

IMPACT OF THE WORKERS' COMPENSATION REFORM ACT OF 2013



**A Review by the Bureau of
Workers' Compensation to
the General Assembly of the
State of Tennessee**

July 1, 2015



INTRODUCTION

On April 29, 2013, Governor Bill Haslam signed the bill known as the Workers' Compensation Reform Act of 2013. One of the sections of the new law was T.C.A. § 50-6-134, which stated that the Division (renamed Bureau in 2015) of Workers' Compensation shall on or before July 1, 2015, review the impact of the Reform Act on the Tennessee workers' compensation system and deliver a report on its findings to each member of the General Assembly. This is the first of those annual reports.

The Workers' Compensation Reform Act of 2013 became effective on July 1, 2014. During the time since the passage of the bill, the Bureau has implemented the provisions of the bill with success and the results are already beginning to be apparent. The milestones of the implementation are:

- Governor Haslam appointed Abbie Hudgens, administrator, effective July 1, 2013 for a term of six years.
- On July 1, 2014, the Tennessee the Court of Workers' Compensation Claims went into effect with the historic result that state trial courts will no longer decide disputed workers' compensation claims. Instead, administrative courts devoted exclusively to workers' compensation claims will make these decisions.
- The construction of the workers' compensation statute changed to one that required the new workers' compensation courts to construe the statute fairly and impartially in claims for injuries that occur on July 1, 2014 or later.
- Administrator Hudgens appointed 8 workers' compensation claims court judges in June 2014 and 4 judges in June 2015.
- The Governor appointed 3 appeals board judges August 1, 2014.
- The Bureau developed and implemented an ombudsman program in the spring of 2014. Ombudsmen began to assist to self-represented employees and employers July 1, 2014.
- The Administrator selected a set of advisory guidelines for adoption for the medical treatment of workers' compensation injuries in April 2015 upon the recommendation of the Medical Advisory Committee.
- The Bureau conducted education and training programs across the state on the aspects of the new law and how to develop more effective workers' compensation programs.

The following sections of this report will provide detailed information on the implementation of the Workers' Compensation Reform Act of 2013 and the impact the new law has had in its first year. The Tennessee experience with its Reform Act has been positive and has already resulted in a workers' compensation system that is timelier, provides new sources of assistance to parties who are self-represented, more consistent, and less costly. We expect that the next several years will include additional and significant outcomes to benefit employees and employers.

We appreciate the interest of Governor Haslam and General Assembly in the workers' compensation system and their support of the reform initiative, which enables us to serve the state and its citizens better.



COURT OF WORKERS' COMPENSTION CLAIMS

Although the Tennessee Court of Workers' Compensation Claims officially began operations on July 1, 2014, planning for the Court began more than a year earlier. Perhaps the most critical task was selecting jurists for the Court. In early 2014, a 10-member committee, representing diverse interests and constituencies, including staff from the Department of Human Resources, Attorney General's Office, and Governor Haslam's Office, the plaintiff and defense bars, and private businesses, reviewed a stack of more than 50 applications from across the state. Of these, the committee interviewed some 21 candidates. The committee developed a list of its recommended candidates for the Administrator of the Workers' Compensation Division, Abbie Hudgens. Administrator Hudgens appointed seven judges and the chief judge. The judges sit in offices across the state. They are:

- Judge Brian Addington, Kingsport;
- Judge Joshua Baker, Nashville;
- Judge Pamela Johnson, Knoxville;
- Judge Lisa Knott, Knoxville;
- Judge Allen Phillips, Jackson;
- Judge Jim Umsted, Memphis;
- Judge Thomas Wyatt, Chattanooga; and,
- Chief Judge Kenneth Switzer, Nashville.



Chief Judge
Kenneth Switzer



Judge Brian Addington



Judge Josh Baker



Judge Pamela Johnson



Judge Lisa Knott



Judge Allen Phillips



Judge Jim Umsted



Judge Thomas Wyatt



In 2015, the Bureau received 34 applications. The 2015 interviewing committee once again represented diverse interests, including a plaintiff and defense attorney, private business, and two former Tennessee Supreme Court justices. The committee interviewed 22 candidates and recommended six candidates. Of those recommended, Administrator Hudgens appointed four judges.

The 2015 appointees are:

- Judge Robert Durham, Cookeville;
- Judge Audrey Headrick, Chattanooga;
- Judge Amber Luttrell, Jackson; and,
- Judge Dale Tipps, Murfreesboro.



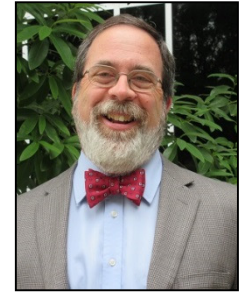
Judge Robert Durham



Judge Audrey Headrick



Judge Amber Luttrell



Judge Dale Tipps

Preparing for the New Court

A significant task leading up to the implementation of the new Court of Workers' Compensation Claims was the development of rules and guidelines. Josh Baker, the Bureau's legislative liaison and a member of the implementation task force for the new law, drafted the rules. The Bureau held a public hearing at which several persons made comments. The Bureau accepted additional comments for the next 14 days. The Bureau modified the rules to reflect appropriate changes and sent the rules to the Attorney General and the Governor's office. After approval from both, the Government Operations Committee met and approved the rules, which became effective on June 30, 2014. Chief Judge Kenneth Switzer assumed his position in early June 2014. He wrote the Court's mission and vision statements, and played a key role in revising forms and drafting new forms, among other logistical concerns.

The most important step in preparing for the implementation of the new Court after selecting the judges was training them before they heard their first cases. The judges' training was intensive. In addition to the Bureau's annual educational conference in June 2014, the judges participated in an internal, two-day "New Judges' College" conducted in cooperation with the National Association of Workers' Compensation Judges (NAWCJ). The judges additionally met to craft the Court procedures and address prospective challenges, such as how to help unrepresented litigants while ensuring fairness to all parties. Judicial training is ongoing and includes semi-annual meetings and bi-weekly conference calls, to brainstorm with each other about concerns as they arise. The training plan for judges also includes external training. All of the judges appointed in 2014 attended the three-day annual NAWCJ conference, and two of them attended the National Association of Hearing Officers annual meeting. The judges appointed in 2015 also participated in an internal, two-day "New Judges' College," which featured speakers from around the country. They will attend the NAWCJ conference later this year.



The Court Commences

Although the Court was operational on July 1, 2014, it was September of 2014 before a claimant filed for a hearing. The delay is understandable because of the nature of workers' compensation claims. In most cases where there is a dispute, it does not reach the level of filing a claim with the Court until other attempts at resolving the disputes have failed. In the 10 months during which the Court has received cases, the overwhelming majority of its proceedings was "Expedited Hearings." In an Expedited Hearing, the Court enters a non-final order that grants or denies the requested medical and/or temporary disability benefits. The clerk schedules an Expedited Hearing as soon as is convenient for all involved. After the hearing takes place, the judge typically enters an order within seven to 10 business days. This process generally results in a faster resolution of these temporary matters than what occurred under the previous law. These Orders are immediately reviewable. In both Expedited Hearings and final Compensation Hearings, the judges apply the Rules of Evidence and Civil Procedure, which did not govern under the former administrative system for hearing temporary issues. Previously, once an employee had exhausted the administrative remedies, relief was available in the trial courts, where general-jurisdiction judges resolved their cases. The results were less predictable than when an administrative, specialist judge decides a case, and it generally took much longer to obtain a resolution. The judges hear matters both telephonically and in-person. The experience of the first year has led the judges to prefer in-person proceedings for taking evidence, which requires an appropriate setting – a courtroom. Knoxville has the first courtroom. Preparation for courtrooms in the seven other Bureau offices is underway.

Ensuring Fairness for All

As previously noted, the judges realized early on that a sizeable percentage of litigants before the Court would be unrepresented. That prediction was borne out, looking at statistics from the first year: at settlement approvals, approximately 88 percent involved a self-represented litigant. Roughly 40 percent of litigants who appeared before the Court in Expedited Hearings was unrepresented and approximately 44 percent of appellants was unrepresented. Two training sessions for the new judges in the first year were on the topic of how to provide fair and appropriate hearings when one or more of the parties is self-represented (*pro se*). Staff and the judges frequently refer *pro se* parties to the newly created ombudsmen program. The Court additionally developed an online handbook for *pro se* persons. Further, during proceedings involving *pro se* parties, the judges offer instruction, but not legal advice. *Pro se* participants have the same rights as attorneys and are held to the same standards.

Communicating the Court's Work

Before any of the judges heard a single case, the Court arranged for online publication of its opinions in multiple arenas. This included collaborating with the University of Tennessee College of Law Library, which created a [webpage](#) devoted to Court and Appeals Board decisions. Anyone can access the full-text of these decisions without charge. In addition, the Court secured publication of its opinions by LexisNexis and Westlaw (Thomson Reuters), as well as Tennessee Attorneys' Memo.



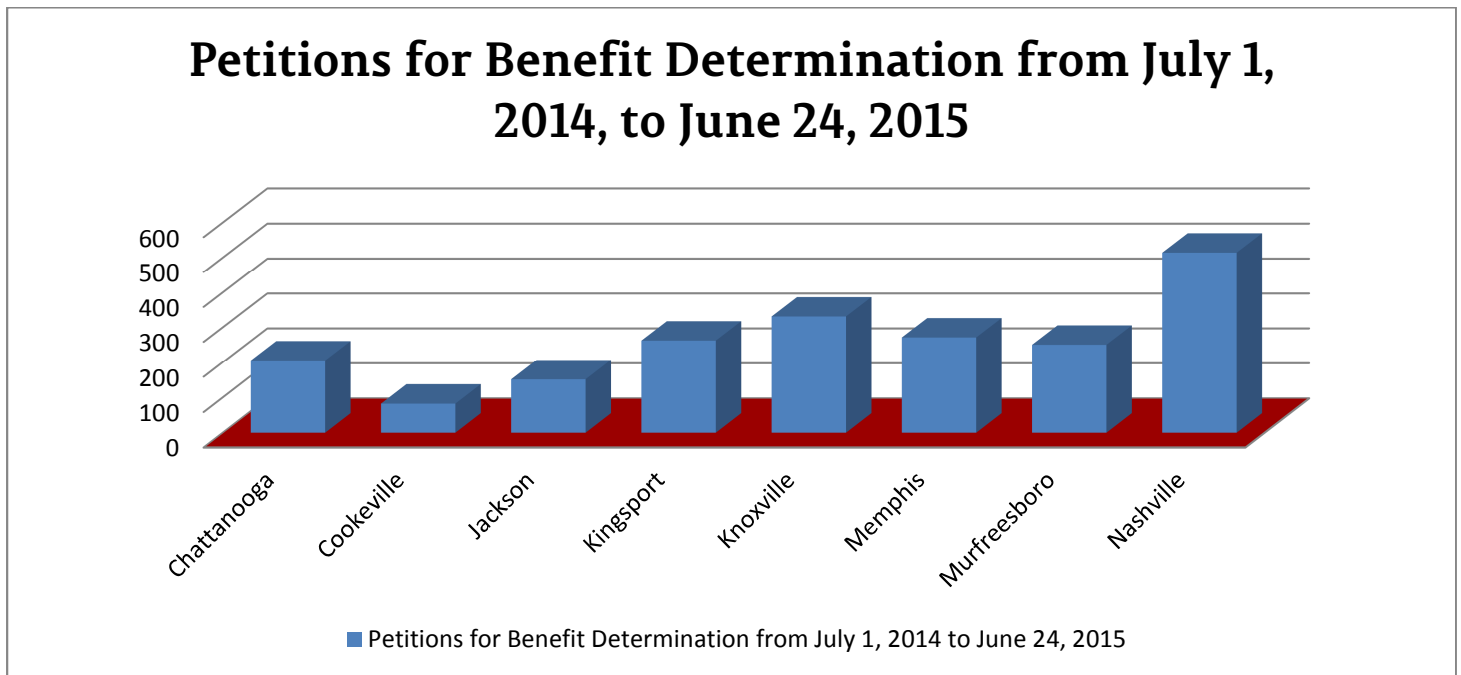
Educating Stakeholders and Tennesseans

The judges have undertaken a multi-faceted effort to educate the practicing bar and the public about the new law. Chief among those facets is speaking to groups around the state. As of the date of publication of this report, the judges have given more than 30 hours of presentations to more than 24 community and business groups, as well as insurance and attorney organizations.

As for written materials, before the Court officially opened its doors, Bureau staff wrote plain-English explanations of the changes in the law for the Bureau's website. The website is updated whenever a rule or procedure changes. Further, in March 2015, the Court launched a [blog](#), inspired by the popularity of other states' workers' compensation judiciary's blogs. The Court posts weekly updates. Each judge participates, covering a wide range of topics.

A Statistical Review of the Court's Inaugural Year

In a workers' compensation claim, when the parties cannot agree on the proper remedy, if any, for an injured worker, either party may file a Petition for Benefit Determination (PBD). This document initiates the mediation.

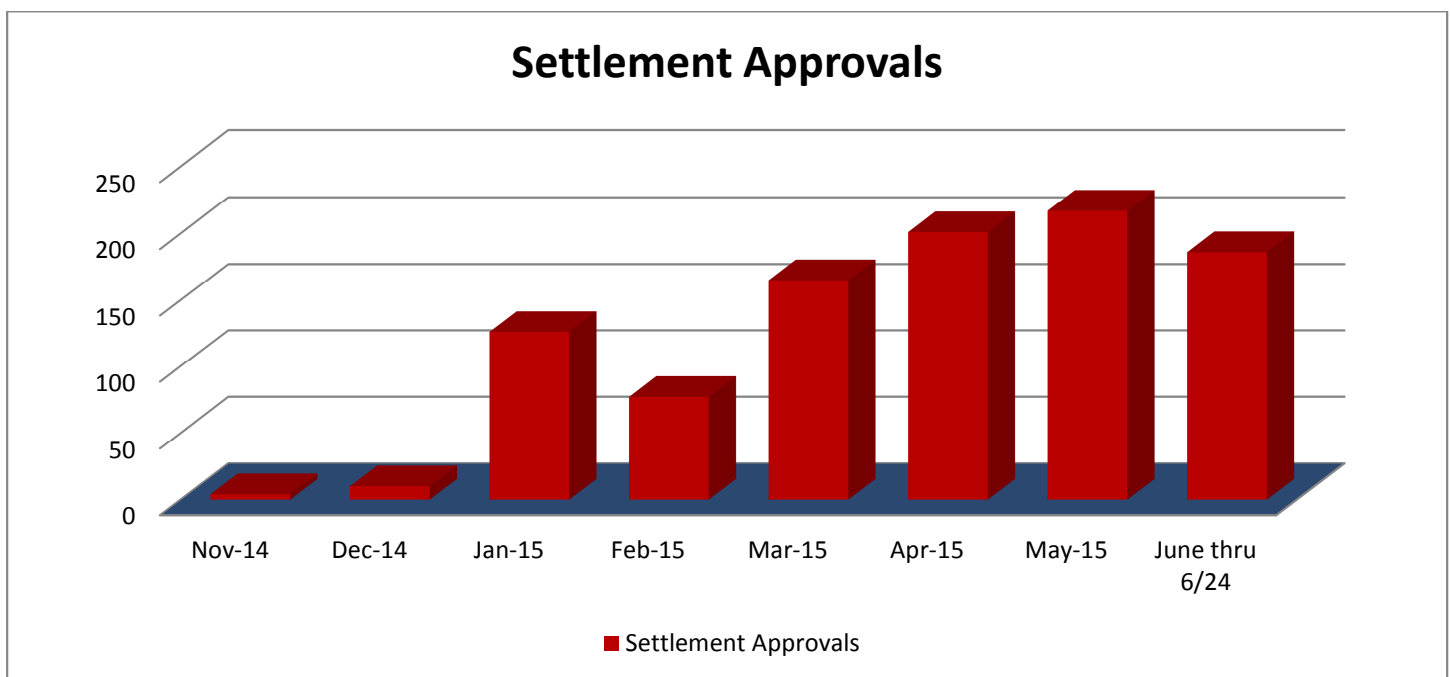


If the mediation does not result in an agreement, the mediator certifies the case to the Court for hearing using a Dispute Certification Notice (DCN). As of June 24, 2015, the Court has conducted 86 Expedited Hearings in which a judge issued an order. It is important to note that it takes, on average, 52 days from the time a mediator files a DCN until the judge issues the order. Thirty days typically pass between the clerk scheduling an Expedited Hearing and issuance of an order. The average time it takes for a judge to issue an order is 10 days from the day of the Expedited Hearing. This dramatic shortening of the time required for a party to have his or her "day in court" was one of the central goals of the Reform Act of 2013, and is already being realized. The Appeals Board has upheld the



overwhelming majority of the orders issued after an Expedited Hearing. Twenty-nine parties appealed the order issued by a judge. In 27 of the appeals, the Appeals Board affirmed the order of the judge or the appellant withdrew the appeal. The Appeals Board affirmed two appeals in part, reversed one order in full, and vacated one order.

Another critical function of the Court is the approval process for proposed settlements. The Court has the responsibility to ascertain whether the injured employee will receive substantially the benefits the Workers' Compensation Law provides. The chart below shows the number of settlement approvals that occurred since settlements began to come to the Court in November of 2014.



Looking Ahead

During the Court's upcoming, second year, objectives include bringing the newly-appointed judges up to speed quickly, continuing to improve the quality and consistency of written orders, developing more formal courtrooms and widening the opportunities for *pro se* litigants to learn Court procedures in advance of their hearings. Administrator Hudgens and the judges of the Court of Workers' Compensation Claims are always open to feedback and suggestions for improvement in the court. Their expectation is that there will be new initiatives to improve the effectiveness of an already effective court system to report in the July 1, 2016 report to the General Assembly.



WORKERS' COMPENSATION APPEALS BOARD

Any court system that makes fairness and justice a priority includes appellate review. Accordingly, a key element of the 2013 reforms to the Tennessee Workers' Compensation Law was the creation of the Workers' Compensation Appeals Board. The Appeals Board, consisting of three judges appointed by the Governor, provides timely and comprehensive review of decisions rendered by judges on the Court of Workers' Compensation Claims. Simply stated, the Appeals Board's mission is to provide all employers and employees of Tennessee fair, accurate, and meaningful appellate review of cases with dates of injury on or after July 1, 2014.

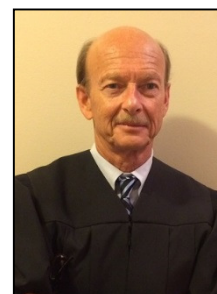
On August 1, 2014, Governor Haslam appointed three judges to serve on the Appeals Board: Timothy W. Conner, Knoxville; Marshall L. Davidson, III, Nashville; and David F. Hensley, Chattanooga.



Judge Timothy Conner



Judge Marshall Davidson



Judge David Hensley

Collectively, these judges have more than eighty years of both legal and administrative experience handling workers' compensation matters in both the private and public sectors. Although the appeals judges reside and work in different parts of the state, they collectively decide every appeal statewide, no matter where the case originates.

Immediately upon their appointment, the appeals judges began laying the groundwork for the timely and efficient resolution of the first appeal, with the expectation that other appeals would quickly follow. To that end, the appeals judges met with their peers from other states having a long and successful tradition of resolving workers' compensation disputes outside the traditional state court system, such as Kentucky, Georgia, Florida, Virginia, and Pennsylvania. The exchange of ideas was invaluable, and soon the Appeals Board appointed a court clerk and deputy clerk who then spent time training with the Appellate Court Clerk's Office in Nashville learning how to process appellate records. In addition, the Appeals Board adopted a mission statement to provide all employers and employees of Tennessee fair, accurate, and meaningful appellate review. Further, the Appeals Board adopted five core values that drive everything the Board does, both legally and administratively:

- *Rule of law:* Interpret and apply the state's workers' compensation laws to provide reasoned decisions made through established processes based faithfully on the law to promote predictability, continuity, and coherence.



- *Equal Justice*: Create and maintain a neutral, fair forum in which cases will be resolved to ensure equal justice for all persons with impartial administration of justice, treating all litigants with dignity and respect.
- *Independence*: Create and preserve an environment conducive to decisional independence, i.e., the ability to render decisions within sufficient structural autonomy.
- *Excellence*: Devise and adopt procedures and processes consistent with the highest jurisprudential and administrative standards of excellence.
- *Accountability*: Foster accountability by adhering to stringent standards of conduct, enforcement of ethical rules, and effective and efficient use of resources.

Within weeks of commencing operations, the Appeals Board also adopted the "Standard Format for Orders and Opinions" used by all the appellate courts in the state, including the Tennessee Supreme Court, for its orders and opinions. Further, the Appeals Board arranged to have its decisions made available to the public through outlets such as Westlaw, Lexis, and Tennessee Attorney's Memo, among others. In addition, the Board made information, such as forms and contact information, available to the public on the Bureau's website. Of particular interest to litigants and their lawyers, the Board adopted Practice and Procedure Guidelines, which are also available online, detailing some of the finer points of appellate practice, such as the format and content of briefs and motions. In an effort to educate the public on appellate process and procedure under the new system, the appeals judges have given presentations to various groups, such as lawyers, adjusters, physicians, and law school students.

The Appeals Board did not have to wait long (September 2014) for someone to file the first appeal. Others quickly followed. Although every appeal is important, several of the cases appealed have involved significant legal issues under the new law, such as whether the timely filing of a notice of appeal is jurisdictional. The Appeals Board held that it is, explaining, "[t]he prompt resolution of workers' compensation cases is paramount, and the timely filing of a notice of appeal is an essential part of achieving that objective." *Bates v. Command Center, Inc.*, No. 2014-06-0053 (Tenn. Workers' Comp. Appeals Bd. April 2, 2015). The Board further observed in *Bates* that "[i]f the rule were otherwise, parties would be faced with the uncertainty of not knowing if or when a trial court's decision will be challenged, an untenable situation inconsistent with both the spirit and purpose of the workers' compensation system."

In another case, the Board resolved the question of whether litigants can rely on pre-reform cases as authority, a major point of uncertainty. The Appeals Board held that reliance on cases decided by the Tennessee Supreme Court was appropriate unless the Supreme Court's decision relied on a remedial interpretation of pre-reform law or statutes that the General Assembly had changed. In yet another case, the Board observed that mere assertions of a party could not establish what occurred in the trial court unless supported by evidence in the record, thereby reinforcing the fundamental principle that parties must prove their cases to prevail under the new system



A Statistical Review of the Appeal Board Inaugural Year

In all, the Board has resolved twenty-nine expedited appeals as of June 24, 2015, each within the seven business days mandated by law. The average time for a decision is 4.37 days from the date the Appeals Board receives the appellate record, far less time than under prior law. In addition, as of June 24, 2015, the appeals judges have decided 181 appeals of the 376 decisions made by administrator designees since August 2014. The number of pre-reform appeals has dropped by approximately forty percent from the same time a year ago. Every appeal decided under pre-reform law has been resolved within the statutorily required time to do so. In other words, the Appeals Board has timely decided 100% of the appeals to date, thereby giving employees and employers alike the certainty needed to move on.

| As of 6/24/2015 | | | | | | | |
|------------------------|----|------------------------|----|-------------------------|---|--------------------------|--------|
| Pre--reform Appeals | | Pre-reform Appeals | | New Law Cases | | New Law Cases | |
| Aug. 2013 to Aug. 2014 | | Aug. 2014 to June 2015 | | Expedited Appeals Filed | | | |
| August | 61 | August | 55 | August | 0 | Expedited Orders Filed | 86 |
| September | 46 | September | 52 | September | 1 | Expedited Appeals Filed | 29 |
| October | 67 | October | 37 | October | 1 | Appeal Rate | 33.72% |
| November | 48 | November | 35 | November | 0 | Average Days to Decision | 4.37 |
| December | 34 | December | 35 | December | 5 | Percent Timely Decided | 100% |
| January | 42 | January | 37 | January | 4 | Pro Se Appellants | 44.83% |
| February | 46 | February | 25 | February | 1 | | |
| March | 51 | March | 29 | March | 3 | | |
| April | 37 | April | 28 | April | 4 | | |
| May | 37 | May | 32 | May | 6 | | |
| June | 32 | June | 11 | June | 4 | | |
| July | 52 | | | | | | |
| Total | | Total | | Total | | | |
| 553 | | 376 | | 29 | | | |

Looking Ahead

The Appeals Board intends to monitor the extent to which unrepresented litigants file appeals. As of June 24, 2015, approximately 44% of appeals have involved unrepresented parties, which is considerably higher than under prior law. In one such case, the Appeals Board observed that it is a party's prerogative to proceed *pro se* on appeal and that those who decide to represent themselves are entitled to fair and equal treatment. The Board further noted that, although courts should take into account that many *pro se* litigants have no legal training and little familiarity with the judicial system, it was equally important to "be mindful of the boundary between fairness to a *pro se* litigant and unfairness to the *pro se* litigant's adversary." While it is too early to draw any definite conclusions, the trend in *pro se* appeals is one worth close monitoring.



In sum, the Appeals Board is up and running and, by all accounts, things are off to a good start. The appeals judges themselves are keenly aware that as a newly created body responsible for deciding appeals from the Court of Workers' Compensation Claims, the Board plays a key role in the transition of workers' compensation litigation from the judicial branch to the executive branch. Thus far, cases are being resolved in less time and with less expense than under the prior system. At this point, there is no reason to believe that this trend will not continue.

OMBUDSMAN PROGRAM

The statutory purpose of the ombudsman program is "to assist injured or disabled employees, persons claiming death benefits, employers and other persons in protecting their rights, resolving disputes and obtaining information available under workers' compensation laws." Tennessee law restricts the Ombudsman Program to providing services only to parties who do not have legal representation. The Ombudsman program provides these self-represented customers information on processes, procedures, rules, and laws, but does not provide legal advice. With better information, employees and employers are better able to communicate with other parties in their workers' compensation dispute, which may lead to resolution of their issues without formal mediation or court hearing. If a self-represented person requires formal dispute resolution, the Ombudsmen will direct them to the appropriate forms to request mediation or a court hearing and provide them with assistance in completing forms.

The first task in the implementation of the ombudsman program was to develop a curriculum for training the new ombudsmen. The curriculum was not just a training tool, however; it provided the structure for the new program. The Bureau's director of quality assurance, Richard Murrell, developed the curriculum and the program structure. The Bureau then hired three ombudsmen in June 2014, one month before the July 1, 2014 effective date of the reform legislation.

Once hired the new ombudsmen began an extensive training program. The training included presentations from Bureau program directors and attorneys on both the reformed workers' compensation law and the law in place prior to July 1, 2014. Other sessions included training on the Bureau's computer system, case law, Bureau rules, and regulations. Of particular importance was the training ombudsmen received in techniques to enhance conflict resolution, the importance of providing highest quality customer service, and how to use interactive conversation to identify what might improve outcomes for the parties. The ombudsmen also heard presentations by experienced leaders from the divisions of Adult Education and TOSHA of the Department of Labor and Workforce Development and the Department of Commerce and Insurance Workers' Compensation Bureau. Only after the training was complete did the new ombudsmen respond to their first self-represented "customer."

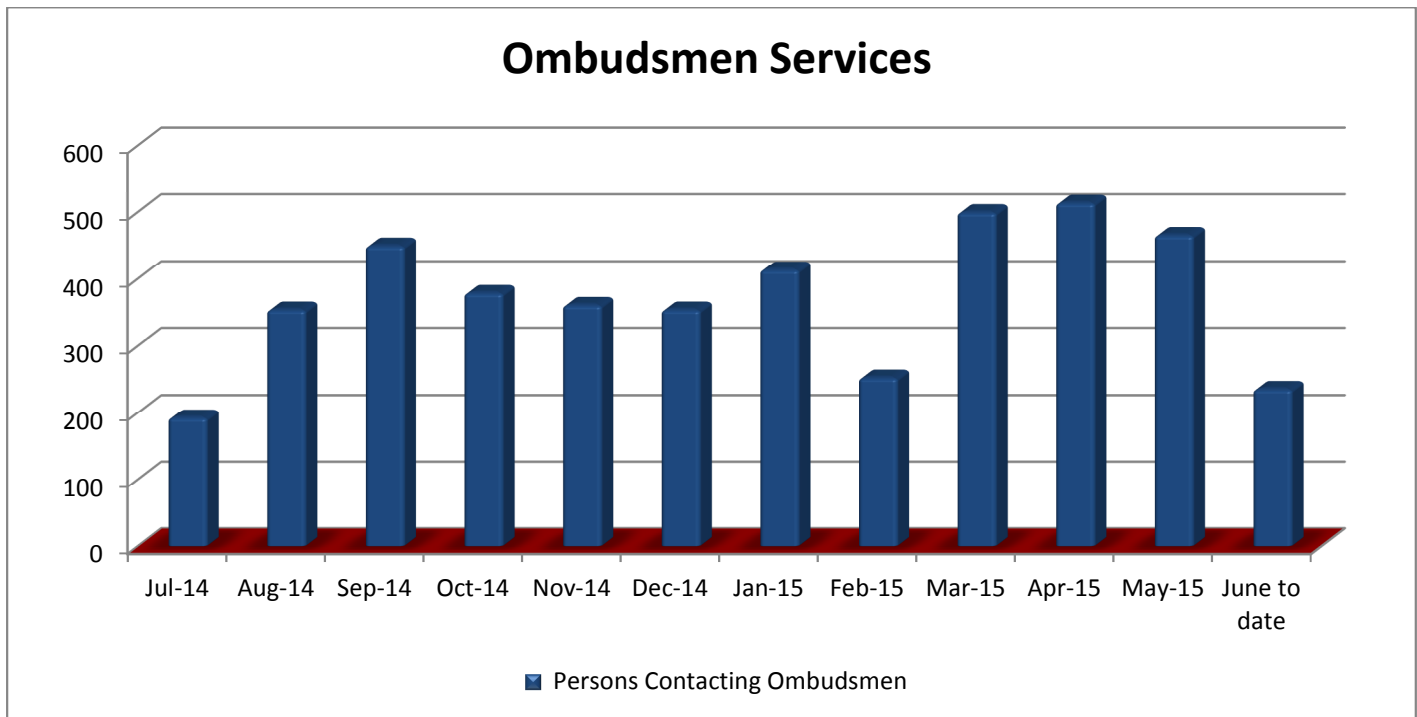
The Ombudsmen also help educate the public on the ombudsman program. Beginning in February 2015, ombudsman representatives made four presentations in conjunction with WEOC or with Bureau of Workers' Compensation outreach initiatives.

The number of individual contacts between Ombudsmen and customers continues to grow. The chart below illustrates the number of contacts made in each month since the program began. This chart only reflects the number of initial contacts. The amount of assistance ombudsmen provide is greater than the numbers convey at first glance. When a self-represented employee or employer contacts an ombudsman, the person's issues may



require the ombudsman to make multiple calls on the person's behalf or talk to the person multiple times to get them the help they need. Help may include phone calls to employers, insurance companies, etc., information sent to a self-represented person or on behalf of that person and/or in-person meetings.

A Statistical Review of the Ombudsman Program



Reaction to the Ombudsman Program

Response to the program in the first year has been positive. Employers and employees have expressed their appreciation for the ombudsmen. The email sent by the father of an injured worker below tells the impact of the ombudsman program best.

I would like to make you aware of Ms. Mary Perry and the excellent support and guidance she has given my son. Ms. Perry has provided sound advice with a professional can-do attitude. Her going the extra mile to help resolve issues and explain the process in a manner that provided my son sound direction, insight and guidance to ensure his right to WC benefits would not be compromised. With Ms. Perry setting this example for other employees I have no doubt your Division will excel in support of the people/employees of Tennessee businesses. I rarely have a chance to write on behalf of someone that provides this level of service. It is far and few between.



MEDICAL PROGRAM

The medical component of Tennessee's workers' compensation system changed with the Workers' Compensation Reform Act of 2013. Since medical costs comprise over 65% of workers' compensation costs in Tennessee, the changes in the Reform Act will have a significant impact on the workers' compensation system in Tennessee.

Causation Definition

The reform act included a new definition of causation; one that requires the physician to provide an opinion about whether work is more than 50% responsible for the medical treatment the employee seeks for the alleged injury. This is a significant change from the lower standard of medical causation for pre-reform claims. The new definition of causation requires extensive education of employers, carriers, adjusters, and physicians so opinions on causation can comply with the new law. The Bureau Medical Director and other members of the executive team have been active in explaining the new causation definition to physicians and other stakeholders in over 30 presentations and more than 100 telephone calls in the past year. To provide additional assistance for physicians, the Bureau posted a "help sheet" on the Bureau's website that clarifies what should be in the physician's causation report.

Medical Advisory Committee

The Reform Act of 2013 provided for 2 new committees. One of the committees is the Medical Advisory Committee, whose purpose is to assist the administrator in the development of medical treatment guidelines and to advise the administrator on issues relating to medical care in the workers' compensation system. The committee is composed of medical practitioners from across the state and representatives of employees, employers and insurance companies. This committee has met 8 times since the appointment of its members. The committee provides invaluable assistance in the determination of which medical treatment guidelines would provide the most value to the Tennessee workers' compensation system. Importantly, it also aids the Bureau in understanding the multiplicity of viewpoints related to the appropriate care of workers' who have compensable workers' compensation injuries. The representation of multiple points of view has led to better decisions and will help the Bureau adopt additional innovative approaches to the provision of high quality, cost effective, and timely health care to injured workers

Treatment Guidelines

Treatment guidelines can lead to improved medical care for injured workers and reduce the delays in approval of medical care. The Reform Act required the adoption of advisory medical treatment guidelines by January 1, 2016. The first guideline selected is the Department of Health guideline for the treatment of chronic pain. The Administrator Hudgens was a member of the steering committee for the Department of Health project to develop this guideline.

Tennessee is second in the nation in the per-capita amount of narcotics used. The Department of Health identified this crisis and published guidelines to help practitioners determine the appropriate treatments for these patients. This is also true in workers' compensation where 30% of the costs of all medications are for narcotics among patients who have been taking narcotics for over one year. As there are special circumstances in workers' compensation, the Bureau published an appendix that explains the most appropriate way to treat chronic pain when the patient is an injured worker. By focusing on quality, timely and appropriate initial treatment in workers'



compensation injuries, the Bureau hopes that we can reduce the future use of these medications that have the potential to damage the lives of injured workers and their families.

In May 2015, the Workers' Compensation Medical Advisory Committee recommended the adoption of ODG treatment guidelines for diagnoses other than the treatment of chronic pain management. They also recommended that the committee form a special subcommittee to consider possible modifications to the guidelines for treatment of spinal injuries. In March, the Medical Advisory Committee recommended that adoption of the ODG Closed Formulary for drugs. This formulary will identify specific drugs that require preauthorization before the pharmacy dispenses them. One of the advantages of such a formulary is its role in reducing the amount of opioids prescribed for workers' compensation injuries that may not be in the best interest of the patient. It will also identify drugs that are much more costly than an equally effective generic drug. Texas adopted this guideline several years ago with great success which the Bureau hopes to duplicate in Tennessee.

Once fully implemented, treatment guidelines will help reduce treatment delays caused by payers' utilization review processes. If a recommended medical treatment is within the treatment guidelines, utilization review is unnecessary. As a result, the state will encourage the most appropriate care according to evidence based research and reduce time consuming delays in that medical treatment. Together these advantages will result in improved outcomes for injured workers and lower costs for employers.

Medical Payment Committee

The Reform Act also established a Medical Payment Committee that replaced the Medical Care and Cost Containment Committee (MCCC). The committee meets quarterly to resolve disputes of payments between providers and payers and to suggest changes to the rules for reimbursement, including the fee schedule. Made up of members from employers, carriers, and providers, their work has been important in improving communication and understanding of the fee schedule. The committee was successful in eliminating the backlog of disputes that built up when the MCCC had to handle multiple issues in addition to payment disputes.

This committee is currently assisting the Bureau to identify solutions for areas of concern about the fee schedule. Some of the issues under review are appropriate compensation for: (1) hospital treatment up until the time of a positive drug screen; (2) doctors' time to provide drug and alcohol counseling, causation analysis, or meetings with case managers. The committee is also providing input on the modification of the Bureau's current fee schedule rules so that they follow Medicare regulations more closely. These changes will simplify the system for payers and providers.

Utilization Review Appeals

An indirect, though beneficial effect of the reform act's focus on medical issues is the Bureau's efforts to reduce the time required to process an appeal of a payer's denial of requested medical care. If the utilization review organization denies a recommended treatment as not medically necessary, an injured worker or their representative or physician can file an appeal to overturn the denial to the Medical Director. Over the last year, the Bureau made significant improvements in the quality and the timeliness of the determination of these appeals. These improvements mean that injured workers receive appropriate medical care with substantially reduced wait



time before treatment can begin. The time needed to complete an appeal dropped from over 21 days to less than 14 days.

This reduction in time makes a difference in the outcome of the medical care for injured workers. The right treatment provided at the right time improves workers' chances to recover and return to work. Not only is the patient more satisfied with their care and with the workers compensation system, but also the temporary disability payment time may decrease due to quicker medical care. High quality medical care provided timely reduces the financial and personal costs of workplace injuries.

Outreach

The medical program staff of 6 fields over 500 calls, faxes or e-mails per month concerning utilization review, impairments, fee schedule, billings, waivers, determinations, inquiries from other departments in the state government and legislative offices. Some calls can be resolved in 5 minutes but others take days to conclude and require input from compliance, administration, legal, and penalty sections of the Bureau. These communications play an important role in fulfilling the mission of the Bureau's medical program to improve the medical care provided to injured workers.



TRAINING AND OUTREACH

Immediately upon the passage of the Reform Act in 2013, the Bureau collaborated with the Tennessee Chamber of Commerce and Tennessee OSHA and delivered two-hour sessions on the provisions of the new law and the importance of injury prevention. More than five hundred employer representatives attended fourteen presentations made across the state during the summer of 2013. In addition to these presentations, Bureau staff members made more than ninety presentations to a variety of groups, many of which were on the reforms. These outreach efforts allow stakeholders to meet and interact with Bureau representatives and ask questions that only the Bureau can answer.

One of the challenges of the outreach efforts was communicating the significant change to the new definition of "injury" to medical providers. The new law states that to be a compensable injury, the physician must reach an opinion that "it is more likely than not considering all causes, as opposed to speculation" that the injury arose "primarily out of and in the course and scope of employment." This new definition of causation meant that medical providers must understand the new law if the expected results of the new definition were to materialize. To help physicians understand the new provisions related to medical determination of causation the Bureau's medical director made presentations to twenty-nine (29) medical conferences and/or individual medical group meetings.

Since the effective date of the reform act (July of 2014), the Bureau has presented information specifically about the reform to the following groups:

- Five (5) Chambers of Commerce events (in addition to the fourteen mentioned above);
- Fourteen (14) Department of Labor and Workforce Development's Workforce Employment Outreach Committees (WEOC) events;
- Four (4) employee events, partnering with the Tennessee AFL-CIO and its unions;
- Twenty-eight (28) employer events, partnering with various professional organizations and special interest groups (SHRM, Safety Engineer, Risk Management, Rotary Clubs, Homebuilder and Contractor associations, etc.);
- Thirteen (13) attorney events, presenting at legal conferences and law firms;
 - Presentations to attorneys at the Tennessee Attorney Memo Annual Conference, local bar associations, and the Sterling Education Conference.
 - Bureau executive team members, including the medical director, made presentations medical providers at Vanderbilt University's annual Workers' Compensation Conference, the Tennessee Medical Association Conference, and the Tennessee College of Occupational and Environmental Medicine Conference.

Thank you for coming to Tullahoma. Your presentation was informative and entertaining.

Thank you again for providing a great update this morning at the Blount County Partnership. I appreciated not only the great tips, but the resource information as well.



On-Going Training

The **2014 Workers' Compensation Education Conference**, built around the theme of "Expecting Great Outcomes", had the largest attendance in its seventeen-year history. Interest about the newly created Court of Workers' Compensation Claims, new rules for accessing the court and the determination of permanent disability benefits swelled the audience to more than 750 employee representatives, employers, adjusters, attorneys, case managers and medical providers with over a hundred people having to be turned away due to a lack of space. The event allowed the Bureau to deliver a common message to hundreds of stakeholders over three days while interacting with them on a personal level. Feedback from the attendees proved that the event met its goals:

- Greater than 89% of the attendees rated the conference as "Excellent" or "Good"
- Greater than 84% of the attendees are "Very likely" or "Somewhat likely" to return to the 2015 conference,

One attendee made this comment about the conference, "I just want to let you know what a good job you did with the Workers' Comp conference last week. That was a huge crowd, and you managed it very well! Everything ran very, very smoothly, and I felt it was beneficial to all in attendance."

Other comments submitted on the feedback forms included:

- "All of the Speakers were great, the review of actual cases was very helpful and the application of information to make working with the State and following Rules so much easier."
- Congratulations on a great conference! I am already looking forward to next year's!
- "This was the first W/C conference I have attended. I was "blown away" by the professionalism and awesome speakers!"
- "I was extremely impressed. All of the hard work put forth by the committee was a huge success." and,
- "I come all the way from Houston, Texas to attend this conference. This is my fourth year and it just gets better every year."



Assist
Educate
Resolve

The Bureau conducted its 18th Annual Workers' Compensation Education Conference June 8-10, 2015 in Nashville. Training sessions were developed on the conference theme of "Assist, Educate and Resolve" reflecting the Bureau's goals of assisting injured workers return to their health and to their jobs as quickly as possible. Over 600 attendees heard presentations that covered topics such as proper claims handling

techniques, ways to assist *pro se* claimants, how to navigate the new court and appeals board, and best practices for nurse case managers and utilization review agents. One attendee commented, "Excellent job of organizing and expanding the scope of the conference." Another wrote, "Overall, I thought it was the best one you have done so far."

There were separate sessions the weekend prior to the conference directed toward medical providers. These sessions addressed the proper use and application of the *AMA Guides to the Evaluation of Permanent Impairment* as well as the impact of statutory and programmatic rule changes that affect the delivery of medical

care. One attendee wrote, "Speakers were very versed, answered all of the questions, and had a huge amount of expertise and understanding of medico-legal issues."





For the first time ever, a **Physician's Education Conference** targeted to medical providers was included as part of the conference. Sessions covering proper treatment techniques for the management of chronic pain, determining medical causation and concepts for developing medical treatment guidelines helped open a too-often closed line of communications between the Bureau and the medical community. This training was and will continue to be an important part of the successful implementation of the reform act.

Another important element in the success of the reform is to provide quality mediation services that facilitate the settlement of claims without a judicial process. The Bureau employs some of the most effective workers' compensation mediators in the state. However, maintaining that level of effectiveness requires annual training. Each year since the passage of the reform law, Dr. Larry Bridgesmith has conducted **Mediation Training** for Bureau mediators. In 2014, the focus was how to discover and overcome obstacles that cause impasses in workers' compensation settlement discussions.

The Bureau reintroduced its **Adjuster Training Program on March 24 and 25 2015**. This training is for insurance adjusters who handle Tennessee workers' compensation claims. The directors of the Bureau's programs, subject matter experts, provide the instruction. The first-day session covered methods designed to improve the efficiency of claims handling and steps to improve communications between the claimant, the mediating specialists and the adjuster as well as pro-active measures to help adjusters avoid penalty assessments and ways to improve the timely delivery of appropriate medical care. Second day sessions focused on the new law, especially the Court of Workers' Compensation Claims and Appeals Board, requirements for good faith negotiations, and the requirements for utilization review appeals.

Interest in the adjuster training is high and the classes reached maximum capacity in March with twenty-nine attending the first day and thirty-six adjusters attending the second day. The Bureau will offer two more adjuster-training sessions in 2015. There will be 2 sessions in East Tennessee on August 26 and 27 and a two-day training for adjusters in West Tennessee will take place in the fall.

Outreach

The Bureau reaches out to persons involved with workers' compensation in a variety of ways, including:

- An introductory postcard to each injured employee when the Bureau receives a "first report of injury;"
- A Beginners' Guide for those people who are new to all that is involved in a workers' compensation claim;
- A webpage, and;
- A toll-free phone line.

Communications with injured workers begins early in the claims process. Experience demonstrates that early communication is often associated with claims that have better outcomes. With this in mind, the Bureau opens a line of communication with claimants immediately after receiving notice of a claim. Upon its receipt of the initial filing of the report of injury, the Bureau mails a bilingual English/Spanish postcard to every claimant. This alerts the individual as to the filing of the claim, introduces him/her to the Bureau and identifies the Bureau's web address and toll-free phone number as resources if additional information is needed. The Bureau will mail approximately 100,000 postcards in FY 14/15.



The Bureau created an informative and attractive "Beginners Guide to Tennessee Workers' Compensation" in both English and Spanish and placed it as a downloadable document on the Bureau's webpage. The document answers the most commonly asked questions from employees and employers regarding benefits entitlement, the provision of medical treatment, and the ways a party can protect its rights.

The Bureau's website is user friendly. With just a click of their mouse, individuals can go to information designed to answer their questions. Information includes employee rights to benefits, requirements for notifying their supervisor and other information to help return them to their health and to their job as quickly as possible.

This year marked a new direction for outreach programs. The toll on the family of a worker who loses their life or sustains a catastrophic injury in the line of duty is enormous. Often their children do not have the resources to attend college. Kids' Chance is a non-profit organization that awards scholarships to provide some of the financial support that their parent would have wanted to provide. This year the Bureau in cooperation with the Tennessee Self-Insurers Association sponsored a 5K run/walk to benefit **Kids' Chance** on the Saturday before the annual conference. In addition, there was a silent auction during the conference. Items for the silent auction came from exhibitors, physicians, attorneys, and special baskets from each of the Bureau's regional offices. This outreach initiative resulted in more than \$16,000 for Kids' Chance. That is enough to fund 6 scholarships for children of injured Tennessee workers.

Communication and outreach are two of the most important functions of the Bureau of Workers' Compensation. The 2013 reforms brought a new definition of a workplace injury, a change in the standard by which causation is determined, and a new means of adjudicating injuries that occur on/after July 1, 2014. The Bureau made it a priority to communicate the nature and impacts of these changes, and their effective dates to countless stakeholders, and will continue to communicate information to improve the state's workers' compensation system long after the full implementation of the reforms.



MEDIATION SERVICES

The Reform Act of 2013 had several effects on the mediation services provided by the Bureau of Workers' Compensation. The number of Requests for Assistance filed with the Bureau related to temporary benefits

decreased 10% (from 428 per month in FY 13-14 to 387 per month in FY 14-15). One possible explanation for the reduction is the change in the definition of causation. There has been a larger drop (21%) in the number of mediations for permanent benefits (from 281 Benefit Review Conferences/mediations per month in FY 13-14 to 223 mediations per month through May of FY 14-15). One possible explanation is the easier to understand calculation of permanent partial disability benefits. In post reform cases, there is little to litigate regarding the amount of benefits if the worker does not return to work and still less to litigate if the employee does return to work.

The number of successful mediations conducted by the Bureau has improved steadily for the past three years. In general, mediators help parties to a disputed claim reach a settlement without court intervention in more than 60% of the cases.

One of the reasons for this success rate is the increased emphasis on training for mediators in the Bureau. For three years, mediators have participated in training conducted by Dr. Larry Bridgesmith, a noted authority on mediation techniques.

After the initial weeklong training, the Bureau's senior staff observed mediators during mediations and provided constructive feedback. Then the program coordinator in each office continued to counsel mediators on the principles of effective mediation. Now these experienced mediators participate in two days of training each year. The highlighted sidebar to the left contains just a few of the commendations that Bureau mediators have received in the past two years. These comments speak to the success of the mediation program.

"...I came into the mediation thinking there was no shot in heck we could settle. As a result of Jaime's creative idea to give each side incentive to settle in a way that closes medicals while still giving the employee more than she would have gotten if another mediator handled it, we got it done and both sides are happy..."

"...Both BRCs were on high dollar cases that were very complicated. She (Kourtney Jones) did an excellent job, and both settled due to what I believe was her outstanding job as a mediator. I do not give feedback often but I thought you should know what a fine job she is doing over there..."

"You (Angela Sparkman) are a miracle worker. Thank you."

"Thank you (Ginny Lynch) for your patience on this one and staying the course with me. It ended up winning the day and being the fair thing for all involved."

"...I was not confident going into the BRC that we would be able to successfully resolve this matter through mediation. Jeannie Henderson's efforts however made all the difference in the world"

"...Martha-Lynn (Lee) offered creative solution suggestions in both cases, which directly resulted in highly successful resolutions. Her ideas and suggestions turned the tide in both mediations, encouraging me to think outside the box and to have new ideas to resolve difficult and/or high exposure claims..."



FINANCIAL IMPACT

The law has only been in effect one year. It was not until September that the new court received its first case. As a result, it is hard to make definitive statements about the ultimate financial impact of the reform act until more time has passed. However, there are facts we know now that give us a glimpse of the financial impact that the act will have.

- Workers' compensation costs in Tennessee are already decreasing. In the past two years, NCCI loss costs have decreased 21.05%.
- The new permanent partial disability benefit for employees who return to work is 33- $\frac{2}{3}$ percent less than the pre-reform benefit.
- The maximum permanent partial disability benefit for employees who are not able to return to work at their pre-injury wage is more than 40% less for the post reform case than the maximum for pre-reform cases.
- Claimants that have very little objective evidence to prove that their employment caused the injury are no longer able to meet the standard for causation, which will bring savings and more fairness to the workers' compensation system.

Insurance companies require more than one year's claims experience before insurance premiums are lowered substantially, but self-insured employers are already beginning to comment on the positive financial impact of the new law. Next year this report should be able to provide a clearer picture of the financial impact of the reform act.



CONCLUSION

The intention of the Reform Act of 2013 was to provide advantages to both employees and employers. In any system where there is the perception of winners and losers, it is extraordinarily difficult to strike a fair balance between competing interests. The reform act, however, has proven in just one year that it can move closer to such a balance. The new law provides language to restrict compensable claims to those workers who are truly injured in the course and scope of their employment. Medical treatment guidelines will promote better medical care and reduce harmful delays in the delivery of needed care. Guidelines also can lead to lower use of harmful opioids that leave workers unable to return to their jobs. Employees receive their benefits without years of delays and legal proceedings. Mediation provides an opportunity for differences to be resolved more amicably before the employee/employer relationship is damaged. Unrepresented employees and employers now have someone (ombudsmen) available to provide them information and assistance. Employers are able to reduce their costs.

The Bureau does not feel that the workers' compensation system is perfect because of the reform, but we do think that this legislation is a move in the right direction. Administrator Hudgens said during the opening remarks at the Bureau's annual education conference that the Bureau is dedicated to finding the "**Right Balance.**" By that she meant that the Bureau of Workers' Compensation will continue to work for the Tennessee workers' compensation system to reach that point where there is the ideal balance between interests of the employee and employer. This will make Tennessee stronger and a place where employers will want to bring jobs for Tennesseans.

