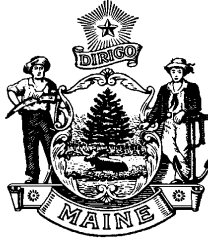


# MAINE STATE LEGISLATURE

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

Submitted to the 128<sup>th</sup>  
Maine Legislature

# February 2017

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Bureau of Labor Standards  
Department of Labor

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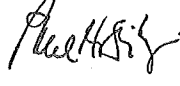
Eric A. Cioppa  
Superintendent  
Bureau of Insurance  
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# MEMORANDUM

## MAINE WORKERS' COMPENSATION BOARD

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**To:** Committee on Labor, Commerce, Research & Economic Development  
**From:** Paul H. Sighinolfi, Executive Director/Chair   
**Date:** February 14, 2017  
**Subject:** *Annual Report on the Status of the Maine Workers' Compensation System*

---

Enclosed for your review are copies of the *Annual Report on the Status of the Maine Workers' Compensation System*.

Maine workers' compensation continues to transition from one of the most expensive systems in the nation to one that is moving to average premium costs combined with a fair and reasonable benefit structure. The National Council on Compensation Insurance (NCCI) has recommended a slight premium increase for 2017. This recommendation is based on our updated changes in our Medical Fee Schedule. They will make a further recommendation based on other considerations soon. Our internal data suggests there will be no additional increase. Our system is viewed as very stable by the insurance industry. Employees who are injured are returning to work more quickly, and our dispute resolution process is working well. It is not clear whether carriers will adjust their premiums given the modest NCCI recommendation.

The Appellate Division, recreated in 2012, continues to excel, giving both employees and businesses an automatic right of appeal. The Board's Medical Fee Schedule, which is updated annually, has stabilized workers' compensation medical costs even with a few up-level adjustments. Vocational rehabilitation requests have leveled off. These are helping injured workers return to gainful employment. Maine Employers' Mutual Insurance Company, the state's largest private carrier, declared a \$20 million dividend to Maine businesses.

The foregoing factors are evidence of the Maine workers' compensation system's gradual and continued improvement for both injured employees and the business community.

The report is on the web at:  
<http://www.maine.gov/wcb/Departments/administration/troika.html>

I am available if there are any questions.

PHS/ldl





STATE OF MAINE  
WORKERS' COMPENSATION BOARD  
27 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0027

PAUL R. LePAGE  
GOVERNOR

PAUL H. SIGHINOLFI, ESQ.  
EXECUTIVE DIRECTOR/CHAIR

February 15, 2017

The Honorable Paul R. LePage  
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1 State House Station  
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The Honorable Michael D. Thibodeau  
President of the Senate  
3 State House Station  
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The Honorable Sara Gideon  
Speaker of the House  
2 State House Station  
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Senator Amy F. Volk, Chair  
Representative Ryan M. Fecteau, Chair  
Joint Standing Committee on Labor,  
Commerce, Research and Economic  
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100 State House Station  
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Senator Rodney L. Whittemore, Chair  
Representative Mark W. Lawrence, Chair  
Joint Standing Committee on  
Insurance and Financial Services  
100 State House Station  
Augusta ME 04333-0100

We are pleased to submit to the Governor and the 128<sup>th</sup> Legislature, First 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.

Pamela D. Megathlin  
Director  
Bureau of Labor Standards  
Department of Labor

Paul H. Sighinolfi, Esq.  
Executive Director  
Workers' Compensation Board

Superintendent  
Bureau of Insurance  
Department of Professional and  
Financial Regulation



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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

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The Maine Workers' Compensation Board has adopted an approach to managing the Workers' Compensation Act that strives to provide quality service, system stability, and procedural simplicity. 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 stable, but overall have been reduced more than 50 percent since 1993; MEMIC, the largest workers' compensation insurer in the State, declared an \$20 million dividend for Maine policy holders; and the Board has kept the employers' assessment under control over the past four years. All of these contribute to our continuing effort to keep 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 endeavor to control medical costs through a comprehensive medical fee schedule that was thoroughly reviewed and updated last year, and updated again this year. With our limited resources, we continue to vigorously address the problem of employee misclassification, and we are monitoring the national and state problem of opioids in medical treatment.

We believe it is critical the system maintain the positive and proactive momentum engendered 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."

Staffing was stable this past year. We had staff retire and others leave. We quickly filled these positions with very qualified individuals. We relocated two of our offices. These moves caused temporary disruptions, but ultimately were positive for improved agency functioning.

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 our 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 12 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 the issues that caused gridlock and now focuses on setting meaningful

policy. Some of the difficult issues the Board has, and continues to address, 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; our 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.<sup>1</sup>

The Workers' Compensation Board made significant progress on controlling medical costs when it adopted a medical facility fee schedule in 2011, and in updating all medical fees 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. Last year, Board staff conducted a comprehensive review of our schedule and updated it to accurately reflect trends in the medical marketplace. This year we again updated the schedule.

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, as has been the case over the past five years, 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

<sup>1</sup> 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. In addition, the largest private carrier in the state, MEMIC, has in recent years declared substantial dividends to its policy holders. These dividends work to reduce employers' workers' compensation costs. This is yet another factor not considered in national cost comparisons.

when appropriate, we are encouraging cooperative job placement efforts with the Bureau of Employment Services, and we are working to ensure system reporting compliance.

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.

## BUREAU OF INSURANCE

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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.

NCCI filed with the Superintendent and received approval for an overall 0.1% increase in the advisory loss costs effective April 1, 2016.

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 2015, 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-four insurers wrote more than \$1 million each in annual premium in 2015. The top 10 insurance groups wrote over 92% of the workers' compensation insurance in the state in 2015. 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 40% (as measured by standard premium) of the overall workers' compensation market in 2015.

## **BUREAU OF LABOR STANDARDS**

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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 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 2017, 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. The Bureau will likely reprise its study on worker Slips and Falls on Ice to reflect more recent injury data and injury reduction strategies.



**SECTION A**

**WORKERS' COMPENSATION BOARD**





# Section A: Workers' Compensation Board

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# 1. INTRODUCTION

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To best understand the Maine Workers' Compensation Board, a background context 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 eligible and willing 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 legislation in 2011, *An Act To Increase the Availability of Independent Medical Examiners*. 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 providers.

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 almost all reported categories, a major improvement since the inception of MAE.

The Worker Advocate Program gives injured workers access to trained representation. This improves the likelihood of receiving statutory benefits. Nearly 56% of injured workers are represented by advocates at mediation and about 34% are represented by advocates at formal hearings.

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. Our assessment is capped by statute. In the past legislative session, our cap was prospectively increased to ensure adequate funding for all future Board obligations.

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 true again this year. We strive to control costs for employers, and at the same time are working to provide benefits in an efficient manner to injured workers.

## 2. ENABLING LEGISLATION AND HISTORY OF MAINE WORKERS' COMPENSATION

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### 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 are 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 126<sup>th</sup> Legislature, Second 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 mandated benefits 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 has come to be known nationally, remains a fundamental feature of today's workers' compensation system. Perhaps as a sign of the times, in Maine 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 responsibilities. Disputes under this system became 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 called "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 legal issues; it does not conduct a hearing de novo. In Maine, our 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 for most employers. In 1974 it became mandatory. This and other significant changes to our Act 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 with some of the vestiges still being felt today.

In the early 1970s, the 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 repetitive overuse conditions to a claimant's 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 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, the governor tied a veto of the state budget to changes in the Workers' Compensation Act. The consequence of this action was a three week shutdown of state government.

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 incapacity. 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 the 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 became 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 2016 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). As reported earlier, 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, with 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. Now 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

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### 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 is 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 2006 through 2016 are shown in the table below:

Cases Entering Dispute Resolution			
Year	Trouble Shooting	Mediation	Formal Hearing
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
2016	14,936	2,449	1,424

\*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-fifth of disputed issues entering troubleshooting proceed to mediation. Of those going to mediation, just over 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 2006 through 2016.

Troubleshooting Filings Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Av Days at TS
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
2016	14,936	14,741	685	25

\*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 2006 through 2016.

Mediations				
Cases Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Av Days at MDN
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
2016	2,449	2,509	406	55

## 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 2006 through 2016.

Formal Hearing Cases Assigned, Disposed, and Pending					
Year	Assigned	Disposed	†Lump Sum Settlements	Pending 12/31	Av Months to Decree
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
2016	1,424	1,299	600	977	*10.7

\* 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 claim frequency is up slightly, a trend that is consistent with what is happening in workers' compensation nationally.

## **4. OFFICE OF MONITORING, AUDIT & ENFORCEMENT**

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### **I. HISTORY**

The Maine Legislature, in 1997, 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**

Our Board today believes a key compliance component is education. In early 2012, the Board confirmed this commitment by dedicating additional human and other resources to this 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 in 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-eight adjusters, employers, providers, and others involved in workers’ compensation attended the 2016 sessions. In addition, open training modules are available on the Board’s website. Quarterly training newsletters are emailed to approximately 800 subscribers. The newsletter is also available on the Board’s website. These writings address a broad range of claims-handling topics and report on Board activities that impact claims management.

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. One hundred ten individuals from thirteen different insurers/administrator groups received on-site training in 2016.

Three special programs were held on proper claims handling and payments using the Board’s medical fee schedule. Seventy- one claim administrators and providers attended.

The Board participated in a training session held by the State Workers’ Compensation Division (WCD). Thirty WCD designees attended.

The Board participated in the annual Human Resources Convention where there were in excess of 800 attendees.

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 also maintains a booth at the Summit where it provides information on training and other Board resources to attendees. Comp Summit 2016 was attended by 320 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 through which it provides guidance on proper claims-handling techniques.

### **III. MONITORING**

This section of the report, because of a data collection lag, traditionally provides information from the prior calendar year. This year is no exception. On July 12, 2016, the Maine Workers' Compensation Board of Directors approved the 2015 Annual Compliance Report (January 1, 2015 through December 31, 2015):

#### **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 seven 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 seven days is 85%.
- Benchmark Not Met. Eighty-three percent (83%) of lost time FROI filings were within seven 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 six days.
- The Board's benchmark for initial indemnity payments within 14 days is 87%.
- Benchmark Met. Eighty-seven percent (87%) of initial indemnity payments were within 14 days.

#### **C. Initial Memorandum of Payment Filings**

- Compliance with the Initial Memorandum of Payment (MOP) 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 filings within 17 days is 85%.
- Benchmark Exceeded. Eighty-six percent (86%) 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-two percent (72%) of Wage Statement(s) and seventy-two percent (72%) of the Fringe Benefit Worksheet(s) were filed within 30 days.
- The Board has not adopted benchmarks for 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 2016:

<b>Auditee (alpha order)</b>	<b>Penalties</b>
Allianz Insurance Group	\$ 4,600.00
AmTrust North America, Inc.	\$ 10,125.00
Broadspire Services, Inc.	\$ 4,500.00
Church Mutual Insurance Company	\$ 3,500.00
Frankenmuth (Patriot)	\$ 3,000.00
Hartford Insurance	\$ 1,500.00
Lumbermen's Underwritings	\$ 1,200.00*
Maine Automobile Dealers Association Workers' Compensation Trust	\$ 4,550.00
Matrix Absence Management	\$ 800.00
MS & AD Insurance Group	\$ 1,700.00
Ryder Services Corporation	\$ 00.00
SeaBright Insurance Company	\$ 5,000.00
Sentry Insurance	\$ 25,000.00
Zurich Insurance Group	\$ 13,350.00

\*penalties negotiated, but not collected because the insurer became insolvent

#### **B. Complaints for Audit**

The audit program also has a Complaint for Audit process. Through this process, a complainant requests the Board conduct an investigation to determine if the insurer, self-administered employer or third-party administrator 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, committing fraud, or making intentional misrepresentations. The complainant also asks that the Board assess all applicable penalties. In 2016, the Board received ten audit complaints. Though up slightly from 2015, the overall number is down significantly 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 an employee 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 2016, the MAE program completed 20 employee misclassification audits. The audits covered 257 employees, \$1,249,032.73 in payroll, \$1,988,864.28 in "subcontractor" wages shown on 1099's, and \$10,911.86 in "casual labor" wages that resulted in \$2,456,919.17 in potentially misclassified wages, which may result in \$162,798.07 in unpaid workers' compensation premiums.

Eight of the misclassification audits resulted in consent agreements between the Board and the audited employer finding a violation of the Act's coverage requirement, four audits led to investigations that are still underway, and eight audits did not result in further action either because the employer had the required coverage or because the Board did not have the statutory authority to proceed at the time the audit was concluded. A legislative change in 2016, LD 1553, has given the Board the needed authority to address this problem through the assessment of penalties.

During 2015-2016, several employee misclassification investigations were placed on hold as a result of the Law Court's decision in the *Holyoke v. The Workers' Compensation Board*, 2015 ME 99. Since *Holyoke* substantially impacted the Board's ability to address misclassification of employees as independent contractors, the Board submitted legislation that was enacted this year that resolved these issues. (For more details about the legislation, see Section 13, subsection I, *infra*.)

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 vocational assessment, retraining and job placement.

## **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

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### I. MEDICAL FEE SCHEDULE

#### A. Background

The Maine Workers' Compensation 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 fee schedule adoption, 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, in an effort to simplify our Rule, incorporated the codes and weights underlying the federal CMS inpatient facility, outpatient facility and professional services payment systems.

The Board's rule contains the final element 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

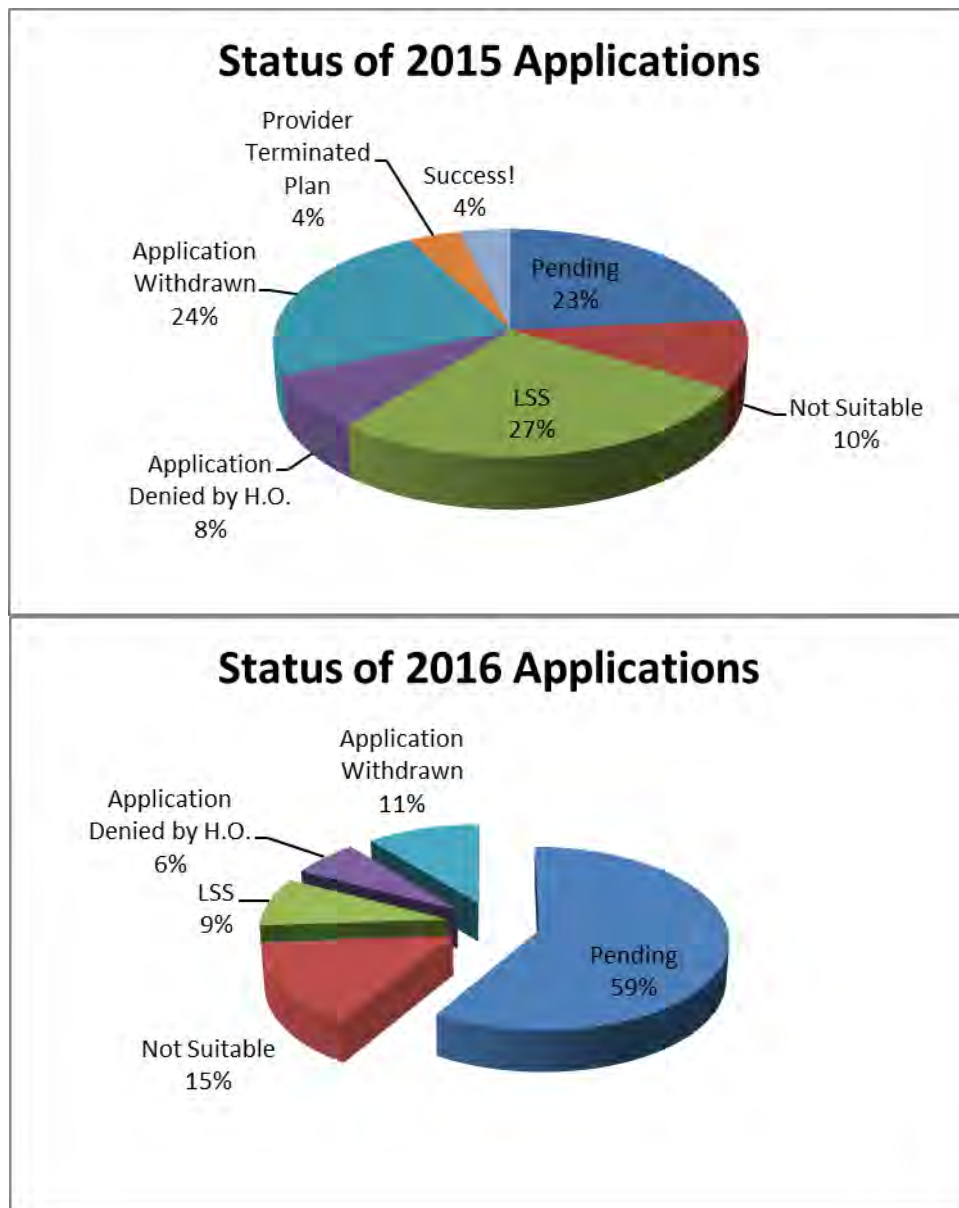
The Act requires two types of updates: annual updates by the Executive Director and periodic, more comprehensive, updates undertaken by the Board. Annual updates are completed during the last quarter of each calendar year. Periodic updates are required every three years. The Board satisfied the second requirement with the adoption of the current iteration of the medical fee rule effective on October 1, 2015. A second periodic review is scheduled to take place during 2017.

### II. MEDICAL UTILIZATION REVIEW

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 continues its discussions regarding opioid use and misuse in Maine's workers' compensation, however the Board does not currently have approved treatment guidelines. The legislature, in 2016, passed LD 1646, *An Act To Prevent Opiate Abuse by Strengthening the Controlled Substances Prescription Monitoring Program*. This legislation applies to all opioid prescribing in Maine. The Board is informally monitoring the legislation's impact on opioid prescribing in workers' compensation.

### III. EMPLOYMENT REHABILITATION

The Board has 21 approved employment rehabilitation providers pursuant to Title 39-A M.R.S.A. §217 and Board Rules Chapter 6. These rehabilitation professionals provide service, treatment or training necessary and appropriate to return an employee to suitable employment. In 2016, the Board received 47 applications for employment rehabilitation services, which represents a slight decrease compared to recent years. Of the requests, 40 were from injured workers, five from employers/insurers, and two were from our Administrative Law Judges. The charts below show the status of 2015 and 2016 applications as of December 31, 2016.



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

#### **IV. INDEPENDENT MEDICAL EXAMINERS**

The Section 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 510 requests for independent medical exams in 2016. Of the 510 requests, 294 were from injured workers, 200 from employers/insurers, 1 from an administrative law judge, and 15 by agreement of the parties.

## **6. WORKER ADVOCATE PROGRAM**

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### **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 for Advocate representation, 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 mediations and hearings; 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 noted 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 (effective 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 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 suggest 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. The additional responsibilities associated with this representation require greater skill and more work than previously required. 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. In 2014, the Board adopted a new Rule on Advocate representation allowing advocates to cease representation in cases where injured workers are uncooperative; e.g., refusing to respond to requests for meetings, information, etc. The Rule is based on the Maine Bar Rules. While not frequently used, in the situations the Rule does apply, it helps advocates better manage their caseloads and spend time more productively with employees who need assistance, and less time chasing uncooperative clients. 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. Advocates representing an injured worker at mediation must first obtain medical records and other evidence related to 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 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 formal hearing.

At mediation, the parties appear before a Mediator, discuss the claim specifics, present the issues, and work to secure 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 by the end of the mediation stage of dispute resolution, and thus avoid formal hearings.

Cases not resolved at mediation typically involve factual and/or legally complex disputes. These claims usually 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 frequently 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 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 56% of the mediations held in 2016. 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. In 2016, the Advocate Division upgraded its case management and statistics software.

### Advocate Cases at Mediation\*

	Assigned	Disposed	Pending 12/31	% of All Pending
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%
2016	1,608	1,089	228	56%

\*The Advocate Division started using new software this year. This software allows us to capture data unavailable to us in the past. We anticipate revising this table in next year's report to provide more detailed data.

In 2016, the number of cases handled by Advocates at mediation represents a slight decrease as compared to the number of cases taken to mediation in 2015. The Advocate Division handled 56% of all mediations in our system in 2016.

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 2006 through 2016.

### Advocate Cases at Formal Hearing\*

	Assigned	Disposed	Pending 12/31	% of All Pending
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%
2016	693	382	333	34%

\*The Advocate Division started using new software this year. This software allows us to capture data unavailable to us in the past. We anticipate revising this table in next year's report to provide more detailed data.

The Advocates handled more formal hearings in 2016 than in 2015. It should be noted that the Advocates continue to be responsible for 34% of the formal hearings held across the state in 2016.

## 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.

Over the 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 123<sup>rd</sup> 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

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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 used regularly:

- The EDI Payments initiative was the primary focus for the majority of development. Our goal was to be a position to offer to our trading partners the ability to send payment information via EDI thus reducing about 75% of the paper they are sending the Workers' Compensation Board. The initial plan was to offer submission of payment reports using the IAIABC Claims Rel 3.0 in a voluntary basis only and to then mandate Claims Release 3.1 in July 2017. The time frame for production of Claims Rel 3.1 was rescheduled to August of 2018 due the extensive number of changes submitted by jurisdictions for inclusion into Release 3.1. We determined there would be less difficulty for the Trading Partners to wait until Release 3.1 and abandon the voluntary use of Release 3.0. We will continue testing for the changes to 3.0 and will incorporate the changes included in Release 3.1 as they are finalized.
- There was a Claims 3.0 change for the Claim Type Code that all jurisdictions must adopt within a two-year time frame. Maine has elected to have this modification implemented in the 3<sup>rd</sup> Phase, which must be in production by November 6, 2017. Along with this change, we also need to cease usage of the UR and CO transactions. Most of this work has been completed but implementation requires Rule writing.
- We completed the programming and introduced to our trading partners the ability for the Board to send back to claim administrators (CA) claim denial forms (NOC) in a .pdf format. Providing the CA community the forms will ensure all parties to the dispute have the same information as the Board. All too often, when parties arrive at a mediation there are various versions of Board documents. This causes confusion and complicates the mediation process. We have also completed programming to return the FROI to the CA community for distribution to the employee and employer involved in the claim. These efforts have paved the way for sending additional forms to all parties in the future.
- In July, the WCB replaced our law office client tracking software, Abacus. The Advocate Division had been using the application since 1997 and was comfortable with the product. The change was necessitated by the product supplier's decision to move all clients holding a lifetime license to change the application at an annual cost of \$36k. When the lifetime license was in place, they advised they were no longer going to honor the license. It would have been far more costly to litigate our contract rights than to purchase a new product. The Advocate program now uses the law office package, Practice Master. Advocate staff is credited with the project success due to their work reviewing functional needs, testing the new product, and continuing their current workload.
- The network infrastructure for the two WCB office relocations this year allowed for an upgrade to the bandwidth in both the Portland and Augusta Central locations. Additionally all internal and security wiring was upgraded at the time we moved.

- The project known as the Progress Upgrade has continued to be plagued with false starts, poor planning and oversight, and basic failure. What should have been an eight-month to one year project is now in its fourth year. We have just begun testing to identify issues with the migration from Progress Release 9 to Progress Release 11. In addition to the time delay on this project, OIT has been unable to provide cost documentation and unable to tie the costs to specific project milestones. This has been disconcerting because the project has taken so long and the costs keep mounting.
- The WCB also replaced the enterprise search application known as ISYS Search Software due to a company buyout and the new owner's discontinuation of their desktop product. This left the Board with a decision to either use the Cloud version of the application with a \$33k yearly subscription cost or find an alternative product. The Board went with the latter and selected dtSearch for initial investment of \$5k. Staff was trained and is currently working with the new product.

#### Future Challenges:

- Computer upgrades to Microsoft Windows 7 32-bit operating system were completed in July 2013. This work did not enhance performance of our computers due to the 3 GB memory limitation. Our operating system needs to be upgraded to a 64-bit version so additional memory can be installed for better system performance.
- OIT also informed the WCB the Progress database is not in their 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. Hosting and application development support are major topics that will need to be evaluated in the upcoming years.

## 8. BUDGET AND ASSESSMENT

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In 1992, the Legislature established a statutory assessment of insurers and self-insurers to fund Board operations. Previously the agency received a General Fund appropriation. Assessments are paid by Maine's employers, both self-insured and those with insurance. By adopting a funding assessment, the Legislature intended the entities using the workers' compensation system pay the system costs. At the same time, the Legislature placed an annual cap on the dollar amount allowed to be assessed, limiting the amount of revenue we could generate. The current Administrative Fund assessment cap of \$11,200,000 has been in place since 2012. The Legislature voted in 2016 to increase the assessment cap to \$13,000,000 annually starting in Fiscal Year 2018 (July 1, 2017 – June 30, 2018).

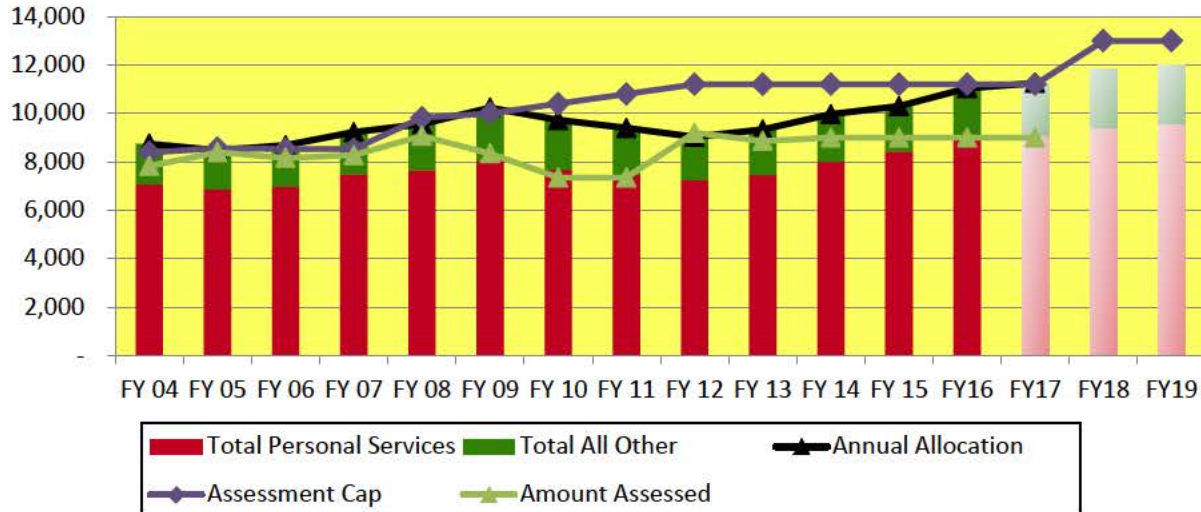
The Board cannot budget more than it can raise in revenue from the annual assessment, we do have other minor revenues collected from the sale of publications and some fines and penalties. The majority of the fines and penalties, however, are paid into the Rehabilitation Fund or the General Fund and are not available for Board expenses. The Board-approved budget for fiscal year 2017 ending on June 30, 2017 is \$11,256,581. The budget for fiscal year 2018, ending June 30, 2018, is \$11,819,123 and the budget for fiscal year 2019, ending June 30, 2019, is \$12,000,871.

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 reserve fund requests via the financial order process. The bar chart entitled "WCB – 15 Year Schedule of Actual and Projected Expenditures" shows actual expenditures through FY16 and projected expenditures for FY 2017 through FY 2019. The chart also shows the amounts actually assessed through FY17 and the assessment cap through FY 19.

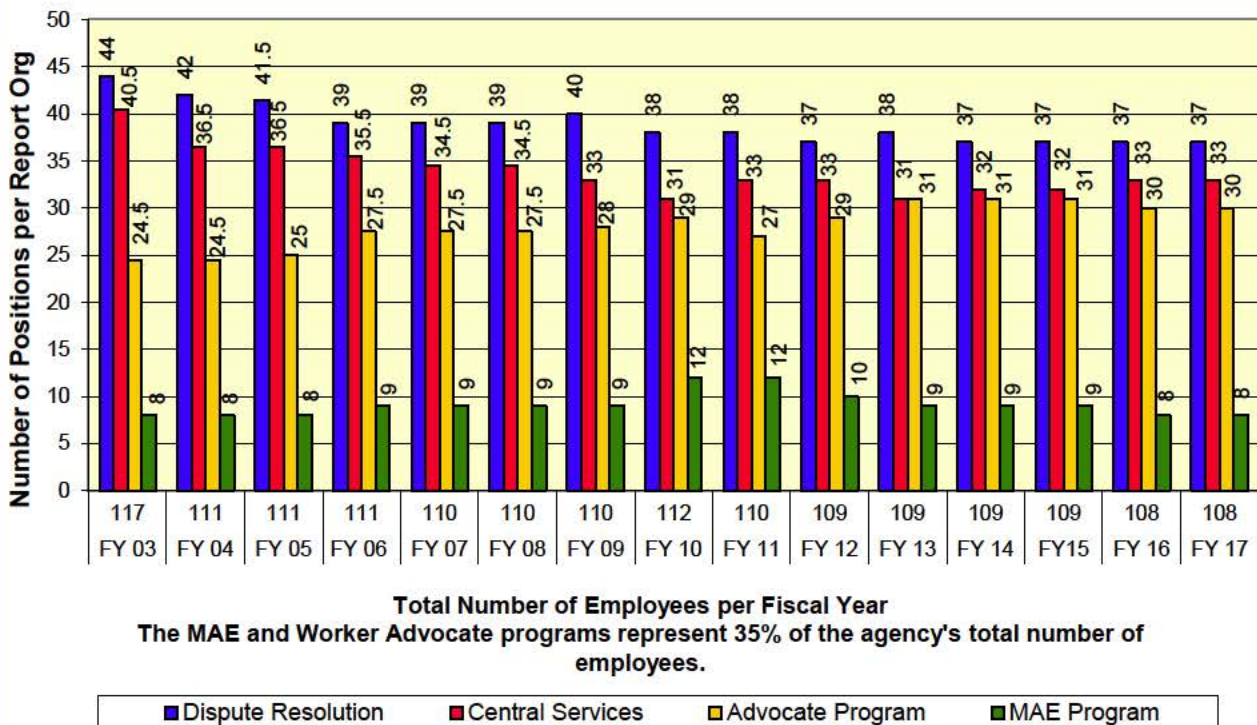
Since 2003, the Board has reduced staff by 9 positions from 117 to the FY17 level of 108. Despite the decrease during this period, the Board has accommodated staffing for new divisions created by the Legislature: the Monitoring, Audit & Enforcement (MAE) program, and the Advocate Division; and the Appellate Division created in 2012. The bar chart entitled "WCB – Personnel Changes Since FY03" illustrates the Board's efficient use of personnel.

**WCB - 15 Year Schedule of Actual and Projected Expenditures**  
**Workers' Compensation Administrative Fund - 0183**  
**December 2016**

(figures for FY 17, FY 18 and FY 19 are budget projections)



**WCB - Personnel Changes Since FY 03**  
**December 2016**





## 9. CLAIMS MANAGEMENT UNIT

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The Claims Management Unit (CMU) operates using a “case management” system. Individual claim managers process a file from start to finish, handling all filings for a given date of injury. The insurance carriers, claims administrators, and self-insured employers benefit from having a single contact in the unit. The Unit coordinates with the Monitoring section of the MAE Program to identify carriers who frequently file late forms or may be consistently late in making required payments to injured workers. Case managers in CMU review carrier’s filings to ensure payments to injured workers are accurate and that the proper forms are completed and filed with the Board. The Unit participates in compliance and payment training workshops quarterly with the MAE Program and as requested.

Electronic Data Interchange (EDI) has created efficiencies in this department. It allows managers to increase their claims management efforts through the electronic filing of the First Reports of Injury and Notices of Controversy. 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.

Currently the Employer’s First Report of Occupational Injury or Disease and an initial Notice of Controversy are the only two forms that can be filed by EDI (corrections to a Notice of Controversy cannot be made electronically and must be filed by a paper form). All others Board forms are filed in paper form and are manually entered into our system.

For each paper form received, Claims staff searches the database for a matching claim, checking by Social Security number, employee name and date of injury. CMU staff verifies the accuracy of payment information on each claim with a date of injury after 1966. Cost of Living Adjustments (COLA) are calculated on claims with dates of injury from January 1, 1972 through December 31, 1992.

The Unit is also responsible for annually producing the “State Average Weekly Wage Notice (SAWW).” This notice contains information needed to calculate COLA’s on claims, to calculate permanent impairment payments, and determine whether to include fringe benefits when calculating compensation rates. The SAWW is determined by the Department of Labor each year. Using the SAWW, Claim staff calculates the COLA multiplier and maximum benefit in effect for the upcoming year.

Following is a brief description of the processing for the most often used forms.

**Petitions** – staff search to match the date of injury on the Petition to an existing claim. The file for the claim is located and the form information is entered in the Board’s database. The file is sent to the assigned Claims Resolution Specialist in the appropriate regional office for dispute resolution. If there is no claim matching the date of injury on the Petition, CMU contacts the person who filed the form and requests they file an Employer’s First Report of Occupational Injury or Disease so a claim file can be started.

**Notices of Controversy** - The initial form is filed electronically. Corrections to the form are submitted to the Board on paper forms and the changes are entered by Claims staff into the Board’s database of claims.

**Answers to Petitions** - The file for the claim is located, the information in the Answer is entered into the database and the Answer is filed or sent to regional office holding the file.

**Wage Statements** - The average weekly wage is calculated by Claims staff in accordance with the Statute, Board Rules and Law Court decisions. The average weekly wage is entered into the database and the form put in the paper file.

**Schedule of Dependent(s) and Filing Status Statements** - The information on this form is entered into the database and the form is placed in the physical file.

**Fringe Benefit Worksheets**- The form is logged in as received and sent to the file.

**Memorandum of Payment, Discontinuance or Modification of Compensation, Consent between Employer and Employee** - The form is checked for accuracy; dates, the compensation rate, and the wage are compared to information previously filed. The information is entered into the database and the form is sent to the file. If there is any discrepancy, a telephone call or e-mail message is directed to the person who filed the form. Explanations or amended forms are requested when necessary.

**21-Day Certificate or Reduction of Compensation** - The form is checked for accuracy; dates, the compensation rate and the wage are compared to information previously filed. Information from the form is entered in the database. If the Claims staff determines there has been an improper suspension or reduction, they contact the person who prepared the form and request a correction. The file and form are sent to a Claims Resolution Specialist in a regional office if the form is not corrected promptly.

**Lump Sum Settlement** - The information on the form is entered into the database and the form filed.

**Statement of Compensation Paid** - The information on this form is compared to information previously reported, the form is entered into the database, and the form is filed. A large number of these forms have errors and staff must then research the file, contact the person who filed the form, and request corrected or missing forms.

**BREAKDOWN OF CLAIM FORMS FILED WITH THE WORKERS' COMPENSATION BOARD**

Information filed from November 1, 2015 - October 31, 2016

Information/Form	EDI	CMU	TOTAL
Employer's First Report of Occupational Injury or Disease	30,186	69	30,255
Notice of Controversy	10,757	52	10,809
Petitions		4,889	4,889
Answers to Petitions		821	821
Wage Statement		9,467	9,467
Schedule of Dependent(s) and Filing Status Statements		61	61
Fringe Benefits Worksheet		8,769	8,769
Memorandum of Payment		5,899	5,899
All other payment forms, including:		15,473	15,473
• 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		15,236	15,236

## 10. INSURANCE COVERAGE UNIT

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The Insurance Coverage Unit is responsible for filings and records concerning 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 matches 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 responds to these calls and, when possible, resolves the matter. The Unit is also responsible for processing applications to waive the workers' compensation coverage requirement, maintaining waiver records and rescinding waivers when applicants no longer meet the statutory requirements.

For the twelve (12) month period November 2015 through October 2016, the Board received and processed 55,348 filings providing employers' proof of workers' compensation insurance coverage. 5,462 "no record of coverage" letters were sent to employers requesting information to verify if they were subject to the coverage requirement, and if so, whether they had workers' compensation insurance. Information received in response to these letters allowed the Unit to determine 645 employers fell under one of the exemptions to the requirement for workers' compensation insurance. The Unit also received and processed 1,355 applications to waive the coverage requirement.

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 in maintaining an accurate, up-to-date employer database utilized by both agencies.

## 10A. PREDETERMINATION UNIT

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The Predetermination Unit processes applications for predetermination of employment status. 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 uniform "independent contractor" definition in 2012. This definition became effective on January 1, 2013. Effective January 1, 2013, 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). This form replaced WCB-264, WCB-265 and WCB-261. The other two applications are exclusive to wood harvesters. The first is titled Application for Certificate of Independent Status (Form WCB-262). This application is used by the wood harvester so he/she can apply for a certificate of independent status. The second wood harvester form is titled Application for Predetermination of Independent Contractor Status to Establish Conclusive Presumption (Form WCB-260). This is a 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 if injured at work.

In calendar year 2016, the Predetermination Unit received 7,097 applications. All applications were processed within 30 days of filing as required by the statute, and most were processed within several days of Board receipt. 5,836 applications were approved, both conclusive and rebuttable, and 27 were denied. Of the total applications received, 1,878 could not initially be processed because they were incomplete or used an old form. The applicants were contacted by phone or letter, asked for additional information or sent an updated form; 617 of the returned applications were eventually processed. The remaining 1,261 were not processed because the applicant did not reply or provide the required information.

## **11. COORDINATION WITH OTHER AGENCIES**

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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 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. Today, the Board can more accurately determine whether employers are complying with the obligation to secure workers' compensation coverage for their employees.

The Board, DOL and other interested parties worked together to create a single, uniform "independent contractor" definition 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 application 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 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 when calculating the annual assessment figures.

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

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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 conduct 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 penalty payments, and for initiating collection through 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 established 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 obligations in 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 penalty hearings; and, when able, negotiates consent agreements resolving 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 (MAE). It represents the MAE unit when a dispute arises as a result of one of an audit. AIU works with the Attorney General's office to enforce subpoenas, and to identify and refer cases for criminal prosecutions against employees and employers who have committed egregious or repeated violations of the Workers' Compensation Act.



## 13. GENERAL COUNSEL REPORT

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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. LEGISLATIVE ACTIVITY

During the Second Regular Session of the 127<sup>th</sup> Legislature, two bills impacting workers' compensation were enacted. The first, proposed by the Board, directly addresses Title 39-A. The second doesn't directly amend the Act, but will have an impact on workers' compensation claims.

(1) An Act To Improve the Workers' Compensation System. (P.L. 2015, c. 469; LD 1553).

P.L. 2015, c. 469 does the following:

(a) In August 2015, the Law Court issued a decision in *Holyoke v. The Workers' Compensation Board*, 2015 ME 99. In its decision, the Law Court held an employer can comply with the Act's coverage requirements by purchasing a policy on an individual employee. The Court held the Board could not 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.

Employee misclassification was, and continues to be, significant problem for employers that comply with the Act by covering all employees from the inception of a policy. The Board receives complaints from employers who think they are at a major competitive disadvantage because they, as opposed to their competitors, have complied with the law. The *Holyoke* decision eliminated the only recourse the Board had to ensure compliance by all employers.

Chapter 469 resolved this problem by clarifying the Board has the authority to pursue penalties against employers who purchase a policy but misclassify some workers as independent contractors. The available penalties include civil monetary fines, criminal charges, and, revocation of corporate status or professional license. The latter penalties have traditionally been reserved for the most egregious offenders (e.g. – employers that are found to have multiple violations) and, with respect to revocation of corporate status, etc., for those employers that fail to pay fines that have been imposed by the Board.

Chapter 469 includes language that reflects this practice. Specifically, criminal charges, and, revocation of corporate status or professional licenses are reserved for cases involving knowing violations. Chapter 469 defines knowing violations as follows:

For purposes of this subsection, a violation is considered a knowing violation if the employer has previously obtained workers' compensation insurance and that insurance has been cancelled or that insurance has not been continued or renewed, unless the cancellation, failure to continue or nonrenewal is due to a substantial change in the employer's operations that is unrelated to the classification of individuals as employees or independent contractors; the employer has been notified in writing by the board of

the need for workers' compensation insurance; the employer has had one or more previous violations of the requirement to secure the payment of the compensation provided for by this Act; or the employer misclassifies an employee as an independent contractor despite a contrary determination by the board.

(b) In a concurring opinion issued in *Holyoke*, our Chief Justice suggested the Act should be amended to provide for direct review of decisions issued by the Board's Appellate Division as opposed to the underlying decision issued by an individual Administrative Law Judge (ALJ). Typically, when the Law Court hears an appeal arising out of an administrative agency, like the Board, it reviews the original agency decision instead of the intervening appellate decision (usually the Superior Court). Because appeals of decisions issued by the Board's ALJ's within the agency, by the Appellate Division, it made sense to have the Court review the decision of the appellate panel. Chapter 469 includes language to make that change. Law Court appeals now review the decision issued by the Appellate Division.

(c) Chapter 469 also addressed the Board's much misunderstood assessment cap. The Board's assessment cap sets a limit on the amount of revenue the Board can raise to fund its operations. (This is necessary because the Board does not receive any General Fund money.) Because the Board's expenses increase yearly, for fixed costs such as rent, insurances, etc., it is inevitable a fixed cap will eventually be rendered inadequate. The Board decided proactively to address the cap now, before it became a problem. Accordingly, the cap was raised to \$13M from \$11.8M beginning in fiscal year 2017-2018.

The full text of the law can be found here:

[http://www.mainelegislature.org/legis/bills/display\\_ps.asp?id=1553&PID=1456&snum=127](http://www.mainelegislature.org/legis/bills/display_ps.asp?id=1553&PID=1456&snum=127)

(2) An Act To Prevent Opiate Abuse by Strengthening the Controlled Substances Prescription Monitoring Program (P.L. 2015, c. 488; LD 1646.)

Ch. 488 makes the following changes to the laws governing the Controlled Substances Prescription Monitoring Program and the prescribing and dispensing of opioid medication and other drugs:

- It provides to the prescriber immunity from liability for disclosure of information to the Controlled Substances Prescription Monitoring Program.
- It allows the Department of Health and Human Services to provide prescription monitoring information to and receive prescription monitoring information from a Canadian province.
- It clarifies that staff in hospitals and pharmacies are authorized to access the Controlled Substances Prescription Monitoring Program insofar as the access relates to a patient's prescription.
- It establishes a fine for dispensers who fail to submit prescription monitoring information to the Controlled Substances Prescription Monitoring Program of \$250 per incident, not to exceed \$5,000 per calendar year.
- It provides that upon the initial prescription of a benzodiazepine or an opioid medication to a person and every 90 days for as long as the prescription is renewed, a prescriber must

check prescription monitoring information maintained by the Controlled Substances Prescription Monitoring Program for records related to that person. A prescriber who violates this provision is subject to a fine of \$250 per incident, not to exceed \$5,000 per calendar year.

- It requires dispensers to check the prescription monitoring information for out-of-state individuals, for out-of-state prescribers, for individuals paying cash and if an individual has not had a prescription for an opioid medication in the previous 12 months. A dispenser who violates this provision is subject to a fine of \$250 per incident, not to exceed \$5,000 per calendar year.
- It provides that the failure of a health care provider who is a prescriber or dispenser to check the prescription monitoring information or to submit prescription monitoring information to the Department of Health and Human Services as required by law is grounds for discipline of that health care provider.
- It requires that a health care provider who is a prescriber of opioid medication or a veterinarian who is a prescriber of opioid medication must complete 3 hours every 2 years of continuing education related to opioid medication prescribing practices.
- It sets limits on the supply of opioid medication that may be prescribed to a patient to 7 days for acute pain and 30 days for chronic pain beginning January 1, 2017.
- It sets limits on the amount of opioid medication that may be prescribed to no more than 100 morphine milligram equivalents for new prescriptions beginning on the effective date of this legislation. For patients who have prescriptions that total over 100 morphine milligram equivalents on the effective date of this legislation, the prescribing limit is 300 morphine milligram equivalents; those patients must be tapered to a level of no more than 100 morphine milligram equivalents by July 1, 2017.
- It establishes statutory exceptions to opioid medication limits and requires the Department of Health and Human Services to adopt rules for other exceptions. The rules must be adopted by January 1, 2017.
- It clarifies that opioid medication limits do not apply to health care professionals directly administering medication to a patient in an emergency room setting, inpatient hospital setting, long-term care setting or residential care setting.
- It provides immunity for pharmacists who dispense opioid medication over 100 morphine milligram equivalents in accordance with a prescription.
- It requires prescribers to electronically prescribe opioid medication if the capability exists. A prescriber who does not have the capability for electronic prescribing must seek a waiver from the Commissioner of Health and Human Services listing the reasons why the prescriber is unable to electronically prescribe. Pharmacists must be able to receive electronic prescriptions of opioid medication or seek a waiver.

- It requires pharmacists and veterinarians who prescribe opioid medication to register with the Controlled Substances Prescription Monitoring Program.
- It authorizes pharmacists to partially fill prescriptions of schedule II controlled substances upon request from the patient.
- It requires the Department of Professional and Financial Regulation, Bureau of Insurance to evaluate the effect of prescription limits on out-of-pocket costs and report on options to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters.
- It requires the Department of Health and Human Services to make enhancements to the Controlled Substances Prescription Monitoring Program through its request for proposals process for the maintenance of the program. It provides that a penalty may not be imposed for a violation of the limits on opioid medication prescribing until the enhancement to the Controlled Substances Prescription Monitoring Program that will enable the conversion of dosages to and from morphine milligram equivalents is implemented.
- It requires the Department of Health and Human Services to report to the joint standing committees of the Legislature having jurisdiction over health and human services matters and occupational and professional regulation matters on the implementation of the registration and use of the Controlled Substances Prescription Monitoring Program, improvements to the program, the effect of opioid medication prescribing limits on the prescriber workforce, the implementation of continuing education requirements and progress on the electronic prescribing of opioid medication.

The Workers' Compensation Board has been working with a small group of physicians to address opioids in workers' compensation. This work will continue and will be tailored to meet the LD 1646 obligation.

The full text of the law can be found here:

[http://www.mainelegislature.org/legis/bills/display\\_ps.asp?PID=1456&snum=127&paper=&paperId=l&d=1646](http://www.mainelegislature.org/legis/bills/display_ps.asp?PID=1456&snum=127&paper=&paperId=l&d=1646)

## **II. RULES**

(1) As required by the Act, the Executive Director updated the medical fee schedule in 2016 by incorporating the most recent CPT codes, MS-DRGs and relative values used by Medicare to set prices for health care services.

(2) In 2016, the Board established a taskforce to undertake a comprehensive review of its rules. The taskforce includes representatives of employers, employees, insurers, self-insurers and other interested parties as needed.

The taskforce met four times in 2016 and hopes to conclude its work early in 2017. At the conclusion of its work, the taskforce will provide a report to the Board for its consideration. The report will highlight areas of agreement, with specific proposals, and will also summarize areas where agreement could not be reached. With respect to the latter issues, the Board will be given a summary of the opposing views of the taskforce members.

### **III. 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 2016.

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)

### **IV. 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 2016.

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

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The Board's Appellate Division has completed its fourth 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 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 issue of significant importance to the workers' compensation community. An *en banc* panel consists of all ALJs except the one who issued the decision being appealed.

Two hundred fifty-four notices of intent to appeal have been filed since August 2012; 55 were filed in 2016. The Division has held oral argument in 61 cases, including before five *en banc* panels, and has issued written decisions in 136 cases, with 49 issued in 2016. Fifty-three appeals (eleven in 2016) 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.

Notable 2016 Appellate Division decisions include *Noll v. LePage Bakeries, Inc.*, Me. W.C.B. No. 16-25 (App. Div. *en banc* 2016) and *Bourgoin v. Twin Rivers Paper Co., LLC*, Me. W.C.B. No. 16-26 (App. Div. 2016). In these cases, an *en banc* panel and three-member Appellate Division panel, respectively, affirmed ALJ decisions ordering employers to reimburse injured employees for costs related to medical marijuana. The panels reasoned the employers did not identify any conduct that constituted a violation of the Federal Controlled Substances Act; the employers were not "private health insurers" under the Maine Medical Use of Marijuana Act, 22 M.R.S.A. § 2426(2)(A), and thus were not protected from being required to reimburse an employee for medical marijuana costs; and the evidence supported the ALJs' conclusions that for both employees, medical marijuana was a reasonable and proper treatment. The employees in these cases both suffered from intractable pain, due to work injuries, that persisted over many years and had not been successfully treated by other means, including opiates.

*Torrey v. Island Nursing Home.*, Me. W.C.B. No. 16-34 (App. Div. 2016), was heard by an *en banc* panel of the Appellate Division before an audience of over 130 attorneys and industry professionals at the 2016 annual Comp Summit in Rockport, Maine. After the hearing, the Appellate Division issued a decision affirming an award of benefits to a certified nursing assistant who suffered complications from a hepatitis B vaccination offered and received at work.

The Law Court issued one decision in an appeal from the Appellate Division in 2016: *Freeman v. NewPage Corp.*, 2016 ME 45, 135 A.3d 340. The Court affirmed an administrative law judge decision determining that although the employee was already receiving the statutory maximum weekly compensation benefit due to a 2007 injury, she was not entitled to further compensation during a

period of incapacity that resulted from a separate work-related injury in 2011. In effect, the Court construed the statutory maximum benefit provision, 39-A M.R.S.A. § 211, as a total ceiling on the potential benefits available to an injured worker.

The Law Court has accepted one case from the Division for appellate review in 2016, *Bailey v. City of Lewiston*, Me. W.C.B. No. 16-11 (App. Div. 2016). The issue in *Bailey* is whether the doctrine of *res judicata* precludes the reduction of an employee's whole person permanent impairment level, set by a prior decree. A decision in that case is expected in 2017.

One significant legislative change affects the Appellate Division. Now, when the Law Court exercises its discretionary jurisdiction and grants a petition for review, it will review and potentially defer to the legal interpretations of the three-member Appellate Division panel. Formerly, the Law Court bypassed the Appellate Division decision and reviewed the legal conclusions of the single administrative law judge who issued the decision in the first instance. P.L. 2015, ch. 461, § 2, codified at 39-A M.R.S.A. § 322.

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

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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, 2016, NCCI filed with the Superintendent for an overall 0.1% increase in the advisory loss costs effective April 1, 2016. According to NCCI, the loss-time claim frequency has been relatively flat since 2006 but the frequency has increased in recent policy years and the average indemnity cost—a measure of severity—has been declining, except for slight increases in policy years 2011 and 2012. Medical costs were increasing until the latest policy year and now consume 50% of Maine's total benefit costs. Indemnity costs account for the other 50% of total benefit costs. The Superintendent approved NCCI's filing effective April 1, 2016.

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

Industry Group	Percentage Change
Office & Clerical	-4.30%
Contracting	-2.40%
Manufacturing	-1.00%
Goods & Services	1.70%
Miscellaneous	2.50%

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:

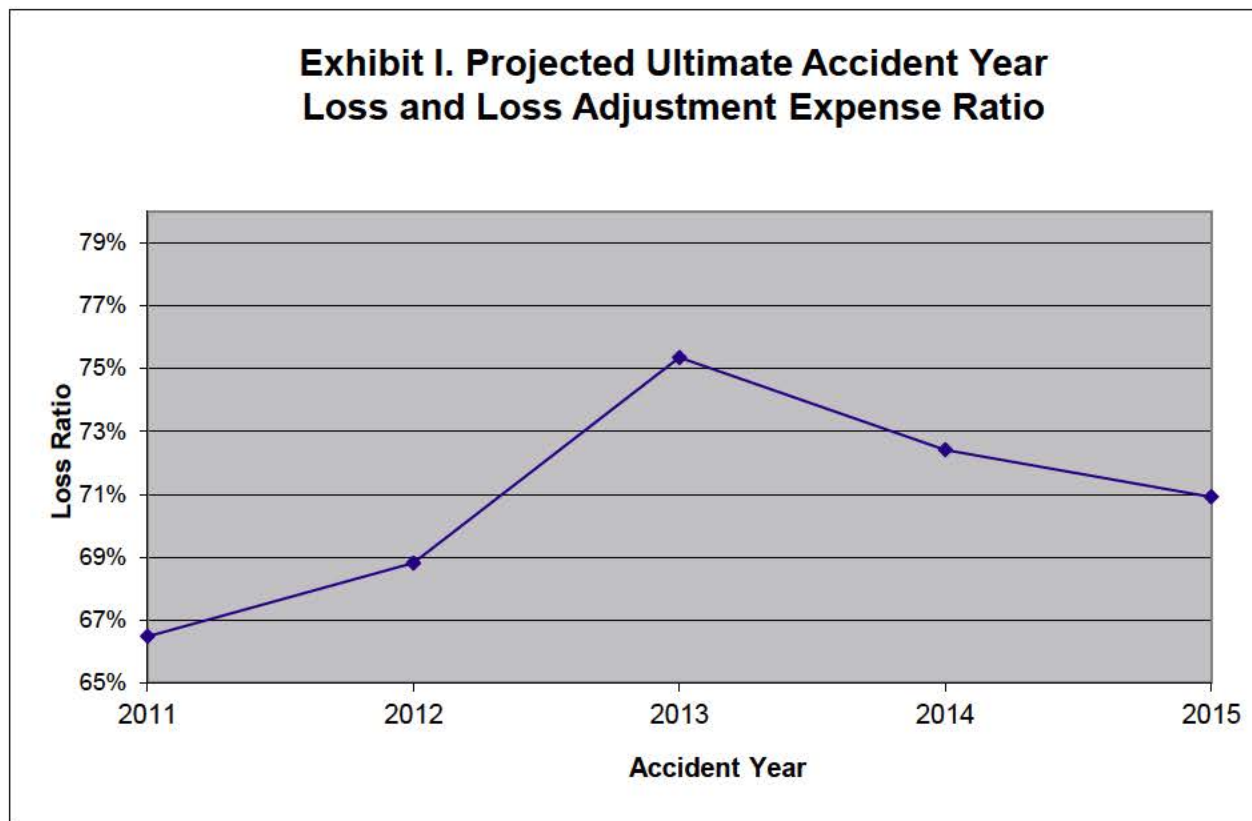
- ❑ **Accident year** experience as of a specific evaluation date matches 1) all paid losses and loss reserves as of the specific evaluation date for injuries occurring during a given 12-month period (regardless of when the losses are reported) with 2) all premiums earned during the same period of time (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, and/or decrease in reserves (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 and/or increase in reserves.

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 75% for the past five years. The 2015 ratio was 70.9%, indicating that \$70.90 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium.



Source: NCCI

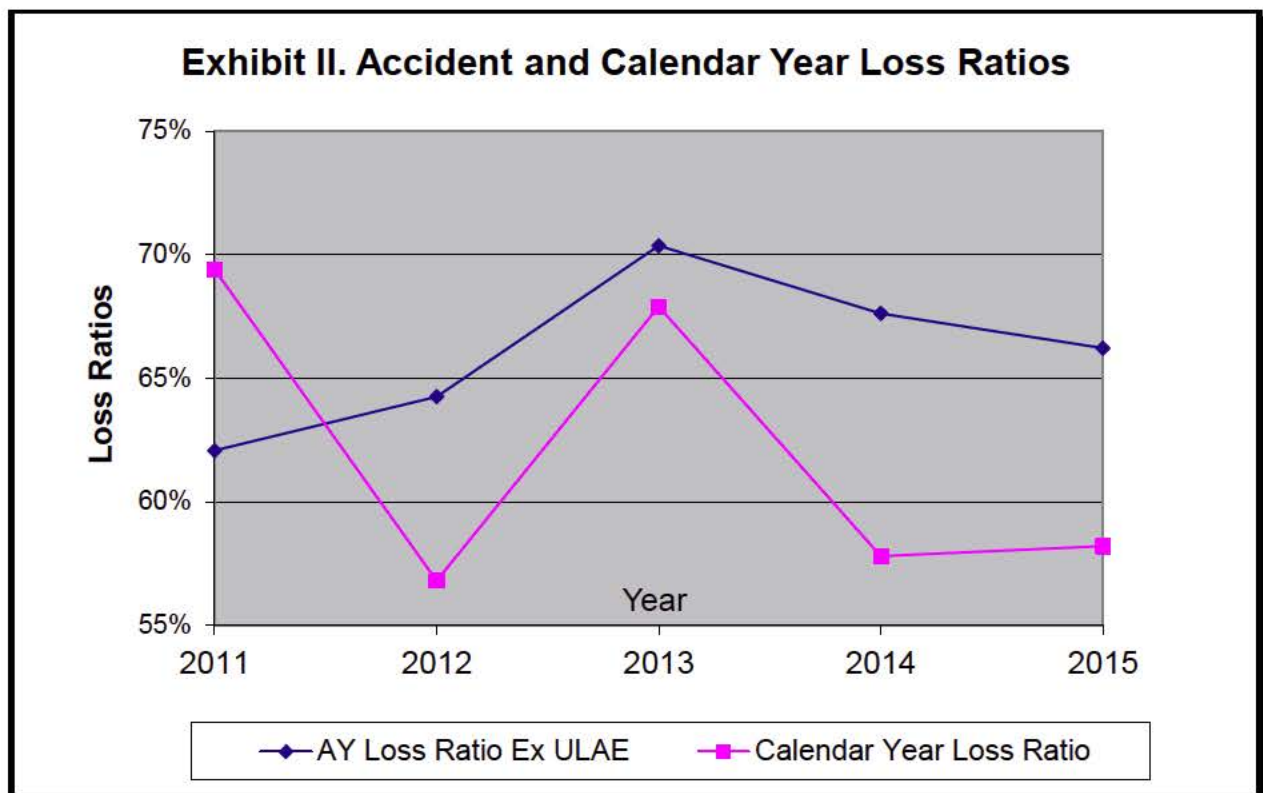
## II. CALENDAR YEAR AND ACCIDENT YEAR LOSS RATIOS

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 2011 to a high of 70% in 2013. Calendar year loss ratios show a slight downward trend, and accident year loss ratios show an upward trend, over a five year period.



Note: ULAE: Unallocated Loss Adjustment Expense

Source: NCCI

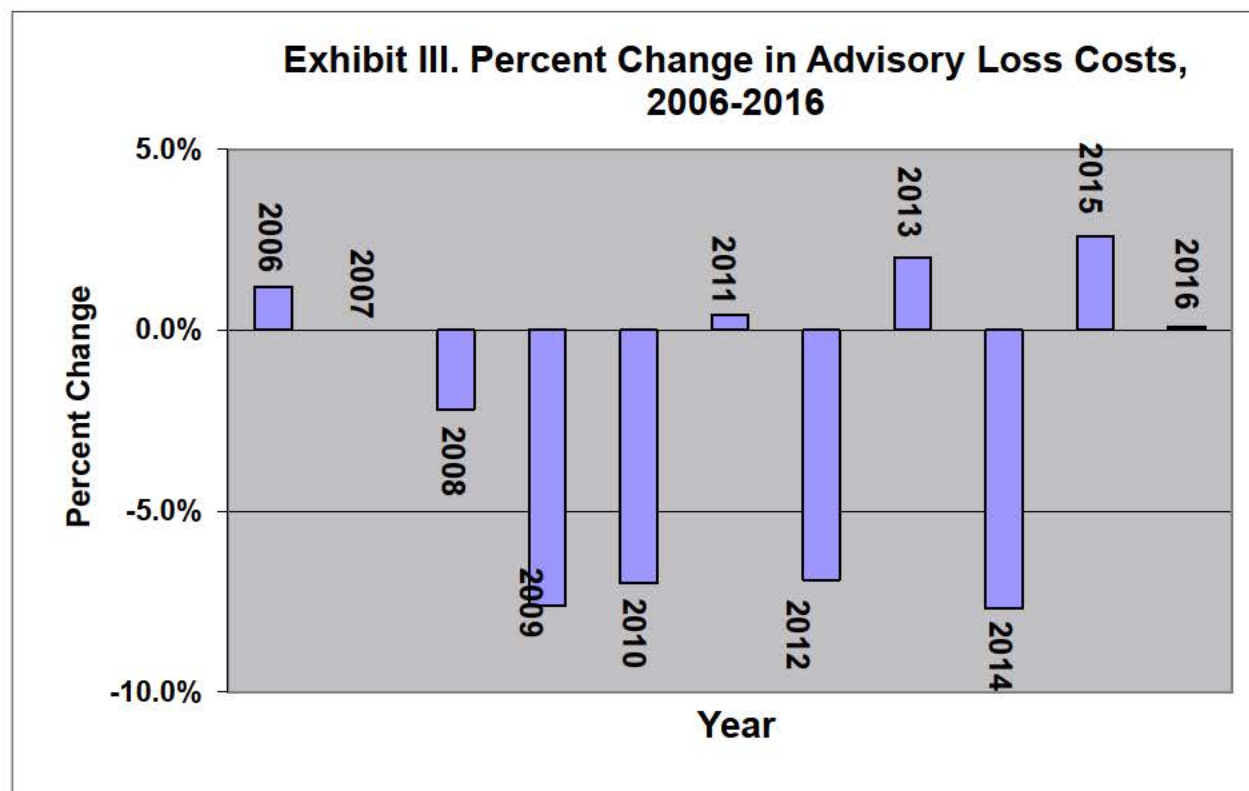


### 3. LOSSES IN WORKERS' COMPENSATION

#### 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, 2016, the Superintendent approved a 0.1% increase in the workers' compensation advisory loss costs. Advisory loss costs are now about 10% lower than they were six 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.

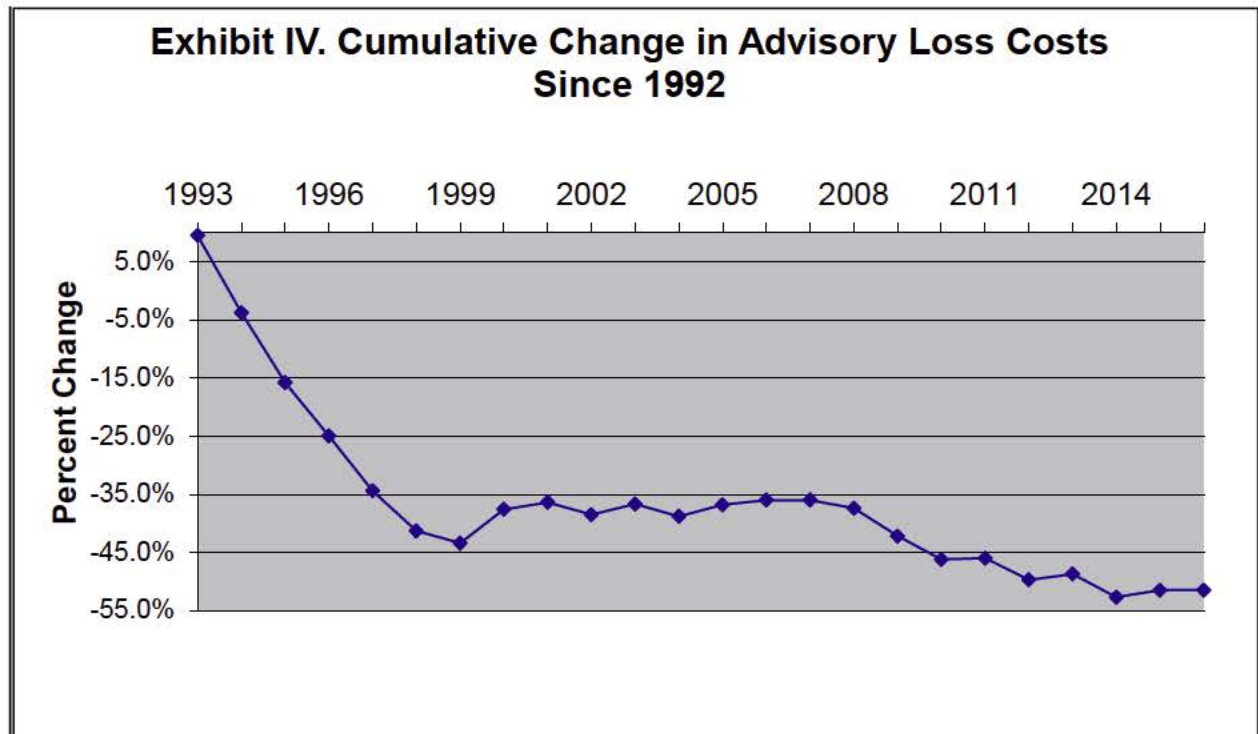


Source: NCCI



## II. CUMULATIVE CHANGES IN ADVISORY LOSS COSTS

Exhibit IV shows the cumulative changes in loss costs since 1993. Average loss costs have declined more than 15% over the past six years.



Source: NCCI

## 4. MARKET STRUCTURE AND COMPETITION

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### 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, 2016, the Superintendent had authorized 327 companies to write workers' compensation coverage. This number is not the best indicator of market concentration because some insurers have no written premium. In 2015 MEMIC, the insurer of last resort, accounted for over 64% 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 2015.

<b>Table I: Number of Companies by Level of Written Premium—2015</b>	
<b>Amount of Written Premium</b>	<b>Number of Companies At That Level</b>
>\$10,000	150
>\$100,000	97
>\$1,000,000	24

Source: Annual Statements Filed with the Bureau of Insurance. Total written premium for 2015 was over \$220 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 2014 Competition Database Report, which was prepared in 2015, the HHI for workers' compensation insurance in Maine was 4,309. 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.

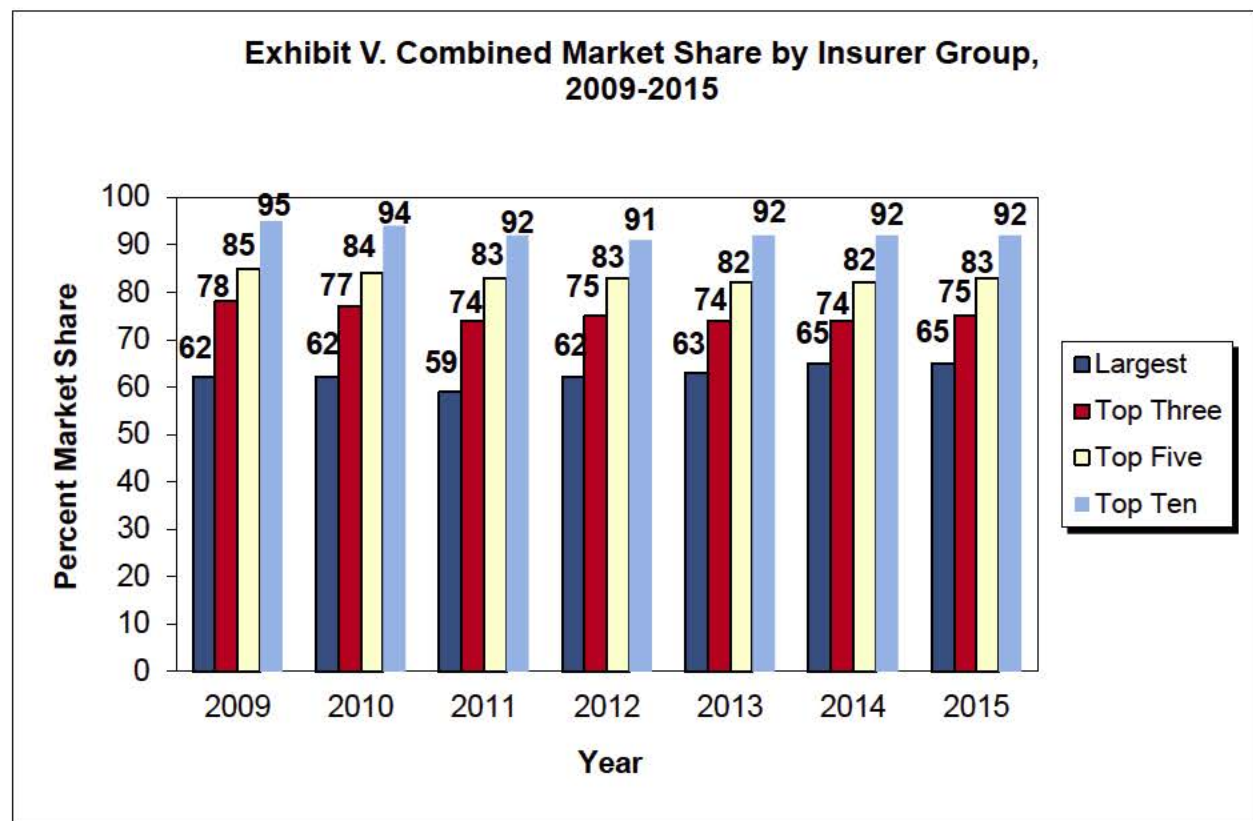
There is no precise point at which the HHI indicates that a market or industry is so concentrated that competition is restricted. The U.S. Department of Justice's guidelines for corporate mergers use 1,800 to indicate highly concentrated markets and the range from 1,000 to 1,800 to indicate moderately 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 92% in 2015; all other groups accounted for just 8% of the workers' compensation premium in Maine. This excludes self-insured premium.

The Maine Employers Mutual Insurance Group (MEMIC) wrote over \$142 million in premium (65%) in 2015. The top three groups, including MEMIC, wrote over \$165 million in business (75%). The top five groups wrote over \$183 million (83%), and the top 10 groups had over \$203 million in written premium (92%). The reported amounts of written premium for the top 10 groups rose by over \$11 million from 2014 to 2015.



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 15 out of the past 17 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 55% since 2000. There currently are no significant barriers to entry.

<b>Table II: Number of Workers' Compensation Carriers, 2000-2016</b>		
<b>Year</b>	<b>Number of Carriers</b>	<b>Net Change (Percent)</b>
2016	327	-1.8
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 2009-2015. These groups wrote 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 remained at over 64% market share in 2015. Great Falls Insurance Company, a Maine domestic insurance company, now ranks third among groups.

<b>Table III: Percent Market Share for Top Insurance Groups, By Amount of Written Premium, 2009-2015</b>							
<b>Insurance Group</b>	<b>2015 Share</b>	<b>2014 Share</b>	<b>2013 Share</b>	<b>2012 Share</b>	<b>2011 Share</b>	<b>2010 Share</b>	<b>2009 Share</b>
Maine Employers' Mutual	64.6	64.8	62.6	62.3	59.4	61.5	62.2
Liberty Mutual Group	5.7	4.5	6.1	8.0	9.7	10.0	10.4
Great Falls Ins Co	4.5	3.7	2.8	1.8	0.7	-	-
Travelers Group	4.3	4.4	4.9	4.7	4.4	3.9	3.5
WR Berkeley Group	4.1	4.5	4.5	4.6	5.1	5.2	5.7
Hartford Fire & Casualty	3.2	3.4	3.5	3.5	3.1	3.2	3.4
Zurich Insurance Group	1.8	1.5	1.5	1.6	2.0	2.1	2.0
American International Group	1.7	3.1	2.8	1.7	4.2	3.6	2.3
Berkshire Hathaway Group	1.1	1.1	1.5	1.8	0.5	0.2	0.1
AmTrust NGH Group	1.0	0.7	0.6	0.3	0.3	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 2009 through 2015. Throughout most of this period MEMIC has had more than 61% of the market. Great Falls Insurance Company, which commenced writing workers' compensation insurance in 2011, is the only other company to attain more than 4% market share since 2008. The top 10 companies combined held over 78% of the market.

<b>Table IV: Percent Market Share for Top Insurance Carriers, By Amount of Written Premium, 2009-2015</b>							
<b>Insurance Carrier</b>	<b>2015 Share</b>	<b>2014 Share</b>	<b>2013 Share</b>	<b>2012 Share</b>	<b>2011 Share</b>	<b>2010 Share</b>	<b>2009 Share</b>
Maine Employers' Mutual	64.4	64.7	62.5	62.1	59.3	61.5	62.2
Great Falls Ins Co	4.5	3.7	2.8	1.8	0.7	-	-
Liberty Mutual Fire Ins Co	1.9	1.1	1.1	0.9	1.0	0.8	0.9
Firemen's Ins Co of Wash DC	1.7	2.0	2.1	1.9	2.3	2.1	1.9
Zurich American Ins Co	1.5	0.9	0.8	0.9	1.1	1.3	1.0
Liberty Ins Corp	1.2	0.6	0.8	1.6	1.4	2.1	2.0
Acadia Insurance Company	1.0	1.5	1.6	2.1	2.2	2.6	3.4
Charter Oak Fire Ins Co	0.9	1.1	1.3	1.3	1.1	1.2	1.0
Insurance Company of the State of PA	0.8	1.1	1.2	0.8	0.6	1.0	0.8
Wesco Ins Co.	0.8	0.3	0.2	0.2	0.1	<0.1	0.0

Source: Annual Statements Filed with the Bureau by Insurance Carriers

## 5. DIFFERENCES IN RATES AND FACTORS AFFECTING RATES

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### 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 \$203 million in written premium in Maine for calendar year 2015. The table below shows the percentage of policies written at rates compared to the MEMIC Standard Rating tier (including MEMIC policies).

<b>Table V: Percent of Reported Policyholders At, Above or Below MEMIC's Standard Rating Tier Rates</b>		
<b>Rate Comparison</b>	<b>2016 Percent</b>	<b>2015 Percent</b>
Below MEMIC Standard Rate	27.8%	18.5%
At MEMIC Standard Rate	55.2%	67.5%
Above MEMIC Standard Rate	18.0%	14.0%

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.
- ❑ **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%.



- ❑ **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.

- ❑ **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 October 2016, MEMIC announced it would pay dividends totaling \$20 million to 18,000 qualified policyholders in November 2016. Including this payment, MEMIC will have returned approximately \$220 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 worker's 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, 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.

## 6. ALTERNATIVE RISK MARKETS

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### 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 2015 over 40% 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 fourteen 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.

<b>Table VI: Estimated Total of All Standard Premiums for Self-Insured Employers and Percent of the Workers' Compensation Market Held by Self-Insurers, 2002-2015</b>		
<b>Year</b>	<b>Estimated Total of All Standard Premiums</b>	<b>Percent of Workers' Comp. Market (in annual standard premium)</b>
2015	\$148,059,524	40.2
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, 2016 there were 19 self-insured groups representing 1,292 employers. The number of self-insured groups has remained the same for the past 10 years. The number of individual self-insured employers decreased from 60 to 58 in the past year.

<b>Table VII: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 2000-2015</b>			
<b>Year</b>	<b># of Self-Insured Groups</b>	<b># of Employers In Groups</b>	<b># of Individually Self-Insured Employers</b>
2016	19	1,292	58
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 13<sup>th</sup> highest workers' compensation premium rates for all industries. In 2012, Maine was 10<sup>th</sup> highest overall, and Maine was 8<sup>th</sup> 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 9th highest average loss cost in the most recent report. In last year's report, Maine had the 12th highest.

State	Average Loss Cost	Rank	State	Average Loss Cost	Rank
Connecticut	2.01	1	Nebraska	1.14	21
Montana	1.71	2	Hawaii	1.13	22
Illinois	1.71	2	Florida	1.11	23
Alaska	1.68	4	Tennessee	1.09	24
Vermont	1.68	4	Oregon	1.07	25
New Hampshire	1.48	6	Kentucky	1.07	25
Georgia	1.45	7	Arizona	1.06	27
Iowa	1.43	8	Mississippi	1.06	27
<b>Maine</b>	<b>1.42</b>	<b>9</b>	Virginia	1.04	29
Rhode Island	1.41	10	South Dakota	1.01	30
New Mexico	1.36	11	Kansas	0.92	31
Oklahoma	1.35	12	Nevada	0.92	31
Louisiana	1.34	13	D.C.	0.91	33
South Carolina	1.33	14	Utah	0.83	34
Maryland	1.31	15	Indiana	0.80	35
Alabama	1.28	16	West Virginia	0.74	36
Colorado	1.27	17	Arkansas	0.61	37
Idaho	1.27	17	Texas	0.55	38
Missouri	1.20	19			
North Carolina	1.20	19	Countrywide	1.14	

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

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## I. ORGANIZATION OF THIS REPORT

The report summarizes the Department of Labor, Bureau of Labor Standard's ("the Bureau") ongoing efforts to prevent occupational injuries and illnesses, including enforcement activities.

**Part 1, Introduction**, includes a summary of the Bureau's role, activities and outcomes.

**Part 2, Prevention Services Available**, describes 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**, presents research programs of the Bureau and some resulting data and conclusions.

**Part 4, Challenges**, discusses how current information gathering and sharing can be improved and initiatives to do so.

**Part 5, Developments**, outlines the 2016 developments and prospects for the immediate future.

## II. 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 (state and local governments).

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 injuries or illness, 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 recognized.
- 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 best function after their injuries or illnesses. This minimizes the economic and social impact of an injury or illness after it occurs.

## 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. The idea is that employees and management in workplaces recognize potential hazard exposure and mitigate risks through situational awareness, preferably even before exposure. 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 that are seen and have crept into the workplace due to failure of primordial prevention. 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). These occur randomly or because of an incident or report of potential hazard in a state or local workplace. The U.S. Occupational Safety and Health Administration (U.S. OSHA) administers enforcement for the private sector.

The dark gray areas in Table C-1 illustrate the purview of the Maine Bureau of Labor Standards. The Bureau’s **non-enforcement** (research, outreach, education, and consultation) services are typically offered under the Bureau’s SafetyWorks! brand to distinguish them from the enforcement activities such as formal inspections and investigations.

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

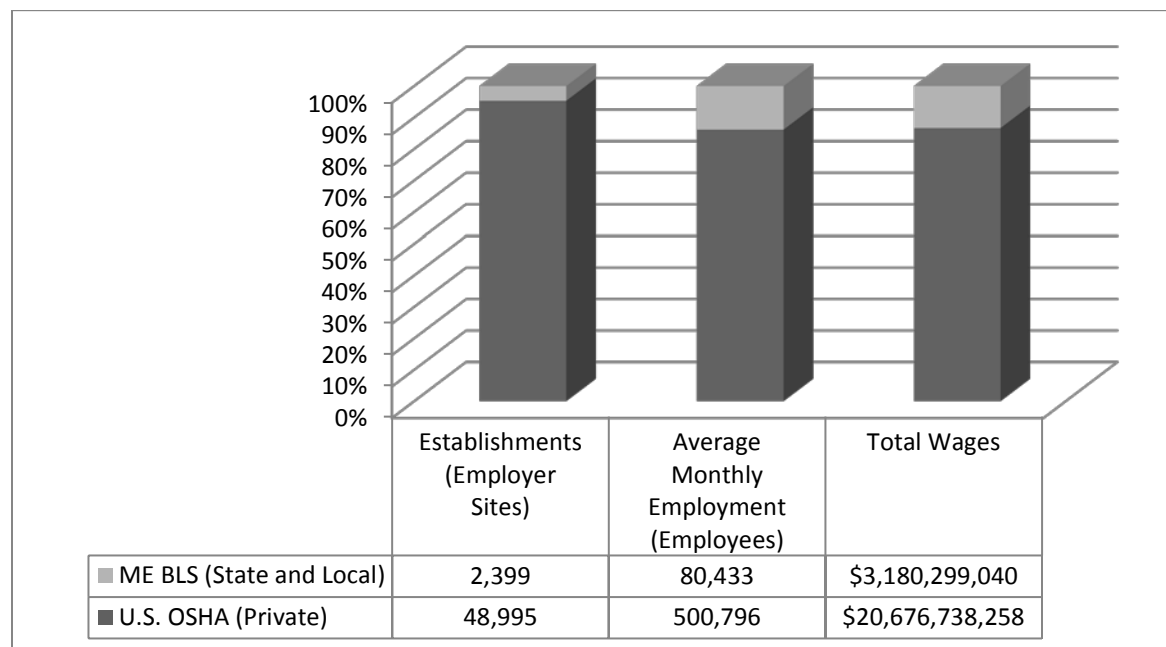
Maine Workers' Compensation System			
Function		State and Local Government	Private Sector Employers
Prevention	Research	Maine SafetyWorks!	
	Outreach and Education	Maine SafetyWorks!	
	Employer Consultation	Maine SafetyWorks!	
	Safety Standards Enforcement	Maine BLS*	US OSHA
	Child Labor Enforcement	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 law has no jurisdiction over them.

While both the state and federal governments share the employer safety enforcement load in Maine, the bulk of the enforcement burden falls on 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 2016.

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 case management systems 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 (SETF) and Other Funding**

A dedicated state special revenue fund called the Safety Education and Training Fund, or SETF, provides funding for the Bureau's non-enforcement services. This fund is collected from insurers and self-insured employers and employer groups, with a cap defined in law and based on the total benefits paid out by insurers in the Workers compensation system in the given year. Individual fees are based on the proportion the employer/insurer paid out in workers' compensation benefits less medical payments. This fund allows the Bureau to provide the services at no additional charge to individual establishments or trainees.

For certain types of employer consultations, the SETF funding is substantially augmented by an OSHA "21d" cooperative agreement with the U.S. Occupational Safety and Health Administration (US OSHA). This program is funded 90/10 federal/state funding but there are requirements on what businesses qualify for the service. Businesses that do not qualify can request and receive the same service funded entirely under the SETF. There are neither direct charges for the consultations nor fines for violations of

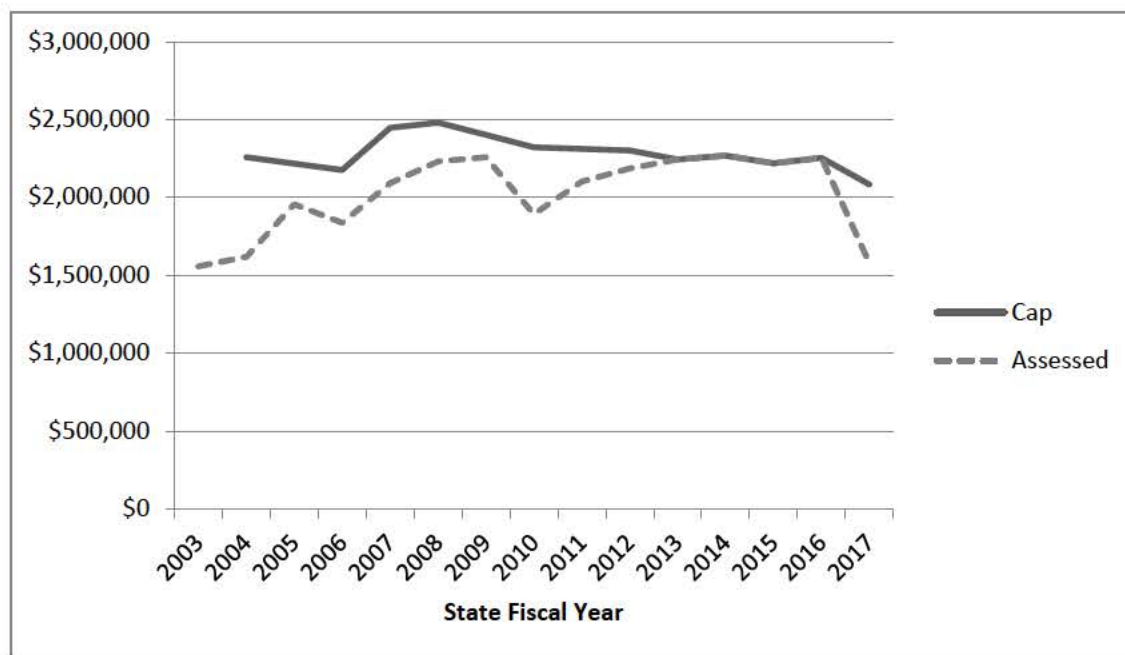
the standards as a result of these voluntary services. There is a commitment on the employer's part to abate any problems uncovered in the consultation services.

The Bureau's public sector (state and local government) enforcement activities are partially funded (50/50) through a US OSHA "23g" cooperative agreement, with 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 an important 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.

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 cap on the SETF fund that pays for the non-enforcement services has steadily declined. Up until the last year, the Bureau has had to assess right at the SETF cap in order to sustain its services. Figure C-2 below illustrates the gaps and when the cap and assessment total merge.

**Figure C-2: Safety Education and Training Fund Cap 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 fluctuates because of holdovers—savings from one year carried over to the next. In the period from 2012-2015 we had to charge at the

cap to pay for a major software upgrade. For state fiscal year (SFY) 2017 have we had a holdover allowing us to assess under the statutory cap.

In 2016 the Bureau went live, replacing its case management system with a COTS (Commercial Off-The-Shelf) software package called AMANDA and a federal OSHA-supplied system called OIS. The Bureau's old case management system, known as "Gen II" had been in place since 1999 and was in "containment", meaning that its components would no longer be supported at some point in the future by the state Office of Information Technology. The AMANDA system schedules and assigns incoming work for field staff and supervisors. The OIS system produces formatted reports for employers, listing standards violations and solutions. Collectively these products allow staff and management to concentrate on content rather than on process and deadlines. Maine has one of the most prolific prevention programs in the nation as a result of its combination of automation and management systems and continues to refine integrate them into an efficient and effective set of services.

The Bureau replaced the old case management system rather than face the possibility that the old system would become unsupported through unplanned programmer or software attrition. This way the replacement was on a planned time schedule. The Bureau needed to build a significant fund to do this. The new systems are completed and paid for, and the Bureau was able to reduce the SETF assessment amount below the cap for state fiscal year 2107. The Bureau believes there will be additional efficiencies from the newer features, improved design and enhanced capacity of the updated systems that should eventually enhance reporting and the efficiency of the work, reducing lead times and increasing value added. The improvements may require additional investment. We hope to realize these within the next few years as we learn the new systems and make them more efficient to our operation.

#### **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 due to 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 38 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	6,214 workers trained (FFY) 2016
Employer OSH Data Profiles	State SETF / US Bureau of Labor Statistics Grant	49 employer profile/data requests answered in CY 2016
On-site Consultations	State SETF / US OSHA and MSHA* Grants	672 employer onsite consultations and reports (FFY) 2016
Youth Employment Permit Enforcement	State General Fund	3,678 permits issued 46 denied in SFY 2016
Wage & Hour Enforcement, Random Inspections	State General Fund	1,610 random employer inspections 369 violations 27 child labor violations SFY 2016
Wage & Hour Enforcement, Complaint Investigations	State General Fund	383 employer investigations 185 violations SFY 2016
Public Sector Safety Enforcement	State General Fund	135 employers 1,163 violations \$125,150 in penalties FFY 2016
Private Sector OSHA Enforcement	US OSHA	293 employer Inspections 553 violations \$1,748,199 in penalties FFY 2016
OSHA Recordkeeping Employer Outreach	State SETF / US Bureau of Labor Statistics Grant	9 sessions in CY 2016 213 attendees in CY 2016 11 sessions planned in CY 2017

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



## B. What are the outcomes of the services provided?

While changes from year to year may not be striking, over the longer term there are clear improvements in the numbers, rates and indicators of disabling injuries and illnesses and fatalities. This is highlighted by Table C3.

**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"> <li>13,477 disabling cases coded in calendar year 2015 <ul style="list-style-type: none"> <li>Decrease of 176 (1.2%) from 2014</li> <li>Decrease of 16,838 (55.5%) from the high of 30,315 in 1989</li> </ul> </li> </ul>
Survey of Occupational Injuries and Illnesses (SOII)	State SETF/US Bureau of Labor Statistics Grant	<ul style="list-style-type: none"> <li>4.9 Total OSHA recordable case incidence rate in CY 2015 <ul style="list-style-type: none"> <li>5.3 from 2014</li> <li>Decrease of 31% from CY 2005</li> <li>Decrease of 49% from CY 1995</li> </ul> </li> <li>2.7 Days Away, Restricted or Job Transfer case incidence rate in CY 2015 <ul style="list-style-type: none"> <li>2.9 in CY 2014</li> <li>Decrease of 31% from 2004</li> <li>Decrease of 49% from 1994</li> </ul> </li> <li>1.4 Days Away From Work case incidence rate in CY 2015 <ul style="list-style-type: none"> <li>1.4 in CY 2015</li> <li>Decrease of 18% from CY 2005</li> <li>Decrease of 42% from 1995</li> <li></li> </ul> </li> </ul>
Census of Fatal Occupational Injuries (CFOI)	State SETF/US Bureau of Labor Statistics Grant	<ul style="list-style-type: none"> <li>15 fatalities in 2015 <ul style="list-style-type: none"> <li>Decrease from 19 fatalities in CY 2014</li> <li>Highest in CY 1999 with 32</li> <li>Lowest in CY 2005 and 2015 with 15</li> </ul> </li> </ul>
Employer Substance Abuse Testing	SETF	<ul style="list-style-type: none"> <li>5.0% total positive tests for CY 2015 <ul style="list-style-type: none"> <li>3.4% in CY 2011 and CY 2014 (record lows)</li> <li>High of 5.0% in CY 2015</li> </ul> </li> <li>5.0% applicants positive for CY 2015 <ul style="list-style-type: none"> <li>3.1 % in CY 2014 (record low)</li> <li>High of 5.0% in CY 2015 and CY 2007</li> </ul> </li> <li>24.4% probable cause positive for CY 2015 <ul style="list-style-type: none"> <li>25.0% in CY 2011</li> <li>Low of 5.0% in CY 2014</li> <li>High of 80% in CY 2007 (only 5 tests)</li> </ul> </li> <li>3.5% random positive for CY 2015 <ul style="list-style-type: none"> <li>1.9% in CY 2011 (record low)</li> <li>High of 4.4% in CY 2009</li> </ul> </li> </ul>

### **III. INJURY PREVENTION AND COST CONTAINMENT**

Preventing injuries and illnesses is, no doubt, the most efficient and humane way to contain both direct and indirect costs of injuries and illnesses and to keep workers from having to enter the WC system. Studies over three separate time periods on the 100 most-costly Maine WC cases\* found that almost any injury/illness case can evolve into a high-cost case due to complications and the intricacies of the medical and WC systems. In fact, studies have pointed to different cases where first reports that were almost exactly alike and yet some devolved into the highest-cost cases while others were at low or no cost.

\*See publication at: [www.maine.gov/labor/bls/techserve.html](http://www.maine.gov/labor/bls/techserve.html)

## 2. PREVENTION SERVICES

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### I. SAFETYWORKS!

SafetyWorks! provides on-site and off-site occupational safety and health training, consultations and outreach (non-enforcement), indoor air quality assessments and accident prevention activities within 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. Some of these services are routinely provided by the Bureau while others may be provided only at the request of the employer. The design and scope of individual services and responses to requests is typically based on research and real-time injury and illness data from the Maine Workers' Compensation Board (WCB); from the US Bureau of Labor Statistics and/or from OSHA.

SafetyWorks! instructors may customize their safety training programs for individual establishments or groups based on industry profiles generated from data from the WCB *First Report of Occupational Injury or Disease* and 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, which allows them to tailor outreach and education activities to meet specific employer needs.

#### A. Employer and Employee Training and Education

**General OSH Training** - SafetyWorks! staff develop and offer industry-specific and problem-specific training and certain Bureau staff provide OSHA and Mine Safety and Health Administration (MSHA) approved regulatory compliance training. Approximately 50 different courses 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.

In state fiscal year 2015, BLS completed 332 safety classes with 6,565 attendees and provided onsite training for 5,052 people. Scheduled public training is usually provided at the SafetyWorks! Training Institute or at local Department of Labor CareerCenters. The training institute is a state-of-the-art training center with realistic, safety mock-ups for experiential, adult learning. Employer training may also be delivered at a worksite if requested by an employer.

**B. Youth Employment Education** - The Bureau places a special emphasis education of young workers. The Wage & Hour Division carries out substantial outreach and education by working with Technical schools and Co-operative Education programs that are geared toward helping our youth understand employment standards as they enter the workforce.

### **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. In CY2016, 49 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.

An employer consultation may 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 2016, 672 employer on-site consultations were requested and completed.

For more on the services offered by the SafetyWorks! program, go to: [www.safetyworksmaine.com](http://www.safetyworksmaine.com).

## **II. ENFORCEMENT**

While programs and resources for voluntary prevention activities are effective, there is still a need for some non-voluntary compliance activities and for compliance assurance measures to verify that voluntary processes are actually carried out. To do so, the Bureau implements several enforcement programs fully outside of SafetyWorks! to distinguish them from those which are voluntary. Enforcement activities are typically triggered by targeted random inspections, by complaints and/or long-running issues or through discovery through analysis of data sources (as outlined in Section 3 of this report).

## **A. Youth Work Permits**

To protect workers under the age of 16, the Wage and Hour Division (W&H) reviews and approves or denies work permit applications for them. The approval process involves school verification of the young worker's age and that the young worker is passing class expectations. The work duties and environment are then reviewed to ensure the work being offered is appropriate or non-hazardous for the age group. From July 1, 2015, to June 30, 2016, W&H approved 3,678 work permits denied 46 permits for these young workers.

## **B. Wage and Hour Enforcement**

The Wage and Hour Division also 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, 2015, to June 30, 2016 the W&H conducted 1,610 self-directed inspections finding 369 separate violations and responded to 383 complaints finding 185 violations. W&H found 27 child labor violations based on excessive hours worked, working at times of the day outside of the range allowed under state labor laws, or failure to obtain work permits.

## **C. Public-Sector Site Safety Inspections**

Having been awarded a 23g cooperative agreement with the US OSHA, as a "state plan state" the Workplace Safety and Health (WS&H) Division of the Bureau enforces safety regulations based on US OSHA standards *in the public sector* 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 135 public sector employers inspected in federal fiscal year 2016 (October 2015 through September 2016); the inspections resulted in 1,163 violations cited and \$125,150 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 through Local Emphasis Programs (LEPs) and National Emphasis Programs (NEPs). 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 293 inspections in Maine for federal fiscal year 2015 (October 2014 through September 2015) resulting in 553 citations and \$1,748,199 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, focused studies, and through continuous injury surveillance programs.

### 3. RESEARCH AND DATA

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#### I. OCCUPATIONAL SAFETY & HEALTH SURVEILLANCE PROGRAMS

The Research and Statistics Unit in the Workplace Safety and Health 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)
- Occupational Fatality Reporting Program

Combined, the results of these surveys and censuses 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 and case aggregations. The database includes:

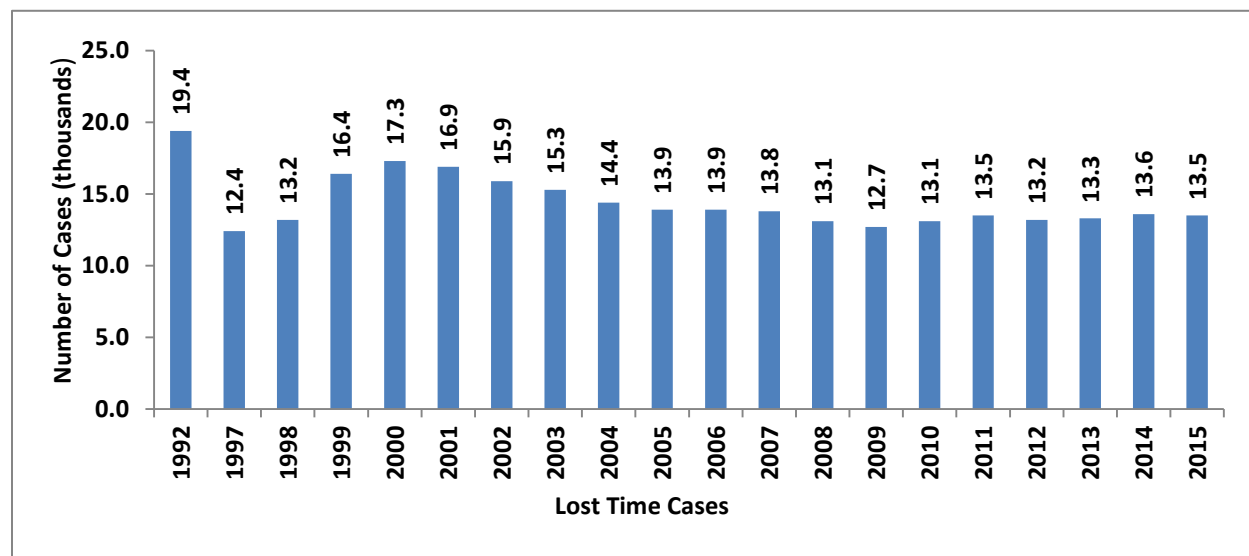
- 1) Characteristics of the employer
- 2) Characteristics of the employee
- 3) Characteristics of the workplace
- 4) Characteristics and results of the incident
- 5) Characteristics and results of the workers' compensation claim including costs

The Bureau analyzes the WCB data and provides injury profiles to employers and safety professionals to use in prevention and training activities. The consistency and completeness of WCB administrative data is critical to the accuracy and effectiveness of these prevention programs. The following is a summary of the data from the WCB claims and corresponding First Reports.

#### i. *Twenty-Year Pattern of Disabling Cases, Maine (1996–2015)*

In 2015, there were 13,478 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 and the 1992 baseline. The figure shows in 2015 a decrease of 167 cases over 2014. There has been a 12 percent reduction in disabling cases reported from 2003; and a 30 percent reduction since the 1992 reforms.

**Figure C-3: Twenty-Year Pattern of Disabling WCB Cases, 1996–2015**



**ii. Geographic Distribution of Disabling Cases, Maine (2013–2015)**

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 2013 through 2015 and respective injury rates for each. These rates are based on numbers of employees in the respective regions and are not based on employee-hours worked.

Generally the county incidence rates fluctuate from year to year. As shown in Table C-4, 2015 injury rates in 7 of the 16 counties were higher than the statewide rate. From 2014 to 2015: four counties remained above the statewide rate (Piscataquis, Sagadahoc, Somerset, and Washington); three remained below the rate (Cumberland, Franklin and York); five moved from above to below the rate (Androscoggin, Aroostook, Oxford, Penobscot, and Waldo); and three moved from below to above the rate (Hancock, Knox and Lincoln).



**Table C-4: Geographical Distribution of Disabling Cases, Maine (2013–2015)**

County	2013			2014			2015		
	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000
Sagadahoc	565	14,890	37.9	598	15,213	39.3	607	15,595	38.9
Washington	255	9,672	26.4	234	10,098	23.2	296	10,098	29.3
Lincoln	259	11,013	23.5	263	12,327	21.3	289	10,928	26.4
Knox	388	16,861	23.3	380	17,961	21.2	449	17,297	26.0
Hancock	456	20,668	22.1	438	24,769	17.7	534	21,840	24.5
Piscataquis	100	5,433	18.4	144	5,563	25.9	133	5,495	24.2
Somerset	382	16,970	22.5	402	17,308	23.2	391	17,030	23.0
<b>Maine</b>	<b>13,273</b>	<b>564,766</b>	<b>23.5</b>	<b>13322</b>	<b>587,885</b>	<b>22.7</b>	<b>13478</b>	<b>595,735</b>	<b>22.6</b>
Waldo	257	10,899	23.6	302	11,588	26.1	250	11,141	22.4
Kennebec	1,540	56,534	36.7	1564	57,970	27.0	1297	59,084	22.0
Oxford	414	16,501	25.1	400	16,765	23.9	364	16,708	21.8
Androscoggin	1,083	47,471	22.8	1144	48,358	23.2	1054	48,795	21.6
Aroostook	646	27,644	23.4	636	26,592	23.9	570	27,231	20.9
Penobscot	1,648	68,046	24.2	1669	69,589	24.0	1365	69,263	19.7
Cumberland	3,783	169,947	22.3	3681	174,540	21.1	3423	175,732	19.5
York	1,275	61,486	20.7	1182	67,486	17.5	1270	68,867	18.4
Franklin	162	10,731	15.1	163	10,758	15.2	191	10,724	17.8
Unknown*	60			122			611		

\* "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 (2013–2015)***

Ten occupational groups accounted for more than 70 percent of all reported disabling injuries in 2015. 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 (2013–2015)**

Occupational Groups	2013		2014		2015	
	Number	Percent	Number	Percent	Number	Percent
Transportation and Material Moving	2,099	15.8	2,171	15.9	1972	14.6
Production	1,238	9.3	1,319	9.7	1266	9.4
Installation, Maintenance, and Repair	1,156	8.7	1,093	8.0	1098	8.1
Construction and Extraction	1,028	7.7	1,092	8.0	1104	8.2
Food Preparation and Serving	974	7.3	971	7.1	956	7.1
Healthcare Support	856	6.4	899	6.6	820	6.1
Office and Administrative Support	913	6.9	879	6.4	1067	7.9
Healthcare Practitioners and Technicians*	709	5.3	681	5.0	824	6.1
Building and Grounds Cleaning and Maintenance	786	5.9	805	5.9	795	5.9
Sales and Related Occupations	660	5.0	608	4.5	720	5.3
Other Occupational Groups	2,854	21.5	3,126	22.9	2856	21.2
<b>Total</b>	<b>13,273</b>	<b>100</b>	<b>13,644</b>	<b>100.0</b>	<b>1,3478</b>	<b>100.0</b>

**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, 2013–2015***

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 have been with their employers longer. While injuries among new hires have actually trended down from a high of 36 percent in 2004, new hires still accounted for 23 percent of the disabling *First Reports* in 2015. Moreover, those between 1 and 2 years of service increased from 10.1 to 17.3 percent between 2014 and 2015. This suggests that programs and efforts to assure the safety of new employees are still warranted.

Second, the Bureau monitors injury rates in the older worker populations because the percentages of older workers have been increasing in the work force. While the numbers of disabling injuries increased in the 10 to 19 year group from 2014 to 2015, it remained the same for the 20+ year group, which suggests that the trend may be changing. It will be interesting to see if rates among the longer-tenured workers actually trend downward in the coming years as more of the “baby boomer” workers leave the work force.

Nevertheless, the numbers of incidents remains fairly evenly distributed among the categories of length of service and the number actually increased for the 1 to 5 year group. This suggests that safety training and measures to reduce the numbers of



accidents and injuries in the workplace should continue to be applied across all lengths of tenures.

**Table C-6: Length of Service of Injured Worker, Maine, 2013–2015**

Length of Service of the Injured Worker	Disabling Cases					
	2013		2014		2015	
	Number	Percent	Number	Percent	Number	Percent
Under 1 Year	3,276	24.7	4,516	33.1	3,096	23.0
1 Year	857	6.5	1,383	10.1	2,332	17.3
2 Years	1,205	9.1	970	7.1	1,253	9.3
3-4 Years	1,330	10.0	1,293	9.5	1,478	11.0
5-9 Years	2,493	18.8	2,354	17.3	2,060	15.3
10-14 Years	1,208	9.1	1,155	8.5	1,287	9.5
15-19 Years	674	5.1	616	4.5	713	5.3
20+ Years	1,341	10.1	1,211	8.9	1,203	8.9
Unknown	889	6.7	146	1.1	56	0.4
<b>Total</b>	<b>13273</b>	<b>100.0</b>	<b>13644</b>	<b>100</b>	<b>13,478</b>	<b>100.0</b>

**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, 2013–2015**

Similarly, the Bureau has also been tracking how the aging workforce relates to disabling Workers' Compensation Claims. 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, one would expect correspondingly higher number of injuries and illness involving older workers. Indeed the number of disabling injuries to workers over 50 years old has increased in recent years over the number in 2001. 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 while the numbers of cases have increased, 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 2013-2015**

Age of the Injured Worker	Disabling Cases							
	2001		2013		2014		2015	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Under 19	397	2.3	184	1.4	196	1.4	209	1.6
19-24	2,182	12.9	1,437	10.8	1,547	11.3	1629	12.1
25-29	1,816	10.8	1,372	10.3	1,389	10.2	1364	10.1
30-34	2,157	12.8	1,228	9.3	1,319	9.7	1345	10.0
35-39	2,407	14.3	1,159	8.7	1,252	9.2	1238	9.2
40-44	2,464	14.6	1,449	10.9	1,439	10.5	1361	10.1
45-49	2,036	12.1	1,638	12.3	1,606	11.8	1509	11.2
50-54	1,548	9.2	1,806	13.6	1,848	13.5	1746	13.0
55-59	1,021	6.0	1,588	12.0	1,608	11.8	1602	11.9
60+	849	5.0	1,412	10.6	1,439	10.5	1475	10.9
Missing	3	N/A	N/A	N/A	N/A	N/A	0	0.0
<b>Total</b>	<b>16,879</b>	<b>100.0</b>	<b>13,273</b>	<b>100</b>	<b>13,643</b>	<b>100</b>	<b>13478</b>	<b>100.0</b>

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 2015, the Maine Bureau of Labor Standards surveyed 2,916 private establishments and 519 public-sector establishments, 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, the federal Bureau of Labor Statistics estimates incidence rates for both the nation and the participating states. The incidence rate is the estimated number of incidents per 100 full-time workers, standardized to a full calendar year and taking into account part-time and overtime exposure hours. Figures C-4 and C-5 display results from the 2015 SOII

While derived from the same injury and illness cases, WCB and SOII data sets are different and are not interchangeable. WCB injury and illness data lend themselves well to providing total *numbers* of incidents and incident characteristics because the data set is in fact a census of all disabling injury and illness cases. While SOII data can be used to estimate total numbers, they are less suited for that because the SOII data set is from a survey – a sample of all cases- rather than a census. On the other hand, SOII data are better suited than WCB data for providing statistically valid estimates of injury *rates* – because, the surveys also collect data on the number and amount of time employees are working.



Data collected from SOII are also incomparable with the WCB data because:

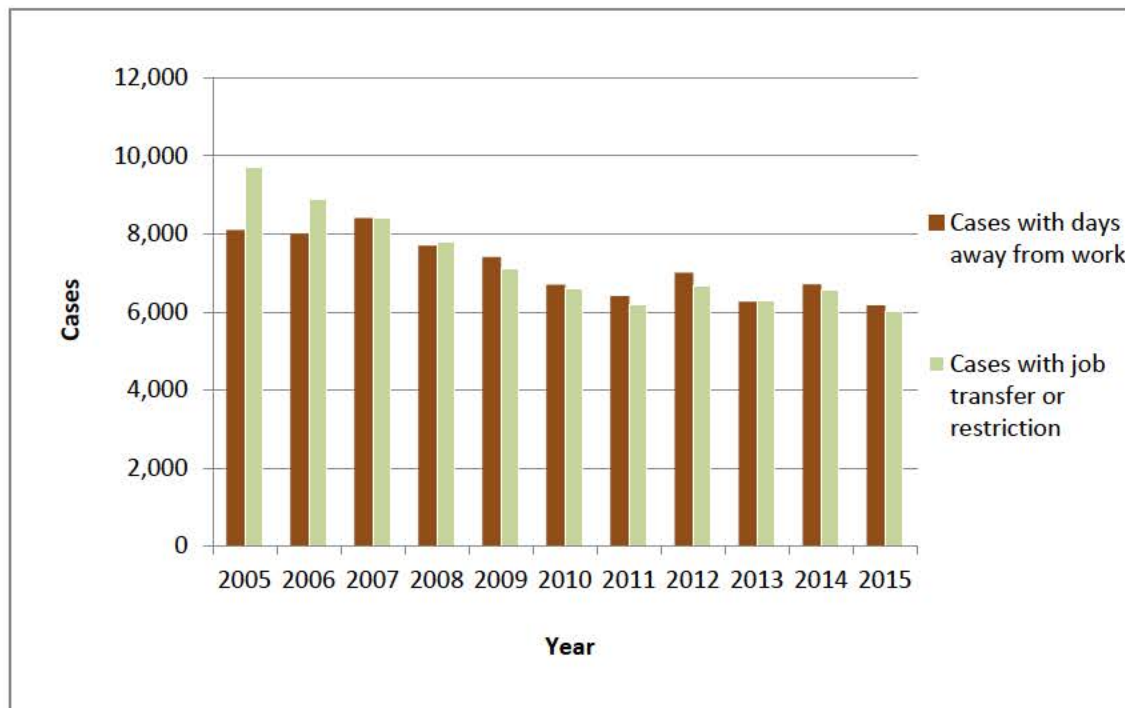
- The two systems record cases based on different definitions of “work-related”.
- WCB data (coupled with employer data available to the Bureau) can be used to generate employment-based rates but those rates are not the same as the rates published through SOII. The SOII rates are based on hours worked converted into full-time equivalents (FTEs) whereas the WCB rates can only be based on employee numbers.

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***

Figure C-4 provides the SOII 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 Estimated Cases (2005–2015)**

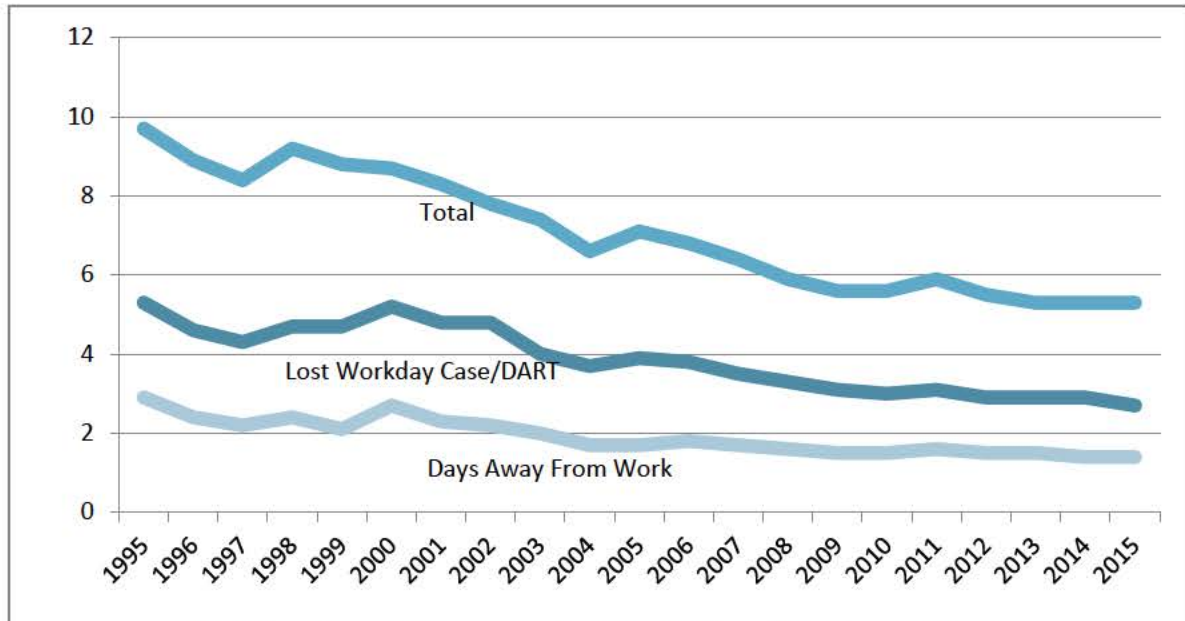


For 2015, there were an estimated total of 12,196 OSHA recordable injuries resulting in at least one day away from work and/or one day of job transfer or restriction beyond the day of injury. Of this total it was estimated that 6,192 cases resulted in at least one day away from work and 6,005 cases resulted 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 (1995–2015)**



**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 31.0 % since 2005 and by 49.5 % since 1995. The Lost Workday Case / DART rate has decreased by 30.8% from 2005 and by 49.1% from 1995. The Days Away from Work Rate has declined by 17.6% from 2005 and by 51.7% since 1995. 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](http://www.bls.gov/iif/state_archive.htm#ME).

### iii. Industry Sector Data

According to the 2015 SOII (private sector), Nursing care facilities recorded the highest total recordable incidence rate of 12.1 per 100 FTEs. Table C-8 describes the top-ten private-industry total recordable rates.



**Table C-8: Publishable\* Industries with the Top-Ten Total Recordable Rates, Maine, 2015**

Industry Group	Cases per 100 FTEs
Nursing Care Facilities	12.1
Seafood Product Preparation and Packaging	10.6
Supermarkets and Other Grocery (except convenience) Stores	8.9
Bakeries and Tortilla Manufacturing	8.6
Elementary and Secondary Schools	8.6
Warehousing and Storage	8.5
Automotive Repair and Maintenance	8.3
Assisted Living facilities for the Elderly	8.0
Arts, Entertainment, and Recreation	7.8
Services for the Elderly and Persons With Disabilities	7.7
<b>All Private Industries</b>	<b>4.8</b>

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. Some industries are not publishable due to confidentiality concerns if one or only a few establishments are in their specific classifications.

### C. 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.

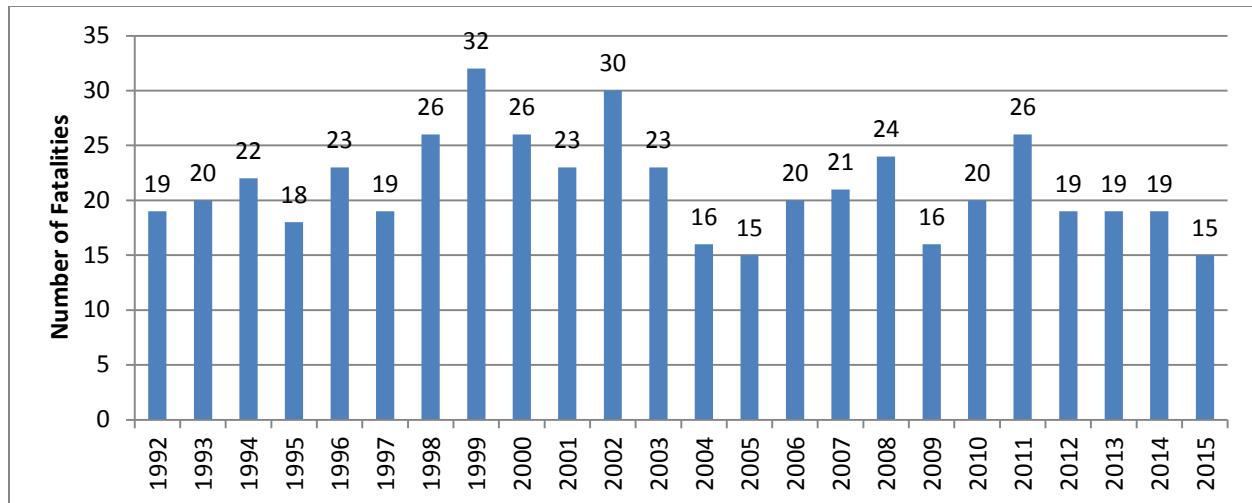
A death is considered work-related if an event or exposure resulted in an employee fatality while in work status, whether at an on-site or off-site location. Private and public sector (state, local, and county government) are included. Fatalities must be confirmed by two independent sources before inclusion 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.

***i. Fatal Occupational Injuries, Maine (1992–2015)***

Figure C-6 shows the numbers of work-related fatalities recorded in Maine from 1992–2015.

**Figure C-6: Work-Related Fatalities, Maine (1992–2015)**



**Source:** Maine Census of Fatal Occupational Injuries

***ii. 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 previous years' 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/index.html](http://www.maine.gov/labor/labor_stats/publications/cfoi/index.html).

**D. 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.

**E. 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.

Possible 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.

#### **F. 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 eliminate 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.

#### **G. 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 2015, the annual survey indicated that a total of 26,258 tests were administered by employers with approved policies and 1,308 (5.0%) of these tests were positives. Of the 25,059 job applicants tested, 1,257 (5.0%) 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](http://www.maine.gov/labor/labor_stats/publications/substanceabuse). Survey data for 2016 will be available by April 1, 2017.

**Table C-9: Results of Overall and Applicant Substance Abuse Testing (2006–2015)**

Year	Approved Policies	Total Tests			Job Applicant Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
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
2015	534	26,258	1,308	5.0	25,059	1,257	5.0

## II. RESEARCH PROJECTS OTHER THAN ANNUAL REPORT

### A. OSHA Recordkeeping Employer Outreach Initiative

The Survey of Occupational Injuries and Illnesses depends on the accuracy of data tabulated from the OSHA Recordkeeping process. To ensure the accuracy of the data and to help employers comply with OSHA recordkeeping guidelines and avoid enforcement actions, the Research and Statistics Unit provides formal training, consultation, and outreach to Maine employers. In 2015, the BLS Research and Statistics training staff conducted classes in various locations in the state via SafetyWorks! In 2015, ten sessions were offered from Portland to Presque Isle.

## **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 - 2016: (<http://www.maine.gov/labor/bls/techserv.html>)

- Tableau: An Interactive Workers' Compensation Database
- Hospital OSHA Recordkeeping Study
- 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 the Bureau updates annually. It is available at: [http://www.maine.gov/labor/labor\\_stats/workinjuries.html](http://www.maine.gov/labor/labor_stats/workinjuries.html).

### **ii. *OSHA Recordkeeping Establishments at Maine Hospitals***

Over the years Bureau staff has come across a number of SOII survey reports by hospitals that included injuries from associated offices and clinics among their totals. Thus the Bureau has been concerned that there may be over-reporting of injuries by hospitals leading to higher reported injury rates for that industry. In 2016, the Bureau hired a Margaret Chase Smith intern to examine the separate offices and practices associated or affiliated with major hospitals in Maine and determine which fall under the hospital's OSHA recordkeeping responsibilities and which are considered separate establishments. Of the 216 associated practices and offices examined, the Bureau found that 175 are actually separate establishments that were not under the OSHA recordkeeping responsibilities of their parent hospitals. The Bureau also determined that all but 2 of the 175 are ordinarily exempt from OSHA recordkeeping based on their NAICS codes. This information has enabled those hospitals to be more accurate in carrying out their OSHA recordkeeping and reporting requirements, which should lead to more accurate calculations of hospital injury rates.

### **iii. *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.

**iv. *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.

**v. *Injuries and Illnesses Due to Workplace Chemicals and Related Hazards***

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.

**vi. *Roofing and Exterior Worker Falls in Maine, 2011 – 2013***

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.

The 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

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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. It does not fund enforcement activities.

As explained in the Introduction, the SETF fund is currently capped by statute at 1 percent of the payouts from Workers' Compensation claims. That total has declined in recent years due to fewer injuries and declining compensation costs which means that to some extent program objectives are being achieved. However, the Bureau's prevention expenses have climbed even at current levels, and there may have to be an eventual decrease in the same education, consultation, and research activities that are promoting or at least helping to maintain the decline in injuries.

In the short term, the Bureau was incurring significant expenses to replace the case management software. After those expenses are through there will be a period where the Bureau can assess under the cap. In the longer-term, if the system continues to reducing claims and costs, expenses may again approach the cap again and, if so, the Bureau will have to further pursue a number of alternatives:

- 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 program delays.

### 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 to the EDI system. This all should fill in substantial holes in the data not currently addressed.

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 often 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, some past 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 injury sources and events. 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 injuries or illnesses after they occur.

In years past, the Bureau has keyed on the entry of the “return to work” date in the *First Report of Occupational Injury* and whether or not that date was missing from reports. Over the years, between 18 and 20 percent of the cases with “incapacity” dates have lacked a “return-to-work” date, which means 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*. Consequently, the Bureau 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.

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, 2010–2015**

Year of Injury or Illness report						
Claim Status	2011	2012	2013	2014	2015	Grand Total
<b>Lost Time Claims</b>	<b>5,350</b>	<b>5,005</b>	<b>5,082</b>	<b>5,011</b>	<b>4,749</b>	<b>25,197</b>
Open Claims	293	307	346	473	742	2,161
% Open	6.1%	7.2%	9.0%	13.0%	15.6%	8.6%
Closed Claims	5,057	4,698	4,736	4,538	4,007	23,036
Resumed Work	3,092	2,926	3,143	3,179	2,947	15,287
% Resumed Work	57.8%	58.5%	61.8%	63.4%	62.1%	60.8%

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

Data is as of 1/3/2017

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).

\*See: [www.maine.gov/labor/bls/techserve.html](http://www.maine.gov/labor/bls/techserve.html)



## 5. 2015 DEVELOPMENTS

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### I. GRANTS

On August 5, 2015, federal OSHA awarded the Bureau a 23g cooperative agreement which will help pay for activities around public sector (state and local government) enforcement of OSHA standards in the workplace. FY2016 was, therefore, Maine's first full year as a "state plan state". This additional funding has enabled 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 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](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 (private sector) 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 and 500 nationally 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 61 employer locations qualified as of December 2016.

**Artisan Boatworks (Rockport)**

**Bison Pumps (Houlton)**

**Borderview (Van Buren)**

**CCB (Westbrook)**

**Central Aroostook Assoc. (County Box & Pallet)**

**Cianbro Corporation – Rickers Wharf (Portland)**

**Cianbro Equipment (Pittsfield)**

**Cianbro Fabrication Shop (Pittsfield)**

**Cianbro Paint Shop (Pittsfield)**

**Classic Boat Shop (Bernard)**

**CM Almy, Inc.**

**Community Living Association (Green Center)**

**Community Living Association (Roger Randall)**

**Davis Brothers (Chester)**

**Deering Lumber (Springvale)**

**Deering Lumber, Inc. (Kennebunk)**

**Everett J. Prescott, Inc. (Bangor)**

**Everett J. Prescott, Inc. (Gardiner)**

**Everett J. Prescott, Inc. (Portland)**

**FASTCO Corp. (Lincoln)**

**Franciscan Home (Eagle Lake)**

**French & Webb Inc. (Belfast)**

**Gorham Sand & Gravel (Gorham)**

**Hancock Lumber (Bethel Mill)**

**Hancock Lumber (Casco Mill)**

**Hinckley Company (Trenton)**

**Howard Tool Company**

**Hunting Dearborn, Inc. (Fryeburg)**

**Johanson Boatworks (Rockland)**

**Kittery Point Yacht Yard (Kittery Point)**

**Limington Lumber Company (Baldwin)**

**Lonza Rockland (Rockland)**

**Lovell Lumber (Lovell)**

**Lucas Tree Experts-Maintenance Facility (Portland)**

**Maibec Lumber USA (Fraser Timber) Ashland**

**Maine Cat (Bremen)**

**Maine Machine Products Company (South Paris)**

**Maine Oxy (Brewer)**

**Maine Oxy (DBA Dirigo Technologies) Auburn**

**Maine Woods Company (Portage)**

**Marden's Inc. (Calais)**

**Marden's Inc. (Ellsworth)**

**Marden's Inc. (Sanford)**

**Marden's Warehouse, (Waterville)**

**Moose River Lumber Co., Inc. (Jackman)**

**Morris Yachts (Trenton)**

**Peavey Manufacturing (Eddington)**

**Pineland Farms Potato Company (Mars Hill)**

**Pleasant River Lumber Company (Dover-Foxcroft)**

**Pleasant River Pine (Hancock)**

**Record Hill Wind (Roxbury)**

**Reed & Reed – Metal Fab (Woolwich)**

**Rumery's Boat Yard (Biddeford)**

**S W Boatworks (Lamoine)**

**SFX America (Portland)**

**Somic America (Brewer)**

**Steel-Pro Incorporated (Rockland)**

**Strouts Point Wharf (Freeport)**

**Tern Inc (DBA Atlantic Boat) Brooklin**

**Yachting Solutions (Rockland)**

**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 2017, there are 75 public-sector employers, who have received SHAPE status, including:

### **Appleton Fire Department**

Ashland Ambulance  
Auburn City Hall  
Auburn Water & Sewage District  
Berwick Fire Department  
Boothbay Fire Department  
Bristol, Town  
Bristol – So. Bristol Transfer Station  
Brooks Fire Department  
Brunswick Sewer District  
Brunswick, Town of

Camden Fire Department  
Caribou, City of  
Cary Medical Center  
L’Acadie Care Facility (Van Buren)

Cushing Fire Department  
Damariscotta Fire Department  
Durham Fire Department  
Fairfield, Town of  
Farmingdale Fire Department  
Farmington Fire Department  
Fort Fairfield Fire Department  
Fort Kent Fire & Rescue  
Greater Augusta Utility District  
Hampden Water District  
Harrington Fire Department  
Hartland Fire Department  
Hope Fire Department  
Houlton Water Company  
Jay, Town of  
Kennebunk, Kennebunkport & Wells Water  
Kennebunk, Town of  
Kingfield Fire Department  
Kittery Water District  
Knox County  
Lewiston Fire Department  
Liberty Fire Department  
Lincoln Water

### **Maine Department of Transportation (MDOT) - Region 2 (Augusta)**

MDOT - Region 3 (Dixfield)  
MDOT - Region 4 (Bangor)  
MDOT - Region 5 (Presque Isle)  
Maine Veteran’ Home (Caribou)  
Manchester Fire Department  
Mapleton, Town of  
Mayo Regional Hospital (Dover-Foxcroft)  
Mid-Maine Technical Center (Waterville)  
Newcastle Fire Department  
North Lakes Fire Department (Sinclair Lake, Madawaska & Cross Lake)  
Northern Maine Community College (Presque Isle)  
Northern Penobscot Tech, Region 3 (Lincoln)  
Northport First Responders

### **Northport Volunteer Fire Department**

Oakland Fire & Rescue  
Orono Fire Department  
Paris Fire Department  
Presque Isle, City of  
Rockport Fire Department  
Rome Fire Department  
Sabattus Sanitary & Water  
Sagadahoc County  
Saint Agatha Fire Dept.  
Scarborough, Town of  
School of Applied Tech. Region 2  
Skowhegan, Town of (excluding PW)  
So. Thomaston Fire Department  
Somerville Fire Department  
United Technologies Center (Bangor)  
University of Maine – Aroostook Farms  
University of Maine – Blueberry Farms  
Waldoboro Fire Department  
Westbrook Public Services  
Wilton Fire & Police Department  
Windsor Volunteer Fire Department  
Winthrop Fire Department  
York Water District