

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



Bureau of Workers' Compensation - July 1, 2016

## Introduction

The 2013 Workers' Compensation Reform Act has been in effect for two years. When the General Assembly passed the Act, there were questions about its potential impact. Answers to many of those questions are emerging, and today Tennessee's workers' compensation system is more balanced, more consistent, less costly, and resolves conflicts more rapidly.

### MISSION

The mission of the Bureau of Workers' Compensation is to fulfill the promise of workers' compensation today...and tomorrow.

Central to the 2013 Reform's impact is the establishment of a new administrative court system consisting of a trial court and appeals board. The Court of Workers' Compensation Claims has received high marks from those who appear before it. The Appeals Board provides effective review of trial court decisions and establishes new case law to clarify provisions of the workers' compensation law and its application.

As important as the new courts' contributions to the 2013 Reform are, enhanced mediation also plays a vital role in system improvements by reducing the number of claims that must be resolved through trial. The Bureau's dedicated group of trained, experienced mediators achieves settlements agreeable to employees and employers, even when settlements appear unlikely.

In addition to provisions related to dispute resolution through the courts and mediation, the Reform Act addresses medical care, the largest portion of the workers' compensation dollar. Medical Treatment Guidelines went into effect February 28, 2016, and include a drug formulary. These treatment guidelines are designed to improve the quality of care and reduce the unnecessary delays in care that often come with utilization review and appeals of a physician's recommended medical care. Other medical provisions of the 2013 Reform Act improve injured employees' access to medical care through simplified physician panel requirements and new time limits for providing referrals to specialists.

The Bureau of Workers' Compensation implemented these reforms within a smaller bureaucratic footprint. There are fewer employees in the Bureau today than when the 2013 Reforms became law and the net cost to the state to administer the workers' compensation

### CORE VALUES

Integrity  
Excellence  
Innovation  
Transparency  
Respect

system is less than in 2013.

These highlights from the past two years are an introduction to this year's report on the "Impact of the Workers' Compensation Reform Act of 2013," required by T.C.A. § 50-6-134. The following report details the impact of the reforms and includes information about post-reform legislation. It also addresses challenges that lie ahead for workers' compensation in Tennessee and the country. This report demonstrates that the Bureau of Workers' Compensation has successfully focused on its mission of "fulfilling the promise of workers' compensation...today and tomorrow" since the passage of the Workers' Compensation Reform Act of 2013.



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Administrator, Bureau of Workers' Compensation

## Impact of the 2013 Reform Act at a Glance<sup>1</sup>

Measure	Two Years Before Reform Act	Two Years After Reform Act
Workers' compensation claims filed	195,785	200,442
Average indemnity cost per claim settled	\$21,062	\$7,857
Percentage of claimants who return to work after settlement	66%	83%
Average medical costs per claim settled	\$32,163	\$14,419
Average duration of Temporary Total Disability (TTD) period in claims settled	177 days	53 days
Average number of weeks from Date of Injury to Date of Conclusion for claims settled	164	49
Average number of weeks from Date of Injury to Maximum Medical Improvement for claims settled	79	30
Average number of weeks from Maximum Medical Improvement to Date of Conclusion for claims settled	63	20

<sup>1</sup> Readers should take into account that outcomes for the two periods may reflect differences in claims severity. Post reform claims occurred and concluded in the two-year period. Pre-reform cases could have occurred more than two years before the conclusion date and include some claims that may have been more severe. For additional discussion on this point, see page 16.

## Court of Workers' Compensation Claims

In a perfect world, there would be no disagreement about a worker's on-the-job injury, but workers' compensation claims do not occur in a perfect world. Fortunately, the vast majority of disputed claims are resolved without litigation. Of the approximately 183,471 workers' compensation claims filed since the effective date of the 2013 Reform Act, fewer than 10,000 resulted in a dispute. Of the disputed claims, fewer than 2,000 resulted in a request for the Court of Workers'



Compensation Claims to render an opinion about whether benefits were due to a worker. Of those 2,000, only 367 proceeded to a court hearing.

When there are disputes that cannot be resolved without a court hearing, it is critical that the court handle them timely, consistently, knowledgeably, and in a manner that is fair to both parties. The new Court of Workers' Compensation Claims excels in these areas.

### *Timeliness*

The court has established an enviable record for issuing timely orders. From July 1, 2014, to the present, the average number of days from the date of a hearing (including expedited and compensation) to issuance of an order is just 15.8 days. The average number of weeks from the date of injury to the conclusion of that claim has dropped from ninety-five weeks (two years before the 2013 Reform Act) to thirty-eight (two years after the 2013 Reform Act).

### *Consistency*

Consistency for the sake of consistency is not the goal of the court. The goal is to achieve consistency through judges who are well versed in the workers' compensation law, and actively engaged in studying and discussing the legal principles of workers' compensation. Chief Judge Kenneth Switzer has exhibited exceptional leadership in building such a court. The judges meet by teleconference twice each month to discuss points of law, and issues that arise in cases that have been before the court. These discussions assist in uniform

interpretation of the law, yet allow for flexibility for the judge to apply the principles discussed on a case-by-case basis.

***Knowledgeable***

The Bureau's success in obtaining knowledgeable judges began with the selection process. Candidates for a judicial appointment are required to be licensed attorneys with at least five years of experience in Tennessee workers' compensation law. To make appointments, the administrator utilized a process that included applicant interviews with a broad-based committee representing various stakeholders in the workers' compensation community.

Soon after their appointment, each judge increased their expertise through training at the annual judicial college of the National Association of Workers' Compensation Judiciary. They also receive semi-annual training here in Tennessee. One of the most important aspects of a judge's performance is the quality of his or her written decisions. To that end, the court engaged experts in legal writing and English composition to evaluate each judge's writing skills and offer suggestions for continued improvement. Surveys conducted post-hearing confirm that, in the opinion of the practicing bar, the judges are succeeding in writing clear and concise decisions that effectively address legal issues.

In the most recent survey, attorneys were asked to score judges from 1 (lowest) to 5 (highest) on several qualities. The average scores on these qualities were favorable for all judges. (See Table I)

Judge's written decisions are clear, concise, and address all issues raised	4.1
Judge's understanding of the law, rules, and legal issues presented	4.1
Judge was courteous to all parties	4.5
Judge showed patience/willingness to listen	4.3
Judge's promptness in issuing orders	4.1
Judge was prepared for hearings	4.3
Judge was impartial	4.25

## *Transparency*

As important as it is to have skilled and knowledgeable judges, it is also important that the public understand the workings of a new court. The Bureau has made communication a priority. The court provides information about the court in several ways:

- (1) The court's decisions are available through the University of Tennessee College of Law Library (TRACE), LexisNexis, Westlaw, and Tennessee Attorneys Memo.
- (2) The twelve judges have given multiple presentations that reached more than a thousand people during the 2015-2016 fiscal year.
- (3) The court started an Internet "blog" in March 2015, which posts updates bi-weekly. Each judge contributes to the blog, which covers a wide range of topics, from summaries of recent workers' compensation opinions to procedural instructions for litigants. It has been viewed over 12,000 times to date.
- (4) The court also conducted listening sessions in Nashville and Knoxville. Attorneys and insurance representatives attended and offered candid perspectives of the court's strengths and areas where they thought changes would be beneficial. Several procedural improvements resulted from these meetings.

## *Challenges*

One issue that has arisen since the implementation of the reform is the increase in the number of self-represented employees. Approximately forty percent of the employees who appear before the court do not have legal representation, a significant increase. An injured employee who does not have an attorney presents challenges for the court and the employee, who may feel overwhelmed by legal terms and procedures. Judges must balance the need to provide them information with the need to ensure fairness to all litigants.

The court acted to help self-represented employees by writing and publishing a comprehensive, plain language guidebook for self-represented persons in English and Spanish. The guidebook is available electronically on the Bureau's website. Paper copies are available at the Bureau's offices, and can be sent by mail at a party's request. The court is also in the process of producing a video for unrepresented employees that demonstrates what to expect when they go to court, perhaps for the first time. The video will offer them guidance on what their responsibilities are in a court hearing.

## Workers' Compensation Appeals Board

The Appeals Board's mission is to provide all employers and employees of Tennessee fair, accurate, and meaningful appellate review of workers' compensation cases with dates of injury on or after July 1, 2014. The appeals judges fulfill their mission through simplification of the appeals process, timeliness, and transparency.

### *Simplifying the Process*

One dramatic and immediate result of the 2013 Reform Act was to provide parties the opportunity for appellate review at multiple steps in the litigation process. With respect to a trial court's preliminary decisions concerning the initiation of temporary disability or medical benefits, parties who wished to challenge a trial court's pre-trial order under pre-reform law were required to seek permission from the trial court and/or the appellate court. This process was time-consuming, expensive, and discretionary, as the trial court had to give permission for an appeal, the Supreme Court had to accept the case for review, the issues had to be briefed and argued, and the Supreme Court had to issue an opinion. With the reforms, this is no longer the case.



Parties who wish to appeal a trial court's preliminary order awarding or denying temporary disability or medical benefits have the right to an immediate appeal to the Appeals Board, which reviews and resolves the issue in a much shorter period. The result is a quicker resolution of the claim.

To provide additional assistance to parties who appeal a ruling of the Court of Workers' Compensation Claims, the Appeals Board revised and published its "Practices and Procedures" in November 2015, which provide additional guidance to parties and attorneys who file appeals and will help move cases forward to final resolution.

## *Timeliness*

The 2013 reforms also had a significant impact on the length of the appeals process, when compared to the state court system. As discussed above, parties have the right to seek appellate review of a trial court's preliminary decisions in a case. Prior to the reforms, if a party sought to appeal a trial court's preliminary decision to award or deny temporary disability or medical benefits, the process of seeking an appeal in the state courts, if one was granted, would take months. Indeed, a decision from the appeals court likely would not be received until well over a year after the appeal was filed.

The 2013 reforms considerably shortened the time required for the court process. Now, if a party seeks to appeal a trial court's preliminary decision to award or deny temporary disability or medical benefits, a notice of appeal is filed within seven business days after issuance of the trial court's order, the record is compiled and forwarded to the Appeals Board, and the Appeals Board issues its decision within seven business days after receipt of the record. Thus, the reforms effectively reduced the time it takes to appeal a preliminary decision from well over one year to fewer than forty-five days.

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This shortened period also extends to final judgments. Compensation orders and judgments of the Court of Workers' Compensation Claims can be appealed to the Appeals Board within thirty days after the order or judgment is issued. Once the record is compiled and the parties have had the opportunity to submit written briefs, a decision is issued by the Appeals Board within forty-five calendar days. In summary, the positive impact of the 2013 reforms on the length and efficiency of the appeals process relative to the state court system cannot be overstated.

## *Transparency*

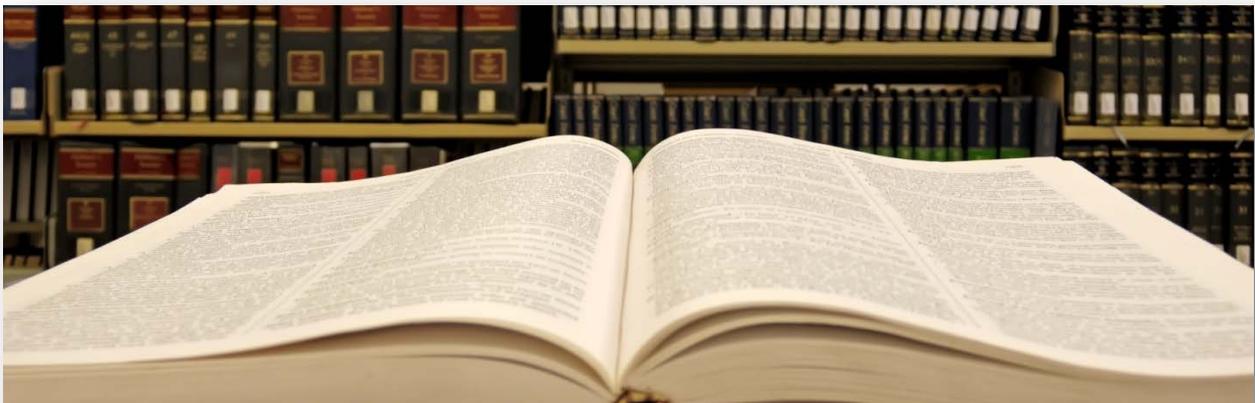
The decisions of the Appeals Board are easily accessible to the public. Decisions are available through LexisNexis, Westlaw, UT College of Law (Trace), and Tennessee Attorneys Memo. (URL addresses are in Exhibit C of the Appendix.) Recently, decisions issued by the Appeals Board have been included in a daily email from the Tennessee Bar Association called "TBA Today," which is available to all members of the Tennessee Bar Association. Since July 1, 2014, decisions of the Workers' Compensation Appeals Board and Court of Workers' Compensation Claims have been downloaded over 21,000 times by readers across the United States and in foreign locations such as Germany, Ireland, and France.

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In an effort to educate the public on appellate processes and procedures resulting from the 2013 Reform Act, the appeals judges have given presentations to various groups in the state, including lawyers, adjusters, physicians, and law school students. Efforts such as these help implement the Reform Act's directive that the workers' compensation system be administered in a "fair, equitable, expeditious, and efficient" manner.

## *Challenges*

Like the Court of Workers' Compensation Claims, the Workers' Compensation Appeals Board has also observed an increase in self-represented employees. As of April 30, 2016, approximately fifty-five percent of all appeals involved self-represented employees. Approximately thirty-two percent of pre-reform cases involved self-represented employees. The Board has stressed in several cases that, although "courts should take into account that many pro se litigants have no legal training and little familiarity with the judicial system," it is equally important to "be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary."



## Mediation

An important goal of the 2013 Reform Act is to minimize unnecessary litigation. Mediation is an effective way to achieve this goal. Resolving conflicts without going to court benefits both employees and employers. While the Bureau of Workers' Compensation has been conducting mandatory mediations since January 1, 2005, the 2013 Reform contained two provisions that made mediations more effective:

- (1) Since July 1, 2014, all parties entering into mediation are required to come prepared to mediate all disputed issues, eliminating a long-standing obstacle to meaningful mediation; and
- (2) If parties are unable to reach a settlement, the mediator must formally articulate all unresolved issues on a form called a dispute certification notice before the parties can proceed to court. This requirement of the reform encourages the parties to come to the mediation prepared to work out the disputes rather than just attending as some did before reform. Completion of this notice requires all parties to explain all issues that prevent them from reaching a settlement.

Aided by these new provisions and professional mediators who receive annual training, periodic coaching, and peer-to-peer consultations, the Bureau's mediation program is making a difference. During the first eleven months of the current fiscal year, sixty-three percent of the 5,150 mediations resulted in an agreement. Each of these settlements represents a disputed claim whose issues were resolved more rapidly and constructively for the employee and the employer than if the parties had proceeded to a court hearing. While successful mediations help both parties in a dispute, they are especially helpful for self-represented claimants who may be at a disadvantage if their cases go to a court hearing where their lack of knowledge and experience with court processes will be a disadvantage.



Comments from mediation participants capture the impact of the mediation program. One injured employee praised a mediator, saying he had been fighting the carrier for two years to get benefits and treatment. "In one week, the mediator got the carrier to approve [his] knee replacement and pay [his] benefits." In other claims, attorneys thanked the mediator and admitted that they never expected their cases to settle. They were appreciative of the mediator's work, skill, and determination. One attorney said "Thanks to Jay's expertise, understanding of Tennessee's law, and his strong mediation skills, the parties ultimately reached a full and final settlement agreement. I want to thank you, Jay and the entire Bureau for a job well done."

*"I have been fighting the carrier for 2 years to get benefits and treatment. In one week, Nicole had gotten the carrier to approve my knee replacement and pay my benefits."*

### ***Challenges***

One of the obstacles to successful mediation is the often adversarial attitudes of participants. There are no easy answers for why they exist, but they make mutually beneficial settlements more difficult to reach. Whatever the cause, the impact is detrimental to both sides. The Bureau is addressing this challenge through continuing mediator education to enhance their skills in dealing with participants who may be reluctant to settle a claim without going to court. Mediators are also providing education for the workers' compensation community about the advantages of mediation. Changing attitudes is not a quick process, but it is an important goal of the Bureau.

## **Ombudsman Program**

Many injured employees are unfamiliar with sources of information available to them if they have questions about their claims. If those employees do not have legal representation, they can feel overwhelmed. The intent of including an ombudsman program in the 2013 Reform Act was to provide these unrepresented parties with a resource to obtain information and non-legal assistance.



The Bureau of Workers' Compensation has four dedicated ombudsmen. By the end of fiscal year 2015-2016, they will have had over 20,000 contacts with or on behalf of unrepresented parties. They will have helped these parties with over 10,000 distinct issues, including:

- The employer did not file a first report of injury with the insurance carrier or third party administrator;
- The adjuster did not contact the injured employee;
- Medical treatment was denied or not offered;
- The employee needed help identifying and completing the correct form(s) to file.

Ombudsmen have resolved over 300 disputes about medical and disability benefits, connected more than 400 employees to their adjusters for the first time, and made over 3,300 referrals to other service providers. They have provided information about workers' compensation to over 8,000 people.

The information they provide includes how disability benefits are calculated, the timing of benefit payments, when travel to a physician is reimbursable, and how appointments for medical treatment are made with a medical provider.

The ombudsman program's greatest value to unrepresented employers and employees may be their empathy, care, and willingness to provide assistance. Examples of comments the Bureau has received about the ombudsmen are:

- "She really, really seemed to care about me, and treated me with such compassion;"
- "She's always helpful and available when I need assistance with my case;"
- "I wanted to tell you how awesome and compassionate she is;"
- "I just wanted to call and compliment and commend him on being so thorough and clear in his explanation of the process and making me aware of what I should be aware of."

#### OMBUDSMEN IMPACT

Resolved 300 disputes

Connected more than 400 employees to their adjuster for the first time

3,300 referrals to service providers

Provided information to over 8,000 people

In March 2016, the Bureau conducted a survey of the individuals who had utilized the ombudsman program. The Bureau sent out one thousand survey requests, and received 425 responses. Eighty-six percent of the responders indicated that they either agreed or

strongly agreed that the ombudsman program provided the desired level of service. To hear from injured employees about their experiences with ombudsmen, click on the link in Exhibit C of the Appendix to view a short video entitled *Worker's Road to Recovery*.

## Medical Treatment in Workers' Compensation Claims

Medical benefits in the Tennessee workers' compensation system account for more than sixty-five percent of total costs. Any meaningful workers' compensation reform must, therefore, include measures to address medical costs while improving outcomes for injured employees. The 2013 Reform Act includes several measures that have had a positive impact or have the potential for a positive impact in the near future.



Forty-one percent of medical costs are for physician services. The most significant medical provision in the 2013 Reform was the requirement to adopt medical treatment guidelines. With the new Medical Advisory Committee's consultation, (membership of this committee is listed in the Appendix, Exhibit B), several options for treatment guidelines were considered. The Work Loss Data Institute ODG® was adopted along with the Department of Health's guidelines for the treatment of chronic pain. ODG® guidelines are evidence-based, frequently updated, peer-reviewed, and consistent. The guidelines prevent duplication of services and identify ineffective procedures. Because the majority of insurers and utilization review organizations in Tennessee are familiar with ODG® to evaluate treatment requests, there has been minimal disruption in the overall medical delivery process. The early results of implementing treatment guidelines are that injured employees have quicker access to appropriate medical treatment and medical providers have fewer "hassles" seeking approval for medical treatment.

It is important to note that guidelines are **voluntary**, not standards, or rules that dictate how physicians provide care for their patients. Medical treatment that is consistent with the guidelines, however, is presumed to be medically necessary for utilization review purposes, reducing the time spent obtaining approval of recommended treatments. (The medical community has long objected to the length and bureaucratic nature of the utilization review process, including "peer-to-peer" contacts.)

An important part of medical treatment guidelines is the drug formulary, which will go into effect August 28, 2016. The formulary lists approved drugs that may be prescribed without prior approval from the payer and lists other drugs that do require approval before being dispensed to an injured employee. The Tennessee workers' compensation formulary functions similarly to those used by group health plans. The expected impacts of implementing the formulary include:



- Increased dispensing of generic drugs (reducing the overall costs of drugs through less use of brand name medications);
- Reduction in the risk of adverse interactions among multiple drugs; and
- Easier weaning of an injured employee off opioids.

By coordinating the Bureau's new formulary and medical treatment guidelines with the Department of Health initiatives on opioids and other addictive drugs, the Bureau seeks to be part of the solution to the epidemic of prescription drug abuse, overdoses, and deaths.

To help medical providers understand the value and function of the medical treatment guidelines, the Bureau's Medical Director, Dr. Robert Snyder, traveled around the state for the past year, educating providers and explaining the role medical treatment guidelines play in improving the medical component of the Tennessee workers' compensation system.

Other provisions of the 2013 reform that streamline medical care are: (1) enhanced communication between the employer and the physician treating the injured employee; (2) elimination of the requirement that the employee sign a waiver before the employer can review medical records related to the work injury; and (3) simplification of the physician selection process. Rules were also adopted that penalize an employer for not providing timely medical care to an injured employee. All of these changes improve the likelihood of prompt access to quality medical care, which plays an important role in improved medical outcomes.

## Second Injury Fund

The impacts of the 2013 Reform Act on the Second Injury Fund have not received publicity, but they are significant. The biggest impact will come from the change in the definition of a compensable injury in T.C.A. § 50-6-102(14), which requires that an injury “arise primarily out of and in the course and scope of employment.”

Rules adopted pursuant to the Reform Law preclude cases from languishing unattended. This streamlining of cases will reduce the incidence of speculative claims against the Second Injury Fund. Further, because all benefit awards, whether interlocutory (award for temporary benefits) or final, are now made by a workers' compensation judge and not a workers' compensation specialist, the refund provision found in T.C.A. § 50-6-238 was eliminated. This change will save the Second Injury Fund approximately \$150,000 per year.

*The biggest impact will come from the change in the definition of a compensable injury...*

## System Costs

During legislative hearings on the 2013 Reform Act, two questions emerged about the costs of implementing the new system. One of these questions was whether the reform would result in additional bureaucratic layers and increased administrative costs. It has now been three years since the passage of the Reform Act, so the Act's effect on administrative costs can be evaluated.

The Bureau implemented the legislation over the course of two years with an eye to building the “leanest,” most effective structure for the administration of the reformed workers' compensation system. Some filled positions were no longer needed because of the establishment of the court system, allowing for the addition of judicial positions. Similarly, ombudsmen positions replaced positions whose function was to answer the 1-800 assistance line. During this transformation, very few employees lost their jobs because of the Reform Act. Most people took other positions within the Bureau that became available through attrition or they were selected for one of the new positions that were part of the reform. Exhibit A of the Appendix is the organizational chart of the current structure of the Bureau of Workers' Compensation.

*The administrative cost to the state for workers' compensation has decreased rather than increased.*

Today the Bureau of Workers' Compensation has eight fewer positions than it had in FY 2012-2013. Its budget for the current fiscal year is \$621,200 more than it was in FY 2012-2013, but \$409,000 of this increase is attributable to appropriations for FY 2013-2014 legislation that provided funds to hire investigators for the employee misclassification program. These employees are funded by revenues from the Exemption Registry that are dedicated for the Employee Misclassification Education and Enforcement Fund. In addition, the Bureau's courts have generated revenues of \$987,925 in court fees in this fiscal year. Taking these revenues into account, the administrative cost to the state for workers' compensation has decreased rather than increased since the passage of the 2013 Reform Act. See Table II below.

Table II

	FY 2012-2013 (final)	FY 2013-14 (final)	FY 2014-2015 (final)	FY 2015-2016 (final)	FY 2016-2017 (Recommended)
General Workers' Compensation	\$13,770,000	\$14,697,200	\$14,668,000	\$13,982,200	\$13,902,200
Employee Misclassification	\$330,400	\$734,200	\$710,800	\$739,400	\$739,200
Second Injury Fund	\$10,147,400	\$10,147,400	\$10,147,400	\$10,147,400	\$10,147,400
<b>Total</b>	\$24,247,800	\$25,578,800	\$25,526,200	\$24,869,000	\$24,788,800
Total Number of Positions	169	170	160	160	161

The second question was whether the reforms would reduce the costs of workers' compensation for employers in Tennessee. It is still early for the 2013 Reform Act to have had a significant impact on insurance rates due to the time lag in the calculation of premiums. However, loss costs established by the Department of Commerce and Insurance have been dropping since 2013, as the Table III reflects.

Table III

Year	Loss Cost Reduction	Effective Date
2013	-6.95%	3/1/2014
2013	-5.9%	Second reduction came on 7/1/14 was based on the reform
2014	-8.2%	3/1/15
2015	-0.9%	3/1/16
2016	-2.7%	8/28/16 (based on new drug formulary)
Total Reductions	-24.65%	

Self-Insured employers are already incurring lower costs. The “Impact of the 2013 Reform at a Glance” on page 3 of this report, shows that the average cost of indemnity claims closed in the two years after the effective date of the reform dropped sixty-two percent from the cost of claims closed in the two years before the reform’s effective date. The reduction may result in part from the new definition of causation and the shortened time required to adjudicate claims.<sup>2</sup>

Similarly, the average medical costs of claims closed in the two years after the effective date are fifty-five percent less than the average medical costs of claims closed in the two years prior to the reform’s effective date.<sup>3</sup> Other measures found in the “Impact of the 2013 Reform at a Glance” also show an impact on the costs and include:

- The number of claimants who return to work after settlement has risen;
- The average duration of temporary total disability payments has decreased;
- The average number of weeks from Maximum Medical Improvement to Date of Conclusion has decreased.

Each of these measures suggests that injured employees miss less time from work because of the 2013 Reform. A shorter period of disability increases the likelihood that the employee will return to gainful, full-time employment, decreasing the impact of their injury on both the employee and the employer. Returning an injured employee to his or her pre-injury life is a major goal of the 2013 Reform.

## Changes After the Reform

Tennessee has made significant progress since the 2013 Workers’ Compensation Reform Act was passed to improve the workers’ compensation system. Improvements did not stop, however, with the implementation of the Reform Act. During subsequent legislative

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<sup>2</sup> Claims in the two post-reform years may be less severe than the claims in the two pre-reform years. The closed, old law claims may include claims with a duration longer than two years, which tend to increase severity.

<sup>3</sup> The same cautions about possible exaggeration in indemnity reductions also apply to medical reductions.

sessions, the General Assembly passed several bills that will have significant impacts on the workers' compensation system in the years ahead.

Two of these recent changes address concerns about the significant number of injured employees appearing before the Court of Workers' Compensation Claims without legal representation. Public Chapter (PC) 1056 permits the Court of Workers' Compensation Claims to award reasonable attorney fees and costs if the court determines the employer wrongfully denied or failed to timely furnish appropriate benefits to the injured employee. The legislative intent of this law is to increase the likelihood that injured employees will be able to obtain legal assistance if they need it.

PC 1056 also includes a provision allowing ombudsmen who are licensed attorneys to provide limited legal advice to unrepresented parties. The attorney ombudsmen cannot represent them in court, but can offer more comprehensive assistance in appropriate cases.

PC 816 also addresses the provision of legal fees. It permits the Court of Workers' Compensation Claims to award attorney fees and reasonable costs incurred in enforcing the medical benefits provisions in their orders. Both PC 1056 and PC 816 are intended to remedy current challenges identified by the Bureau and stakeholders. They should further foster a system that is fair and balanced.

Another significant law that will have a positive impact on the workers' compensation system is PC 803. This law authorizes the Administrator of the Bureau of Workers' Compensation to establish requirements and standards for medical case management services for injured employees. It requires all case managers and case manager assistants to be certified by the Bureau prior to offering case management services in the workers' compensation system. It establishes a penalty for failure to obtain that certification or failure to comply with rules regarding appropriate actions of a case manager.

This law also authorizes penalties for insurance companies or third party administrators (TPAs) whose adjusters act in a manner that is not compliant with fair claims handling standards promulgated by the Bureau. Developing effective claims handling standards will be a priority for the Bureau in the coming fiscal year. Effective standards have significant potential to create a fairer and more balanced system.

In 2014, the General Assembly passed PC 765 effective July 1, 2015, that will reduce the harm done to an injured employee whose employer unlawfully fails to provide workers' compensation benefits. This law allows eligible employees to receive limited temporary disability and medical benefits from the Uninsured Employers Fund when an employer

who is required to provide workers' compensation benefits fails to do so. The processes and procedures necessary to implement the new benefit program are in place and the Bureau will begin to publicize the program this summer.

## Future of Workers' Compensation

Tennessee is not alone in considering reforms. For several years, groups around the country with two divergent views have called for reforms. One view is that workers' compensation benefits have decreased to the point they are inadequate. They argue that injured employees are not receiving appropriate protection against interruption of income or sufficient medical care and that vocational rehabilitation has been a failure. Some have even suggested the federal government should take over state workers' compensation systems. They argue that workers' compensation costs have been shifted to federal disability programs, and that the "grand bargain" has been breached.

Some groups take the opposite position. They argue that inefficiencies in traditional workers' compensation systems increase costs without improving outcomes. These groups would prefer a system similar to those of Texas or Oklahoma that allow employers to "nonsubscribe" or "opt-out" of a state's workers' compensation requirements and develop "injury benefit plans" of their own design.

In Texas, employers have been able to choose whether to subscribe to the state's workers' compensation system since 1919. About thirty-three percent of Texas employers representing twenty percent of employees do not "subscribe" to the workers' compensation law. There are no requirements that nonsubscribers provide benefits to injured employees, although many do. For those that do provide benefits, there is no state oversight of what those benefits are or how they are administered. In Texas, employers who do not "subscribe" to the statutory workers' compensation system assume the risk of tort claims from their injured employees. These employers cannot claim that their benefit plan, if they have one, is the exclusive remedy for injured employees.

In 2013, Oklahoma reformed its workers' compensation system. The new law includes language that allows "qualified employers" to "opt-out" of the statutory workers' compensation system. However, Oklahoma took a different approach than Texas regarding the provision of benefits and whether benefits programs of employers who "opt-out" constitute an exclusive remedy for legal action. The Oklahoma law includes language

mandating that employers provide benefit plans with benefits equal to or better than the workers' compensation law. Benefits provided under these plans are the exclusive remedy for injured employees.

The impact of the Oklahoma law is unclear. The number of employers who have opted out is relatively small (approximately fifty). There have been numerous constitutional challenges to the "opt-out" provisions of the Oklahoma reform law. The Oklahoma Workers' Compensation Commission has ruled in one case that a provision of the "opt-out" law is unconstitutional and has ten cases pending that challenge the constitutionality of the "opt-out" legislation.

By the end of May 2016, the Oklahoma Supreme Court rendered opinions in five cases, concluding that one or more provisions of the "opt-out" legislation were unconstitutional in each case. There are six more cases pending in the Oklahoma Supreme Court regarding the constitutionality of Oklahoma's "opt-out" provisions.

The wide gap between these perspectives has triggered many forums around the country about the pros and cons of each of these very different approaches to benefits for injured workers. These forums will continue in the coming year, and one will be at the Bureau of Workers' Compensation in Nashville on October 21, 2016.

However, it cannot be doubted that there is more clarity about the future of workers' compensation in Tennessee. Spurred by the 2013 Reform Act, Tennesseans interested in the future of workers' compensation continue to collaborate on identifying ways to make the system work better. While agreement concerning specific ideas is rarely unanimous, there continues to be agreement on the central goal. That goal is to continue to improve Tennessee's workers' compensation system for both employees and employers. With this type of collaboration, **the future for workers' compensation in Tennessee looks bright.**



Appendix

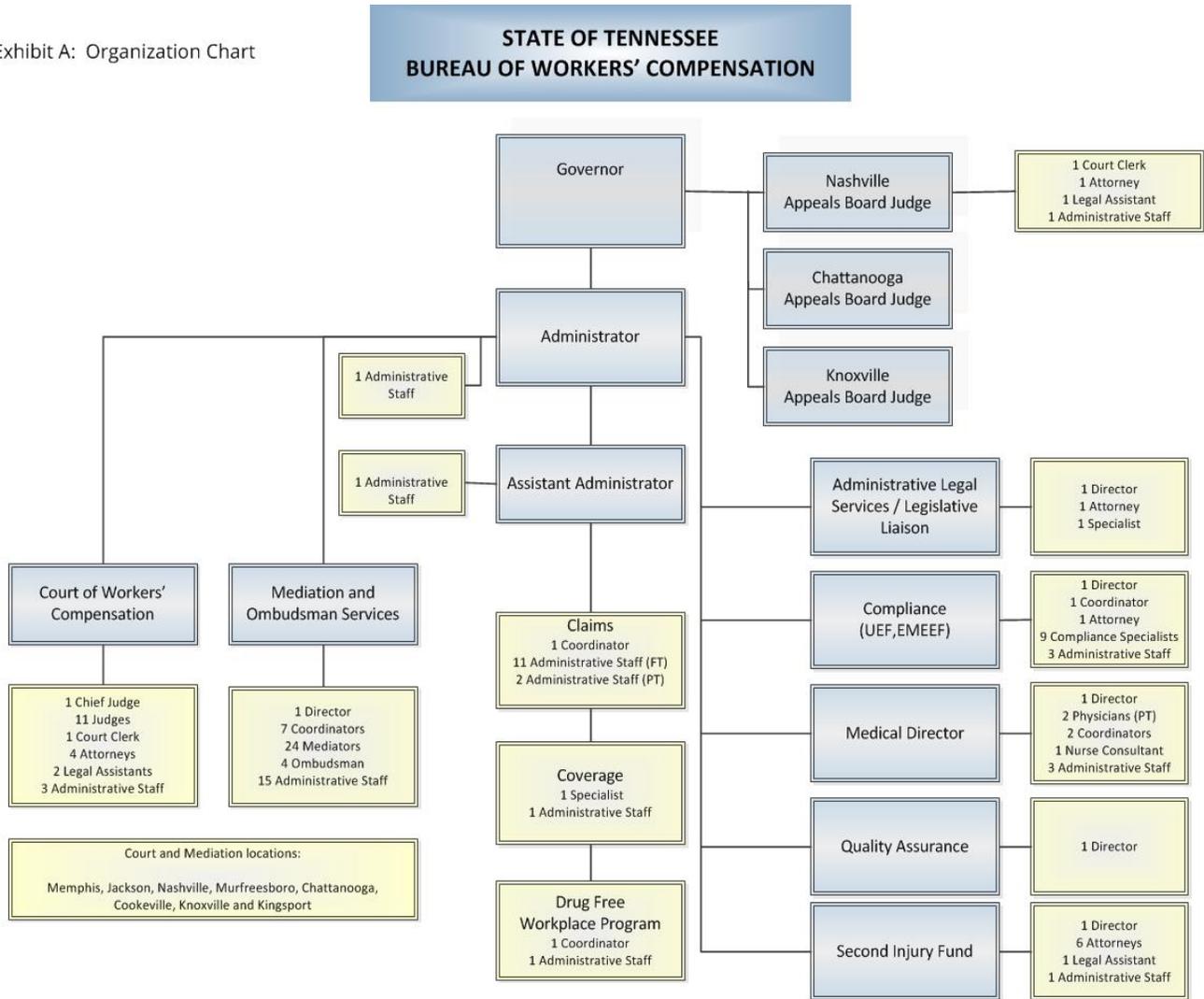
Exhibit A: Organization Chart

Exhibit B: Membership of the Medical Advisory Committee, Membership of the Medical Payment Committee

Exhibit C: URL addresses for:

- Trace,
- Lexis Nexis,
- Westlaw,
- Tennessee Attorney's Memo
- Worker's Road to Recovery, a video about injured employees' experiences with the ombudsmen

Exhibit A: Organization Chart



## Exhibit B

**Medical Advisory Committee****Employers**

Rob Behnke, CPCU  
Cracker Barrel

Jerry Barrix  
Wade Electric Company

Gaye Fortner, President and CEO  
HealthCare 21 Business Coalition

**Employee Representative**

Lisa Hartman, RN

**Insurance**

Misty D. Williams, RN, BSN, CCM, AIC  
Travelers Insurance

Ginny Howard, Claim Manager II  
Zurich North American

**Occupational Medicine**

David Tutor, MD  
East TN Urgent Care

**Chiropractic**

Keith Graves, DC

**Pharmacy**

Jason Carter, Pharm D

**Anesthesiology/Pain Management**

Tracy Jackson, MD  
VUMC Interventional Pain Center

**Health Department**

John Dreyzehner, MD, MPH, FACOEM  
Commissioner, TN Department of Health

**Orthopaedics**

Douglas Weikert, MD  
Vanderbilt Orthopaedic Institut

Randall Holcomb, MD  
OrthoMemphis

**Neurosurgery**

John Brophy MD  
Semmes-Murphy

**Psychiatry**

James Gregory Kyser, MD

**Administrator**

Abbie Hudgens, ARM, AIC

**Medical Director**

Robert B. Snyder, MD

**Assistant Medical Directors**

James B. Talmage, MD  
Jeffrey E. Hazlewood, MD

Exhibit B continued

## **Medical Payment Committee**

### **Workers' Compensation Insurance Industry**

Jeff Ford, ARM, AIC

Frank E. "Wink" Neal III

Everett Sinor, Esq.

### **Medical Provider Industry**

Jim McBride, Pharm D

Mary Layne Van Cleave

Mary Yarbrough, MD

### **Administrator**

Abbie Hudgens, ARM, AIC

### **Medical Director**

Robert Snyder, MD



Exhibit C

[http://trace.tennessee.edu/utk\\_workerscomp/](http://trace.tennessee.edu/utk_workerscomp/)

<http://www.tennesseeattorneymemo.com/>

<http://www.lexisnexis.com>

<https://signon.thomsonreuters.com/>

[https://www.youtube.com/watch?v=pvzb6vj\\_fxA&feature=youtu.be](https://www.youtube.com/watch?v=pvzb6vj_fxA&feature=youtu.be)

