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Annual Report on the Status of the Maine Workers' Compensation System

Submitted to the 127th
Maine Legislature

February 2016

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February 15, 2016

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We are pleased to submit to the Governor and the 127th Legislature, Second Regular Session, the ***Annual Report on the Status of the Maine Workers' Compensation System*** as required by Title 39-A § 358-A(1).

The Annual Report profiles the current status of the workers' compensation system in Maine and is submitted by the three State agencies most involved in the workers' compensation system – the Workers' Compensation Board, the Bureau of Insurance, and the Department of Labor, Bureau of Labor Standards.

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EXECUTIVE SUMMARY

The Workers' Compensation Board, in consultation with the Superintendent of Insurance and the Director of the Bureau of Labor Standards, is directed in the Workers' Compensation Act, Title 39-A, at §358-A(1) to submit an annual report on the status of the workers' compensation system to the Governor, the Joint Standing Committee on Labor, Commerce, Research and Economic Development, and the Joint Standing Committee on Insurance and Financial Services by February 15 of each year.

WORKERS' COMPENSATION BOARD

The Maine Workers' Compensation Board has an approach to managing the Workers' Compensation Act that focuses on providing quality service and maintaining system stability. Overall, dispute resolution continues to perform well; compliance with the Workers' Compensation Act is generally high, however, claim frequency is slightly higher; compensation rates are marginally higher, but have been reduced more than 50 percent since 1993; MEMIC, the largest workers' compensation insurer in the State, has once again declared an \$18 million dividend to Maine policy holders; and the Board has reduced the assessment to employers over the past three years. All of these contribute to our continuing effort to make the Maine workers' compensation system viable, which in turn creates a stable and productive market.

Although said before, we believe it is worth repeating, the Workers' Compensation Board, in recent years, has transitioned from an agency whose focus was mainly on dispute resolution to one which provides effective regulation, improved compliance, and functions as an advocate for both injured workers and the employers for whom they work. We are working to control medical costs through a comprehensive medical fee schedule that was thoroughly reviewed and updated this year. We continue to vigorously address the problem of employee misclassification, and we are exploring the national and state problem of increased use of opioids.

We believe it is critical the system maintain a positive and proactive momentum generated by the Board in recent years. Our political landscape is ever changing. In spite of this reality, it is important for the Board to have a clear vision, one that reassures the Governor and Legislature we are fulfilling our mission "to serve the employees and employers of the State fairly and expeditiously."

Our staffing was fairly stable this past year. We had a Hearing Officer retire. He was replaced by a well-known and well respected practitioner who was able to hit the ground running.

This annual report should provide the Governor and the Legislature with a foundation from which to analyze the Board's workings and assess the effect these efforts have made.

To put the Board's present functioning in context: the seeds of administrative changes at the Board were initially sown more than ten years ago. At that time, the Governor worked with both labor and management to ensure the passage of legislation designed to eliminate Board gridlock and normalize operations. The legislation changed the Board structure from eight to seven members. Since the changes, three members represent labor and three represent management. The seventh is the Executive Director, who serves as Chair of the Board and at the pleasure of the Governor. Since 2004, the Board has worked to resolve all of the issues that caused gridlock and now focuses on setting policy. Some of the difficult issues the Board has, and is addressing, are: Administrative Law Judge appointments; budgetary and assessment matters; electronic filing mandates; rule revisions; form revisions; legislation; compliance issues; independent medical examiner recruitment and retention; worker advocate resources and reclassifications; dispute resolution; increases in compliance benchmarks; independent contractor predeterminations and assessment; medical fee schedule updates; data gathering; and employee misclassification.

The importance of the 2004 legislation cannot be overly emphasized. Maine has gradually improved its national workers' compensation fiscal standing. An effective, efficient and well managed Board helps to facilitate this positive trend. Policy decisions are less regularly made by the Chair which means, in large part, the parties in interest are reaching consensus more often on decisions that impact the system.

It was not too long ago that Maine was one of the costliest workers' compensation states in the nation. Reports comparing Maine workers' compensation costs to other states demonstrate Maine has improved significantly in lowering costs. Maine is approaching the national average for indemnity and medical benefits; Maine's status has improved when compared to the other jurisdictions requiring workers' compensation.

As we have reported in recent years, we have moved from one of the most expensive states in the nation to one that is in the average range for both premiums and benefits and have positioned ourselves to continue this trend. Maine is working towards a balance between reasonable costs and reasonable benefits, all within the Governor's policy of keeping Maine fair-minded and competitive.¹

The Workers' Compensation Board made significant progress on controlling medical costs when it adopted a medical facility fee schedule in 2011, and in updating the schedule each year thereafter. The Legislature in 1992 mandated the adoption of a fee schedule to help contain health care costs within the system. It was not until 2011 one was adopted and implemented. This year, Board staff conducted a comprehensive review of this schedule and updated it to accurately reflect trends in the medical marketplace.

The objectives of the fee schedule include: providing access to quality care for all injured workers, ensuring providers are fairly paid, reducing and containing health care costs, and creating certainty and simplicity in this complex area.

This year, the Board reached consensus on a number of issues and has moved forward on matters that have hindered its efficiency and effectiveness in the past.

We can still do more to improve Maine's workers' compensation system. We continue to work on employee misclassification, injured employees are being encouraged to explore vocational rehabilitation when appropriate (vocational rehabilitation requests have increased in recent years), we are encouraging cooperative job placement efforts with the Bureau of Employment Services, and we are working to ensure reporting compliance within the system.

In recent years, the Maine Workers' Compensation Board has transitioned from an agency whose energies were mainly focused on dispute resolution to one which provides effective regulation, improved compliance, strong advocacy for injured workers, and open and equal treatment of the business community.

¹ Some of the national reports comparing Maine to other jurisdictions repeatedly fail to consider the very high percentage of Maine employers who are self-insured. Greater than 40% of our market is self-insured. This is significantly higher than most other states. When national comparisons are made, they do not consider the self-insured community, thus these comparisons fail to give an accurate picture of the health of our workers' compensation market.

BUREAU OF INSURANCE

This portion of the report examines different measures of market conditions. Workers' compensation insurance in Maine operates in a prior approval rating system. The National Council on Compensation Insurance (NCCI), the state's designated statistical agent, files annual advisory loss costs on behalf of insurers for approval with the Superintendent. Advisory loss costs represent the portion of the rates that accounts for losses and loss adjustment expenses. Each insurer files factors called loss cost multipliers for the Superintendent's approval. These multipliers account for company experience, overhead expenses, taxes, contingencies, investment income and profit. Each insurer reaches its rates by multiplying the advisory loss costs by the loss cost multipliers. Other rating rules, such as experience rating, schedule rating, and premium discounts, also affect the ultimate premium amount paid by an individual employer.

On January 15, 2015, NCCI filed with the Superintendent for an overall 2.6% increase in the advisory loss costs effective April 1, 2015. According to NCCI, the loss-time claim frequency has been exhibiting a declining trend since 2000 with a slight increase in policy year 2012, and the average indemnity cost—a measure of severity—has also been declining with slight increases in policy years 2011 and 2012. Medical costs continue to increase and now consume 52% of Maine's total benefit costs. Indemnity costs accounts for the other 48% of total benefit costs. The Superintendent approved NCCI's filing effective April 1, 2015.

Maine Employers' Mutual Insurance Company (MEMIC) actively competes in the voluntary market and is the insurer of last resort in Maine. MEMIC's market share rose from 59% in 2011 to 65% in 2014, a 6% increase. The workers' compensation insurance market is very concentrated with much of the business being written by a small number of companies. Twenty-three insurers wrote more than \$1 million each in annual premium in 2013. The top 10 insurance groups wrote over 92% of the workers' compensation insurance in the state in 2014. Employers that maintain a safe work environment and control their losses should continue to see insurers competing for their business.

The number of insurance companies with workers' compensation authority has increased during the past several years, but the number of companies actively writing this coverage has not changed significantly. Rates have remained relatively steady, although some insurers have lowered their rates in hope of attracting business. Insurers other than MEMIC do not have to offer coverage to employers and can be more selective in choosing which employers to underwrite. However, in order to be eligible for lower rates an employer needs to have a history of few or no losses, maintain a safe work environment, and follow loss control recommendations. New businesses and businesses with unfavorable loss experience have limited options available in the voluntary market.

Self-insurance continues to be a viable alternative to the insurance market for employers. Self-insured employers represented nearly 42% (as measured by standard premium) of the overall workers' compensation market in 2014.

BUREAU OF LABOR STANDARDS

Title 3 MRSA §42 authorizes The Bureau of Labor Standards (BLS) to collect and analyze statistical data relating to work-related injuries and illnesses. BLS partners with the Maine Workers' Compensation Board (WCB) and federal agencies to coordinate injury and illness data collection from workers compensation cases and BLS helps organize that data in ways that augment its quality, availability, and applicability.

Under Title 26 MRSA §42-A, BLS establishes and oversees safety education and training programs to help employers comply with Occupational Safety and Health Administration requirements and maintain best practices for injury and illness prevention and reporting. BLS also oversees the employer-employee relationship through enforcement of Maine labor standards laws; enforcement of occupational safety, and health standards in the public sector; and administration of the Maine Employer Substance Abuse Testing law under Title 26 MRSA, Subchapter 3-A.

In 2015, Maine achieved "23g status", having attained a cooperative agreement with federal OSHA to enforce safety standards in the public sector workplaces. OSHA provides partially funding for BLS under this agreement, while BLS agrees to maintain the same or more stringent standards as OSHA in enforcing workplace safety regulations.

The Bureau's non-enforcement services are currently provided through a dedicated, special-revenue state fund collected from insurers and self-insured employers and employer groups, the Safety Education and Training Fund, or SETF. Insurers and self-insured employers pay an assessment based on a cap and an allocation formula defined in law with individual fees determined by how much the employer/insurer pays out in workers' compensation benefits (less medical payments). The SETF is also the source of matching funds for roughly \$700,000 in grants from US DOL for core injury/illness data and prevention programs, and, without the SETF source, those grants would not be possible.

Achievements in prevention have helped reduce both the numbers and rates of injuries and illnesses over time. Likewise, programs and activities aimed at secondary and tertiary prevention have reduced injury/illness-case durations and costs. Together, these reductions have driven down the Workers' Compensation benefits paid out by insurers and self-insured employers and, as a result, the SETF fund has steadily declined. BLS may at some point have to consider options or changes to the current funding mechanism to maintain prevention program activities.

In 2016, BLS plans to continue its efforts to further refine the injury and illness data collected from workers' compensation claims and assess their ability to help address emerging workplace safety issues. One such objective is to better understand the magnitude of workplace injuries and illnesses affected by substance abuse in the workplace. Presently there are few reliable studies in Maine or elsewhere that quantify the relationship of substance abuse to workplace injuries and injury rates. BLS believes it could be of significant value to evaluate whether and how data from first reports of injuries (FROIs) and other Workers' Compensation transactions can help quantify and characterize those relationships.

SECTION A

WORKERS' COMPENSATION BOARD

Section A: Workers' Compensation Board

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1. INTRODUCTION

To best understand the Maine Workers' Compensation Board, some background is helpful. The original agency, known as the Industrial Accident Board, began operations 100 years ago on January 1, 1916. There was a name change in 1978 when it became the Workers' Compensation Commission. On January 1, 1993, there was another name change when it became the Maine Workers' Compensation Board.

The functions of the Board fit into seven broad areas: (1) Dispute Resolution; (2) Compliance – Monitoring, Auditing, and Enforcement (MAE); (3) Worker Advocacy; (4) Medical/Rehabilitation Services; (5) Technology; (6) Central and Regional Office support; and (7) the Appellate Division.

With the implementation of Standard Operating Procedures (SOPs), our claims management process has experienced a reduction and, in some cases, an elimination of backlogs. Dispute resolution has become more efficient. A Law Court decision in 2004 on our Independent Medical Examiner (IME) program reversed some of our early progress in this area. The Court's holding in *Lydon v. Sprinkler Systems* resulted in a reduction in the number of health care providers who were willing and eligible to become independent medical examiners. This caused delays in our formal hearing process. The effects of this decision can still be felt. Cases without need for an IME are processed more quickly than those involving a Board-appointed independent examination. In addition, the Board's ability to attract doctors in certain sub-specialties willing to serve as independent medical examiners is difficult, and in order to ameliorate the problem the Board has raised the fees payable to the IME doctors. The Legislature helped by enacting LD 1056 in 2011, *An Act To Increase the Availability of Independent Medical Examiners*, which has aided some. The number of IME physicians was 30 pre- *Lydon*; 11 post- *Lydon*; and 25 currently. A concerted effort has been made in recent years to expand the pool of IME doctors. We have contacted specialty societies and sought to have information posted on sub-specialty websites. Through these efforts, we have modestly increased the number of IME physicians.

The MAE Program has improved payment and filing compliance. MAE's goals are to (1) provide timely and reliable data to the Board and other policy-makers; (2) monitor and audit payments and filings; and (3) identify insurers, self-insurers and third-party administrators who are not complying with minimum standards. Compliance is at or near 90% in all reported categories, a major improvement since the inception of MAE.

The Worker Advocate Program gives injured workers access to trained representatives. This improves the likelihood of receiving statutory benefits. Nearly 66% of injured workers are represented by advocates at mediation and about 29% are represented by advocates during the formal hearing level.

The Board is not a General Fund agency, that is, it receives no General Fund money. We are financed through an assessment on Maine's employers and their carriers. The Legislature established this assessment as the Board's revenue source. The assessment is capped by statute.

The Board is working to improve efficiency and lower costs through administrative efforts ranging from mandating electronic data interchange (EDI), enforcing performance standards in the dispute resolution process, and enforcing compliance through the MAE program and the Abuse Investigation Unit.

Prior to the inception of the Maine Workers' Compensation Act of 1992, Maine was one of the costliest states in the nation for workers' compensation coverage. Recent national evaluations demonstrate an

improvement in comparison to other states. Maine has moved from being known for its high costs, to a state that is approaching average premium costs while providing meaningful benefits. In recent years, we reported these reductions fit within the Governor's goal of making the system fair and competitive for the employees and employers of Maine. That is still true again this year. We strive to control costs for employers, and at the same time work to provide benefits in an efficient manner to injured workers.

2. ENABLING LEGISLATION AND HISTORY OF MAINE WORKERS' COMPENSATION

I. ENABLING LEGISLATION

On January 1, 1993, Title 39, which was the Workers' Compensation Act of 1991, and all prior Workers' Compensation Acts, were repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992. Title 39-A M.R.S.A. § 101, et seq. (Maine Workers' Compensation Act of 1992).

II. REVISIONS TO ENABLING LEGISLATION

The following revisions were enacted since 1993:

- **§ 102(11)(B-1).** Tightened the criteria for wood harvesters to obtain a predetermination of independent contractor status.
- **§ 102(13-A).** Tightened definition of independent contractor and made it the same as the definition used by Department of Labor.
- **§ 113.** Permits reciprocal agreements to exempt certain nonresident employees from coverage under the Act.
- **§ 151-A.** Added the Board's mission statement.
- **§§ 151, Sub-§1.** Established the Executive Director as a gubernatorial appointment and member and Chair of the Board of Directors. Changed the composition of the Board from eight to seven members.
- **§ 153(9).** Established the monitoring, audit & enforcement (MAE) program.
- **§ 153-A.** Established the worker advocate program.
- **§ 201(6).** Clarified rights and benefits in cases which post-1993 work injuries aggravate, accelerate, or combine with work-injuries that occurred prior to January 1, 1993.
- **§§ 212 and 213.** Changed benefit determination to 2/3 of gross average weekly wages from 80% of after-tax wages for dates of injury on and after January 1, 2013.
- **§ 213.** Eliminates the permanent impairment threshold for dates of injury on and after January 1, 2013 and establishes 520 weeks as the maximum duration for partial incapacity benefits with certain exceptions.
- **§ 213(1-A).** Defines "permanent impairment" for the purpose of determining entitlement to partial incapacity benefits.
- **§ 217(8).** Creates a rebuttable presumption that work is unavailable if an employee is participating in employment rehabilitation.
- **§ 224.** Clarified annual adjustments made pursuant to former Title 39, §§ 55 and 55-A.
- **§ 301.** Notice changed to 30 days from 90 days for injuries on and after January 1, 2013.

- **§§ 321-A & 321-B.** Reestablished the Appellate Division within the Board.
- **§ 328-A.** Created rebuttable presumption of work-relatedness for emergency rescue or public safety workers who contract certain communicable diseases.
- **§§ 355-A, 355-B, 355-C, and 356.** Created the Supplemental Benefits Oversight Committee.
- See Section 13 of this report for bills enacted by the 127th Legislature, First Regular Session.

III. STATE AGENCY HISTORY

As reported earlier, the original agency, the Industrial Accident Board, began operations on January 1, 1916. In 1978, it became the Workers' Compensation Commission. In 1993, it became the Workers' Compensation Board.

The Early Years of Workers' Compensation

A transition from common law into the statutory system we know today occurred on January 1, 1916. Under our common law tort system, an injured worker had to sue his employer and prove fault to obtain compensation. Workers' compensation was conceived as an alternative to the tort system for injured workers. Instead of litigating fault, under this "new" system, injured workers would receive statutorily determined compensation for lost wages and medical treatment. Employers correspondingly lost legal defenses such as assumption of risk or contributory negligence. Injured workers gave up remedies beyond lost wages and medical treatment such as pain and suffering and punitive damages. This "grand bargain," as it is sometimes called, remains a fundamental feature of our workers' compensation system. Perhaps as a sign of the times, financing and administration of benefit payments remained in the private sector, either through insurance policies or self-insurance. Workers' compensation disputes still occur in a no fault system. For example, disputes arise as to whether an incapacity is related to work; the amount of weekly benefits due the injured worker; and what, if any, earning capacity has been lost. Maine, like other states, established an agency to process these disputes and perform other administrative duties. Disputes were simpler. Injured workers rarely had lawyers. Expensive, long term, and medically complicated claims, such as cumulative trauma and chemical exposures, were decades away.

Adjudicators as Fact Finders

In 1929, the Maine Federation of Labor and an early employer group listed as "Associated Industries" opposed Commissioner William Hall's re-nomination. Testimony from both groups referred to reversals of his decisions by the Maine Supreme Court. This early feature of Maine's system, review of decisions by the Supreme Court, still exists, although today these appeals are discretionary. The Supreme Court decides issues of legal interpretation; it does not conduct a hearing de novo. In Maine, the state agency adjudicator is the final fact finder.

Until 1993, Commissioners were gubernatorial appointments, subject to confirmation by the legislative committee on judiciary. The need for independence of its quasi-judicial function was one of the reasons why the agency was established as an independent, free-standing institution, rather than as a part of a larger administrative department within the executive branch. The small scale of state government in 1916 no doubt also played a role in this structural decision.

Transition to the Modern Era

Before 1974, workers' compensation coverage in Maine was voluntary. In 1974 it became mandatory. This and other significant changes to the statute were passed without an increased appropriation for the Industrial Accident Board. In 1964, insurance carriers reported about \$3 million in direct losses paid. By 1974, that number grew to about \$14 million in direct paid losses. By 1979, direct losses paid by carriers totaled a little over \$55 million. By 1984, this number grew to almost \$128 million. These figures are only part of the benefit picture because they do not reflect benefits paid through self-insurance. The exponential growth of the system resulted from legislative changes during the 1970s and set the stage for a series of workers' compensation crises that occurred throughout the 1980s, into the early 1990s and some of the vestiges are still felt today.

In the early 1970s, time limits were removed for both total and partial wage loss benefits. Inflation adjustments or cost of living adjustments (COLAs) were introduced. The maximum weekly benefit was set at 200% of the state average weekly wage. Legislation was enacted making it easier for injured workers to secure the services of an attorney. The availability of legal representation greatly improved an injured worker's likelihood of receiving benefits, especially in a complex case. Statutory changes and evolving medical knowledge brought a new type of claim into the system. The law no longer required an injury happen "by accident." Doctors began to connect injuries such as carpal tunnel syndrome or other repetitive overuse conditions to work and thus brought these conditions within the workers' compensation coverage.

Gradual, overuse injuries frequently have a slower recovery period requiring benefit payments for longer periods than many accidental injuries. These claims were also more likely to involve litigation. Over the course of time, rising costs quickly transformed workers' compensation into a contentious political issue in the 1980s and early 1990s.

In the 1980s, Commissioners became full-time and an informal conference process was introduced in an attempt to resolve disputes early in the claim cycle, before a formal hearing.

Additionally, the agency expanded, opening regional offices in Augusta, Bangor, Caribou, Lewiston, and Portland supported by the central administrative office in Augusta.

In 1987, three full-time Commissioners were added, bringing the total from 8 to 11, in addition to a Chair. Today, the Board has reduced the number of staff hearing claims to nine, from a high of 11.

The political environment of the 1980s and early 1990s was extraordinary for Maine's workers' compensation system. Contentious legislative sessions directly related to workers' compensation occurred in 1982, 1985, 1987, 1991, and 1992. In 1991, then Governor John McKernan tied his veto of the state budget to changes in the Workers' Compensation Act. The consequence of this action was the shutdown of state government for three weeks.

In 1992, a Blue Ribbon Commission was created to examine our system and recommend much needed changes. The Commission's report made a series of proposals which were ultimately enacted. Inflation adjustments for both partial and total benefits were eliminated. The maximum benefit was set at 90% of state average weekly wage. A limit of 260 weeks of benefits was established for partial disability. These changes represented reductions in benefits for injured workers, particularly those with long term incapacity. Additionally, the provision of the statute concerning access to legal representation was changed making it more difficult for injured workers to secure the services of private attorneys.

Maine Employers' Mutual Insurance Company (MEMIC) was established. It replaced the assigned risk pool and offered a permanent coverage source. Despite differing views on the nature of the problems within the system, virtually all observers agree MEMIC has played a critical role in stabilizing Maine's workers' compensation environment.

Based on a recommendation of the Blue Ribbon Commission, the Workers' Compensation Board was created directly involving labor and management members in the administration of the agency.

The Board of Directors was initially comprised of four Labor and four Management members, appointed by the Governor based on nomination lists submitted by the Maine AFL-CIO and Maine Chamber of Commerce. The eight Directors hired an Executive Director who ran the agency. In 2004, legislation was enacted reducing the Board to three Labor and three Management members. The Executive Director was made a gubernatorial appointment, confirmed by the Senate and serving at the pleasure of the Governor.

The Board appoints Administrative Law Judges (f/k/a Hearing Officers) who hear and decide formal claims. A two-step process replaced informal conferences: troubleshooting, and mediation.

In 1997, legislation was passed providing more structure to the claims monitoring operations of the Board and created the Monitoring, Audit, and Enforcement (MAE) program. Also in 1997, a worker advocate program, a pilot project created by the Board, was expanded by the Legislature. This program provides injured workers with legal counsel who provide guidance and prosecute claims.

In recent years, both the regulatory and dispute resolution operations of the Board have experienced significant accomplishments. The dispute resolution function has evolved into an efficient informal process. Between troubleshooting and mediation, approximately 69% of initial disputes that were filed and resolved in 2015 were resolved within 80 days from the date a denial was filed. An efficient formal hearing process has reduced timelines to an acceptable 11 months for processing average claims.

The Board of Directors was gridlocked when appointing Hearing Officers in 2003 and 2004 resulting in slower claims processing at the formal level. This problem was further exacerbated when the Law Court decided *Lydon v. Sprinkler Systems*. This decision significantly reduced the number of independent medical examiners (IME). The pool went from 30 to 11. We now have 25 active examiners and are constantly recruiting. The Hearing Officers gridlock was broken when the Board agreed to appoint them to seven year terms. The IME problem has improved through the addition of better compensation for independent medical examiners and making it easier to qualify as an IME doctor.

In an apples-to-apples comparison, matching the complexity of the dispute and the type of litigation, the Board's average processing time for formal hearings is reasonable compared to other states, and is quite good if compared to the civil court systems for comparable personal injury claims.

The agency was criticized for not doing more with its data gathering and regulatory operations during the late 1980s and early 1990s. The Board installed a relational database in 1996, and a modern programming language; the result was an improvement in data collection. Today, filings of First Reports and first payment documents are systematically tracked. Significant administrative penalties have been pursued in some cases. Better computer applications and the Abuse Unit have improved the task of

identifying employers, typically small employers, with no insurance coverage. No coverage hearings are regularly scheduled. The Board mandated the electronic filing of First Reports beginning on July 1, 2005. The Board has also mandated the electronic filing of claim denials; this became effective in June 2006.

During the late 1990s, the Board of Directors deadlocked on important issues such as the appointment of Hearing Officers, adjustments to the partial benefit structure under § 213, and the agency budget. By 2002, this became a matter of legislative concern. Finally, in 2004, legislation was proposed and enacted to make the Board's Executive Director a tie-breaking member of the Board and its Chair. The Executive Director became a gubernatorial appointment, subject to confirmation by a legislative committee and Senate. With the new arrangement, gridlock due to tie votes is no longer an issue. The Executive Director casts deciding votes when necessary. However, the objective is still to foster cooperation and consensus between the Labor and Management caucuses. This now occurs regularly.

3. DISPUTE RESOLUTION

I. INTRODUCTION

The Workers' Compensation Board has five regional offices throughout the state that manage and process disputed claims. The regional offices are responsible for troubleshooting, mediations and formal hearings. Regional offices are located in Augusta, Bangor, Caribou, Lewiston and Portland.

II. THREE TIERS OF DISPUTE RESOLUTION

Title 39-A, the Maine Workers' Compensation Act, establishes a three-tiered dispute resolution process: troubleshooting, mediation, and formal hearing.

Troubleshooting

Troubleshooting represents the initial stage of the Dispute Resolution process. At troubleshooting, a Claims Resolution Specialist informally attempts to resolve controversies by contacting the employer and the employee. Many times, additional information, often medical reports, must be obtained in order to facilitate a resolution. The Claims Resolution Specialist functions as a neutral in the system providing assistance and information. If the parties are not able to resolve the dispute at this stage, the claim is referred to the next step, mediation.

Mediation

At mediation, a case is scheduled with one of the Board's regional mediators. The parties attend or teleconference the mediation at a regional office. The favored and typical mediation is in person. The Board has seen an increasing number of requests for telephonic mediations in the past year. The agency is evaluating whether the increasing number of mediations conducted by telephone are impacting the effectiveness of mediation. In the typical case, a mediator requests the party seeking benefits provide an explanation and rationale for the benefits being sought. The mediator then requests the other parties explain their concerns and identify what benefits they are willing to pay and/or why they are not prepared to pay benefits. The mediator seeks resolution proposals from the parties and the mediator may propose resolutions in an attempt to find an acceptable compromise. If the case is resolved at this stage, the mediator completes a formal agreement that is signed by the parties. The terms of the agreement are binding on those involved. If the case is not resolved at mediation, it could be referred to formal hearing. If a voluntary resolution is not reached at mediation, participation at mediation often benefits the parties by assisting them in identifying concerns that need further exploration and narrowing the issues that need to be addressed at formal hearing.

Formal Hearing

A formal hearing is scheduled after a petition is filed. At the hearing stage, the parties are required to exchange information, including medical reports, and answer Board discovery questions pertaining to the claim. After required discovery has been completed, the parties file a "Joint Scheduling Memorandum." This document lists the witnesses who will testify and estimates the hearing time needed. Medical witness depositions are oftentimes scheduled to elicit or dispute expert testimony. At the hearing, witnesses for both sides testify and other, usually documentary, evidence is submitted. In most cases, the parties are represented either by an attorney or a worker advocate. Following the

hearing, position papers are submitted and the Administrative Law Judge thereafter issues a final written decision.

The number of cases entering each phase for the period 2005 through 2015 are shown in the table below:

Cases Entering Dispute Resolution			
Year	Trouble Shooting	Mediation	Formal Hearing
2005	8,784	3,003	2,088
2006	8,962	2,652	1,915
2007	8,749	2,499	1,765
2008	8,384	2,428	1,680
2009	7,960	2,220	1,602
2010	8,546	2,928	1,561
2011	*13,660	2,362	1,440
2012	14,526	2,766	1,398
2013	13,351	2,522	1,321
2014	14,035	2,755	1,333
2015	14,663	2,534	1,272

*Beginning in 2011, the Board changed the way cases are counted. In the past, our count was based on the number of parties. In 2011, we started counting the "disputed issues." This change was made to more accurately report on the work of the Board, not just the number of participants within our system.

As this chart shows, less than one-third of dispute issues entering troubleshooting proceed to mediation. Of those going to mediation, approximately half will continue to the formal hearing stage.

III. TROUBLESHOOTING STATISTICAL SUMMARY

The following table shows the number of filings and dispositions at troubleshooting, the average timeframes, and number of filings pending at the end of each year for the period 2005 through 2015.

Troubleshooting Filings Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Av Days at TS
2005	8,784	8,724	666	27
2006	8,962	8,927	701	27
2007	8,749	8,719	731	27
2008	8,439	8,439	676	30
2009	7,960	7,913	723	29
2010	8,546	8,303	919	27
*2011	13,660	13,438	697	28
2012	14,526	14,514	685	24
2013	13,351	13,358	678	26
2014	14,035	14,067	646	32
2015	14,663	14,819	490	32

*Beginning in 2011, the Board changed the way cases are counted. In the past, our count was based on the number of parties. In 2011, we started counting the "disputed issues." This change was made to more accurately report on the work of the Board, not just the number of participants within our system.

IV. MEDIATION STATISTICAL SUMMARY

The following table shows the number of filings and dispositions at mediation, the average timeframes, and number of cases pending at the end of each year for the period 2005 through 2015.

Mediations				
Cases Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Av Days at MDN
2005	3,003	3,084	585	59
2006	2,652	2,741	496	61
2007	2,499	2,532	463	58
2008	2,428	2,488	443	55
2009	2,220	2,239	424	57
2010	2,928	2,868	452	59
2011	2,231	2,362	583	66
2012	2,766	2,738	555	50
2013	2,522	2,556	521	61
2014	2,755	2,789	487	57
2015	2,534	2,513	487	48

V. FORMAL HEARING STATISTICAL SUMMARY

The following table shows the number of filings, dispositions, and lump sum settlements at formal hearing, the average timeframes, and number of cases pending at the end of each year for the period 2005 through 2015.

Formal Hearing Cases Assigned, Disposed, and Pending					
Year	Assigned	Disposed	†Lump Sum Settlements	Pending 12/31	Av Months to Decree
2005	2,088	2,266		1,528	11.7
2006	1,915	2,173		1,270	11.7
2007	1,765	1,907		1,128	10.7
2008	1,680	1,728		1,080	8.4
2009	1,602	1,546		1,136	9.1
2010	1,561	1,486		1,211	8.5
2011	1,440	1,445		1,206	*10.8
2012	1,398	1,427	667	1,144	*12.1
2013	1,321	1,311	702	1,154	*9.7
2014	1,333	1,376	734	1,111	*10
2015	1,272	1,281	556	1,102	*10.9

* This figure represents all cases within the system. In prior years, certain cases were excluded. Claims processing has been slowed by a shortage of IME physicians in certain specialties, awaiting Medicare approval, and staff retirements.

† These figures were not recorded in prior years, but they are a significant part of the formal hearing process, so they will be included going forward.

VI. OTHER

The number of cases entering the dispute resolution process declined steadily until 2010, when an increase was experienced. Because we are now attempting to provide a more accurate picture of this process, it is difficult to compare figures pre-2011 to those post-2011. Our new numbers demonstrate claims are slightly down or flat, a trend that is consistent with what is happening in workers' compensation nationally.

4. OFFICE OF MONITORING, AUDIT & ENFORCEMENT

I. HISTORY

In 1997, the Maine Legislature established the Office of Monitoring, Audit and Enforcement (MAE). The multiple goals of this office are: (1) monitoring and auditing payments and filings; (2) providing timely and reliable data to policymakers; and (3) identifying those insurers, self-administered employers, and third-party administrators (collectively “insurers”) who are not in compliance with minimum standards established under our Act.

II. TRAINING

The Board believes a key compliance component is education. In early 2012, the Board confirmed this commitment by dedicating additional human and other resources to its training program for insurers, self-insured employers, claim adjusters, and administrators who manage Maine workers’ compensation claims.

The Board offers a two day “open training” four times a year in January, April, June, and October. These sessions provide a general overview of the Board and its divisions, as well as specific training in claims-handling techniques such as form filing, average weekly wage (AWW) calculations, and calculation of benefits due for a wide variety of scenarios a claim handler is likely to encounter. These sessions are very popular, both for those new to Maine claims, and as a review and update for the seasoned claims handler. Seventy-one adjusters, employers, providers, and others involved in workers’ compensation attended the 2015 sessions. In addition, open training modules are available on the Board’s website. Quarterly training newsletters are emailed to about 800 subscribers. The newsletter is also published on the Board’s website. These writings address a broad range of claims-handling topics.

The Board offers on-site training sessions which provide the entity being trained the opportunity to experience customized and specific-to-their-needs training. The six hour session focuses on the core of the open training sessions – form filing, AWW calculation, and benefit calculation. These presentations provide the opportunity to review the entity’s recent compliance and audit results, and address specific problems and issues they may have encountered. Eighty-three individuals from eleven different insurers/administrator groups received on-site training in 2015.

Three special sessions were held to educate claim administrators in planned changes to the electronic filing of claims information such as payments, benefit changes/suspensions, and other reports. One hundred three claim administrators attended these half-day sessions.

A special program was held on proper claims handling and payments using the Board’s medical fee schedule. Twenty-eight claim administrators were in attendance.

In conjunction with a Portland-based claim administrator, the Board presented an informational and educational session, attended by thirty-two employers, mostly from medical facilities. The session focused on the operations of the Maine workers’ compensation system, and the employer’s role in the claims process.

The Board provides training at the annual Comp Summit convention, including participation in the “Comp 101” session held each year for those new to the Maine workers’ compensation system. The Board maintains a booth at Comp Summit where it provides information on training and other Board resources to attendees. Comp Summit 2015 was attended by three hundred fifteen members of the workers’ compensation community.

Finally, the Board continues to provide access and assistance by telephone and email to claim handlers who have specific questions on difficult or unusual claims. The Board receives an average of a dozen such calls/emails a week in which it provides guidance on proper claims-handling techniques.

III. MONITORING

This section of the report, because of the data collection lag, traditionally provides information from the prior calendar year. This year is no exception. On July 14, 2015, the Maine Workers’ Compensation Board of Directors approved the 2014 Annual Compliance Report (January 1, 2014 through December 31, 2014):

A. Lost Time First Report Filings

- There is compliance with the lost time first report filing obligation when a lost time first report is filed (accepted Electronic Data Interchange (EDI) transaction, with or without errors) within 7 days of the employer receiving notice or knowledge of an injury causing an employee to lose a day’s work.
- When a medical-only first report is received and later the claim is converted to a lost time first report, if the date received minus the date of the employer’s notice or knowledge of incapacity is less than zero, the filing is considered compliant.
- The Board’s benchmark for lost time first report (FROI) filings within 7 days is 85%.
- Benchmark Not Met. Eighty-four percent (84%) of lost time FROI filings were within 7 days.

B. Initial Indemnity Payments

- Compliance with the Initial Indemnity Payment obligation occurs when an indemnity check is mailed within the later of: (a) 14 days after the employer’s notice or knowledge of incapacity, or (b) the first day of compensability plus 6 days.
- The Board’s benchmark for initial indemnity payments within 14 days is 87%.
- Benchmark Exceeded. Ninety percent (90%) of initial indemnity payments were within 14 days.

C. Initial Memorandum of Payment Filings

- Compliance with the Initial Memorandum of Payment filing obligation occurs when the MOP is received within 17 days of the employer’s notice or knowledge of incapacity.
- The Board’s benchmark for initial Memorandum of Payment (MOP) filings within 17 days is 85%.
- Benchmark Exceeded. Eighty-nine percent (89%) of initial MOP filings were within 17 days.

D. Initial Indemnity Notice of Controversy Filings

- Measurement excludes filings submitted with full denial reason codes 3A-3H (No Coverage).
- Compliance with the Initial Indemnity Notice of Controversy filing obligation occurs when the NOC is filed (accepted EDI transaction, with or without errors) within 14 days of the employer receiving notice or knowledge of the incapacity or death.
- The Board's benchmark for initial indemnity Notice of Controversy (NOC) filings within 14 days is 90%.
- Benchmark Exceeded. Ninety-four percent (94%) of initial indemnity NOC filings were within 14 days.

E. Wage Information

- Seventy-three percent (73%) of Wage Statement(s) and sixty-eight percent (68%) of the Fringe Benefit Worksheet(s) were filed within 30 days.
- The Board has yet to adopt benchmarks on these filings.

IV. AUDIT

The Board conducts compliance audits of insurers, self-insurers and third-party administrators to ensure all obligations under the Workers' Compensation Act are met. The functions of the audit program include, but are not limited to: ensuring that all Board reporting requirements are met, auditing the timeliness of benefit payments, auditing the accuracy of indemnity payments, evaluating claims-handling techniques, and determining whether claims are unreasonably contested.

A. Compliance Audits

The following audits were completed in 2015:

Auditee (alpha order)	Penalties
Chubb	\$400.00
ESIS	\$8,995.00
Hannaford	\$7,500.00
Hartford	\$1,500.00
Liberty Mutual	\$0.00
MMA	\$1,500.00
MSMA	\$3,000.00
Safety National	\$11,650.00
Sentry	\$25,000.00
Starr	\$25.00
XL Specialty	\$400.00

B. Complaints for Audit

The audit program also has a Complaint for Audit form and procedure where a complainant requests the Board conduct an investigation to determine if the insurer, self-administered employer or third-party administrator has violated 39-A M.R.S.A. §359 by engaging in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims and/or has violated §360(2) by committing a willful violation of the Act or committing fraud or intentional misrepresentation. The complainant also asks that the Board assess all applicable

penalties. In 2015, the Board received nine (9) complaints for audit. This number is down from previous years and is seen as a sign of a workers' compensation system that is working as designed.

C. Employee Misclassification

The misclassification of a worker as something other than an employee, such as an independent contractor, presents a serious problem for affected employees, employers, and our state economy. Misclassified employees are often denied access to the critical benefits and protections to which they are entitled under our Act. Employee misclassification also generates substantial losses to our state Treasury, Social Security and Medicare, as well as to state unemployment insurance.

In 2009, our Legislature established an allocation of funds to enhance the enforcement of laws prohibiting the misclassification of workers. In 2015, the MAE program completed 24 employee misclassification audits. The audits covered 115 employees, \$1,086,416.41 in payroll and \$1,087,468.00 in "subcontractor" wages shown on 1099's that resulted in \$1,370,977.52 in potentially misclassified wages, which may result in \$93,570.89 in unpaid workers' compensation premiums.

During 2014-2015, several employee misclassification investigations of the construction industry were pending final resolution. The cases were placed on hold pending the outcome of the Law Court's decision in *Workers' Compensation Board Abuse Investigation Unit v. Nate Holyoke Builders, Inc.*. Since *Holyoke* substantially impacted the Board's ability to address misclassification of employees as independent contractors, the Board is presently evaluating options in order to determine how to best address similar cases. (For more details about the *Holyoke* case, see Section 13, subsection II, *infra*.)

Several audits in the non-construction industry resulted in Board action. Penalties assessed on employees not properly covered by workers' compensation insurance are credited to the Employment Rehabilitation Fund, a fund that provides access to employment rehabilitation services such as retraining and job placement. Besides penalties, these employers are required to maintain workers' compensation insurance to cover their employees going forward.

V. ENFORCEMENT

The Board's Abuse Investigation Unit handles enforcement of the Workers' Compensation Act. The report of the Abuse Investigation Unit appears at Section 12 of the Board's Annual Report.

5. OFFICE OF MEDICAL/REHABILITATION SERVICES

I. MEDICAL FEE SCHEDULE

A. Background

Our Act provides, the goal of a medical fee schedule is “to ensure appropriate limitations on the cost of health care services while maintaining broad access for employees to health care providers in the State.” 39-A M.R.S.A. § 209-A(2). The Board was tasked with establishing a medical fee schedule in 1993 and again in 2011. See, 39-A M.R.S.A. § 209 and § 209-A(4). The Board satisfied the latter requirement with the adoption of a medical fee rule effective December 11, 2011. The Board has, since the adoption of a fee schedule Rule, kept the Rule current and consistent with its statutory obligation through annual and periodic updates.

B. Methodology

The Board’s medical fee schedule reflects the methodologies underlying the federal Centers for Medicare and Medicaid Services’ (“CMS”) inpatient, outpatient and professional services payment systems. In particular, the fee schedule uses procedure codes, relative weights or values (together “relative weights”) and conversion factors or base rates (together “conversion factors”) to establish maximum reimbursements.

In the case of both procedure codes and relative weights, the Board does not exercise discretion in assigning codes to procedures, or relative weights to coded services. The Board simply incorporates the codes and weights underlying the federal CMS inpatient facility, outpatient facility and professional services payment systems.

The Board’s Rule contains the final piece of the equation to determine the maximum reimbursement for a service, i.e. the applicable conversion factor. Separate conversion factors exist for anesthesia, all other professional services, inpatient and outpatient acute care facilities, inpatient and outpatient critical access facilities and ambulatory surgical centers.

C. Annual and Periodic Updates

The Act requires two types of updates: annual updates by the Executive Director and periodic, more comprehensive, updates undertaken by the Board. Annual updates are completed during the last quarter of each calendar year. Periodic updates are required every three years. The Board satisfied the second requirement with the adoption of the current iteration of the medical fee Rule effective on October 1, 2015.

II. MEDICAL UTILIZATION REVIEW

The Executive Director believes that utilization review is a much neglected and under-utilized provision of the Workers’ Compensation Act. The Board currently has 26 organizations certified to provide workers’ compensation utilization management services pursuant to Title 39-A M.R.S.A. §210 and Board Rules Chapter 7, however, the Board does not currently have any approved treatment guidelines.

The issue of opioid use and misuse by injured workers is a major concern in the workers’ compensation community as well as to society in general. The Board is taking very slow and deliberate measures to address opioid use and misuse in Maine’s workers’ compensation.

At present, the Executive Director is working with a small group of physicians to frame the issue(s). Once the medical community is aware of, and comfortable with, the Board's approach in this area, we plan to expand the task force by adding a limited number of stakeholders with expertise in these areas with the hope that the group can have something for the full Board's consideration in 2016.

III. EMPLOYMENT REHABILITATION

The Board has 20 providers approved to provide employment rehabilitation services pursuant to Title 39-A M.R.S.A. §217 and Board Rules Chapter 6. The program includes the service, treatment or training necessary and appropriate to return an employee to suitable employment. In 2015, the Board received 52 applications for employment rehabilitation services, which represents a slight decrease compared to recent years. All requests were from injured workers. Of the requests, 25 are pending, including nine which have been ordered, 11 were withdrawn, seven cases settled, a Hearing Officer denied four based on objections, three applicants were found not suitable, and two were ordered plans terminated by providers.

As rehabilitation plans from prior years come to a close, the program is seeing more success stories. In 2015, six rehabilitation plans assisted injured employees in returning to gainful employment. A delivery driver with a back injury was retrained, and is successfully employed as a phlebotomist. A horticulturist with a wrist injury is now employed as a behavior health professional. A drywall finisher with a back injury is now trained, and successfully employed, as an orthotic design technician. Based on ongoing reports from rehabilitation providers, it is anticipated more plans will end successfully in the coming months.

The Board is in the very early stages of drafting Rules that should help to encourage and facilitate vocational rehabilitation as a return-to-work option.

IV. INDEPENDENT MEDICAL EXAMINERS

The §312 Independent Medical Examiner System is critical to the Board's mission. Despite recent law changes and the recruitment efforts of the Board's Executive Director, the Board still lacks a sufficient number of health care providers willing and able to serve as independent medical examiners. At present, the Board has 25 independent medical examiners pursuant to Title 39-A M.R.S.A. §312 and Board Rules Chapter 4.

The Executive Director continues his efforts to recruit physicians to serve as independent medical examiners. In addition, with the assistance of the International Association of Industrial Accident Boards and Commissions (IAIABC), he is in the process of evaluating the Board's annual review process designed to measure the quality of the performance and the timeliness of the submission of the medical findings by the independent medical examiners.

There were 497 requests for independent medical exams in 2015. Of the 497 requests, 295 were from injured workers, 149 from employers/insurers, one from an administrative law judge, and 52 by agreement of the parties.

6. WORKER ADVOCATE PROGRAM

I. INTRODUCTION

The Worker Advocate Program provides legal representation without cost to injured workers pursuing claims before the Workers' Compensation Board. In order for an injured worker to qualify to receive assistance, the injury must have occurred on or after January 1, 1993; the worker must have participated in the Board's troubleshooter program; the worker must not have informally resolved the dispute; and finally, the worker must not have retained private legal counsel.

Traditional legal representation is the core of the program; the Advocate staff have broad responsibilities to injured workers, which include: attending hearings and mediations; conducting negotiations; acting as an information resource; advocating for and assisting workers to obtain rehabilitation, return to work and employment security services; and communicating with insurers, employers and health care providers on behalf of the injured worker.

II. HISTORY

As reported earlier, in 1992 the Maine Legislature re-wrote our Workers' Compensation Act. They repealed Title 39 and enacted Title 39-A. One of the most significant changes impacting injured workers was the elimination of the attorney fee "prevail" standard. Under Title 39, attorneys who represented injured workers were entitled to Board ordered fees from employers/insurers if they obtained benefits for their client greater than any offered by the employer, i.e., if they "prevailed." Now, under Title 39-A (beginning on January 1, 1993 for claims after that date), the employer/insurer no longer has liability for legal fees regardless of whether the worker prevails, and, in addition, fees paid by injured workers to their attorneys are limited to a maximum of 30% of accrued benefits with settlement fees capped at no greater than 10% of the settlement amount.

These changes made it difficult in many instances for injured workers to obtain legal counsel—unless they had a serious injury with substantial accrued benefits or a high average weekly wage. Estimates indicate that upwards of 40% of injured workers did not have legal representation after this statutory change was enacted. This presented dramatic challenges for the administration of the workers' compensation system. By 1995, recognition there was a problem prompted the Workers' Compensation Board of Directors to establish a pilot "Worker Advocate" program.

The pilot program was staffed by one non-attorney Advocate and was limited to the representation of injured workers through the dispute resolution and mediation stages. Based on the pilot's success, the Board expanded the program to five non-attorney Advocates, one for each regional office; however, representation remained limited to mediations. Ultimately, in recognition of both the difficulties facing unrepresented workers and the success of the pilot program, the Legislature in 1997 amended Title 39-A and formally created the Worker Advocate Program.

The 1997 legislation resulted in a substantial expansion of the existing operation. Most significantly, the new program required Advocates to provide representation at mediation and formal hearings. These additional responsibilities associated with this representation require greater skill and more work than previously required of Advocates. Some of the new responsibilities include: participation in depositions,

attendance at hearings, drafting required joint scheduling memorandums, drafting motions, drafting post-hearing position letters, working with complex medical reports, conducting settlement negotiations, and analysis and utilization of the statute, our Rules, and case law.

III. THE CURRENT WORKER ADVOCATE PROGRAM

At present, the Board has 12 Advocates working in five regional offices. Advocates are generally required to represent all qualified employees who apply to the program. This contrasts with private attorneys who generally pick and choose who they represent. The statute provides exceptions to this requirement where the program may decline to provide assistance. However, the reality is relatively few cases are rejected.

Cases are referred to the Advocate Program only when there is a dispute—as indicated by the employee, employer, insurer, or a health care provider. When the Board is notified of a dispute, a Claims Resolution Specialist (commonly referred to as a “troubleshooter”) works to facilitate a voluntary resolution. If not successful, the Board determines if the employee qualifies for the assistance of the Advocate Program and, if so, a referral is made.

As reported in the dispute resolution section of this report, if troubleshooting is unsuccessful, cases are forwarded to mediation. To represent an injured worker at mediation, the Advocate Program must first obtain medical records and other evidence concerning the injury and the worker’s employment. Advocates meet with the injured worker, where they explore the claim and review issues. They also gather information from health care providers and others. Advocates are often called upon to explain the legal process (including the Act and Board Rules) to injured workers. They frequently are called upon to discuss medical issues, review work restrictions and assist workers with unemployment and health insurance matters. Advocates provide injured workers with other forms of interim support, as needed. Many of these interactions produce evidence and information necessary for subsequent formal litigation, if the case proceeds to more formal processing.

At mediation, the parties appear before a Mediator, discuss the claim specifics, present the issues, and attempt to negotiate a resolution. The Mediator facilitates, but has no authority to require the parties to reach a resolution or to set the terms of an agreement. If the parties resolve the claim, the agreement is reduced to writing in a binding record. A significant number of cases are resolved before, at, and after mediation; of every 100 disputes reported to the Board, approximately 75 are resolved at mediation and thus avoid formal hearings.

Cases that are not resolved at mediation typically involve factual and/or legally complex disputes. These claims typically concern situations where facts are unclear or there are differing interpretations of the Act and case law. If a voluntary resolution of the dispute fails at mediation, the case typically proceeds to a formal hearing.

The hearing process is initiated by an Advocate filing petitions (after assuring there is adequate medical and other evidence to support a claim). Before a hearing, the parties exchange information through voluntary requests and formal discovery. Preparation for hearing involves filing and responding to motions, preparing the employee and other witnesses, preparation of exhibits, analysis of applicable law and review of medical and other evidence. At a hearing, Advocates, like any other lawyer, must elicit direct and cross examination testimony from the witnesses, introduce exhibits, make objections and

motions, and, at the conclusion of the evidence, file position papers that summarize the facts and credibly argue the law in the way most favorable to the injured worker. Along the way, the Advocates also often attend depositions of medical providers, private investigators, and labor market experts. Eventually, a decision is issued or the parties agree on either a voluntary resolution of the issues or a lump sum settlement. In recent years, the average timeframe for the entire process is about 11 months, although it can be significantly shorter or longer depending on the complexity of medical evidence and the need for independent medical evaluations.

IV. CASELOAD STATISTICS

Injured workers in Maine have made substantial utilization of the Advocate Program. Advocates represented injured workers at approximately 66% of the mediations held in 2015. Given the relatively large number of mediations handled by Advocates, it bears noting that from 1998 through 2008, the program consistently cleared a majority of the cases assigned in a given year for mediation. The following table reflects the number of Advocate cases mediated from 2005 through 2015.

Advocate Cases at Mediation				
	Assigned	Disposed	Pending 12/31	% of All Pending
2005	1,915	1,841	311	53%
2006	1,522	1,533	280	56%
2007	1,397	1,434	243	52%
2008	1,405	1,437	211	48%
2009	1,205	1,195	221	52%
2010	1,006	1,156	271	60%
2011	975	896	246	42%
2012	1,703	982	294	53%
2013	1,465	1,540	270	55%
2014	1,688	1,486	307	64%
2015	1,621	1,410	326	66%

In 2015, the number of cases handled by Advocates at mediation represents a slight decrease as compared to the number of cases taken to mediation in 2014. The Advocate Division handled 66% of all mediations in our system in 2015.

Since becoming fully staffed, the Advocate Program has represented injured workers in approximately 29% of all Board formal hearings. In some years, Advocates clear more formal cases than were pending at the start of the year. Given the much greater scope of responsibility inherent in formal hearing cases,

Advocates have performed well in their expanded role. The following table represents the number of cases handled by Advocates at formal hearing from 2005 through 2015.

Advocate Cases at Formal Hearing				
	Assigned	Disposed	Pending 12/31	% of All Pending
2005	679	714	452	30%
2006	628	715	361	29%
2007	632	673	320	28%
2008	599	610	309	29%
2009	564	511	362	32%
2010	463	515	306	26%
2011	438	374	242	20%
2012	444	289	338	29%
2013	476	281	377	31%
2014	461	293	305	26%
2015	503	275	326	29%

The Advocates handled more formal hearings in 2015 than in 2014. It should be noted that the Advocates continue to be responsible for 29% of the formal hearings held across the state in 2015.

In 2014, the Board adopted a new Rule on Advocate representation.

V. SUMMARY

The Advocate Program was created to meet a significant need in the administration of the workers' compensation system. The statutory expansion of program duties in 1997 created unmet needs in the program. In order to meet the obligations in the statute, the Workers' Compensation Board has diverted resources from other work to the Advocate Program. Currently the program has 12 Advocates with a support staff of 16 (two of whom are part-time) and a supervising Senior Staff Attorney. Services are provided in five regional offices: Augusta, Bangor, Caribou, Lewiston, and Portland.

In its first 10 years, the Program has proven its value by providing much-needed assistance to Maine's injured workers, albeit with limited resources. As a result of the limited resources, the Advocate Program has experienced periods of high caseloads which has led to staff turnover. In one 12-month period, (2006–2007) 42% of existing Advocate Program positions were vacant. Nothing has greater potential to impact the quality of the services rendered to injured workers than insufficient staff. In response to ongoing concerns, the 123rd Legislature provided additional support for the Advocate Program. Qualifications for Advocates and paralegals were increased and, in conjunction, pay ranges

were upgraded. The changes, which went into effect in September 2007, were intended to attract and retain staff and to bolster stability of this program—which is an integral part of the workers' compensation system in Maine. We believe these goals are being met.

7. TECHNOLOGY

The Board, over the past year, has implemented a number of significant changes within our information management systems and their delivery. By statute, many of the information delivery platforms and applications are centralized into the Maine Office of Information Technology (OIT). We work with OIT to improve the service quality and support provided.

The following represents a list of functional areas within the Board that have seen new development, upgrades, or enhancements to the systems they use on a regular basis:

- The EDI Payments initiative has been in development for the past year. The anticipated rollout is June 2016. We will move the Claim Administrators over in three groups. This will allow for more testing and training time for each entity. There are a few remaining items in discussion with the Consensus Rule-Making Group. A majority of the programming has been completed and the internal review team is currently working on business edit, queue related issues, Explanation of Benefit forms, 21-day reporting, and the legacy claim migration process. These items are complex and will take time to analyze.
- We are ready to roll out the ability to send back completed .pdf forms based on information received via EDI claim submission. We will begin with Denial (NOC) forms, and as we move forward with the payment project additional forms will be added. This process will ensure that information sent the Workers' Compensation Board electronically will match what is sent the injured employee. This has been an issue in the past and this should resolve the inconsistency.
- We are also investigating having a web portal for trading partners to enter, view, and update claim information. We have contacted the State of South Carolina and have opened discussions concerning their web offering and the ability to port the application to our system. This segment will follow the Progress upgrade for payments.
- The Abacus application, which is a law firm client tracking system used by the Advocate Division, was upgraded in early December to the latest release with hopes of resolving compatibility issues which arose with the computer upgrades with Windows 7. With one month of operation, it seems issues have resolved with the upgrade. However, critical issues remain with the performance of the product. We have looked at the network, servers, and desktops, and believe the fundamental problem lies with the wide-area network delivery. We are working with OIT on other application delivery options. We anticipate the replacement project to begin early 2016.
- In July 2015, the Board's website was updated using Dreamweaver. The new and improved website is more user-friendly for injured employees, employers, insurers, and other interested parties.
- UPDATE: The write-up below discussed a project that was to begin last year. As of yet the project has had many false starts and the cost/project deliverables continue to change without any actual work being performed in the Workers' Compensation Board piece. OIT has had project management responsibilities and has been slow to provide an update on issues, cost overruns, or providing a set of deliverables that would enable the stakeholders to sign a Memorandum of Understanding. This project may not be implemented as initially projected.

OIT informed the WCB in late fall the platform for our Progress application, which is the primary system used by all within the WCB, is deteriorating. The Department of Labor and WCB share this hardware and an upgrade is sorely needed. There are significant operational risks without this upgrade. In order to implement this project, the hardware and all applications need to be brought up to the latest release of Progress. Cost is estimated to be \$120k.

- The Portland Regional Office is moving from 62 Elm Street to 1037 Forest Avenue. Some work will need to be done on the interior to facilitate the Board and Advocate office needs. We anticipate moving in March 2016.

Future Challenges:

- Computer upgrades were completed July 2013 to Microsoft Windows 7 32-bit operating system. This work did nothing to enhance performance of our computers due to the 3 GB memory limitation. We need the operating system to be upgraded to the 64-bit version so additional memory can be installed for better system performance. In order for this to occur, we need a more advanced ISYS application so it is compliant with the 64-bit operating system.
- OIT also informed the WCB the Progress database is not in the long-term plan and it is not a going-forward strategy for the State. There are options that may be available to the WCB that will be investigated over the next few years.
- Abacus delivery in a wide area networked environment is barely acceptable and other options for hosting the application need to be investigated.
- Application upgrade is needed for ISYS, Progress (in the works), Abacus, and Dragon.

8. BUDGET AND ASSESSMENT

In 1992, the Legislature established a statutory assessment of insurers and self-insurers to fund the operations of the Board. Previously the agency received an appropriation from the General Fund. Assessments are paid by Maine's employers, both self-insured and those with insurance. By adopting an assessment for funding, the Legislature intended that the entities using the workers' compensation system pay the costs of funding the system. At the same time, the Legislature placed a cap on the dollar amount allowed to be assessed annually limiting the amount of revenue produced. The current Administrative Fund assessment cap of \$11,200,000 has been in place since 2012. The Board voted in November 2015 to introduce legislation to increase the assessment cap to \$13,000,000 annually for Fiscal Years 2016-2017.

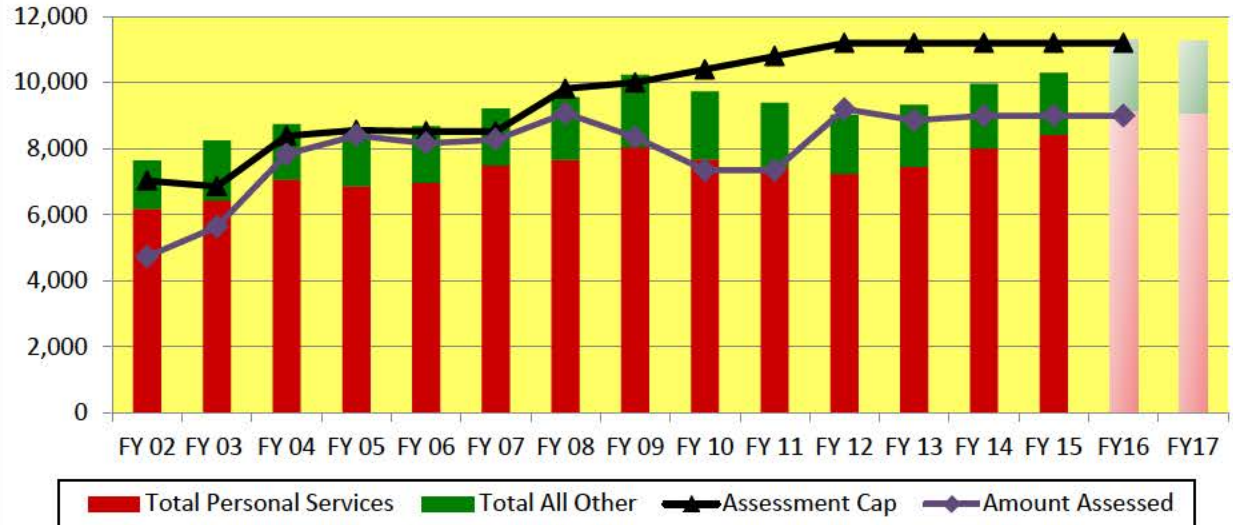
The Board cannot budget more than it can raise in revenue from the annual assessment, and other minor revenues collected from the sale of publications, and some fines and penalties. The majority of the fines and penalties, however, are paid into the Rehabilitation Fund or the General Fund and are not available as revenue for Board expenses. The Board-approved budget for fiscal year 2016 ending on June 30, 2016 is \$11,290,511. The budget for fiscal year 2017, beginning July 1, 2016, is \$11,256,581.

The Board's funding mechanism also includes a reserve account. The Board may vote to use funds from the reserve account to assist in funding Personal Services, All Other expenditures, and other reasonable costs incurred to administer the Act. The Bureau of the Budget and Governor approve all requests to use reserve funds via the financial order process. The bar chart entitled "WCB – 15 Year Schedule of Actual and Projected Expenditures" shows actual expenditures through FY15 and projected expenditures for FY16-FY17. The chart also shows the assessment cap and the amounts actually assessed through FY16.

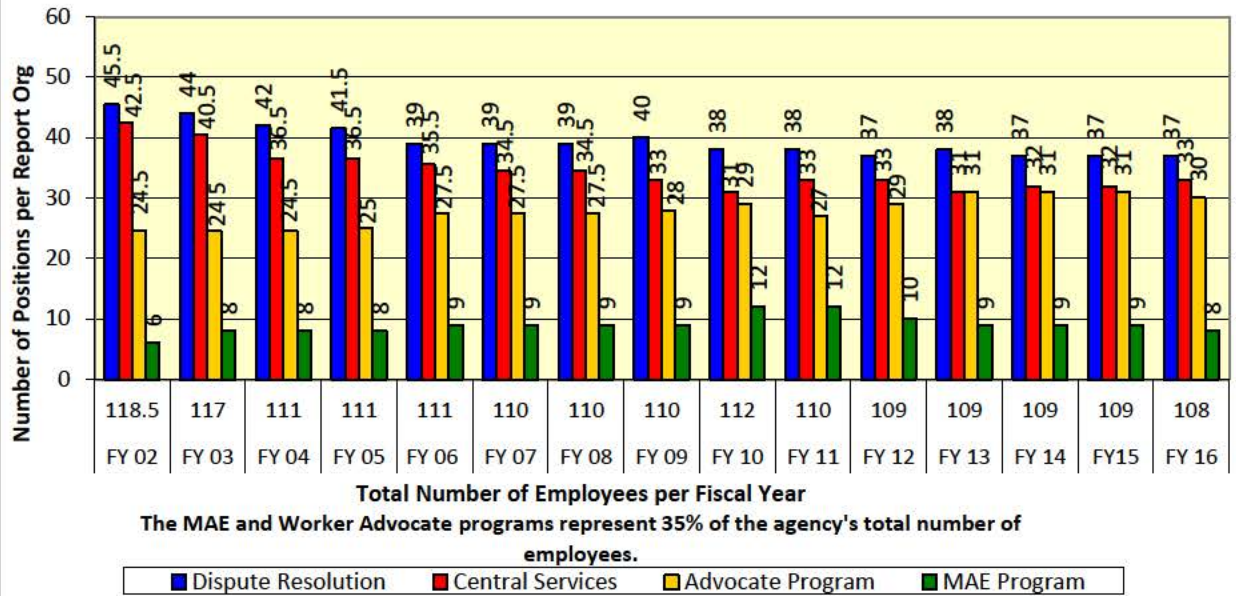
Since 2000, the Board has reduced staff by over 14 positions (14.5 full-time equivalent staffing hours) from 122.5 to the FY16 level of 108. Despite the decrease during this period, the Board has accommodated staffing for three new divisions: the Monitoring, Audit & Enforcement (MAE) program, the Advocate Division, and the Appellate Division. In FY16 personnel for the MAE and Advocate programs combined represents 35% of the Board's total number of employees. The bar chart entitled "WCB – Personnel Changes Since FY02" illustrates the Board's efficient use of personnel.

WCB - 15 Year Schedule of Actual and Projected Expenditures
Workers' Compensation Administrative Fund - 0183
December 2015

(figures for FY16 and FY 17 are budget projections)



WCB - Personnel Changes Since FY 02
December 2015



9. CLAIMS MANAGEMENT UNIT

When an injured worker makes a claim for benefits, the insurers, claims administrators, and/or self-insured employers who may be responsible for paying those benefits are required to file information with the Board. Filings start with the first notice that a claim has been made (the Employer's First Report of Occupational Injury or Illness) and may continue for years as a claim is litigated and/or paid.

The Claims Management Unit (CMU) is responsible for reviewing filings to ensure compliance, accuracy and, if necessary, resolve problems. The CMU uses a "case management" system; staff are assigned a group of insurers, claims administrators and/or self-insured employers. Each claim manager oversees and troubleshoots the filings made by the entities on their caseload for the life of each claim.

The CMU also are responsible for verifying Cost of Living Adjustments (COLA) for claims dates of injury from January 1, 1972 through December 31, 1992. Staff produce annually the "State Average Weekly Wage Notice" (based on the Department of Labor's State Average Weekly Wage calculation). The SAWW Notice contains information insurers, claims administrators and self-insured employers need to calculate COLA's, permanent impairment payments, and determine whether to include fringe benefits in compensation rate calculations. Claim staff use the SAWW Notice to perform the mathematical calculations to determine the COLA multiplier and maximum benefit in effect for the upcoming year. Staff also coordinate with the Monitoring section of the MAE Program to identify entities that fail to file information or file information late (i.e., after the required deadline), and participates in compliance and payment training workshops for insurers, claims managers and self-insured employers.

In 2004, the Board implemented a program to change the filing of some information on paper forms to an Electronic Data Interchange system (EDI). The Employer's First Report of Injury form began EDI submission in 2004 followed by the Notice of Controversy form in 2006. Starting in 2016, most indemnity payments will be reported to the Board by EDI (EDI Payments). The CMU is participating in this project. Currently testing for the expansion of EDI is expected to begin in the spring of 2016.

Details of the requirements for EDI payments are not final; however, CMU anticipates that, as a result of EDI Payments, the following indemnity payment forms will be discontinued:

- Memorandums of Payment (WCB 3)
- Modifications/Discontinuances (WCB 4)
- Statement of Compensation (WCB 11)

Filings for indemnity that require legal signatures, verification or other documentation will continue to be submitted on paper. These forms include:

- Wage Statement (WCB 2)
- Fringe Benefit Worksheet (WCB 2B)

Paper filings will be required for the following forms in addition to an EDI transaction:

- Consent Between Employer and Employee (WCB 4A)
- 21-day Certificate of Discontinuance or Reduction of Compensation (WCB 8)

While EDI has become the standard reporting method in Maine, not all information required by statute is amenable to EDI transmission. The CMU staff will continue to process paper submissions of the following information/forms:

- **Petitions** – A file is created or located, the Petition is entered in the Board’s database, and the file is routed to the appropriate Claims Resolution Specialist in a regional office. If the claim is not in the Board’s database, CMU staff contact the filer to request an Employer’s First Report of Occupational Injury or Disease.
- **Answers to Petitions** - The Answer is matched to a claim(s), entered into the database, and the paperwork is sent to the file.
- **Wage Statements** - The average weekly wage as filed is verified and entered into the claim in the Board’s database. The form is sent to the claim file.
- **Schedule of Dependent(s) and Filing Status Statements** - The information is entered into the claim in the Board’s database, and the form is sent to the claim file.
- **Fringe Benefit Worksheets**- The received date is entered into the database and the form is sent to the file.
- **21-Day Certificate or Reduction of Compensation** - The form is checked for accuracy, comparing dates, the payment rate, and the wage. Filings that comply with Board requirements are entered into the claim database. If the filing does not comply, CMU contacts the preparer and requests a correction. If the form is not corrected, the form and file are sent to a Claims Resolution Specialist in a regional office for troubleshooting and/or alternative dispute resolution.
- **Lump Sum Settlement** - Information on the form is entered into the claim database and then matched with the file.

The EDI system has shifted the CMU workload, allowing a sizeable portion of mandatory filing information to be transmitted electronically. As a result, CMU staff can focus on troubleshooting more complex questions, verification of information in cases of dispute and investigate more serious problems. This shift in focus benefits the entire workers’ compensation community and assists carriers to identify potential problems early in the life of a claim.

BREAKDOWN OF CLAIM FORMS FILED WITH THE WORKERS' COMPENSATION BOARD

Information filed from November 1, 2014 - October 31, 2015

Information/Form	EDI	CMU	OTHER*	TOTAL
Employer's First Report of Occupational Injury or Disease	29,383	33	18	29,434
Notice of Controversy	9,843	1	56	9,900
Petitions		3,147	2,024	5,171
Answers to Petitions		1,042	7	1,049
Wage Statement		9,401	7	9,408
Schedule of Dependent(s) and Filing Status Statements		114	1	115
Fringe Benefits Worksheet		8,591		8,591
Memorandum of Payment		6,046	3	6,049
All Other Payment Forms*, including:		15,684	11	15,695
• Discontinuance or Modification of Compensation				
• Consent Between Employer and Employee				
• 21-Day Certificate of Discontinuance or Reduction of Compensation				
• Lump Sum Settlement				
Statement of Compensation Paid		18,119	162	18,281

*Other represents claims forms entered by Board staff other than CMU, and is included for completeness.

10. INSURANCE COVERAGE UNIT

The Insurance Coverage Unit is responsible for filings and records regarding workers' compensation insurance coverage. Board rules require employers doing business in Maine file proof of a workers' compensation policy (known as "coverage") with the Board. When an injured worker makes a claim for benefits, the claim must be linked to that employer's policy.

The Coverage staff provides information to insurers, employers, insurance adjusters and the public on insurance coverage requirements. Staff match insurance coverage to employers, update employer records, and research the history of an employer's insurance coverage when there is a question what insurer is liable for paying benefits. Part of matching coverage to specific employers involves resolving instances of "no recorded coverage." Employers identified as needing, but not having, workers' compensation coverage are notified by letter and asked to contact the Coverage Unit. Coverage staff respond to these calls and, when possible, resolve the matter. The Unit is also responsible for processing applications to waive the requirement to have workers' compensation coverage, maintaining waiver records, and rescinding waivers when applicants do not meet the statutory requirements.

In 2009, the Board implemented electronic filing for proof of workers' compensation insurance. The advent of electronic filing has allowed Coverage staff to focus on research and resolution of problems. The majority of routine filings (initial proof of coverage, endorsements, renewals, etc.) flow through the electronic filing system without staff intervention. Any electronic filings that require research to resolve are routed to staff. Electronic filing has reduced data entry and enhanced identification of problems and trends with coverage filings. Changes to the Board's computer program associated with electronic filing have improved linking coverage to employers and claims, and reduced the amount of research needed to identify whether there is coverage and the insurer is responsible for the claim.

For the twelve (12) month period November 2014 through October 2015, the Board received and processed 44,720 proof-of-coverage filings and 1,420 waiver applications. The staff goal is to resolve 100% of issues with electronic coverage filings within 24 hours of receipt and 90% of waiver applications within 48 hours of receipt.

The Coverage staff works closely with the Abuse Investigation Unit on problems associated with coverage enforcement. The Unit cooperates with the MAE program to identify carriers and self-insureds who consistently fail to file required information in a timely manner. They also assist the Bureau of Labor Standards to maintain an accurate, up-to-date employer database utilized by both agencies.

10A. PREDETERMINATION UNIT

The Predetermination Unit processes applications for employment status predetermination. These forms are used by workers, employers and insurance companies to determine whether an individual worker, and in some cases a group of workers associated with an employer, are employees or independent contractors. If a worker is an employee, the employer must provide workers' compensation insurance coverage for that person. If the worker is an independent contractor, insurance coverage is not required unless the independent contractor has employees or elects to be personally covered. Filing the forms is voluntary under the Maine Workers' Compensation Act.

The Legislature adopted a new uniform "independent contractor" definition in 2012. The new definition became effective on January 1, 2013, at which time, the Board reduced the number of predetermination forms from five to three. The Board adopted a new form titled Application for Predetermination of Independent Contractor Status to Establish A Rebuttable Presumption (WCB-266). The new form replaced forms WCB-261, WCB-264 and WCB-265. The other two forms are exclusive to wood harvesters. The first is titled Application for Certificate of Independent Status (Form WCB-262). This form is used by the wood harvester so he/she can apply for a certificate of independent status. The second form for wood harvesters is titled Application for Predetermination of Independent Contractor Status to Establish Conclusive Presumption (Form WCB-260). This two-party application is completed by the land owner and the wood harvester. If both forms are approved, the wood harvester is precluded from filing a workers' compensation claim.

In calendar year 2015, there were 4,967 approved predeterminations, both conclusive and rebuttable. All were processed within 30 days of filing as required by the statute. Most were processed within several days of Board filing.

11. COORDINATION WITH OTHER AGENCIES

The Workers' Compensation Board is an independent agency charged with performing discrete functions within state government. Despite this, the Board coordinates and collaborates with other agencies. The Department of Labor (DOL) and Bureau of Insurance (BOI) are major collaborators; the Bureau of Human Resources (BHR), the Office of Information Technology (OIT), the Department of Health and Human Services (DHHS), and the Attorney General's Office are agencies the Board works with regularly.

I. DEPARTMENT OF LABOR

For years, the Board and the Department of Labor (DOL) maintained separate employer databases. The separate databases contained information unique to the needs of each agency, but there was also a significant overlap. Maintaining the two systems proved to be inefficient and resulted in unnecessary work. Information that was updated on one system, for example, would not always be updated on the other, causing confusion between the agencies. The Board and DOL worked together to merge their information into a single database. Now, the Board can more accurately determine whether employers are complying with the requirement to secure workers' compensation coverage for their employees.

The Board, DOL and other interested parties worked together to draft a single, uniform "independent contractor" definition that is used for both workers' compensation and DOL purposes. The new definition has been in effect since January 2013 and is working reasonably well. In an effort to improve the overall effectiveness of the new definition, the Board is reviewing the process for requesting a predetermination of an individual's employment status. Concerns have been raised it may be too easy to receive an independent contractor predetermination, thus, potentially, undermining the goal of ensuring all employees are covered by required workers' compensation insurance. We are evaluating this concern.

The Board also works with DOL's vocational rehabilitation staff. In order to return injured workers to suitable employment as quickly as possible, the Board refers injured workers to qualified employment rehabilitation specialists, who evaluate the workers and develop rehabilitation plans. Some of these referrals go to DOL staff. DOL's staff does well ensuring developed plans for injured workers are tailored to the individual workers' abilities and needs. The Board and DOL continue to monitor how effective the plans are at returning injured workers to suitable employment.

The Bureau of Labor Standards (BLS), a division within DOL, uses claim information gathered by the Board to produce statistical reports on workplace safety in Maine. These reports are used by the Board, policy makers, and others to understand how well the system is working and where there is room for improvement. BLS is currently working with the Board to develop and define procedures for filing claim information electronically.

II. BUREAU OF INSURANCE

While the Board has primary responsibility for implementing Maine's Workers' Compensation Act, the Bureau of Insurance (BOI) is responsible for overseeing certain aspects of Maine's system that require the two agencies to work cooperatively. A primary area of collaboration revolves around the Board's

annual assessment. In order to ensure proper and adequate funding, the Board works with BOI to obtain information on premiums written, predictions on market trends, and paid losses information for self-insured employers. This information is utilized by the Board to calculate the annual assessment.

The Board's Monitoring, Auditing, and Enforcement (MAE) Unit works directly with BOI on compliance and enforcement cases pursuant to 39-A M.R.S.A. § 359(2). When insurers, self-insurers and/or third-party administrators are found, after audit, to have failed to comply with the requirements of the Act, the Board certifies this information and forwards it to BOI. BOI must then take appropriate action to ensure questionable claims handling is addressed.

III. OTHER AGENCIES

As the Board continues to shrink, it has entered into agreements with other agencies to provide services that used to be provided in-house. Several of these agencies are within the Department of Administrative and Financial Services (DAFS).

For instance, the Board's human resources needs are managed in conjunction with the Bureau of Human Resources. The Board and BHR have worked well together to address a number of personnel related issues.

A coordinated effort is also underway with the Office of Information Technology (OIT), another DAFS Bureau, to upgrade the Board's computer hardware and software. Upgrades include desktops, network servers, a database server, network hubs, and a routed network. Major programming changes are underway. We anticipate these will continue into the foreseeable future.

The Board works with the Department of Health and Human Services (DHHS) to assist in recovering past due child support payments and to ensure MaineCare does not pay for medical services that should be covered by workers' compensation insurance.

Finally, the Board works with the Attorney General's office on matters ranging from employee misclassification to representation on collection matters when penalties are assessed and not readily paid.

12. ABUSE INVESTIGATION UNIT

The Abuse Investigation Unit (AIU) is responsible for enforcing the administrative penalty provisions of the Workers' Compensation Act. The AIU investigates allegations of fraud, illegal or improper conduct, and violations associated with mandatory filings, payments and insurance coverage. The Unit has six (6) professional staff and is supervised by the Board's Deputy General Counsel. AIU personnel perform investigations, file complaints and petitions, represent the Board at administrative penalty hearings, and decide penalty cases.

AIU staff is also responsible for managing billing and payments for penalties, and for initiating collection via Maine Revenue Services and the Attorney General's office through civil and criminal actions. As part of this work, AIU is responsible for complying with requirements set by the Department of Administrative and Financial Services, and the Office of the State Controller.

The Unit's legal work is focused on enforcement of the insurance coverage requirements of the Act. The AIU staff investigates whether businesses have workers' compensation insurance; files complaints against businesses that are out of compliance; represents the Unit in administrative hearings for penalties; and, when able, negotiates consent agreements that resolve violations. The Unit is also responsible for defending appeals of "coverage" penalty decisions to the Board's Appellate Division.

AIU coordinates its work with the Board's Coverage Division and the Monitoring, Audit and Enforcement Program. AIU also works with the Attorney General's office to enforce subpoenas, and to identify and refer cases for criminal prosecutions against employees and employers that have committed egregious or repeated violations of the Workers' Compensation Act.

13. GENERAL COUNSEL REPORT

The Workers' Compensation Board is responsible for overseeing and implementing the Workers' Compensation Act. The Board, in performing these functions, can propose legislation and rules when it deems change is necessary. The Board has the authority, in limited situations, to act in adjudicatory and appellate roles.

I. LITIGATION

It is unusual, but not unheard of, for the Board, in its role overseeing the Act and the workers' compensation system, to be involved in litigation. Such is the case in the matter of *Workers' Compensation Board Abuse Investigation Unit v. Nate Holyoke Builders, Inc.*, 2015 ME 99, 121 A.3d 801. *Holyoke* centers around the issue of ensuring employers comply with the requirement to purchase workers' compensation for all workers.

Holyoke was penalized after a hearing during which the Abuse Unit staff proved Holyoke had misclassified several employees as independent contractors. In an attempt to avoid being penalized, Holyoke argued purchasing a workers' compensation policy on *an* employee satisfies its statutory obligation to purchase such a policy for *all* employees. This argument was rejected by the Hearing Officer assigned the case and was also unanimously rejected by the Board's Appellate Division.

The Appellate Division, in a 2-1 decision, held Holyoke, despite having misclassified several of its employees as independent contractors, was effectively immune from being penalized. The dissenting member of the panel wrote that adopting either Holyoke's theory or the majority's theory would significantly undermine Maine's workers' compensation system. Employers could either ignore the coverage requirement entirely, or, purchase a policy on its least expensive employee and hope no one is injured.

In response to the Appellate Division, the Board unanimously voted to appeal the *Holyoke* case to the Law Court. Oral argument took place in February 2015, and a decision was issued in August, 2015.

The Law Court held an employer can comply with the Act's coverage requirements by purchasing a policy on an individual employee. The decision ended the Board's ability to enforce the Act's coverage requirements in cases where an employer has misclassified its employees as independent contractors when there is a policy in place. This will cause significant problems for employers that are trying to comply with the Act by covering all employees from the inception of a policy.

As a result, the Board, as discussed in Section III, *supra*, has recommended legislation to once again give the Board authority to penalize employers that misclassify employees as independent contractors.

II. RULES

The Board conducted a comprehensive review of its medical fee schedule in 2014-2015. After reviewing information comparing reimbursement by private third-party payors with reimbursement by workers' compensation payors, the Board adjusted the applicable base rates accordingly. The Board also made changes designed to improve the process of, and reduce disputes related to, payment of medical bills.

III. LEGISLATIVE ACTIVITY

During the First Regular Session of the 127th Legislature, two workers' compensation related bills were enacted.

(1) *An Act Extending Workers' Compensation Benefits to Certain Employees of the Office of the State Fire Marshal Who Contract Cancer*. (P.L. 2015, c. 373; LD 125).

During the First Regular Session of the 124th Legislature, 39-A M.R.S.A. § 328-B was enacted. Pursuant to this section, a firefighter who meets certain requirements and contracts one of ten enumerated cancers is entitled to a rebuttable presumption that their cancer is a compensable injury under the Workers' Compensation Act.

Chapter 373 amends § 328-B by including investigators and sergeants employed by the Office of the State Fire Marshal in the definition of firefighters. It also adds a requirement that, in order to qualify for the rebuttable presumption that cancer was contracted in the course of employment, an investigator or sergeant in the Office of the State Fire Marshal must represent that the investigator or sergeant used protective equipment in compliance with Office of the State Fire Marshal policies in effect during the course of the investigator's or sergeant's employment.

The full text is available at:

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0059&item=3&snum=127>

(2) *An Act To Amend the Laws Governing the Filing of Wage Statements and Other Laws under the Maine Workers' Compensation Act of 1992* (P.L. 2015, c. 297; LD 1119).

Chapter 297 makes various changes to the Workers' Compensation Act.

1. 39-A M.R.S.A. § 303 is amended to provide that an employer may report an employee's wages to the Board in the same manner as the employee is paid (e.g. – bi-weekly).

2. Section 303 is also amended to provide that an employer is not required to report lost time to the Board beyond the 14 day waiting period for an injured employee who has returned to work and subsequently attended medical appointments provided the employee did not lose wages for attending such appointments.

3. The Workers' Compensation Board must inform the Maine Insurance Guaranty Association of the association's responsibilities under the Workers' Compensation Act within 180 days of notice of insolvency to the board.

4. It changes the job title of hearing officer to administrative law judge, except for any hearing officer currently serving who is not admitted to the practice of law in Maine.

5. It requires the Workers' Compensation Board to develop rules in relation to timeliness and procedures for independent medical examinations. The Board must also annually report data regarding the timeliness of examinations conducted pursuant to § 312 and any other data regarding independent medical examiners and examinations.

The full text is available at:

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0391&item=3&snum=127>

The effective date for each law was October 15, 2015.

Pursuant to 39-A M.R.S.A. § 152(11), the Board submitted recommended legislative changes for consideration during the Second Regular Session of the 127th Maine Legislature.

The Board's bill:

(1) Transfers the predetermination of independent contractor status process to the Bureau of Insurance.

(2) Establishes that rebuttable presumptions granted as a result of a request for a predetermination are only admissible in proceedings arising under Title 24-A. Conclusive predeterminations received by landowners continue to be admissible in proceedings under the Workers' Compensation Act, Title 39-A §101, *et seq.*

(3) Modifies the law after the Law Court's decision in *Workers' Compensation Board Abuse Investigation Unit v. Nate Holyoke Builders, Inc., et al.*, 2015 ME 99 and ensures employers that misclassify employees as independent contractors are subject to penalties under the Workers' Compensation Act, Title 39-A, §101, *et seq.*

(4) Increases the Workers' Compensation Board's assessment cap starting in fiscal year 2016-2017.

(5) Establishes that appeals to the Law Court from the Workers' Compensation Board are from decisions of the Workers' Compensation Board's Appellate Division and not an individual administrative law judge.

IV. EXTREME FINANCIAL HARDSHIP CASES

Benefits for weekly compensation are subject (with some exceptions) to a durational limitation pursuant to 39-A M.R.S.A. § 213(1). Once the durational limitation is reached, an employee is no longer entitled to partial incapacity benefits. Because this might work a hardship on an injured worker, the Board "may in the exercise of its discretion extend the duration of benefit entitlement ... in cases involving extreme financial hardship due to inability to return to gainful employment." 39-A M.R.S.A. § 213(1).

When it decides these types of cases, the Board acts like an Administrative Law Judge. It must hear and accept evidence and argument on the standard contained in § 213(1) and then decide if an extension of benefits is warranted. The Board did not hear any cases in 2015.

Decisions are available at:

[http://www.maine.gov/wcb/Departments/boardofdirectors/section213\(1\)decisions.html](http://www.maine.gov/wcb/Departments/boardofdirectors/section213(1)decisions.html)

V. BOARD REVIEW PURSUANT TO 39-A M.R.S.A. § 320

When the Workers' Compensation Act was amended in 1992, the Appellate Division, which was part of the Workers' Compensation Commission, was eliminated. As a result, the Board was given authority to hear and decide appeals from Hearing Officer decisions in limited situations. First, only an Administrative Law Judge can refer a case for possible review; second, the case must involve an issue of significance to the operation of the workers' compensation system; and third, the Board must vote to accept the case for review.

Over the years, the Board received a small number of requests for review. With the reinstitution of the Appellate Division, it is likely requests for review will be few and far between. However, the Board still is empowered to review decisions in appropriate cases. The Board heard no § 320 cases in 2015.

Decisions of the Board pursuant to 39-A M.R.S.A. § 320 are available at:

<http://www.maine.gov/wcb/Departments/boardofdirectors/section320decisions.html>

14. APPELLATE DIVISION

The Board's Appellate Division has completed its third full year of operation after being reinstituted by the Legislature on August 30, 2012. The Appellate Division is authorized to hear and decide appeals from decisions issued by Administrative Law Judges (ALJs). With the renewed operation of the Appellate Division, the parties now have an automatic right of appeal from a decision issued by an ALJ.

Prior to August 30, 2012, a party aggrieved by a decision could ask an ALJ for a referral to the Board of Directors for review, or they could file a petition for appellate review with Maine's Law Court. Requests for Board review were few in number, and limited to cases of significance to the operation of the workers' compensation system. Appeals to the Law Court were (and still are) discretionary, and the Law Court accepted only a small percentage of cases for review.

Appeals to the Appellate Division are generally decided by panels comprised of three ALJs. The Executive Director can ask the Appellate Division to hear an appeal *en banc* if the appeal contains an important issue. An *en banc* panel consists of all ALJs except, of course, the one who issued the decision being appealed.

One hundred ninety-nine Notices of Intent to Appeal have been filed since August 2012, seventy-one were filed in 2015. So far, the Appellate Division has held oral argument in forty-one cases, including before three *en banc* panels, and has issued written decisions in eighty-seven cases, with thirty-two issued in 2015. Forty-two cases (thirteen in 2015) have been dismissed as a result of post-appeal settlement, withdrawal by the parties, or procedural default. The remaining cases are under consideration by Appellate Division panels, or are in various stages of the briefing process.

One case, *Axelsen v. Interstate Brands Corp.*, Me. W.C.B. No. 15-27 (App. Div. 2015), was heard by an *en banc* panel of the Appellate Division before an audience of over 130 attorneys and industry professionals at the 2015 annual Comp Summit in Rockport, Maine. After the hearing, the Appellate Division issued a decision addressing an important issue of statutory construction, clarifying the effect of a recent amendment to the Workers' Compensation Act that affords a statutory presumption to employees while they participate in Board-approved vocational rehabilitation programs.

In 2015, the Law Court issued two decisions on appeals from the Appellate Division: *Estate of Gregory Sullwold v. The Salvation Army*, 2015 ME 4, 108 A.3d 1265, in which the Court affirmed the Appellate Division's decision that the statutory presumption in 39-A M.R.S.A. § 327 applied to an employee whose death occurred while working at home; and *Workers' Compensation Board Abuse Investigation Unit v. Nate Holyoke Builders, Inc.*, 2015 ME 99, 121 A.3d 801, in which the Court vacated penalties imposed on Holyoke Builders, concluding that it met the Act's insurance requirements because its workers' compensation policies not only covered the workers Holyoke considered to be employees, but also would cover any worker who was later determined to be an employee under the Act.

The Law Court accepted one case from the Division for appellate review in 2015, *Freeman v. NewPage Paper*, Me. W.C.B. No. 15-8 (App. Div. 2015). The issue in that case is whether a high-earning employee who is injured and is awarded the maximum benefit, then returns to work and establishes a new earning capacity, is entitled to any additional benefits based on the new earning capacity. A decision in that case is expected in 2016.

Other 2015 Appellate Division decisions of note include *Foley v. Thermal Engineering International, Inc.*, Me. W.C.B. No. 15-2 (App. Div. 2015), in which the Appellate Division construed 39-A M.R.S.A. § 215(2) to require dependency status on the date of injury, as opposed to the date of death, as a prerequisite for receipt of death benefits; and *Justard v. NewPage Corp.*, Me. W.C.B. No. 15-28 (App. Div. 2015), in which a majority of the panel affirmed the ALJ's decision that the employer did not discriminate against the employee by paying him less in bonus and vacation pay pursuant to the terms of a collective bargaining agreement because he was absent from work due to a work injury.

Appellate Division decisions are available at:

<http://www.maine.gov/wcb/Departments/appellate/appellatedecisions.html>

SECTION B

BUREAU OF INSURANCE

Section B: Bureau of Insurance

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1. INTRODUCTION & BACKGROUND

This report examines different measures of competition in the Maine workers' compensation insurance market. The measures are 1) the number of insurers providing coverage; 2) insurer market share; 3) changes in market share; 4) ease of entry into and out of the workers' compensation insurance market; and 5) comparison of variations in rates.

The tables in this report for accident year and calendar year loss ratios contain five years of information. Loss ratios are updated each year to account for how costs have developed for claims opened, the number of claims closed, and the number of claims reopened during the year. Other tables and graphs contain additional years of information.

On January 15, 2015, NCCI filed with the Superintendent for an overall 2.6% increase in the advisory loss costs effective April 1, 2015. According to NCCI, the loss-time claim frequency has been exhibiting a declining trend since 2000 with a slight increase in PY 2012 and the average indemnity cost—a measure of severity—has also been declining with slight increases in policy years 2011 and 2012. Medical costs continue to increase and now consume 52% of Maine's total benefit costs. Indemnity costs account for the other 48% of benefit costs. The Superintendent approved NCCI's filing effective April 1, 2015.

The increase in the advisory loss costs is not evenly distributed across all five principal rating classifications, as seen below.

Industry Group	Percentage Change
Contracting	-0.9%
Office & Clerical	-0.6%
Manufacturing	+0.7%
Goods & Services	+2.9%
Miscellaneous	+8.9%

The change in loss costs for individual classification within each group varies depending on the experience of the classification.

Although Maine's market has become quite concentrated and MEMIC writes a large volume of business, there are still many insurers writing workers' compensation coverage in Maine. Insurers, however, continue to be conservative in selecting businesses to cover or to renew. An insurer can decide to non-renew a business for any reason as long as it provides the policyholder with the statutorily required advance written notice. Self-insurance provides a viable alternative for some Maine employers.

I. ACCIDENT YEAR, CALENDAR YEAR AND POLICY YEAR

Workers' compensation is a long-tail line of insurance. This means that payments for claims can continue for a long time after the year in which the injury occurred. Thus, amounts to be paid on open claims must be estimated. Insurers collect claim, premium and expense information to calculate financial ratios and assess whether they have collected enough premium to cover claims and expenses. This information may be presented on an accident year, calendar year, or policy year basis. This report

primarily shows information on an accident year basis. A description of each method and its use in understanding workers' compensation follows:

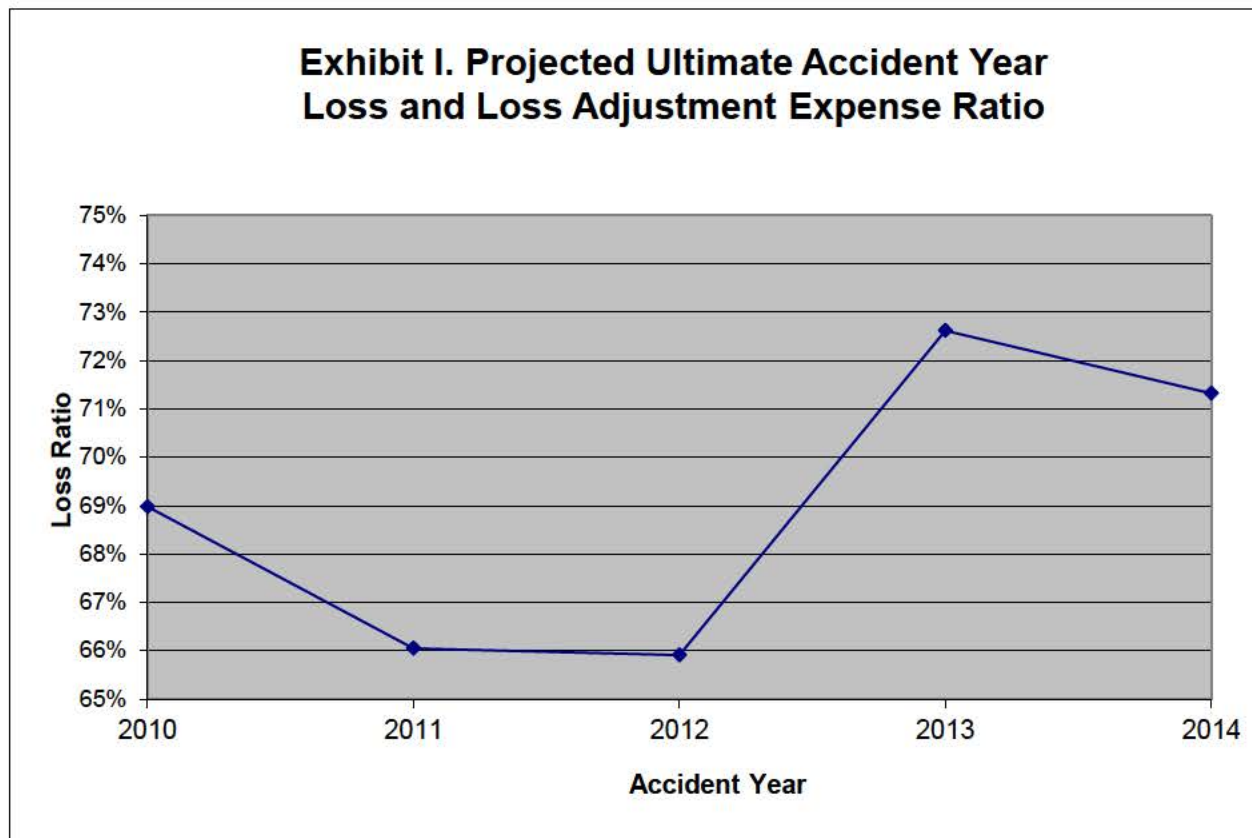
- ❑ **Accident year** experience as of a specific evaluation date matches 1) all paid losses and loss reserves as of the specific evaluation date for injuries occurring during a given 12-month period (regardless of when the losses are reported) with 2) all premiums earned during the same period of time (regardless of when the premium was written). The accident year loss ratio as of a specific evaluation date shows the percentage of earned premium that is expected to be paid out on claims. Therefore, the loss ratio for each accident year needs to be updated until the losses are finally settled.
- ❑ **Calendar year** experience matches 1) all paid losses and reserve change incurred within a given calendar year (though not necessarily for injuries occurring during that calendar year) with 2) all premiums earned during that year. Because workers' compensation claims are often paid out over a long period, only a small portion of calendar year losses is attributable to premiums earned that year. Many of the losses paid during the current calendar year are for claims occurring in past calendar years. Calendar year loss ratios also reflect aggregate reserve adjustments for past years. For claims expected to cost more, reserves are adjusted upward; for those expected to cost less, reserves are adjusted downward. Calendar year incurred losses are used primarily for financial reporting. Once calculated for a year, calendar year experience never changes.
- ❑ **Policy year** experience as of a specific evaluation date segregates all premiums and losses and loss reserves, as of the specific evaluation date, attributed to policies having an inception or a renewal date within a given 12-month period. The total value of all losses for injuries occurring during the policy year (losses paid plus loss reserves) is assigned to the period regardless of when the losses are actually reported. The losses are matched to the fully developed earned premium for those same policies. The ultimate policy year incurred loss result cannot be finalized until all losses are settled. Policy year data is used to determine advisory loss costs. Advisory loss costs are the portion of rates that accounts for losses and loss adjustment expenses.

2. RECENT EXPERIENCE

I. PROJECTED ULTIMATE ACCIDENT YEAR LOSS AND LOSS ADJUSTMENT EXPENSE RATIOS

The accident year loss and loss adjustment expense ratio shows the percent of earned premium used to fund losses and their settlement expenses. The loss and loss adjustment expense ratio does not include insurers' general expenses, taxes and contingencies, profit or investment income. Loss and loss adjustment expense ratios that exceed 100% mean that insurers are paying out more in benefits than they collect in premiums. A decrease in these ratios over time may reflect increased rates, improved loss experience, or decrease in reserve (i.e., the amount of money expected to be paid out on claims). Conversely, an increase in the loss ratios may reflect decreased rates, worsening loss experience or increase in reserve.

Exhibit I shows the projected ultimate accident year loss and loss adjustment expense ratios for the most recent five years. Ultimate loss and loss adjustment expense ratios in this report are based on more recent claim and loss adjustment expense data and may not match the projected ultimate accident year loss and loss adjustment ratios for the same accident years in prior reports. The accident year ultimate loss and loss adjustment expense ratio has ranged from 66% to 73% for the past five years. The 2014 ratio was 71.3%, indicating that \$71.30 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium.



Source: NCCI

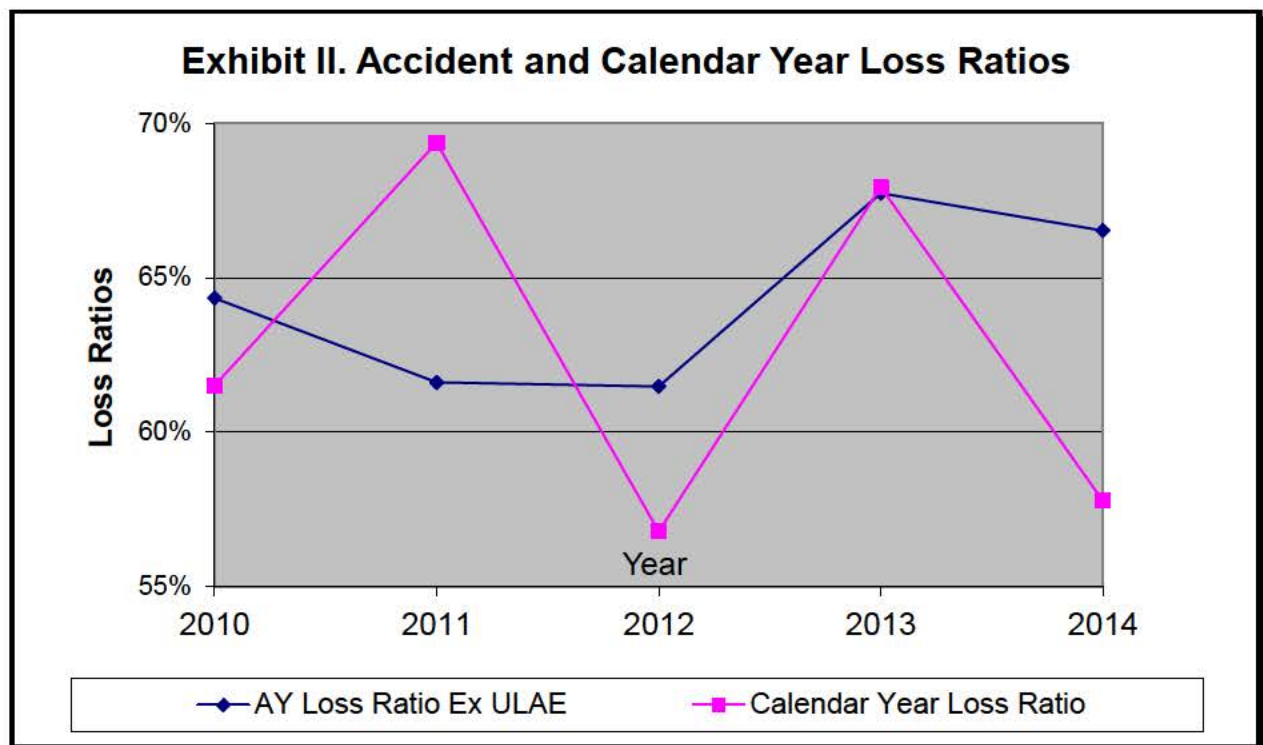
II. CALENDAR YEAR AND ACCIDENT YEAR LOSS RATIOS

Calendar year loss ratios compare losses incurred with premium earned in the same year. Calendar year loss ratios reflect loss payments, adjustments to case reserves, and changes to IBNR (“incurred but not reported”) reserves, on all claims during a specific year, including those adjustments from prior injury years. Calendar year data is relatively easy to compile but can be distorted by large changes in case or IBNR reserves.

Accident year data is more useful in evaluating the claim experience during a particular period because it better matches the earned premium used to pay losses for injuries occurring in the year. In addition, the accident year experience is not distorted by reserve adjustments on claims that occurred in prior periods, possibly under a different law.

Fluctuations in calendar year loss ratios from below to above accident year loss ratios may reflect increases or decreases in reserves on prior accident years. Calendar and accident year ratios do not include amounts paid by insurers for sales, general expenses and taxes, nor do they reflect investment income.

Exhibit II shows calendar year and accident year loss ratios for the most recent five years. The calendar year loss ratios ranged between 69% in 2011 and 57% in 2012. Accident year loss ratios ranged from a low of 62% in 2012 to a high of 68% in 2013. Calendar year loss ratios show a slight downward trend, and accident year loss ratios show an upward trend.



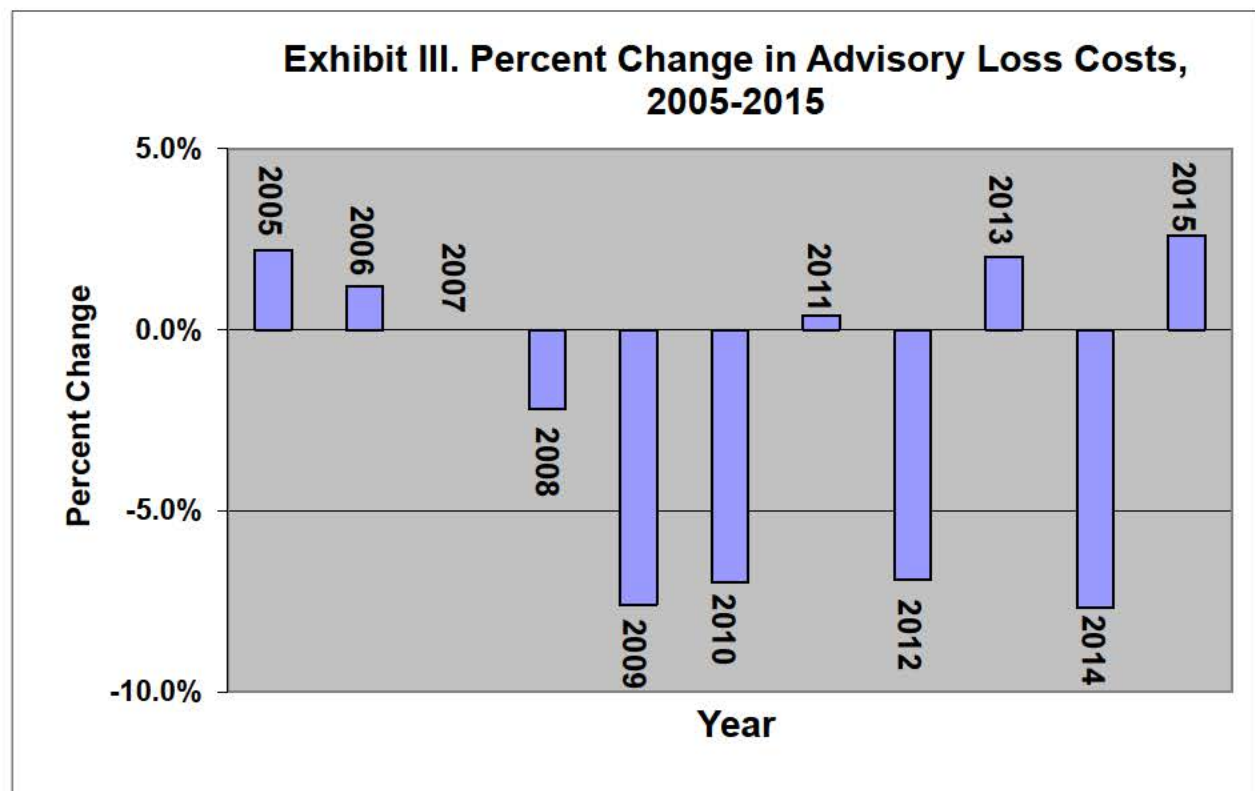
Note: ULAE: Unallocated Loss Adjustment Expense
Source: NCCI

3. LOSSES IN WORKERS' COMPENSATION

I. CHANGES IN ADVISORY LOSS COSTS

NCCI files advisory loss costs on behalf of workers' compensation carriers. Advisory loss costs reflect the portion of the rate that applies to losses and loss adjustment expenses. Advisory loss costs do not account for what insurers pay for commissions, general expenses, taxes and contingencies, nor do they account for profits and investment income. Under Maine's competitive rating law, each insurance carrier determines what to load into premium to cover those items.

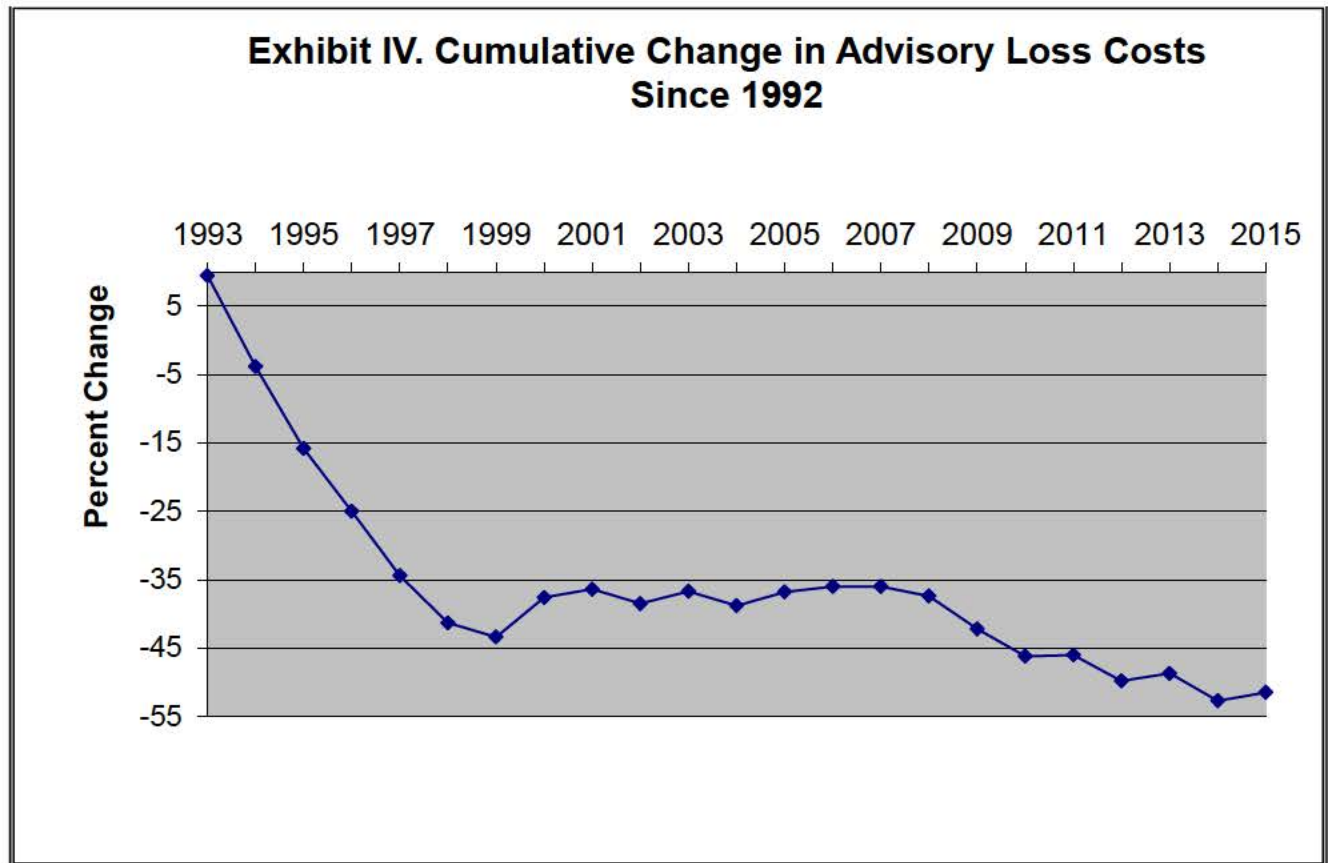
Effective April 1, 2015, the Superintendent approved a 2.6% increase in the workers' compensation advisory loss costs. Advisory loss costs are now about 10% lower than they were five years ago and nearly 52% lower than when the major reform of the workers' compensation system took effect in 1993. Changes in the advisory loss costs tend to lag behind actual changes in statewide loss experience because of the time needed to accumulate and evaluate loss data.



Source: NCCI

II. CUMULATIVE CHANGES IN ADVISORY LOSS COSTS

Exhibit IV shows the cumulative changes in loss costs since 1993. Average loss costs have declined 10% over the past five years.



Source: NCCI

4. MARKET STRUCTURE AND COMPETITION

I. MARKET CONCENTRATION

Market concentration is one measure of competition. Greater concentration means that there are fewer insurers in the market or that relatively few insurers are issuing a disproportionate amount of coverage. The result is less competition. Conversely, less concentration indicates greater competition.

As of October 1, 2015, the Superintendent had authorized 333 companies to write workers' compensation coverage. This number is not the best indicator of market concentration because some insurers have no written premium. In 2014 MEMIC, the insurer of last resort, accounted for nearly 65% of the written premium in the market. Although MEMIC has succeeded in retaining business, voluntary market insurers are able to be more selective about which risks they accept. The following table shows the number of carriers by premium level that wrote workers' compensation insurance in 2014. The number of companies at each level in 2014 was nearly identical to 2013.

Table I: Number of Companies by Level of Written Premium—2014	
Amount of Written Premium	Number of Companies At That Level
>\$10,000	144
>\$100,000	94
>\$1,000,000	23

Source: Annual Statements Filed with the Bureau of Insurance. Total written premium for 2014 was nearly \$208 million.

Market concentration alone does not give a complete picture of market competition. That is because a significant portion of Maine's workers' compensation coverage is self-insured. See the Alternative Risk Markets section below for more complete information.

II. HERFINDAHL-HIRSCHMAN INDEX

The Herfindahl-Hirschman Index (HHI) measures market concentration. The HHI is calculated by summing the squares of the market shares (percentages) of all groups in the market. The annual Competition Database Report produced by the National Association of Insurance Commissioners compiles various data elements that measure the competitiveness of state insurance markets. The HHI is one data element.

According to the 2013 Competition Database Report, which was prepared in 2014, the HHI for workers' compensation insurance in Maine was 4,044. This measure is the third highest (i.e., most concentrated) for all commercial lines in Maine, well behind financial guaranty and just slightly behind medical professional liability.

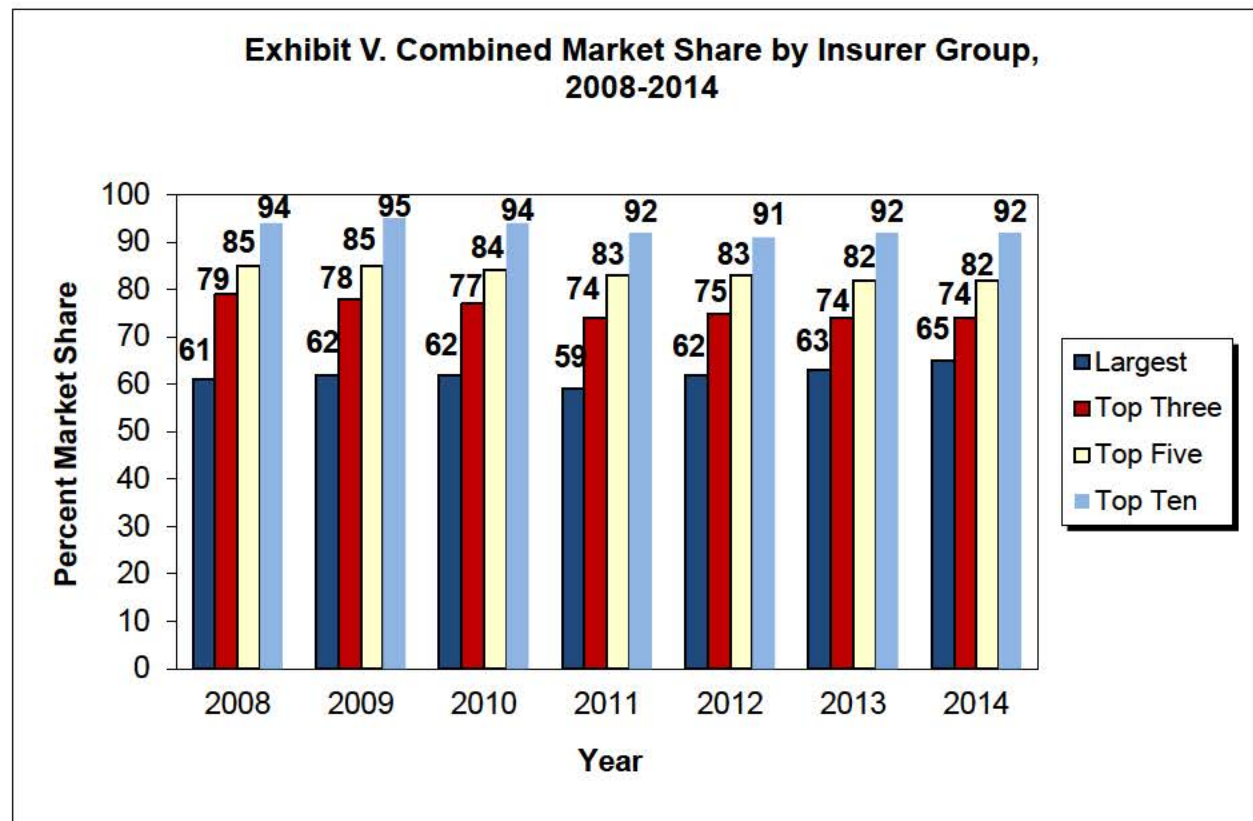
There is no precise point at which the HHI indicates that a market or industry is so concentrated that competition is restricted. The U.S. Department of Justice's guidelines for corporate mergers use 1,800 to indicate highly concentrated markets and the range from 1,000 to 1,800 to indicate moderately concentrated markets. A market with an HHI below 1,000 is considered not concentrated.

Applying the HHI to Maine's workers' compensation market might not be a helpful gauge of this market for two reasons. First, the Maine Legislature created MEMIC to replace a highly concentrated residual market in which other insurers were reluctant to write actively in this state. Second, the market has a high percentage of employers who self-insure, either individually or in groups.

III. COMBINED MARKET SHARE

An insurance group is one or more carriers under common ownership. Exhibit V illustrates the percent market share of the largest commercial insurance group, in terms of written premium, as well as the percent market share for the top three, top five and top 10 insurer groups. MEMIC has the largest market share at nearly 65%. The market share of the top 10 insurer groups was nearly 92% in 2014; all other groups accounted for just over 8% of the workers' compensation premium in Maine. This excludes self-insured premium.

MEMIC wrote nearly \$135 million in premium (65%) in 2014. The top three groups, including MEMIC, wrote nearly \$154 million in business (74%). The top five groups wrote over \$170 million (82%), and the top 10 groups had nearly \$192 in written premium (92%). The reported amounts of written premium for the top 10 groups rose by over \$5 million from 2013 to 2014.



Source: Annual Statements Filed with the Bureau of Insurance

IV. NUMBER OF CARRIERS IN MAINE'S WORKERS' COMPENSATION INSURANCE MARKET

The number of carriers in the workers' compensation market has increased in 14 out of the past 15 years, as shown in the table below. The number of carriers who may file rates and are eligible to write workers' compensation coverage has increased by over 59% since 2000. There currently are no significant barriers to entry.

Table II: Number of Workers' Compensation Carriers, 2000-2014		
Year	Number of Carriers	Net Change (Percent)
2015	333	1.5
2014	328	-0.6
2013	330	0.3
2012	329	5.1
2011	313	6.8
2010	293	0.3
2009	292	3.6
2008	282	3.3
2007	273	2.3
2006	267	3.9
2005	257	1.1
2004	254	1.2
2003	251	4.2
2002	241	5.7
2001	228	8.6
2000	210	6.1

Source: Bureau of Insurance Records

Notes: Totals are based on the number of carriers licensed to transact workers' compensation insurance as of October 1 of each year.

V. PERCENT MARKET SHARE OF THE TOP TEN INSURANCE GROUPS

Table III shows market share for the ten largest insurance groups from 2008-2014. These groups wrote nearly 92% of business. Information by group is more relevant when assessing competition because carriers in a group are under common control and are not likely to compete with one another. The Maine Employers Mutual group gained over 2% market share in 2014. Great Falls Insurance Company, a Maine domestic insurance company, gained nearly 1% market share in 2014.

Table III: Percent Market Share for Top Insurance Groups, By Amount of Written Premium, 2008-2014							
Insurance Group	2014 Share	2013 Share	2012 Share	2011 Share	2010 Share	2009 Share	2008 Share
Maine Employers' Mutual	64.8	62.6	62.3	59.4	61.5	62.2	61.3
Liberty Mutual Group	4.5	6.1	8.0	9.7	10.0	10.4	11.0
WR Berkeley Group	4.5	4.5	4.6	5.1	5.2	5.7	6.1
Travelers Group	4.4	4.9	4.7	4.4	3.9	3.5	2.7
Great Falls Ins Co	3.7	2.8	1.8	0.7	-	-	-
Hartford Fire & Casualty	3.4	3.5	3.5	3.1	3.2	3.4	3.7
American International Group	3.1	2.8	1.7	4.2	3.6	2.3	2.8
Zurich Insurance Group	1.5	1.5	1.6	2.0	2.1	2.0	1.2
The Hanover Ins Group	1.2	1.4	1.4	1.6	1.5	1.6	1.8
Berkshire Hathaway Group	1.1	1.5	1.8	0.5	0.2	0.1	0.1

Source: Annual Statements Filed with the Bureau by Insurance Carriers

VI. PERCENT MARKET SHARE OF THE TOP TEN INSURANCE CARRIERS

Table IV shows the percent of market share for the ten largest carriers for each calendar year from 2008 through 2014. Throughout most of this period MEMIC has had more than 61% of the market. No other carrier attained a 4% market share since 2008. The top 10 companies combined held nearly 78% of the market. Great Falls Insurance Company, which commenced writing workers' compensation insurance in 2011, has the second largest market share for the second year in a row.

Table IV: Percent Market Share for Top Insurance Carriers, By Amount of Written Premium, 2008-2014							
Insurance Carrier	2014 Share	2013 Share	2012 Share	2011 Share	2010 Share	2009 Share	2008 Share
Maine Employers' Mutual	64.7	62.5	62.1	59.3	61.5	62.2	61.3
Great Falls Ins Co	3.7	2.8	1.8	0.7	-	-	-
Firemen's Ins Co of Wash DC	2.0	2.1	1.9	2.3	2.1	1.9	1.3
Acadia Insurance Company	1.5	1.6	2.1	2.2	2.6	3.4	4.2
Liberty Mutual Fire Ins Co	1.1	1.1	0.9	1.0	0.8	0.9	0.8
Charter Oak Fire Ins Co	1.1	1.3	1.3	1.1	1.2	1.0	0.9
Insurance Company of the State of PA	1.1	1.2	0.8	0.6	1.0	0.8	0.6
New Hampshire Ins Co	1.0	1.3	1.0	1.2	1.2	1.2	1.0
Zurich American Ins Co	0.9	0.8					
Arch Ins Co	0.8	0.4					

Source: Annual Statements Filed with the Bureau by Insurance Carriers

5. DIFFERENCES IN RATES AND FACTORS AFFECTING RATES

I. RATE DIFFERENTIALS

There is a wide range of potential rates for workers' compensation policyholders in Maine, but most employers are not able to get the lowest rates. Insurers are selective in accepting risks for the lower-priced plans. Their underwriting is based on such factors as prior-claims history, safety programs and classifications. An indication that the current workers' compensation market may not be fully price-competitive is the distribution of policyholders among companies with different loss cost multipliers or among a single company with multiple rating tiers.

The Bureau of Insurance surveyed all of the companies in the ten largest insurance groups, requesting the number of policyholders and the amount of written premium for in-force policies in Maine within each of their rating tiers. Carriers in these groups accounted for about 92% of the market and nearly \$192 million in written premium in Maine for calendar year 2014. The table below shows the percentage of policies written at rates compared to the MEMIC Standard Rating tier (including MEMIC policies).

Table V: Percent of Reported Policyholders At, Above or Below MEMIC's Standard Rating Tier Rates		
Rate Comparison	2015 Percent	2014 Percent
Below MEMIC Standard Rate	18.5%	19.5%
At MEMIC Standard Rate	67.5%	66.1%
Above MEMIC Standard Rate	14.0%	14.4%

Note: Based upon the results of a survey conducted by the Bureau of Insurance

Possible reasons that policyholders accept rates higher than MEMIC's Standard Rating tier are: 1) an insurer other than MEMIC that might not otherwise provide workers' compensation coverage provides it as part of a package with other lines of insurance at an overall competitive price to the insured; 2) an insurer other than MEMIC charges a higher rate but offers enough credits to lower the overall premium; or 3) the insured's poor loss history resulted in its being placed in MEMIC's High Risk Rating tier.

II. ADDITIONAL FACTORS AFFECTING PREMIUMS

Some insurers offer employers other options that may affect their workers' compensation premium. Common options include:

- ❑ **Tiered rating** means that an insurer uses more than one loss cost multiplier, based on where a potential insured falls in its underwriting criteria. Tiered rating may apply to groups of insurers that have different loss cost multipliers for different companies in the group. Our records indicate that over 71% of insurers either have different loss cost multipliers on file or are part of a group that does.
- ❑ **Scheduled rating** allows an insurer to consider other factors in setting premium that an employer's experience rating might not reflect. Factors including safety plans, medical facilities, safety devices and premises are considered and can result in a change in premium of up to 25%. More than 81% of insurers with filed rates in Maine have received approval to use scheduled rating.

- ❑ **Small deductible plans** must be offered by insurers. These plans include medical benefit deductibles of \$250 per occurrence for non-experience-rated accounts and either \$250 or \$500 per occurrence for experience rated accounts. Insurers must also offer deductibles of either \$1,000 or \$5,000 per claim for indemnity benefits. Payments are initially made by the insurer and then reimbursed by the employer. Each insurer files the percentage reductions in premium applicable to their small deductible plan. The Bureau must review and approve this filing.
- ❑ **Managed Care Credits** are offered to employers who use managed care plans for workers' compensation injuries. Eighteen percent of insurers offer managed care credits.
- ❑ **Dividend Plans** provide a return premium to the insured after the policy expires if losses are lower than average. Premiums are not increased if losses are greater than average. Because losses may still be open for several years after policy expiration, dividends are usually paid periodically after the insurer has accounted for changes in its incurred losses. Dividends are not guaranteed. In calendar year 2014, MEMIC declared dividends of \$18 million. In September 2015, MEMIC announced it would pay a dividend totaling \$18 million to 17,000 qualified policyholders in November 2015. Including this payment, MEMIC will have returned nearly than \$200 million to policyholders in the form of capital returns and dividends since 1998.
- ❑ **Retrospective rating** means that an employer's final premium is a direct function of its loss experience for that policy period. If an employer has lower than expected losses, it receives a reduced premium; conversely, if the employer has a bad loss experience, it receives an increased premium. Retrospective rating uses minimum and maximum amounts for a policy and is typically written for larger employers.
- ❑ **Large deductible plans** are for employers who do not want to self-insure for workers' compensation but have a discounted premium in exchange for assuming more of the risk than the statutory deductibles offer. Large deductibles can be in excess of \$100,000 per claim. The law requires that the insurer pay all losses associated with this type of policy and then bill the deductible amounts to the insured employer.
- ❑ **Maine Merit Rating Plan.** If an employer is not eligible for the experience rating plan than a merit rating plan must be offered by the insurer pursuant to 24-A M.R.S.A. § 2382-D.

While these options might lower an employer's premium, they may also carry some risk of greater exposure. Employers should carefully analyze these options, especially retrospective rating (retros) and large deductible policies, before opting for them.

Insurers in Maine's top ten groups reported that nearly \$10 in credits (for policies in force as of August 31, 2013) was provided for every \$1 in debits. These credits were more than \$16.5 million, an increase of \$11 million over the prior year. The debits for these policies were nearly \$1.7 million, \$160,000 less than in 2012.

6. ALTERNATIVE RISK MARKETS

I. PERCENT OF OVERALL MARKET HELD BY SELF-INSURED EMPLOYERS

Self-insurance plays an important role in Maine's workers' compensation market. Self-insured employers pay for losses with their own resources rather than by purchasing insurance. They may, however, choose or be required by the Bureau of Insurance to purchase insurance for losses that exceed a certain limit. One advantage of being self-insured is better cash flow. Employers who self-insure anticipate that they would be better off not paying premiums. They are likely to have active programs in safety training and injury prevention. In 2014 nearly 41.5% of Maine's total workers' compensation insurance market, as measured by standard premium, consisted of self-insured employers and groups. The self-insured workers' compensation market has exceeded 40% in each of the thirteen years listed in the table below.

The estimated standard premium for individual self-insured employers is determined by multiplying the advisory loss cost by a factor of 1.2 as specified in statute, multiplying that figure by the payroll amount, dividing the result by 100, and then applying experience modification. As advisory loss costs, and therefore rates, decline, so does the estimated standard premium. Group self-insurers determine their own rates subject to review by the Bureau of Insurance.

Table VI: Estimated Total of All Standard Premiums for Self-Insured Employers and Percent of the Workers' Compensation Market Held by Self-Insurers, 2002-2014		
Year	Estimated Total of All Standard Premiums	Percent of Workers' Comp. Market (in annual standard premium)
2014	\$147,407,332	41.5
2013	\$147,032,582	41.9
2012	\$159,230,371	44.6
2011	\$166,712,916	44.7
2010	\$171,478,611	47.5
2009	\$160,359,285	44.5
2008	\$179,280,965	44.6
2007	\$174,830,526	42.1
2006	\$167,535,911	40.9
2005	\$167,278,509	40.3
2004	\$171,662,347	41.7
2003	\$182,379,567	43.1
2002	\$167,803,123	43.0

Source: Annual Statements Filed with the Bureau of Insurance

Notes: Estimated standard premium figures are as of December 31 of the year listed.

The percent of the self-insured workers' compensation market is calculated by dividing the estimated standard premium for self-insured employers by the sum of the estimated standard premium for self-insured employers and the written premium in the regular insurance market, and then multiplying the result by 100.

II. NUMBER OF SELF-INSURED EMPLOYERS AND GROUPS

As of October 1, 2015 there were 19 self-insured groups representing 1,327 employers. The number of self-insured groups has remained the same for the past nine years. The number of individual self-insured employers decreased from 62 to 60 in the past year.

Table VII: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 2000-2015			
Year	# of Self-Insured Groups	# of Employers In Groups	# of Individually Self-Insured Employers
2015	19	1,327	60
2014	19	1,336	62
2013	19	1,363	58
2012	19	1,370	59
2011	19	1,378	59
2010	19	1,382	58
2009	19	1,459	58
2008	19	1,461	70
2007	19	1,478	70
2006	20	1,437	71
2005	20	1,416	80
2004	20	1,417	86
2003	19	1,351	91
2002	19	1,235	98
2001	19	1,281	92
2000	19	1,247	98

Source: Bureau of Insurance Records

Notes: For the purposes of self-insurance, affiliated employers are considered separate employers. The number of individually self-insured employers and self-insured group information beginning in 2001 is as of October 1 of the year listed. Figures for 2000 are as of January 1.

7. A LOOK NATIONALLY

I. OREGON WORKERS' COMPENSATION PREMIUM RATE RANKING

The State of Oregon ranks the states and the District of Columbia bi-annually by premium. The Oregon premium rate rankings focus on 50 classifications based on their relative importance as measured by their share of losses in Oregon. In 2014, Maine had the 13th highest workers' compensation premium rates for all industries. In 2012, Maine was 10th highest overall, and 8th highest in 2010.

II. AVERAGE LOSS COSTS BY STATE BASED ON MAINE'S PAYROLL DISTRIBUTION

NCCI reports average loss costs for 37 states and the District of Columbia, using the most recent loss cost filings for the states which have designated NCCI as the licensed rating and statistical organization. Maine had the 12th highest average loss cost in the most recent report. In last year's report, Maine had the 15th highest.

State	Average Loss Cost	Rank	State	Average Loss Cost	Rank
Connecticut	2.08	1	Nebraska	1.19	21
Montana	1.75	2	Florida	1.18	22
Alaska	1.74	3	Mississippi	1.16	23
Illinois	1.73	4	Tennessee	1.12	24
Vermont	1.67	5	Kentucky	1.12	24
Oklahoma	1.58	6	Oregon	1.11	26
New Hampshire	1.57	7	Hawaii	1.10	27
Rhode Island	1.53	8	Arizona	1.10	27
Iowa	1.52	9	South Dakota	1.07	29
New Mexico	1.45	10	Kansas	1.05	30
Maryland	1.43	11	Nevada	0.97	31
Maine	1.42	12	Virginia	0.94	32
Georgia	1.39	13	D.C.	0.90	33
Alabama	1.39	13	Utah	0.85	34
Louisiana	1.38	15	West Virginia	0.82	35
North Carolina	1.35	16	Indiana	0.79	36
South Carolina	1.31	17	Arkansas	0.64	37
Colorado	1.29	18	Texas	0.59	38
Idaho	1.27	19			
Missouri	1.25	20	Countrywide	1.19	

Note: Average loss cost does not include expense and profit loading and is an average using all payrolls. The actual average for an employer will depend on the type of business and payroll mix.

SECTION C

BUREAU OF LABOR STANDARDS

Section C: Bureau of Labor Standards

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1. INTRODUCTION

I. ROLE OF THE BUREAU OF LABOR STANDARDS IN PREVENTING INJURIES AND ILLNESSES IN MAINE WORKPLACES

Title 26 MRSA § 42-A charges the Maine Bureau of Labor Standards with establishing and supervising safety education and training programs to help employers comply with OSHA requirements and maintain best practices for the prevention of injuries and illnesses. Additionally, the Bureau is responsible for overseeing the employer-employee relationship in the state through enforcement of Maine labor standards laws and the related rules, including child labor laws and occupational safety and health standards in the public sector.

For program planning, evaluation and management, the Bureau considers how each program activity may affect any of the four stages of injury and illness prevention and response:

- The **primordial** stage, which relates to the incipience or creation of hazards and activities/events that can lead to them or keep them from emerging.
- The **primary** stage, which refers to administrative, enforcement and engineering activities to prevent exposure to injury and illness hazards that are already present.
- The **secondary** stage, which refers to the response to injuries and illnesses as they happen.
- The **tertiary** stage, which refers to the therapies and treatment strategies beyond the initial treatment response necessary to return patients to full function from their injuries or illnesses.

Administration

The Bureau conducts and supports prevention **research** in all four stages but primarily concentrates its **intervention** efforts in **primordial** and **primary** prevention, eliminating risks and exposures to danger before an injury or illness can be initiated.

- The Bureau supports **primordial** prevention through **education and outreach**, helping employers “vaccinate” their workplaces against injuries and illnesses. These efforts are designed to foster preemptive undertakings such as employee wellness programs and best safety practices, and include training of workers and management and publicly offered classes and displays. Participation in these outreach activities is voluntary and available for any employer that requests them or allows its employees to take part in them.
- The Bureau supports **primary** safety prevention through **consultation** relating to OSHA safety standards in private, state, and local government workplaces, which serves to minimize or remove exposure to dangerous workplace risks and work practices. These consultations are voluntary as well: there are neither direct charges for the consultations nor fines for violations of the standards as a result of these voluntary services. There is, however, a commitment on the employer’s part to abate any problems uncovered in the consultation services.

- The Bureau also supports *primary* safety prevention through its enforcement of OSHA safety standards. This includes formal inspections and investigations conducted directly by the Bureau for public sector employers (state and local employers). The U.S. Occupational Safety and Health Administration (OSHA) administers this same enforcement for the private sector.

The dark gray areas in Table C-1 illustrate the purview of the Maine Bureau of Labor Standards. The **non-enforcement** (research, outreach, education, and consultation) services that the Bureau offers are branded under the Bureau's SafetyWorks! logo to distinguish them from the enforcement activities (formal inspections and investigations)

Table C-1: Workplace Injury and Illness Prevention and Response

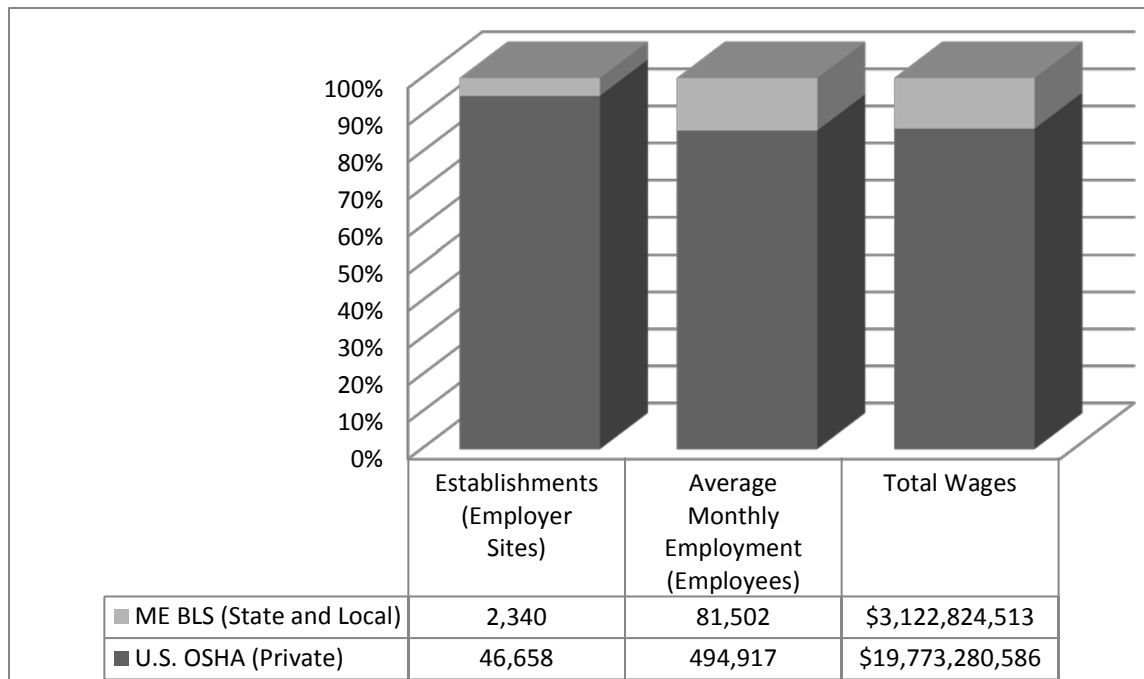
Maine Workers' Compensation System			
Function		State and Local Government	Private Sector Employers
Prevention	Research	Maine SafetyWorks!	
	Outreach and Education	Maine SafetyWorks!	
	Employer Consultation	Maine SafetyWorks!	
	Safety Standards Enforcement	Maine BLS*	US OSHA
	Child Labor Enforcement	Maine BLS	
Administration		Maine Workers' Compensation Board	
Insurance Market		Maine Bureau of Insurance	
Outside of Maine Workers' Compensation System			
Exempt (self-employed, agriculture, forestry, or fishing)			
U.S. Government and Special Federal Jurisdictions			

*Starting in 2015 US OSHA has been funding part of the state and local enforcement process, 50/50. It is still administered by Maine BLS.

Table C-1 includes certain areas or types of activities that are outside the Workers' Compensation system because there can be some overlap, although that overlap is unlikely. For instance, self-employed individuals may elect to buy WC insurance coverage for themselves, and workers under the federal Longshore and Harbor Workers' Compensation Act can elect to claim through the Maine WC system. However, neither group typically does that. Likewise, the table and this report do not cover federal government employees because the Maine workers' compensation system has no jurisdiction over them.

While both the state and federal governments share the employer safety enforcement load in Maine, the bulk of this enforcement work is carried out by federal OSHA. The numbers and proportions of establishments, workers and wages are shown in Figure C-1 below.

Figure C-1: Establishments, Employment, and Wages by Enforcement Jurisdiction (Excludes U.S. Government)



Source: <http://www.maine.gov/labor/cwri/qcew1.html> , annual average, year-ending 2nd quarter 2015.

Data relating to private-sector enforcement in this report are provided by U.S. OSHA. All other statistics come from the Maine Workers' Compensation database for reportable injuries and illnesses and from the Maine Bureau of Labor Standards "Gen II" database for all outreach, education, and consultation activities and public-sector (state and local government) employers and child-labor enforcement activities, as well as from publically available data provided by the federal Bureau of Labor Statistics. More detailed explanations of, and statistics for, the enforcement activities that the Bureau provides are explained later in this report.

Safety Education and Training Fund and Other Funding

The Bureau's non-enforcement services are currently available at no additional charge because resources are provided through a dedicated state special revenue fund collected from insurers and self-insured employers and employer groups. Individual fees are based on how much the employer/insurer pays out in workers' compensation benefits (less medical payments). The fund is called the Safety Education and Training Fund, or SETF, and the revenue for the fund is assessed on insurers and self-insured employers based on a cap and an allocation formula defined in law.

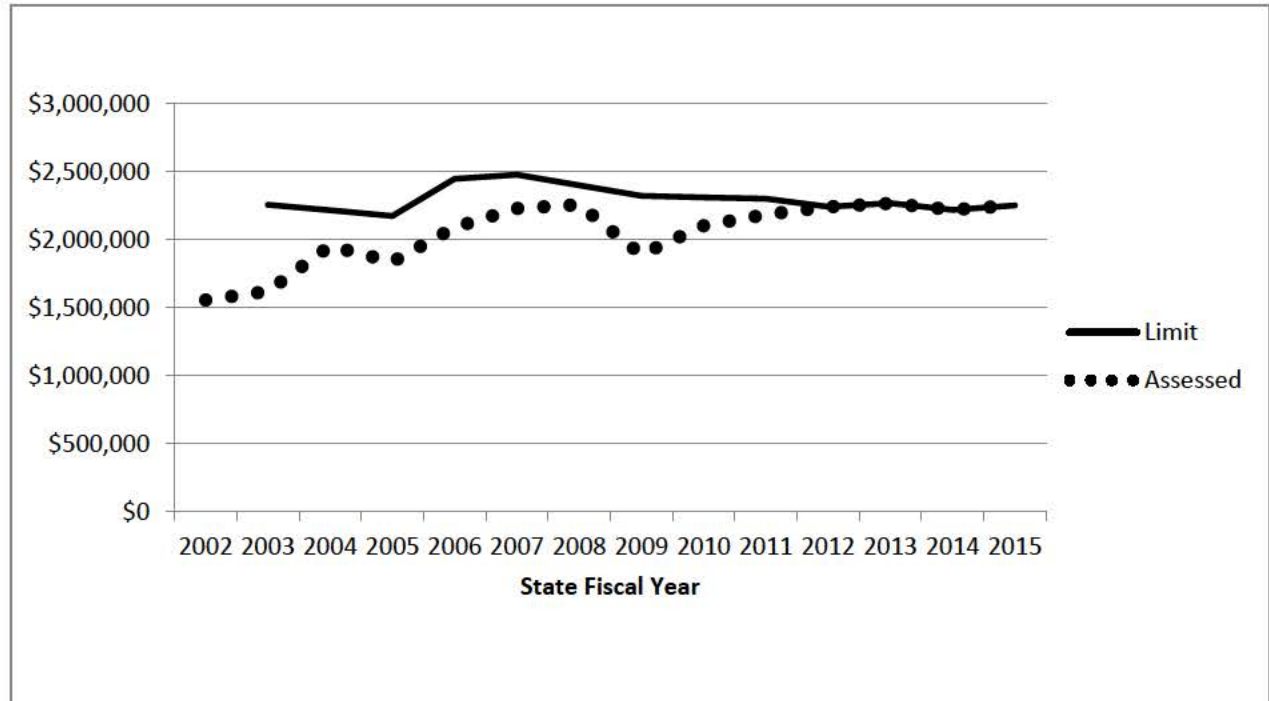
The SETF assessment is augmented by significant funding for certain employer consultations through an OSHA "21d" cooperative agreement with the U.S. Department of Labor (US DOL) . There are neither direct charges for the consultations nor fines for violations of the standards as a result of these voluntary services. There is a commitment on the employer's part to abate any problems uncovered in the consultation services.

BLS public sector (state and local government) enforcement activities are partially funded (50/50) through a US OSHA “23g” cooperative agreement, with BLS matching funds from the general fund. BLS enforcement standards for the public sector must continue to meet or exceed federal OSHA workplace safety and health standards in order to continue this shared funding.

The SETF funding is also important as the source of matching funds for roughly \$1.2 million in grants from US DOL. Without matching state funding via SETF, those grants would not be possible and all activity would need to be funded through the general fund where competition for funding is great and emphasis is on enforcement.

There is growing concern about the level of SETF funding for future activities. Due in part to prevention efforts of the Bureau, OSHA, insurers, employers, the Workers’ Compensation Board and the Bureau of Insurance, both the number and rate of injuries and illnesses have decreased over time, which means less Workers’ Compensation payouts, and, therefore, fewer SETF fees generated. Moreover, programs and efforts that have reduced injury/illness-case durations and costs (secondary and tertiary prevention), have also driven down the Workers’ Compensation benefits paid out by the insurers and self-insured employers. As a result, the SETF fund that pays for the non-enforcement services has steadily declined. In fact, for the last few years, the Bureau has had to assess right at the SETF cap in order to sustain its services. Figure C-2 below illustrates the cap coming down to meet at the point of program budget needs.

Figure C-2: SETF Limit and Assessed Amounts



The gap between the two lines represents assessment dollars the Bureau could have collected but did not. The amount the Bureau has needed to sustain its programs fluctuated in previous years because of holdovers—savings from one year carried over to the next. However, in moving from state fiscal year

2011 to 2012, and in the years subsequent, there have been no holdovers and the Bureau has had to assess the full amount for the services it provides.

The Bureau is in the process of replacing its current case management system with a COTS (Commercial off-the-shelf) software package. The Bureau's current case management system, in place since 1999, is now in "containment", meaning that support for its components will no longer be provided at some point in the future. This system records and tracks work for field staff and supervisors and produces formatted reports for employers, listing standards violations and solutions. It allows staff and management to concentrate on content rather than on process and deadlines.

Rather than face the possibility that the system would become unsupported through programmer or software attrition, the Bureau decided to replace it on a planned time schedule. However, the Bureau will need to invest a significant sum to do so. Once the new system is completed and paid for, the Bureau may be able to reduce the SETF assessment amount below the cap again. The Bureau also believes there will be additional efficiencies from the newer features, improved design and enhanced capacity of the updated system that should eventually enhance reporting and the efficiency of the work, reducing lead times and increasing value added.

A. What services were provided?

Table C-2 provides a summary of the services most recently provided by the Bureau. Note that time frames for the reports vary because they are based on various yearly periods and availability of the data at the time of publication. While much of the activity appears to be funded through the state General Fund, that revenue source accounts for only eight full-time equivalent positions out of 39 in the Bureau. The SETF and federal matching funds account for the majority of position and activity funding.

Table C-2: Summary of Prevention Services and Activities

Service	Jurisdiction / Funding Source	Activity Measures
Worker and Employer OSH Training	State SETF	6,565 workers trained(FFY)
Employer OSH Data Profiles	State SETF / US Bureau of Labor Statistics Grant	38 employer profile/data requests answered December 2014 through November 2015
On-site Consultations	State SETF / US OSHA and MSHA* Grants	545 employer onsite consultations and reports (FFY) 2015
Youth Employment Permit Enforcement	State General Fund	3,109 permits issued 50 denied in SFY 2015
Wage & Hour Enforcement, Random Inspections	State General Fund	2,443 random employer inspections 428 violations 14 child labor violations SFY 2015
Wage & Hour Enforcement, Complaint Investigations	State General Fund	573 employer investigations 237 violations SFY 2015
Public Sector Safety Enforcement	State General Fund	91 employers 826 physical sites 2,454 violations \$221,000 in penalties FFY 2015
Private Sector OSHA Enforcement	US OSHA	421 employer Inspections 655 violations \$2,062,277 in penalties FFY 2015
OSHA Recordkeeping Employer Outreach	State SETF / US Bureau of Labor Statistics Grant	10 sessions in CY 2015 215 attendees in CY 2015 7 sessions planned in CY 2016

* MSHA—U.S. Mine Safety and Health Administration
FFY Federal Fiscal Year (October 1 through September 30)
SFY State Fiscal Year (July 1through June 30)
CY Calendar Year

B. What are the outcomes of the services provided?

There is a striking contrast between where things were 20-plus years ago compared to the latest data as evidenced in the individual reports to follow. In many cases, the changes from the year before are not striking. However, this report reveals marked longer-term changes.

Table C-3: Summary of Data Activities and Significant Measures

Data Programs	Funding	Result Measures
Workers' Compensation Case Data	State SETF/US Bureau of Labor Statistics Grant	<ul style="list-style-type: none"> 13,644 disabling cases coded in calendar year 2014 <ul style="list-style-type: none"> Increase of 375 (2.8%) from 2013 Decrease of 16,671 (54%) from the high of 30,315 in 1989
Survey of Occupational Injuries and Illnesses (SOII)	State SETF/US Bureau of Labor Statistics Grant	<ul style="list-style-type: none"> 5.3 Total OSHA recordable incidence rate in CY 2014 <ul style="list-style-type: none"> 5.3 from 2013 Decrease of 20% from CY 2004 Decrease of 38% from CY 1994 2.9 Days Away, Restricted or Job Transfer incidence rate in CY 2014 <ul style="list-style-type: none"> 2.9 in 2013 Decrease of 22% from 2004 Decrease of 38% from 1994 1.4 Days Away From Work incidence rate in CY 2014 <ul style="list-style-type: none"> 1.5 in CY 2014 Decrease of 18% from CY 2004 Decrease of 53% from CY 1994
Census of Fatal Occupational Injuries (CFOI)	State SETF/US Bureau of Labor Statistics Grant	<ul style="list-style-type: none"> 19 fatalities in 2013 <ul style="list-style-type: none"> Consistent with 19 fatalities in CY 2012 Highest in CY 1999 with 32 Lowest in CY 2005 with 15
OSHA Data Initiative (ODI)	US Occupational Safety & Health Administration	This program was suspended in 2013 due to funding cuts following the federal sequestration.
Employer Substance Abuse Testing	SETF	<ul style="list-style-type: none"> 3.4% total positive tests for CY 2014 <ul style="list-style-type: none"> 3.4% in CY 2011 and CY 2014 (record lows) High of 4.9% in CY 2002 and CY 2007 3.1% applicants positive for CY 2014 <ul style="list-style-type: none"> 3.1 % in CY 2014 (record low) High of 5.0% in CY 2007 5.0% probable cause positive for CY 2014 <ul style="list-style-type: none"> 25.0% in CY 2011 Low of 1.1% in CY 2006 High of 80% in CY 2007 (only 5 tests) 2.5% random positive for CY 2014 <ul style="list-style-type: none"> 1.9% in CY 2011 (record low) High of 4.4% in CY 2009

The prevention of injuries and illnesses helps workers avoid entering the WC system and is the most efficient and humane way to contain costs. Three studies on the 100 most-costly Maine WC cases found that almost any case can evolve into a high-cost case due to complications and the intricacies of the WC system. As explained later in this report, the reduction in high-cost cases and the number of cases is the rationale behind the Department's comprehensive prevention program.

II. Organization of this Report

The report is meant to providing an accurate picture of the prevention of the Bureau's efforts to prevent occupational injuries and illnesses, including enforcement activities.

Part 1, above, is a summary of the Bureau's role, activities and outcomes.

Part 2, Prevention Services Available, will describe the workplace injury and illness prevention activities of the Bureau and its partners in the occupational safety and health (OSH) community, including outreach, advocacy, and enforcement.

Part 3, Research and Data Available, will present research programs of the Bureau and some resulting data and conclusions.

Part 4, Challenges, will discuss how current information gathering and sharing can be improved and provide an update on the initiative in this area.

Part 5, Developments, will outline 2014 developments and some prospects for the immediate future.

2. PREVENTION SERVICES AVAILABLE

I. SAFETYWORKS!

Services provided by SafetyWorks! include on-site and off-site occupational safety and health training, consultations and outreach (non-enforcement), indoor air quality assessments and prevention functions of the Bureau of Labor Standards (BLS). Under its umbrella, a variety of free education, consultations, and outreach services are made available to Maine employers, employees, and educators. These services are voluntary and provided only at the request of the employer at no cost. These activities include use of the Maine Workers' Compensation Board (WCB) data supplementing the US Bureau of Labor Statistics and OSHA data to respond to requests for information from the OSH community and the general public on the safety and health status of Maine workers.

SafetyWorks! instructors may design their safety training programs based on industry profiles generated from data from the WCB *First Report of Occupational Injury or Disease* among other sources. By analyzing the WCB data, SafetyWorks! consultants can see what types of injuries and illnesses are prevalent in different industry sectors in Maine. This information allows outreach and education activities to be tailored to those employers and their needs.

A. Employer and Employee Training and Education

General OSH Training - SafetyWorks! staff develops and offers industry-specific and problem-specific training. WCB data can suggest the need for, and direct the selection of the components of such training. In addition, the Bureau provides OSHA and Mine Safety and Health Administration (MSHA) approved regulatory compliance training. Approximately 50 different curricula are offered, ranging in scope from 30-hour OSHA compliance courses to such tightly focused efforts as video display terminal (VDT) operator training requiring as little as two hours. This includes free training in OSHA recordkeeping—rare, if not unique to the state of Maine—and critical to collecting accurate federal data. Scheduled public training is offered at the SafetyWorks! Training Institute, and at local CareerCenters. Employer training is delivered at the worksite at the employer's request. In state fiscal year 2015, BLS completed 332 safety classes with 6,565 attendees and provided onsite training for 5,052 people. In 2012, the SafetyWorks! Training Institute was relocated from Fairfield to the Central Maine Commerce Center in North Augusta. This state-of-the-art training center has realistic, safety mock-ups for experiential, adult learning.

B. Youth Employment Education - A special emphasis for the Bureau is the education of young workers. As you will see in the data section, a high proportion of the injuries and illnesses reported occur to young workers and to workers with little experience. The Bureau regularly works with the vocational technical centers and high schools to provide teen students with 10-hour standards training and with the Penobscot Job Corps to train their students prior to entering the workforce. The Wage & Hour Division is increasing their outreach to our youth employee market for education in employment standards they should expect in their new employment choices. This has resulted in a 12 percent increase in issued work permits over the last SFY

C. Employer Consultation

Employer Profiles - Using the data from the WCB's *First Report of Occupational Injury or Disease* and the Survey of Occupational Injuries and Illnesses (SOII), the Research and Statistics Unit (R&S) of the Bureau can provide a Maine employer with a profile of that employer's injury and illness experience over a number of years. Such a profile shows the type of disabling injuries or illnesses that have been experienced by the company's workers. This profile also describes the nature of the injury or illness and the event or exposure that led to each incident. The employer uses this information to detect patterns while developing and refining the company safety program. From December 2014 through November 2015, 38 employer profile/data requests were answered.

On-Site Consultation - Also under SafetyWorks!, the Workplace Safety and Health (WS&H) Division of the Bureau provides consultation services to public and private sector employers at their request. In the private sector, the Bureau provides consultations to employers identified by Regional OSHA for inspection through its Local Emphasis Programs (LEPs). National OSHA and Regional OSHA both identify employers for LEPs and National Emphasis Programs (NEPs) based on summary data from the WCB and the OSHA Data Initiative (ODI). Consultations are also provided in both the public and private sector upon employer request.

A typical employer consultation can include:

- An evaluation of training records from the employer, including an analysis of the employer's Workers' Compensation cases and/or the OSHA Forms 300, 300A, and 301.
- An environmental evaluation (walk-through).
- Examination of mandated written safety programs and employer policies.
- An examination of work processes. Consultations are advisory, confidential, and cooperative in nature. In fiscal 2015, 545 employer on-site consultations were requested and completed.

For more on the services offered by the SafetyWorks! program, go to: www.safetyworksmaine.com.

II. ENFORCEMENT

Despite all the voluntary resources available, there is a need to determine compliance on a non-voluntary basis if, for no other reason, as a check on the Bureau's voluntary process. In order to accomplish that, there are several enforcement programs in place. The Bureau keeps those separate from the SafetyWorks! programs to distinguish them from those which are voluntary. The enforcement activity is triggered through targeted random inspections, complaints and/or known issues which are

typically discovered through analysis of one or more data sources (as outlined in Section 3 of this report).

A. Youth Work Permits

To protect young workers, the Wage and Hour Division of the Bureau reviews and approves or denies work permit applications for workers under the age of 16. The approval process involves school verification of the young worker's age and that the young worker is passing class expectations. Then the work duties and environment are cleared as appropriate or non-hazardous jobs in that age group. From July 1, 2014, to June 30, 2015, 3109 work permits were approved and only 50 permits were denied.

B. Wage and Hour Enforcement

In addition to the issuance of work permits, the Wage and Hour Division inspects employers for compliance with Maine wage and hour and youth employment laws, which have an occupational safety and health component. The Division can use age data from the WCB *First Report of Occupational Injury or Disease* to select industries and employers for inspection. Employers are also identified for inspections based on combinations of administrative criteria and complaint history. From July 1, 2014, to June 30, 2015 the Division conducted 2243 self-directed inspections finding 428 separate violations. There were also 573 complaint assignments finding 237 violations. There were 14 child labor violations involving the number of hours worked or the time of day the work was performed beyond state labor law limits.

C. Public-Sector Site Safety Inspections

The Workplace Safety and Health (WS&H) Division of the Bureau enforces safety regulations based on US OSHA standards *in the public sector only* and is therefore responsible for the health and safety of employees of state and local governments and quasi-state/municipal agencies. The Board of Occupational Safety and Health, whose members are appointed by the Governor, oversees public sector safety and health enforcement. WS&H prioritizes state and local agencies for inspection based on reports of deaths or serious injuries requiring overnight hospital stays, complaints from employees or employee representatives, the agencies' injury and illness data from the WCB, and the results of the Survey of Occupational Injuries and Illnesses (SOII). WS&H compliance officers conduct randomly selected, unannounced inspections of the work environment and can cite the state and local employers for non-compliance with safety and health standards, which may carry fines. Failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be asked to shut down the operation; however, this shutdown is not mandatory. By way of comparison with OSHA activity in the private sector (below), there were 91 public sector employers and 826 site inspections completed in federal fiscal year 2015 (October 2014 through September 2015); the inspections resulted in 2,454 violations cited and \$221,000 assessed in penalties before reductions for size of the employer and good faith abatement efforts.

D. Private-Sector Site Safety Inspections (US/OSHA)

In Maine, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) enforces federal workplace health and safety standards in the private sector in parallel with the Bureau's enforcement in the public sector. OSHA prioritizes employers for inspection based on the employers' injury and illness data from the OSHA Data Initiative (ODI), LEPs or NEPs – both typically developed using the ODI, and complaints from employees or employee representatives. OSHA compliance officers likewise conduct randomly selected, unannounced and complaint-based inspections of the work environment and can cite employers for non-compliance with safety and health standards, which usually carry fines. As in the public sector, failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be required to shut down the operation. OSHA conducted 421 inspections in Maine for federal fiscal year 2015 (October 2014 through September 2015) resulting in 655 citations and \$2,062,277 in penalties.

Effective workplace injury and illness prevention services cannot be designed and delivered without a detailed working knowledge of all factors that contribute to occupational safety and health (OSH). This knowledge is gained by OSH research, through continuous injury surveillance programs and through conducting focused studies.

3. RESEARCH AND DATA AVAILABLE

I. OCCUPATIONAL SAFETY & HEALTH SURVEILLANCE PROGRAMS

The Research and Statistics Unit in the Technical Services Division of the Bureau of Labor Standards is responsible for the administration and maintenance of the following data sources:

- Maine Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*
- U.S. Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses (SOII)
- U.S. Bureau of Labor Statistics Census of Fatality Occupational Injury Program (CFOI)
- U.S. OSHA Data Initiative (ODI)
- Occupational Fatality Reporting Program

Combined, the results of these surveys provide a useful profile of occupational injuries and illnesses in Maine. The following are program overviews and data summaries generated by these programs.

A. Maine Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*

Since 1973, the Maine Bureau of Labor Standards has coded, tabulated, analyzed, and summarized data from the WCB *First Reports*. This activity began as a program called the Supplementary Data System (SDS) funded by the U.S. Bureau of Labor Statistics. When federal funding ended, this program was continued with state funding and is now called the Census of Case Characteristics. The Bureau data are directly linked to the WCB administrative data for each case and provide a wealth of information on individual cases. The database includes:

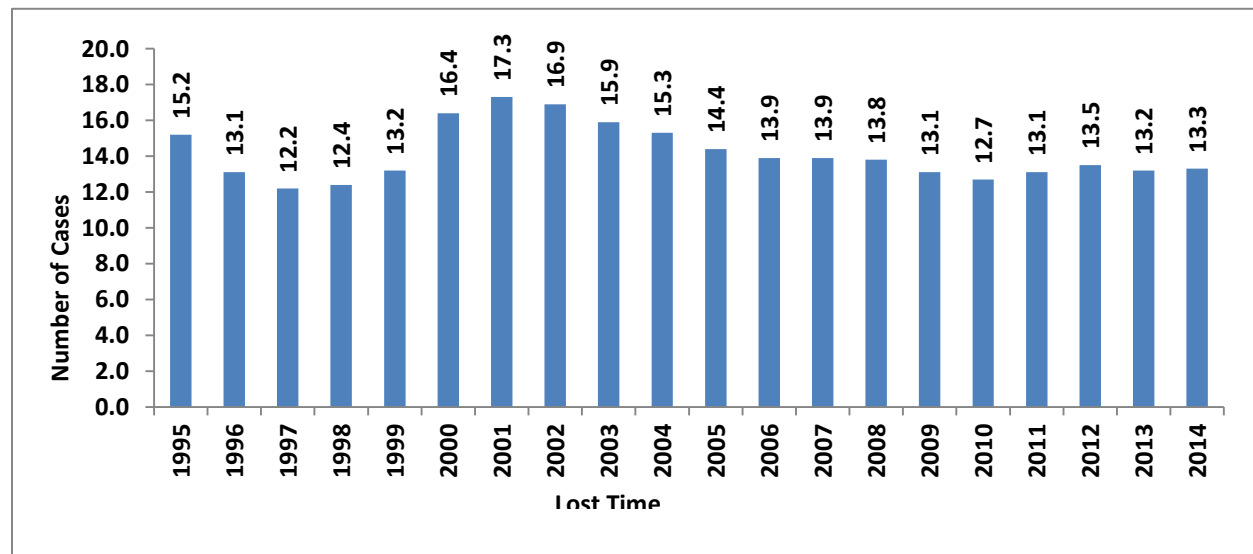
- 1) Characteristics of the employer
- 2) Characteristics of the employee
- 3) Characteristics of the workplace
- 4) Characteristics and results of the incident
- 5) Characteristics and results of the workers' compensation claim

Because the data are tied to the WCB administrative data, the consistency and completeness of administrative data is critical. The Bureau analyzes the WCB data and provides injury profiles to employers and safety professionals to use in prevention and training activities. The following is a summary of the data from this program.

i. *Twenty-Year Pattern of Disabling Cases, Maine (1995–2014)*

In 2014, there were 13,645 disabling cases reported to the Maine Workers' Compensation Board. A disabling case is a case in which a worker lost one or more days of work beyond the day of the injury. Figure C-3 shows the 20-year trend of disabling cases. The figure shows in 2013 an increase of 372 cases over 2012. There has been an 11 percent reduction in disabling cases reported from 2003; about a 29 percent reduction since the 1992 reforms.

Figure C-3: Twenty-Year Pattern of Disabling WCB Cases, 1995–2014



ii. Geographic Distribution of Disabling Cases, Maine (2012–2014)

Geographic distribution data can be useful in health and safety related planning and setting respective enforcement and consultation priorities by region. Table C-4 provides the number of disabling cases statewide and by county for calendar years 2012 through 2014 and respective injury rates for each. These rates are based on numbers of employees in the respective regions and are not on employee-hours worked. As shown in Table C-4, 2014 injury rates in ten of the sixteen counties (Sagadahoc, Kennebec, Waldo, Piscataquis, Penobscot, Oxford, Aroostook, Washington, Androscoggin and Somerset) were higher than the state-wide rate.

Table C-4: Geographical Distribution of Disabling Cases, Maine (2012–2014)

County	2012			2013			2014		
	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000
Sagadahoc	623	14,648	42.5	565	14,890	37.9	598	15,213	39.3
Kennebec	1,477	55,540	26.6	1,540	56,534	36.7	1564	57,970	27.0
Waldo	241	10,571	22.8	257	10,899	23.6	302	11,588	26.1
Piscataquis	101	5,423	18.6	100	5,433	18.4	144	5,563	25.9
Penobscot	1,491	67,649	22.0	1,648	68,046	24.2	1669	69,589	24.0
Oxford	398	16,313	24.4	414	16,501	25.1	400	16,765	23.9
Aroostook	669	26,945	24.8	646	27,644	23.4	636	26,592	23.9
Washington	281	9,751	28.8	255	9,672	26.4	234	10,098	23.2
Androscoggin	1108	47,222	23.5	1,083	47,471	22.8	1144	48,358	23.2
Somerset	405	16,781	24.1	382	16,970	22.5	402	17,308	23.2
Maine	13,187	568,809	23.2	13,273	564,766	23.5	13322	587,885	22.7
Lincoln	259	11,002	23.5	259	11,013	23.5	263	12,327	21.3
Knox	366	16,629	22.0	388	16,861	23.3	380	17,961	21.2
Cumberland	3,586	168,792	21.2	3,783	169,947	22.3	3681	174,540	21.1
Hancock	463	21,488	21.5	456	20,668	22.1	438	24,769	17.7
York	1,357	61,226	22.2	1,275	61,486	20.7	1182	67,486	17.5
Franklin	140	10,732	13.0	162	10,731	15.1	163	10,758	15.2
Unknown*	265			60			122		

* "Unknown" represents WCB First Reports with missing location information.

Sources: The case data are from the Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*. The employment data are from the Center for Workforce Research and Information, Maine Department of Labor; and includes all non-federal private- and public- sector employment.

iii. Disabling Cases by Occupational Groups, Maine (2012–2014)

Ten occupational groups accounted for more than 70 percent of all reported disabling injuries in 2014. Table C-5 describes the top ten occupational groups with corresponding rates. Further research may be warranted to study the trends and patterns of injuries and illnesses within these ten occupational groups to identify the occupational risk factors.

Table C-5: Disabling Cases by Occupational Groups, Maine (2012–2014)

Occupational Groups	2012		2013		2014	
	Number	Percent	Number	Percent	Number	Percent
Transportation and Material Moving	1,664	12.6	2,099	15.8	2,171	15.9
Production	1,329	10.1	1,238	9.3	1,319	9.7
Installation, Maintenance, and Repair	1,053	8.0	1,156	8.7	1,093	8.0
Construction and Extraction	1,081	8.2	1,028	7.7	1,092	8.0
Food Preparation and Serving	916	6.9	974	7.3	971	7.1
Healthcare Support	923	7.0	856	6.4	899	6.6
Office and Administrative Support	1,072	8.1	913	6.9	879	6.4
Building and Grounds Cleaning and Maintenance	716	5.4	786	5.9	805	5.9
Healthcare Practitioners and Technicians*	-	-	709	5.3	681	5.0
Sales and Related Occupations	711	5.4	660	5.0	608	4.5
Other Occupational Groups	3,722	28.2	2,854	21.5	3,126	22.9
Total	13,187	100.0	13,273	100	13,644	100.0

Source: Workers' Compensation Board *Employer's First Reports of Occupational Injury or Disease*

*Not tabulated for 2012

iv. Length of Service of Injured Worker, Maine, 2012–2014

Based on the WCB data, the Bureau has monitored two significant patterns relating to employee length of service and disabling injuries. First, new hires (under one year of service) have historically comprised roughly one quarter (and in some years more) of all disabling cases. New hires have a significantly higher injury rate than those who had been with their employers for a year or more. While injuries among new hires have actually trended down from a high of 36 percent in 2004, new hires still accounted for 33.1 percent of the disabling *First Reports* in 2014. This suggests that programs and efforts to assure the safety of new employees are still warranted.

Second, disabling cases for workers having 15 or more years of service with the same employer increased from 10.3 percent in 2001 to 15.2 percent in 2013 and slightly down to 13.4 percent in 2014. Disabling cases for workers with 20 or more years with the same employer increased from 5.9 percent in 2001 to 10.1 percent in 2013 and slightly down to 8.9 percent in 2014. However, having more injuries and illness among this group may or may not mean there are intrinsic factors that drive the injury rates for this group. There may be more injuries solely because there are more workers in this category as Maine's workforce ages due to the high proportion of older workers.

Nevertheless, these changes merit further attention to determine any long term projections and ramifications of this trend. For example, factors such as the economic downturn of 2008 - 2012 and its incentive for older workers to delay retirement and for employers to use the workforce in place (without recruiting new or additional employees) could be further evaluated to guide future policies and responses.

Table C-6: Length of Service of Injured Worker, Maine, 2012–2014

Length of Service of the Injured Worker	Disabling Cases					
	2012		2013		2014	
	Number	Percent	Number	Percent	Number	Percent
Under 1 Year	3,185	24.2	3,276	24.7	4,516	33.1
1 Year	1,512	11.5	857	6.5	1,383	10.1
2 Years	929	7.0	1,205	9.1	970	7.1
3-4 Years	1,365	10.4	1,330	10.0	1,293	9.5
5-9 Years	2,328	17.7	2,493	18.8	2,354	17.3
10-14 Years	1,169	8.9	1,208	9.1	1,155	8.5
15-19 Years	549	4.2	674	5.1	616	4.5
20+ Years	1,323	10.0	1,341	10.1	1,211	8.9
Unknown	827	6.2	889	6.7	146	1.1
Total	13,187	100.0	13,273	100.0	13,644	100

Source: Workers' Compensation Board Employer's First Reports of Occupational Injury or Disease

Note: Null entries were placed in the "Unknown" instead of the "Under 1 Year" category.

v. Age of Injured Worker, Maine, 2001, 2012–2014

Related to the issue of injury rates and length of service, the Bureau has also been tracking how the aging workforce relates to disabling Workers' Compensation Claims. As can be seen in Table C-7, the proportion of injuries occurring to those workers age 50 and older has risen from 20.2 percent in 2001 to 36.2 percent in 2013 and slightly down to 35.8 in 2014. This is not surprising since, according to the Maine Jobs Council's 2010 report: *Maine's Aging Workforce:*

Opportunities and Challenges, "By 2018, nearly one-quarter of the labor force will be age 55 and older." (The Maine Jobs Council is now known as the State Workforce Investment Board). With a higher percentage of older workers in the work force, there is likely to be a correspondingly higher number of injuries and illness involving older workers. However, there is yet no clear evidence that older workers are intrinsically more prone to injuries and illnesses than other workers or that their injuries are more costly. Employment and injury data suggest that injury rates (number of injuries per worker) in this older population have not increased over recent years.

Table C-7: Age of Injured Worker, Maine, 2001 and 2010-2012

Age of the Injured Worker	Disabling Cases							
	2001		2012		2013		2014	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Under 19	397	2.3	145	1.1	184	1.4	196	1.4
19-24	2,182	12.9	1,522	11.5	1,437	10.8	1,547	11.3
25-29	1,816	10.8	1,315	10.0	1,372	10.3	1,389	10.2
30-34	2,157	12.8	1,257	9.5	1,228	9.3	1,319	9.7
35-39	2,407	14.3	1,217	9.2	1,159	8.7	1,252	9.2
40-44	2,464	14.6	1,505	11.4	1,449	10.9	1,439	10.5
45-49	2,036	12.1	1,621	12.3	1,638	12.3	1,606	11.8
50-54	1,548	9.2	1,783	13.5	1,806	13.6	1,848	13.5
55-59	1,021	6.0	1,483	11.2	1,588	12.0	1,608	11.8
60+	849	5.0	1,339	10.2	1,412	10.6	1,439	10.5
Missing	3	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total	16,879	100.0	13,187	100.0	13,273	100	13,643	100

Source: Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*

B. U.S. Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses (SOII)

OSHA Recordable Cases

Since 1972, the Maine Bureau of Labor Standards has partnered with the U.S. Bureau of Labor Statistics through a cooperative agreement to collect data through the annual Survey of Occupational Injuries and Illnesses (SOII). The results from this survey are summarized and published annually on the U.S. Bureau of Labor Statistics website at this link:

<http://www.bls.gov/iif/oshstate.htm#ME>.

The data are generated from a random sample stratified by industry and establishment size. There are more than 3,000 work establishments in the sample in any given year. For the year 2013, the Maine Bureau of Labor Standards surveyed 2,951 private establishments and 524 public-sector agencies, asking these businesses about their injury experience with OSHA recordable injuries and illnesses. In addition, employers report their average employment and total hours worked at the reporting worksite. From this information, incidence rates are produced. The incident rate is the estimated number of incidents per 100 full-time workers, standardized to a full calendar year. Unlike the rates generated from employment as the denominator, these rates take into account part-time and overtime exposure hours.

Figures C-4 and C-5 display results from the 2014 SOII. Data collected from this survey is not comparable with the WCB rate data for the following reasons:

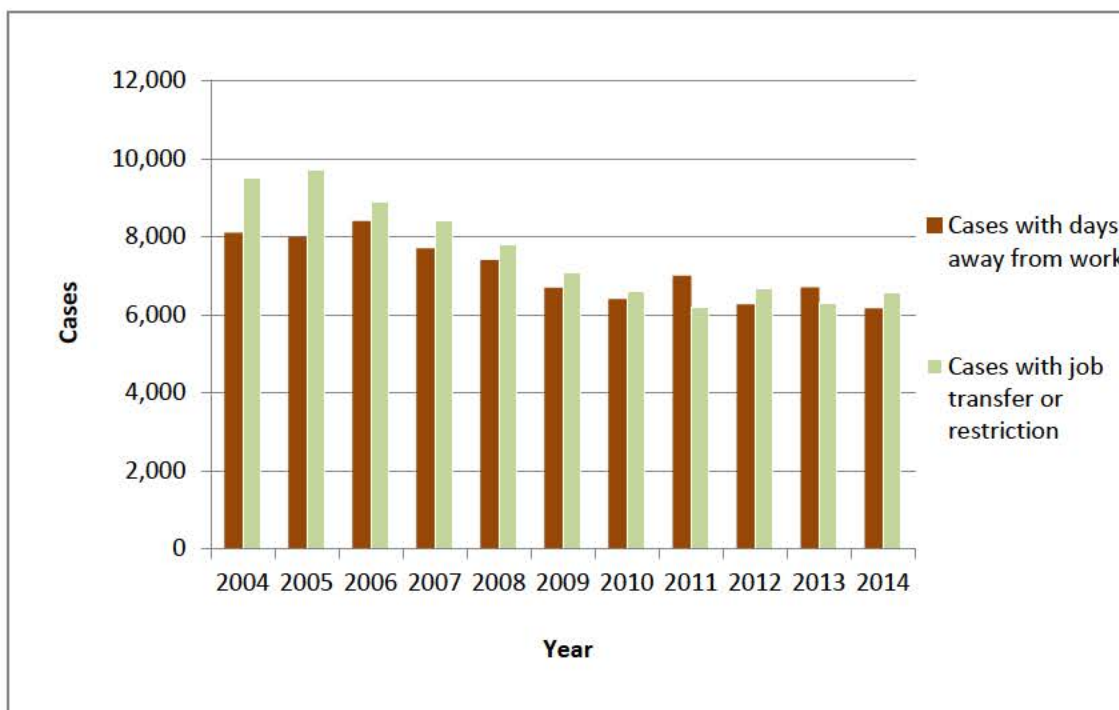
- The two systems use different definitions of recordability of work-related cases.
- WCB rates are employment-based while the SOII rates are computed based on hours worked converted into full-time equivalents (FTEs).

- The WCB data set is a census of disabling injuries and illnesses while the SOII data are from a statistical sample. The SOII data are therefore subject to sampling errors.

i. OSHA Reportable Case Numbers and Rates

There has been an ongoing debate in the OSH community about using the number versus rates; thus, the SOII estimates both. Figure C-4 provides the estimated number of recordable cases while Figure C-5 depicts the rates. The rates take into account the number of hours workers were exposed to workplace risks. The exposure hours vary from industry to industry and year to year, and the rates take that into account.

Figure C-4: Lost Workday and Restricted Work Activity Cases (2004–2014)

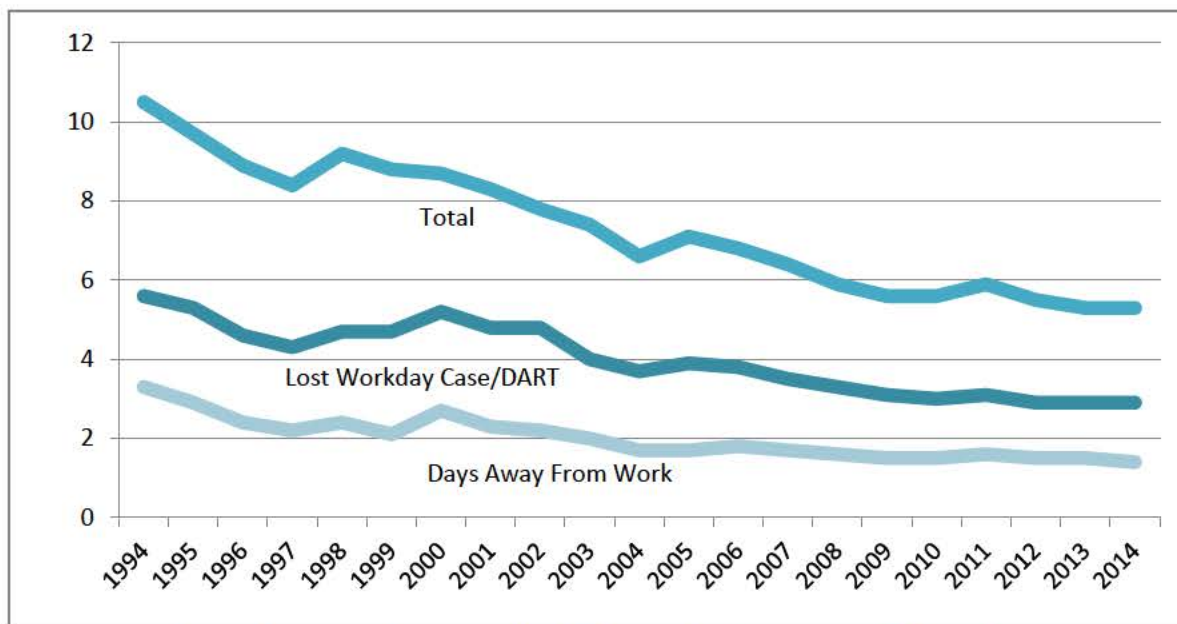


For 2014, there were an estimated total of 12,734 OSHA recordable injuries resulting in at least one day away from work and/or one day of job transfer or restriction beyond the day of injury. Of this total it was estimated that 6,159 cases resulted in at least one day away from work and 6,575 cases resulted in job transfer or restriction without any days away from work.

ii. OSHA Reportable Case Rates

A complement to the numbers generated from the WC and SOII data are the rates that, as mentioned, take into account differences in the hours worked and exposed.

Figure C-5: Total Recordable, Lost Workday or DART and Days Away from Work Cases per 100 FTEs (1994–2014)



Note: DART = Days Away from Work, Restricted Work Activity, or Job Transfer

Figure C-5 shows the general decline in the rate of injuries and illnesses reported. This table is per 100 full-time equivalents (FTEs) computed from employer-reported total hours worked.

The Total Recordable incidence rate has declined by 19.7% since 2004 and by 38.3% since 1994. The Lost Workday Case / DART rate has decreased by 21.6% from 2004 and by 38.3% from 1994. The Days Away from Work Rate has declined by 17.7% from 2004 and by over half since 1994. Note that there was a change in this time period between the years 2001 and 2002, when OSHA recordkeeping rules and definitions were changed. In any case, this is a significant decrease, seen only as small decrements looking at them from year to year.

Again, more Maine SOII rate data from 1996–2014 are published on the U.S. Bureau of Labor Statistics website at this link: http://www.bls.gov/iif/state_archive.htm#ME.

iii. Industry Sector Data

According to the 2014 SOII (private sector), Landscaping Services recorded the highest total recordable incidence rate of 13.4 per 100 FTEs. Table C-8 describes the top-ten private-industry total recordable rates.

Table C-8: Industries with the Top-Ten Total Recordable Rates, Maine, 2014

Industry Group	Cases per 100 FTEs
Landscaping Services	13.4
Transportation Equipment Manufacturing	13.2
Residential Mental Retardation, Mental Health and Substance Abuse Facilities	12.1
Nursing Care Facilities	11.6
Fuel Dealers	9.2
Warehousing and Storage	8.9
Supermarkets and Other Grocery (except convenience) Stores	8.5
Waste Management and Remediation Services	8.4
Sawmills and Wood Preservation	8.2
Seafood Product Preparation and Packaging	8.1
All Private Industries	5.3

Source: US Bureau of Labor Statistics *Survey of Occupational Injuries and Illnesses*

The link at <http://www.bls.gov/iif/oshstate.htm#ME> has rates for most of the major industries.

U.S. Bureau of Labor Statistics, Census of Fatality Occupational Injury Program (CFOI)

Since 1992, the Maine Bureau of Labor Standards has worked in partnership with the U.S. Bureau of Labor Statistics to administer the Census of Fatal Occupational Injuries (CFOI) program for Maine.

The CFOI program is a federal/state cooperative program to collect data on all fatal occupational injuries. It was created in 1990 by the U.S. Department of Labor, Bureau of Labor Statistics and includes all 50 states and the District of Columbia. The program was established to determine a true count of work-related fatalities in the United States. Prior to CFOI, estimates of work-related fatalities varied because of differing definitions and reporting sources. The CFOI program collects and compiles workplace-fatality data that are based on consistent guidelines throughout the United States.

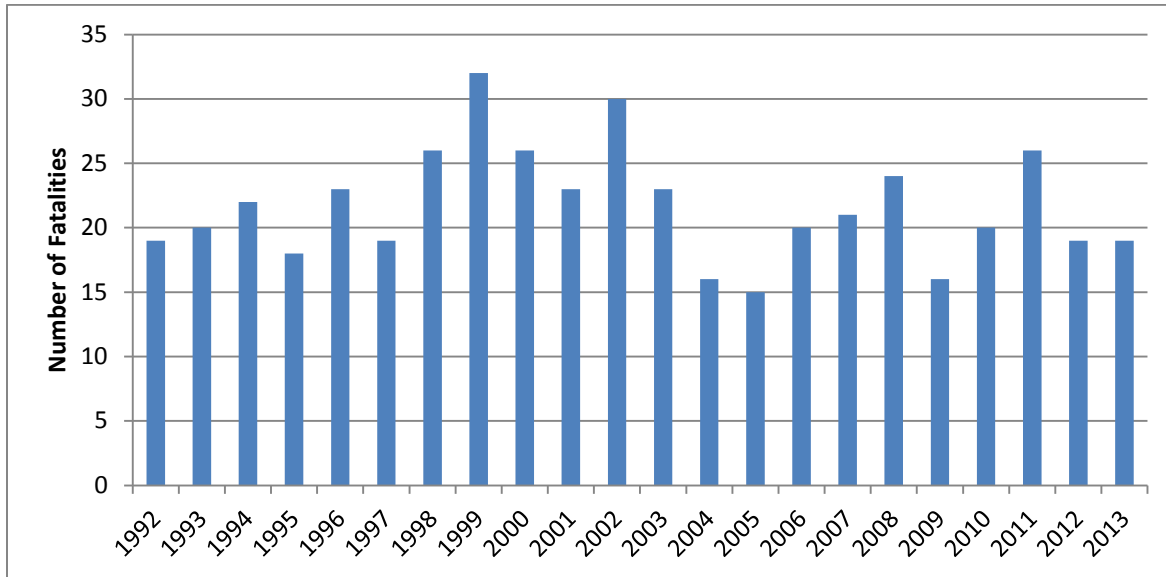
A death is considered work-related if an event or exposure resulted in an employee fatality while in work status, whether at an on-site or off-site location. Private and public sector (state, local, and county government) are included. Fatalities must be confirmed by two independent sources before inclusion in the CFOI. Sources in Maine include the WCB *Employer's First Reports of Occupational Injury or Disease*, and fatality reports from the following agencies and sources: 1) death certificates from Maine Center for Disease Control and Prevention, 2) the Chief Medical Examiner's Office, 3) the Department of Marine Resources, 4) investigative reports and motor vehicle accident reports from the Maine State Police, 5) investigative reports from the local police and sheriff's department, 6) the U.S. Coast Guard; 7) OSHA reports, and 8) newspaper clippings and other public media.

Only fatalities due to injuries are included in the CFOI. Fatalities due to illness or disease tend to be undercounted because the illness may not be diagnosed until years after the exposure or the work relationship may be questionable.

iv. Fatal Occupational Injuries, Maine (1992–2013)

Figure C-6 shows the numbers of work-related fatalities recorded in Maine from 1992–2013.

Figure C-6: Work-Related Fatalities, Maine (1992–2013)



Source: Maine Census of Fatal Occupational Injuries

v. Fatal Occupational Injuries by Classification

In a separate report to the U.S. Bureau of Labor Statistics, the Maine Bureau of Labor Standards has summarized 2013 data by several categories: year, occupation, type of fatal event, primary source (mostly vehicle accidents), and age of the victim. The nature of these reports is tightly restricted by the US BLS, and the final form of the report must be approved by that agency. Thus, rather than publishing this information in two separate places, the reader is referred to the original document. Please see:

http://www.maine.gov/labor/labor_stats/publications/cfoi/CFOI2013.pdf .

Finalized numbers for 2014 fatalities will not be available until spring of 2016.

C. OSHA Data Initiative (ODI)

From 1993 through 2012, the Bureau received a grant from US OSHA to collect data on specific worksite occupational injury and illness rates in Maine. The information was used by OSHA to target establishments with high incidence rates for intervention through consultation or enforcement. Usually the regional office of OSHA initiates this activity under the US OSHA LEP. Due to the federal sequester in fiscal year 2013, the ODI initiative was not funded and has not been funded since.

D. Occupational Fatality Reports

Ten years ago, BLS piloted a fatality assessment, control and evaluation (FACE) program designed after the US FACE program conducted by the National Institute for Occupational Safety and Health

(NIOSH). The program consisted of a series of publications regarding work-related fatalities, the conditions that contributed to them, and measures that should or could have been taken to prevent them. With federal funding unavailable to continue the FACE program, BLS implemented its own Occupational Fatality Reporting Program (OFR) and published nine OFR reports through 2008 to draw attention to the work environments and behaviors resulting in worker fatalities.

In late 2012, the Bureau renewed this effort and is preparing a new OFR series that will identify fatality hazards in order to motivate employers and employees to embrace recommended safety practices and behaviors. The first report of the new OFR series entitled “Dying Alone on the Job,” January 2013, explores the causes of death while working alone and makes practical and industry-oriented recommendations for increased safety.

Planned future OFR topics include fatalities due to electrocution from direct or indirect contact with energized sources, tree cutting accidents, climbing/falling accidents and the general practices of situational awareness.

E. Worker’s Memorial Day

Worker’s Memorial Day is observed every year on April 28, the day of OSHA’s establishment in 1971. In a number of Maine locations, community leaders, families of fallen workers, and employers gather to discuss the ongoing commitment to have no on-the-job fatalities by providing safe and healthy workplaces for all of Maine’s working men and women. The Bureau of Labor Standards supports these commemorations and provides workplace fatality information to assist in their preparation. Through its workplace safety inspections and consultations, its SafetyWorks! training and education, and its research and analysis of injuries and illnesses data, the Bureau continues to work hard to ensure the objectives of safer workplaces are constantly advanced.

F. Employer Substance-Abuse Testing

Under the Maine Substance Abuse Testing Law, the Bureau of Labor Standards reviews and approves or denies proposed drug testing policies of Maine employers who want to have a substance abuse testing program. Employers can either use a model policy available from the Bureau or develop their own drug testing policy that complies with Maine drug testing laws (The Maine Substance Abuse Testing Law, Title 26 MRSA, Section 680 *et seq.*).

The Maine Substance Abuse Testing Law is intended to protect the privacy rights of employees, yet allow an employer to administer testing for several purposes: 1) to ensure proper testing procedures, 2) to improve workplace safety, and 3) to eliminate drug use in the workplace. Regulation of testing for use of controlled substances has been in effect under Maine law since September 30, 1989.

The administration of this law is the collaborative effort of the following agencies:

- The Maine Department of Labor (MDOL), which:
 - Reviews and approves substance abuse testing policies.
 - Conducts the annual survey of substance abuse testing.
 - Analyzes testing data and publishes the annual report.
 - Provides models for Applicant and Employee Testing Policies.

- The Maine Department of Health and Human Services (DHHS), which licenses testing laboratories, and the Division of Licensing and Regulatory Services within DHHS, which reviews and approves employee assistance programs (EAPs) for employers who do probable cause or random and arbitrary testing. (Any employer with more than 20 full-time employees must have a functioning EAP prior to testing their employees under the current statute.)

In 2014, the annual survey indicated that a total of 21,216 tests were administered by employers with approved policies and 711 (3.4%) of these tests were positives. Of the 19,536 job applicants tested, 609 (3.1%) tested positive for illegal substances. Table C-9 shows the total and applicant test results for the last ten years while Table C-10 describes the corresponding results for probable cause and random testing.

For a full report, visit: www.maine.gov/labor/labor_stats/publications/substanceabuse. Survey data for 2015 will be available by April 1, 2016.

Table C-9: Results of Overall and Applicant Substance Abuse Testing (2005–2014)

Year	Approved Policies	Total Tests			Job Applicant Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
2005	310	17,742	749	4.2	16,876	706	4.2
2006	325	18,112	853	4.7	17,364	824	4.7
2007	350	22,641	1,110	4.9	21,700	1,076	5.0
2008	384	23,437	1,086	4.7	22,477	1,045	4.7
2009	412	17,399	666	3.8	16,719	631	3.8
2010	433	21,388	931	4.3	20,267	897	4.4
2011	436	16,100	545	3.4	15,580	532	3.4
2012	452	17,229	634	3.7	15,938	602	3.8
2013	487	24,225	1,100	4.5	23,284	1,068	4.6
2014	461	21,216	711	3.4	19,536	609	3.1

Table C-10: Results of Probable and Random Substance Abuse Testing (2005–2014)

Year	Approved Policies	Probable Cause Testing			Random Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
2005	310	18	9	50.0	863	34	3.9
2006	325	18	2	11.1	730	27	3.7
2007	350	5	4	80.0	936	30	3.2
2008	384	13	2	15.4	947	37	3.9
2009	412	16	6	37.5	664	29	4.4
2010	433	39	6	16.2	1,082	29	2.6
2011	436	12	3	25.0	847	16	1.9
2012	452	20	3	15.0	1,271	30	2.4
2013	487	44	3	6.8	897	29	3.2
2014	461	363	18	5.0	1,317	33	2.5

II. RESEARCH PROJECTS OTHER THAN ANNUAL REPORT

A. OSHA Recordkeeping Employer Outreach Initiative

The Survey of Occupational Injuries and Illnesses and the OSHA Data Initiative survey depend on the accuracy of data tabulated from the OSHA Recordkeeping process. Additionally US OSHA enforces OSHA recordkeeping law and rules and fines employers for non-compliance. To ensure the accuracy of the data and to help employers comply with OSHA recordkeeping guidelines and avoid the fines, the Research and Statistics Unit provides formal training, consultation, and outreach functions to Maine employers, at no additional cost.

In 2015, the BLS Research and Statistics training staff conducted classes in various locations in the state from Portland to Presque Isle. In 2015, there were ten sessions offered throughout the state. Some of this training was placed on the web in video format in 2013.

Also, of note, in October 2014, OSHA announced two major changes to the OSHA Recordkeeping Standard beginning January 1, 2015. One was a list of high-hazard industries subject to the OSHA recordkeeping rules based on the establishment's NAICS code (replacing the Standard Industrial Classification Code). The other change was new rules detailing what types of catastrophic events must be reported directly to Federal OSHA: fatalities, amputations, and in-patient hospitalizations. Information on these recordkeeping changes is available at <https://www.osha.gov/recordkeeping2014/index.html>.

In addition of note in Maine, US OSHA enforces OSHA recordkeeping rules (CFR1904) for private-sector establishments. Public-sector (state and local government employers) enforcement falls under the Bureau of Labor Standards, Workplace Safety and Health Division.

B. Special Projects

Using information from the Maine Workers' Compensation Board's *Employer's First Report of Occupational Injury or Disease*, the Research and Statistics Unit conducted the following special research projects in 2012 - 2013: (<http://www.maine.gov/labor/bls/techserv.html>)

- Tableau: An Interactive Workers' Compensation Database
- Slipping and Falling on Ice
- Injuries Incurred by Maine's EMTs (and others)
- *Injuries and Illnesses Due to Workplace Chemicals and Related Hazards*
- *Roofing and Exterior Worker Falls in Maine, 2011 – 2013*

i. Tableau Interactive Web Database for Workers' Compensation Injury Data

In response to requests to publish characteristics of Workers' Compensation annual injury data, it was determined that the most effective method of graphic presentation would be via the interactive database software Tableau on the Department of Labor's website. This method of data presentation allows data seekers easy access to Workers' Compensation injury data that will be updated on an annual basis and is now available at:

http://www.maine.gov/labor/labor_stats/workinjuries.html

ii. Slipping and Falling on Ice: A Serious Workplace Hazard

Snow and ice cover Maine for most of the cold months, transforming our state into a true "winter wonderland" that is enjoyed by thousands. However, those same forms of frozen water pose serious hazards for work-related and other activities. Slipping and falling on ice may seem a common and inevitable nuisance in the winter, it may even seem comical at times; however, people sustain serious injuries from winter slips and falls. Each year, hundreds of Maine workers get hurt and lose valuable work time by slipping or falling on ice and snow. Indeed, the frequency of these incidents should raise more concern for everyone, employers and workers in particular.

Using information provided by the Maine Workers' Compensation Board (WCB) illness and injury claims database, this report examines the nature and extent of injuries occurring due to slipping and falling on snow and ice. It includes data about the physical effects the injured employees sustain; the financial burdens injuries place on employees, employers and insurance carriers; and factors that might affect the frequency of these accidents. This report aims to better define and examine the problem and its causes in the hope of guiding further work to foster effective measures that reduce these kinds of injuries to Maine workers.

iii. Injuries Incurred by Maine's EMTs, EMT/Firefighters and Paramedics

This report presents 2012 data pertaining to injuries incurred by Maine's emergency medical technicians (EMTs), EMT/firefighters and paramedics where a significant number of similar injury events were recorded. Research and data analysis resulted in findings that 35 percent of injury events were due to overexertion while lifting, transporting or assisting injured or ill persons. Findings also show that sprain and strain injuries accounted for 93.6 percent of the overexertion injuries and that the back was the body part injured most often, accounting for 44.7 percent of the cases. These injuries occurred with and without the use of mobility or lift assistance equipment.

iv. Injuries and Illnesses Due to Workplace Chemicals and Related Hazards (pending publication)

This report presents data from Maine's 2012 – 2013 Workers' Compensation injury and illness claims resulting from direct or indirect exposure to injurious chemicals or workplace environmental hazards, such as poor indoor air quality resulting from microbiological (mold and fungus) growth. These exposures present occupational health and safety hazards to workers that can result in acute injuries as well as acute or chronic respiratory, allergenic, and other types of illnesses.

v. Roofing and Exterior Worker Falls in Maine, 2011 – 2013 (pending publication)

This report focuses on fall injuries among Maine's roofing and building exterior construction workers, the factors that may have contributed to them and the regulatory/enforcement efforts to reduce them. From 2011 through 2013, 34 Maine roofing and exterior workers were injured as a result of falls from roofs, falls onto roofs, and falls from ladders, scaffoldings, and staging. Four others died as a result of their falls.

This report provides data on the causes of these incidents, the kinds of injuries incurred by the workers, and the associated Workers' Compensation costs. It also provides information regarding federal regulations and standards enforced by OSHA and the Maine Department of Labor, pertaining to fall protection safety in the construction industry and penalties levies for violations of those standards.

4. CHALLENGES

The following items are challenges identified this year or ones that continue from previous years.

I. SAFETY EDUCATION & TRAINING FUNDING

The Bureau's prevention efforts are funded through four federal cooperative grants and the state Safety and Education Training Fund (SETF). The SETF funds non-enforcement programs and activities directly and is used to provide the matching funds required by the consultative and statistical federal grants.

As explained in the Introduction, the SETF fund is currently capped at 1 percent of the payouts from Workers' Compensation claims. That total has declined in recent years due to fewer injuries occurring and declining compensation costs, while at the same time the Bureau's prevention expenses have climbed. In a sense this dilemma is happening because the program goals are being achieved, the Bureau is preforming the ideal—which is putting itself out of business. However, this may also mean an eventual decrease in the education, consultation, and research activities that are now serving to maintain the decrease.

Short term, there are extraordinary expenses to replace the case management software and after those are met there will likely be a period where we can assess under the cap. Long-term, should the system continue to be successful reducing claims and costs, we may meet the cap again. Should that occur BLS would:

- Locate alternative funding sources for the current activities funded through the SETF.
- Seek additional grant funding where possible.
- Seek additional General Fund monies if appropriate.
- Raise the cap on the fund.
- Cut services currently provided and funded by the SETF.
- Reduce the capacity of some services, likely resulting in longer wait times.

II. ELECTRONIC DATA INTERCHANGE AND DATA QUALITY

The Workers Compensation Board's administrative computer system is a major source, and in some ways the most significant source, of workplace injury and illness data in Maine. The Bureau relies on that system for its programs rather than keeping a separate repository of injury and illness data. In fact, the Bureau codes the information from Workers' Compensation First Reports and directly enters that coded data back into the Workers' Compensation system, from which it can then pull the stored data as needed for research or responding to inquiries.

As of January 1, 2005, all filings of the *Employer's First Report of Occupational Injury or Disease* were required to be submitted to the WCB through electronic data interchange (EDI), computer-to-computer, using the International Association of Industrial Accident Boards and Commissions (IAIABC) Claims Release 3.0 EDI format. Under the standard, certain fields are classified as "required," that is, necessary for a claim to be processed. Others are classified as "expected," that is, not required for a claim to be processed but necessary to complete a report. Although the WCB will request missing "expected" data

from the reporting entity, the data may not be available at the time the Bureau does its coding. WCB is in the process of requiring SROI (Secondary reports of Occupational Injury) to be submitted through a similar EDI process. As part of that process, data will be tighter and there will be more requirements. The “expected” fields will be changed to “required” as part of the upgrade in progress to the EDI system. This all should fill in substantial holes in the data.

Because the Bureau’s coders are the first humans to view the electronic data, and they frequently access the data for research and inquiries, they are usually the first to notice data quality problems. Over the past year the Bureau’s staff has identified data problems of two distinct types:

1. **Ambiguity and coding uncertainty:** The Bureau’s coders follow strict rules about coding items where uncertainty exists. In some cases specific information is identified in the report that is not in the coding system and must be coded as “Not Elsewhere Classified” or “NEC.” In other cases not enough information is provided in the report to accurately determine a code and must be coded as “Unspecified” or “UNS.” Still in other cases the information suggests that multiple codes be selected. Based on the prevalence of “Unspecified” codes, the Bureau can identify topics, situations, specific employer groups, and even EDI system changes where the information submitted in the First Reports is not sufficient for accurate coding and classification.

The number of “Unspecified” codes has gone down over time, which suggests that the data quality overall has been improved by the EDI process. This is probably because the EDI system consistently requires responses and is tied to a tight employer-identity system. However, it is also clear that data quality with EDI still varies widely, and the reasons for that are not always understood. Some entries are complete and precise enough for accurate coding whereas at times some entries are missing or are far too vague to be coded accurately. This may be due to changes in reporting instructions to employers and insurers, changes in programming, and/or changes in the involved personnel. They may occur anywhere in the injury Illness reporting system — from the way employees report events to their employers at the beginning of the process to the way drop-down menu choices are used in the EDI data entry (First Report), to coding conventions and choices that the Bureau’s staff can make in its own process. Further research will be needed to determine the sources and causes of the variance so it may be addressed and minimized.

2. **Software glitches:** While overall the data are better, recent review subsets based on sources (employers/insurers) has turned up some systems that were not allowing data to move through them. In such cases, significant effort is required by system managers and others to correct the problems, and we will continue work to identify such sources and correct the data gaps as they are discovered.

III. RETURN-TO-WORK DATA

Returning to work for the same employer is the most favorable of the outcomes of a Workers’ Compensation claim. Once open and closed cases are determined, dates can be defined and, in turn, duration and lost productivity can be derived as well. These measures augment counts and costs, indicate something about the seriousness of the individual injuries and illnesses, and can be aggregated

to prioritize and call attention to certain situations. Consequently, it is important to accurately quantify and characterize return-to-work data so that tertiary prevention programs and activities are properly managed (reducing the social and economic cost of an injury or illness after it occurs).

In years past, the Bureau focused on a missing date on the *First Report of Occupational Injury or Disease* called return-to-work. Over the years, the Bureau noted between 18 and 20 percent of the cases seemed to lack a “return-to-work” date when an “incapacity date” was provided, which meant there was uncertainty about whether the cases were actually resolved. A few years ago, Bureau staff and the Monitoring and Enforcement Unit at the Workers’ Compensation Board identified how to locate that information in the system when it is not on the *First Report*. After this effort and research and redefinition-of-return to work to account for other events, the Bureau has determined that only 5 to 15 percent of the cases are actually unresolved or “open” and therefore legitimately lack a return-to-work date. All the other cases are resolved or “closed,” even though they may not necessarily have a recorded return-to-work date. The current data represent a “snapshot” and are constantly changing, even for past years.

From this research, we now know that, for almost 60 percent of the cases that occurred in the last five years, the injured worker has returned to work for the same employer. This suggests that major progress has been made in prevention and in determining the economic and social costs of workplace injuries and illnesses. These data are in the process of commitment to an EDI process, which should improve its tightness. As it is, many exceptions and corrections are necessary to categorize cases that may not actually reflect individual situations

Table C-11: Status of Lost Time Claims, Maine, 2010–2014

Year of Injury or Illness report						
Claim Status	2010	2011	2012	2013	2014	Grand Total
Lost Time Claims	5,361	5,243	4,886	4,922	4,715	25,127
Open Claims	316	320	354	441	612	2,043
% Open	5.9%	6.1%	7.2%	9.0%	13.0%	8.1%
Closed Claims	5,045	4,923	4,532	4,481	4,103	23,084
Resumed Work	2,788	3,107	2,939	3,135	3,085	15,054
% Resumed Work	52.0%	59.3%	60.2%	63.7%	65.4%	59.9%

Source: Workers’ Compensation Board *Employer’s First Report of Occupational Injury and Disease* subsequent payment reports

Data is as of 12/29/2015

From weekly data warehouse check, Lost Time Status.

Open, Closed entered from "Lost Time Status" sheet.

Resumed Work from the "Last Payment Episode Closed/Set Reason" sheet.

IV. COST DATA

The Bureau now uses individual-case cost data from the WC system to compare and contrast groups of injury cases, similar to how it uses other case characteristic counts. Like the return-to-work and days-lost data, cost data are limited in that they stem from "snapshots" of each case at a point in time (when the data entry is made). Some of the cases do not accumulate further expenses beyond that, while

others are open and continue to accumulate cost data. To address this, the Bureau and WCB have established how to define "open" and "closed" cases and therefore how to tabulate cost data so that reviewers and researchers can distinguish between the two situations.

Now that data are available to determine ranges in duration and cost of injury/illness cases, there are many new possibilities for directing case management. These data can tell the Bureau which groups and types of cases have more uncertainty in their outcomes. This, in turn, may allow the Bureau to focus on classes of cases where the medical treatment and case management are more a factor in what happens over the life of the case and its ultimate cost. This is supported by research the WCB and the Bureau have done on the 100 costliest cases, where findings show that some of the most costly cases are ones where the initial injury or illness was not well defined at the start (i.e., the treatment begins before the diagnosis is clear).

5. 2015 DEVELOPMENTS

I. GRANTS

The Bureau was awarded a 23g cooperative agreement with the US OSHA which will help pay for activities around public sector (state and local government) enforcement of OSHA standards in the workplace. This likely will enable the Bureau to supplement its enforcement staff and activities.

II. PROGRAM INITIATIVES

From time to time, the Bureau initiates or enters into partnerships initiating various programs promoting occupational safety and health.

A. Safety Education Research Initiative (SERI)

In order to provisionally fill the research coordination function vacated by MORA, and to foster a more proactive and cooperative working arrangement between the Research and Statistics Unit (R&S) and the Division of Workplace Safety and Health (WSH), the Bureau created an in-house group called SERI to help coordinate and target the Bureau's injury and illness research and publications. The main purpose of SERI is to identify, initiate, and prioritize research projects for R&S to undertake (using the SafetyWorks! brand) in concert with the needs and emerging priorities in the Division of Workplace Safety and Health. The group meets regularly to identify and discuss emerging problems data and research needs and to review ongoing projects. As a result, the Bureau's research publications and other such outputs benefit from greater collaboration from within the Bureau.

B. Data Outreach Initiative

Also a data dashboard has been maintained on the MDOL website in cooperation with the Center for Workforce Research and Information. The dashboard uses an interactive data visualization tool called "Tableau", which is now available on the Bureau's website, http://www.maine.gov/labor/labor_stats/workinjuries.html.

C. SHARP and SHAPE Award Programs

Some employers have been so successful with adopting best practices that they have earned recognition from the Maine Department of Labor through the SHAPE and SHARP awards program. As part of the award, the employer is presented a plaque in a ceremony and a flag to display at the workplace.

i. SHARP

SafetyWorks!, in partnership with US OSHA, administers the Safety and Health Achievement Recognition Program (SHARP). Under this program, a private employer with 250 or fewer employees on-site who meets the program requirements for employee safety and health, including an exemplary safety and health program, is exempted from program inspection for

two years. Employers successfully meeting SHARP requirements are publicly honored. There are 64 employer locations qualified as of December 2015.

Artisan Boatworks (Rockport)	Limington Lumber Company (Baldwin)
Bison Pumps (Houlton)	Lonza Rockland ((Rockland)
Borderview (Van Buran)	Lovell Lumber (Lovell)
CCB (Westbrook)	Lucas Tree Experts-Maintenance Facility (Portland)
Central Aroostook Assoc. (County Box & Pallet)	Maibec Lumber USA (Fraser Timber) Ashland
Cianbro Corporation – Rickers Wharf (Portland)	Maine Cat (Bremen)
Cianbro Equipment (Pittsfield)	Maine Machine Products Company (South Paris)
Cianbro Fabrication Shop (Pittsfield)	Maine Oxy (Brewer)
Cianbro Paint Shop (Pittsfield)	Maine Oxy (DBA Dirigo Technologies) Auburn
Classic Boat Shop (Bernard)	Maine Woods Company (Portage)
CM Almy, Inc.	Marden’s Inc. (Calais)
Community Living Association (Green Center)	Marden's Inc. (Ellsworth)
Community Living Association (Roger Randall)	Marden's Inc. (Sanford)
Davis Brothers (Chester)	Marden's Warehouse, (Waterville)
Deering Lumber (Biddeford)	Moose River Lumber Co., Inc. (Jackman)
Deering Lumber (Springvale)	Morris Yachts (Trenton)
Deering Lumber, Inc. (Kennebunk)	Peavey Manufacturing (Eddington)
Everett J. Prescott, Inc. (Bangor)	Pineland Farms Potato Company (Mars Hill)
Everett J. Prescott, Inc. (Gardiner)	Pleasant River Lumber Company (Dover-Foxcroft)
Everett J. Prescott, Inc. (Portland)	Pleasant River Pine (Hancock)
FASTCO Corp. (Lincoln)	Portage Wood Products LLC (Portage)
Franciscan Home (Eagle Lake)	Record Hill Wind (Roxbury)
French & Webb Inc. (Belfast)	Reed & Reed – Metal Fab (Woolwich)
Gorham Sand & Gravel (Gorham)	Rumery’s Boat Yard (Biddeford)
Hinckley Company (Trenton)	S W Boatworks (Lamoine)
Hodgdon Shipbuilding (East Boothbay)	SFX America (Portland)
Howard Tool Company	Somic America (Brewer)
Hunting Dearborn, Inc. (Fryeburg)	Steel-Pro Incorporated (Rockland)
Johanson Boatworks (Rockland)	Strouts Point Wharf (Freeport)
Jotul North America	Tern Inc (DBA Atlantic Boat) Brooklin
Katahdin Health Care (Millinocket)	Yachting Solutions (Rockland)
Kittery Point Yacht Yard (Kittery Point)	Yachting Solutions (Rockport)

ii. SHAPE

In 2005, SafetyWorks! initiated the Safety and Health Award for Public Employers (SHAPE) program, a public-sector application of the federal private-sector SHARP program. SHAPE is a voluntary award program for all “public sector” employers/employees that are going above and beyond the safety and health requirements to provide a safe and healthy workplace and strive to keep injuries/illnesses down. As of January 2016, there are 62 public-sector employers, who have received SHAPE status, including:

SHAPE EMPLOYERS IN MAINE

Ashland Ambulance (Ashland)	Mayo Regional Hospital (Dover-Foxcroft)
Auburn Water & Sewage District (Auburn)	Mapleton Fire Department (Mapleton)
Berwick Fire Department (Berwick)	Mid-Maine Technical Center (Waterville)
Bristol, Town of, (Bristol)	Newcastle Fire Department (Newcastle)
Bristol-South Bristol Transfer Station (Bristol)	North Lakes Fire Department (Sinclair Lake)
Brooks Fire Department (Brooks)	North Lakes Fire Department (Madawaska)
Brunswick, Town of, (Brunswick)	North Lakes Fire Department (Cross Lake)
Camden Fire Department (Camden)	Northern Maine Community College (Presque Isle)
Caribou, City of (Caribou)	Northern Penobscot Tech Region 3 (Lincoln)
Caribou Fire Department (Caribou)	Northport Volunteer Fire Dept. (Northport)
Cary Medical Center (Caribou)	Northport First Responders (Northport)
Cushing Fire Department (Cushing)	Oakland Fire & Rescue (Oakland)
Damariscotta Fire Dept. (Damariscotta)	Orono Fire Department (Orono)
Durham Fire Department (Durham)	Paris Fire Department (Paris)
Fairfield, Town of (Fairfield)	Presque Isle, City of (Presque Isle)
Farmingdale Fire Department (Farmingdale)	Region 3 Maine DOT (Dixfield)
Farmington Fire Department (Farmington)	Region 5 Maine DOT (Presque Isle)
Fort Fairfield Fire Dept. (Fort Fairfield)	Sabattus Sanitary & Water (Sabattus)
Fort Kent Fire & Rescue (Fort Kent)	Sagadahoc County (Bath)
Hampden Water District (Hampden)	Scarborough, Town of (Scarborough)
Harrington Fire Department (Harrington)	School of Applied Tech. Region 2 (Houlton)
Hartland Fire Department (Hartland)	Skowhegan Fire Department (Skowhegan)
Houlton Water Company (Houlton)	So. Thomaston Fire Dept. (So. Thomaston)
Jay Fire & Police Departments (Jay)	Saint Agatha Fire Dept. (St. Agatha)
Jay, Town of (Jay)	United Technologies Center (Bangor)
Kennebunk, Kennebunkport & Wells Water	University of Maine-Aroostook (Presque Isle)
Kennebunk, Town of (Kennebunk)	University of Maine-Blueberry (Jonesboro)
Kittery Water District (Kittery)	Waldoboro Fire Department (Waldoboro)
L'Acadie Care Facility (Van Buren)	Wilton Fire & Police Department (Wilton)
Manchester Fire Department (Manchester)	Winthrop Fire Department (Winthrop)
Mapleton, Castle Hills & Chapman (Mapleton)	York Water District (York)

III. LEGISLATION

Several bills with potential impact on occupational safety and health were submitted during the First Regular Session of the 127th Legislature:

- 1) LD 188, *An Act to Protect Employees from Abusive Work Environments* sought to provide legal relief for employees who have been harmed psychologically, physically or economically by exposure to abusive work environments. The legal remedies made available by this bill do not limit any other legal rights of an individual, except that workers' compensation benefits received under the Maine Revised Statutes, Title 39-A for the same injury or illness must be reimbursed from compensation that is earned through the legal remedies made available by this bill (DEAD).
- 2) LD 699, *An Act to Update Maine Law to Conform to New Federal Occupational Safety and Health Administration Regulations* changed the law to allow an employer the ability to report injuries by telephone or electronically and provides that the report may be made to the director or the director's designee. It amends the definition of "serious physical injury." It also authorizes the director and any authorized agent of the bureau to enter a public sector workplace for the purpose of examining the safety and health of employees (PASSED).
- 3) LD 748, *An Act to Provide for Tiered Qualifications for Volunteer Firefighters in Certain Municipalities* sought to provide a municipality with fewer than 2,500 permanent residents, the fire chief, with the approval of the municipal officers of that municipality, may approve training for volunteer firefighters that provides for 3 tiers of qualifications (DEAD).
- 4) LD 1011, *An Act To Address Drug Testing in the Workplace and the Effect of Approved Substances on Current Drug Policy*, sought to provide employers with a single, consistent model policy intended to encourage greater participation. The bill requires an employer to adopt the model policy before establishing a substance abuse testing program. It removes the requirements that employers provide an employee assistance program and pay for half of rehabilitation beyond services provided through health care benefits. The bill amends the definition of "probable cause" to provide that a single work-related accident is probable cause to suspect an employee is under the influence of a substance of abuse (DEAD).
- 5) LD 1165, *An Act to Enact the Toxic Chemicals in the Workplace Act*, sought to enact the Toxic Chemicals in the Workplace Act to create a statutory and regulatory framework designed to prevent harm to employees by reducing exposure to highly toxic chemicals in the workplace and thereby decrease the rates of cancer and other chronic diseases in the State, improve workplace chemical management and safety and ensure safer workplaces and healthier communities (DEAD).
- 6) LD 1201, *An Act to Standardize and Simplify the Process for Employers to Have a Drug-free Workplace Policy*, sought to provide a single, consistent model policy intended to encourage greater participation. The bill requires an employer to adopt the model policy before establishing a substance abuse testing program. It removes the requirements that employers provide an employee assistance program and pay for half of rehabilitation beyond services provided through health care benefits. The bill amends the definition of "probable cause" to provide that a single work-related accident is probable cause to suspect an employee is under the influence of a substance of abuse. The bill requires a group to study issues related to the legalization of marijuana and the model policy (DEAD).
- 7) LD 1384, *An Act to Improve Workplace Safety by Simplifying and Improving Employers' Substance Abuse Policy Requirements*, sought to allow employers to establish policies or rules

related to the possession or use of substances of abuse by employees and for employee impairment by substances of abuse at the workplace. It repeals a section of law that addresses nuclear power plants since there are no operating nuclear power plants in this State. It authorizes an employer that has employees subject to a federally mandated substance abuse testing program to extend its federal drug testing activities to its entire workforce in order to maintain a single testing program and specifies that the employer must maintain the privacy protections that Maine statute affords all other Maine employees. It amends the law to provide that a single work-related accident that results in injury or significant property damage may be probable cause to suspect an employee is under the influence of a substance of abuse. It eliminates the current requirement that, prior to establishing a substance abuse testing program, an employer with over 20 full-time employees have a functioning employee assistance program. It directs the development model policy templates with adequate flexibility so as to facilitate the ability of the employers' substance abuse testing programs and policies. It expands the number of establishments that can undertake companywide random substance abuse testing from those with 50 or more employees to those with 10 or more employees. It eliminates the requirement that employers share an employee's rehabilitation costs not covered by group health insurance and clarifies that rehabilitation costs not covered by a group health insurance program are the responsibility of the employee. It specifies that testing at the point of collection of saliva or urine is permissible for both applicants for employment and for employees (CARRIED OVER to 2nd SESSION).