



Biennial Report to the **89th Legislature**

November 2024

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November 22, 2024

The Honorable Greg Abbott, Governor
The Honorable Dan Patrick, Lieutenant Governor
The Honorable Dade Phelan, Speaker of the House
The Honorable Members of the Texas Legislature

Dear Governors, Speaker, and members of the Texas Legislature:

In accordance with Texas Labor Code Section 402.066, I am pleased to submit the Texas Department of Insurance, Division of Workers' Compensation's (DWC) biennial report to the 89th Texas Legislature. This report provides an update on the Texas workers' compensation system and briefly describes legislative recommendations that I believe will improve the state's ability to effectively and efficiently regulate the workers' compensation system.

I am available to discuss any of the issues in the report and provide you with technical assistance. Please contact Deputy Commissioner of Operations and External Relations Matthew Posey at 512-804-4405 if you have any questions or need any additional information. Thank you for your consideration.

Sincerely,



Jeff Nelson
Workers' Compensation Commissioner
TDI, Division of Workers' Compensation

Introduction

Workers' compensation is a state-regulated insurance program that pays medical bills and replaces some lost wages for employees who have a work-related injury or illness.

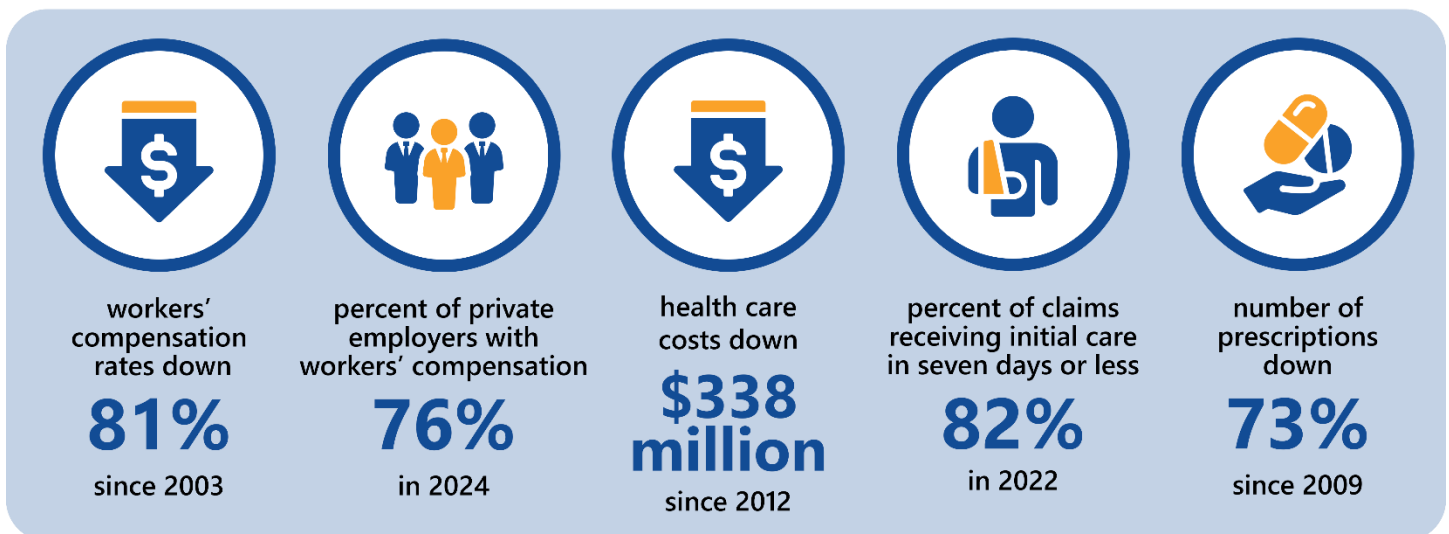
The founding principle of all workers' compensation systems is known as the Grand Bargain, which is an agreement between employers and employees. Workers' compensation insurance protects employers from potentially devastating lawsuits brought by injured employees. In return for giving up their right to sue, employees are entitled to prompt, no-cost medical treatment for their work-related injury or illness and income benefits to replace some of their lost wages. The system also includes income benefits for beneficiaries of an employee who dies from a work-related injury.

Texas allows private employers to choose whether to provide workers' compensation coverage for their employees. Texas has had a voluntary coverage system since its first workers' compensation laws passed in 1913. Due to legislative reforms, the Texas workers' compensation system has transformed over the past two decades into a leading example of efficiency and effectiveness that serves as a model for other states. These advances have led to lower claim and system costs, reduced workplace injuries, better access to medical care, fewer disputes, and higher return-to-work rates for injured employees.

In the upcoming biennium, DWC's goal is to continue modernizing operations by harnessing technology to reduce administrative burdens for all system participants and agency staff. This involves implementing user-friendly digital solutions to improve stakeholder interactions, accelerate dispute resolution, and promote seamless internal coordination across various program areas.

This report outlines key trends about the performance of the current system to allow DWC, policymakers, and system stakeholders to help identify improvements to maintain a fair and balanced workers' compensation process.

Key trends



System overview

Workers' compensation insurance market

A healthy workers' compensation system ensures that employers have access to affordable insurance to cover their employees. Providing competitive rates is especially important in Texas, since workers' compensation coverage is voluntary for private employers. In 2023, the top 10 insurance groups wrote about 74% of the market for total premiums written, with the top writer, Texas Mutual Insurance Company, having 41% of the market share.



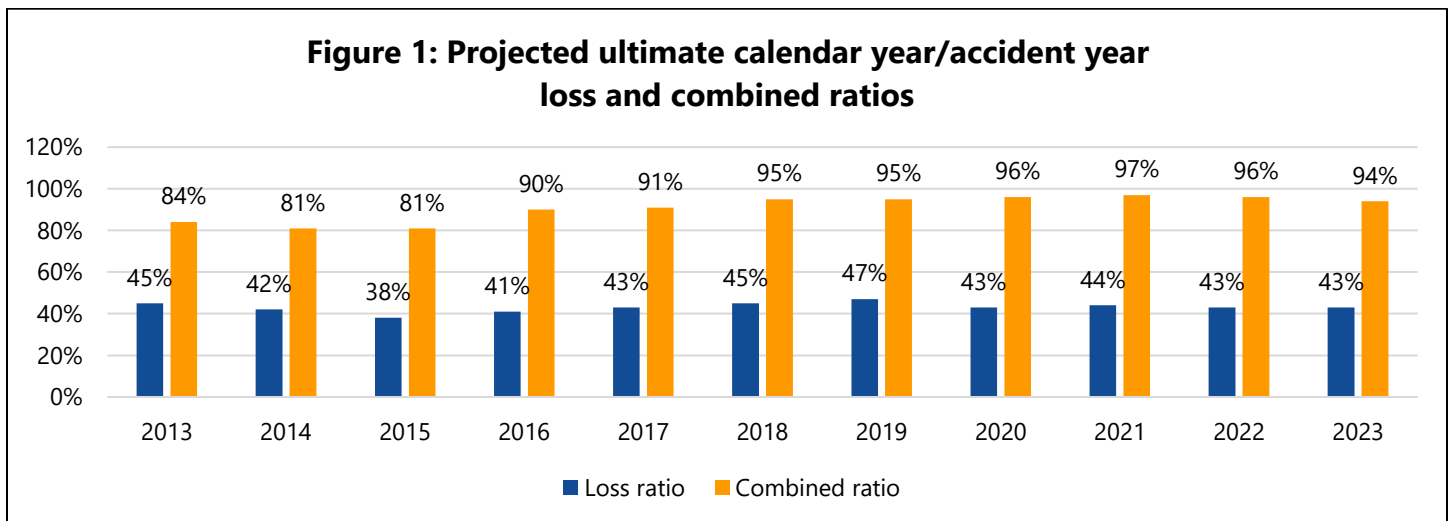
304
workers' compensation
insurers in 2023



\$2.6 billion
in direct written
premiums in 2023

Texas continues to have a robust workers' compensation insurance market, which encourages competition from insurance companies and allows employers to buy coverage at affordable rates. One important measure of market health is the size of the residual market (policies written by the insurer of last resort). In 2023, the residual market represented only about 0.28% of the entire market. In fact, the residual market has consistently been less than 1% of the market for over 20 years.

The last decade has been profitable for insurance companies writing workers' compensation in Texas. In 2023, the projected accident year combined ratio for workers' compensation in Texas was 94%. This means that for every dollar an insurance company collects, it pays an estimated 94 cents to cover losses and expenses and keeps the remainder as profit (Figure 1). Insurance companies writing workers' compensation in Texas averaged a 9.9% return on net worth over the last decade, similar to the national average of 9.7%.



Source: National Council on Compensation Insurance's Underwriting Results by State.

Workers' compensation insurance has become increasingly more affordable. Since 2003, workers' compensation insurance rates have dropped 81%. While rates have continued to decline in the last decade, these rates are just the start of the workers' compensation insurance pricing process. What employers pay—the insurance premium—reflects not only rates and changes in wages, but also mandated rating programs like experience rating and premium discounts, as well as optional rating tools, such as schedule rating plans and negotiated deductibles.

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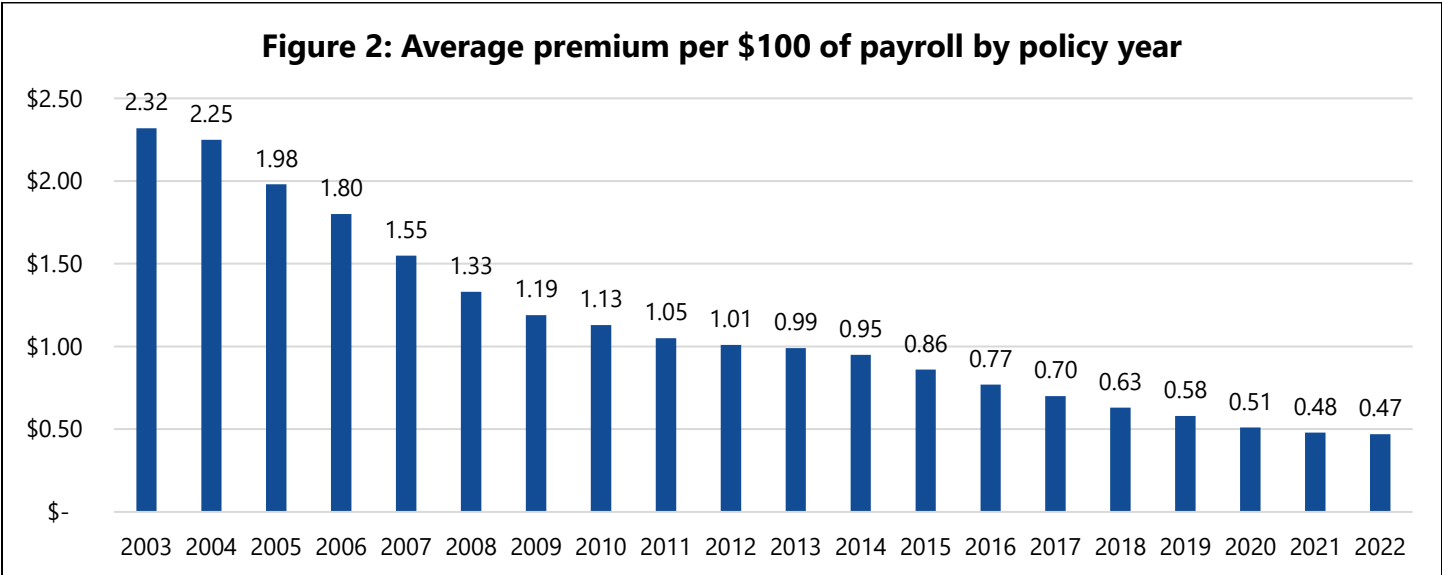


Figure 2 shows the average premium per \$100 of payroll for policy years 2003-2022, reflecting year-to-year changes in premiums charged. Beginning in policy year 2004, the average premium per \$100 of payroll began to decrease steadily as insurance companies lowered rates and increased the use of optional rating tools. The 2005 legislative reforms played a large role in these cost reductions, and also led to fewer injuries and claims, more efficient and effective medical care, fewer disputes, and better return-to-work rates for injured employees. As of policy year 2022, the average premium per \$100 of payroll was 47 cents.



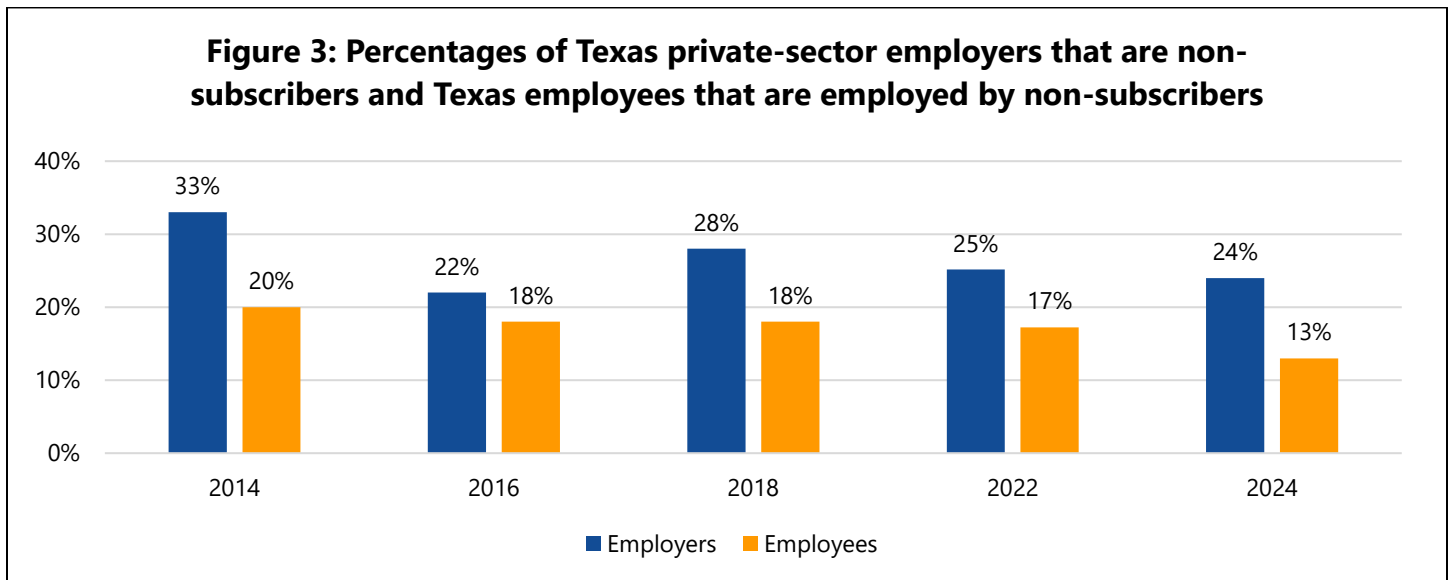
Source: Texas workers' compensation financial data call and data compiled by the National Council on Compensation Insurance, 2023.
 Note: Policy year reporting is for the previous 20 months. Policy year 2023 data won't be available until August 2025.

Employer participation

Texas allows private-sector employers to forgo buying workers' compensation insurance, making them "non-subscribers" to the state system. Non-subscribers lose the protection of statutory limits on liability and may be sued by their employees who are injured on the job. However, some employers do choose to provide their employees with some workplace injury protections through coverage referred to as employer benefit plans. DWC does not regulate these plans.

Non-subscription rates are an important measure in the workers' compensation system because they show whether employers believe the benefits of participating in the system outweigh the costs of obtaining coverage.

In 2024, the percentage of employers that were non-subscribers was the lowest since 2016, at 24% (Figure 3). The percentage of Texas employees working for non-subscribers was the lowest in a decade at 13%. Table 1 shows the percentage of private Texas employers who are non-subscribers, by the number of employees they have.



Source: Workers' Compensation Research and Evaluation Group, 2024.

Table 1: Percentage of Texas private-sector non-subscribers by employment size

Date	1-4 employees	5-9 employees	10-49 employees	50-99 employees	100-499 employees	500+ employees
1995	55%	37%	28%	24%	20%	18%
1996	44%	39%	28%	23%	17%	14%
2001	47%	29%	19%	16%	13%	14%
2004	46%	37%	25%	20%	16%	20%
2006	43%	36%	26%	19%	17%	21%
2008	40%	31%	23%	18%	16%	26%
2010	41%	30%	20%	16%	13%	15%
2012	41%	29%	19%	19%	12%	17%
2014	43%	27%	21%	18%	14%	19%
2016	31%	19%	10%	10%	11%	19%
2018	36%	27%	16%	10%	10%	20%
2022	31%	18%	13%	7%	12%	20%
2024	32%	20%	11%	3%	6%	15%

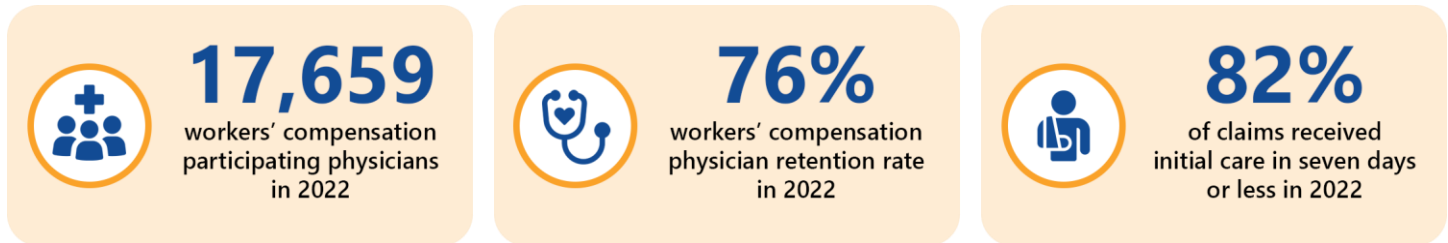
Source: Workers' Compensation Research and Evaluation Group, 2024.

Note: DWC did not update reports biennially with this data before 2004.

Access to care

A primary function of workers' compensation is to ensure employees with work-related injuries receive high-quality medical care that is timely, appropriate, and easily accessible.

Important measures to determine the accessibility of care are the number of physicians in the Texas workers' compensation system, the rate of retention for workers' compensation physicians, and the timeliness of medical care provided to injured employees. Our latest study from 2023 found that access to care conditions have improved for Texas workers' compensation patients, but there are still opportunities to build on this progress.



The total number of physicians actively practicing in Texas increased at an annual rate of 2.6% between 2017 and 2022. The total number of workers' compensation participating physicians remained relatively stable in 2022 (17,659), resulting in a decreasing participation rate. Generally, the workers' compensation participating physician retention rate remains high and relatively stable at 79% in 2017 and 76% in 2022.

The timeliness of medical care for Texas workers' compensation claims also maintained a stable rate. In 2022, 82% of claims received initial non-emergency care in seven days or less. The share of claims receiving same-day treatment decreased 3% from 2017 to 2022 (from 44% down to 41%), with a slight dip during the COVID-19 pandemic.

Health care cost and utilization

Another measurement of how well the Texas system is performing is the total health care costs incurred to treat work-related injuries and illnesses. This medical care may include professional, hospital, dental, and pharmacy services.


The 2005 Texas legislative reforms did a lot to reduce medical costs and improve outcomes for injured employees. Those statutory changes included:

- Adopting evidence-based treatment guidelines.
- Creating a pharmacy closed formulary.
- Establishing certified workers' compensation health care networks.

Even two decades after these reforms, the workers' compensation system is still seeing decreasing health care costs.

Total health care costs in the Texas workers' compensation system are down 30%, dropping from \$1.15 billion in 2012 to \$812 million in 2022. A contributing factor in this was a decrease in the total number of claims by 20%, from 319,000 to 256,000.

Notably, the total cost of pharmacy services decreased significantly by 71% from 2012 to 2022, with the average cost per pharmacy claim decreasing 38%, from \$908 in 2012 to \$563 in 2022.

Since 2012,  **total health care costs have decreased 30%.**

In addition to decreasing costs, there has also been a considerable decline in the number of prescriptions. The total number of prescriptions decreased 73% from 2009 to 2022, and the total number of opioid prescriptions during that period dramatically declined 86%, from 555,000 to 78,000.



total number of prescriptions
from 2009 to 2022

↓ 73%



total number of opioid
prescriptions from 2009 to 2022

↓ 86%

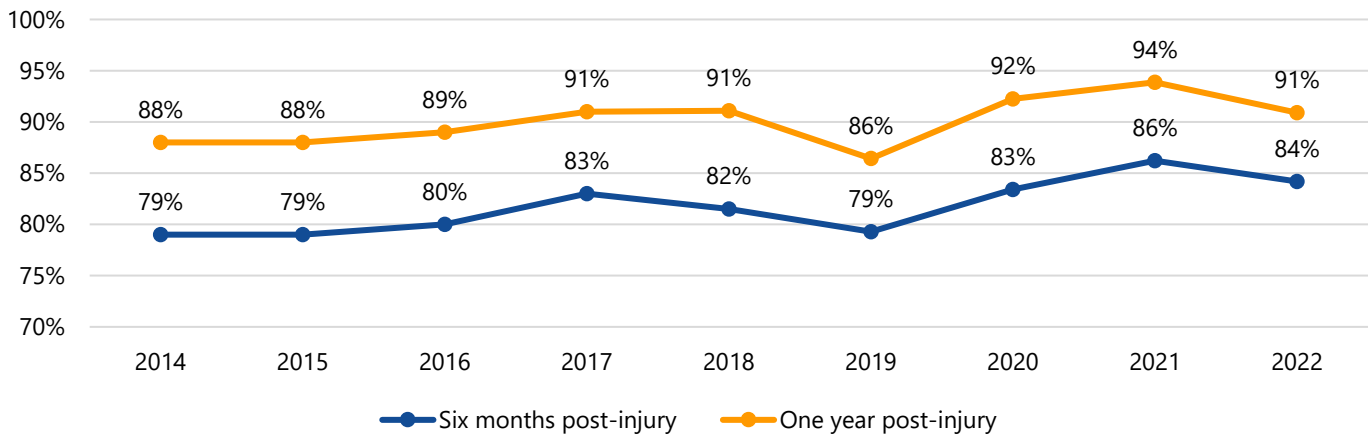
The decrease in opioid prescriptions is mainly attributed to the adoption of the pharmacy formulary in 2011. The formulary applies to both network and non-network claims and applies evidence-based medicine guidelines to ensure quality medical treatment for injured employees while controlling costs and unnecessary utilization. Drugs excluded from the formulary can still be prescribed but require preauthorization.

Return to work

A goal of the Texas workers' compensation system is to help injured employees return to a productive work role as quickly and safely as possible. Returning to work after an injury greatly benefits both injured employees and their employers. Injured employees heal faster, keep job-related benefits, minimize financial losses, and avoid long-term disability. Employers retain valuable, skilled employees and reduce expenses related to absences, turnover, and overall workers' compensation costs.

Return-to-work rates have steadily improved for injured employees in Texas in the last decade. Figure 4 shows that 84% of employees injured in 2022 went back to work within six months, and 91% went back within the first year after their injury.

Figure 4: Percentage of injured employees receiving TIBs who initially returned to work at six months and one year post-injury



Source: Workers' Compensation Research and Evaluation Group, 2024.

Note: Injured employees may earn temporary income benefits if their work-related injury or illness causes them to lose some or all of their wages for more than seven days.

DWC initiatives

Modernization

DWC continues to prepare for the future by modernizing automated systems to improve efficiency, collaboration, and services for system participants.

New electronic claim reporting standards – DWC helped insurance carriers and self-insured governmental entities transition to the latest electronic data interchange (EDI) claims release 3.1 standard for reporting their claims data. The update improves the quality of data DWC uses for monitoring and oversight, agency performance measures, and legislative reports, and is a more effective process for insurance carriers reporting data in multiple jurisdictions.

DWC's new online tools to streamline services include:



Paperless filing through DWC's web-based TXCOMP system



New wage and benefits estimator tool



Online tool to gather rule comments and sign up witnesses for public hearings



Searchable online database for consent orders



Electronic documentation of CE credits earned in DWC webinars

New online portal for employers – DWC created a portal that allows non-subscribers, and their agents to easily file annual notices online from any device, 24 hours a day. Non-subscribers may also report deaths, occupational diseases, and injuries as Texas law requires. This portal will be available for Texas businesses during the February 2025 filing period.

Upgrade agency data reporting and analysis – This project upgrades the agency's SAS statistical reporting software from the current TDI-managed SAS server environment to a cloud-based SaaS solution. This includes exploring the use of machine learning and artificial intelligence to provide DWC with more advanced and effective data tools.

Future modernization projects – Many projects are underway to replace DWC's legacy claims-management system, COMPASS, in use since 1991. DWC has been working for several years on a multi-phase project to move all claim data from the COMPASS system to the more modern, web-based system TXCOMP. This modernization effort includes projects to:

- **Move claim correspondence to TXCOMP** – The TXCOMP system will handle required updates more easily and streamline management of claim correspondence.
- **Modernize the medical fee dispute resolution system** – This project provides an efficient

medical fee dispute case management system that allows system participants a secure log-in process to file and receive fee disputes electronically and gives DWC staff an effective queue system to work fee disputes and maintain decisions.

- **New system to manage disputes over income benefits** – This project modernizes DWC’s indemnity dispute resolution to create an online system where injured employees, insurance carriers, attorneys, and health care providers can file disputes, schedule proceedings, exchange documents, and check the status of their dispute.

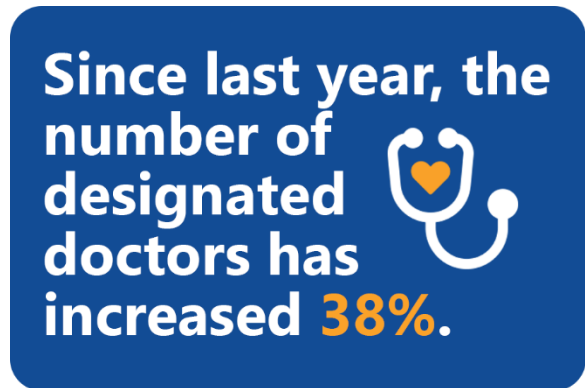
These modernization efforts will allow DWC to fulfil statutory duties in a more efficient, cost-effective manner while providing real value to our system participants.

Designated doctor program improvements

DWC continuously works to improve the designated doctor (DD) program to attract and retain qualified doctors for this critical function. DDs are neutral, independent doctors that DWC trains and certifies to help resolve complex medical issues on disputed claims. They are a key component for timely and successful dispute resolution.

This past biennium, DWC completed rule projects to reduce administrative burdens related to training and testing requirements, simplify billing, and increase reimbursement rates for DDs and doctors with maximum medical improvement and impairment rating certifications. This was the first increase to reimbursement rates for DDs since 2008.

Before these improvements, there were 236 DDs in the system. Texas now has 325, a 38% increase from April 2023.



Since last year, the number of designated doctors has increased 38%.

The infographic features a blue rounded rectangle with white text and a white stethoscope icon with a yellow heart in the center.

Improved billing and reimbursement for DDs:



Eliminated exam tiering so all issues are addressed within one exam fee



Created \$100 missed appointment fee and \$300 specialist fee



Adjusted fees by applying Medicare Economic Index percentage adjustment factor



Clarified timely submission of a DD exam bill



Required an assignment number to identify DD-associated exam bill

Revised certification testing and qualification standards – Doctors who passed the certification test on or after May 13, 2013, are no longer required to take the certification test. Doctors must still apply for and take certification training every two years.

Streamlined exam appointments and reporting – Developed new tool to enable DDs to accept and manage their appointments online and file their reports in TXCOMP, eliminating the need for conducting these activities by fax.

Recommended legislation excluding DD exams from sales tax – Senate Bill 1122, which passed in the 88th Legislative Session, was a DWC recommendation to ensure that DD exams, and other similar exams that health care providers conduct in the workers’ compensation system, are not considered “insurance services” subject to sales and use tax.

Enhanced training – DWC has implemented various outreach efforts to enhance the DD program. Key initiatives include 64 mandatory and optional trainings in the biennium, as well as updated training materials and online resources.

Education and outreach

Part of DWC’s mission is to educate all stakeholders about their rights and responsibilities, as well as changes to rules and laws, and the importance of having a safe and healthy workplace. In fiscal year 2023 and 2024, DWC held:



Workplace safety activities – DWC’s Workplace Safety program provided 4,622 consultations and compliance assistance activities to Texas employers, removing 9,374 hazards from the workplace and safeguarding more than 41,000 employees.

Workplace safety training – The Workplace Safety program also held 190 safety and health training classes that 1,632 employers and 2,669 employees attended. Some of these classes included low-cost OSHA 10-hour and 30-hour certification classes to teach the essentials of occupational safety.

Employer training – DWC attended 26 Governor’s Small Business Summits and 23 conferences for employers hosted by the Texas Workforce Commission (TWC) to educate employers on workers’ compensation coverage, occupational safety and health resources, compliance assistance, and to promote DWC resources. DWC also held 31 trainings on the importance of return to work for employers and partnered with TWC and other state agencies to provide other training events.

Health care provider training – DWC’s Health Care Provider Outreach team provided 43 trainings to medical students, health care providers, and medical office staff about treating in the Texas workers’ compensation system.

CompCourses webinars – In 2024, DWC developed free continuing education (CE) credit webinars for stakeholders in the workers’ compensation system. These webinars feature topics like return to work, compliance, and dispute resolution. So far, 960 participants have attended and received 469 CE credits through TDI.

Additional outreach efforts:

- Developed a catastrophic incident management program to respond to workplace incidents involving multiple injuries or fatalities. Under that program, DWC joined state and local response to the Hays Consolidated Independent School District bus accident and Panhandle wildfires to educate about injury reporting and benefits.
- Hosted 12 statewide ‘Brown Bag’ lunch seminars for stakeholders to get the latest updates from DWC Hearings staff on dispute resolution in the workers’ compensation system. This series enables meaningful interaction between system participants and allows DWC to gather feedback to ensure greater transparency for everyone involved.
- Offered hundreds of free workplace safety publications and a monthly *Safety@Work* newsletter for employers. During the biennium, DWC created or revised 42 online publications in both English and Spanish.
- Launched the *Texas Comp Update* newsletter to connect with stakeholders and inform them about industry news and DWC updates.

Legislative recommendations

Allow contested case hearings by videoconference

Recommendation

Amend Texas Labor Code Section [410.005](#) to allow contested case hearings (CCHs) by videoconference if **all parties** agree to that format. This change will enhance flexibility and efficiency of CCHs by streamlining the administrative process, reducing travel-related burdens, and promoting access to justice while maintaining the integrity of the hearing process.

Issue

Labor Code Section [410.005\(d\)](#) provides that benefit review conferences (BRCs) may be held by telephone, videoconference, or in person on a showing of good cause. However, there is no similar provision for CCHs, which are formal hearings that DWC administrative law judges conduct. DWC holds about 4,500 CCHs annually and currently allows parties and witnesses to appear by telephone if good cause exists.

Virtual hearings, on agreement of all parties, would improve access to legal representation for injured employees living in more remote regions or out of state. Permitting all parties to appear at CCHs by videoconference will help shorten timelines to resolve disputes, improve injured employees' access to necessary medical treatment, and allow them to return to work more quickly.

Background

An injured employee has the right to dispute decisions that the insurance carrier makes on their claim. To dispute a decision on their claim, injured employees must use an administrative process that DWC oversees to help resolve these disagreements. DWC's dispute resolution process may include:

- A BRC, an informal mediation.
- A CCH, a formal hearing held by an administrative law judge.
- An appeal to the DWC Appeals Panel.

If parties still disagree after an Appeals Panel decision, they can appeal to court for judicial review, but that is outside of DWC's jurisdiction.

As currently written, Labor Code Section [410.005](#) requires dispute proceedings to be conducted within 75 miles of the injured employee's residence, unless DWC finds good cause for the "selection of a different location." Due to the impact of COVID-19, DWC moved all proceedings to a virtual format for a period, citing the "good cause" exception, and held both BRCs and CCHs by videoconference or telephone.

This led to the passage of [House Bill \(HB\) 1752](#) from the 87th Legislature, Regular Session (2021), allowing DWC to conduct BRCs by videoconference or telephone with a “good cause” exception to hold a BRC in person. Due to the change in law, DWC currently schedules all BRCs by videoconference, unless it finds that good cause exists.

Remove references to the expired Approved Doctors List from the Texas Labor Code; make conforming changes

Recommendation

Remove all references to the Approved Doctors List (ADL), which expired September 1, 2007, from the Labor Code and make conforming changes.

Issue

Outdated language: The statute regarding ADL expired on September 1, 2007. However, sections in the Labor Code still refer to the ADL, which causes confusion for system participants, especially those trying to understand the current statutory requirements for health care practitioners who provide health care for work-related injuries.

Today, injured employees have the right to choose a “treating doctor” (health care practitioner) to treat their injuries. If they want to change treating doctors, they ask DWC to let them make the change. Before 2007, injured employees had to select their doctors from the ADL, but that has not been the case since.

Removing statutory language that is outdated and no longer applies will decrease confusion for health care practitioners who want to provide health care in the workers’ compensation system. Feedback through health care provider outreach indicates there are health care practitioners who believe the old ADL and registration and training are still required to become a treating doctor in the workers’ compensation system.

Background

[HB 7](#) from the 79th Legislature, Regular Session (2005) amended the Labor Code to eliminate the ADL on September 1, 2007. Prior to this change, only doctors who met specific requirements and were registered on the DWC-maintained ADL were permitted to treat injured employees in the workers’ compensation system. This change in HB 7 was made to improve access to care for injured employees and reduce administrative burdens to health care providers wanting to enter the workers’ compensation system.



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