau has made diligent efforts to educate stakeholders about the new law. Nonetheless, questions remain, particularly among the medical community, regarding the Reform Act's changes to the definitions of "injury" and "causation."

Previously, an injured worker could receive benefits with expert medical testimony that a work accident "could be" the cause of the employee's condition, along with the employee's corroborating lay testimony. The Reform Act altered this, so that:

- An injury must arise "primarily" out of employment.
- An injury must be shown "to a reasonable degree of medical certainty" that the work incident contributed "more than fifty percent" in causing the death, disablement, or need for medical treatment, "considering all causes."
- "Shown to a reasonable degree of medical certainty" means that "in the opinion of the physician," it is more likely than not, considering all causes, as opposed to "speculation or possibility."

The Appeals Board has ruled that this definition means an employee's lay testimony alone, without a corroborating expert medical opinion, is insufficient. Judges cannot "second-guess" a physician's treatment, recommendations, or diagnoses. In some cases—typically those where one or both parties are represented by counsel—the doctor might be asked questions about the work-relatedness of an alleged injury in a letter that quotes the pertinent statutory language, or they might answer questions in a deposition using the exact phrases from the statute. This is certainly helpful for judges in deciding whether the requisite causal link is present, but it does not necessarily mean that physicians must quote the statute verbatim in their treatment notes. The judge simply needs to know if the physician believes a causal link exists between the incident and resulting injury in the physician's own words, including what led the doctor to that conclusion.

The Court of Workers' Compensation Claims and the Appeals Board are rapidly building a battery of case law to assist stakeholders in understanding how new definitions apply in actual cases. While the case law is still developing, not every possible scenario has been addressed thus far. To date, the Supreme Court has not issued a single opinion on the new definition or any other section of the Reform statute. It takes time for case law to evolve, and we remain in the early period of that evolution.

Another area that is still evolving is an understanding of the limits on disability benefits. There were concerns that the more certain method of calculating permanent partial disability indemnity benefits would unfairly reduce benefits. However, section 242 of the Act provided an "escape" clause, allowing for benefits in extraordinary circumstances beyond the enhancement factors where a doctor concludes an employee cannot return to his or her pre-injury job. Although it has taken some time for attorneys to recognize the value of this section, the Court is increasingly seeing this provision used to add to the permanent disability monetary value in qualified cases.

## BENEFITS THAT DIDN'T CHANGE

It is important to note that important provisions for Permanent Total Disability (PTD) benefits have remained unchanged since the 2013 reform, as the law still contains section 50-6-207(4). An employee is determined to be

permanently and totally disabled if the injury (or combination of injuries) totally incapacitates the employee from working at an occupation that brings the employee an income. In cases of permanent total disability, benefits are payable to the employee until they are eligible, by age, for full benefits in the Old Age Insurance Benefit Program under the Social Security Act.



**\$992.20**  
Max Weekly TTD Rate

31 states have a lower temporary total disability maximum rate than Tennessee.

The Reform included a provision to eliminate gaps in benefits for those who were within five years of the previous eligibility age for Social Security benefits.

The benefits for Temporary Total Disability (TTD) benefits did not change with the Reform. They are still based on a maximum of 110% of the average weekly wage. As of July 1, 2017, the maximum TTD weekly benefit will be \$992.20. Thirty-one states have temporary total disability rate maximums that were lower than Tennessee's in 2016.<sup>1</sup> Temporary total benefits are not limited to a certain number of weeks with one exception. In the case of mental injuries with no underlying physical injury, there is a limit of 104 weeks after the date of injury. This valuable benefit for workers often goes unappreciated.

Another benefit that was largely unchanged was the death benefit. The number of weeks on which the benefit was based increased from 400 weeks to 450 weeks. In 2017, the benefit for funeral expenses increased from \$7,500 to \$10,000.

## EFFECT OF THE REFORM IN DISPUTE RESOLUTION ON THE SUBSEQUENT INJURY & VOCATIONAL RECOVERY FUND (THE SUBSEQUENT INJURY FUND)

The Subsequent Injury Fund remains viable with the Reform Act of 2013. While no Subsequent Injury Fund apportionment cases have been decided in the new Workers' Compensation Court, it is anticipated that permanent total disability awards will continue as in pre-reform courts if the employee's injury meets the new definition of injury.

*Experience with Subsequent Injury Fund cases under the reform is expected to be less costly because of the change in the definition of injury requiring the work incident to contribute "more than fifty percent" in causing the death, disablement, or need for medical treatment, "considering all causes."*

With the passage of the new law, all cases filed with the Bureau of Workers' Compensation, including Subsequent Injury Fund cases, are concluded quicker than they were under the pre-reform act. Under the new law, a Petition for Benefit Determination, which is the initiating document, cannot be filed until there is a disputed issue at hand. The Reform Act also contains numerous time limitations and scheduling requirements to ensure that even the complicated Subsequent Injury Fund cases are concluded more expediently.

Section 50-6-238(b), which was the reimbursement section, has been completely removed with the passage of the 2013 Reform Act. Because all awards, whether they are interlocutory or final, are now being made by a workers' compensation judge and not a workers' compensation specialist, the refund provision found in 50-6-238 has been eliminated. Previously, if a workers' compensation specialist had ordered the payment of benefits and a court had subsequently found that the employee was not entitled to the ordered benefits, then the party who paid the benefits would be entitled to a refund from the Subsequent Injury Fund.

<sup>1</sup>Workers Compensation Research Institute and the International Association of Industrial Accident Boards and Commissions. (2016). *Workers Compensation Laws as of January 1, 2016*. (Rep. No. WC-16-43). Cambridge, MA: Workers Compensation Research Institute.

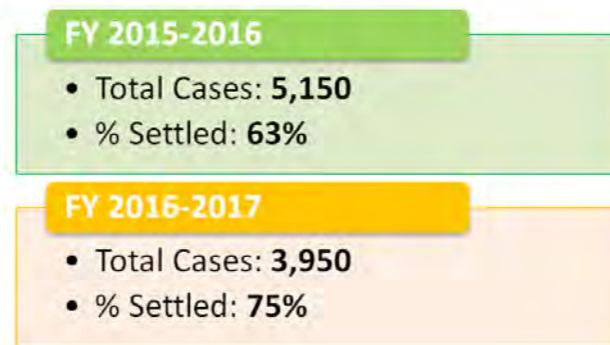
# Alternative Dispute Resolution

The advantages of alternative dispute resolution are many and justify its use. Among them are: the opportunity for parties to understand the position(s) and underlying concerns of the other parties; the opportunity for parties to participate in the resolution of differences rather than turning the decision over to a judge; and the more expeditious resolution of claims than through litigation. The 2013 Reform included a requirement for alternative dispute resolution that improved the probabilities of settlement or a more effective court hearing if there is no settlement.

There are two mechanisms for these improvements in the law. One is the requirement that parties must mediate in good faith (T.C.A. § 50-6-236(c)(1)). If agreement is not possible, parties must agree on the terms of a dispute certification notice (T.C.A. § 50-6-236(d)). This notice must include all issues that could not be resolved. In other words, a party may not attend a mediation and withhold issues in order to bring them up for the first time at a court hearing.

Under the Reform, only those issues addressed in the dispute certification notice can be raised in court. The results of the mediation program have been successful. The settlement rates shown in the figure below illustrate the improvement from the 63% achieved in FY 2015-2016.

Figure 2: Settlement Rates Achieved Through Mediation



Some of the explanations for the improvement are continuing training in mediation principles, peer review, and a growing appreciation of the value of mediation in the workers' compensation community. The following quotes are typical of many received by the Bureau about its mediators.

*"I'm writing you to express my gratitude and appreciation for the job one of your specialists did for a client the other day. Kourtney Jones at the Memphis Department of Labor recently mediated a case for me that I believed was impossible to resolve. The client was amazingly distrustful of everyone and everything. The case was wildly contentious, and there were a lot of hard feelings on both sides, apparently. The case was so unlikely to resolve after several earlier mediations including a private mediation, that I had withdrawn from representation entirely. Then Chancellor Jenkins asked me, through the client, to take one more shot at mediation at the department. I'm glad he did."*

-C. Wesley Fowler, Esq.

*"Martha-Lynn,*

*I just left the court room after settling the case and wanted to thank you so much for making this another successful homerun in favor of the current process for settling work-related injury claims. I really think that you had much to do with that because of your broad scope of knowledge of how it works and explaining it in easy-to-understand terms, and having a wonderful, compassionate personality along with that knowledge just made it that much less stressful for myself. Thank you!"*

-Dean C. Bales

# Assistance for Unrepresented Parties

When there is a dispute about a worker's claim, it can be overwhelming, whether it is the forms that must be completed, going to a mediation, or preparing for a court hearing. It is even more daunting if a worker is self-represented. To address the complaint that there was not enough assistance for self-represented parties, the 2013 Reform created a new program: the ombudsman program (T.C.A. 50-6-216).

This program was designed to provide education and assistance (but not legal advice) to those who are pursuing their claim without the assistance of an attorney. The ombudsman is to act as a neutral party, but provide education concerning the rights and obligations of all parties and service providers; provide effective assistance on the preparation of forms required for contested claims; and

provide information on the process of resolving disputed issues.

There are currently four ombudsmen providing assistance to the public, one of whom speaks Spanish. While they are all located in the Nashville workers' compensation office, they provide help to people across the state. In addition to providing education and help with form preparation, they have been proactive in resolving simple disputes without the need for mediation. All of this is done by providing an excellent customer experience. In the past fiscal year, the program had 21,048 contacts with injured workers, employers, medical providers, and other interested parties. Contacts included calls from customers, emails, "online chat" and calls to injured workers and their employers.

## Most Frequent Reasons For Ombudsman Calls



Person needed basic WC information	10,375
Employer had not reported the claim	805
Carrier denied the claim	608
Temporary disability benefits	619
Employee had not been contacted by the insurance carrier	417
Medical treatment was denied	419
Lifetime medical treatment was denied	196

### FY 2016-2017 CONTACTS

**21,048**

including injured workers, employers, medical providers, and other interested parties.

## Most Frequent Topics of Information Provided to Callers

- Provided basic workers' compensation information
- Provided literature
- Provided or assisted with dispute resolution forms
- Contacted opposing party and resolved the problem
- Connected the claimant with the adjuster

With each call, the ombudsmen work diligently to provide excellent customer service. The program spent 230 more hours on the phone in FY 2016-2017 than in FY 2015-2016. In FY 2015-2016, the average call was five minutes and 18 seconds, while the ombudsmen spent an average of six minutes and 48 seconds per phone call in FY 2016-2017. The increased amount of time with each caller resulted in fewer customers having to call back a second time. On average, the program received 228 fewer calls per month this fiscal year compared to last year. Additionally, ombudsmen have resolved significantly more disputes in FY 2016-2017 (767) than in FY 2015-2016 (420)—an increase of over 82%. The ombudsmen attribute the increase in dispute resolutions to spending more time on each call.

The customers of the ombudsmen program recognized the ombudsmen's hard work. In FY 2015-2016, 92% of 425 survey respondents indicated they had a positive overall experience. In the FY 2016-2017 survey, 96% of 603 survey respondents noted a positive overall experience. The annual satisfaction survey also included questions about the effect of the new service. Of those who received this help, 84% reported the ombudsmen assistance positively impacted their ability to understand the Court of Workers' Compensation Claims.

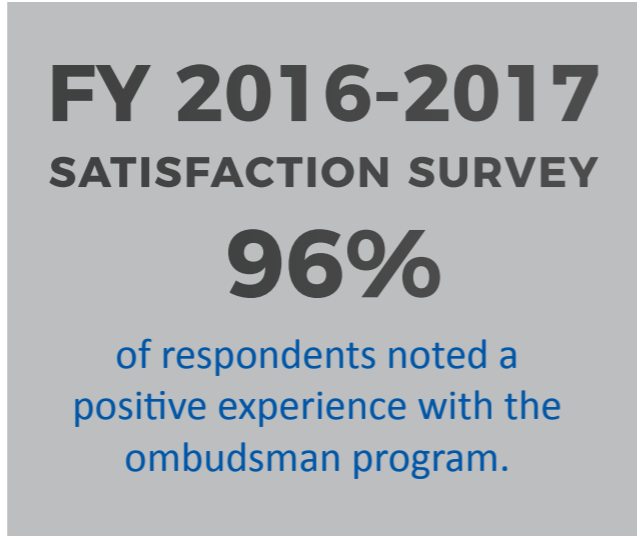
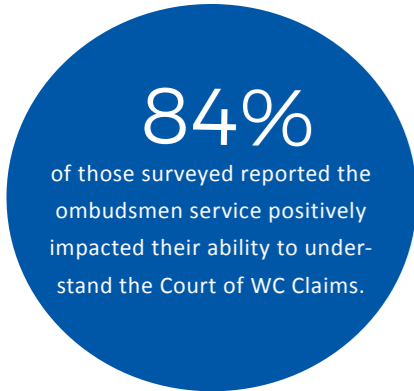
Two enhancements were added this year that make the ombudsmen program more effective. The first is to reach out to each self-represented worker with a disputed claim whose mediation was not successful and whose mediator had issued a dispute certification notice to initiate litigation in the Court of Workers' Compensation Claims.

The ombudsman's role is to explain how to proceed with a workers' compensation claim in the Court of Workers' Compensation Claims and to be available to the self-represented worker when questions about the process inevitably arise. The ombudsmen explain the need to file a Request

for Expedited Hearing or Request for Scheduling Hearing, provide access to the Court's Practices and Procedures Manual, and direct self-represented litigants to the Court's instructional video titled: "What to Expect at your Workers' Compensation Hearing." Since the new service went into effect on January 4, 2017, the ombudsmen have helped 268 self-represented litigants.

The second enhancement came about because of legislation in 2016 that allows an ombudsman who is a licensed attorney to "provide limited legal advice but shall not represent any party as the party's attorney." (T.C.A. § 50-6-216(e)(3)). The Bureau spent many months seeking to determine the ethical parameters that "limited legal advice" imposes. It was assisted in this effort by the Board of Professional Responsibility of the Supreme Court of Tennessee, which issued a formal ethics opinion that delineated the permissible tasks, actions, and areas of advice that will provide genuine assistance to self-represented litigants.

Importantly, the formal ethics opinion draws a line where advice crosses over into impermissible legal representation. Activities such as appearing in court or mediation on the behalf of a party, drafting or filing documents with the Court, or communicating with the opposing party on the behalf of the self-represented litigant, are prohibited. However, ombudsmen attorneys may explain basic principles and procedures to self-represented parties and assist them in understanding the strengths and weaknesses of their cases, as well as provide the information and resources available to them. This clarification with respect to the appropriate scope of ombudsmen attorney's "limited legal advice" ensures that this program provides the best possible information to employees while maintaining the highest ethical standards.



# Medical Components of the 2013 Reform

As important as the adjudication process is to the effectiveness of Tennessee's workers' compensation law, the medical component cannot be underestimated. Access to quality medical care improves the outcomes for injured workers and lowers the ultimate costs of claims. With these goals in mind, the 2013 Reform had several provisions related to medical care.

## NEW COMMITTEES

Prior to the 2013 Reform, there was one advisory committee, the Medical Care and Cost Containment Committee (MCCC), whose role was to approve regulations, hear disputes between payers and providers, and provide advice on medical issues. The 2013 Reform abolished this committee and replaced it with two committees, the Medical Advisory Committee and the Medical Payment Committee.

The change from MCCC to the Medical Payment Committee (T.C.A. § 50-6-125) has worked well. The Medical Payment Committee (MPC) is smaller than the MCCC, which allows for a much smoother and cohesive process for hearing payment disputes and providing input on policy decisions. The MPC has been instrumental in developing changes to the Fee Schedule (particularly inpatient) that reduce administrative costs to hospitals, but are revenue-neutral.

The Medical Advisory Committee (T.C.A. § 50-6-135) has more stakeholders than the MPC. The larger number of members allows decision-makers access to a wide variety of opinions on issues important to the medical component of workers' compensation. This variety of opinions is helpful in finding the right balance between competing interests.

One of the greatest advantages of the Medical Advisory Committee is the forum it provides to discuss medical care in workers' compensation candidly with a view to improving the medical part of workers' compensation. The issue may be complaints about utilization review, adjuster practices, treatment guidelines, or compensation for medical providers. The varied interests on the committee help keep new approaches balanced, which is of great value.

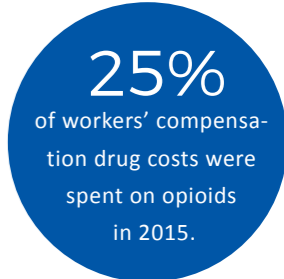
## MEDICAL TREATMENT GUIDELINES

The Reform Act directed the administrator to adopt medical treatment guidelines for the treatment of workers' compensation injuries by 2016. Effective since 2016, the guidelines provide a standard set of advisory statements that make the medical necessity of types of treatment clear and accessible to all parties.

The intent of the guidelines was to provide a standard to determine whether treatment prescribed by the treating physician was medically necessary. Guidelines were expected to reduce treatment that was not medically necessary and to reduce the number of delays caused by unnecessary utilization review. The treatment guidelines have been well accepted by the medical community.

An important part of the treatment guidelines is the adoption of a drug formulary to limit unnecessary or ineffective medication prescriptions in workers' compensation. The implementation of the drug formulary (T.C.A. § 50-6-124) has given the state tools to help the insurers and providers stem the epidemic of opioid abuse. The National Council on Compensation Insurance (NCCI) reported that workers' compensation payers spent \$11.7 million in Tennessee on opioids in 2015, which accounted for approximately one-quarter of the total drug costs for workers' compensation in 2015.<sup>2</sup> The ripple effect of excessive drug use is serious. A Centers for Disease Control (CDC) study in 2017 stated that opioids used for as short a period as 30 days for back, neck, or head pain will result in 40% of those patients still being on those drugs one year later.<sup>3</sup> After a year of excessive drug use, getting a patient off opioids is extremely difficult.

To develop a formulary, the Bureau drew on the experience of other states that had already implemented a formulary, the Medical Advisory Committee, and multiple stakeholders. Another important part of the process was the work of the Department of Health in its efforts to control opioid use and abuse. The Bureau has been cooperating with the Department of Health since its efforts began to reduce the inappropriate usage of opioids. The Department of Health



<sup>2</sup>National Council on Compensation Insurance. (2016a). *Medical Data Report for the State of Tennessee*. Boca Raton, FL: NCCI, Inc.  
<sup>3</sup>Shah A., Hayes C.J., and Martin B.C. (2017). *Characteristics of Initial Prescription Episodes and Likelihood of Long-Term Opioid Use — United States, 2006–2015*. Centers For Disease Control Morbidity and Mortality Weekly Report, 66(10), 265-269.

recently released the second edition of Tennessee Chronic Pain Guidelines. These guidelines are incorporated in the medical treatment guidelines for workers' compensation.

The implementation of the drug formulary has been more difficult than the implementation of the rest of the guidelines. Several factors contributed to the difficulty. One is the apparent lack of understanding of the process of filling a prescription when there is a formulary. The process includes multiple players (physician prescribers, pharmacists, pharmacy benefits managers, claims adjusters, utilization review organizations, insurance companies, and other payers). This complexity makes it difficult for injured workers and sometimes their physicians to understand this new process.

Another roadblock to a smooth implementation has been resistance from patients who have been on opioids for a long time and who have been taking very high dosages of the drugs. They feel they cannot survive without taking the opioids on which they have grown dependent. Physician resistance has also been a problem. Some physicians insist on prescribing high doses in spite of medical evidence of the danger. Compounding the problem is the difficulty in weaning a patient from excessively high doses of opioids. Weaning is difficult, and that difficulty cannot be overstated. The alternative, however, can be life-threatening. One lesson from the opioid problem is that it is critically important to prevent future injured workers from becoming dependent on opioids. It is easier to prevent the problem than to cure it.

Finally, there is the problem of ensuring that a prescription can be approved on an emergency basis. To address this concern, the Bureau implemented an emergency approval process. This is available for situations in which the denial of a medication might cause a medical emergency and the process must be expedited.

To address some of the obstacles to implementation, the Bureau focused on educating all of the players. The Bureau's medical director, Dr. Robert Snyder, spent months before the implementation date going to hospitals across the state, group practices, and to professional groups to explain the formulary and how it would operate. He also worked with the major pharmacy benefit managers operating in Tennessee to smooth out friction points. The medical director continues to work with individuals and groups to increase understanding of the process. The entire formulary is on the Bureau website.

The Medical Advisory Committee has discussed the formulary issues frequently, and there is a subcommittee working on alternative language for some situations. These

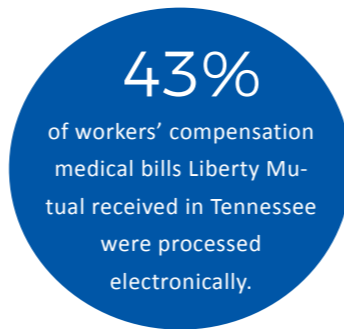
committee meetings are attended by many stakeholders in addition to the committee members, and their opinions are welcome. The Bureau will continue to work toward smoothing friction points.

### E-BILLING

An often-overlooked provision of the 2013 Reform Act is the requirement that on or after July 1, 2014, rules would be adopted regarding the electronic submission and processing of medical bills by health care providers to insurance carriers. Electronic medical billing processes have long been standardized and utilized for health insurance, Medicare, and Medicaid claims, but not for workers' compensation claims. Tennessee will be the tenth state to promulgate rules adopting national standards. Several payers and medical providers in Tennessee are already utilizing e-billing in their business practices. For example, a representative of Liberty Mutual reported that approximately 43% of the one million workers' compensation medical bills it receives annually from Tennessee are processed electronically.

The Bureau is working with the International Association of Industrial Accident Boards and Commissions (IAIABC) to develop the rules for e-billing. The IAIABC was designated by American National Standards Institute's Accredited Standards Committee to be responsible for coordinating and confirming that programs for electronic billing in workers' compensation follow appropriate standards. To assist states, the IAIABC developed the Workers' Compensation Electronic Medical Billing Model Rule and Companion Guide.

The Bureau of Workers' Compensation, in cooperation with the Department of Commerce and Insurance, used the IAIABC Model Rule to draft Tennessee's e-billing rules. During the drafting process, the Bureau collaborated closely with IAIABC and its member states that have already implemented e-billing. Once the rules were drafted, the Bureau hosted an interactive webinar on May 26, 2017. Participants included members of the IAIABC Implementation Committee, the Tennessee Hospital Association, the Tennessee Medical Association, insurance carriers, medical practice system vendors, self-insured employers, claims adjusters, and Bureau officials. The feedback from medical providers and payers following the webinar was very positive. Now the Bureau has begun the official rule-approval process. Rules have been posted, and a public hearing will take place by late summer.



## PENALTIES FOR INAPPROPRIATE PRACTICES

The Reform Act included changes to the penalty provisions of the existing statute. These changes added penalties for those actions that correlated with complaints about the system.

The new penalties provided in T.C.A. § 50-6-118 include, but are not limited to, the following:

- Failure of any party to appear or to mediate in good faith at any alternative dispute resolution proceeding
- Failure of any party to comply, within the designated timeframe, with any Order or judgment issued by a workers' compensation judge
- Failure of any employer to timely provide medical treatment made reasonably necessary by the accident and recommended by the authorized treating physician or operating physician
- Wrongful failure of an employer to pay an employee's claim for temporary total disability payments
- Wrongful failure to satisfy the terms of an approved settlement

The provisions above were the basis for rules passed since the Reform. The rules prohibit the following specific actions, which will potentially subject violators to penalties. These provisions and associated rules will reduce those actions that add friction to the system, causing delays and unfair practices. There are now consequences for inappropriate actions that impede settlement rather than encourage it.

- Denial of or cancelling benefits for a claim of temporary disability or medical benefits without first performing a reasonable investigation of the claim
- Providing a panel of medical providers that a party knew or has good reason to believe will not provide treatment for injured employee
- Failure to provide documents required by the Act or Bureau rules
- Failure to provide a representative at an alternative dispute resolution proceeding who has authority to settle the case

## Helping the Reforms Succeed

The Reform Act of 2013 affected every person and organization connected to workers' compensation in Tennessee. Therefore, it was critically important to communicate the new law effectively. During the first months after the signing of the bill, the administrator and legislative liaison made presentations at forums hosted by the Tennessee Chamber of Commerce across the state, as well as numerous other organizations' programs on the Reform Act. Frequently asked questions and answers were posted on the Bureau's website.

Another method to communicate with people has been the Bureau's annual education conference. These conferences have been an excellent way to reach a large number of employers, attorneys, and service providers at one time, as

well as to provide statutorily-required training for Bureau staff. In June 2013, over 700 attendees came to hear briefings on the 2013 Reform Act. At each of the conferences since 2013, attendance has continued to be high (678 in each of the past two years), which is a larger attendance than any pre-reform education conference. In June 2016, the Bureau expanded its focus to include improving the workers' compensation system, not through laws but through better practices. The 2016 conference's theme was "Roads to Recovery." During the three-day event, attendees heard presentations focused on topics important to them, including pain management, ethics, best practices in claims-handling techniques, and return-to-work success stories. In June 2017, the theme was "Improving Communications: The Key to Improving Outcomes." Topics included



the advocacy-based claim model, why opioids don't work long-term, cultural diversity in claims handling, and improving communications with the injured worker.



In today's world, information cannot be limited to conferences and notices about rule promulgation. The Bureau has developed multiple vehicles for communicating the elements of the 2013 Reform and reforms since the 2013 Reform law. An electronic external newsletter was created to provide updates on the Bureau's activities and

to serve as an introduction to the public. It was sent to over 500 stakeholders in January 2017 and is scheduled for three editions each year. Now, the Bureau has broadened its presence on what was once known as "the information superhighway," but is better described as the new "digital world." The Bureau has its own Facebook, Instagram, and Twitter accounts, as well as a YouTube channel to reach the millennials who have entered the workforce. The Bureau posts information multiple times each week as a means of interacting with an audience that looks to these sources for information.

***The 2013 Reform Act was not the end of reform but the beginning of an ongoing process of improvement.***

An important part of that improvement process is the continued communication with stakeholders. In the fall of 2015 and 2016, the Bureau hosted a forum on the future of workers' compensation. The 2015 forum focused on Tennessee and the effects of the 2013 Reform Act. The

2016 forum was part of a nation-wide Conversation on the Future of Workers' Compensation initiated by the IAIABC to have discussions among subject-matter experts on the future of workers' compensation in the United States. These forums allowed attorneys, employers, carriers, medical providers, and employee representatives to share opinions about a wide variety of issues that are currently being debated across the country. The opinions shared by the 50-plus attendees from 2016 were compiled and provided to the IAIABC for inclusion in its national study.

Communications have also been used to identify areas where an already effective program can improve. In the fall and winter of 2016, the Chief Judge of the Court of Workers' Compensation Claims, Kenneth Switzer, and the Director of the Mediation and Ombudsman Services of Tennessee program, Brian Holmes, went directly to stakeholders in Tennessee and conducted "listening tours" in each of the Bureau's eight offices. They asked participants to share their ideas and comments on how the Court and mediation programs are performing, and identify any obstacles they perceived as obstructing or delaying the resolutions of claim disputes. These programs were in addition to speaking engagements of the leadership team of the Bureau.

Throughout the last year, Bureau leadership has spoken at over 100 events sponsored by groups such as chambers of commerce, bar associations, service organizations, insurance carriers, labor organizations, and human resource associations to educate their members about workers' compensation programs and ways to improve them. More than 2,000 people attended these events.

**2,000+**  
people attended over 100 Bureau events in fiscal year 2016-2017.



# Continuing Reforms

## IMPROVED CASE MANAGEMENT & CLAIMS ADJUSTING PRACTICES

In legislative sessions since 2013, the General Assembly passed additional bills that were intended to continue the improvements. T.C.A. § 50-6-419 required the Bureau of Workers' Compensation to set standards by rule to govern the adjustment and settlement of workers' compensation claims and to assess civil penalties against entities that do not comply with the rules promulgated. The legislative intent of this section of the statute was "to assure that injured employees are treated fairly and to assure that claims are handled in an appropriate and uniform manner." It became effective January 1, 2017. To date, two initiatives emerged as a result of this legislation.

The first initiative was a requirement that medical case managers must become certified to provide case management for workers' compensation claims. To be certified, case managers must meet education requirements and refrain from prohibited practices articulated in the rules. Failure to follow the rules can result in civil penalties. Effective January 2017, these rules improve the professionalism of case managers and clarify the limits on their role. The new rules provide an important safeguard for Tennessee's injured workers.

The second initiative was the voluntary adjuster certification program. Listening to injured workers, employers, adjusters, attorneys, and Bureau staff, it was clear that there was a need for adjuster education on Tennessee laws. Most adjusters handling Tennessee claims also adjust claims for two or more states. This fact lessens the likelihood of providing effective adjusting, since no two states have the same benefit structure, rules, filing requirements or resolution processes.

Other needs that the adjuster certification program will address are the identification of psycho-social roadblocks to recovery and a focus on early intervention in cases where there might be a barrier to the injured employee's return to work.

The adjuster certification program that is being designed will meet these challenges. It is being developed through a collaborative process with industry representatives. The new program is voluntary, but will allow firms that have invested in best practices for claim adjustment to distinguish themselves from their competition in their marketing ef-

orts by referencing their "certification." The Bureau will also maintain a list of all certified entities on its website, adding to their recognition and marketability to provide adjustment services.

## UTILIZATION REVIEW

A feature of workers' compensation medical provisions that led to complaints from physicians, injured workers, and some employers has been the utilization review process. The implementation of treatment guidelines in the 2013 Reform Act was intended to resolve many of the issues that caused complaints. However, complaints continued about the practices of some utilization review providers. In response to these concerns, the legislature passed a bill in 2015 that required utilization review providers to obtain accreditation from either URAC or National Committee for Quality Assurance by July 1, 2016. In the 2017 session, SB 0297 passed, which reduced the procedures subject to utilization review. This law went into effect May 19, 2017.

## BENEFITS FOR INJURED WORKERS OF UNINSURED EMPLOYERS

In 2014, legislation established a program to provide limited benefits for temporary disability and medical benefits to injured workers whose employers did not provide them legally-required workers' compensation coverage. This program was effective on or after July 1, 2015. The funding of this program comes from penalties collected from noncompliant employers. As of the date of this report, five injured workers have received temporary total disability and medical benefits, and one received medical benefits.

While the new benefit is limited to \$20,000 for temporary disability benefits and \$20,000 for medical benefits, it provides a lifeline to injured workers who had compensable workers' compensation claims, but who could not get lawful benefits from their employers. To see the effect of the benefit on one employee, please click on the icon below to watch the video.

**Video: Impact of the Uninsured Employers Fund**



### LEGAL FEES

Another significant change was the passage in 2016 of a statute authorizing a trial court to award reasonable attorney's fees and expenses to an employee under certain circumstances, such as when an employer fails to timely initiate benefits to which the employee is entitled or when an employer wrongfully denies a claim. In the current fiscal year, \$17,248 in legal fees were awarded to attorneys for one case. This was a significantly lower award than the attorneys requested, but the Court found it reasonable under the circumstances. Interestingly, even though the full impact of this new statute remains to be seen, the number of self-represented parties on appeal has decreased by approximately ten percent this year. The importance of legal representation was made clear when the Appeals Board stressed in several cases that, although courts should consider that many self-represented litigants have no legal training and little familiarity with the judicial system, it is equally important to be mindful of the boundary between fairness to a self-represented litigant and unfairness to the self-represented litigant's adversary.

## Effect of Reform

As noted earlier, the Court of Workers' Compensation Claims resolves disputed cases more quickly than courts did pre-reform. More cases are settled through alternative dispute resolution, which is a win-win for the parties. More self-represented workers are getting assistance through the ombudsmen program. Additionally, treatment guidelines have been implemented to improve the quality of care and reduce opioid use.

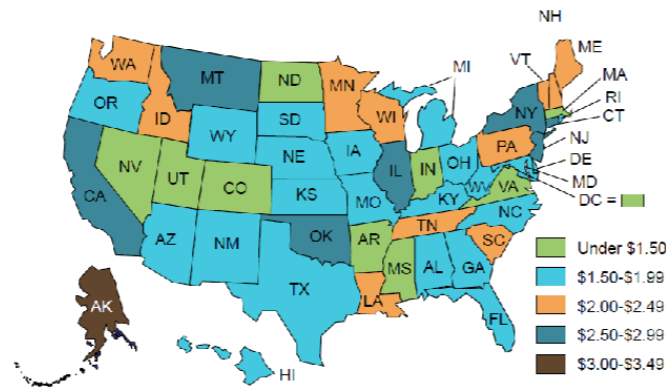
### FINANCIAL

Another area that should be discussed is the financial effect of the Reform Act. The perceived high cost of workers' compensation in Tennessee compared to neighboring states was a major complaint from employers before the Reform Act was passed. Any review of the effect of the Reform Act must include information on whether there has been an impact on costs.

One benchmark for states' workers' compensation insurance rates has been the Oregon Workers' Compensation Premium Rate Ranking Survey, which is conducted every two years. In the year before the reform bill was introduced (2012), Tennessee tied for the 19th most expensive state in the country in regard to workers' compensation insurance rates. While the median index rate was \$1.88 per \$100 of payroll, Tennessee's rate was \$2.02—107% of

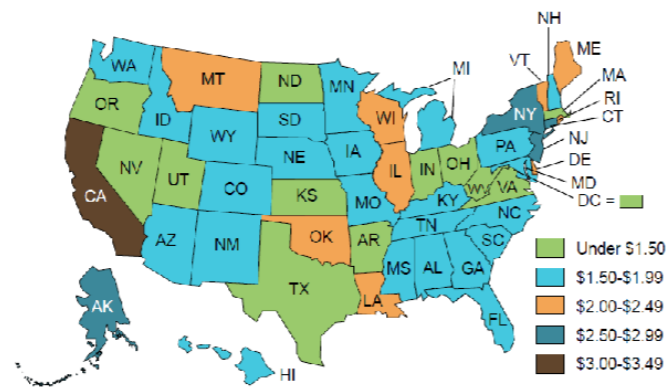
the median.<sup>4</sup> As the figure below shows, Tennessee's rate was higher than its contiguous states.

Figure 3: 2012 Workers' Compensation Premium Index Rates<sup>5</sup>



Oregon conducted its last survey in 2016. Even though that was still early in the implementation of the reform in terms of financial impact, Tennessee's ranking improved. In 2016, the median index rate was \$1.84, per \$100 of payroll, but Tennessee's was \$1.68, 91% of the median.<sup>6</sup> The figure below demonstrates the change of Tennessee ranking relative to its neighboring states.

Figure 4: 2016 Workers' Compensation Premium Index Rates<sup>7</sup>



Another measure of the financial impact of the Reform Act comes from the National Council on Compensation Insurance (NCCI). Each year, NCCI makes recommendations on whether loss costs for insurance coverage in Tennessee should change. Loss costs represent the expected pure cost of workers' compensation claims by employee class code. They do not include costs specific to each insurance company such as salaries or overhead. Since 2013, NCCI has recommended loss costs decreases in Tennessee that total 37.45%. However, not all of these decreases can be attributed to the Reform Act.

One factor affecting the monetary value of disability benefits is the greater number of weeks used in calculations. For injuries that occur after July 1, 2014, permanent partial disability (PPD) benefits are now based on 450 weeks instead of 400 weeks which increases costs. Additionally, the Reform Act eliminated the statutory schedule and reduced the maximum multiplier used to calculate PPD benefits (from 6.0 to 3.05). Taken together, the NCCI estimated in 2016 that these changes will reduce PPD claim costs by 23.7% and reduce the overall workers' compensation system costs by 6.0%.<sup>8</sup> Adjusting for wage inflation and benefit changes not directly impacted by the Reform Act, NCCI estimates the average PPD impairment multiplier for both return to work and non-return to work claims, as well as average indemnity costs, have decreased.<sup>9</sup>

NCCI also released a study to Tennessee in June 2017, which provided a preliminary evaluation of the effects of the Reform Act. The NCCI report made its comparison of pre-and post-reform experience utilizing the following primary sources of data: NCCI Financial Call data, NCCI Workers' Compensation Statistical Plan data, NCCI Detailed Claim data, and data obtained from the Bureau's statistical data form submissions. NCCI pointed out that there were disadvantages associated with each source of data, mainly associated with the time lag between experience and reporting and the ultimate cost of claims. They pointed out that the evaluation is preliminary, since it takes as many as six years for the full cost of claims to be known. However, the study did make the following significant observations:

- The average permanent partial disability (PPD) indemnity cost per case has decreased relative to the average PPD indemnity cost per case prior to the reform.
- It is difficult to relate any changes in the average fatal indemnity cost per case to the reform even though the maximum number of weeks increased from 400 to 450.
- The number of claims concluded through trial or settlement within one year from the date of injury increased post reform, suggesting an acceleration in the claim resolution process<sup>10</sup>.

The report also included information on the average number of weeks awarded in permanent partial indemnity payments. Figure 6 shows that the average number of weeks decreased at the 12-and-24 month maturity points. NCCI also studied frequency of lost time claims. It was expected that the change in the definition of injury would result in a lower frequency of lost time claims.<sup>11</sup> At this time NCCI did not find a discernable decrease in frequency, but it may be too soon for frequency changes to have materialized. Its finding is consistent with the Bureau's estimates from the statistical data reports it receives.

Figure 5: Average Indemnity Cost Per Case<sup>12</sup>

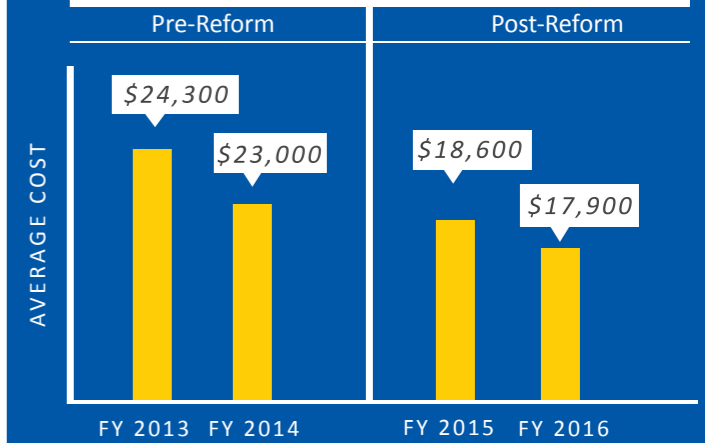


Figure 6: Tennessee Permanent Partial Average Weeks<sup>13</sup>

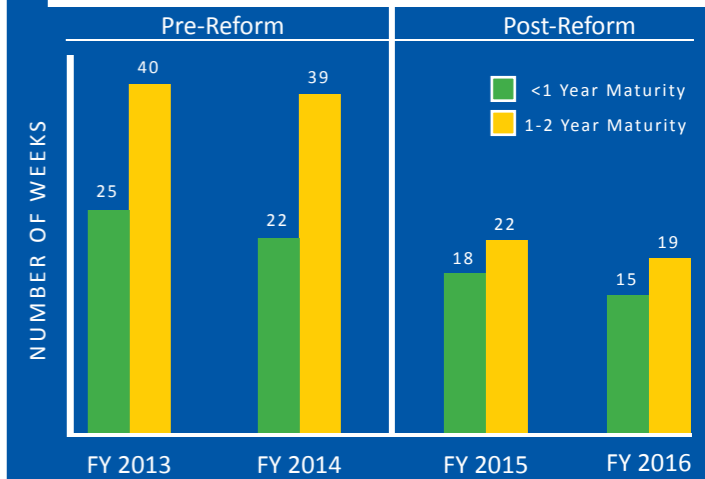
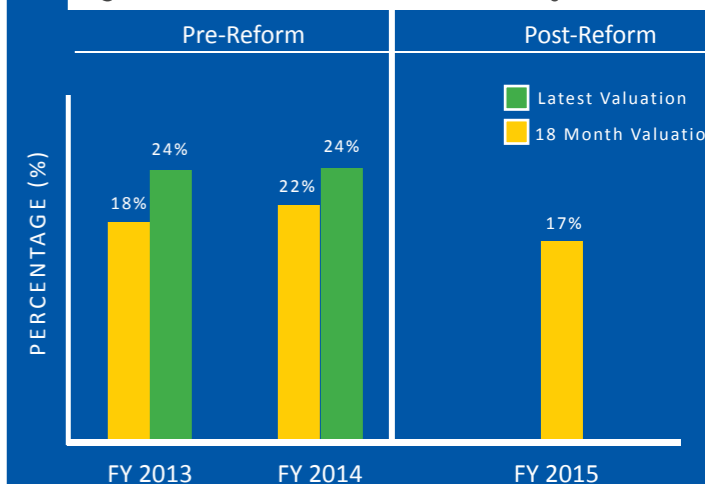


Figure 7: Percent of Cases with Attorney Involvement<sup>14</sup>



<sup>4</sup> Dotter, J. and Manley, M. (2012). 2012 Oregon Workers' Compensation Premium Rate Ranking Summary. Salem, OR: Department of Consumer and Business Services.

<sup>5</sup> Dotter & Manley, 2012. <sup>6</sup> Day, C., Manley, M., and Dotter, J. (2016). 2016 Oregon Workers' Compensation Premium Rate Ranking Summary. Salem, OR: Department of Consumer and Business Services. <sup>7</sup> Day, Manley & Dotter, 2016.

<sup>8</sup> National Council on Compensation Insurance. (2016b). Post-Reform Study of Tennessee Senate Bill 200. Boca Raton, FL: NCCI, Inc. <sup>9</sup>NCCI, 2016b.

<sup>10</sup>National Council on Compensation Insurance. (2017). Post-Reform Study of Tennessee Senate Bill 200 (2017 Update). Boca Raton, FL: NCCI, Inc. <sup>11</sup> NCCI, 2017.

<sup>12</sup> Average indemnity cost per case at 1st report; NCCI, 2017, p. 11.

<sup>13</sup> NCCI, 2017, p. 13.

<sup>14</sup> NCCI, 2017, p. 21.

Another surprising finding is that the percentage of claim denials is not significantly different for these calendar years. Table 1 shows the denial percentage for the five year period between January 1, 2012, and December 31, 2016—two and a half years before and after the Reform Act's implementation. As shown below, the largest percentage of denials occurred before the Reform Act went into effect on July 1, 2014, and has remained steady following a decrease in the immediate months after implementation.

Table 1: Claim Denials (Old Law vs. New Law)

	Cal. Year	1st Rep. of Injury	Denials	% Denied
Old Law Cases	2012	101,319	8,974	8.9%
	2013	96,214	9,043	9.4%
	2014*	55,033	6,703	12.2%
New Law Cases	2014*	44,178	2,922	6.6%
	2015	99,435	8,737	8.8%
	2016	97,795	8,893	9.1%

NCCI's analysis of average medical paid-plus-case severity is that it has increased since 2011 and may be partially due to changes in claim settlement practices as a result of the June 6, 2011 enactment of PC 416, which removed restrictions on the settlement of future medical benefits.<sup>15</sup> Other factors affecting medical costs are large losses and variations in injured worker demographics, among others.

Another issue that is of interest is whether the Reform Act affected the percentage of cases with attorney involvement. NCCI's findings are that at the 18-month valuation, the average percentage of attorney involvement in the post-reform period is comparable to the average percentage attorney involvement in the pre-reform period. This finding runs counter to the anecdotal experience of the Bureau. NCCI stated that "data at 18 months is immature and the percentage attorney involvement may change significantly as the data matures."<sup>16</sup> This finding will continue to be monitored.

## THE EFFECT AS SEEN BY STAKEHOLDERS

The initiative to examine workers' compensation was spurred by more than concern about costs. The concerns of stakeholders around the state on multiple issues were also important factors in initiating a study and developing elements of the reform. When evaluating the effect of the reform, therefore, it is appropriate to ask for comments from some of the stakeholders who have been involved in many of the workers' compensation reforms in the past, not just the 2013 Reform Act.

During the discussions leading up to the Reform Act, two groups were very engaged in reform discussions and providing input from their members: the NFIB and the Tennessee Chamber of Commerce. Both groups replied when asked about their overall impression of the results of the reform. Their quotes follow.

"Tennessee is a blueprint for the right way to reform a workers' comp system that sorely needed an overhaul. Small business is benefitting greatly from the Workers' Comp Reform Act of 2013. Insurance rates for many employers have dropped significantly, sparking job growth, reinvestment and relocations to Tennessee. Injured workers are getting their benefits sooner, which is very important to their well-being, rehabilitation and future productivity. In addition, the Bureau of Workers' Compensation continues to engage stakeholders, which is helping to improve the system further while ensuring the pendulum is fair to employers and employees.

Ten years ago, NFIB members called our offices regularly to report frustration with fraud and abuse, contentious claims that dragged on for years, and soaring rates in several modifications. Today, few independent business owners call about workers' comp issues. Governor Haslam's administration is to be commended for reforming workers' comp the right way, while remaining open-minded to new ideas and feedback to make it even better."

*-Jim Brown, NFIB, Tennessee State Director  
The Tennessee Chamber of Commerce*

"Prior to the 2013 reforms, data frequently noted that Tennessee's workers' compensation system was out of line with other states in a number of areas. Most importantly for employers were the high medical and indemnity cost, frequent dispute and the overall duration of all claims. These problems were hindering Tennessee's ability to recruit both new and maintain existing employers. The 2013 reforms, initiated by Governor Bill Haslam and approved by the 108th Tennessee General Assembly, have made a number of significant changes that have helped to improve Tennessee's overall workers' compensation system. Workers' compensation is constantly evolving, the Tennessee Chamber appreciates the open dialog we maintain with the Tennessee Bureau of workers' compensation to ensure we maintain a functioning system that is consistently and fairly applied with statute established by the Tennessee General Assembly."

*-Bradley Jackson, President/CEO  
Tennessee Chamber of Commerce*

\*Note: Calendar Year 2014 is separated showing cases that occurred before and after the July 1 implementation date.

<sup>15</sup> NCCI, 2017.

<sup>16</sup> NCCI, 2017, p. 21.

Long-time voting members of the Advisory Council on Workers' Compensation, who have been part of discussions on the future of Tennessee's workers' compensation system, were also asked for comments on the effect of the Reform Act. The first response is from a voting employer member of the Advisory Council on Workers' Compensation:

"As an old timer, I have been through five major reforms of Workers' Compensation in Tennessee. It is my opinion that the 2013 reforms could well be the most significant and far reaching changes of all. While there have been numerous changes made to the Workers' Compensation that I believe were for the better of all parties in the 2013 reforms, three stick out as extremely significant. The first was the definition of the injury. Now, only injuries that rise 'primarily' in the course and scope of work is compensable. The new law defines key phrases which were previously undefined. The second was the construction of the statute. New law did away with the state being liberally construed in favor of injured worker and replaced it with requirement that the statute be construed fairly and impartially.

Finally, the basic removal of Tennessee Workers' Compensation from the traditional court system and placing it under largely an administrative system has had a tremendous impact. There is more uniformity in decisions across the state which is beneficial both to the employer and employee. In closing, I believe the positive impact of the 2013 reforms will still be forthcoming for a number of years."

*-Bob Pitts, Voting Member (Employer)  
Advisory Council on Workers' Compensation*

However, the response below is from a voting employee member of the Workers' Council whose view of the Reform Act is in marked contrast to those previously expressed:

"If the goal of the 2013 Reform Act was to increase profits to insurance companies at the sole expense of injured workers, the Act was a resounding success. If, however, success is measured by the fair administration of justice and satisfaction to both employers and employees, this Reform Act continues to be a failure. Under this new law, employers and their insurers regularly deny compensable claims with relative impunity. They're able to do this because the drafters of this legislation achieved their stated goal of limiting litigation by intentionally making it difficult for employees to find legal representation. The vast majority of injured workers are forced to prosecute their cases without legal representation. Meanwhile, employers have legal representation at all phases of litigation.

For those workers that are able to get passed the initial hurdle of establishing compensability, they are surprised to find that benefits have been slashed across the board. Employers and their insurers consistently frustrate or deny medical treatment prescribed by the authorized treating physician through the use of the utilization review process. Temporary and permanent disability benefits were cut by as much as 70%. In short, employees have taken a hit at every level and received nothing in return except frustration and poverty. Meanwhile, the promise of drastically reduced premiums for employers hasn't materialized. The devastating effects visited on Tennesseans through the passage and implementation of the Reform Act cannot be understated."

*-Bruce Fox, Esq., Voting Member (Employee)  
Advisory Council on Workers' Compensation*

The final quote comes from the President of the AFL-CIO:

“The 2013 workers’ compensation reforms and the intention to improve the system for both employers and injured workers has had some positive effects. There are two sections of the law that we feel have tilted the balance more toward the employer and less toward the injured worker. (1) TN 50-6-102 para. 14 (A-E) Places more of a burden on the injured worker[\*] than on the injury’s treatment and his/her well-being. (2) TN 50-6-207 para. 3 (B)[\*] This formula in its current form makes it easier for employers to rid themselves of the burden caused when an employee is injured as opposed to making it a priority to find gainful employment within the company.”

- *Billy Dycus, President  
TN AFL-CIO*

## Conclusion

Three years ago, the Workers’ Compensation Reform Act became effective. What may be the most noteworthy feature of the implementation of the law is that major changes have not only been implemented, but are now the new normal.

Tennessee now has a Court of Workers’ Compensation Claims that is devoted solely to providing consistent decisions in accordance with the law and as quickly as possible. There is now a judicial body, the Workers’ Compensation Appeals Board, that rapidly provides carefully crafted reviews of court decisions on the new law. The effectiveness of the new courts may be demonstrated by the low number of “new law” cases that have been appealed to the Tennessee Supreme Court. Tennessee’s workers’ compensation system now includes an ombudsmen program, including an ombudsman attorney, dedicated to providing support to those who are not represented by legal counsel. Other features of the Reform Act that no longer seem new are Medical Treatment Guidelines and enhanced alternative dispute resolution. These changes have not only been successfully implemented, but also are accomplishing exactly what they were intended to do.

Other changes that did not involve new programs, but had significant effects, were changes in the law that re-balanced interests between employers and employees.

Now the workers’ compensation law is constructed to be neutral, favoring neither the employee nor the employer. Injuries must arise primarily out of a worker’s employment. No longer is a claim compensable if it only “could be” work-related.

The effect of these changes is especially evident in the new adjudication process. The time required for resolving conflicts has changed from years to months, which allows workers to receive medical care and compensation more rapidly, reduces the period of conflict between workers and employers, and lowers costs.

While there are several ways to measure the financial impact of the Reform Act, each reflects a measurable lowering of the indemnity costs of Tennessee’s workers’ compensation system. In evaluating the financial impact, it is important to remind ourselves that claim experience for workers’ compensation cases takes years to mature in cases that involve long-term medical care. The full financial impact of the Reform Act will become clearer with each passing year.

These improvements do not signify that Tennessee’s system no longer needs improvement, but they do reflect the outcomes of the major legislative objectives. There will continue to be legislative changes to improve the system, as there has been in the four years since the passage of the Reform Act. However, Tennessee has a solid, effective system on which to build.

In addition, we must remind ourselves that some improvements cannot be legislated. There will continue to be employers who try to avoid providing legally-required benefits, employees who try to obtain benefits to which they are not entitled medical providers whose treatment is not appropriate, attorneys who do not act in the best interests of their clients, and insurance companies that do not use acceptable claims practices. However, Tennessee has put into law provisions that should serve as deterrents to unfair or ineffective practices.

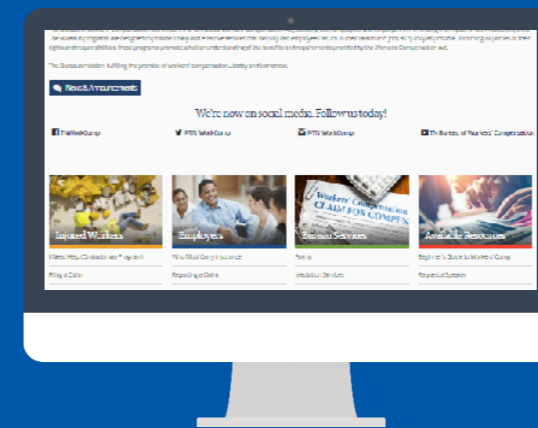
***In summary, the effect of the 2013 Reform Act has been positive. The complaints that led to the legislation have been addressed. The Bureau of Workers’ Compensation remains committed to its mission to “Fulfill the promise of workers’ compensation today...and tomorrow.”***

\*Note: Section 50-6-102 (14) refers to the new definition of “injury,” while section 50-6-207(3)(B) is the amended schedule of compensation for workers suffering permanent partial disability who do not return to work.

## Electronic Resources

Click on the icons below to open the resources.

### BUREAU WEBSITE



### SOCIAL MEDIA ACCOUNTS



The Bureau has a Facebook, Twitter, YouTube, and Instagram account to aid in getting assistance and information to the public.

FB: @TNWorkComp

TW: @TN\_WorkComp

YT: TN Bureau of Workers’ Compensation

IG: @TN\_WorkComp

### COURT OF WORKERS’ COMPENSATION CLAIMS SELF-REPRESENTED LITIGANT GUIDEBOOK



The Guidebook is available in English as well as Spanish.

### APPEALS BOARD DECISIONS



Decisions are hosted on the Bureau’s website, as well as TRACE, LexisNexis, and Westlaw.

### SELF-REPRESENTED LITIGANT VIDEO



The Court of Workers’ Compensation Claims’ self-represented litigant video was developed to assist unrepresented parties in understanding Court rules and what to expect during litigation.

### OMBUDSMAN HOTLINE



615-532-4812

The ombudsmen are available within business hours (8:00a.m. – 4:30p.m.). A Spanish-speaking ombudsman is available.



## BUREAU OF WORKERS' COMPENSATION

✉ Email

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[wc.info@tn.gov](mailto:wc.info@tn.gov)

☎ Phone

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P : + 1 (615) 532 4812  
TF: + 1 (800) 332 2667  
F : + 1 (615) 532 1468

📍 Address

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Bureau of Workers' Compensation  
220 French Landing Drive  
Suite 1-B  
Nashville, Tennessee 37243

