



TENNESSEE BUREAU OF WORKERS' COMPENSATION

# 2020 Annual Report

*on the Effect of the 2013 Workers' Compensation Reform Act*

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REPORT





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**TOP  
WORK  
PLACES  
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**Tennessean.**

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# Introduction

As the state workers' compensation system comes to the close of its 101<sup>st</sup> year, it is also concluding the sixth year of operation under the 2013 Workers' Compensation Reform Act, which was effective July 1, 2014. This year has had unexpected challenges with the emergence of a serious pandemic, which put the reformed system to the test. It performed well, providing services fairly and expeditiously with little interruption. All aspects of the system have continued to provide services effectively although with modifications. As we gradually move to a new normal, we have an opportunity to evaluate where we are and what we might do in the future to continue to improve on a system that is already performing well. The mission of the Bureau of Workers' Compensation is still "to fulfill the promise of workers' compensation today... and tomorrow."

The following pages tell the story of the impact of the Workers' Compensation Act of 2013 and the changes built on the principles of fairness for all parties that followed the 2013 Reform. The story of the reform's effect is still being written. There have been measurable results, but the full impact of the reform is still years away, when more claims have reached the end of the payment of benefits.

We will be happy to answer questions you might have or discuss any of the sections in more detail.



Abbie Hudgens,

Administrator, Bureau of Workers' Compensation





Our court system, dedicated to workers' compensation cases, is faster and more reliable.

# Adjudication

## **Court of Workers' Compensation Claims**

Our specialty court hears workers' compensation claims exclusively. Before the reform, judicial decisions in workers' compensation cases were heard in state circuit and chancery courts for final adjudication and decisions varied significantly from county to county. In part, this was because the judges hearing the cases were not always specialists in workers' compensation. Our judges hear these cases exclusively, resulting in greater consistency in results statewide.

### **Eliminated the race to the courthouse**

With only one place to file litigation, there is no "race to the courthouse." The Supreme Court disapproved of this concept in a 2008 opinion:

*We find this process of racing to the courthouse unseemly. It reflects attorneys' lack of confidence in the judiciary of this state to apply the Workers' Compensation Law in an evenhanded manner and demonstrates that lack of confidence to clients and the public at large. Furthermore, this process engages attorneys in the undignified spectacle of literally racing to secure perceived procedural advantages. Such gamesmanship does little to improve the image of attorneys in the eyes of the public.*

*West v. Vought Aircraft Indus., 256 S.W.3d 618, 622 (Tenn. 2008).*

### **Faster claim resolution**

Resolutions that used to take years now take only months. Channeling all compensation cases through our Court greatly reduces the timeframe to obtain a decision on the compensability of an injury.

## Timeliness of Opinions Released by CWCC Judges

*The turnaround time from hearing to order.*

Opinion Type	Business Days from Hearing
Expedited Hearings	5.9 days
Motions for Summary Judgment	3.1 days
Compensation Hearings	10.8 days

All of our judges have an extensive history in workers' compensation law. This was not the case under pre-reform law, as cases were sent to state courts, which also decide general civil, domestic, and criminal matters.

### Trial Court Cases Closed

The Court maintains a revolving set of pending cases totaling about 750, or about 62 pending cases per judge at any one time. This caseload waxes and wanes throughout the year. Each assigned case is monitored closely by each judge with periodic status conferences conducted by phone.

### Settlement Approvals

Under the workers' compensation law, the Court must approve all settlements. The Court's criteria are whether injured workers are receiving substantially the benefits to which they are entitled or whether the settlement is in their best interests. Under normal circumstances, these approvals occur in person at the regional CWCC court. However, in the last two years, with the gracious cooperation of several judicial districts, the Court also hears approvals at courthouses in Weakley, Montgomery, Maury, and Hamblen Counties.

### Number of Settlements and Trials Conducted by CWCC

Fiscal Year	Settlements	Trials (Compensation and Expedited hearings)
FY 2014-15	1,092	94
FY 2015-16	6,337	292
FY 2016-17	8,321	258
FY 2017-18	8,520	202
FY 2018-19	8,749	194
FY 2019-20*	7,659	150

*\*Through May 31, 2020.*

In the 2019-20 fiscal year, the virus caused a reduction in trials for a few months (March through May) for health reasons. A normal slate of trials, held with strict safety precautions, resumed in June.

## Survey Results

The Court continues to receive high marks in the annual survey from attorneys who practiced before the Court in the past year. Attorney responses were based on a 5.0-point scale in the following categories:

### **Attorney Results:** (on a five-point scale)

220 of 464 attorney surveys were returned **(47.4%)**

- Legal Ability: 4.7
- Written Decisions: 4.6
- Temperament: 4.8
- Diligence: 4.8
- Impartiality: 4.6.

Self-represented individuals were asked a different set of questions (4.0 scale) that addressed their perceptions of going to court. Since this is a legal process with evidentiary and procedural rules, etc., we anticipated frustration with the results. Employees who represent themselves at trial are successful only about 38% of the time.

### **Self-represented Results:** (on a four-point scale)

24 of the 104 surveys were returned **(23.1%)**

- Explanation/understanding procedures: 2.6
- Treated me with respect: 2.4
- The judge seemed well-prepared: 2.4
- Explanation of rulings: 2.4
- I understood the order: 2.4
- Timely: 2.3
- I could tell the story of my injury and medical condition: 2.2
- Unbiased hearing: 2.0.

## Coronavirus Update

For contested cases, the uncertainties of receiving workers' compensation benefits are intimidating for claimants, but in March 2020, the coronavirus pandemic compounded that stress. As the effects of the virus on operations loomed, the Court developed protocols for telephone approvals in anticipation of the Governor's safe-at-home instructions. When the order came, we were ready to go.

During the coronavirus pandemic, the Court remained open and continued working. From March 23 through May 29, working remotely, we approved 1,603 settlements, compared to 1,691 in 2019 for the same time. The system continued to work and placed more than \$28 million settlement dollars in the hands of Tennesseans.



## Judge Reappointments

One of the most significant improvements to Tennessee’s workers’ compensation system was the establishment of the position of workers’ compensation judge. Each judge is appointed by the Administrator for up to three terms of six years each. (T.C.A. § 50-6-238.) Terms begin on July 1 and expire six years later. The terms of seven judges expired on June 30<sup>th</sup>. They have been reappointed effective July 1, 2020. The reappointed judges are:

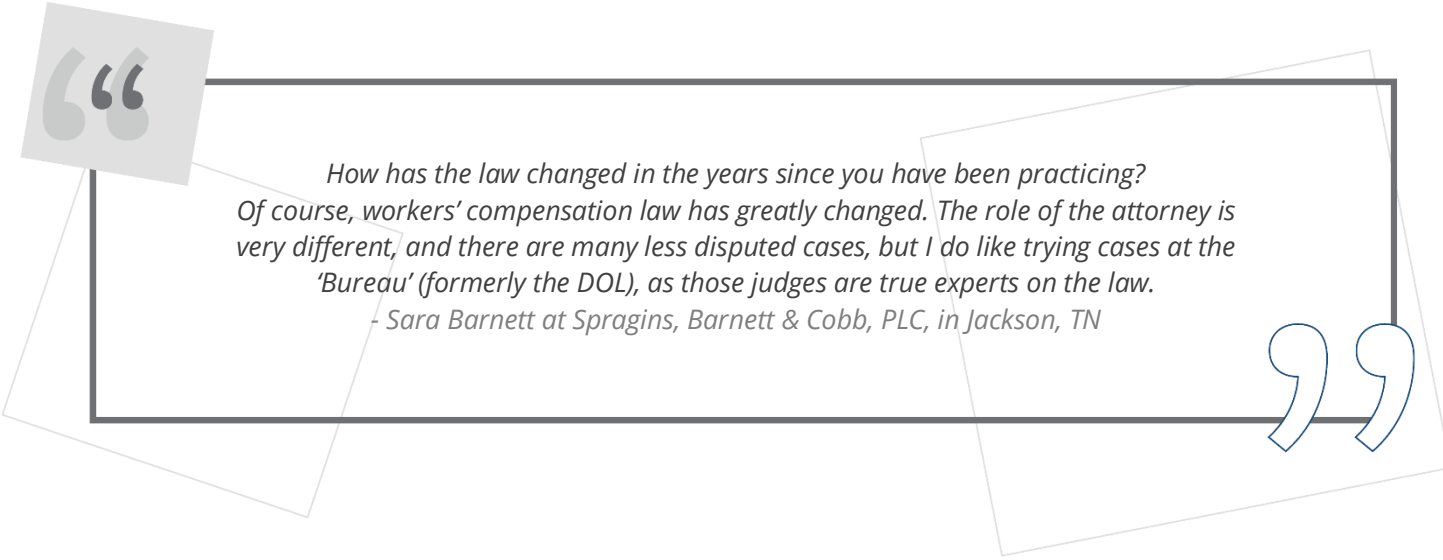
- Kenneth Switzer, Chief Judge, Nashville
- Brian Addington, Gray
- Pamela Johnson, Knoxville
- Lisa Lowe, Knoxville
- Thomas Wyatt, Chattanooga
- Allen Phillips, Jackson
- Deana Seymour, Memphis.

Reappointment decisions were based on the following:

- Scores on evaluations of judicial writing by two outside experts at Belmont University Law School and Lipscomb University;
- Results surveys of persons who have had interactions with the Court;
- Comments from the legal community to the administrator in response to a request for comments in the Court blog; and,
- Interviews the Administrator held with each judge.

## Quote

Below is a comment from a Jackson, Tennessee attorney in an interview with the local *Inns of Court* newsletter.

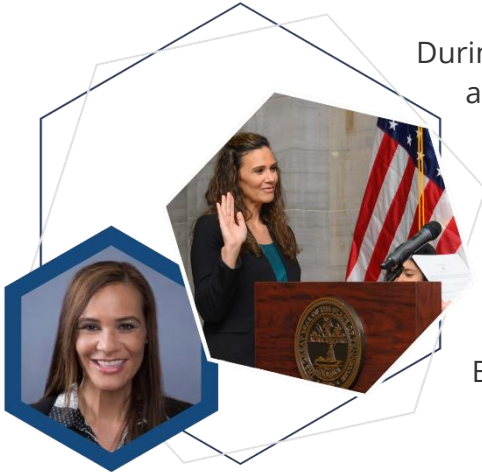


*How has the law changed in the years since you have been practicing?  
Of course, workers’ compensation law has greatly changed. The role of the attorney is very different, and there are many less disputed cases, but I do like trying cases at the ‘Bureau’ (formerly the DOL), as those judges are true experts on the law.  
- Sara Barnett at Spragins, Barnett & Cobb, PLC, in Jackson, TN*

# Appeals Board

Our record of expeditiously resolving every appeal within statutory time limits remains intact.

The Appeals Board provides fair, accurate, and meaningful review of decisions of the Court of Workers' Compensation Claims.



During the last year, the Appeals Board underwent its first change among the panel of judges. Presiding Judge Marshall L. Davidson, III resigned in January 2020 to become Chief Disciplinary Counsel to the Tennessee Supreme Court's Board of Judicial Conduct. Governor Lee announced Pele I. Godkin's appointment to serve as the Appeals Board's newest judge. She was sworn in during a ceremony at the state capitol on January 17, 2020. Judge Timothy W. Conner of Knoxville now serves as the Appeals Board's presiding judge.



## Notices of Appeal

Fiscal Year 2019-20

52 Notices of Appeal were filed to the Workers' Compensation Appeals Board in Fiscal Year 2019-20.



## Timeliness

### Average time to appellate decision

Average **Interlocutory Appeal** Resolution Time  
**15 business days**

20 business day statutory deadline

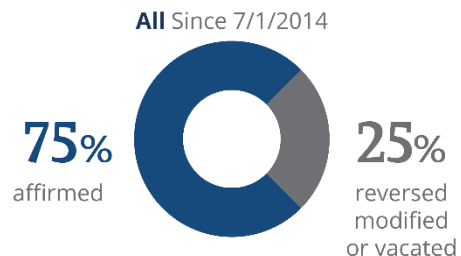
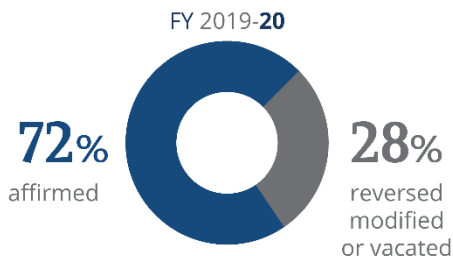
Average **Compensation Appeal** Resolution Time  
**30 calendar days**

45 calendar days statutory deadline

As compared to before the reform—where appeals could take a year or more—the average amount of time it took parties to receive a decision from the Appeals Board for an appeal of a compensation hearing order in this fiscal year is 30 days.

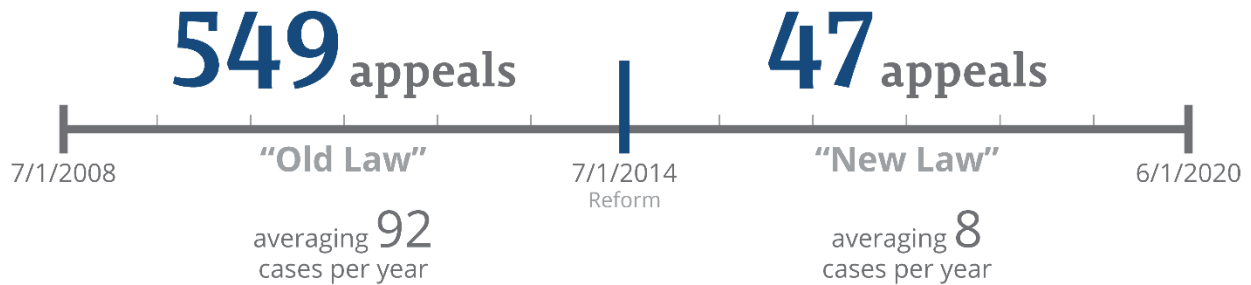
## Order Outcomes

from the Workers' Compensation Appeals Board



## Reduction of cases sent to the Supreme Court for review of worker' compensation opinions

A clear reduction of workers' compensation appeals to the Supreme Court can be seen in the past six years.



### Coronavirus Update

The Appeals Board has continued to operate at full capacity despite the pandemic. On March 24, the Appeals Board conducted its first-ever telephonic oral arguments, during which it heard arguments in six pending appeals. All opinions have been released timely, and the Appeals Board continues to accept and process all appeals.

## Key Changes in the Post-Reform Law

### Neutral interpretation of the law

The law now favors neither the employee nor the employer.

The standard of proof became a “preponderance of the evidence,” with no remedial interpretation, which is what it has been in every other area of civil law.

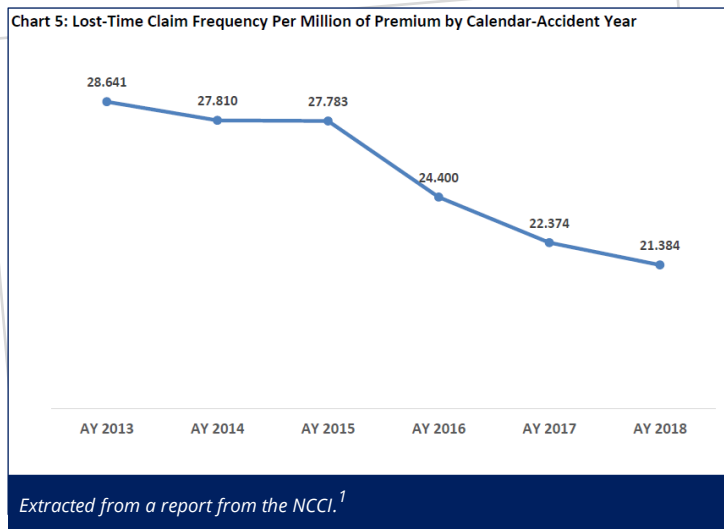
### Clarified what qualifies as a compensable injury

Is the injury “work-related”? Determining “causation” was narrowed.

The definition of a compensable injury changed to one that arises “**primarily out of and in the course and scope** of employment.” T.C.A. § 50-6-102(14).

This modification of the term “injury” means that injuries now must have been caused by something directly related to the worker's job duties. This affected how physicians provide their medical opinions on whether an alleged injury is more than 50% caused by work.

This new definition may have contributed to a lower claim frequency, but it is not clear. Claim frequency across the country has been decreasing for several years. In 2014 and 2015 Tennessee's claim frequency decreases were less than country-wide decreases of 3.9%. Claim frequency reductions in accident year 2016 and 2017 were more than the country-wide reduction of 4.0% per year. In 2018 the reduction in Tennessee claims frequency was closer to the nationwide reduction. It is reasonable, however, to conclude that the “tightened compensable standard” and “stricter interpretation standards” were contributors to steeper frequency declines in AY 2016 and later.

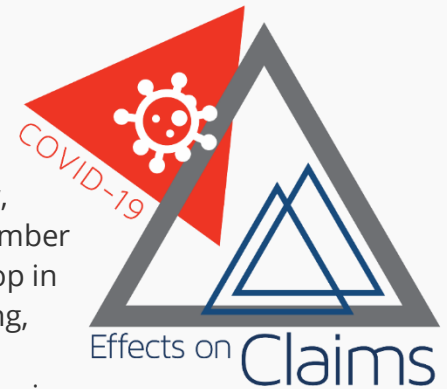


<sup>1</sup> National Council on Compensation Insurance, “Post-Reform Study of Tennessee State Bill 200 (2020 Update),” May 2020.

## Effects of COVID-19 on claims

We estimate 3.7% of claims since March 2020 were related to the pandemic.

The frequency table on page 8 does not reflect the impact of COVID-19 claims, since the period covered ends with 2018. However, the pandemic may be a factor in the future, as it is impacting the number and types of claims. COVID-19 has resulted in an unprecedented drop in employment in a short period of time. With fewer employees working, there have been fewer injuries. There have been new claims for benefits related to COVID-19, but the net result is an overall reduction in frequency during the period of the pandemic.



The chart below shows the number of COVID-19 claims per week since March 1, 2020, the number of those that have been denied, the number of all claims during the pandemic period, the number of claims in the same time period last year, and the difference between years.

### TN Workers' Compensation Claims and Denials related to COVID-19

Week Period <i>Date of Report</i>		Cumulative First Reports of Injury with COVID-19 code from 3/01/20	Cumulative Denials per week with COVID-19 code	2019 <i>First Reports of Injury filed between 3/1/2019 to 6/7/2019</i>	2020 <i>First Reports of Injury filed between 3/1/2020 to 6/7/2020</i>	Year-to-Year Difference in Total Claims between 2019 and 2020
03/01/20	03/08/20	1	0	2,128	1,838	-14%
03/09/20	03/15/20	2	0	3,845	4,015	4%
03/16/20	03/22/20	18	0	5,695	5,700	0%
03/23/20	03/29/20	42	0	7,494	7,169	-4%
03/30/20	04/05/20	103	6	9,213	8,475	-8%
04/06/20	04/12/20	193	34	11,072	9,700	-12%
04/13/20	04/19/20	265	58	12,937	10,796	-17%
04/20/20	04/26/20	336	75	14,697	11,984	-18%
04/27/20	05/03/20	394	94	16,480	13,188	-20%
05/04/20	05/10/20	487	121	18,421	14,653	-20%
05/11/20	05/17/20	554	146	20,290	15,912	-22%
05/18/20	05/24/20	613	177	22,217	17,352	-22%
05/25/20	05/31/20	650	200	23,928	18,497	-23%
06/01/20	06/07/20	732	233	25,719	19,936	-22%

Source: TN First Reports of Injury (C-20) and Denials (C-23)

The effect of the 2013 Reform on COVID-19-related claims is the same as the effect on all other claims. The employee must prove that the illness arose “primarily out of and in the course and scope of employment.”

## **Changed Calculations for Permanent Partial Disability (PPD) Benefits**

By simplifying the PPD benefit calculations, we saw more predictable results, increased the likelihood of settlements, and engaged in less litigation. The new calculation method:

- Recalculated impairment ratings to the “body as a whole” instead of impairments based on individual body parts (fingers, feet, hands, legs, arms, etc.). This change simplified calculations, which made it easier to arrive at resolutions.
- Decreased the maximum PPD award multipliers; and
- Increased the maximum duration for compensation of PPD indemnity benefits.

## **Presumption of accuracy by the attending physician**

“Doctor-shopping” was curbed, and we cut some of that friction from the system.

# Alternative Dispute Resolution

What if we could  
resolve issues  
before going to court?  
We do,  
82% of the time.

## Ombudsman Program

Four ombudsmen answered thousands of questions and resolved nearly 2,000 disputes within two to three days each.

### *Ombudsman*

This program, created by the reform, addressed the complaint that there was not enough assistance for self-represented parties in disputed claims.

An ombudsman is the first stop for unrepresented employees or employers who need guidance about their rights and responsibilities under the workers' compensation law. They answer questions about the process and resolve simple disputes without the need for mediation or court. Assistance is provided across the state with our four ombudsmen, one of whom is bilingual.



*Customer Feedback: 92% Overall Satisfaction.  
90% Court Comprehension: Positively impacted ability to understand  
the Court of Workers' Compensation Claims*

### Top 5 Reasons

*Why Our Ombudsmen Were Called*

- 4,263** Provided basic information
- 1,461** Provided PBD forms
- 929** Electronic version of workbook
- 731** Assisted employees with forms
- 188** Provided RFA forms

### Top 5 Actions

*Our Ombudsmen Resolved Claim Issues*

- 494** "No Benefits" disputes resolved
- 470** Receiving medical treatment
- 402** Connect employee with adjuster
- 165** TTD/TPD benefits paid
- 38** Employer file a first report of injury

When a self-represented employee or employer contacts an ombudsman, the issues might require multiple calls to connect them to the help they need.

## Ombudsman Attorneys

Due to the increase in self-represented parties appearing in the Court of Workers' Compensation Claims, 2016 legislation allowed an ombudsman who is a licensed attorney to “provide limited legal advice but shall not represent any party as the party’s attorney.”

Now, we have two ombudsman attorneys who explain basic principles and procedures to self-represented parties and assist them in understanding the strengths and weaknesses of their cases, as well as recommend available resources.



These attorneys help injured workers **without**:

- Appearing in court or mediation on the behalf of a party;
- Drafting or filing documents with the Court; or
- Communicating with the opposing party on the behalf of the self-represented litigant.

FY 19-20 <b>Results</b>	Count
Employee Settled Their Claim	24
Lost at Expedited Hearing	22
Won at Expedited Hearing	15
Discontinued contact with the program	12
Employee Retained Counsel	6
Lost on Appeal	4
Lost at Compensation Hearing	3
Ineligible due to their date of injury	1
Won at Compensation Hearing	1

<b>Reasons</b> to request the ombudsman attorney's assistance	Count
Claim Denied	62
Medical Care Denied	22
Employment status/Uninsured Employer	15
Permanent Disability Benefits	13
Temporary Disability Benefits Denied	8

## Grant

The Bureau’s ombudsman attorneys are working with the Tennessee Alliance for Legal Services and Lincoln Memorial University (LMU)-Duncan School of Law to improve access to its dispute resolution programs. The efforts are funded by a \$100,000 grant from the Tennessee Bar Foundation.

Beginning in August 2020, injured workers will be able to begin the dispute resolution process with the help of artificial intelligence. The “WC Bot” asks questions in a simple format and assembles the answers much like online do-it-yourself tax software. The



program provides help with the initial form, a petition for benefit determination, and a form to request a court hearing.

The grant also funds a workers' compensation legal clinic at LMU. The clinic introduces a whole new generation of lawyers to workers' compensation while helping unrepresented workers. Bureau personnel provided a full day of legal clinic training to LMU students on March 7, 2020. Additional legal training and a free clinic for injured workers will be held when the university reopens, post-pandemic.



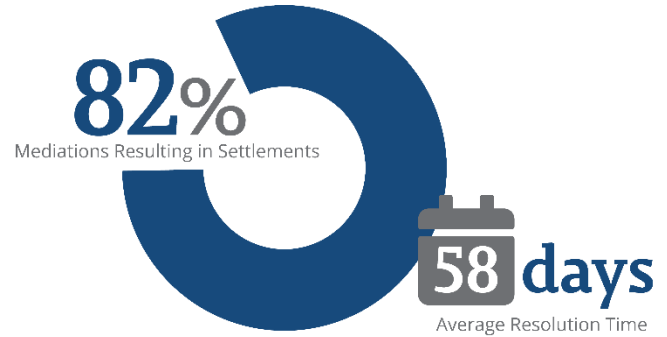
## Mediation

Alternative dispute resolution (mediation) keeps parties out of court.

The 2013 Reform included a requirement for alternative dispute resolution (ADR) to do one of two tasks:

- Improve the probability of settlements; and
- Narrow the issues to be decided by the Court.

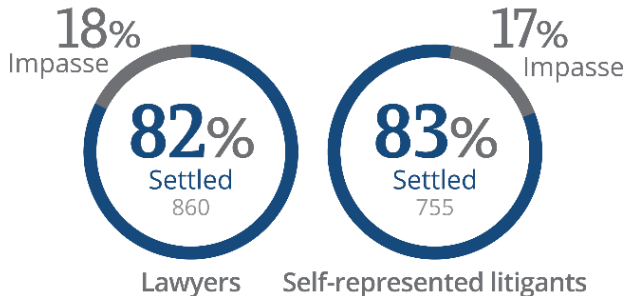
Parties must mediate in good faith, and if an agreement is not possible, the specific disagreements must be submitted in writing on a dispute certification notice before requesting a court hearing.



Our mediation program resolves disputes faster and more cost-effectively than court.

## Disputed Claims

FY 2019-20 Breakdown



	Self-Represented Litigants		Lawyers	
	Claims	Percentage	Claims	Percentage
Settled	755	83%	860	82%
Impasse	150	17%	183	18%
<i>Totals</i>	<i>905</i>	<i>46% of all cases</i>	<i>1,043</i>	<i>54% of all cases</i>

## Mediation Statistics

Year	Total Mediations	Mediations Resulting in Settlements	% of Disputes Resolved in Mediation	Average Resolution Time
FY 2017-18	3,670	2,854	78%	40 days
FY 2018-19	3,898	3,110	80%	46 days
FY 2019-20	3,108	2,539	82%	58 days

## Coronavirus Update

The mediation program started part-time, staggered Alternative Work Solutions (work from home). This provided a nearly seamless transition for staff to work from home full-time when the virus struck. We were able to quickly convert in-person mediations to telephonic mediations. We continue to settle more than 80% of disputes before they reach the Court of Workers' Compensation Claims.

## Medical

Access to quality medical care improves the outcomes for injured workers and lowers the ultimate costs of claims.

### Medical Committees

Two post-reform committees replaced one pre-reform committee.

With the 2013 Reform, the Medical Care Cost Containment Committee was divided into two committees.

The **Medical Payment Committee** was given statutory authority to decide the merits of payment disputes between provider and payers. The smaller committee of six provides continuity and cohesion. All cases have been moved to the “cloud” over the past year. The committee made determinations on **36 cases** with **32 additional applications** to the committee being resolved or withdrawn prior to committee presentation.

The **Medical Advisory Committee**, larger and more diverse, advises the Administrator on changes to medical programs, including the medical treatment guidelines and stakeholder complaints. The committee completed the first analysis of the Access to Care Report for the state workers’ compensation system, engaged a subcommittee for telehealth regulations, and is investigating possible problems in utilization review.

### Treatment Guidelines

Nationally recommended treatments for injured workers provide safer, more uniform outcomes.

Adopted in 2016, following extensive research by the Medical Advisory Committee, the insurers and utilization review organizations have used the treatment guidelines exclusively as anticipated. The penetration into the provider community, even with significant efforts by the Bureau, has been limited. The **Drug Formulary**, published free on the Bureau website, has been successful in improving the effectiveness of medication usage in the workers’ compensation population. Two important improvements have been the **reduction in opioid use** by 16% over the last three years with a significant drop in the higher dosage patients. Only two patients have appealed where dosages have exceeded the Department of Health guidelines in the last six months, as compared to approximately 30 for the same period before the guidelines. The use (and cost) of compound topical creams has been reduced by 95%. This category of drugs was not approved by the FDA and its reduced use has had no detrimental therapeutic effect.



## **E-billing**

We are keeping up with technology.

The 2013 Reform mandated the adoption of rules regarding the electronic submission and processing of medical bills by health care providers to insurance carriers. Bills paid by electronic transactions use the industry national standard published by the International Association of Industrial Accidents Boards and Commissions.

There have been fewer requests for exemptions each year: 59 in fiscal 2018-19, and 34 in 2019-2020. Each company requesting an exemption is assessed and will receive further guidance, a warning, or a penalty in August 2020 for fiscal 2020-21.

## **Coronavirus Update**

Even with the move to working from home because of the pandemic, the medical unit is up-to-date with utilization review appeals, processing them within 10 days of notification. The Medical Payment Committee and the Medical Advisory Committee have both met and conducted business via Webex.



## Educational Conference

The Bureau hosted the best-attended workers' compensation event in the state last June, where we honored the inaugural Excellence in Workers' Compensation Award recipient.

In 2019, the Bureau conducted its 22<sup>nd</sup> Workers' Compensation Educational Conference, again hosting **over 600** employers, attorneys, insurance adjusters, nurse case managers, medical providers, and others in a three-day event in June.

In the six years since the implementation of the Reform Act, this conference has evolved, most notably in its scope. The conference serves as the primary resource to introduce and highlight the programs created by the Reform Act and their role in achieving the Act's overall goals of reducing costs and decreasing litigation, all while improving outcomes in Tennessee's workers' compensation system.

- The new adjudication processes within the **Court of Workers' Compensation Claims** and the **Appeals Board** have been **heavily featured**. Workers' Compensation Judges from each of the three Grand Divisions have explained the Court's Policies and Procedures and shared their recommendations for best practices. Practitioners representing both sides of claims have been featured panelists, sharing their expertise and experiences.
- We have emphasized **ethical** behaviors by all parties involved in claims. **Video vignettes** of potentially unethical activities have been produced and included into conference sessions to facilitate discussions and highlight behaviors that should be avoided.
- We have focused on injured workers' **recoveries** from their work-related injuries and improving the results of their medical treatment. Employers with strong and successful **return-to-work** programs have presented information highlighting the benefits of their programs, the cost savings and the impacts they had on their financial bottom lines.
- Locally- and nationally-recognized **thought leaders** have shared their insights in treatment techniques, injured employee engagement strategies, and understanding the biopsychosocial elements to injuries. Injured workers have shared their experiences in dramatic and often tear-provoking details.

The 2019 event celebrated the 100th anniversary of the signing of the original workers' compensation law in the state. The inaugural Sue Ann Head Award for Excellence in Tennessee Workers' Compensation was announced and presented to a very worthy recipient, Mr. Terry Hill, an attorney who has been instrumental in revising and improving the law for decades and helping shape it into the current iteration.


## 2020 Conference Cancellation

The 2020 Educational Conference was scheduled for June 10-12 in Murfreesboro. Due to the ongoing pandemic and CDC recommendations, the in-person event was canceled. The Bureau is currently researching alternative methods of delivering the information and hopes to be able to conduct a virtual conference.

## Adjuster Certification Program

We successfully trained more than 300 adjusters to improve results for employers and injured workers.

The workers' compensation system fails when injured workers who are entitled to benefits do not receive them or fail to receive them timely. Health outcomes are compromised and worsened. The likelihood of injured workers fully recovering is lessened. The standards of living of entire families are negatively impacted. System costs borne by employers are increased—sometimes dramatically. Frustrations build, and the result is often litigation that could have been avoided had the appropriate benefits been timely provided. The Adjuster Certification Program plays an important role in helping achieve the Reforms Act's goals by improving the timeliness of the provision of benefits and efficiency of claims handling overall.



By the end of 2019, over **280 adjusters** had attended the two-day training event associated with this program and passed an exam afterwards. They are now listed on the Bureau's website as a resource for employers to consider as they purchase or renew their workers' compensation insurance policies. Initial evidence indicates the program is a success as shown by the decrease in the number of penalties assessed by the Bureau's Penalty Program since the introduction of the Adjuster Certification Program. The Bureau's plans to host six class offerings in 2020.

Learn more at <https://www.tn.gov/workforce/injuries-at-work/bureau-services/bureau-services/adjuster-certification-program.html>.

## Speaking Engagements

Over 2,000 attendees learned at more than 100 Bureau events in 2019.

The changes to Tennessee’s workers’ compensation system caused by the Reform Act were numerous and wide-ranging, and felt by all parties involved in claims. The introduction of these changes created a need to educate the employer and employee communities as much as possible. The Bureau’s Outreach Program was developed to work with business organizations such as the Chambers of Commerce and the National Federation of Independent Businesses and labor organizations such as the AFL-CIO and its affiliated unions, as well as professional organizations such as the Tennessee Bar Association, the Tennessee Society for Human Resource Management, and the Tennessee Medical Association. While it has been six years since the reforms were implemented, both the interest in and need for relevant information remains. Many presentations offer guidance regarding employers and workers’ rights and responsibilities both before and after work-related injuries occur. Others request updates regarding the initial results produced by the reforms, their trends, and the expected future effects. Still other presentations request information geared to employers in specific industries, such as construction, since there are specific sections of the law that apply to them directly. In 2019 alone, Bureau leaders spoke at over 100 events to audiences totaling over 2,000 individuals. While the number of speaking events has decreased with the pandemic, they will resume when the pandemic has passed.

## Legislative Updates

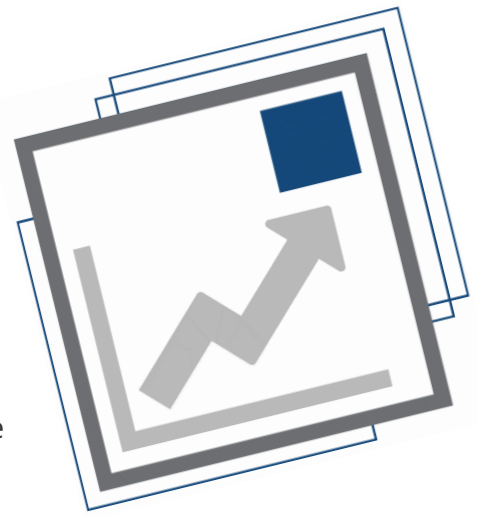
### Post-Reform Timeline: Summary of Key Legislation



- **2014** – PC 765 authorizes the Bureau to provide temporary disability and medical benefits to any employee who suffered an injury arising primarily out of and in the course and scope of employment with an employer who failed to have workers' compensation insurance at the time the employee suffered the injury (**Uninsured Employer Fund Benefits**).
- **2015** – PC 341 The **utilization review** process is a feature of workers' compensation medical provisions that had led to complaints from physicians, injured workers, and some employers. The implementation of treatment guidelines in the 2013 Reform Act was intended to resolve many of the issues. However, concerns continued about the practices of some utilization review providers. In response, lawmakers passed legislation that required utilization review providers to obtain accreditation from either the Utilization Review Accreditation Commission or the National Committee for Quality Assurance.
- **2016** – PC 1056 allows for **ombudsmen** who are licensed attorneys to assist self-represented litigants by providing limited legal advice, and it also reduces the period of reporting of a work injury from 30 to 15 days.
- PC 803 authorizes the Administrator of the Bureau of Workers' Compensation to establish a system of medical **case management** and requires all case managers be Bureau-certified. Case managers must meet education requirements and refrain from prohibited practices. The goal is to improve the professionalism of case managers and to clarify their role. These rules provide an important safeguard for Tennessee's injured workers. This legislation also establishes penalty authority for **improper claims handling**.
- **2017** - PC 380 raises the **burial expense benefit** in workers' compensation cases to \$10,000 (from \$7,500).
- PC 344 provides an **education benefit** for injured employees who are not able to make a meaningful return to their pre-injury jobs.
  - The Vocational Recovery Program, "Next Step," was created.



- **2018** – PC 629 allows **farm and agricultural employers** to opt in to the workers' compensation laws by purchasing a workers' compensation insurance.
- PC 648 provides that a **marketplace contractor** is an independent contractor and not an employee of the marketplace platform if 10 conditions are set forth in a written agreement between the marketplace platform and the marketplace contractor.
- **2019** – PC 490 creates a presumption that certain conditions or impairments of full-time **firefighters** caused by certain **cancers** occurred in the course of employment unless rebutted by competent medical evidence.
- PC 373 prohibits a medical review officer from considering prescriptions issued more than six months prior to a positive confirmed **drug result** for purposes of determining a valid **prescription**.
- **2020** – SB2189 by Johnson/HB2556 by Lamberth requires all **construction services providers** (including out-of-state providers) to maintain primary **Tennessee** workers' compensation insurance **coverage** while working in this state and imposes liability on a **successor in interest** of a penalized construction services provider. *Passed by the General Assembly, June 2, 2020.*
- SB2190 by Johnson/HB2257 by Lamberth extends the minimum deadline to 180 days for an injured employee to file a claim for **increased benefits** with the Bureau, lengthens the period of time from 60 to 180 days following an injury that an employee has to **provide notice** to the Bureau of an injury and the failure of an employer to have workers' compensation insurance coverage. *Passed by the General Assembly, June 2, 2020.*

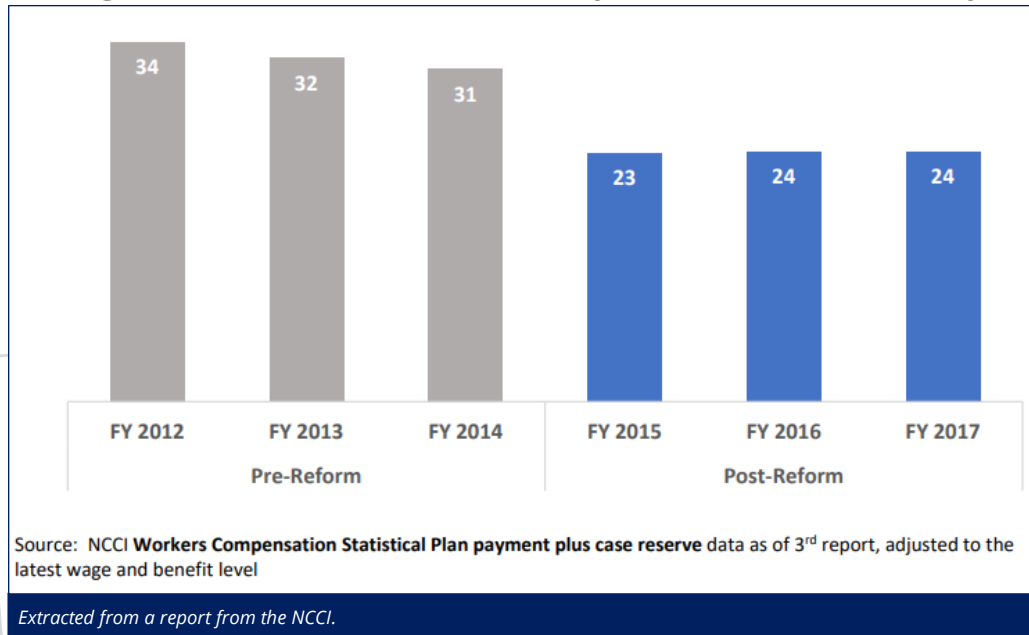


## Effect of the Reform on Claims

The following four charts are from the “Post-Reform Study of Tennessee State Bill 200 (2020 Update),” May 2020. The primary sources of data used by NCCI in their report are: NCCI Financial Call data; NCCI Workers’ Compensation Statistical Plan data; NCCI Detailed Claim (DCI) data; and data obtained from the Bureau’s statistical data forms.

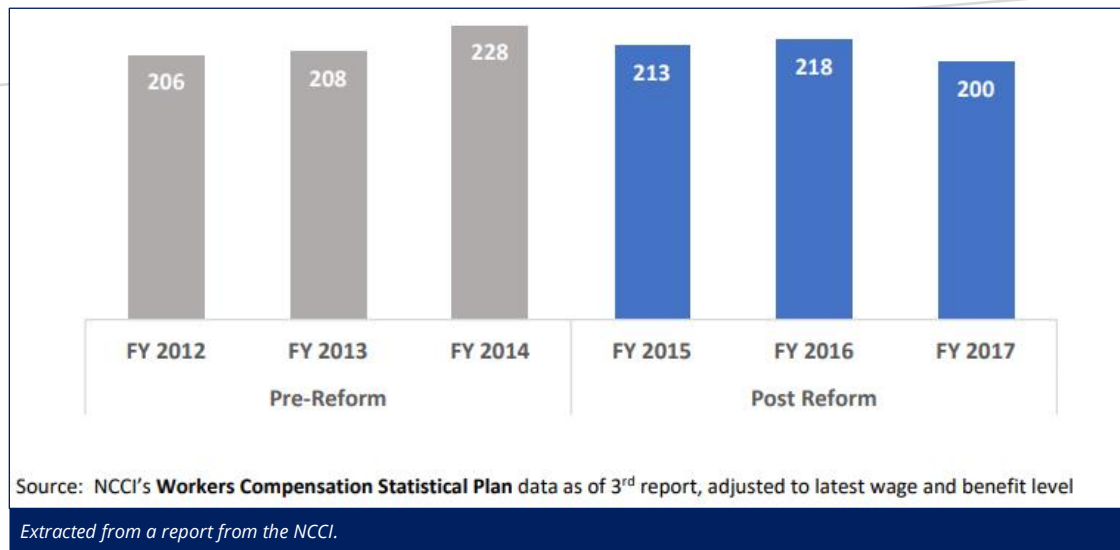
The NCCI report relied on data for claims with accident dates from July 1, 2011, to June 30, 2017, separated into periods that matched Tennessee’s fiscal years. More recent data was not used, as it includes only a portion of all the PPD claims that will ultimately be reported for these years, and its inclusion could be misleading for the analysis.

### Average Permanent Partial Indemnity Cost Per Case (\$000) by Fiscal Year



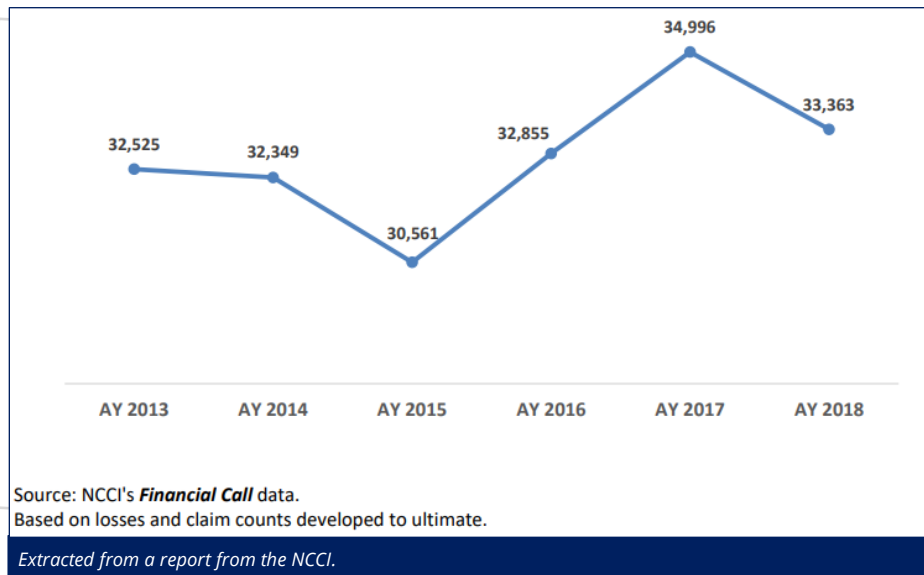
NCCI noted that it is difficult to draw definite conclusions from this data because the post-Reform data does not include all the PPD claims that will ultimately emerge for the accident period. The more serious cases will take longer to reach maximum medical improvement, will likely have a higher impairment rating, and might not be reflected in the data. However, when the average number of weeks awarded for PPD indemnity benefits was compared at a common “implied maturity level,” the average number of PPD weeks paid is 46% lower in the post-Reform period.

### Average Fatal Indemnity Cost Per Case (\$000) by Fiscal Year



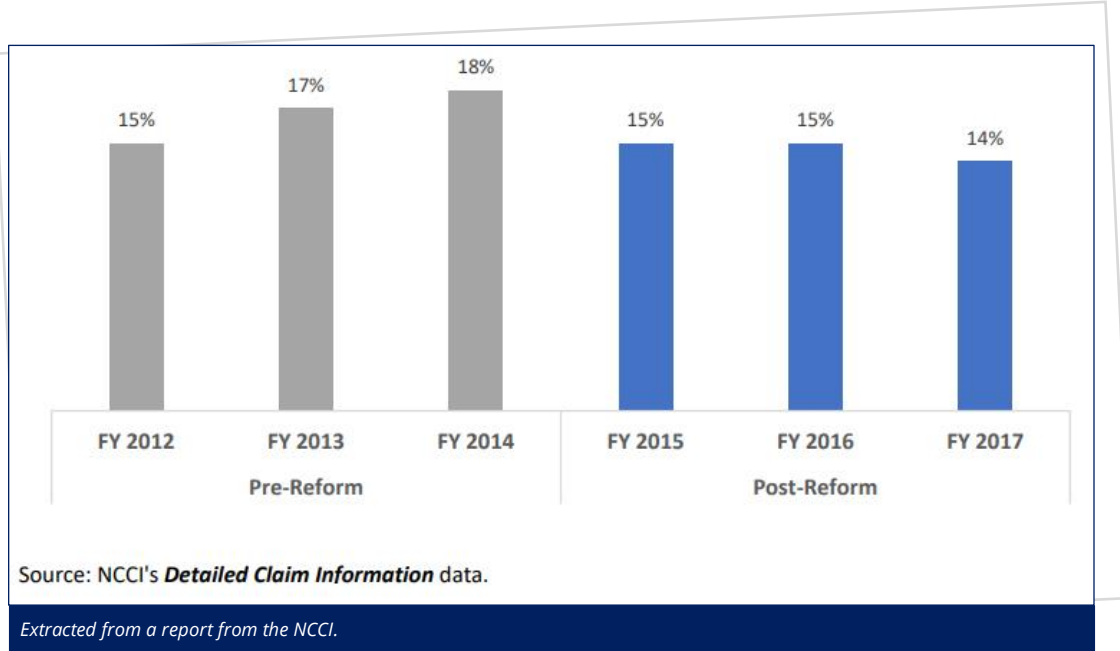
The cost per case adjusted for wage inflation for fatality cases has remained constant, even though the reform increased the maximum benefit from 400 weeks to 450 weeks. It is difficult to draw definitive conclusions because of the various factors that affect death benefits, such as the deceased workers' wages and the number and mix of beneficiaries. NCCI did not consider these results to be conclusive.

### Medical Average Paid + Case Severity (in \$) by Accident Year



The decreases and increases in the average medical costs per claim are difficult to tie to changes from the reform. The costs are affected by the types of injuries that occur in each year, variations in worker demographics, and other factors.

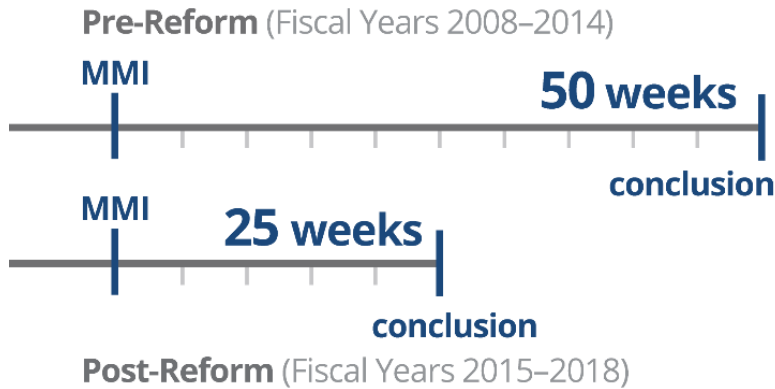
### Percent of Cases with Attorney Involvement by Fiscal Year



The comparison of attorney involvement pre-Reform and post-Reform was made on claims at the same level of maturity, 30 months.

### Timeliness: MMI to Conclusion

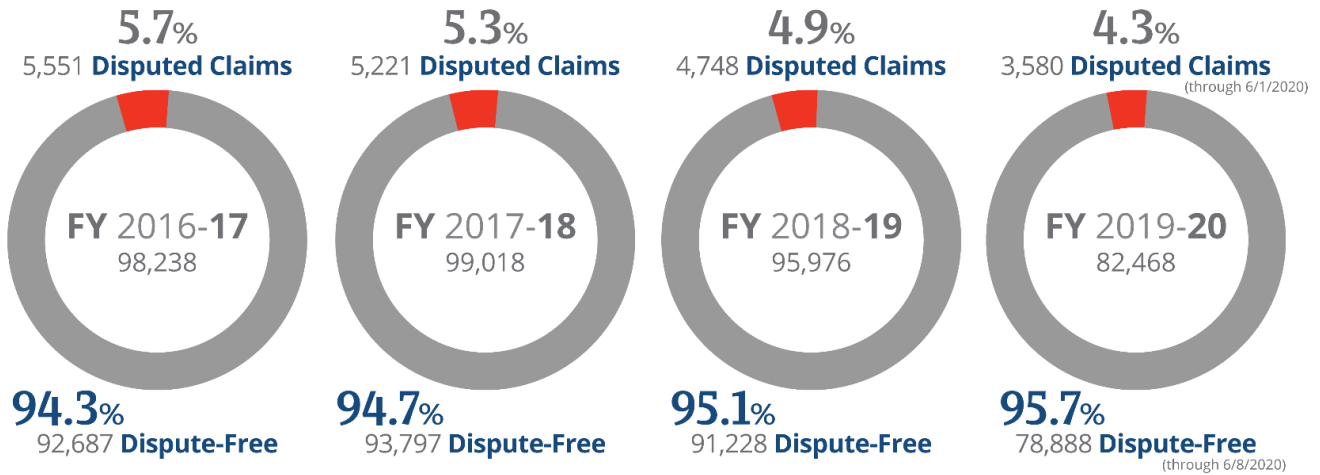
The average length of time from maximum medical improvement to the conclusion of the claim is much shorter.



*Based on of Date of Injury records and Statistical Data Forms (SD-2) submitted to the Tennessee Bureau of Workers' Compensation*

### Yearly Claim Totals v. Number of Disputes

The final chart is based on data the Bureau receives from insurance companies, third-party administrators and other payers. It shows no significant change in either the number of claims or the number of disputed claims after the 2013 Reform Act. These numbers are for all claims, loss-time cases, medical-only claims, and claims that are only a report. It is interesting to note that, while overall claims have remained constant, the frequency of loss-time claims has decreased as discussed on page 8.



These charts provide data that shed light on the effect of the 2013 Reform Act on Tennessee’s workers’ compensation system.

## Last Thoughts

Tennessee has much to be pleased about the effects of the 2013 Reform. The adjudication process is much improved. Services for injured workers who do not have legal representation have increased. Educational programs have increased and improved. Efforts to improve medical care continue to increase. The costs of the system are lower and more competitive with other states.

With the Bureau's mission "to fulfill the promise of workers' compensation today ... and tomorrow" in mind, there are still improvements that can be made beyond the components of the 2013 Reform Act. The Bureau of Workers' Compensation is actively working on these improvements that include:

- Additional efforts to eliminate misclassification of employees that prevent them from their legal right to benefits;
- Additional opportunities for education, and services for injured workers who cannot return to their pre-injury job; and,
- A new program to help employees stay at work or return to work after work-related injuries or illnesses.

To fulfill the promise of workers' compensation, we must continue to focus on minimizing the negative effects of workers' compensation injuries and illnesses on the injured worker and their employers and enable workers to remain in the workforce.



## Questions about this report?

### **Administrator**

Abbie Hudgens, [Abbie.Hudgens@tn.gov](mailto:Abbie.Hudgens@tn.gov) (615) 741-5384

### **Legislative Liaison**

Troy Haley, [Troy.Haley@tn.gov](mailto:Troy.Haley@tn.gov) (615) 532-0176

**General inquiries** can be made to  
[wc.info@tn.gov](mailto:wc.info@tn.gov)



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