

Legislative Report

For the Year 2006

**Submitted to:
The Governor's Office
Lieutenant Governor
Speaker of The House of Representatives
and
Legislative Offices**

By:

The Office of Injured Employee Counsel



December 1, 2006

Signed:

A handwritten signature in black ink, appearing to read "Norman Darwin".

**Norman Darwin
Public Counsel**

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I. Introduction:

The Office of Injured Employee Counsel (OIEC) was established March 1, 2006 as a result of House Bill (HB) 7 during the 79th Texas Legislature, Regular Session, 2005. HB 7 abolished the Texas Workers' Compensation Commission (TWCC) and established the Division of Workers' Compensation (DWC) as a division within the Texas Department of Insurance (TDI). HB 7 also preserved and moved TWCC's Ombudsman Program to OIEC. See HB 7 §7.0031 (requiring Ombudsmen to be transferred to OIEC no later than March 1, 2006).

OIEC was established to represent the interests of injured employees of Texas. OIEC's statutory duties are to provide assistance to injured employees and to advocate on behalf of injured employees as a class. OIEC operates the Ombudsman Program, which assists unrepresented injured employees in obtaining benefits at administrative dispute resolution proceedings before DWC.

Governor Rick Perry appointed Norman Darwin on December 8, 2005 as OIEC's first Public Counsel. As Public Counsel, Mr. Darwin hired regional staff attorneys as statutorily required to serve as a legal resource for the Ombudsman Program. The Public Counsel and OIEC staff are proud to serve as the voice of the injured employees of Texas in the recently overhauled Texas Workers' Compensation System.

Legislative Report:

HB 7 requires OIEC to submit a report to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and the Chairs of legislative committees with appropriate jurisdiction not later than December 1st of even numbered years. TEX. LAB. CODE §404.106. In accordance with Texas Labor Code §404.106, this legislative report must include:

- A description of the activities of OIEC;
- Identification of problems within the workers' compensation system from the perspective of injured employees, as considered by the public counsel, with recommendations for regulatory and legislative action; and
- An analysis of the ability of the workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers. *Id.*

This legislative report addresses the requirements set out in Texas Labor Code §404.106. OIEC has disseminated this report in accordance with the requirements of the statute.

In preparing this report, OIEC has coordinated with TDI's Research and Evaluation Group (REG) to obtain needed information and data. OIEC is administratively attached to TDI and appreciates the research and data support provided to OIEC by TDI and DWC. As a result of the transition from TWCC to DWC, TDI has inherited information technology issues, which limits the availability of current data pertaining to medical billing, claims, and income benefits. TDI is working expeditiously to resolve these data issues, and the information contained in this legislative report reflects the most current data that is available to OIEC. OIEC has made every effort to obtain current information to make this report a meaningful analysis of the Texas Workers' Compensation System.

II. OIEC's Mission and Description of Agency's Activities:

A. Mission:

OIEC's mission is to educate and assist injured employees and advocate for them as a class in order to achieve a balanced workers' compensation system that protects the rights of all injured employees in Texas. OIEC's mission is to provide quality services and assistance to guide injured employees through the workers' compensation system.

OIEC provides the following services:

Advocacy:

- Identify issues that increase burdens or create problems for injured employees and address those issues in the legislative and rulemaking processes and through the simplification of procedures and forms.
- Monitor the performance of the workers' compensation system.

Customer Service:

- Educate and provide general assistance to injured employees regarding the workers' compensation system.
- Provide referrals to other local, state, and federal financial assistance, rehabilitation, work placement, and social service agencies, including the Department of Assistive and Rehabilitative Services (DARS), as appropriate.
- Assist in referring complaints received from injured employees regarding health care providers to the appropriate entities and licensing boards.

Ombudsman Program:

- Provide an Ombudsman once a workers' compensation proceeding has been scheduled to assist an unrepresented injured employee throughout the administrative dispute resolution process at DWC.

B. Agency Organization:

OIEC has structured its organization to fulfill its duties in accordance with the statute and in recognition of its administrative attachment to TDI and close business partnership with DWC. See Figure 1, page 7. There are three major programs within OIEC supporting its mission. These programs are:

- **Injured Employee Services** consists of an Ombudsman Program that assists unrepresented injured employees through the administrative dispute resolution process and an administrative services team. The

administrative services team provides support to the Ombudsman Program and general customer service to injured employees.

- **Legal Services** supports the Ombudsman Program through a team of regional staff attorneys who conduct research; assist ombudsmen with spotting legal issues and developing legal strategies; respond to legal questions; develop model discovery and case development tools; and help with the preparation for informal and formal proceedings and appeals. This program also supports the agency's advocacy role through rule comment and rule development, workgroup participation, and pursuing matters before courts on behalf of injured employees as a class. Legal Services is also responsible for providing the agency with legal counsel regarding the Public Information Act (open records); human resource issues, such as hiring and disciplinary practices; contracts; and other issues that affect the daily operations of the agency.
- **Policy Development** establishes the policies, procedures, public and government relations' practices, and training programs that support the day-to-day operations of the agency. This service team performs all agency central administration functions not performed by TDI or DWC. Policy Development serves as the liaison to TDI regarding its administrative support functions for OIEC. This service team also coordinates OIEC field office facilities, personnel, and managerial issues with the DWC.

OIEC's central office is located in Austin, Texas and consists of 15 OIEC staff that provide technical support for the agency by developing and commenting on rules, analyzing data and performance measures, developing agency procedures and employee training, and providing central administration for the agency. Central office serves as the liaison with DWC and TDI regarding managerial, service, and administrative issues.

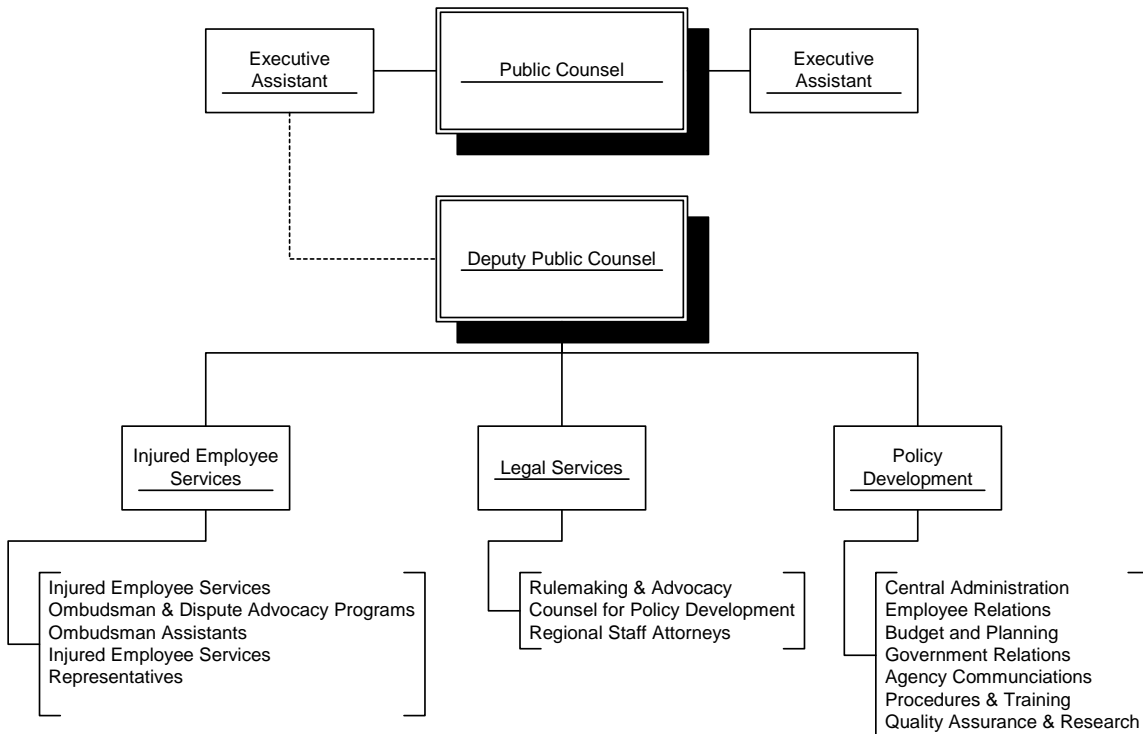
DWC manages 24 field office locations, and 65 Ombudsmen and 28 Ombudsman Assistants are located in those field offices. In addition to field offices, Ombudsmen may also travel to designated proceeding locations, such as Mount Pleasant and Uvalde to ensure injured employees do not have to travel in excess of 75 miles to attend a dispute resolution proceeding as required by Texas Labor Code §410.005. Field office locations are generally determined by DWC based upon claim activity and demand for services in a specific geographic area. OIEC personnel provide assistance in administrative dispute resolution proceedings and general customer service in the field offices.

At least one Ombudsman and one Ombudsman Assistant are located in every field office. Some field offices are staffed with additional OIEC personnel generally based upon the number of proceedings that are docketed for unrepresented injured employees. Field offices are located in the following areas to satisfy the requirement of Texas Labor Code §410.005: Abilene, Amarillo, Austin, Beaumont, Bryan/College Station, Corpus Christi, Dallas, Denton, El

Paso, Fort Worth, two offices in the Houston area, Laredo, Lubbock, Lufkin, Midland/Odessa, Missouri City, San Angelo, San Antonio, Tyler, Victoria, Waco, Weslaco, and Wichita Falls.

Staff attorneys are located in designated field offices to support the Ombudsman Program. Staff attorneys conduct legal research, develop training regarding legal strategies and hearings skills (i.e. opening statements, direct examination, cross-examination, closing argument, entering evidence, etc.) and provide responses to legal inquiries posed by Ombudsmen.

Figure 1
Organizational Chart for the Office of Injured Employee Counsel (OIEC) as of November 15, 2006



Source: Office of Injured Employee Counsel, 2006

C. Access Plan and Servicing Non-English Speaking Customers

In recognizing both Texas' diverse and increasing non-English speaking populations and OIEC's statutory responsibility to assist all injured employees of Texas, OIEC has placed its communication efforts as a top priority. As such, OIEC has developed an access plan to the agency's programs and facilities as required by Texas Labor Code §404.005. This plan assures that non-English speaking injured employees have access to services offered by OIEC.

The Injured Employee Services Program provides outreach and information materials for injured employees and employers. OIEC provides translation/interpreter services for Spanish speakers through its employees. All literature and materials are available in English, Spanish, and other languages upon request, such as Chinese, Vietnamese, and Korean. In addition, OIEC's website and all agency forms are available in Spanish. OIEC has also worked extensively with TDI and DWC to assure that all information disseminated regarding an injured employee's participation in a workers' compensation health care network is understandable and available for all non-English speaking injured employees and employers.

OIEC has taken additional measures to address the rising demand for Spanish-speaking Ombudsmen and personnel who can assist Spanish-speaking injured employees. Many OIEC positions are posted with Spanish-speaking skills preferred, if not required, particularly in highly populated Hispanic areas of the State. DWC contracts for translators for its formal proceedings (Contested Case Hearings) but not for its informal proceedings (Benefit Review Conferences). In 75 percent of the field offices, either an Ombudsman or Ombudsman Assistant is bilingual to facilitate communication in informal proceedings and to provide general customer service in Spanish to Spanish-speaking customers.

D. Description of Agency Activities:

1. Serving as an Advocate for Injured Employees

OIEC represents injured employees as a class through the following mechanisms:

- Work Group Participation
 - TDI and DWC sponsor a variety of work groups on workers' compensation matters, and OIEC participates in all of these work groups to ensure the viewpoint of injured employees is considered.
- Rulemaking Initiatives
 - OIEC participates in rules proposed by TDI impacting injured employees.

- OIEC participates in rules proposed by DWC impacting injured employees.
- OIEC proposes and adopts its own rules on behalf of injured employees.
- Amicus Curiae Briefs
 - OIEC files amicus curiae (friend of the court) briefs when a case is pending before court and the decision may impact a large number of injured employees.

a. Work Group Participation:

In response to HB 7's changes to the Texas Workers' Compensation System, DWC has formed several work groups in an effort to create a forum where various stakeholders may provide informal feedback on DWC's rulemaking initiatives. OIEC has been actively involved in all work groups in order to fulfill its mission to serve as an advocate on behalf of injured employees in the workers' compensation system. OIEC staff believes that vigorous participation at the informal rulemaking stage provides the greatest opportunity to effectively impact workers' compensation rules. OIEC has represented the interests of injured employees in the following work groups from March 1, 2006 to December 1, 2006:

- **Workers' Compensation Work Group** consists of various workers' compensation stakeholders, including insurance carriers, health care providers, employer groups, injured employees and their advocate OIEC, and legislative staff. Monthly meetings provided updates on the transition, data issues, and rulemaking initiatives. This work group was designed to offer a comprehensive overview of the changes implemented system wide as a result of HB 7 and to provide a forum for stakeholder input.
- **Workers' Compensation Network Communications Work Group** consists of TDI, DWC, and OIEC staff and served as a forum for information sharing as well as providing a unified communications message regarding the development of and injured employee participation in a workers' compensation health care network.
- **Peer Review Monitoring Work Group** was formed by DWC in an effort to solicit input from insurance carriers and other system stakeholders on the frequency, types, cost, and use of peer review reports by insurance carriers. DWC issued this data call in August 2006, which requires a select group of insurance carriers to submit information on each peer review requested by these insurance carriers during September and October 2006. Selected insurance carriers are requested to document each peer review report received during the data collection period and track from the insurance carrier's receipt of the peer review report to when the insurance carrier took action based on the peer review report. Each insurance carrier must also report the action taken as a result of the peer review report. Each selected insurance carrier is required to submit all

data by the end of December. DWC, with the assistance of REG, is processing the above-referenced information gathered during the data collection period in order to develop a fundamental understanding as to the effects of peer reviews in the workers' compensation system.

- **Performance-Based Oversight Work Group** consists of various health care providers and insurance carriers charged with developing a system whereby health care providers and insurance carriers can be publicly ranked/tiered as high, average, or poor performers in the system. The performance-based oversight initiative has its roots in the Sunset Advisory Commission's recommendations and later requirements by HB 7 to provide enhanced oversight on the system's poor performers in order to maximize the effectiveness of regulatory enforcement efforts. The work group established key regulatory goals, suggested measures in order to benchmark performance and assign a ranking for health care providers and insurance carriers, developed regulatory incentives as required by Texas Labor Code §402.075 to enhance compliance, and suggested an implementation plan to initiate the Performance-Based Oversight Program.
- **Complaints Work Group** developed an agency-wide complaint procedure required by Texas Labor Code §402.023 for TDI and DWC. This procedure consists of a high-level complaint processing framework and an implementation plan for a unified TDI and DWC effort to coordinate complaints via a single tracking system, the Complaint Information System.
- **Disability Management Work Group** was designed to provide a forum to discuss HB 7's requirement to adopt treatment and return to work guidelines in order to curb overutilization in the system and assure injured employees receive necessary and appropriate health care.
- **Language Translations Work Group** provided a comprehensive review of the TDI and DWC website communications. New translation software and procedures were developed as a result of this work group to assure educational materials were properly translated for non-English speaking system participants.
- **Inpatient/Outpatient Hospital Fee Guidelines Work Group** is a group of health care facilities and insurance carriers that discusses and recommends appropriate reimbursement methodologies for health care facilities. This work group is responsible for assisting DWC with its statutory mandate pursuant to Texas Labor Code §413.011 to promulgate health care reimbursement policies and guidelines that reflect standardized reimbursement structures found in other health care delivery systems with occupational injury requirements. OIEC's particular interest in this work group is to advocate for an appropriate reimbursement rate to assure that sufficient health care facilities accept and treat workers' compensation patients. OIEC's position is that injured employees should receive substantially similar treatment to group health patients. Therefore,

the fee reimbursement for health care facilities should be substantially similar, regardless of whether the injury was work-related.

OIEC's active participation in TDI's and DWC's various informal work groups and stakeholder meetings has been vital to keeping OIEC informed of the latest issues in the workers' compensation system and to offer the injured employees' viewpoint. As a result of work group discussions and information received from ombudsmen, OIEC has had the opportunity to express its concerns about injured employees' access to health care in the workers' compensation system. This concern has been an overarching theme in OIEC's informal feedback in many of the above-referenced work groups and will be discussed further in Part III of this report.

b. Rulemaking Initiatives:

OIEC has been actively involved in developing agency rules in accordance with Chapter 2001 of the Government Code. Texas Labor Code §404.006 gives the Public Counsel rulemaking authority. OIEC worked with the *Texas Register* at the Secretary of State's Office to provide for the new agency's rulemaking activities. Chapters 275 through 300, Part VI, Title 28 of the Texas Administrative Code have been reserved for OIEC rulemaking initiatives.

On August 3, 2006, OIEC adopted its first rules regarding the Ombudsman Education and Training Program and Private Meetings with Unrepresented Injured Employees. Adopted §276.10 extends the current training and education program given to Ombudsmen. This section provides for the assignment of staff attorneys to each Ombudsman to offer legal research and counsel on providing assistance to injured employees in administrative dispute resolution proceedings. Adopted §276.12 establishes requirements for ombudsmen to meet privately with unrepresented injured employees prior to a proceeding. These rules became effective August 23, 2006.

OIEC's second rulemaking initiative regarding OIEC's mission and the notification requirement for employers to inform their employees of the Ombudsman Program in accordance with Texas Labor Code §404.153 is underway. An informal draft rule was placed on OIEC's website from September 4, 2006 through October 6, 2006 for informal feedback from stakeholders. The formal rule proposal was sent to the *Texas Register* on October 9, 2006 for an October 20, 2006 publication and a November 21, 2006 public comment period deadline. OIEC is currently incorporating public comment and plans to adopt the rules in December 2006.

In accordance with the authority granted to OIEC in Texas Labor Code §404.104, OIEC has been active in the rule development process at DWC. OIEC has attended all stakeholder meetings concerning workers' compensation rules and will continue to do so. In addition, OIEC has commented on both informal pre-

proposal draft rules and formal proposed rules. OIEC's role in providing comments to pre-proposal drafts and proposed rules is critical to ensuring that the interests of injured workers are protected in the workers' compensation system. As a result, OIEC's efforts in this regard will be ongoing.

OIEC has actively participated in the following TDI and DWC workers' compensation rulemaking initiatives since the passage of HB 7:

- **Preauthorization and Concurrent Review Process Rules** address revisions to Texas Labor Code §413.014(c), which requires health care providers to seek preauthorization and concurrent review at a minimum for certain treatments including physical and occupational therapy.
- **Medical Billing and Reimbursement Rules** address statutory changes to Texas Labor Code §408.027 and provide medical reimbursement direction for system participants. These rules primarily focus on HB 7's revised medical billing timeframes and have been designed to accommodate electronic medical billing initiatives by identifying both paper and electronic processes that are compatible.
- **Treating Doctor Examination to Define Compensable Injury Rule** addresses the new statutory provision Texas Labor Code §408.0042, designed to promote earlier identification of the nature of the compensable injury and resolution of extent of injury disputes. This rule establishes requirements for requesting the examination, reporting the findings of the examination and acceptance or denial of those findings, in addition to billing and dispute resolution topics.
- **Injured Employee's Rights and Responsibilities in the Texas Workers' Compensation System Rule** implements Texas Labor Code §404.109, which requires OIEC's Public Counsel to submit to DWC and TDI the "Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System" to be distributed as provided by DWC and TDI rules.
- **Interlocutory Order Rules** address HB 7's statutory changes to Texas Labor Code §410.032 regarding the issuance of interlocutory orders. The changes create a new process and establish requirements for requesting and issuing an interlocutory order for the payment of workers' compensation benefits pending final resolution of a dispute.
- **Electronic Claims Request Rules** implement House Bill 251, Texas Legislature, Regular Session, 2005, which requires the release of certain information to an insurance carrier so that potential sources of recovery may be identified.
- **Designated Doctor/ Required Medical Examination Rules** address amendments to Texas Labor Code §§408.004 and 408.0041 that limit the use of required medical examinations and expand the scope of a designated doctor. Under HB 7, in addition to authority to certify injured employees at maximum medical improvement and to assign impairment ratings, designated doctors may now also evaluate and report on the extent of the employee's work-related injury; determine whether the

injured employee's disability is a direct result of the work-related injury; determine an injured employee's ability to return to work; and any other issues similar to those above.

- **Peer Review Rules** establish the qualifications for health care providers conducting peer reviews, standards for peer reviews, and the appropriate use of peer review reports.
- **Disability Management Rules** establish a construct (consisting of an integrated tool set) focused on improving quality of health care and return to work outcomes for the workers' compensation system. It is based on the premise that only a small number of injured worker claims (14 percent of claims in Texas) account for 80 percent of system medical and indemnity costs. The focus of disability management is on these "high risk" lost time claims in a proactive, preventive approach by early intervention with proven strategies to help direct clinical and work retention activities. The major components of a disability management system are treatment guidelines; treatment planning for "at risk" claims; return to work guidelines; and work retention strategies, such as case management.
 - **Treatment Guideline Rule** establishes a universal standard treatment guideline for use for health care provided to injured employees not subject to workers' compensation health care networks. The purpose of an adopted treatment guideline is to achieve effective medical cost control, reduce excessive or inappropriate medical care, and to provide a tool to monitor health care providers' patterns of practice and appropriateness of treatment.
 - **Treating Planning Rule** allows for options for health care outside the treatment guidelines through discussion and negotiation in the preauthorization process. The rule is designed where health care providers and insurance carriers can negotiate and decide on appropriate health care delivery for an injured employee. In doing so, health care providers will avoid future fee disputes because health care provided through a treatment plan guarantees payment for services.
 - **Return-to-Work Guideline Rule** provides a basis for treating doctors to objectively establish or develop return to work goals or a plan based on guideline-established expectancies for disability duration that includes expected return-to-work timeframes for the timely and medically appropriate return-to-work of injured employees. Return-to-work guidelines provide benchmarks for all system participants for appropriate stay-at-work and lost time as well as return-to-work goals.
- **Medical Dispute Resolution Rules** provide for a medical dispute resolution process that is modeled after group health insurance whereby an independent review organization provides medical judgment as to appropriate and necessary medical care. These rules are intended to

streamline the process for an efficient resolution of non-network medical care disputes.

- **Inpatient and Outpatient Hospital Fee Guideline Rules** implement Texas Labor Code §413.011, which requires DWC to promulgate health care reimbursement policies and guidelines that reflect standardized reimbursement structures found in other health care delivery systems while considering occupational injury requirements. DWC is required to adopt current reimbursement methodologies, models, and values used by federal Centers for Medicare and Medicaid Services to achieve such standardization. DWC may deviate from these reimbursement methodologies where appropriate.

Since the passage of HB 7, the only three workers' compensation rulemaking initiatives that OIEC did not provide informal or formal public comment are:

- **Electronic Medical Billing Rules** establish the method of transmission and the required elements in an electronic transmission. Texas Labor Code §408.0251 requires DWC to adopt rules regarding the submission and processing of medical bills from health care providers to insurance carriers.
- **Return-to-Work Pilot Program for Small Employers Rules** implement Texas Labor Code §413.022, which requires the Commissioner of Workers' Compensation to establish by rule a return-to-work pilot program for small employers. The purpose of the Return-to-Work Pilot Program for small employers is to promote the early and sustained return to work of injured employees in modified or alternate duty job assignments through reimbursements to small employers for the costs of workplace modifications and other costs that were necessary to return injured employees back to work. The maximum reimbursement that a single eligible employer may receive is \$2,500 annually for all workplace modifications.
- **TDI's Workers' Compensation Health Care Network Rules** implement the Workers' Compensation Health Care Network Act pursuant to Article 4 of HB 7. Under this Act, if an employer elects to participate in a workers' compensation health care network, the employer's injured employees who receive workers' compensation health care coverage and who live in the network service area must obtain health care services for a work-related injury from a health care provider that has contracted with the network. The rules establish certification, administration, evaluation, and enforcement of the delivery of health care services provided to an injured employee by the network.

While OIEC staff believes DWC's Electronic Medical Billing Rules initiated as a result of HB 7 will significantly improve the communication between DWC and system participants, OIEC had no substantive recommendations to enhance the proposed rules. Therefore, OIEC suggested the rules be adopted as proposed. With regard to the Return to Work Pilot Program for Small Employers and

Workers' Compensation Health Care Network Rules, both rule packages were proposed and adopted prior to the establishment of OIEC.

OIEC's mission to advocate on behalf of injured employees in the workers' compensation rulemaking process is captured by Table 1. OIEC is committed to review every rule proposed by TDI and DWC to determine its impact, if any, on injured employees and to provide comments that protect the interests of injured employees.

Table 1 OIEC's Advocacy Efforts and Outcomes	
OIEC's Advocacy Efforts through Participation in TDI's and DWC's Rulemaking Processes	Outcomes Based on Public Comment Provided by OIEC from March 2006 through November 2006
Percentage of workers' compensation formal or informal rules analyzed by OIEC	100%
Percentage of workers' compensation formal or informal rulemaking processes in which OIEC participated	92.7%
Percentage of rules changed for the benefit of injured employees as a result of OIEC participation	68.8%
Source: Office of Injured Employee Counsel, 2006.	

c. Participation in Court Proceedings and Filing Amicus Curiae Briefs on behalf of Injured Employees

OIEC filed its first amicus curiae (friend of the court) brief with the Texas Supreme Court on September 5, 2006. Texas Labor Code §404.104(3) provides that OIEC “may appear or intervene, as a party or otherwise, as a matter of right, on behalf of injured employees as a class in any proceeding in which the public counsel determines that the interests of injured employees as a class are in need of representation . . .”

The Public Counsel determined that the interests of injured employees as a class would potentially be adversely affected if the Texas Supreme Court granted a petition for review filed by an insurance carrier and reversed the Court of Appeal's decision. The case concerns the interpretation of Texas Labor Code §409.021(c), the provision that establishes that an insurance carrier waives its right to contest compensability if it fails to do so within 60 days of the date it receives written notice of the claimed injury. OIEC determined that if the Supreme Court were to grant the petition and reverse the Court of Appeals decision, the effectiveness of the waiver provision, which encourages prompt

investigation and decision-making by the insurance carrier to either pay benefits or contest compensability, would be significantly undermined.

2. Assisting Injured Employees Through the Ombudsman Program and the Use of Regional Staff Attorneys

When a Benefit Review Conference is scheduled and an injured employee is not represented by an attorney, a notification is routed from DWC to OIEC. OIEC then contacts the injured employee and offers assistance to proceed through the dispute resolution process.

An Ombudsman Assistant contacts the injured employee, explains the upcoming process, and schedules an appointment with the injured employee to meet with an Ombudsman and prepare for the Benefit Review Conference. The injured employee is informed that Ombudsman assistance is free of charge but that the injured employee has the right at any time to obtain an attorney or decline the assistance of an Ombudsman. An overwhelming majority of injured employees who do not retain an attorney accept the assistance of an Ombudsman. In fact, 20,000 letters are sent annually to confirm that an injured employee has accepted assistance and is set for a preparation appointment, yet only approximately 100 letters are sent annually confirming that an injured employee has declined Ombudsman assistance.

At the preparation appointment, the Ombudsman becomes familiar with the disputed issues in the injured employee's claim and educates the injured employee regarding documentation needed to support the injured employee's position. The Ombudsman also explains the expectations at a Benefit Review Conference. If legal issues arise in a case and the Ombudsman needs additional research or legal assistance, the Ombudsman contacts their assigned staff attorney for assistance. At the Benefit Review Conference, the Ombudsman assists the injured employee in presenting the case to the Benefit Review Officer. At the conclusion of the Benefit Review Conference, the case is either resolved or is scheduled for a Contested Case Hearing.

Subsequent preparation appointments occur between the Benefit Review Conference and the Contested Case Hearing so that the Ombudsman can prepare the injured employee for the Contested Case Hearing and ensure all documents are properly obtained and exchanged. The Ombudsman may enlist additional research or legal assistance from the staff attorney to help prepare opening and closing arguments, cross-examination of witnesses, organization and presentation of evidence, and discuss legal strategy. After the conclusion of the Contested Case Hearing and depending on the outcome of the decision, either party can appeal the decision to DWC's Appeals Panel. The Ombudsman also assists an injured employee with preparing an appeal or a response to an appeal and getting the documents filed timely.

All administrative remedies are exhausted after the outcome of the appeal is entered by DWC. As such, either party may file in district court to have the disputed issues further evaluated. OIEC has no statutory authority to assist an injured employee in court. Consequently, an injured employee must either retain legal counsel or pursue the claim pro se at district court. Based on telephone calls received and issues raised to OIEC staff, it appears that there are a limited number of attorneys who will represent injured employees in workers' compensation cases in district court. OIEC makes referrals to the State Bar of Texas' Attorney Referral Service to attempt to help injured employees find a lawyer to represent them in court. It is important to note that an injured employee without representation can win every issue throughout the administrative workers' compensation process only to lose on a default judgment in district court solely due to a lack of representation.

3. Educating, Referring, and Assisting Injured Employees

a. Educating Injured Employees and Other System Participants

OIEC tracks the manner in which it is able to educate injured employees or other system participants regarding the role of OIEC through two major mechanisms:

- The number of injured employees that receive the *Injured Employee Rights and Responsibilities in the Workers' Compensation System*, and
- The number of public presentations OIEC provides to injured employees or other system participants regarding the role of OIEC. See Table 2, page 18.

OIEC is actively involved in education and outreach through public presentations. These presentations include workshops, seminars, speaking engagements, and other forums where OIEC staff speaks to a group of system stakeholders regarding OIEC, its role, and how OIEC helps protect the interests of injured employees in the workers' compensation system.

OIEC estimates that approximately 170,000 injured employee packets, which include the *Injured Employee Rights and Responsibilities in the Workers' Compensation System* were mailed by DWC for claims established in 2005. However, OIEC is subtracting the number of packets returned due to address delivery failures to determine the actual number of injured employees that receive these educational materials. OIEC has established a method for tracking returned mail and began collecting this data when OIEC's injured employee rights and responsibilities information began being distributed in June 2006. Of the 55,147 injured employee rights and responsibilities packets that have been distributed by DWC when a claim is established, 3,750 packets have been returned to date. OIEC is targeting 125,000 injured employees annually with these materials and plans to monitor this process closely to see if improvements

in the process would increase the number of injured employees receiving these educational materials. It is also important to note that OIEC is only able to reach those injured employees for whom claims are established with DWC. This means that injured employees with “medical only” claims that are not reported to DWC do not currently receive this information. OIEC continues to seek opportunities to reach a greater number of injured employees in Texas.

Table 2 OIEC’s Outreach Efforts and Outcomes	
OIEC’s Education and Outreach Efforts	Outcomes Based on Data Collected from March 2006 through October 2006
Percentage of injured employees with workers’ compensation claims reached by OIEC outreach efforts	93.2%
Number of injured employees educated regarding their Rights and Responsibilities	51,397
Number of public presentations performed by OIEC	28

Source: Office of Injured Employee Counsel, 2006.

Prior to March 1, 2006, the Ombudsmen and Ombudsman Assistants only provided assistance to injured employees who were unrepresented and were scheduled for a proceeding. With the creation of OIEC, Ombudsman and Ombudsman Assistants are now assisting injured employees who contact the local field office and request to speak with someone from OIEC. OIEC developed a new method for OIEC staff to track the assistance provided to injured employees who are not scheduled for a proceeding.

OIEC only began collecting this new assistance data in April 2006. Table 3 below depicts the statistics collected for six months:

Table 3 OIEC’s Assistance Efforts and Outcomes	
OIEC’s Assistance to Injured Employees	April 2006 through September 2006
Walk-in Customer for General Assistance	868
Telephone Contact for General Assistance	14,554

Source: Office of Injured Employee Counsel, 2006.

b. Referring Injured Employees to Appropriate Social Services and Financial Assistance Programs

OIEC is responsible for referring injured employees to the Department of Rehabilitative and Assistive Services (DARS), the Texas Workforce Commission (TWC), or other social service, financial assistance, rehabilitation, and work placement programs. OIEC created a new method to log various types of referrals that staff makes. Additionally, OIEC implemented a system enhancement that allows staff to indicate in the dispute resolution information system whether or not a referral to DARS has been made. The dispute resolution information system that OIEC shares with DWC generates a letter to the injured employee on a claim explaining the various services provided by DARS.

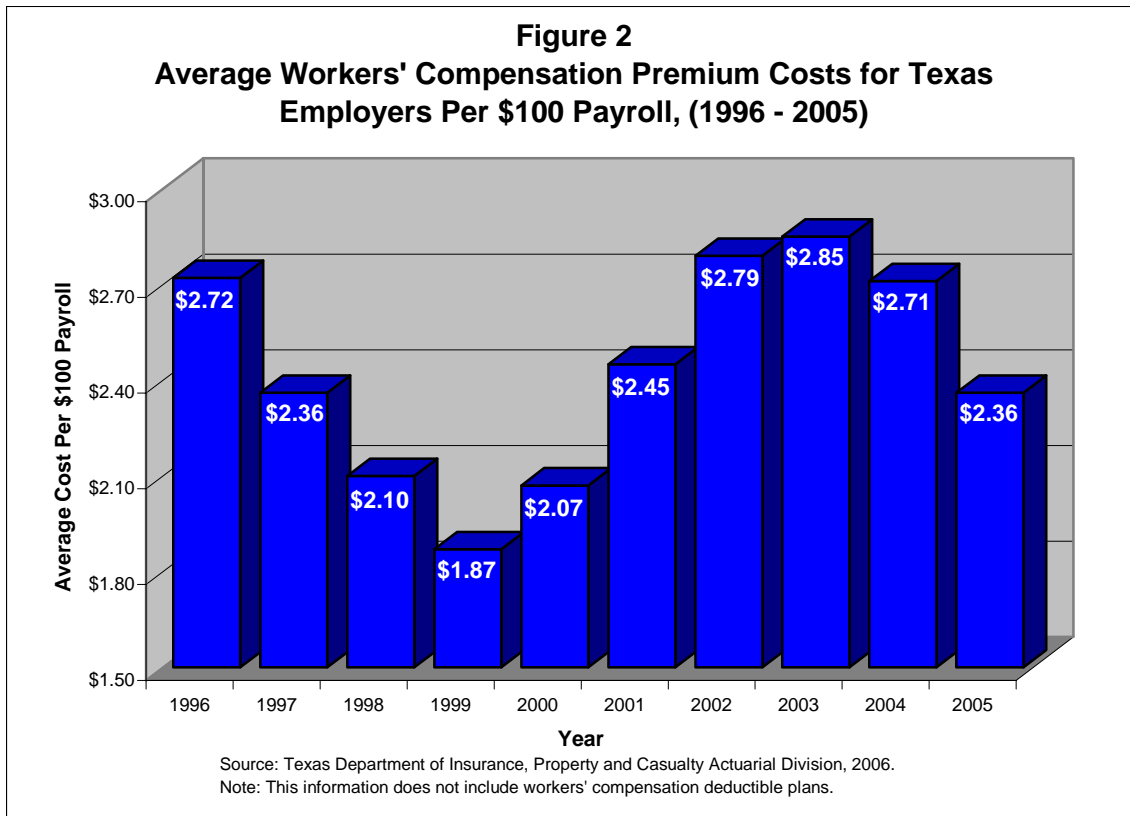
Table 4 depicts OIEC's referral statistics collected for six months:

Table 4 OIEC's Referral Efforts, April through September, 2006.	
OIEC's Referrals to DARS, TWC, and Other Social Service or Financial Assistance Programs	April 2006 through September 2006
Department of Rehabilitative and Assistive Services	191
Texas Workforce Commission	37
Other referrals	35
Source: Office of Injured Employee Counsel, 2006.	

III. Adequacy of Income and Medical Benefits for Injured Employees in the Workers' Compensation System

Noting the limited ability to obtain current data at this time, this section of the legislative report provides an analysis of the ability of the workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers as required by Texas Labor Code §404.106.

A. Cost to Employers



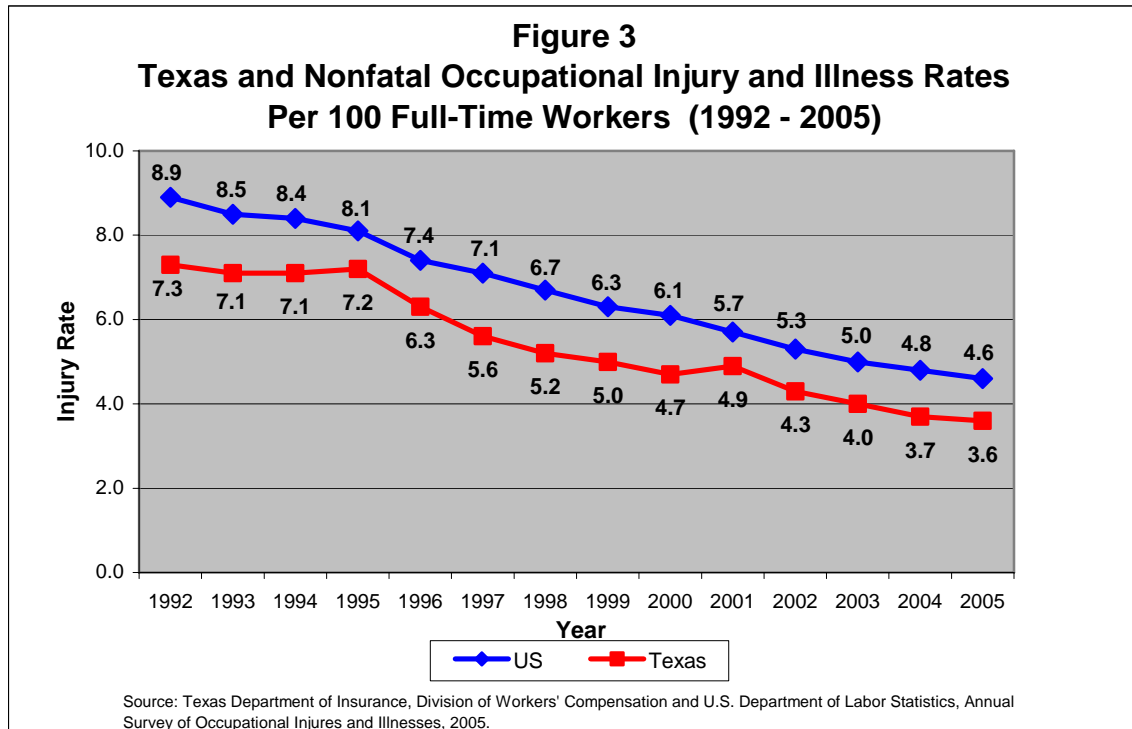
According to TDI's Property and Casualty Actuarial Division, there has been over a 20 percent decrease in workers' compensation rates over the past two years. Figure 2 demonstrates that there has been a decline in average costs to employers per \$100 of payroll in the last two years. OIEC believes that there is a potential correlation between an employer's cost of obtaining workers' compensation coverage with both:

- The decrease in occupational injuries in Texas as shown in the following section of this report (page 21), and
- The increase in medical denials later discussed in this report (page 31).

B. Income Benefits

1. Financial Impact of Work-Related Injuries

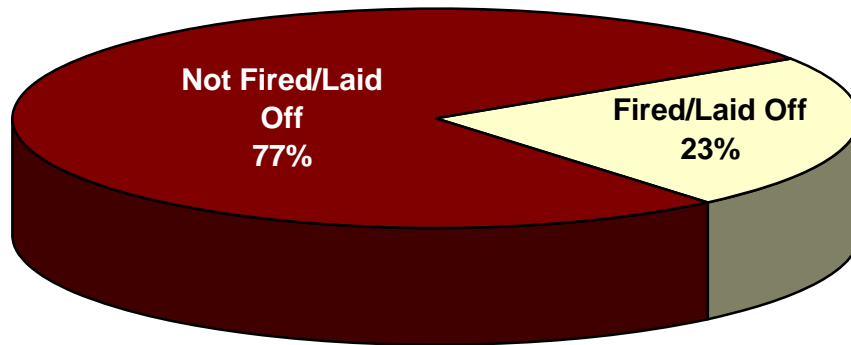
During 2005, a total of 246,000 nonfatal injuries and illnesses were reported in private industry workplaces in Texas, which results in a rate of 3.6 cases per 100 equivalent full-time workers according to TDI's October 23, 2006 press release.



While this rate of injury is a slight decline from recent years (3.7 in 2004 and a rate of 4.0 in 2003) and while Texas has remained below the national injury rate (national rate is 4.6 for 2005) since data collection began for Texas in 1990, OIEC notes that a quarter million Texans sustained a work-related injury in 2005 and that significant social and financial burdens have resulted from those work-related injuries.

OIEC believes it is important to note that the purpose of income benefits is to either replace the income that an injured employee loses because of time lost or reduced earning potential or to compensate the injured employee for the permanent impairment resulting from the injury. Many injured employees receiving income benefits contact OIEC reporting difficulties in meeting financial obligations, such as mortgages, automobile loans, and household bills. This financial burden is compounded for injured employees should there be a change in employment status. Frequently, the difficulty in meeting financial obligations results from the delay in receiving income benefits in contested cases where benefits are not paid by the insurance carrier during the period that the dispute is proceeding through the indemnity dispute resolution process.

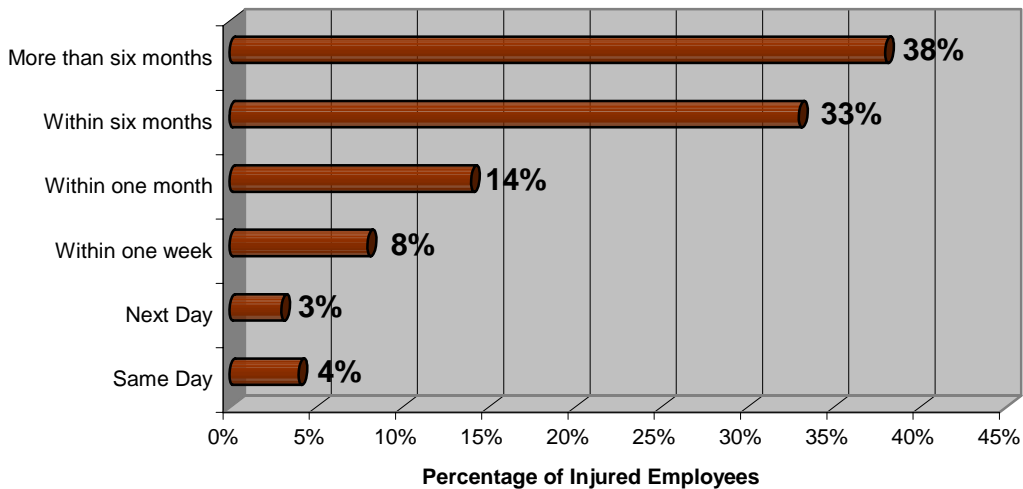
Figure 4
Percentage of Injured Employees Who Reported Being Fired/Laid Off at Some Point After Their Work-Related Injury



Source: 2005 Injured Worker Survey Results from the Texas Department of Insurance Workers' Compensation Research and Evaluation Group, March 2006

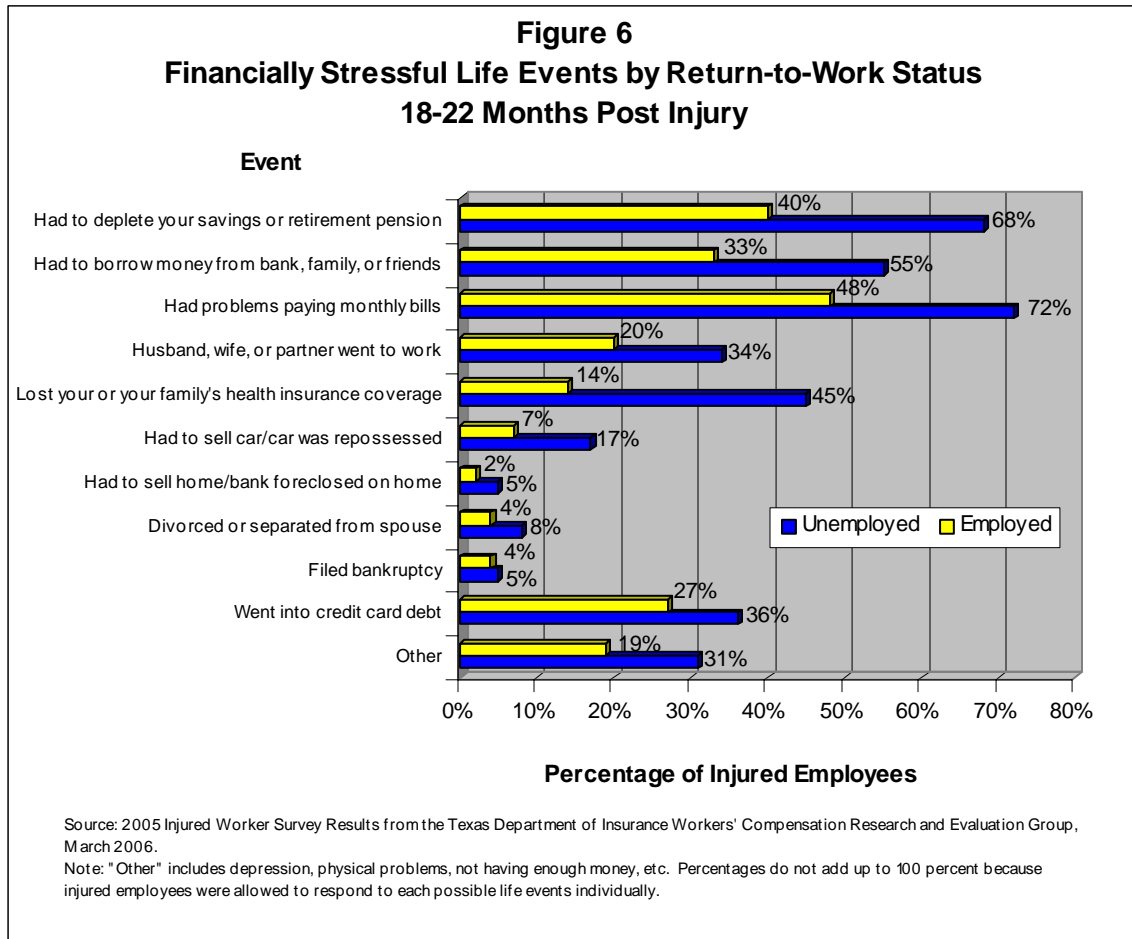
Approximately a quarter of injured employees report being fired or laid off at some point after their work-related injury. See Figure 4. Nearly two-thirds of those injured employees report being laid off within six months of their work-related injury while almost one-third (29 percent) report being laid off within one month of their work-related injury. See Figure 5.

Figure 5
How soon after you reported your work-related injury or illness to your employer were you fired or laid off?



Source: 2005 Injured Worker Survey Results from the Texas Department of Insurance Workers' Compensation Research and Evaluation Group, March 2006

With the change in employment status, 72 percent of injured employees surveyed report having problems paying monthly bills; 68 percent report having to deplete savings and retirement accounts; 68 percent report having to borrow money from a bank, family member, friend; and 36 percent report having incurred credit card debt within 18 to 22 months post injury. See Figure 6.



As a result of working one-on-one with injured employees through OIEC's Ombudsman Program, OIEC has determined that a work-related injury can be detrimental socially, financially, and psychologically to Texas' injured employees and their families. It is important to understand that a work-related injury is often a life-altering event. The Legislature recognized and addressed this issue by reducing the statutory waiting period for paying benefits back to the first day of disability from four weeks to two weeks pursuant to Texas Labor Code §408.0082. Also HB 7 provides that on or after October 1, 2006, the Statutory Average Weekly Wage is equal to 88 percent of the Average Weekly Wage as computed by the Texas Workforce Commission. While this increase in the maximum compensation rate is beneficial, it does not impact a great number of injured employees because of the limited number of injured employees that are paid at such a level as to qualify for that rate.

2. Income Benefit Disputes

In 2005, DWC received a total of 42,113 disputes regarding income benefits. The majority of disputes, specifically 18,124 disputes or 43 percent, proceeded to a Benefit Review Conference for resolution while 8,883 disputes or 21 percent were resolved prior to a Benefit Review Conference. The remaining 15,106 disputes or 36 percent did not go forward in the indemnity dispute resolution process because the parties either decided not to proceed to a Benefit Review Conference or because DWC determined that the parties were not prepared with necessary information to go to a Benefit Review Conference. See Figure 7.

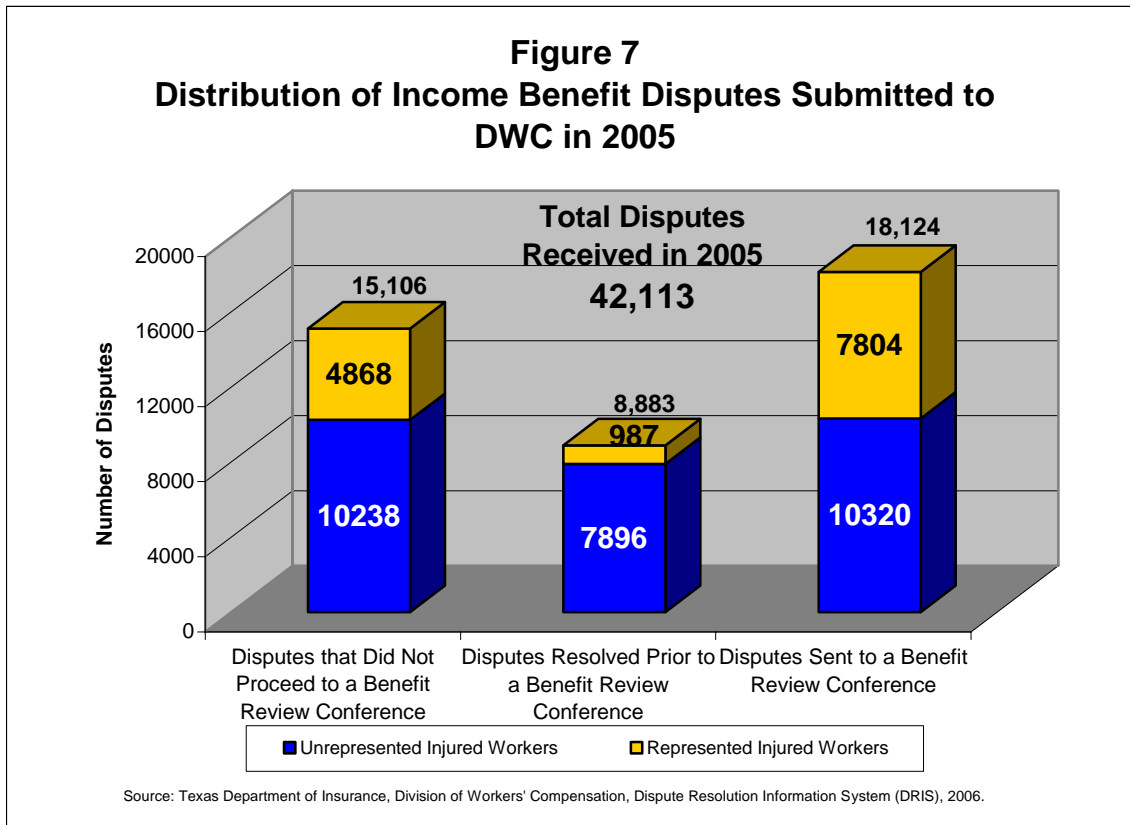


Table 5 (page 25) demonstrates the top ten disputed issues from January through September of 2006 and identifies the level where the dispute was resolved. For example, 55.8 percent of disputes regarding a designated doctor's maximum medical improvement date were either withdrawn prior to a Benefit Review Conference, or the injured employees' requests to pursue their claim at a Benefit Review Conference were denied. Of those cases where a designated doctor's maximum medical improvement date was disputed and the issue was permitted to proceed through the indemnity dispute resolution process, 26.5 percent of the time the disputed issue was resolved prior to a Benefit Review Conference while 5 percent of the time the dispute was resolved once the proceeding was held (4 percent were resolved at a Benefit Review Conference, and 1 percent was resolved at a Contested Case Hearing). See Table 5.

Table 5
Top Ten Disputed Issues Received by DWC From 01/01/2006 through 09/30/06 and
the Level Where They Were Resolved ¹

Issue Type	Percent Withdrawn or Denied	Prior to Benefit Review Conference²	At Benefit Review Conference	At Contested Case Hearing	Concluded at Appeals Panel
Existence/Duration/Extent of Disability	13.0%	24.3%	14.3%	13.5%	2.1%
Designated Doctor's Impairment Rating	46.2%	34.5%	2.9%	2.1%	1.0%
Designated Doctor's Maximum Medical Improvement Date	55.8%	26.5%	4.0%	1.0%	0.0%
Extent of Injury	19.6%	25.6%	10.1%	10.2%	2.9%
Existence of Compensable Injury	16.0%	24.8%	10.7%	12.6%	3.1%
Amount of Average Weekly Wage	11.4%	42.6%	25.2%	1.0%	0.1%
Impairment Rating	5.2%	94.5%	0.1%	0.0%	0.0%
Maximum Medical Improvement Date	7.4%	91.9%	0.2%	0.0%	0.0%
Supplemental Income Benefits/ Subsequent Quarters	44.8%	19.5%	11.9%	6.1%	2.0%
Timely Contested by Carrier	7.8%	44.4%	15.4%	3.4%	1.0%

Source: Texas Department of Insurance, Division of Workers' Compensation, Dispute Resolution Information System (DRIS), 2006.

Notes:

1 Percentages do not add to 100% due to pending disputes at various levels of the indemnity dispute resolution process.

2 "Resolved prior to Benefit Review Conference" does not include issues included in disputes that were withdrawn or denied.

The indemnity dispute resolution process at DWC proceeds relatively quickly. However, injured employees often suffer financial hardships in those cases where the insurance carrier denies entitlement to income benefits. For many employees, particularly those employees that provide the only source of income for their families, any period of time without income has devastating consequences. By the time the benefits are paid following a final decision in the indemnity dispute resolution process, the damage has already occurred because injured employees likely fall behind in their payments, and the money they ultimately receive is insufficient to permit them to catch up as a result of late payments and interest accrued on the unpaid balance.

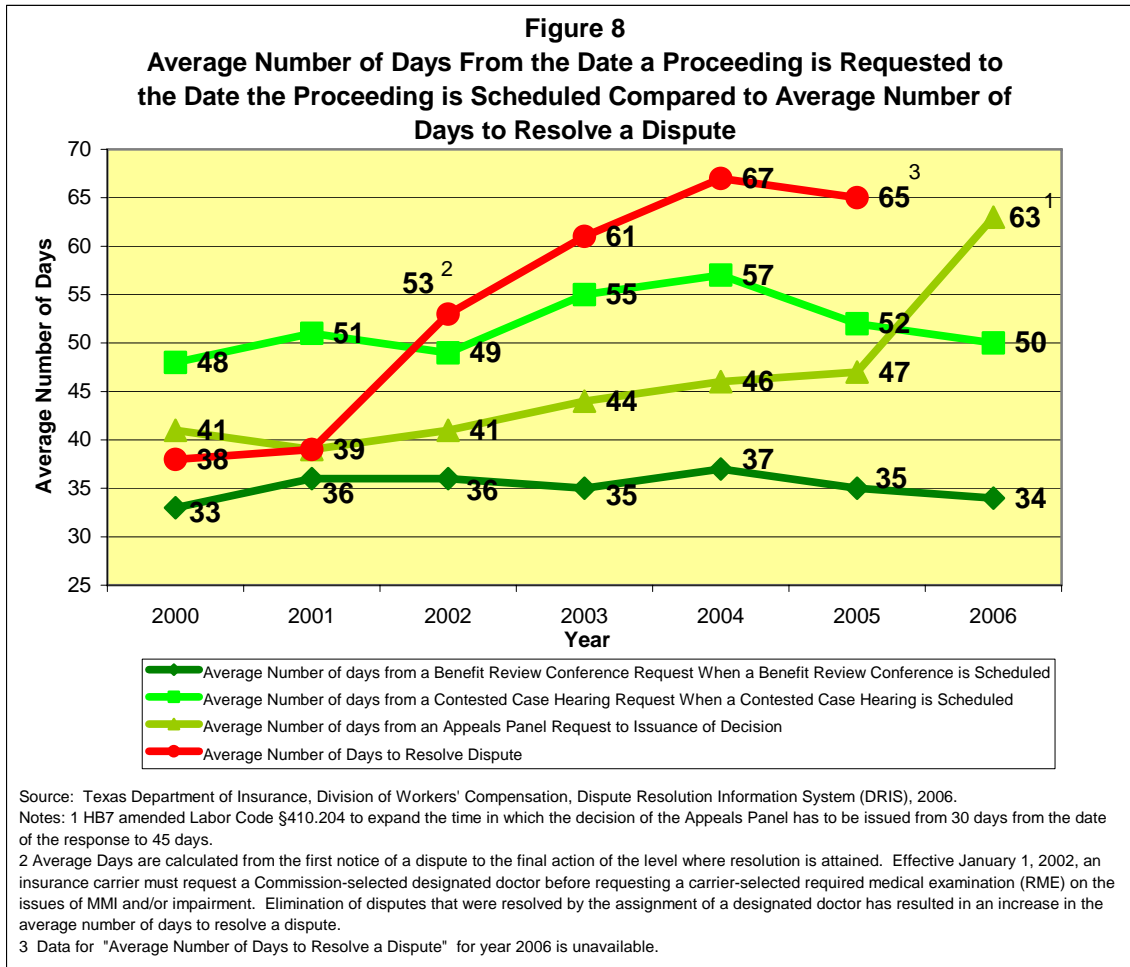


Figure 8 illustrates that in 2005, it took an average of 65 days to resolve an income dispute in the indemnity dispute resolution process. However, should an insurance carrier dispute the injured employee's claim throughout the indemnity dispute resolution process, an injured employee may be forced to live without income benefits an average of 147 days (which consists of an average 34 days for a Benefit Review Conference; 50 days for a Contested Case Hearing; and 63 days for review before the Appeals Panel).

Prior to HB 7 and DWC's rulemaking efforts regarding interlocutory orders, the interlocutory order process provided some relief in circumstances where the injured employee was likely to prevail on the merits. However, with the passage of the DWC rule that implements HB 7 changes, the process for requesting an interlocutory order has become more complicated and lengthy, which has undermined the effectiveness of interlocutory orders to immediately provide income and medical benefits pending resolution of the disputed issue. A recommendation for addressing this issue is found on page 41 of this report.

C. Medical Benefits

1. Health Care Within a Workers' Compensation Network

Prior to HB 7, there was dissatisfaction with the Texas Workers' Compensation System. There were concerns about employers and health care providers leaving the system. HB 7 provided workers' compensation health care networks as a solution in response to those concerns. Under the Workers' Compensation Health Care Network Act pursuant to Article 4 of HB 7, if an employer elects to participate in a workers' compensation health care network, the employer's injured employee who sustains a work-related injury and who lives in the network service area must obtain health care services for that injury from a health care provider that has contracted with the network. This health care delivery framework was designed to model the Texas Workers' Compensation System after group health insurance while simultaneously respecting the fundamental difference that benefit delivery systems in the workers' compensation system must pass Constitutional muster.

To date, the following workers' compensation health care networks have been approved by TDI:

- Concentra HCN
- Concentra Texas Star
- Memorial Hermann
- Corvel
- First Health HCN
- First Health/Travelers
- Genex Services, Inc
- Intracorp
- Liberty Health Care
- First Health/AGCIS
- Compkey/Forte
- SHA, LLC/FirstCare
- Physicians Cooperative of TX
- The Hartford HCN
- Specialty Risk TX WC HCN
- IMO Med-Select
- Zurich Services Corp HCN

The following approved workers' compensation health care networks have applied for modifications to their service areas:

- Concentra HCN
- Texas Star Network/Concentra
- Liberty Health Care Network

Pursuant to HB 7, workers' compensation health care networks are required to develop a process whereby complaints may be handled. TDI is also tracking complaints it receives regarding workers' compensation health care networks. Since March 2006 and based on TDI's definition of what is considered a complaint, TDI reported at the Workers' Compensation Work Group on October 11, 2006 that 17 complaints pertaining to workers' compensation health care networks had been received. Of the complaints received, TDI found six to be justified complaints. Five of the six justified complaints related to inadequacy of the networks' health care provider directory. The remaining justified complaint related to network adequacy. To date, TDI has not taken any action against a workers' compensation health care network but reports that two complaints are pending full investigation.

TDI and REG performed a data call in the third quarter of 2006 to obtain initial information as to the penetration of workers' compensation health care networks in the market. Preliminary information was gathered to report on the progress of network expansion. In doing so, 13 workers' compensation insurance companies were contacted and asked to answer questions regarding their current and future participation in the workers' compensation health care networks. These 13 insurance companies represent about 84 percent of the direct premium written during the second quarter of 2006.

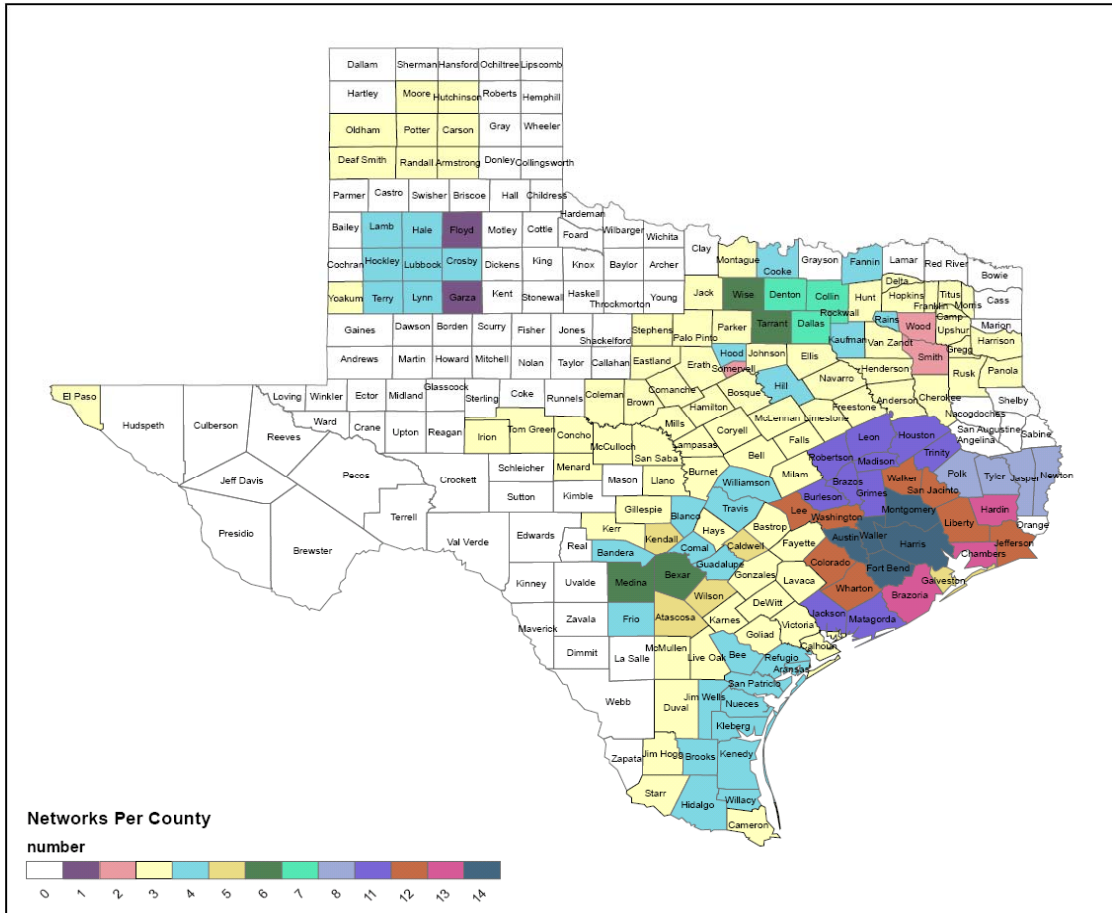
As of September 1, 2006, the insurance carriers surveyed reported that approximately 2,527 claims were treated by workers' compensation health care networks. The results of the data call also estimate that the number of injured employees or claims treated in a workers' compensation health care network would significantly increase by the end of 2007.

- By the end of 2007, nine of the insurance carriers surveyed reported that approximately 29,634 claims would be treated by workers' compensation health care networks; and
- By the end of 2008, nine of the insurance carriers surveyed reported that approximately 50,840 claims would be treated by workers' compensation health care networks.

Figure 9 demonstrates workers' compensation health care networks' penetration by county:

Figure 9

Counties With Workers' Compensation Networks



Source: Texas Department of Insurance, 2006.

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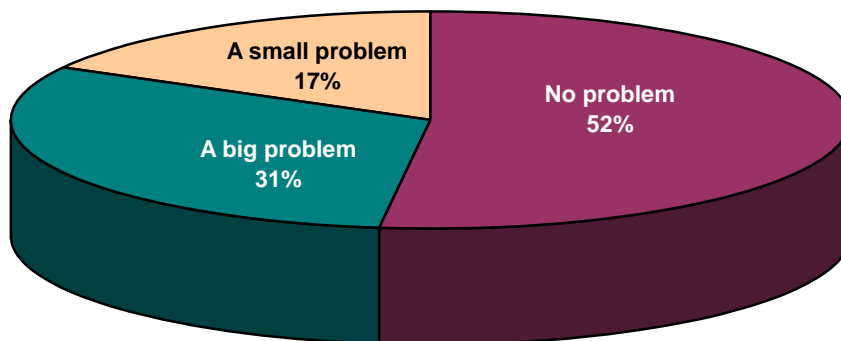
With workers' compensation health care networks in their infancy, OIEC believes that there is not enough information collected to provide a reliable assessment of their impact on injured employees at this time. OIEC expects health care provided within a workers' compensation health care network to be a critical monitoring issue as network penetration progresses across the State. OIEC will report more detail as data is collected for its second Legislative Report due December 1, 2008.

2. Health Care Outside of Workers' Compensation Networks

a. Access to Care:

OIEC believes that many health care providers have stopped accepting workers' compensation patients because of the administrative burdens associated with the workers' compensation system. Recently, OIEC had the opportunity to take a tour through an orthopedic, sports, and rehabilitation center to examine the differences of processing for a workers' compensation patient compared to processing a group health patient. This experience brought to life the overwhelming administrative burden of handling a workers' compensation patient. Administrative support spent an extensive amount of time determining coverage issues and the network status of the patient, coordinating physician schedules for preauthorization consultation between the peer review doctor and treating doctor, and making telephone calls due to the limited ability to view workers' compensation information online. This administrative burden coupled with outdated health care reimbursement fee guidelines has significantly contributed to health care providers' decreased participation in the workers' compensation system. As a result, injured employees are having difficulties finding a treating doctor to render services, particularly in rural areas of the State. OIEC believes that an injured employee's access to appropriate health care is paramount to a successful workers' compensation system. Approximately half of injured employees surveyed by REG reported having difficulties in getting medical care for their injury. See Figure 10.

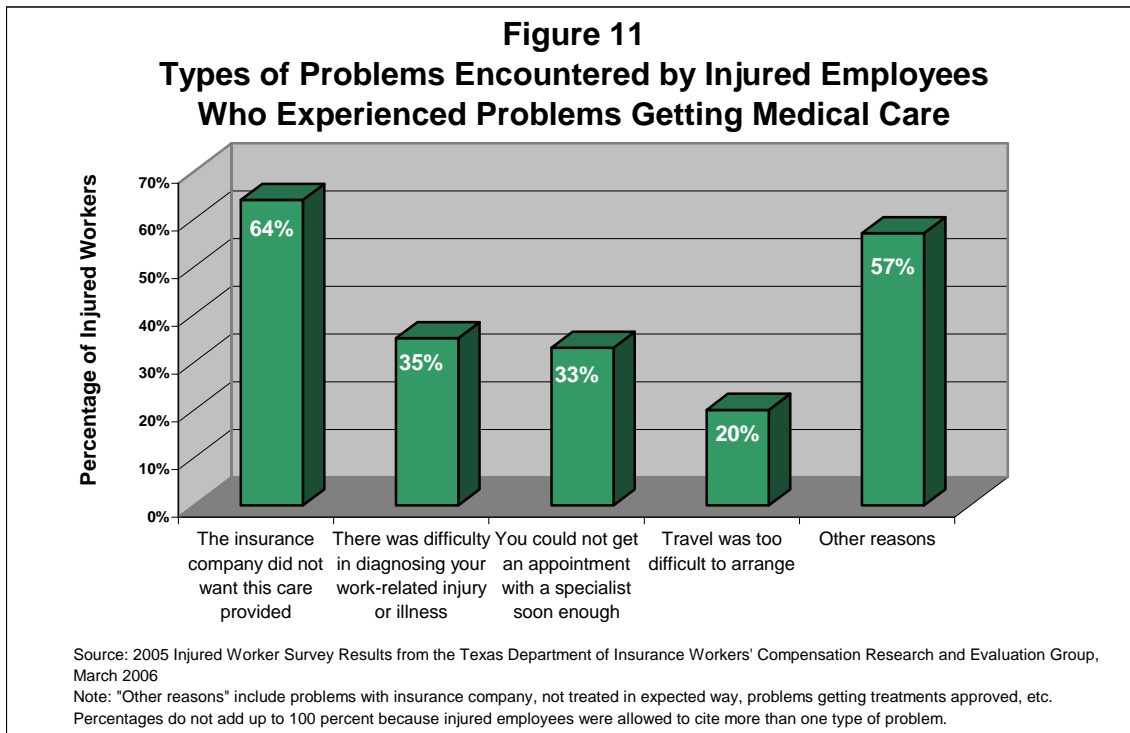
Figure 10
Percentage of Injured Employees who Reported Having Problems Getting Medical Care for Their Injury



Source: 2005 Injured Worker Survey Results from the Texas Department of Insurance Workers' Compensation Research and Evaluation Group, March 2006

Figure 11 shows the types of problems encountered by surveyed injured employees who reported that they experienced problems getting medical care. Of injured employees surveyed, 64 percent expressed that the reason that they did not receive medical care was that the insurance carrier did not want the proposed health care rendered. A majority of the injured employees identified other reasons for their not receiving needed medical care as follows:

- Problems with the insurance company;
- They were not treated in the manner they expected; or
- Problems in getting the desired medical treatment approved.



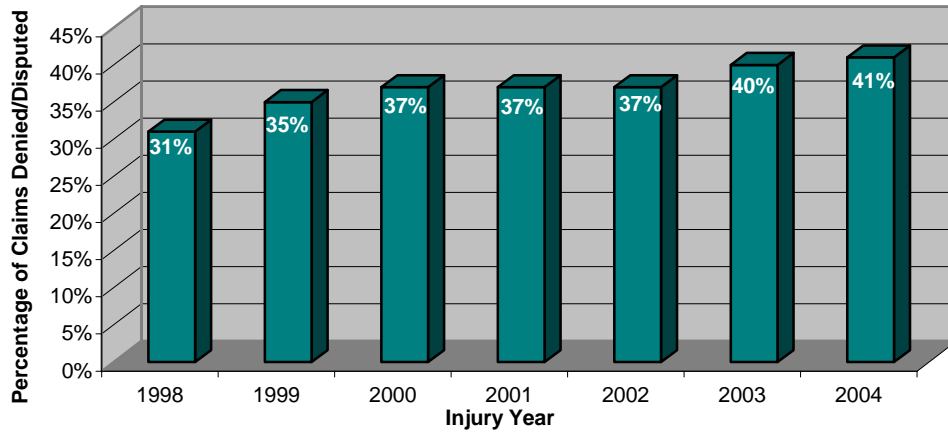
The following section of the report attempts to identify the issues pertaining to medical benefit denials and the interplay between those denials and access to care issues.

b. Medical Benefit Denials

Insurance carrier denials contribute significantly to injured employees' inability to receive necessary health care to treat their work-related injury. According to REG's June 2006 presentation, *Workers' Compensation Claim and Medical Denials: Examination of 1998 – 2004 Trends*, there was a 10 percent increase in the reportable claims that are initially denied/disputed by insurance carriers from 1998 through 2004. See Figure 12. This trend also applies to professional medical services denied by insurance carriers, which has almost doubled during the seven-year period. OIEC is concerned about this increased trend to deny

medical care to injured employees, particularly in light of the fact that the trend for work-related injuries and illnesses have decreased over the last several years. It may also be important to note that the majority of the increase in professional medical service denials has occurred within the last five years.

Figure 12
Percentage of Reportable Claims and Professional Medical Services Initially Denied/Disputed, 1998 - 2004¹²

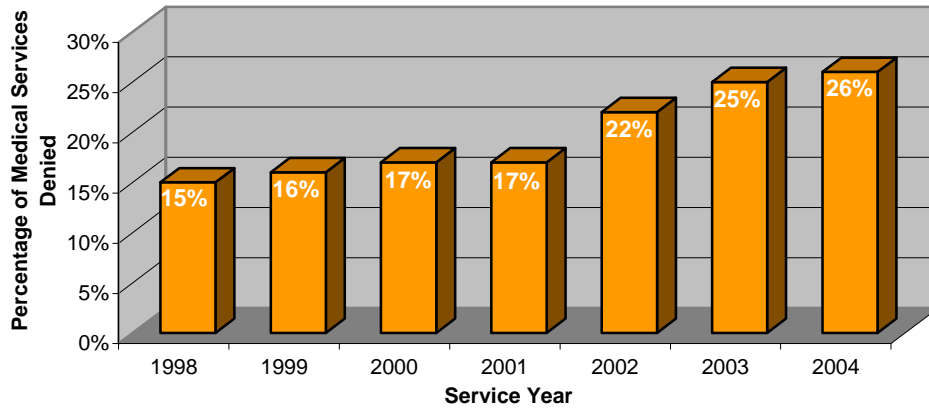


Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2006.

Note 1: Professional medical denial rates for 2004 should be interpreted with caution since these numbers are tentative and are current as of February 2005.

Note 2: House Bill (HB) 2600, a workers' compensation reform bill aimed at reducing medical costs, was passed in 2001. In August 2003, the most recent professional medical fee guideline, which incorporated Medicare's payment policies, went into effect.

Figure 13
Percentage of Medical Services Denied for the Top 25 Workers' Compensation Carriers for Service Years 1998 - 2004¹²



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

Note 1: Professional medical denial rates for 2004 should be interpreted with caution since these numbers are tentative and are current as of February 2005.

Note 2: House Bill (HB) 2600, a workers' compensation reform bill aimed at reducing medical costs, was passed in 2001. In August 2003, the most recent professional medical fee guideline, which incorporated Medicare's payment policies, went into effect.

Table 6
Percentage and Number of Denied Professional Medical Services By
Injury Type and Injury Year, One Year Post-Injury

Injury Type	Injury Year 1998	Injury Year 1999	Injury Year 2000	Injury Year 2001 ¹	Injury Year 2002	Injury Year 2003
Low Back Soft Tissue Injury	11% 479,886	14% 529,801	14% 549,701	15% 600,263	19% 789,568	21% 786,869
Shoulder Soft Tissue Injury	13% 77,216	14% 83,577	14% 94,587	15% 123,363	19% 176,667	22% 186,385
Neck Soft Tissue Injuries	17% 149,172	20% 168,201	19% 167,842	21% 199,372	27% 257,931	30% 239,252
Hand and Wrist Soft Tissue Injuries	11% 27,876	17% 44,787	16% 48,306	19% 77,161	23% 94,829	23% 78,112
Knee Internal Derangement	12% 32,613	14% 42,449	13% 40,027	16% 54,888	19% 75,900	21% 79,333
Hand and Wrist Superficial Trauma	10% 13,596	12% 16,262	13% 18,397	14% 22,376	17% 31,566	19% 32,186
Musculoskeletal Soft Tissue Injuries	17% 33,879	19% 39,204	20% 40,568	24% 60,848	30% 86,888	29% 63,123
Lower Back Nerve Compression	20% 611,611	21% 595,065	20% 626,131	23% 727,597	27% 866,109	31% 740,589
Ankle and Foot Soft Tissue Injuries	12% 21,653	14% 25,185	14% 26,199	15% 34,021	20% 45,976	23% 50,907
Hand and Wrist Nerve Compression	16% 56,522	19% 68,321	20% 83,891	21% 97,988	27% 103,469	29% 78,431

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

¹ House Bill (HB) 2600, a workers' compensation reform bill aimed at reducing medical costs, was passed in 2001.

Table 6 offers a comparison of the percentage and number of professional medical denials from insurance carriers by injury type and year of injury, one-year post injury. It appears that insurance carrier denials for professional medical services have increased for every injury type from year to year.

Table 7 on page 34 offers a comparison of the reasons insurance carriers denied injured employees' claims for health care to treat their work-related injury. OIEC notes that the insurance carriers' cite unnecessary treatment 37 percent of the time as the reason health care was denied and unnecessary treatment with the use of a peer review represents 14.9 percent of that figure. Other reasons cited for denying injured employees health care are unbundling and health care provider's noncompliance with payment policy requirements, which were cited 13 percent and 10.5 percent of the time as reasons insurance carriers denied injured employees health care, respectively. Together, those reasons account for 23.5 percent of medical denials and serve as barriers of health care delivery to injured employees.

Table 7
Percentage of Denied Professional Medical Services by Top 10 Denial
Reasons for Service Years 1998-2004¹

	Injury Year 1998	Injury Year 1999	Injury Year 2000	Injury Year 2001 ³	Injury Year 2002	Injury Year 2003	Injury Year 2004 ¹
Unnecessary Treatment (without peer review)	10%	12%	12%	13%	25%	26%	22%
Unnecessary Treatment (with peer review)	<1%	0.3%	1.0%	3.5%	12.7%	15.7%	14.9%
Inappropriate Documentation	36%	42%	39%	26%	21%	14%	10%
Preauthorization Required But Not Requested	19%	17%	16%	16%	3%	2%	2%
Not by Treatment Guidelines	13%	7%	8%	10%	4%	--	--
Entitlement to Benefits	6%	8%	9%	10%	9%	7%	7%
Extent of Injury	7%	6%	6%	7%	8%	8%	8%
Final Adjudication	<1%	<1%	<1%	<1%	<1%	<1%	1.6%
Unbundling	5%	4%	4%	5%	4%	7%	13%
Payment Policy	<1%	--	<1%	<1%	<1%	3.7%	10.5%
Other Reasons²	4%	4%	5%	9%	13%	16%	11%

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

¹ The 2004 figures should be interpreted with caution since these numbers are tentative and are current as of February 2005.

² "Other reasons" include "not timely filed," "not treating doctor," "inappropriate health care provider," "final adjudication," "preauthorization requested, but denied," etc.

³ House Bill (HB) 2600, a workers' compensation reform bill aimed at reducing medical costs, was passed in 2001.

From an insurance carrier perspective, there may be a potential correlation between the increase in medical denials with the common belief that many qualified health care providers have left the workers' compensation system. Thus, insurance carriers are more likely to be suspect of treatment proposed based on the perception that much of the recommended treatment is not reasonable and necessary. OIEC believes the solution to this problem lies with

attracting additional qualified health care providers back into the system by increasing the professional medical service reimbursement fee guideline and reducing the administrative burden with processing a workers' compensation patient as much as possible.

IV. Regulatory and Legislative Recommendations Addressing Current Workers' Compensation System Factors Impacting Injured Employees

With HB 7's overhaul of the workers' compensation system, the focus and goals of the system have also changed. The new workers' compensation goals are:

- Each employee shall be treated with dignity and respect when injured on the job;
- Each injured employee shall have access to a fair and accessible dispute resolution system;
- Each injured employee shall have access to prompt, high-quality medical care within the framework established by the Workers' Compensation Act; and
- Each injured employee shall receive services to facilitate the employee's return to employment as soon as it is considered safe and appropriate by the employee's health care provider. TEX. LAB. CODE §402.021(a).

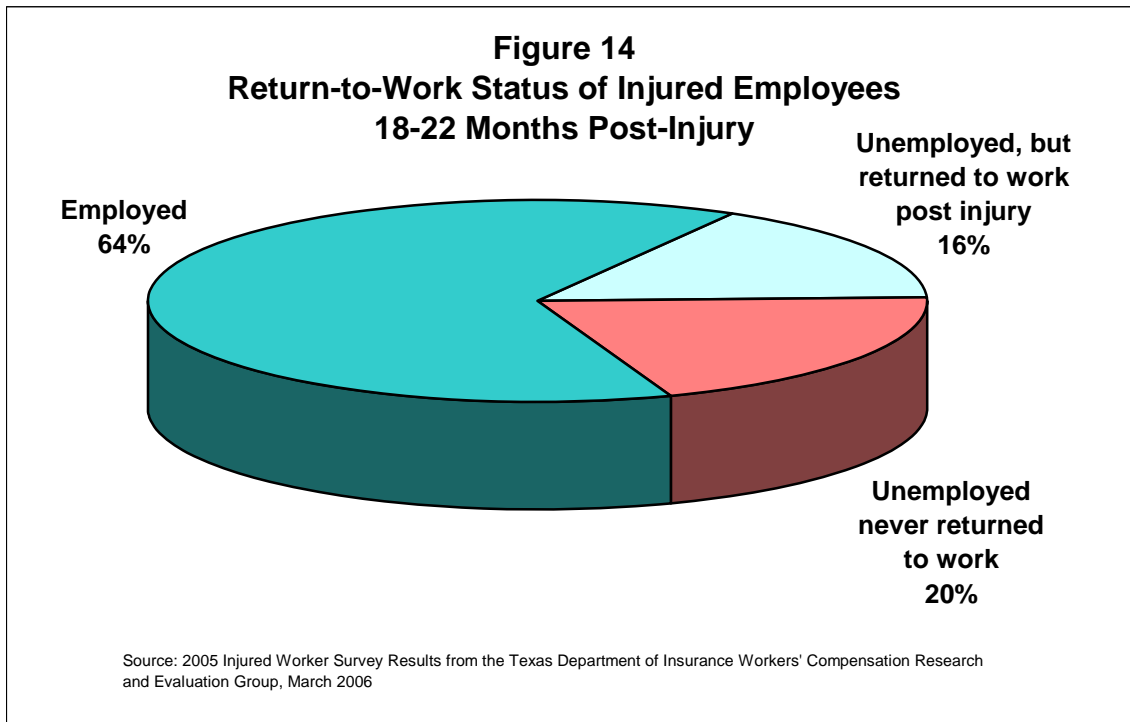
With these goals in mind, this section of the legislative report offers both regulatory and legislative recommendations on behalf of Texas' injured employees.

A. Return to Work

In accordance with the passage of HB 7 and Texas Labor Code §413.022, DWC has by rule established a Return-to-Work Pilot Program for Small Employers. This program is one of several intended to improve return-to-work outcomes. See Figure 14. The purpose of the Return-to-Work Pilot Program for Small Employers is to promote the early and sustained return to work of injured employees in modified or alternate duty job assignments through reimbursements from the return-to-work account of up to \$2,500 annually to small employers for the costs of workplace modifications made to return injured employees back to work. There is a maximum of \$100,000 that may be dispersed to small employers for each state fiscal year. The Return-to-Work Pilot Program for Small Employers expires on September 1, 2009 pursuant to Texas Labor Code §413.022(e), unless subsequently extended or reauthorized by the Legislature.

Effective January 1, 2006, eligible small employers could submit an application for reimbursement for workplace modification expenditures necessary to allow an injured employee to return to work. An eligible employer must have already made the expenditure prior to submitting the application for possible reimbursement for the workplace modifications. Upon approval of the application, DWC will then dispense funds from the account for approved reimbursements to eligible employers depending on the availability of funds in the account. When all available funds in the return-to-work account are disbursed, reimbursements from the account are not approved or authorized

during the remainder of the current state appropriation year. Neither the applications received nor approved reimbursements are carried forward to the next state appropriation year once the available funds have been disbursed.



As of TDI/DWC's final Workers' Compensation Work Group on October 11, 2006 meeting, not one application for reimbursement from a small employer had been received by DWC, and no funds had been dispersed to the benefit of Texas' small employers and injured employees even though there had been reported interest. OIEC attributes the lack of applications to small employers' inability to gather the necessary financial resources to pay upfront expenses for workplace modifications to return injured employees back to work.

Legislative Recommendation: OIEC believes that legislative action may be required to enhance the return-to-work pilot program for small employers. Such action may include a pre-certification process whereby small employers may submit and receive approval for reimbursements of workplace modifications to return injured employees back to work prior to incurring the cost of the modifications. OIEC believes that the pilot program for small employers would be enhanced by authorizing DWC to release funds upfront, analogous to a grant, to a small employer to pay for an injured employee's workplace modification. DWC may then take necessary steps to fulfill its fiduciary responsibility to assure the released funds were appropriately used.

B. Peer Review Process

DWC has made several strides to clarify the use of peer review reports in the workers' compensation system. DWC adopted standards as required by HB 7 for an insurance carrier's use of peer reviews to determine reasonable and necessary medical treatment for a work-related injury. Specifically, DWC's new Peer Review Rules define the role of a health care provider performing peer reviews and establish standards for peer review reports. The rules also provide that peer reviewers and insurance carriers must maintain requests, reports, and results for peer reviews so that DWC may monitor peer review activity. DWC is currently using this provision to gather more information via a data call of selected insurance carriers to determine how peer reviews are used in the system. The data gathered is 60 days of peer review information that is being tracked from October through November of 2006. Selected insurance carriers are requested to document each peer review received during the month and track from receipt of the report by the carrier to a decision that leads to carrier action. Each selected insurance carrier is required to submit all data by the end of December. As a result, OIEC cannot speak to the findings of this data call at this time.

OIEC believes this data call will provide needed information. However, OIEC is concerned that this prospective data call, which requires insurance carriers to collect peer review reports from October forward may not give an accurate historical overview of how peer review reports have been used in the workers' compensation system because it is possible for an insurance carrier to alter its operations regarding the use of peer review reports in that period. OIEC believes that a retrospective data call on peer reviews would also be beneficial because it would give a historical representation of the use of peer review reports in the workers' compensation system, which could be compared to the results of the prospective data call to verify the accuracy of that data.

As noted in DWC's adoption preamble of the Peer Review Rules, the intent of the rules is to improve the quality of health care provided to injured employees and to monitor peer review activities in the workers' compensation system. The implementation of peer review standards helps ensure that health care providers performing peer reviews consider evidence-based medicine prior to making any medical care recommendations. OIEC concurs with DWC's assessment that the implementation of peer review standards may reduce excessive or inappropriate medical care while safeguarding the delivery of necessary medical care by requiring the treating doctor to identify, prescribe, and provide only appropriate health care.

OIEC believes that DWC may have had a unique challenge in developing peer review rules that conform to HB 7 due to possible conflicting statutory provisions. Texas Labor Code §408.0231(g) provides:

**§408.0231. MAINTENANCE OF LIST OF APPROVED DOCTORS;
SANCTIONS AND PRIVILEGES RELATING TO HEALTH CARE.**

(g) The commissioner shall adopt rules regarding doctors who perform peer review functions for insurance carriers. Those rules may include standards for peer review, imposition of sanctions on doctors performing peer review functions, including restriction, suspension, or removal of the doctor's ability to perform peer review on behalf of insurance carriers in the workers' compensation system, and other issues important to the quality of peer review, as determined by the commissioner. **A doctor who performs peer review under this subtitle must hold the appropriate professional license issued by this state.** (Emphasis added).

OIEC believes the legislative intent behind this provision is to prevent out-of-state health care providers from conducting peer reviews on health care providers that are licensed by the Texas Medical Board. By doing so, DWC's enforcement abilities over potential peer review abuse would be enhanced by providing the opportunity to coordinate administrative violations with the Texas Medical Board. However, HB 7's new §408.0231 may conflict with existing Texas Labor Code §408.023(h), which was codified as subsection (k) of the section previous to HB 7. Texas Labor Code §408.023(h) provides:

**§408.023. LIST OF APPROVED DOCTORS; DUTIES OF TREATING
DOCTORS.**

(h) Notwithstanding Section 4(h), Article 21.58A, Insurance Code, a utilization review agent that uses doctors to perform reviews of health care services provided under this subtitle **may use doctors licensed by another state to perform the reviews, but the reviews must be performed under the direction of a doctor licensed to practice in this state.**

It appears that HB 7's §408.0231 provides that health care providers performing peer reviews must hold a medical license issued by Texas while existing §408.023(h) allows health care providers to perform peer reviews as long as they are conducted under the direction of a Texas licensed doctor. To harmonize these two statutory provisions, DWC Rule 180.22(g) provides:

(g) **A peer reviewer is a health care provider who, at the insurance carrier's request, performs an administrative review of the health care of a workers' compensation claim. The peer reviewer must not have any known conflicts of interest with the injured employee or the health care provider who rendered any health care being reviewed.**

(1) **A peer reviewer who performs a prospective, concurrent, or retrospective review of the medical necessity or reasonableness of health care services (utilization review) is subject to the requirements of Insurance Code Article 21.58A and Chapter 1305 and applicable provisions of the Labor Code. A peer reviewer who performs utilization review must be:**

(A) **certified or registered as a utilization review agent (URA) by the Texas Department of Insurance or be employed by or under**

- contract with a certified or registered URA to perform utilization review; and
- (B) licensed to practice in Texas or perform utilization reviews under the direction of a doctor licensed to practice in Texas.
- (2) A peer reviewer who performs a review for any issue other than medical necessity, such as compensability or an injured employee's ability to return to work, must hold an appropriate professional license in Texas.

OIEC believes that the legislative intent behind HB 7 was to prohibit the performance of peer reviews conducted out-of-state. This belief is based on vast amounts of testimony provided by injured employees to the Texas House of Representative's Business and Industry Committee regarding peer review reports conducted out-of-state.

While there have been significant improvements made in the workers' compensation system with regard to peer reviews, OIEC remains sensitive to the potential abuse of peer review reports and the damaging effects that they may have on an injured employee's ability to obtain appropriate income and medical benefits. Peer reviews may be important to the operations of an insurance carrier, such as a tool used to establish and maintain financial reserves. However, from an injured employee's perspective, peer review reports are often perceived as an insurance carrier's purchased tool used to deny entitlement to appropriate health care and needed income benefits.

Legislative Recommendation: OIEC recommends amending article 21.58A of the Texas Insurance Code and Texas Labor Code §408.023 to require all peer reviews to be performed by health care providers professionally licensed in Texas. By requiring all peer review reports to be performed by health care providers professionally licensed in Texas, DWC's ability to effectively regulate peer review reports is enhanced. DWC would be able to coordinate administrative actions with the Texas Medical Board if all health care providers performing peer reviews were professionally licensed in Texas.

C. Interlocutory Orders

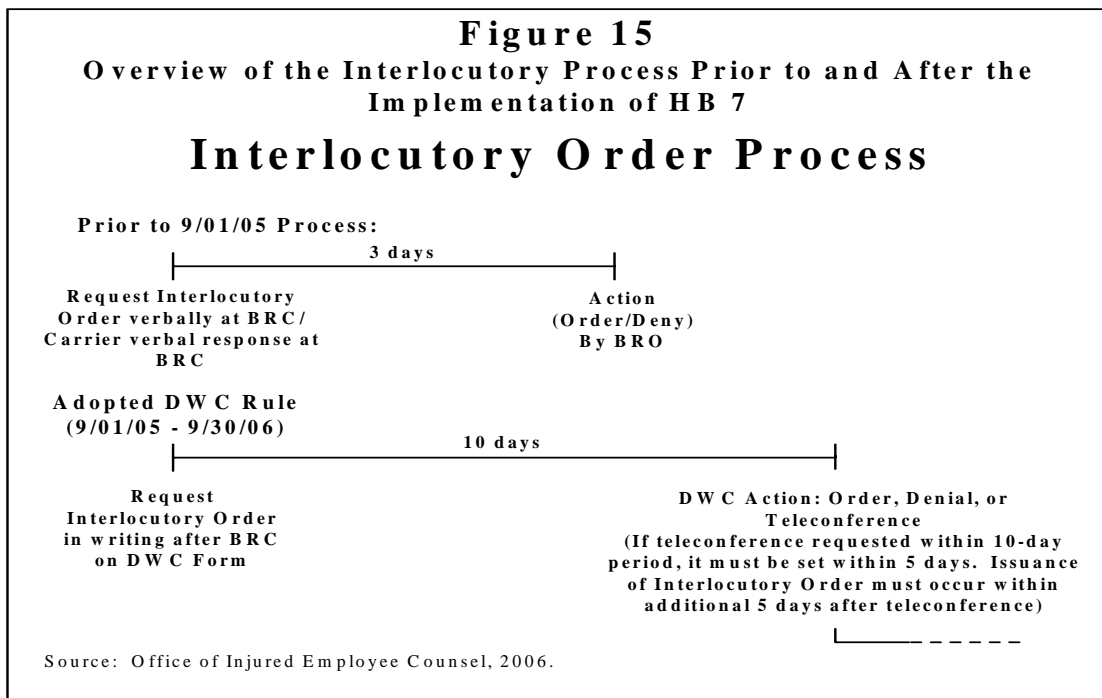
Historically, interlocutory orders have been used in the workers' compensation system to authorize the payment of benefits to an injured employee who sustains a work-related injury while an issue on which an injured employee is likely to prevail is proceeding through the indemnity dispute resolution process in accordance with Chapter 410 of the Texas Labor Code. A final decision in favor of the insurance carrier, which reverses an interlocutory order may be reimbursed from the Subsequent Injury Fund. Prior to HB 7, a Benefit Review Officer presiding over a Benefit Review Conference had authority to issue an interlocutory order for the payment of all or part of the requested income or medical benefits. The injured employee would verbally request the issuance of an interlocutory order at a Benefit Review Conference. The Benefit Review Officer would issue the Interlocutory Order at the Benefit Review Conference or within three days thereafter and provide it to the insurance carrier.

After the passage of HB 7, Texas Labor Code §410.032 provides that DWC staff, other than the Benefit Review Officer that presided or will preside over the Benefit Review Conference shall consider a request and issue an interlocutory order. To implement this provision, DWC adopted Rule 141.6 and established an interlocutory request form, which requires an injured employee to file the form with the DWC Central Office in Austin with a copy to the insurance carrier. Rule 141.6 provides that within 10 days of receipt of the request, DWC shall approve the request, deny the request, or schedule a teleconference. DWC's Interlocutory Order Rule requires injured employees to submit written documentation to support the request, which is understandable considering that the claim file is not located in the Central Office.

OIEC strongly believes that the injured employees of Texas need a simple and efficient process to request interlocutory orders. An interlocutory order request is time-sensitive and needs to be acted upon as quickly as possible to ensure that injured employees have easy access to requesting and obtaining an interlocutory order. At DWC's Interlocutory Order Rule hearing, OIEC suggested that at a Benefit Review Conference, a Benefit Review Officer should be able to reduce an oral request for an interlocutory order to written form. This would place the insurance carrier on immediate notice that the request for an interlocutory order was made and would ensure that the supporting documentation would be readily accessible in the claim file. DWC staff could then act upon the request. DWC's adopted Interlocutory Order Rule 141.6 only addresses the procedure for requesting interlocutory orders after a Benefit Review Conference and when a Contested Case Hearing is scheduled. OIEC strongly recommended that DWC's Interlocutory Order Rule should address a request for an interlocutory order that is made both before and at a Benefit Review Conference. This recommendation was not incorporated in the adopted interlocutory order rule. As a result, injured

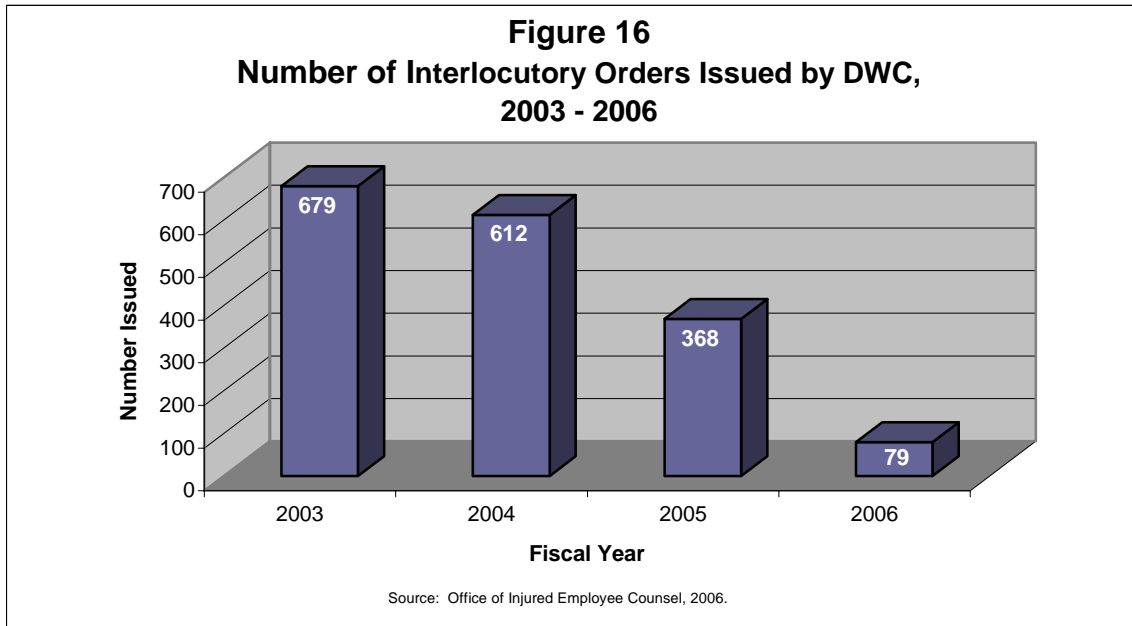
employees undergo continued financial hardship as no procedure is in place to process an interlocutory order request before a Benefit Review Conference, at a Benefit Review Conference, or in those circumstances when the Benefit Review Conference is reset rather than sending the issues to a Contested Case Hearing for resolution.

The following table offers a comparison of the pre-HB 7 interlocutory order process to DWC's current process. Prior to HB 7, an interlocutory order was requested and issued within three days of the Benefit Review Conference. While HB 7 has indicated that the Benefit Review Officer who presided, or who will preside, over the Benefit Review Conference cannot issue an interlocutory order, the time for issuance and the number of orders issued should not be substantially impacted by the change in the statute. The table illustrates that the average number of days between when an interlocutory order was requested until when an interlocutory order was issued has increased to over 12 days under the revised procedure. This extended process means that now injured employees will have to wait almost four times longer to receive necessary income benefits than prior to HB 7.



The DWC rule preamble states that the agency anticipates that 300-500 requests for interlocutory orders will be processed within one year. In the past, interlocutory orders were verbally requested at the Benefit Review Conference. As such, the number of requests is unknown, but it is substantially higher than the number of interlocutory orders actually issued. The System Data Report shows that for the year 2003, there were 679 orders issued and for 2004, there were 612 issued. The average from 2000-2004 is 668 per year. The following

chart shows a significant decrease in the actual number of interlocutory orders issued since 2005 and the passage of HB 7. OIEC is concerned that this decrease is due to the fact that DWC's Rule 141.6 has created a burdensome process that requires an injured employee to submit a written request with documentation as opposed to being permitted to make an oral request under the prior process. It is believed that this new process discourages injured employees from requesting interlocutory orders. In addition, the time frame for considering interlocutory orders has quadrupled, and there is a significant reduction in the number of interlocutory orders issued.



This significant reduction in the number of interlocutory orders issued is detrimental to injured employees who are likely entitled to income benefits but do not have a simple and effective interlocutory order process to obtain those benefits. OIEC believes that DWC's rule should have addressed requests made before a Benefit Review Conference, at the Benefit Review Conference, and when the Benefit Review Conference is reset rather than the issues proceeding to a Contested Case Hearing. All parties and appropriate documentation are available at those times, and the statute does not prohibit an exchange of information and request for an interlocutory order before, during, or after a Benefit Review Conference.

Legislative Recommendation: In absence of DWC amending Rule 141.6, OIEC believes legislative action may be necessary to provide that interlocutory orders may be requested and issued at a benefit review conference. The time frame between when the interlocutory order is requested until it is issued should not take over three days. By shortening the time frame, injured employees who are likely entitled to benefits will obtain essential income and medical benefits in a more timely fashion.

D. Designated Doctor Disputes

Pursuant to Texas Labor Code §§408.0041 and 408.004, which will become effective January 1, 2007, the role of the designated doctor in the workers' compensation system was expanded, and the role of the required medical examination doctor (RME) was purportedly limited to disputes regarding appropriateness of medical care. Texas Labor Code §408.0041(f) reintroduces the RME doctor into the process on all of the issues that the designated doctor addresses:

- impairment caused by the compensable injury;
- attainment of maximum medical improvement;
- extent of the compensable injury;
- whether disability is the direct result of the work-related injury;
- the ability of the employee to return to work; and
- similar issues.

However, this statutory provision only allows the insurance carrier the opportunity to request an RME. The relevant portion of Texas Labor Code §408.0041(f) provides:

If an insurance carrier is not satisfied with the opinion rendered by a designated doctor under this section, the carrier may request the commissioner to order an employee to attend an examination by a doctor selected by the insurance carrier.

OIEC recommends that §408.0041 be amended to permit an injured employee to have a physical examination to determine maximum medical improvement (MMI) and an impairment rating (IR) by the injured employee's treating doctor or a referral doctor in the event that either the treating doctor or a referral doctor has not issued an opinion on the questions of MMI and IR prior to the issuance of a designated doctor report addressing those issues. There are instances where the designated doctor makes the first certification of MMI and IR. When that occurs and the injured employee disagrees with the designated doctor's opinion, the insurance carrier in practice does not pay for an examination by the treating doctor to address the issues of MMI and IR. Thus, the injured employee does not have a realistic opportunity to obtain another medical opinion on the issues of MMI and IR because of the inability to pay for the examination. By only permitting the insurance carrier to have meaningful access to another doctor's opinion to dispute a designated doctor's opinion, the current version of Texas Labor Code §408.0041 has made it significantly more difficult for the injured employee to challenge the opinion of the designated doctor while giving the insurance carrier access to evidence to challenge the designated doctor's opinion.

Legislative Recommendation: In order to level the playing field, OIEC recommends that in those cases where the injured employee disagrees with the opinion of the designated doctor and either the treating doctor or a referral doctor

has not conducted an examination to assess MMI and IR, prior to the issuance of a designated doctor's report on those issues, the statute be amended to require the insurance carrier to pay the cost of an examination by the treating doctor, if the treating doctor is qualified and willing to conduct the examination, or a referral doctor in those instances where the treating doctor is either unable or unwilling to conduct an MMI/IR examination. The current version of Texas Labor Code §408.0041 has made it significantly more difficult for the injured employee to obtain any evidence to challenge the opinion of the designated doctor regarding MMI/IR while creating a mechanism for the insurance carrier to access the evidence it needs to challenge the designated doctor's opinion. As a result, the designated doctor's opinion is effectively the opinion that resolves the MMI/IR issue when the injured employee is challenging the designated doctor's opinion. However, the insurance carrier has a good chance of overcoming the designated doctor's opinion by producing the preponderance of medical evidence contrary to that report pursuant to the mechanism that is provided only to the insurance carrier in Texas Labor Code §408.0041(f).

In the alternative, OIEC suggests that Texas Labor Code §408.0041(f) be repealed so that the insurance carriers will no longer be permitted to obtain an RME to dispute the designated doctor findings. The argument can be made that by creating the designated doctor process, it was envisioned that the designated doctor's opinion would be used to resolve the issues of MMI and IR. If neither the injured employee nor the insurance carrier is able to obtain a contrary medical opinion resulting from an examination of the injured employee, the designated doctor's opinion would almost certainly be the opinion that would be used to resolve issues of MMI and IR.

E. Standing in Concurrent Review Process and Medical Dispute Resolution

As an advocate for injured employees in the workers' compensation system, OIEC believes it is imperative that injured employees' procedural due process is preserved in the system, particularly in light of the fact that injured employees forfeit the right to sue their employer in return for workers' compensation coverage. As such, OIEC has provided extensive feedback to DWC's rules to ensure that injured employees' right to be a party in processes concerning their own medical care is protected.

In DWC's Preauthorization and Concurrent Review Rule (Rule 134.600), OIEC recommended that the injured employee be given the opportunity to be a party in the concurrent review process. While the preauthorization process provides the injured employee with the opportunity to be a party, Rule 134.600 does not extend the same opportunity to injured employees in the concurrent review process. OIEC sees no distinction between the two processes and recommended that the rule should reflect an injured employee's right to be a party in all matters where the delivery of health care to that particular injured employee is an issue. OIEC's comments were not incorporated into DWC's Preauthorization and Concurrent Review Rule. As a result, injured employees may initiate prospective review of medical necessity questions in preauthorization but cannot be a party or requestor when it comes to the continuation of their medical care through DWC's concurrent review process.

In DWC's Medical Dispute Resolution Rules, OIEC recommended that an injured employee be permitted to be a party/requestor in the medical dispute resolution process and that DWC comply with Texas Labor Code §413.031(a), which states, "A party, including a health care provider, is entitled to a review of a medical service provided or for which authorization of payment is sought." Further, subsection (b) states, "A claimant is entitled to a review of a medical service for which preauthorization is sought by the health care provider and denied by the insurance carrier." TEX. LAB. CODE §413.031(b). As such, OIEC provided rule comment that recommended that proper due process be given to all injured employees and that all injured employees have the procedural right to be considered a "party" or "requestor" in the medical dispute resolution process. OIEC believes DWC does not have statutory authority to carve out due process for only a portion of Texas' injured employees. OIEC agrees it is unlikely that many injured employees will exercise their right to appeal within the administrative process without assistance from their health care provider; however, injured employees should not be deprived of due process simply because they may not choose to exercise such rights.

While the new Preauthorization and Concurrent Review and Medical Dispute Resolution Rules may be beneficial to the workers' compensation system and are helpful in implementing HB 7's changes, denying injured employees party status denies injured employees procedural due process because they are not

permitted to participate in the process where decisions on their health care are made. As a result of DWC's Rule 134.600 regarding injured employees' medical care, an injured employee can be a party in the preauthorization process and initiate prospective review of the health care they receive. However, the same Rule 134.600 prevents injured employees from being a party or requestor in the continuation of that health care. This unnecessarily shifts the burden to the injured employee's health care provider to actively participate and pursue health care for the injured employee in the concurrent review process. Should the injured employee receive two adverse determinations and the medical care the injured employee needs be denied by the insurance carrier, the health care provider must pursue medical dispute resolution. As proposed, the Medical Dispute Resolution Rules deny injured employees party status unless the injured employee incurs out-of-pocket expenses. As such, the burden shifts to the health care provider to pursue medical dispute resolution, and the injured employee is unnecessarily dependent upon the health care provider to pursue the claim.

Legislative Recommendation: OIEC recommends DWC address these concerns through its rulemaking authority. However, legislative action may be needed to further protect the right of the injured employee to be considered a party or requestor in the concurrent review and medical dispute resolution processes whereby injured employees receive their entitlements to medical benefits.

E. OIEC's Access to Medical Records

In DWC's Medical Billing and Reimbursement Rules in response to HB 7, OIEC recommended that §134.120(e) require health care providers to give OIEC access to medical records free of charge upon request. This request was made by OIEC to continue the pre-HB 7 practice of allowing an Ombudsman to have access to the injured employee's medical records at no cost so assistance could be provided in both the indemnity and medical dispute processes. However, OIEC's rule comments were not incorporated into DWC's adopted rules. As a result, Ombudsmen can no longer obtain the medical records free of charge in providing assistance to injured employees. DWC's Medical Billing and Reimbursement Rule adoption preamble specifically provides:

The Division declines to make this change. The Division believes such a directive to be more appropriate within future Office of Injured Employee Counsel rules. Although Chapter 404 of the Labor Code provides broad access to information in the hands of the Division, it does not provide for access to information held by health care providers.

OIEC agrees with the second sentence of this response. Texas Labor Code §404.107 provides OIEC's Public Counsel access to DWC and TDI records. However, OIEC notes that DWC may not request or have on file records, which may be pertinent to OIEC's statutory obligation to assist injured employees. OIEC disagrees that this directive may be more appropriate in OIEC's rulemaking initiative at this time because as noted by DWC, OIEC does not have the statutory authority pursuant to Chapter 404 of the Texas Labor Code to request information from health care providers. After the adoption of these rules, OIEC requested that DWC develop an informal procedure to rectify this occurrence and place the Ombudsmen in the same position with respect to access to medical records to assist injured employees as they were prior to the passage of HB 7. To date, no informal procedure has been developed. As a result, injured employees are being charged to obtain copies of medical records so that they may provide them to their Ombudsman for presentation in the indemnity and medical dispute resolution process. Should the injured employee not have the financial resources to obtain their medical records, such information remains unavailable for the injured employee to use in the indemnity dispute resolution process.

Legislative Recommendation: OIEC believes legislative action is required to give OIEC's Ombudsman Program access to an injured employee's medical records at no cost. Such legislative action within Chapter 404 of the Texas Labor Code would restore an Ombudsman's capabilities to fully assist an injured employee in the indemnity and medical dispute resolution system and provides for full implementation of HB 7's intent to have OIEC provide assistance to the injured employees of Texas by granting the same access to information as is granted to TDI and DWC.

F. Judicial Review

Through the Ombudsman Program and injured employees seeking assistance beyond the workers' compensation administrative process, the issue of injured employees' ability to pursue their claim at district court has been brought to OIEC's attention. Many injured employees contact OIEC seeking assistance at the judicial review level. This is beyond the administrative jurisdiction of the Ombudsman Program, and OIEC recommends contacting the Texas Bar Attorney Referral Service and local legal aid clinics for attorney representation. Unfortunately, after following such guidance, many injured employees contact OIEC explaining that the attorneys referred from the Texas Bar Attorney Referral Service will not represent them in district court despite Texas Labor Code §408.221(c) that provides for reasonable attorney fees to be paid for by the insurance carrier should the injured employee prevail. In addition, the three largest legal aid clinics in Texas do not take workers' compensation cases.

Legislative Recommendation: Since its establishment, OIEC has worked with Texas' three largest legal aid clinics, the Texas Bar, and the Texas Equal Justice Center to attempt to rectify the lack of attorney representation at the judicial review level. However, OIEC believes legislative action may be needed to provide a permanent solution. Perhaps the Texas Legislature may consider extending Texas' court appointment system to injured employee's who prevailed at the workers' compensation administrative level.

Injured employees give up their Constitutional right to sue their employer for work-related injuries. As such, OIEC recommends legislative action to authorize Texas courts to appoint an attorney ad litem to either represent an injured employee or refer the case to another attorney to provide competent representation at the district court if the final administrative decision was in favor of the injured employee. However, OIEC also recommends that the district judge be required to conduct a hearing to determine that the injured employee has sought representation in good faith and has been unsuccessful in obtaining representation. In cases where the injured employee does prevail at district court, Texas Labor Code §408.221(c) provides for attorney's fees to be paid by the insurance carrier. If the injured employee does not prevail in district court with the representation of a court appointed attorney ad litem, OIEC recommends a provision be added in Chapter 408 of the Texas Labor Code to provide that the injured employee's attorney's fees should be paid from the Subsequent Injury Fund. OIEC also recommends that the attorney ad litem may be paid for services rendered on the claim, such as allowing for reimbursement for time spent referring the case to an attorney competent in the field of workers' compensation should the ad litem decline to represent the injured employee. However, OIEC recommends that a statutory provision be included to prohibit more than one attorney from being paid at any given time to represent the injured employee in district court in order to safeguard the Subsequent Injury Fund.

V. Conclusion:

HB 7's overhaul to the workers' compensation system encourages open communication between system participants in an effort to create a workers' compensation system that serves as a national model. HB 7 incorporated the Sunset Commission's recommendations to:

- abolish TWCC and transfer regulatory functions to TDI while transferring administrative functions for the injured employee to OIEC;
- streamline the system's processes;
- establish workers' compensation health care networks as the new vehicle for health care delivery for injured employees; and
- refine focus on return to work.

The Legislature added other provisions that enhance TDI's regulatory oversight over workers' compensation prices to the benefit of Texas' employers, address medical cost containment through requiring treatment and return to work guidelines, and limit the use of post-injury cause of action waivers.

Through these system enhancements, HB 7 provides transparency to a complex workers' compensation system where injured employees struggled to navigate the system in an effort to obtain appropriate income and medical benefits. OIEC supports and is committed to HB 7's vision to encourage prompt and sustained return to work through the delivery of prompt and appropriate medical care. OIEC is proud to be a part of this reform that emphasizes the need for an advocacy agency to protect the interests of injured employees and the need for injured employees to be treated with dignity and respect. OIEC believes that the system changes implemented by HB 7 provide significant progress toward creating a fair and balanced workers' compensation system where injured employees receive necessary income and medical benefits, get better, and return to work.