



2018-19 Fiscal Year
Annual Report
on the effects of the 2013 Reform Act

from the **Tennessee Bureau of Workers' Compensation**



Letter from the Administrator



Dear Governor, Senators, and Representatives:

The 2013 Workers' Compensation Reform Act requires the Bureau of Workers' Compensation to provide "each member of the general assembly" on or before July 1, 2015 and annually afterwards a report on the Bureau's findings on the impact of the reform. This is the fifth such report. Thus far the results have been positive and consistent with the legislative intent of being fair to both employees and employers. Highlights of this report include the following:

- The Court of Workers' Compensation Claims receives high marks from attorneys whose cases have been heard by the court and from observers outside the state for its emphasis on continuous improvement in the quality of its opinions and timeliness in issuing opinions.
- The Appeals Board makes a priority of increasing access to people with cases before them by allowing oral arguments in some cases. It also emphasizes quality in opinions which is reflected in the marked decrease in the number of cases that are appealed to the Supreme Court of Tennessee and the adoption of some Appeals Board's orders verbatim by the Supreme Court.
- The alternative dispute resolution program is now mandatory and the percentage of settlements has risen each year. Tennessee's approach to mediation has captured the interest of other states, one of which modeled its revamped mediation process on Tennessee's program.
- The new ombudsman program provides valuable information and assistance to unrepresented parties and has been well received by those it serves. The impact of this program increased with the addition of two ombudsmen attorneys. The ombudsmen's efforts are supported by its own handbook as well as handbooks prepared by the Court of Workers' Compensation Claims and Appeals Board. These handbooks walk an unrepresented party through the required steps in the adjudication system.

This year this report has special significance as it marks an important date. Tennessee's workers' compensation system has been in place for one hundred years since Governor Albert Roberts sign the bill into law April 15, 1919. It will provide a snapshot of what led to the original legislation and the benefits it provided. It will also show just how much the system has or has not changed over a

Letter from the Administrator

century.

Finally, as you read this report, you will see that the 2013 Reform Act lives up to its name. It has indeed reformed Tennessee's workers' compensation system to be more responsive to the needs of stakeholders. The system is now more dedicated to fulfilling the promise of workers' compensation to provide timely and fair adjudication of claims.

We thank you for your interest in workers' compensation and your support to make Tennessee a leader in providing high-quality services to its citizens.

Respectfully,

A handwritten signature in black ink that reads "Abbie Hudgens". The signature is written in a cursive, flowing style.

Abbie Hudgens, Administrator



Overview of the First Hundred Years of Workers' Compensation Law in Tennessee

In 1911, Tennessee did not have a workers' compensation law. In that year, Tennessee Governor Ben Hooper appointed a five-member commission to study possible workers' compensation legislation.¹ The commission discovered that fewer than twenty percent of workers injured on the job received any compensation for their injuries.² Of those who did receive compensation for their injuries, about half of what they received went to attorneys.³

There was wide agreement in Tennessee that something needed to be done for people who suffered work-related injuries. However, the multiple interests involved in the conversations were insistent that any workers' compensation legislation had to be fair to both injured workers and employers. Structuring legislation that satisfied this requirement proved to be difficult and time consuming. It wasn't until the last days of the 1919 legislative session that a workers' compensation bill was passed that embodied what became known as the Grand Compromise. Governor Albert Roberts signed the bill into law on April 15, 1919.



Great Train Wreck of 1918 — Nashville, "Dutchman's Curve Disaster"

¹ A Century of Progress and Perspective: Workers' Compensation in Tennessee 26-28 (Tenn. Bur. of Workers' Comp., 2019)

² Ibid.

³ Ibid. p. 43.

Overview of the First Hundred Years of Workers' Compensation Law in Tennessee

Thus began the history of workers' compensation in Tennessee. A surprising number of provisions in the 1919 law survived for the next one hundred years. For example, agricultural laborers were not covered by the statute in 1919 and are still not covered in 2019. There were, however, many changes to the law through the years, and those changes were rarely made without spirited debate.



Reel Cove Mine, 1952 — Marion County

Some of the most significant changes during the last century concerned the benefits to which injured workers are entitled, as shown in the examples below:

- Initially, medical benefits were capped at \$100 (about \$1,500 today) and were only payable during the 30 days after a worker gave notice of the injury. Today medical benefits are not limited by amount or duration.⁴
- Temporary total disability benefits were limited to \$12 a week (\$177 today). Today the maximum is \$1,021 a week and will increase at the beginning of each fiscal year. (T.C.A. § 50-6-102(16)⁵
- Benefits in 1919 included permanent total disability benefits, but only for certain combinations of scheduled members of the body, and those benefits could not exceed \$5,000 (\$74,000 in today's dollars).⁶ Today, the maximum permanent total disability benefit is the total number of weeks from date of injury to full, old-age retirement at the injured worker's compensation rate.
- A special workers' compensation court system gives quicker resolution to disputes, and its rulings are consistent with the law across all regions of the state.

⁴ Ibid, 43.

⁵ Ibid, 62.

⁶ Act of Apr. 12, 1919, ch. 123, 1919 Tenn. Pub. Acts 369.

Overview of the First Hundred Years of Workers' Compensation Law in Tennessee

- An ombudsman program assists parties who are unrepresented.
- Strict mediation requirements are in place to encourage resolution of disputes without going to court.
- A more conservative formula for permanent partial disability benefits that simplifies calculations by eliminating "scheduled members" and converting all injuries to a percentage of the "body as a whole."
- Permanent partial benefits are based on 450 weeks rather than 400 weeks.
- Medical treatment guidelines were implemented to promote quality medical care, including a drug formulary intended to lower inappropriate drug use.

The changes did not stop in 2013. Additional changes have occurred in every year since the passage of the Reform Act:

- Benefits for funeral expenses increased to \$10,000.
- Two ombudsmen attorneys to provide limited legal advice were added to the ombudsman program.
- Attorney fees and other costs may be paid for services to claimants if an employer in a workers' compensation case wrongfully denies a claim and a workers' compensation judge subsequently finds benefits were owed. This statute may sunset June 2020.
- A new program was created to provide workers' compensation benefits for injured workers when their employer illegally refuses to provide benefits.
- An education benefit was created, granting up to \$5,000 per year for up to four years, to assist with vocational training for those with injuries that occurred on or after July 1, 2018.
- An intensified employer compliance program annually identifies more employers who do not obtain required workers' compensation insurance and compels them to provide workers' compensation coverage to their employees.
- A voluntary adjuster certification program has graduated 206 participants since the first class in FY 17-18 which leads to increased quality of services provided to injured workers in Tennessee.
- Most recently, a grant has been received to develop a computer application to help unrepresented workers complete forms.

The 2013 Workers' Compensation Reform Act

Introduction

Listening to Many Voices

In 2011, roundtable meetings were held around the State to listen to the concerns of businesses. A common complaint was the workers' compensation system. Business leaders viewed the system as too costly and unfair to employers, and they felt that the current system represented a disincentive to new or expanded business. They complained about a court process that took too long to adjudicate claims, judges' opinions that varied too much from one jurisdiction to the other, and that Tennessee was one of only two states that did not have an administrative court with judges who specialized in workers' compensation law.

In 2012, the Haslam administration met multiple times with groups affected by the workers' compensation system, including attorneys for both employers and employees, business groups, physicians, and employees. The Governor asked the administrator of the then-Division of Workers' Compensation to form a working group to study the workers' compensation system and concerns raised by stakeholders, to procure the services of a consultant with expertise in U.S. workers' compensation jurisdictions, and to develop recommendations that would improve the system. The working group included representatives from the Department of Commerce and Insurance, the Governor's Policy Group, the Division of Workers' Compensation, and the Workers' Compensation Administrator. They met numerous times with different stakeholders; employers, plaintiff attorneys, defense attorneys, and unions. They contracted with WorkComp Strategies in March 2012, who delivered a report in August 2012. The working group reviewed the report and made its recommendations for reforms to the Governor in September 2012. The recommendations were approved and became the basis of legislation that was passed by both the Senate and House of Representatives during the 2013 session with an effective date of July 1, 2014. It was signed by the Governor April 29, 2013 (Public Chapter 289).

Implementing the Changes

The legislation has been called the most comprehensive workers' compensation reform in Tennessee's history. Implementing the new law was a daunting task:

- A system to appoint highly-qualified judges had to be developed;
- Judges had to be selected;
- Appellate judges and an administrator for the new system had to be appointed;
- Two new committees (Medical Advisory and Medical Payment Committees) had to be appointed;
- Processes and procedures for the new court and Appeals Board had to be established;
- New procedures for mediation had to be developed, a new ombudsman program had to be created, and ombudsmen had to be hired and trained.

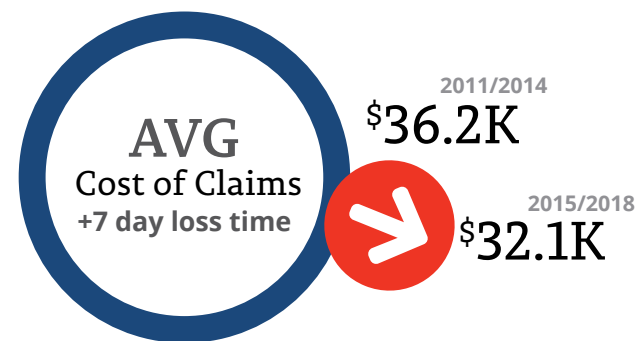
All these changes were successfully implemented on schedule.

Since the implementation of the reform, the cost of Workers' Compensation insurance has decreased. The Oregon Premium Rate Ranking in 2012 (before the Reform Act) reported that Tennessee's workers' compensation insurance rate was \$2.02 per \$100 of payroll, which was 107% of the median (\$1.88) of all states. The 2018 study showed that Tennessee's cost had **dropped** to 89% of the median of all states.

The Workers' Compensation Research Institute 2019 Compscope Benchmarks for Tennessee reported the average cost of claims with more than seven days lost time had dropped from \$36,264 for the period 2011/2014 to \$31,991 for the period 2015/2018.⁷ These decreases were reflected in the loss costs, which have had a cumulative reduction of 48.6% since the Reform Act was implemented.

The Bureau now provides more assistance to workers or employers who don't have legal representation through the ombudsman program. With just four ombudsmen, 16,551 contacts were made in FY 2018-2019 and the ombudsmen received a 94% positive rating in a survey of clients served by the program during the year. These services are in addition to those provided by the two ombudsman attorneys.

The Bureau implemented all these changes with fewer employees and a smaller budget than before the 2013 Reform while still receiving high marks for services to stakeholders.



⁷ *CompScope™ benchmarks for Tennessee, 18th edition*.10 (Cambridge, MA: Workers Compensation Research Institute. 2019).

The Workers' Compensation Reform of 2013:

A New Way to Resolve Claim Disputes

The most significant change in the 2013 reform was the establishment of a trial and appellate court in the executive branch devoted specifically and exclusively to workers' compensation. Before the reform, disputed claims went to state circuit and chancery courts for final adjudication after the parties went through a preliminary administrative process in the Bureau. This system resulted in benefit awards that varied greatly from county to county, making it difficult for both employees and employers to predict outcomes.

The new trial court, called the **Court of Workers' Compensation Claims** (CWCC) has twelve judges who are appointed by the Administrator of the Bureau of Workers' Compensation. To qualify for appointment to this court, a judge must be a Tennessee licensed attorney in good standing with at least five years' experience in workers' compensation and be at least thirty years of age. Terms are limited to six years. A judge may not serve more than three full terms.

Operating separately from the Court of Workers' Compensation Claims is a three-judge appellate court called the **Workers' Compensation Appeals Board** that reviews decisions appealed from the trial court. The three-judge board is appointed by the Governor in consultation with the Speaker of the House of Representatives and the Speaker of the Senate. Terms are limited to six years and a maximum of two terms. Appeals Board judges must be licensed attorneys with at least seven years' experience in workers' compensation and be at least thirty years of age. This new, focused and specialized court process makes decisions faster and more consistently.

A final appeal may be made to the Tennessee Supreme Court under the new system in the same way that was possible before the reform,

The chart below shows the difference between the dispute resolution process before and after the 2013 reform.

A New Way to Resolve Claim Disputes

Injuries **Before**
July 1, 2014

There were no ombudsmen, but there was a toll-free phone line available for employers and employees to obtain information about workers' compensation.

Info & Assistance

The Ombudsman program provides information with four ombudsmen and two ombudsmen attorneys who provide limited legal advice.

Injuries **After**
July 1, 2014

Administrative processes were in place for disputes involving temporary total disability benefits and medical benefits with an administrative review, if requested. A separate county court process handled maximum medical impairment, permanent disability benefits, and future medical benefits.

Court System

All disputes are handled under a single administrative process that includes alternative dispute resolution (mediation), the CWCC, and an Appeals Board for disputes that cannot be resolved through mediation.

Disputes could ultimately be resolved in the county court system after a mediator signed an "impasse report." New issues could be brought to court that were not discussed in mediation. A defendant could recover payments from the Second Injury Fund if the county court ruled that the payments ordered in the administrative process were not required by law.

Disputes

Disputes are now resolved in a new Court of Workers' Compensation Claims after a mediator signs a "dispute certification notice," distributes it to all parties, and provides them the opportunity to amend it.

Appeals went to the Tennessee Supreme Court.

Appeals

Interlocutory appeals may be made to the Workers' Compensation Appeals Board. For final orders, parties may appeal to the Appeals Board or the Tennessee Supreme Court.

Court of Workers' Compensation Claims

If an injured worker and employer cannot agree on whether or how much benefits are owed, the Bureau has two options to help resolve the disputes other than a court hearing. One option is the Ombudsman program for parties that are not represented by legal counsel. Ombudsmen provide information about the dispute resolution process and work to resolve issues where an advocate for the employee can be helpful. If the ombudsman is not able to resolve the issues, cases will be assigned to a trained mediator in the Bureau. If mediation does not result in a settlement, the mediator issues a document that outlines all disputed issues in the case, a Dispute Certification Notice. The claim is then assigned to a Workers' Compensation Judge in the Court of Workers' Compensation Claims.

A New Way to Resolve Claim Disputes

The trial court can order temporary disability or medical benefits be paid. After the injured worker has undergone medical treatment and recovered as much as possible, the judge will schedule the case for a trial if the parties still cannot settle the claim. After considering the evidence presented by the parties at trial, the judge issues a compensation hearing order awarding or denying benefits. Since the 2013 reforms went into effect, the CWCC has heard 878 expedited cases and 159 compensation cases through May 2019.

If the parties agree on the benefits owed, by law the settlement must be approved by a CWCC judge to ensure that the settlement provides substantially the benefits required by law. Since the effective date of the reform, the CWCC has approved 32,944 settlements through May 2019.



Court of Workers' Compensation Claims courtroom in Murfreesboro, TN

Enhancements Since the 2013 Reform

Electronic Court Filing

Last year's most significant development for the CWCC and the Appeals Board was the successful implementation of the court module of TNComp that was introduced in 2018, the electronic platform for filing documents and managing cases. Extensive efforts have been made to educate private-practice attorneys and their staff on TNComp, including written materials, online educational videos, blog posts, and in-person training sessions. These efforts have paid off, as now the majority of TNComp filings are done online instead of manually on paper through the Bureau's court clerks.

Optimizing Court Rules

After conducting several listening sessions in various offices, the CWCC court combined the existing collection of rules into one set. This reduced redundancies and simplified the language. The amended rules for the CWCC will take effect this summer.

Parties Have More Options for Settlement Locations

Two new locations for CWCC settlement approvals were added in Columbia and Morristown, providing greater convenience for parties and counsel in those areas and bringing the number of locations to ten. The Court hopes to identify more locations in the future.

New Security Measures

Mindful of current events, the Bureau took measures to improve security at all locations with special attention to the courtrooms. A guard now attends all contested in-person hearings in Nashville and Jackson where the courts are in state office buildings and other in-person hearings when requested. This is in addition to existing security protocols and the active shooter training that most Bureau employees have received.

Effect of the Court of Workers' Compensation Claims

The CWCC has enjoyed strong approval ratings from lawyers year after year. A recent survey (297 respondents) concluded that attorneys appearing before the Court rated the judges' legal and writing ability at an average of 4.48 on a scale of one to five.



Further, in a white paper written by International Association of Accident Boards and Commissions (IAIABC) that profiled the dispute resolution process of six states (Kansas, Oregon, Pennsylvania, Tennessee, Washington and Wisconsin), the authors remarked on the emphasis in Tennessee on the quality control in the writing of court opinions. "Each judge receives extensive, ongoing training on decision-writing. What may be a **unique feature of the Tennessee system** is the peer review that each draft decision undergoes, both by a fellow judge and the chief judge."⁸

⁸ International Association of Accident Boards and Commissions, Profiles of the Dispute Resolution Process in KX, OR, PA, TN, WA, and WI: 41. 2019.

Workers' Compensation Appeals Board

A party to a case that the CWCC hears may appeal to the Appeals Board. These appeals are initiated by filing a notice to appeal within specific time limits set by statute: seven business days after an expedited hearing and thirty days after a compensation hearing. The Appeals Board may affirm, modify, or reverse and remand a decision of the CWCC. Approximately half of the CWCC decisions are appealed. The white paper written by the IAIABC opined that the relatively high volume of appeals might partly be the result of a waiver of the filing fee for low-income claimants, and the relative ease of appealing to an administrative body as compared to appealing to a judicial court.⁹ In the almost five years of its existence, the Appeals Board has received approximately 400 appeals.

Decrease in Supreme Court Appeals

One goal of the reform was less litigation at all levels, including in the Tennessee Supreme Court and there has been a marked reduction of workers' compensation appeals to the Supreme Court in the past five years. In the five years prior to the reform, 425 workers' compensation cases were appealed to the Tennessee Supreme Court. In the five years since the reform, there have been 39 decisions with dates of injury on or after July 1, 2014 appealed to the Supreme Court.



Supreme Court Adopts Recent Appellate Decisions as Their Own

In three recent decisions, the Tennessee Supreme Court has adopted the decision of the Appeals Board as its own. It is rare for an appellate court to simply adopt the decision of a lower court, and for the Supreme Court to do this on multiple occasions is noteworthy and reflects favorably on the quality of the Appeals Board's work. See *Batey v. Deliver This, Inc.*, 2019 Tenn. LEXIS 18 (Tenn. Jan. 29, 2019) and *House v. Amazon.com, Inc.*, 2019 Tenn. LEXIS 211 (Tenn. Mar. 16, 2019). The Supreme Court adopted another of the Board's decision as its own in 2018, *Thysavathdy v. Bridgestone*, 2018 Tenn. LEXIS 313 (Tenn. Workers' Comp. Panel June 8, 2018).

⁹ Ibid. 39.



Judge Conner (far left) talking to students before an oral argument.

“One of our challenges is to help our students understand what professionalism means...seeing lawyers and judges modeling professional behavior in real life is the best teacher. The [Appeals Board’s] demeanor on the bench and questions [while conducting court at the Nashville School of Law in 2017] reflected just the sort of preparation and courtesy that are essential parts of being a professional.”

William C. Koch, Jr., President and Dean of the Nashville School of Law

Oral Argument

The Appeals Board hears oral argument in cases that raise novel or complex legal issues. Oral argument creates an opportunity for the appeals judges to have a focused discussion with the parties about the crucial aspects of their cases. Oral argument promotes transparency by allowing the parties to feel that their concerns have been heard and addressed, whether they prevail or not. Allowing this type of transparency promotes confidence in the system as a whole and furthers the legitimacy of the new administrative court system.

Accessibility to Court Decisions

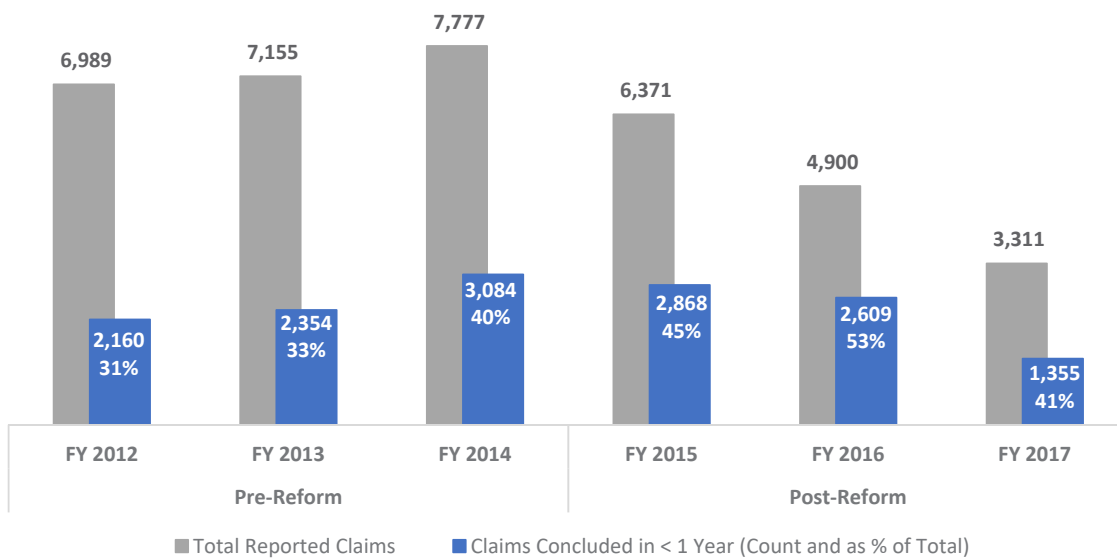
Another way in which the Appeals Board and the CWWC are transparent is to make their decisions readily and easily accessible to anyone who wishes to view them. Their decisions are available on a variety of paid or free forums. Decisions can be accessed from the Bureau’s website, as well as LexisNexis, Westlaw, Tennessee Attorneys Memo, and Tennessee Research and Creative Exchange (“TRACE”). The Appeals Board opinions are also featured in TBAToday.

Speedier Claim Resolution Processes is One Effect of the Reform

The Reform Act contained many time limitations and scheduling requirements to ensure that cases are concluded more rapidly. The chart below shows the percentage of claims that concluded within a year of their date of injury, as well as the total number of reported claims underlying the percentages. In its annual report on the effects of the reform, NCCI found the percentages suggest a “speed-up in the claim resolution processes.”¹⁰

The chart below illustrates the percentage of disputed claims that concluded within a year of their accident date, as well as the total number of reported disputed claims.

Chart 9: Claims Concluded by Trial or Settlement by Fiscal Year



Source: Tennessee SD data

¹⁰ Post-Reform Study of Tennessee Senate Bill 200 (2119 Update 16 (National Council on Compensation Insurance, Inc. June 2019)

Ombudsman Program

What changed in the 2013 law?

Before the Reform Act, specialists answered general questions about workers' compensation benefits via a toll-free phone line. The Reform Act created the Ombudsman program to provide more extensive services to parties (either employees or employers) who are not represented by an attorney. The services focus on education, self-help, and dispute resolution.

An ombudsman is the first stop for unrepresented parties who need answers about their rights and responsibilities as a claimant, the dispute resolution process, and how to complete the necessary forms. Often, however, their problem is as simple as they cannot get in touch with an adjuster, and the ombudsman may be able to make that connection for them. There are four non-attorney ombudsmen who cannot provide legal advice but can answer procedural questions. In the years since the reform, legislation was passed that authorized ombudsman attorneys who may provide limited legal advice.

Impact of the Ombudsman Program

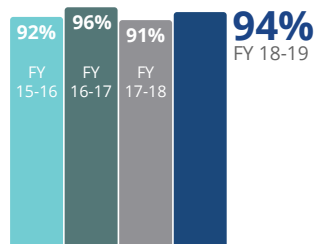
Most people will only be injured at work once in their lifetime and may find the claims process difficult to understand. The ombudsman program is a reliable and accurate source of information for individuals unfamiliar with the claim process. Other than providing basic information, the most common request is to provide assistance with obtaining or completing dispute resolution forms. Those forms are the basis for resolving disputes about a worker's claim for workers' compensation benefits from the employer/insurance company. Other types of assistance are summarized in the chart below.

Top Ombudsman Requests	5,054 Provide basic information
	2,251 Provide or assist with dispute resolution forms
	1,633 Provide literature
	655 Aided injured workers' receipt of benefits
	404 Connect claimant with the adjuster
	381 Carrier denied the claim
	374 Employer has not reported the claim
	180 Medical treatment was denied
167 Lifetime medical treatment was denied	

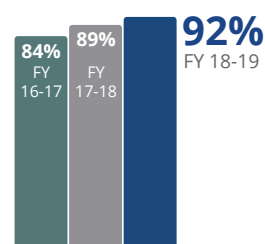
Ombudsman Program

As part of the Bureau's customer focus, it surveys the persons who receive its ombudsman services. As the graph below illustrates, responses have been positive since the surveys began in FY 2015-16.

Overall Satisfaction



Positively impacted ability to understand the Court of Workers' Compensation Claims



One of Many Testimonials about the Impact of Ombudsman Program

Ms. Swafford's workers' comp claim had been one disaster after another. She had been prescribed physical therapy three weeks earlier but had not yet been approved by the insurance carrier. Her adjuster justified the delay by saying he didn't have the medical records. So she had a friend drive her to fill out the paperwork to send the records to the adjuster, but the physical therapy was still not approved. Ms. Swafford also complained that she not been paid any temporary total disability benefits since her injury. She told us that she could not express how horrible this whole process has been, and she felt mentally exhausted and tormented.

Ms. Swafford finally called the ombudsman line after hearing about us. The ombudsman, Susanne, made a few phone calls on Ms. Swafford's behalf, and lo and behold, the next morning Ms. Swafford gets a call from the adjuster. Her physical therapy was approved and scheduled, her back pay was going to be paid before the end of the week, and the adjuster's attitude toward her seems to be completely different. She said that Susanne is "an absolute miracle worker," and she wishes she would have called sooner. She said that she was in awe that with just two or three phone calls, her problems were fixed within 12 hours of her call to the ombudsman line.

Ombudsman Attorneys

In 2017, the legislature added ombudsman attorneys to the ombudsman program. These attorneys may provide limited legal advice only (by statute). The ombudsman attorney allows claimants to receive more in-depth information on basic legal principles and the claims adjudication process before they go to court without an attorney. Without representing the person seeking assistance a party, these licensed attorneys help them prepare documentation and understand the basic court process better.

Ombudsman Program

This service is needed because parties who chose to represent themselves—mostly injured workers—are not well versed in the legal requirements and proper procedures required to present their cases before the Court of Workers' Compensation Claims or the Appeals Board. This lack of knowledge puts unrepresented claimants at a significant disadvantage.

Most frequently, the ombudsman attorneys help litigants understand how to pursue their claim legally. For example, they educate litigants on what is required in the three phases of a trial: the opening arguments, presentation of their evidence, and closing arguments. The second most frequent service they provide is explaining the law and rules so that self-represented litigants better understand legal issues such as the employee's burden of proof that the injury was caused by employment, the requirement to obtain medical care through an authorized treating physician, and benefits that are and are not available under the law.

Newest Innovation

The Ombudsman Attorney program has joined with the Tennessee Alliance for Legal Services and Lincoln Memorial University, Duncan School of Law in a new program that was announced in June 2019. The three groups will work together to develop a self-help computer program like those offered by many tax preparation companies to make it easier for unrepresented workers to complete the necessary paperwork to pursue their claim. The project is funded by a \$100,000 grant from the Tennessee Bar Foundation.

Ombudsman Attorney Outcomes

Outcomes of the attorney ombudsman program for the period July 1, 2018-April 2019 are:

- Assisted 145 injured workers (some received more than one service).
 - ▶ Seventy-seven had their claims denied.
 - ▶ One hundred eight needed basic information on legal principles.
 - ▶ Thirty-five needed information on medical proof.
 - ▶ Seventy-one received information on the law.
 - ▶ Forty-one received guidance on appropriate procedures.
- Twenty-four injured workers settled their claims.
- Twenty-three lost their case but were able to better represent themselves.
- Twelve injured workers received awards for benefits at an expedited or compensation hearing.
- Seven injured workers decided to retain counsel after understanding the legal process.

Alternative Dispute Resolution

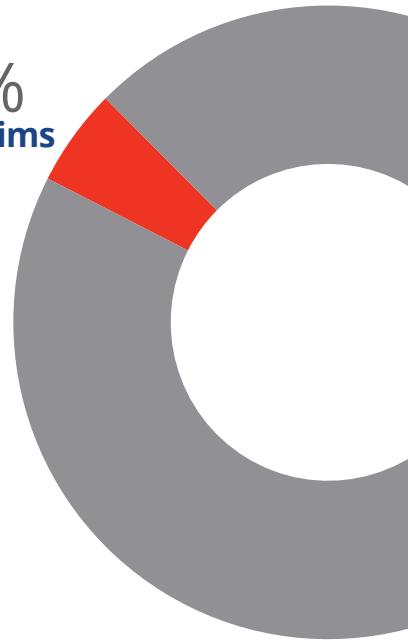
What changed in the 2013 law?

In almost 95% of all workers' compensation claims, the process of obtaining benefits is dispute-free.

A petition for benefit determination is filed in only about 5% of claims. This form is filed to dispute the payment or non-payment of disability or medical benefits. The Bureau's mediation program helps parties resolve their disputes without formal legal proceedings, which shortens the period injured workers are negatively impacted by the dispute. If the mediation is successful, the injured worker receives benefits more quickly. Settlements also help employers. It reduces claim expenses, shortens the period of conflict with their injured workers, and positively impacts employee/employer relations

5%
Disputed Claims

95%
Dispute-Free

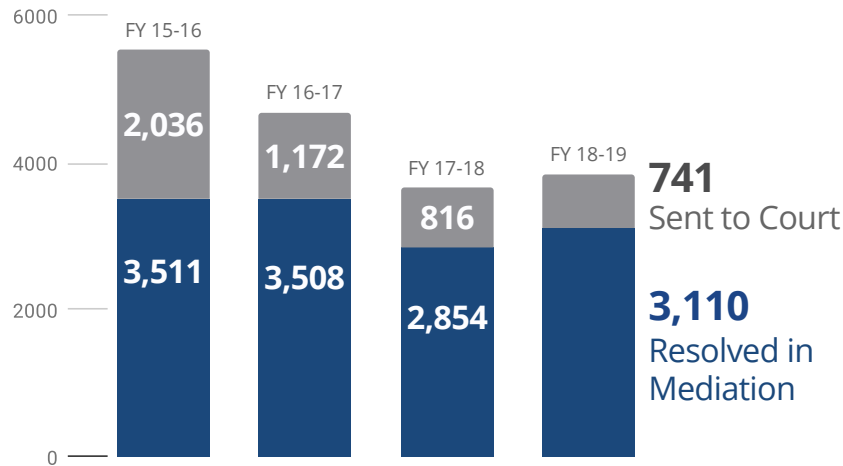


The 2013 Reform Act included provisions that increase the likelihood that mediations will result in settlements.

- When there is a dispute about benefits, the parties must participate in good faith in the Bureau's mediation process before they may file their case with the court.
- There is now a requirement that someone with authority to settle the claim must attend the mediation.
- The mediation gives the mediator authority to require documents relevant to the claim, which will be shared with the parties.
- Failure to attend a mediation may result in a significant penalty.
- If the parties cannot resolve their disputes, they must agree on all the issues that need to be resolved on a form called a Dispute Certification Notice (DCN). A party cannot raise an issue in court that is not included on the DCN. This avoids a party withholding an issue that prevents settlement at the mediation.

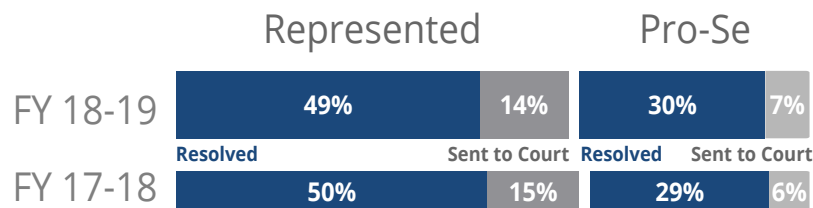
Impact

In FY 2018-2019, the mediation program settled almost eighty percent of cases that required alternative dispute resolution.



In FY 2018-2019, the mediation program settled almost eighty percent of cases that required alternative dispute resolution. Telephonic mediations settled at slightly higher rate (81%) than in-person mediations (76%). Attorneys are less likely to settle the claim at mediation (78%) than unrepresented workers (82%).

Chart: Disputes Resolved in Mediation



Of all mediations during the past year, sixty-four percent had an attorney representing injured workers. Attorneys are more likely to represent injured workers for permanent disability benefits (83%) than they are for temporary disability or medical benefits (53%). Attorneys also average two more days to resolve the dispute than those without representation.

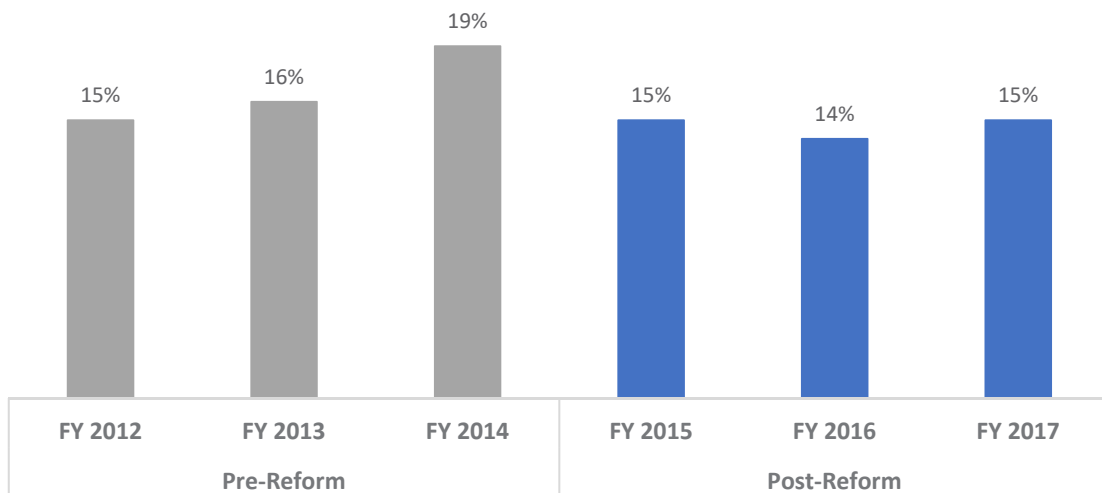


Alternative Dispute Resolution

The emphasis in the reform on resolution of claims without a court hearing was expected to impact attorney involvement. This is because there is less ambiguity about compensability of claims, or the amount of permanent partial disability benefits, and there are new requirements for mediation in the reform legislation. NCCI measured the percentage of cases with claimant attorney involvement for fiscal years 2012 through 2017 at a common maturity of eighteen months. The chart below shows the differences in claims with attorney involvement by fiscal year pre- and post-reform.¹¹

Chart 7 measures the percentage of cases with claimant attorney involvement for Fiscal Years (FYs) 2012 through 2017 at a common maturity of 18-months.

Chart 7: Percent of Cases with Attorney Involvement by Fiscal Year



Source: NCCI's *Detailed Claim Information* data.

¹¹ Post-Reform Study of Tennessee Senate Bill 200 (2119 Update 14) (National Council on Compensation Insurance, Inc. June 2019)

Definition of an Injury

A significant change in the 2013 Reform Act was the change in the definition of injury. Prior to July 1, 2014 an injury was defined as an accident arising (not primarily) within the course of employment causing disablement or death. Case law had developed that an injury was compensable if it “could be” caused by the employment, which made it easier for an injury to be compensable. This was one aspect of workers’ compensation that employers objected to as being unfair.

The reform law change the definition of what was a *compensable injury* to a claim that “arises primarily out of and in the course and scope of employment” **only** “if it has been shown by a preponderance of the evidence that the employment contributed more than fifty percent (50%) in causing the injury, considering all causes.” T.C.A. § 50-6-102(14)(B). This part of the reform changed the threshold for compensability from “could be” to “primarily.”

The Effect of this and Other Changes that are Difficult to Quantify

The definition of injury is important because if the injury is not related to employment as defined by statute, the claim is not compensable, and no benefits are owed to the employee. This provision in addition to others were determined by NCCI to be difficult to quantify. Included in the changes in this category are the following:

- Replacement of the old benefit review conference process with a formal mediation process.
- Creation of the Court of Worker’s Compensation Claims (although they did find that the metrics suggested that reform has led to a speed up in the claim resolution process) .
- Ombudsman program.
- Clarification of the definition of maximum medical improvement (MMI) and the termination of temporary total disability benefits.
- Removal of the 104-week restriction on the determination of MMI for mental injuries.
- Modification of the definition of “treating physician.”
- Requirement for the development of medical treatment guidelines.

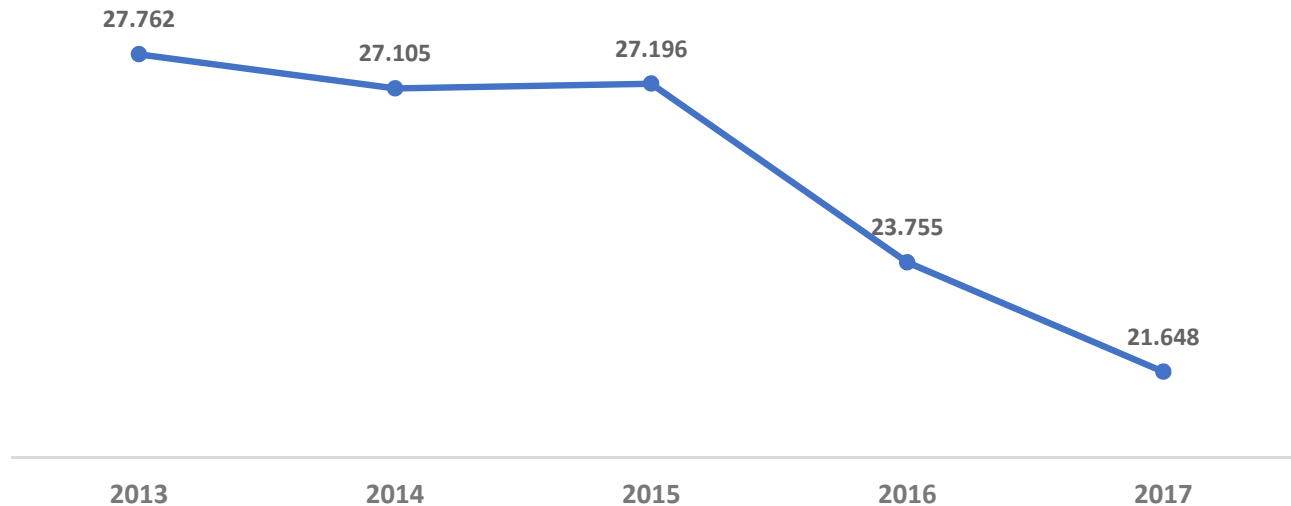
Two other provisions of the reform were considered to have a direct impact. These were:

Definition of an Injury

- Changing the construction of the workers' compensation statutes from "liberal" standard to one that was "fair and impartial."
- Modification of the definition of the term "injury," so that, in order to be a compensable injury, at least 50% of the injury must be linked to a specific, on-the-job incident or illness.

NCCI hypothesized that a possible impact to costs might be inferred from changes in frequency of claims. The chart below shows the average claim frequency (per million dollars of premium for lost-time claims pre- to post-reform. Note: the premium has been fully adjusted to the current loss cost and wage level for appropriate comparison.

Chart 5: Lost-Time Claim Frequency Per Million of Premium by Calendar-Accident Year



Source: NCCI's *Financial Call* data. Based on premium and claim counts developed to ultimate.

NCCI stated in their analysis of the effect of the reform that, as seen in the chart, "claim frequency has decreased by an average of almost 11% per year between Accident Year (AY) 205 and AY 2017 after a period of relative stability from AY 2013 to AY 2015. In comparison, countrywide frequency decreased by an average of 3.9% between AY 2013 and AY 2015 and by an average of 5.6% between AY 2015 and

Definition of an Injury

AY 2017. Given the timing of the recent decreases in claim frequency in relation to the effect date of the SB 200 (the Reform Act), it is likely that the tightened compensability standard and stricter interpretation standards resulting from SB 200 were a contributor to the steeper frequency decline in AY's 2016 and 2017 for Tennessee relative to countrywide frequency, but is unclear to what extent other WC system factors played a part."¹²

Other Changes

"Body as a whole"

All impairment ratings are now assigned as a percentage of impairment to the *body as a whole*. Before the reform, impairment ratings could be either a percentage of the impairment to the body as a whole or based on percentage of impairment to specific body parts.

The effect of switching to a "body as a whole" is minimal. Some injuries might receive a slightly greater benefit and some a slightly smaller. It does simplify the dispute resolution process and reduces areas of controversy.

Presumption of Accuracy by the Attending Physician

One of the issues that complicated resolution of disputes pre-reform involved the accuracy of the attending physician's evaluation of the employee's impairment rating. Pre-reform cases were delayed while attorneys obtained medical opinions regarding impairment ratings that favored their clients. This practice had a reasonable chance of success because the treating physician's evaluation carried no more weight with the courts than that of a physician who had not treated the employee.

The reform included a section that declared that the "treating physician's or chiropractor's written opinion of the injured employee's permanent impairment rating shall be presumed to be the accurate impairment rating. This presumption shall be rebuttable by the presentation of contrary evidence that satisfies a preponderance of the evidence standard." T.C.A. §50-6-204(k)(7).

Impact

Based on anecdotal data, the presumption has resulted in less time resolving disputes. This reduces costs, maintains the employee's right to overcome the treating physician's presumption, and shortens the period before the employee receives benefits.

¹² Post-Reform Study of Tennessee Senate Bill 200 (2119 Update 11-12 (National Council on Compensation Insurance, Inc. June 2019)

Temporary Disability Benefits

Background Info

Workers' compensation provides two types of benefits: wage-replacement and medical treatment. There are two types of wage-replacement benefits. Temporary disability benefits are wage-replacement benefits to help compensate for the workers' lost wages during the period of recovery. Permanent Disability Benefits are compensation for the disability that results from a compensable injury.

What changed in the 2013 law?

Provisions Clarified T.C.A. §50-6-207

Minimal changes were made to the temporary disability benefits. Changes were intended to clarify some provisions. One of these changes was to state that maximum medical improvement (MMI) occurs when the authorized treating physician ends all active medical treatment and the only care is for the treatment of pain or a mental injury that arose out of a physical injury. If additional payments are made after the date of MMI, those payments are offset against permanent benefit payments. The second change was to modify the definition of MMI for mental injuries to include the time treating psychiatrist concludes that the employee reached MMI or 104 weeks after the date of injury when there is no underlying physical injury.

Impact

As stated above, the purpose was to clarify the provisions, and this purpose was accomplished. In its 2019 Post-Reform Study of Tennessee Senate Bill 200, NCCI stated that changes to the TTD benefit could not be quantified.¹³

While not related to the Reform Act, the maximum temporary disability rate has continued to increase each July in compliance with T.C.A. §50-6-102(16):

(A)(xi)(b) For injuries occurring on or after July 1, 2005, the maximum weekly benefit for temporary disability benefits shall be sixty-six and two thirds percent (66 2/3%) of the employee's average weekly wage up to one hundred ten percent (110%) of the state's average weekly wage, as determined by the department;

¹³ Post-Reform Study of Tennessee Senate Bill 200 (2119 Update 11 (National Council on Compensation Insurance, Inc. June 2019)

Temporary Disability Benefits

(B) As used in subdivision (15), the state average weekly wage shall be determined as of the preceding January 1, and shall be adjusted annually using the data from the Bureau and shall be effective on July 1 of each year;

The current maximum temporary disability weekly benefit is \$1,021.90. Beginning July 1, 2019, the [weekly benefit](#) will increase to \$1,056.00.

Permanent Partial Disability (PPD) Benefits

What changed in the 2013 law?

A new method of calculating PPD Benefits

The reform act made several changes to the calculation of permanent partial disability benefits.

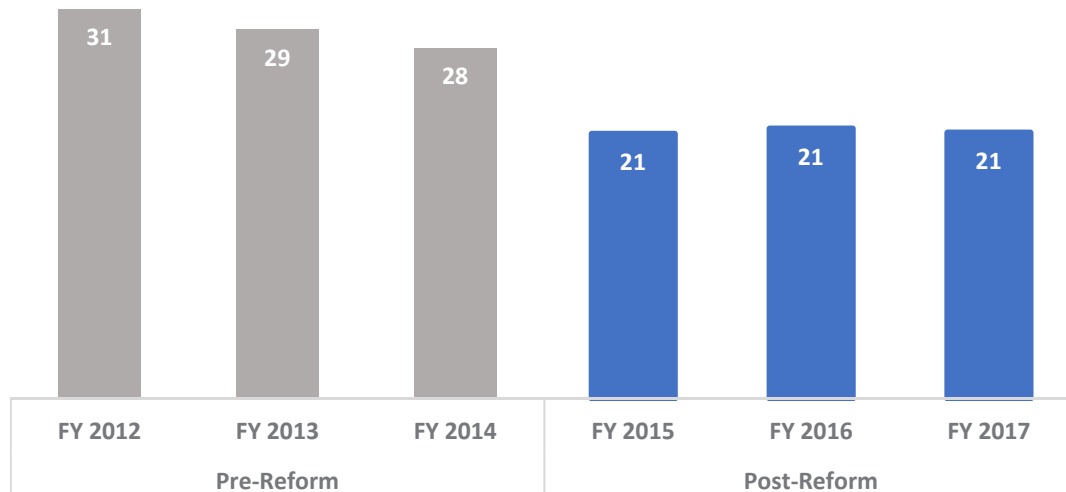
- The maximum PPD multiplier went from 1.5 to 1.0 for injured workers who return to work at the same or higher wage.
- The maximum PPD multiplier for injured workers who were not able to return to work at a comparable or higher wage went from 6 to 3.05. The calculation of PPD for injured workers who do not return to work is now based on several factors: the original award times factors for (1) not being able to return to work, (2) age, (3) education, and (4) unemployment rate in the worker's county.
- The number of weeks used in the calculation rose from 400 to 450 weeks.
- The calculation of PPD changed from being based on a scheduled body part or body as a whole to being expressed as disability to the body as a whole for all injuries.

Impact

The chart below displays the average PPD indemnity cost per claim with losses adjusted to the latest wage and statutory benefit-level changes other than the Reform Act.¹⁴

¹⁴ Post-Reform Study of Tennessee Senate Bill 200 (2119 Update 7 (National Council on Compensation Insurance, Inc. June 2019)

Chart 1: Average Permanent Partial Indemnity Cost Per Case (\$000s) by Fiscal Year



Source: NCCI's **Workers Compensation Statistical Plan** data as of 2nd report, adjusted to latest wage and benefit level

As shown in the chart above, the average PPD indemnity cost per case has decreased by approximately 28%. NCCI had expected the elimination of the use of scheduled members in the PPD calculation and the increase in the maximum number of weeks to increase the average number of weeks payable for PPD. However, claims experience suggests the reduction was more than offset by the change in PPD multipliers. Similarly, the expected increase from the increased number of weeks was offset by the change in the PPD multiplier.¹⁵

Assistance for the Employee Who is Not Able to Return to Work

The 2017 Legislative session included a bill that renamed the Second Injury Fund to the Subsequent Injury and Vocational Recovery Fund. The new name reflected the expanded purpose of the Fund to provide for educational assistance (up to \$5,000 per year) to qualified, injured workers who have suffered a work injury on or after July 1, 2018 and cannot return to work, or if they are able to return to work, they are making less money than they did before their work injury.

Those who lose their employment because of their work injury suffer a severe setback. This program gives them the opportunity to attain new skills through training, so they can get back to full employment.

¹⁵ Ibid.

Next Step Program

The Bureau launched the Next Step Program to implement the new law in December 2018 after regulations were developed to help injured workers participate in the program in accordance with the legislation. Today, the program is still in an early phase. Most workers' compensation claims take more than a year from the date of injury to reach eligibility. To date the Bureau has concentrated on publicizing the program with employers and attorneys active in workers' compensation.

The program has been positively received by parties with whom the Bureau has spoken. Stakeholders who have been contacted about the program have not only been positive about it, they have offered to spread the word. The insurance claims industry has linked more injured employees to the new program than any other source.



Brochures for the Next Step program in our Murfreesboro office.

The Next Step Program was featured in the Chattanooga Times Free Press, WTVL Channel 8 Knoxville evening news, and the Tennessee Radio Network. We have been featured in many industry publications and interest groups, including the Tennessee Bar Association, Trial Lawyers Association and Defense Lawyers Associations, WorkComp Central, Workers' compensation.com, Mid-South Workers' Compensation Association, and Occupational Managed Care Alliance among other publications. Insurance adjusters, nurse case managers, employers, attorneys, physicians, and anyone connected with a workers' compensation claim have been targeted to help spread the word.

Changes to Medical Components of the Workers' Compensation Law

Treatment Guidelines

During meetings with stakeholders in the year before the 2013 reform bill was introduced, one of the frequent complaints among injured workers, plaintiff attorneys, and medical providers was the interference with and delays in the delivery of medical care from utilization review providers. On the other side of the issue were complaints about medical providers who prescribed opioids excessively and who were too quick to perform surgery that might be harmful to the injured worker.

The treatment guidelines were included in the reform to address these concerns. A provision in the reform legislation statute states that if proposed treatment “explicitly follows the treatment guidelines,” it is presumed to be medically necessary for utilization review purposes and that the presumption can only be rebutted by clear and convincing evidence. T.C.A. §50-6-124 (h).

The treatment guidelines selected for use in Tennessee’s workers’ compensation program were the nationally-recognized Official Disability Guidelines, which contain independent, evidenced-based medical treatment guidelines for most work-related conditions and include a drug formulary. The guidelines were effective as of January 1, 2016, and the use of its drug formulary went into effect August 28, 2016 for new prescriptions and February 28, 2017 for refill prescriptions.

Impact

The medical treatment guidelines generated awareness of the appropriate treatment of common workers’ compensation injuries. One indication of the treatment guidelines’ effectiveness would be a reduction in the number of denials of medical treatment when the guidelines were followed. This reduction **has not** occurred. In fact, the number of appeals is up from 1,409 in FY 2015-2016 to approximately 1,700 in FY 2018-2019.

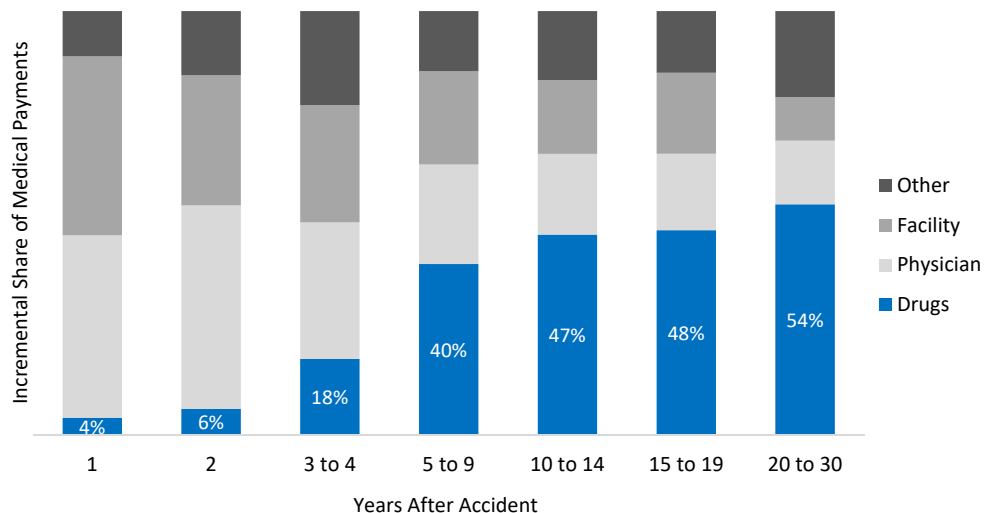
Of the denials that are appealed to the Medical Director of the Bureau, approximately half are upheld, and half are rejected. This suggests that payers are not complying with the requirement of the treatment guidelines; i.e., treatment that substantially follows the treatment guidelines are not subject to utilization review. The increased number of denials might also result from the addition of a drug formulary, which requires physicians to be more judicious in the use of opioids for pain management. The appropriate medications and dosages of those medications continue to be an area of disagreement among treating physicians and utilization review providers.

Treatment Guidelines

In addition to impacting the overall quality of medical care and the incidence of utilization review denials of recommended medical care, the drug formulary portion of the treatment guidelines was expected to reduce inappropriate drug use. The ODG formulary is a list of frequently used drugs in workers' compensation divided into Y drugs (no pre-approval is necessary) and N (pre-approval is necessary). So, it is expected that there would be a change in the number of N drug usage with the implementation of the formulary.

NCCI recently released a study of the impact of the ODG formulary in Tennessee and Arizona. Their results include two caveats that must be considered in evaluating results. One is that the report is based on data available through 2017, which was very early in the implementation period and does not reflect the long-term effects on prescribing patterns. Historically, drug use increases as a claim ages, as illustrated in the chart below.¹⁶

THE INCREMENTAL DRUG SHARE OF MEDICAL COSTS RISES WITH CLAIM MATURITY IN TENNESSEE



Based on MDC data for medical payments in Calendar Year 2017¹⁶

Exhibit 2

The second caveat is that their study could not control for other factors affecting utilization, such as other legislation, fee schedules, and industry practices.

¹⁶ Formulary Implementation and Initial Impacts on Workers' Compensation 6 (National Council on Compensation Insurance, Inc. June 2019)

Treatment Guidelines

NCCI's analysis of the data regarding N-drug utilization is illustrated in the chart below.

THE DECREASE IN N-DRUG UTILIZATION IN TENNESSEE ACCELERATED AFTER IMPLEMENTATION

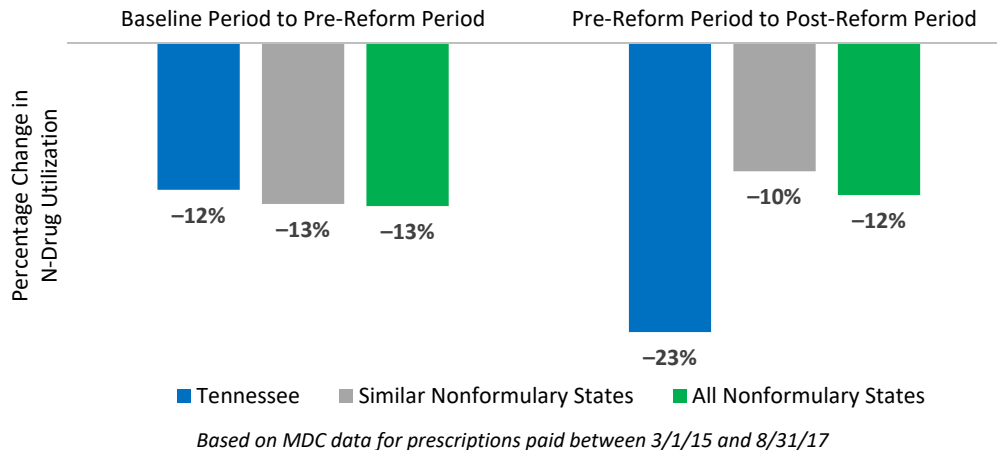


Exhibit 4

The NCCI study also looked at one sub-category of N-drugs; those that required topical application or compounding. This was of interest because of their increased usage across the country, high cost, and little evidence of increased effectiveness. Tennessee's drug formulary requires prior authorization of topicals and compounded drugs, whether they were a N-drug or not. The chart below illustrates the *dramatic decrease* compounds and topicals post-implementation. This decrease has resulted in cost savings without any apparent reduction in the quality or effectiveness of the overall medical treatment.¹⁷

UTILIZATION OF TOPICAL AND COMPOUND DRUGS FELL DRAMATICALLY POST-IMPLEMENTATION

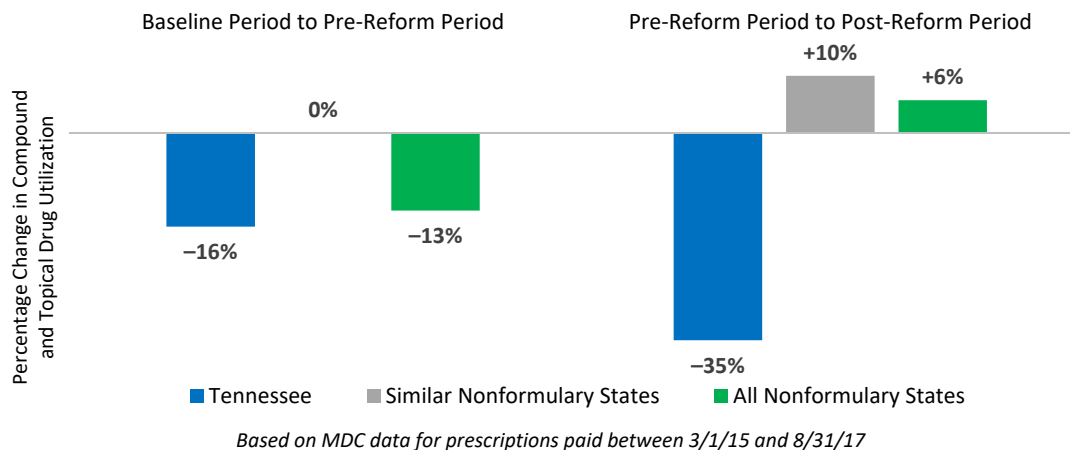


Exhibit 9

¹⁷ Ibid, 14

Opioid Reduction

It was expected that use of the ODG formulary would lead to the reduction of opioid prescriptions in the workers' compensation system in Tennessee. There was a decrease of 16% in the use of opioids in NCCI's study period. However, this reduction was experienced in non-formulary states also. Programs including **TNTogether**, the Department of Health's Chronic Pain Management Guidelines (which includes an appendix on pain management in workers' compensation) and increasing concern over the national opioid crisis have played an important role in reducing the prescribing of opioids. It is important to note that the NCCI study only describes the immediate post-reform period. "As more data becomes available... further research will be needed to better understand both the longer-term impacts of the formulary."¹⁸

Treatment Guidelines and Emerging Issues - Medical Marijuana

As part of the treatment guidelines, it is prudent for the workers' compensation system to keep current with trends in medical treatment that might affect injured workers. The potential impact of medical marijuana on the injured workers is one of these trends, and is being evaluated by the Bureau. This includes research into the impact on Tennessee specifically as it relates to the employers in the Drug Free Workplace Program and on the safety and potential adverse effect on co-workers across all jobs.

¹⁸ Ibid. 13.

Medical Payment Committee

Law Change

The pre-reform law mandated the Medical Care Cost Containment Committee to approve regulations related to workers' compensation and advise the Department of Labor and Workforce Development Commissioner on issues related to medical care and cost containment. One of their functions was to hear disputes on medical bill payments and render decisions on the merits of each side of the dispute. Although the statute did not give the committee enforcement authority, most of the disputed cases resulted in a resolution according to the committee's decisions.

The reform divided the Medical Care Cost Containment Committee into two more specialized committees. One is the Medical Payment Committee. This committee was required to hear disputes on medical bill payments between providers and insurers and render decisions on the merits of disputes. Like the Medical Care Cost Containment Committee, the Medical Payment Committee does not have enforcement authority to require payment of bills the committee deems appropriate for payment. However, it may refer a provider or insurer to the Bureau for a possible civil penalty if the Bureau determines that the provider or insurer acted in bad faith. The Medical Payment Committee also has a responsibility to advise the administrator on issues related to the medical fee schedule and medical care cost containment in the workers' compensation system.

Impact

The Medical Payment Committee's expertise and advice has been valuable in the annual review of medical fee schedule required by statute. A subcommittee of the MPC conducted a study in 2018 that resulted in revenue-neutral changes in the fee schedule for certain hospital admissions that had been the source of confusion. They also assisted in the development of recommended changes in the fee schedule for the 2019 review. These recommendations include a 6% increase in reimbursement for most providers for the first time in seven years and a 5% increase for hospitals which was the first in fifteen years. The projected impact of the workers' compensation system is projected to be +1.5%. The revisions the medical fee schedule have been approved by the Attorney General and will be presented to the Joint Government Operations Committee this summer for their consideration.

Changes to Medical Components of the Workers' Compensation Law

Medical Advisory Committee

The second committee that followed the pre-reform Medical Care Cost Containment Committee was the Medical Advisory Committee (MAC). The committee is composed of diverse subject matter experts on medical issues in workers compensation including insurers, third party administrators, self-insured employers, labor, medical providers and the Commissioner of the Department of Health.

The reform law charged the committee with helping in the development of treatment guidelines and providing advice on issues related to the medical component of the workers' compensation system. The first major task of the MAC was to study various sources for medical treatment guidelines and to recommend one to the administrator. After the adoption of the ODG guidelines, the MAC continues to monitor the guidelines and make suggestions for improvements on issues such as work-conditioning programs, functional capacity evaluations, and the use of certain procedures in back injuries and drug treatments. The committee also reviews modifications that ODG makes to the guidelines (or the drug formulary) quarterly.

Employer Communication with Treating Physician

What changed in the 2013 law?

Source of Frequent Delays are Removed

Obtaining medical records pre-reform was often a roadblock that slowed claims down. For example, if the worker was severely injured and unable to communicate, the old law still required a release form to be signed by the employee before the employer's insurance adjuster could view the workers' compensation injury records, which delayed decisions on compensability. The Reform Act allows the employer's insurance company to communicate with the treating physician by removing the requirement to have a waiver signed by the employee for the release of medical records pertaining to workers' compensation claims. This improved the speed with which claims can be processed and treatment authorized and provided.

Authorization to Waive the Fee Schedule

Workers' Compensation includes a medical fee schedule. Pre-reform, it was not allowed for any charge to exceed the maximum in the medical fee schedule. However, over time it became apparent that on occasion exceptions could be necessary to assure reasonable access to medical care. These occasions usually involve the need for specialist care that is difficult to obtain or medical care for retirees who now reside outside of Tennessee.

To address this issue, the reform authorized the Bureau to waive the "maximum allowable fees" when it is necessary to provide the appropriate care for an injured employee. T.C.A. §50-6-204(3)(A)(iii). The Bureau has not granted an excessive number of waivers in the past five years. It granted 46 waivers in 2018 and eleven to date in 2019.

Changes to Medical Components of the Workers' Compensation Law

E-billing

A little-known section of the 2013 reform is T.C.A. §50-6-202, which requires the development and adoption of rules requiring health care providers to submit their bills electronically and requires insurance carriers to accept medical bills submitted electronically. The reason for this section of the reform was to increase the efficiency of billing process to reduce costs for insurance companies and speed up payment to medical providers for their services. To avoid undue problems for either insurance carriers or medical providers, the rules include criteria for granting exceptions if a health care provider or insurance carrier can demonstrate an inability to submit or accept medical bills electronically. Insurers processing fewer than 250 payment claims, and providers with fewer than 10 employees or less than 150 submitted claims per year, are automatically exempt. The Bureau has exempted others who could demonstrate a financial burden if they were to comply. An implementation **Companion Guide** was updated in 2019.

Impact

The implementation of standards, rules, and exemptions was effective July 1, 2018. With a few exceptions, both payers and providers who have been in contact with the Bureau have indicated that they have or intend to comply with the e-billing regulations. In the first year of implementation, there was a significant number of requests for exemptions that were granted. There was a 43% reduction in the number of exemptions requested for the second year (FY 19-20).

Education to Support the Reform

Adjuster Certification Program

The Bureau wants to ensure that injured workers return to their health and to their jobs as quickly as possible without unwarranted delays in receiving medical benefits or lost wage benefits. To meet this goal, the Bureau developed an Adjuster Certification Program to educate adjusters about the requirements and intent of Tennessee's workers' compensation laws, rules and regulations. The curriculum of the training was focused on two principles: injured employees are to be treated fairly, and Tennessee workers' compensation claims are to be handled in an appropriate and uniform manner.

The voluntary program consists of a two-day training event conducted by Bureau staff. The facilitators are all directors and supervisors within Bureau - in other words, the very people who interpret and enforce the policies and procedures made the presentations during training. Insurance adjusters who attend the two-day class and then pass a final exam are recognized by the Bureau as "certified." To date, over 200 adjusters have become certified.



Insurance adjusters listening to training in Nashville on February 27, 2019.

Annual Education Conference

For twenty-two years, the Bureau has provided an annual education conference on workers' compensation for employees of the Bureau and the public in collaboration with the International Workers' Compensation Foundation. This training is required

Education to Support the Reform

by T.C.A. 50-6-219, which requires the administrator to “institute and maintain an education and training program for workers’ compensation mediators, workers’ compensation judges, the chief judge, ombudsmen, and the judges of the workers’ compensation appeals board in order to assure that these persons maintain current and appropriate skills and knowledge in performing their duties.” At least seven hours of training is required each year that is “focused on workers’ compensation statutes and case law, and the rules and regulations of the Bureau of Workers’ Compensation.” Over six hundred people have attended this conference each year since the reform, and each of these conferences has been rated highly by participants for the quality of the programming.



Fred Baker, Attorney with the Cookeville office of Wimberly, Lawson, provides a recap at the conference of the past year’s case law pertaining to workers’ compensation.

Physician Education Conference

The medical component of workers’ compensation is extremely important in the effectiveness of the system. Since 2014, the Bureau has held a Physician Education Conference each year, which drew its largest audience this year with sixty-five participants. The precursor of this conference was one that was held periodically to train physicians on the AMA Guides to Medical Impairment.

The interest in the medical aspects of workers’ compensation stretches across the spectrum of stakeholders, drawing attorneys, employers, case managers and medical providers. As a result, the conference dialogue bridges the communication gaps that might hinder workers’ compensation effectiveness.

Recognition Related to the Reform

There has been considerable interest the Tennessee Workers' Compensation system after the reform, especially as the implementation was quite extensive and successful. Several awards and positions of leadership came to members of the Executive Committee and include:

- Abbie Hudgens, Administrator, was awarded the Frances Perkins award by the International Association of Workers' Compensation (IAIABC) in 2015 for "following in the footsteps of Frances Perkins, U.S. Secretary of Labor and IAIABC President, who was a role model for innovation and progressive leadership in workers' compensation and social security." She was also elected president of the Southern Association of Workers' Compensation Administrators (16-17). She is now the president of the IAIABC.
- Chief Judge Kenneth Switzer received the John Lazzara Leadership Award at the annual meeting of the National Association of Workers' Compensation Judiciary in August 2018.
- Jeff Francis, Assistant Administrator, is president-elect of the Tennessee Labor Management Foundation, which is an association of labor, management, and higher education that offers educational conferences statewide.

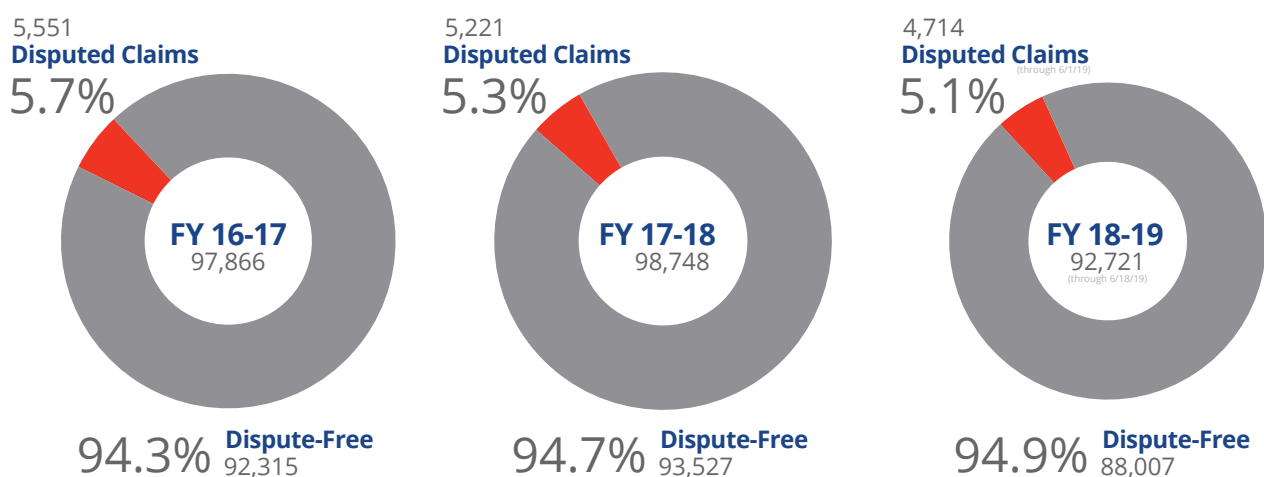
Conclusion

Tennessee's workers' compensation system is now one hundred years old. It took almost ten years for the Legislature to agree on the details of that first law. What they did agree upon was that it had to be fair to both the employee and employer. On July 1, 2019, the Workers' Compensation Reform Act of 2013 will have been in effect for five years. This legislation, as the first, was intended to be fair to both employees and employers.

What has been the impact of the 2013 reform? The years since the July 1, 2014 effective date have been characterized by increases in efficiency, improved services to unrepresented workers, innovation, and a court system of which the state can be proud that is marked by timeliness, sound judgements and consistency.

When evaluating the reform, some will look only at the overall cost, which has decreased and praise it. Others look at the decreased legal representation of injured workers and lower permanent partial disability benefits and criticize it. Others see some parts of the reform to applaud, but have questions about other parts.

When evaluating the reform and the Tennessee workers' compensation system, we must keep in mind how well the system works for most claimants. The chart below illustrates the number of workers' compensation claims received in each of three past fiscal years and the number of notices the Bureau received of a dispute. Almost 95% of claims do not involve a dispute!



As encouraging as these statistics are, if there are claims that are not settled quickly with as little friction as possible between the employee and employer, improvements are still needed. The Bureau of Workers' Compensation mission is "to fulfill the promise of workers' compensation today...and tomorrow." With each year, Tennessee works to close the gap between the status quo and fulfillment of its mission.

Conclusion

There are still many challenges to meet with the system and new challenges will continue to emerge each year, but the Tennessee workers' compensation system is sound and is on track to continue to improve. The Reform of 2013 has had a positive impact on the state thus far and should be the basis for continued positive effects that in keeping with the message of Governor Thomas Clarke Rye on January 18, 1917:

"The growth and development of manufacturing, power and transportation facilities and systems, with large use of complicated and hazardous machinery, operated by both skilled and unskilled workmen, demands the enactment of a workmen's law, which shall be fair, just and equitable to both employer and employe[e]."



Questions about this report?



Administrator

of the Bureau of Workers'
Compensation

Abbie Hudgens

Abbie.Hudgens@tn.gov
(615) 741-5384



Legislative Liason

for the Bureau of Workers'
Compensation

Troy Haley

Troy.Haley@tn.gov
(615) 532-0179

General inquiries can be made to wc.info@tn.gov