

An Assessment of the 1989 Texas Workers' Compensation Reform Act

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An Applied Research Project (Political Science 5397)
Submitted to the Department of Political Science
Southwest Texas State University
In Partial Fulfillment for
The Requirements for the Degree of

MASTER OF PUBLIC ADMINISTRATION

Spring 2002

Approval:

Abstract

In response to growing concerns about high workers' compensation costs and in regards to low levels of benefits, in 1987 the 70th Texas Legislature appointed the Joint Select Committee on Workers' Compensation Insurance to conduct a two-year study to identify problems with the system. The findings of this study formed the basis for the Texas Workers' Compensation Reform Act adopted during the following legislative session.

The purpose of this case study is to observe the Texas Workers' Compensation Reform Act with the intent to gauge whether the objectives established by the reform were met. Specifically, the study analyzes the system's emphasized importance on safety to reduce injuries in the workplace; the administration of an adequate, equitable, and effective delivery system of income benefits; the assurance of adequate medical care provided in a timely manner following the injury while maintaining insurance carriers' expenditures at a comparable rate to other systems; and the outcome of the dispute resolution process. For this project, descriptive statistics of an administered survey and existing data are used to address the standards developed by the reform.

Overall, based on the responses from surveyed participants and analysis of available existing data, this study reveals some level of support that the system is meeting the standards required by the reform. System participants surveyed did express some disagreement with the statements presented in the survey instrument related to safety and dispute resolution. Analysis of the existing data, however, demonstrates that the number of accidents have declined since the reform and is below the national averages. Furthermore, data strongly supports that the dispute resolution processes is successfully

resolving disputes at the earliest possible level. Since injured employees were unable to participate in this analysis due to confidentiality issues, further research to address the variances between system participants' perception and analysis of existing data is recommended.

This research is dedicated to

My husband for his love and patience

My family for their never-ending support, and

My friends for reminding me I'm capable

during my many moments of doubt.

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CHAPTER ONE

INTRODUCTION

An employee, Mary Hurtz¹ suffers an injury while working for her employer. As a result, Mary is unable to work for a lengthy period of time while she recovers from the back surgery resulting from the accident. A large sum of medical expenses is incurred while her lack of wages grows.

In a perfect world, this situation would never happen. Mary should never have to endure the physical pain and suffering that results from her injury and her employer should never have to bear the burden of lost production while she remains unable to work because of the on-the-job accident. The operative word, however, is accident. According to Webster's Dictionary, an accident is defined as "an event that takes place without one's foresight or expectation." Therefore, the perfect world scenario is unrealistic. The best an employer can hope for is to use foresight to attempt to prevent potentially obvious accidents from occurring. Safety provisions and coordination of returning the injured employee to work at the safest and earliest point in their recovery are the simplest means to alleviate the hardship of injuries.

So, the accident resulting in injuries occurs and the medical bill expenses rise while Mary, the injured employee, remains unable to earn wages due to her inability to work. These issues are insurmountable and the workers' compensation system was developed to address these concerns. Mary's employer, through the insurance, is responsible for payment of the incurred medical expenses resulting from her injury and

¹ Mary Hurtz is a fictional character in this scenario. Any similarities to an actual person is purely coincidental.

assists with her lack of income by providing a percentage of wage replacement, income benefits, while she remains unable to work because of the injury.

Unfortunately, not every workers' compensation claim proceeds through the workers' compensation system as smoothly as Mary Hurtz'. Sometimes, during their investigation, insurance carriers may be provided information that causes them to question whether the injury actually occurred at work, or whether the extent of injury claimed is the sole responsibility of the employer. On the contrary, injured employees may also be dissatisfied with the amount of income benefits they're receiving. As a result, participants may need assistance resolving the dispute.

The workers' compensation system has evolved through a long and exhaustive history since the start of its existence in 1913. In 1989, for example, a reform Act was passed that resulted in an entire overhaul of the prior system. Then, twelve years later, during the 77th Texas Legislative session, HB2600, an omnibus bill, addressing several key components of the existing workers' compensation system was passed. Was the timing of HB2600 appropriate? Was the 1989 Texas Workers' Compensation Reform Act given ample time to conform to the required standards?

The purpose of this applied research project is to assess the 1989 Texas Workers' Compensation Reform Act through the analysis of existing system data as well as participant surveys in the key areas of safety, income benefits, medical benefits, and dispute resolution. These topics were objectives identified in the Joint Select Committee report and will be used in this analysis to evaluate whether or not the current Texas workers' compensation system has successfully met these challenges. Specifically, the study will assess the system's emphasized importance on safety to reduce injuries in the

workplace; the administration of an adequate, equitable, and effective delivery system of income benefits; the assurance of adequate medical care provided in a timely manner following the injury while maintaining insurance carrier expenditures at a comparable rate to other systems; and the outcome of the dispute resolution process.

This research project will use a classification of conceptual framework called a "practical ideal type". This type of framework is useful to measure the proximity of an existing situation to a preconceived ideal or standard. In this particular instance, the standards are identified through the literature analysis of the Research Papers of the Joint Select Committee on Workers' Compensation Insurance. Practical ideal type frameworks are generally organized by categories. In response, the categories for this project will consist of safety, income benefits, medical benefits, and dispute resolution. Descriptive statistics of an administered survey and existing data is used to analyze the case study, Texas Workers' Compensation Reform Act of 1989.

CHAPTER TWO

LITERATURE REVIEW

The purpose of this chapter is to review the literature related to workers' compensation, specifically pertaining to the history and evolution of the program's existence. There is special emphasis on background information pertinent to safety, income benefits, medical benefits, and dispute resolution as they relate to workers' compensation insurance all of which are identified as part of the conceptual framework for this project. Review of these components establishes the research foundation and creates the standards for the assessment model this study is built.

History²

Workers in the nineteenth-century America rarely brought lawsuits against their employers for injuries sustained on the job. A prevailing fear of unemployment kept most employees wary of testifying against their employers (Gabel and Mansfield, 1998: 404).

Before 1910, in almost every state, laws determining employers' responsibility for industrial injuries were handed down from the pre-industrial period in England and the United States. Under these laws, it has been estimated that not more than 15 percent of injured employees ever recovered damages under common law, even though 70 percent

² This portion of the chapter is presented on the basis of significant influences that impacted the development of workers' compensation insurance. The information is not in sequential order of time.

of the injuries were estimated to have been related to working conditions or employer's negligence (IAIABC, 1999: 6).

Review of Common Law Rules

Under common law rules of negligence, failure to use that degree of care that was reasonably necessary to protect another person from injury constituted a cause of civil action. The employer was deemed to have certain legal duties of protection that he owed to his employees. These duties were to: provide and maintain a reasonably safe place to work, and safe appliances, tools and equipment; to provide a sufficient number of suitable and competent fellow employees to permit safe performance of the work; to warn employees of unusual hazards; and to establish and enforce proper safety rules. If the employer properly performed all of these duties, he could not be held liable for an injury to an employee arising out of his employment (IAIABC, 1999: 7). Breach of duty providing these components was not easy to prove in court. To sustain this action, the injured party had to prove damage and a natural and continuous sequence, uninterruptedly connecting the breach of duty with the damage, as cause and effect (IAIABC, 1999: 6).

Influential Doctrines

Throughout the early life of workers' compensation, several doctrines that protected employers from liability were introduced. These doctrines consisted of contributory negligence, common employment or fellow servant doctrine and the doctrine of assumption of risk.

The doctrine of contributory negligence originated in 1809. Under this doctrine, the slightest lack of ordinary care on the part of the injured party that contributed proximately to his injury, barred him from recovering damages. If the employee contributed even one percent to the elements that caused the accident, and his employer 99 percent, the injured employee could not recover (IAIABC, 1999: 8).

The common employment or fellow servant doctrine was first suggested in 1837. The doctrine implied the rule that a master should be liable for the acts of his servants presupposed that the master and the person injured “stand to each other in the relation of strangers.” This decision precluded the application of the principle of vicarious liability to the employer-employee relationship by assuming that the employee’s rights are regulated by the contract, expressed or implied, made when the employee entered his employment. This implied employment contract does not extend to indemnify the employee against the negligence of anyone but the master himself (IAIABC, 1999; 8).

The third doctrine described as a process allowing employers the opportunity to avoid liability was the doctrine of assumption of risk. The doctrine of assumption of risk assumed that, although the employee is not obliged to work for the employer, if the employee takes the work, he enters an implied contract in which he assumed certain risks: the ordinary risks of her employment; the extraordinary risks of her employment, if the employee knew of these, or might reasonably be expected to know of them; and the risks arising from the carelessness, ignorance or incompetence of his fellow servants (IAIABC, 1999; 9).

Employer Liability Act

Many pressure groups, advocating reform, proposed that positive rules be laid down to secure justice in the employment relationship. This desire was manifested by statute, rather than judicial decision, simply because legislative bodies are more responsive to public opinion than are the courts (IAIABC, 1999; 9). The employer liability acts did not attempt to create a new system of liability in the industrial relationship. The acts were based on the theory that the employee must bear the economic loss of an industrial injury unless he could show that some other person was directly responsible, through a negligent act or omission, for the occurrence of the accident. The employer was liable only for his own negligence, or at most for the liability of someone for whom he was directly responsible under the doctrine (IAIABC, 1999; 9).

By 1907, 26 states had enacted employer liability acts, with most of these abolishing the fellow servant rule while a few limited the assumption of risk and contributory negligence doctrines as well (IAIABC, 1999; 9). A source of criticism of this system stemmed from the fact that liability could be established only by a lawsuit. Every serious accident was litigated under the employer liability statutes because the injured worker hoped to recover a generous award. When the employee did receive compensation only after a long delay, he was then forced to sacrifice a large portion of the award to pay attorney's fees. On the other hand, employers had to pay out large sums of money for defense of these claims and for satisfaction of verdict (IAIABC, 1999; 11). The system of employer liability under these statutes was defective in that it failed to accomplish its fundamental purpose: A solution of the problems created by work-related

accidents. The operation of the employer's liability system resulted in injustice to all classes. With the continuous increase in economic development, the injustice was aggravated. As a result, alongside this development there grew a new social philosophy which demanded recognition of changed conditions and sought some adequate and just compensation for workers who suffered economic losses from work-related injuries (IAIABC, 1999; 11).

A study of theory of negligence by Richard Posner offered two observations giving some indication why employers began to advocate reform through compensation legislation. First, he points to the tremendous growth in litigation that occurred over this period. Second, he indicates that plaintiffs seemed to be recovering damages in their negligence suits more frequently than ever before. These factors would cause a tremendous increase in costs for employers, and therefore, it would be logical for them to support a compensation system aimed at reducing litigation (IAIABC, 1999, 12).

Compensation Legislation

By 1910, the position of labor had shifted because of the failure of liability statutes to provide a remedy. As a result, labor laws began working actively for compensation legislation. The National Civic Federation, which claimed to represent business, labor, and the public, managed to unify the various labor organizations and gain the attention of the state legislatures. With labor and industry lobbying for effective compensation legislation, the movement toward reform was in full swing (IAIABC, 1999; 12). Several states attempted to pass an act providing for compensation of on-the-job injuries, but to no success. In 1908, Congress, under the direction of President

Theodore Roosevelt, passed a compensation act covering certain Federal employees. Though utterly inadequate, it was the first real compensation act passed in the United States (IAIABC, 1999; 12). Following the adoption of the first real compensation act, several states began enacting their own workers' compensation legislation. As of 1999, there are compensation acts in all 50 states, the District of Columbia, Puerto Rico and Canada. In addition, the Federal Employees' Compensation Act covers the employees of the U.S. Government (IAIABC, 1999; 14).

Workers' Compensation Today

The goal of workers' compensation systems is to benefit both employees and employers by: replacing uncertain remedies with certain ones; avoiding the expenses and risks of tort litigation; and channeling workers' compensation disputes through the presumably cheaper administrative system (Gabel and Mansfield, 1998; 405).

Workers' compensation creates a contractual relationship between employers and employees in which benefits are shared in a way that maximizes their joint profits and uses price adjustments to match the residual risks assigned to each party. The workers' compensation system grants injured workers a guaranteed recovery of scheduled income benefits and medical coverage without regard to fault. In exchange, the employer and insurer gain immunity from litigation and the threat of compensatory and punitive damages" (Gabel and Mansfield, 1998, 403).

Workers' compensation programs are designed and administered by the states through regulatory agencies. Workers' compensation programs are mandated for most employers in every state except Texas, where employers may opt out of the program (Mont, et al, 1999: 2). Laws that are elective rather than compulsory permit the employer to reject coverage, but in the event he does, he loses the customary common law

defenses: assumed risk or employment; negligence of a fellow servant; and contributory negligence (IAIABC, 1999: 15). Workers' compensation programs vary across states in terms of who is allowed to provide insurance, which injuries or illnesses are compensable, and how benefit levels are determined (Mont et al, 1999: 3). The agency's many correlated responsibilities include close supervision over the processing of cases. The primary objective is to assure compliance with the law and to guarantee an injured worker's rights under the statute. Administration by a division within the labor department, board or commission has been found to be more effective in achieving the full purpose of the law than administration by the courts.

A key ingredient in a marriage of professional bureaucracy to science is bureaucracy's need for established rules and science's willingness to supply such research-based rules (Schneider & Ingram, 1997: 177). For example, some workers' compensation systems are established as a commission where the governor appoints representatives to serve as commissioners. These appointed officials vote on whether rules specific to workers' compensation insurance will be adopted, or not. Furthermore, some states have even established a research oversight division to analyze the success of adopted rules in meeting the rules intent. Public policymakers and other system participants debate how to make workers' compensation systems more self-executing. A self-executing system is one in which benefits are delivered and most disputes resolved without recourse to involvement by the public workers' compensation agencies (Ballantyne, 1998: ix). Workers' compensation policymakers strive to make systems more nearly self-executing in order that: entitled benefits are delivered and terminated in a timely manner, thus minimizing economic and social hardships for workers' and

providing reasonable cost to employers; disputes are resolved with a minimum of friction costs (including attorney fees, medical/legal costs, and claims handling costs); and workers return to work faster (Ballantyne, 1998: ix).

The most logical approach to a competent workers' compensation system would be to prevent on-the-job injuries from occurring at all. Safety plays the most significant role in this concept.

Safety

A key agenda item of the workers' compensation movement from the onset has been to prevent occupational injuries from occurring. Although some interest in safety manifested by various employers before the enactment of workers' compensation laws, the organized safety movement, as we know it, began shortly after the first compensation laws went into effect. This movement was due in large part to the industrial leaders' assumption that one of the best ways to reduce compensation costs would be to reduce the number of accidents (IAIABC, 1999: 27).

From the first move toward an organized effort by the Association of Iron & Steel Electrical Engineers in 1912, a devoted safety committee called the National Safety Council was created and continues to exist through 2002. Insurance companies writing workers' compensation policies have also had a large part in the movement to prevent accidents. As a result, they have developed or assisted in the development of safety standards and safe practices and have contributed to the development of methods and techniques of accident prevention (IAIABC, 1999: 27). As a motivator, many carriers

also offer premium discounts for any employer who implements a safety program in the workplace.

Workplace safety is an issue of considerable importance for several reasons. First, deaths from occupational injuries remain unacceptably high. Second, legislation across jurisdictions requires managers to ensure that work is performed in a safe manner. Third, the recent increase in the number of contract workers has been associated with an increase in incidents and injuries. Fourth workers cite occupational safety and health as one of their primary concerns (Barling and Hutchinson, 2000: 77).

According to Barling and Hutchinson (2000, 77), a commitment-based approach to the management of occupational health and safety would be more effective than a control orientation and would achieve its effects because it would enhance employees' trust in management and their effective commitment to the organization. Employees who perceive their managers as having concern for their safety, rather than ensuring compliance with minimal externally established standards by punishing rule violations, will also be proud of their association with the organization.

To assist in measuring the success of the safety regime, the Bureau of Labor Statistics (BLS, 1999) collects information about work-related injuries and illnesses that occur in private sector workplaces. The Survey of Occupational Injuries and Illnesses is a joint federal/state program in which employer reports are collected from a sample of about 165,000 private industry establishments and processed by state agencies in

cooperation with the BLS. The annual survey classifies three degrees of severity of workplace injuries or newly diagnosed illnesses.³

TABLE 2.1
Private Industry Occupational Injury and Illness:
Number of Reported Cases (in millions)

Year	All Cases	Cases with Days Away from Work
1992	6.8	2.3
1993	6.7	2.3
1994	6.8	2.2
1995	6.6	2.0
1996	6.2	1.9
1997	6.1	1.8
1998	5.9	1.7
1999	5.7	1.7

Source: National Academy of Social Insurance, Workers' Compensation: Benefits, Coverage, and Costs: May, 2001.

The number of injuries and illnesses for all levels of severity combined was 5.7 million in 1999, a drop from 6.8 million in 1992 (See Table 2.1). This Table demonstrates success in the endeavor of workplace accident prevention. In order to approximate the number of injuries that may have received workers' compensation income benefits, Mont, et al (2001, 26) used the BLS data that involved days away from work. The BLS report indicates the number of injuries or illnesses involving lost days

³ The first category includes injuries requiring recuperation away from work beyond the day the incident occurred, or "days away from work" cases. The second type of severity of workplace injuries includes injuries involving "restricted work activity only," which means that, while the worker did not miss work, he was not able to perform all normal job tasks for some period of time. The final type of injury severity includes less severe cases that do not involve either restricted activity or lost workdays.

from work were 1.7 million in 1999 and have declined in every year since 1993. Finally, according to the BLS, in 1999, 6,026 fatal occupational injuries were reported. This number is slightly lower than the 6,331 fatalities reported in 1993

When safety measures fail to prevent injuries from occurring, the need for workers' compensation insurance begins. Since injured employees may face the inability to work, the hardship of no income becomes a reality. As a result, one of the benefits of workers' compensation insurance includes coverage for lost wages.

Income Benefits

The categories of workers' compensation benefits payable to an injured worker or the worker's dependents are: medical, disability, rehabilitation, and death. The dollar amounts of these benefits, as well as other related rules, vary considerably from state to state (IAIABC, 1999; 20). The purpose of disability benefits is to replace the worker's loss of income or earning capacity that results from a compensable injury. The four classes of disability are temporary partial, temporary total, permanent total, and permanent partial (IAIABC, 1999: 22). A basic objective of a modern workers' compensation program is to provide protection to workers against loss of income from work-related injuries and diseases. To achieve this goal, the program must carefully weigh the worker's interest in substantial income benefits against factors such as the loss of incentive for rehabilitation (and return to work), which some believe may occur if income benefits are too high (Gardner, 1989: 1). Regardless of the type of disability all states have a waiting period during which disability benefits are not payable. The length of the waiting period varies from state to state, but three days is the most common time

period. Essentially, the waiting period acts as a deductible and eliminates the administrative work for small claims. Normally, if the disability lasts beyond a specified number of weeks (usually 2 or 3), retroactive disability benefits are paid back to the date of injury (IAIABC, 1999: 23).

Temporary Partial Disability

In some cases, injured employees return to work prior to the date they reach maximum medical improvement and thus have reduced responsibility and an accompanying lower salary (Mont, et al, 2001: 27). Compensation for a temporary partial disability is usually calculated as a percentage of the difference between the weekly wage earned during the recovery period and the weekly wage that would have been earned had no injury taken place (IAIABC, 1999: 22).

Temporary Total Disability

When workers' lost time exceeds the waiting period for income benefits, they receive temporary total disability benefits (Mont, et al, 2001: 27). An injured employee with a temporary total disability is expected to recover from the injury and return to employment but is unable to do any type of work while recovering. The amount of the weekly benefit for a worker with a temporary total disability is set by state statute. It is expressed as a percentage of the workers' weekly wages (usually 66-2/3 percent), and is often subject to a minimum and/or maximum dollar amount. Some states also place a limit on the number of weeks and/or dollar amount an employee can collect for a temporary total disability (IAIABC, 1999: 22).

Permanent Total Disability

After the date of maximum medical improvement, if a disability is severe enough, the worker receives permanent total disability benefits. Permanent total disability means that an injury is suffered that leaves the employee unable to do any kind of work for the remainder of his or her life. The majority of states provide permanent total disability benefits for life (IAIABC, 1999: 22). In some states certain injuries are presumed to be a permanent and total disability, for example the loss of two eyes or two arms. In these cases permanent total disability benefits are paid automatically and in full (Mont, Burton, Reno, and Thompson, 2001: 27).

Permanent Partial Disability

Permanent partial disabilities account for 27 percent of cases that involve any cash payments and for the major share of benefits spending in such cases (62 percent) (Mont, et al 2001: 28). A permanent partial disability occurs when an employee suffers an injury from which she will never recover, (back injury resulting in surgery), but the injury is such that the ability to work is only partially affected. In other words, the worker can still do some work but her earning capacity is less than it would have been had no injury occurred (IAIABC, 1999: 23). According to Mont, et al (2001, 28), the system for determining benefits in these cases is very complex and varies significantly across jurisdictions. Some states provide benefits based on an impairment rating scheme while others provide benefits based on the loss of earning capacity.

States have been shifting away from scheduled benefits in permanent disability cases toward benefits that vary with post-injury wage losses. Because awards for loss of earning capacity may be influenced by actual wage loss during the recovery from injury, incentives exist to extend the duration of disability (Gardner, 1989: 2).

In addition to income benefits, workers' compensation insurance also provides for coverage of medical expenses resulting from the on-the-job injury. In many jurisdictions, coverage is provided without a timeframe of coverage, as long as the need for treatment continues to relate to the injury.

Medical Benefits

Every state law requires the employer to provide for medical care to the injured worker. Most state statutes provide for unlimited medical benefits in terms of both dollar amounts and duration (IAIABC, 1999: 20). Only two states have limitations on total medical care available for work-related injuries by a specified maximum dollar amount or maximum periods. In Arkansas, employer liability ceases six months after an injury where no time is lost from work, or six months after a claimant returns to work, or maximum of \$10,000 has been paid, unless the employer waives rights or the Commission extends time and dollar limits. In Florida, after maximum medical improvement is reached, a \$10 patient co-payment is required for all medical services (IAIABC, 1999: 21).

Expenditures

For many years, disbursements for medical services provided under workers' compensation have comprised about one-third of total outlay for benefits. Medical care expenditures in the United States have been rising at a substantially faster rate than other consumer expenditures. According to Boden and Fleishman (1989, 15), medical costs for workers' compensation increased at an annual rate of 1.3 percent faster than non-workers' compensation medical costs between 1965 and 1985. But workers' compensation has some distinct features. First, workers' compensation systems provide first-dollar coverage; there are no deductibles or coinsurance. In addition medical treatment in workers' compensation can be complicated by litigation. Other issues also make negotiating for discounts difficult. According to Boden and Fleischman (1989: 18), workers' compensation has only a small share of the medical care market, therefore it has less bargaining power. Second, workers have the legal right to choose a treating physician in about half the states, making it more difficult for employers to direct them to lower-cost providers. As other payers have tightened reimbursements, workers' compensation may have become the victim of cost shifting. By cost shifting, Boden and Fleischman (1989, xiii) mean that workers' compensation pays an increasing share of the providers' overhead costs, while other payers reduce their payments, absorbing smaller shares of those costs.

The range across states for both payments and utilization per service is wide for all provider types, but differences in average cost seem to be driven more by differences in utilization than in payments (Eccleston, et al, 2000: 38). Interstate differences in workers compensation medical costs often are due to differences in medical prices,

treatment patterns, and utilization of the workers' compensation system (Boden and Fleishman, 1989: xvi). Litigation can complicate care and delay recovery, prolonging the duration of medical treatment paid by workers' compensation. In addition, most states allocate the expense of medical evaluations used to resolve legal disputes—which are often substantial—as medical costs (Boden and Fleishman, 1989: 18). In 1996, according to Eccleston, et al (2000, 3), expenditures for workers' compensation medical benefits across the nation exceeded \$16 billion. Although health care costs in workers' compensation made up less than 2 percent of total medical expenditures nationally, they comprised roughly 40 percent of total workers' compensation benefit costs that year. The total share of state workers' compensation benefits that were for medical care rose from 40.3 percent in 1998 to 43.3 percent in 1999, an increase of 3.0 percentage points (Mont, et al 2001: 14).

Cost Containment

Containing medical costs is not an end in itself. If medical cost containment adversely affects the quality of medical care, workers will suffer and the cost to employers and insurers will go up as indemnity benefits rise to compensate for the consequences of diminished care (Boden and Fleishman, 1989: xvii). Eccleston, et al (2000, 93) explain that medical cost containment may include price controls (physician and hospital fee schedules, for example) and mandated bill review, as well as utilization controls (utilization review, treatment guidelines, provider choice, and comprehensive managed-care arrangements, for example).

Medical fee schedules are one of the oldest and most widespread methods of cost control used in workers' compensation. Fee schedules list maximum charges for specific medical goods and services. These fee schedules are designed to control medical care prices, not utilization (Boden and Fleishman, 1989: 31). Fee schedules have been adopted to limit the price of medical services and goods. According to Eccleston, et al (2000, 37), fee schedules and treatment guidelines may play a role in determining the use of particular providers. For example, utilization limits on chiropractic care in Florida's fee schedule may contribute to the state's somewhat lower use of chiropractic care. Large payors, including private health insurers and Medicare have established controls on the charges they pay as well as procedures for reviewing medical treatment for excessive utilization or inappropriate care (Boden and Fleishman, 1989: 3). Fee levels in each state generally are developed through a review of charges and the advice of panels and committees. Most fee schedules set fees based on relative values from existing scales, combined with state-defined conversion factors (Eccleston et al, 2000: 93).

Employer choice of treating physician is another feature of workers' compensation systems that some believe is critical to effective containment of medical care costs. Employers and insurers may have more leverage over medical costs when they are able to choose the medical care provider (Boden and Fleishman, 1989: 31). About half of the states give the employee the right to designate the physician with some allowing the employee to choose from a list maintained by the employer. Eight states allow the employer to select the physician and nine allow the employer to make the initial selection with the state agency or the employee being able to change such selection after a specified period of time (IAIABC, 1999: 21). In most states, the statutes define who

can or cannot be designated a treating provider in workers' compensation. The treating provider is generally the provider who directs the worker's care; he does not require a referral from another physician to treat the injured worker (Eccleston, et al, 2000: 95).

Another option in workers' compensation is managed care. The objectives of managed care include: controlling the cost of claims by achieving the fastest maximum medical improvement; and securing the earliest return to work feasible, given the nature of the injury involved (IAIABC, 1999: 21). Some states regulate managed-care arrangements. That means payers in those states can provide healthcare to injured workers under managed-care arrangements, but those arrangements must conform to the rules governing managed care (Eccleston, et al, 2000: 95).

According to Eccleston, et al (2000, xv), changes in medical costs may be tracked to measure the success of the program through analysis of the average medical costs per claim, average number of services per claim, average number of visits per claim, and average number of service per visit. The gathered cost data should assist policy-makers identify other means to regulate the expense of medical care costs.

Simply the process of filing a workers' compensation claim with the employer does not always ensure the provision of coverage to the injured employee. Occasionally, insurance carriers may have insufficient evidence to accept liability of a claim. Or, perhaps, an injured employee may have concern over the amount of benefits provided. In any case, dispute resolution may be needed by either party to assist bringing the disagreement to closure.

Dispute Resolution

Maintaining the employment relationship could have important implications for workers' compensation systems. Research investigating claimant perceptions of the claims process suggests that the breakdown of the employment relationship, the lack of information and/or assistance navigating the claims process, and humiliating treatment by professionals during the claims process are at the core of claimant dissatisfaction (Ballantyne and Mazingo, 1999: 21). Disagreements can and do arise. The sides do not always agree about: whether the injury is compensable; whether benefit amounts are correct; whether benefits have been paid on time; and whether additional benefits should be paid. In such cases participants turn to the workers' compensation agency for information, assistance, and resolution of disputes (Ballantyne, 1998: 3). The universal challenge in designing and implementing forums to fairly, quickly, and cost effectively resolve workers' compensation disputes has resulted in tremendous diversity in organizations, structures, methods, and procedures among jurisdictions in the United States (Ballantyne, 1998: ix).

Recognizing the human and system costs associated with litigation, public policymakers have increasingly sought to ameliorate those costs through: preventing disputes, that is, helping to resolve differences between the parties without resort to dispute resolution forum. Informal dispute resolution forums are developed to resolve inevitable disputes faster, more cost-effectively, and at lower friction costs to both sides. Furthermore, reducing delay and friction costs associated with the formal hearing and appeals processes result from this informal dispute resolution process (Ballantyne, 1998: 7). If prevention of a dispute is not successful, the most common pattern for resolving

workers' compensation disputes according to Ballantyne (1998, 17) is some form of informal dispute resolution forum, followed by a formal hearing and administrative appellate review. All jurisdictions permit appeal to the civil courts.

Early Intervention

Many times, claim disputes arise from a lack of knowledge of the workers' compensation system or poor communication between parties involved in the claim for compensation. A higher degree of certainty can be achieved when states take actions to define expectations and responsibilities of system participants. A distinguishing characteristic among jurisdictions is the extent to which their staff is designated (and presumably trained) to intervene by telephone and in writing to address problems that arise among the parties (Ballantyne, 1998: 29). Strategies used by some public agencies have sought to prevent disputes include disseminating information about participants' rights and responsibilities, designating staff to provide assistance, intervening to resolve misunderstandings before they result in hearing requests and conducting regular training and education for participants (Ballantyne, 1998: 3).

The Workers' Compensation Research Institute has recognized and conducted studies on the issue of early intervention. Through this analysis, six strategies to assist in the prevention of unnecessary disputes have been identified. First, written materials explaining the law and participants' rights and responsibilities under the law should be targeted to each participant in the system. The study also found a benefit in providing information on the Internet for easier, anytime access. The workers' compensation agency, employer, and insurance carrier should be required to send information to

workers regardless of whether the information is requested, or not. Toll-free information lines should be available to various constituents. Finally, agency staff should have local computer access to agency-maintained workers' claim files and routinely intervene to attempt to solve problems among participants (Ballantyne, 1998: 23).

Early intervention may not always be successful in resolving disputes. The time agency staff spends attempting to resolve these differences in opinion will assist in preparing the claim for the next level, informal dispute resolution.

Informal Dispute Resolution

Three general types of informal dispute resolution forums have been identified. The first type of informal dispute resolution forum is multi-issue informal conferences that involve a face-to-face meeting or telephone conference call conducted by a convener. Next, there are other multi-issue dispute resolution forums designed to address a wide variety of issues that do not involve a face-to-face meeting or telephone call. Specialized informal dispute resolution forums that address cases involving disputes over specific types of benefits are the final type of general informal dispute resolution forums. Some jurisdictions mandate the use of a multi-issue information dispute resolution forum and may even require the conference be held before a formal hearing can be requested (Ballantyne, 1998: 33). Conferences include face-to-face meetings or telephone conferences with the purpose of giving the parties an opportunity to meet in the presence of a convener, to exchange information, to define issues, and to resolve disputes by voluntary agreement or a decision (Ballantyne, 1998: 9).

Informal dispute resolution forums are distinguished from formal forums by the following characteristics: there are no or few procedural rules; there are no rules governing admissibility of evidence; there is no sworn testimony or cross examination of witnesses; and no transcript or other form of formal hearing record kept (Ballantyne, 1998: 9). Evidence indicates that mediation increases the likelihood of voluntary resolution. Mediation also seems to increase the disputants' willingness to compromise, to "split the difference" (Ballantyne and Mazingo, 1999: 36). An examination of the disputants' satisfaction with mediation and arbitration found strong evidence that the parties and their attorneys were more satisfied with every aspect of mediation: the process and its effect on the parties' relationship, the convener, and the outcome and its implementation (Ballantyne and Mazingo, 1999: 46).

If the informal dispute resolution is unsuccessful, the issue is continued to the higher, more formal dispute resolution process. In many instances, the officer above the informal resolution process summarizes their conference and sends recommendations to a judge.

Formal Dispute Resolution

Formal administrative hearings are oral proceedings before an administrative agency adjudicator, consisting of argument or trial or both. These proceedings are distinguished from informal conferences by the following characteristics: sworn testimony is taken; cross-examination of witnesses is permitted; a record is kept of the proceedings; and a written decision is issued if voluntary agreement is not reached (Ballantyne, 1998: 10). Most formal hearings among jurisdictions look alike in their

structure and process. A judge normally presides over pre-hearing conferences conducted in person. Workers usually attend the pre-hearing conference and attorneys commonly represent both sides. If, by chance, any subsequent formal hearing is necessary, the same judge will preside. Judges conduct single-session formal hearings. Following the close of the record, judges are required to issue written decisions within 30-45 days from the formal hearing or close the hearing record if voluntary agreement is not reached at or shortly after the hearing (Ballantyne, 1998: 45). Most jurisdictions require some combination of: exchange of reports; submission of stipulation sheets, completion of formal discovery, submission of depositions; and prior meetings. The outcomes of formal hearings in all states include a formal hearing decision, a settlement, or some other form of voluntary agreement (Ballantyne, 1998: 45).

If, following the decision from the formal proceeding, either party is not satisfied, the unsatisfied party may request review through the appeals panel process.

Appeals Process

Many jurisdictions have developed administrative appellate forum to review formal hearing decisions upon request. These involve panels of three appellate judges, but other models exist such as review by other formal hearing judges, review by a single individual or review by a smaller or larger panel (Ballantyne, 1998: 17). In most jurisdictions, the appellate panel or officer review the formal-hearing record and issues a decision based on a review of the law and the facts in the case (Ballantyne and Mazingo, 1999: 18). All jurisdictions permit decisions issued by an administrative appellate body to be appealed to a state civil court (Ballantyne, 1998: 11).

Ballantyne and Mazingo (1999, 73) realize that in workers' compensation systems, change is nowhere more evident than in dispute resolution programs. To monitor and evaluate those programs, policymakers must ask a number of questions:

- Is the dispute resolution program meeting its objectives?
- What are the current outcomes—disposition rate, speed of resolution, administrative and participants' costs, and participants' satisfaction and perceptions of fairness—of the program?
- What issues are being disputed?
- How can the program's performance be improved?

Research of the workers' compensation system revealed that program cost is a great concern to both policy-makers and participants within the system; however, all parties understand that appropriate benefits to injured employees are necessary. In an effort to provide appropriate system coverage, while keeping control over the costs, monitoring of safety provisions in the workplace, income benefit and medical coverage, as well as the dispute resolution process have become highlighted issues in evaluating the revamped workers' compensation system.

Conceptual Framework

This research uses a practical ideal type framework. The objectives identified by the Joint Select Committee that were eventually formalized by the adoption of the 1989 Texas Workers' Compensation Reform Act are used in this study to develop the standards of measurement for the conceptual framework.

Table 2.2: Linking Conceptual Framework to Sources

Standard	Scholarly Support
<p>Safety:</p> <ul style="list-style-type: none"> • The system should promote safety and health in the workplace. 	IAIABC, 1999 Barling and Hutchinson, 2000 Mont, et al, 2001 BLS, 1999 TWCC Act and Rules, 2001 Lee, 1998 Joint Select Committee on WCI, 1988 TWCC Agency Strategic Plan, 2000 Barth and Eccleston, 1995
<p>Income Benefits:</p> <ul style="list-style-type: none"> • The system should provide adequate income benefits. • The system should provide equitable income benefits to claimants in similar circumstances. • The system should provide income benefits in a timely, humane, and cost-effective manner. 	Gardner, 1989 IAIABC, 1999 Johnson, 2000 Mont, Burton, Reno, and Thompson, 2001 TWCC Act and Rules, 2001 Lee, 1998 Joint Select Committee, 1988 TWCC Agency Strategic Plan, 2000 TWCC System Data Report, 1999 & 2001 Barth and Eccleston, 1995
<p>Medical Benefits:</p> <ul style="list-style-type: none"> • The system should ensure appropriate and quality medical care. • The system should ensure timely medical care is received following the injury. • The system should ensure the amount of insurance carrier medical care expenditures is comparable to other systems. 	IAIABC, 1999 Boden and Fleishman, 1989 Eccleston, et al, 2000 Mont, et al, 2001 TWCC Act and Rules, 2001 Lee, 1998 Joint Select Committee, 1988 TWCC Agency Strategic Plan, 2000 TWCC System Data Report, 1999 & 2001 Barth and Eccleston, 1995
<p>Dispute Resolution</p> <ul style="list-style-type: none"> • The system should encourage resolution of benefit disputes at the lowest possible level. 	Ballantyne and Mazingo, 1999 Ballantyne, 1989 IAIABC, 1999 TWCC Act and Rules, 2001 Lee, 1998 Joint Select Committee, 1988 TWCC Agency Strategic Plan, 2000 TWCC System Data Report, 1999 & 2001 Barth and Eccleston, 1995

In Table 2.2 the four components of the assessment framework are identified. The first topic established by the Joint Select Committee evolves around **safety**. The objective establishes that the workers' compensation system should promote safety and health in the workplace. The simplest way to reduce the expense of workers' compensation insurance would be to prevent the number of injury occurrences. When a worker is injured, employers face the prospects of increased insurance premiums, lost profits due to down time, and recruitment and training costs to replace disabled workers.

The judgment has always been that Texas benefits are among the lowest in the nation. Therefore, the second component of analysis will involve **income benefits**. The committee states the system should provide adequate income benefits to employees injured on the job. Through a Report to the 71st Texas Legislature from the joint select committee, benefits are inadequate for some classes of employees. Texas workers with serious, long-term disabilities receive benefits that are among the very lowest in the nation. High wage earners also receive benefits that are low by national standards. Low wage earners, part-time or seasonal workers, and many with minor injuries receive benefits that are high by national standards. Furthermore, the income to claimants should be equitable to other claimants in similar circumstances. The Joint Select Committee (1988: 4) establishes several features contributing to inequities among claimants. These are: the low weekly benefit maximums; short benefit durations for permanent disabilities; the benefit schedule for specific injuries; and the occurrence of settlements prior to stabilization of the claimants' medical condition. The income benefits should also be provided in a timely, humane, and cost-effective manner. According to the Joint Select Committee (1988: 4), the process of delivering benefits suffered from several deficiencies

impeding its efficiency and effectiveness. Prior to the reform, information was lacking that enabled policymakers to effectively control the routing operations of the system or to evaluate its performance. The agency lacked either the ability or the resources to effectively control the behavior of participants and to compel appropriate actions when they are required.

The third topic of interest addressed in this research involves the provision of **medical benefits** to injured employees. The Joint Select Committee established the criteria of the system to ensure appropriate and quality medical care is provided. Furthermore, the system should provide means to maintain the amount of insurance carrier medical care expenditures at a level comparable to other systems. Each of these issues were identified as ideals in the conceptual framework in Table 2.2 and are analyzed through this research.

The final issue addressed in this research involves **benefit dispute resolution**. Through *An Evaluation of the Workers' Compensation System with Issues and Option*, John Lewis (1988: 55) demonstrates two ways where a problem of equity is made more acute in Texas because of the use of the de novo trial concept. First, in an attempt to bring the parties to agreed settlements, pre-hearing examiners consider not only the severity of injury but also the county in which the case might be heard, should it proceed to a jury trial. Second is the "race to the courthouse" which occurs after Board awards are issued. Moreover, the use of juries means that fact finders who have no experience with workers' compensation, and no context in which to place their decisions hear every case. To address this concern, the system reform established an adjudication system

within the workers' compensation system's jurisdiction that must be exhausted prior to appeal to district court.

To amplify the direction of this study, an overview of the Texas Workers' Compensation System is provided in the next chapter. This chapter provides an explanation of the system in the key areas of safety, income benefits, medical benefits, and dispute resolution in Texas.

CHAPTER THREE

LEGAL SETTING

In Texas, the original workers' compensation law went into effect in 1913. Among its many provisions, the statute of 1913 established the Industrial Accident Board (IAB) to administer the workers' compensation law and vested responsibility for final adjudication of disputes in the civil courts (Barth, et al, 1989: 5). This workers' compensation law, along with major revisions in 1917, 1957, 1969, and 1973, enacted a system of insurance designed to provide quick and certain recovery to industrially injured workers without regard to fault for the injury, to limit the liability of employers, and to transfer the costs of work-related injuries from the employee and the public at large to employers and the consumers of their product (Joint Select Committee on Workers' Compensation Insurance, 1988: 2).

Prior to 1989, workers' compensation insurance rates had increased over 67 percent in 30 months, causing many large and small employers to re-evaluate their business growth opportunities in Texas. Insurance carriers were reconsidering the idea of writing workers' compensation coverage to Texas employers and many employers, unable to afford workers' compensation coverage, were opting out of the system (Joint Select Committee on Workers' Compensation Insurance, 1988: 1).

According to the Research and Oversight Council's Examination of Strengths and Weaknesses of the Texas Workers' Compensation System (1998: 2), Texas had no statistical basis on which to evaluate the effectiveness of the prior system. System participants perceived that the entire workers' compensation system was out of control,

yet little information existed to support or reject such assertions. In response to this lack of information the Texas Legislature in 1987 created the Joint Select Committee on Workers' Compensation Insurance to gather objective information in order to identify potential problems and develop sound policy recommendations. In December of 1988, the Joint Select Committee presented a summary of research findings and recommendations to the 71st Texas Legislature that became the basis for the 1989 Texas Workers' Compensation Act. The ideal type for the conceptual framework of this project evolves around the suggestions made by this committee to the Texas Legislature specifically in the areas of safety, income benefits, medical benefits, and dispute resolution. A brief historical background of the four categories pre and post 1989 reform is provided.

Safety

The link between occupational safety and health and workers' compensation insurance is undeniable. If on-the-job injuries did not occur, a need for workers' compensation would not exist. Evidence provided by the Joint Select Committee (1988: 5), portrayed that just prior to the 1989 reform, Texas may not have been devoting sufficient attention or resources to safety.⁴

Since the reform, a Workers' Health and Safety Division was created at the Texas Workers' Compensation Commission. This division coordinates the implementation of state laws and rules relating to workers' health and safety. The division is responsible for

⁴ For statistical detail, refer to Research Papers of the Joint Select Committee on Workers' Compensation Insurance, September 1988, Chapter 7.

monitoring both employers' compliance with mandatory safety programs and insurers' accident prevention services.

Also a part of this division is the Extra-Hazardous Employer Program. This program is part of the Workers' Health and Safety Division's effort to monitor employers' compliance. If designated an extra hazardous employer, the employer must hire a consultant to survey existing hazards and develop accident prevention plans.

The Workers' Health and Safety Division also publishes safety education materials, offers safety education services, and helps employers allocate their accident prevention resources through the Safety, Health, and Injury Prevention Programs Section of the division. This section offers a back injury prevention program, a voluntary training program, a drug-free workplace program, a safety training program, a peer review safety program, and a federal OSHCON program that provides free safety consultations to small employers. The division also maintains a resource center where employers and others can borrow videotapes, slides, books, periodicals, and other research materials on safety (Barth and Eccleston, 1995: 23).

Finally, to ensure proper analysis of safety in the workplace, the Workers' Health and Safety Division formed the Safety Information Systems and Planning Section responsible for publishing an annual survey of occupational injuries and illnesses. This census of fatal occupational injuries is conducted in cooperation with the U.S. Department of Labor. The division is also working with other state agencies to develop a comprehensive injury database (Barth and Eccleston, 1995: 23).

Income Benefits

The original act of 1913 limited all compensation rates payable to injured employees to 60 percent of the employee's average weekly wage. The compensation for total incapacity was for 400 weeks, extended to 401 weeks in 1917. Partial incapacity was compensated by payment of 60% of the difference between the average weekly wage before the injury and the average weekly wage earning capacity after the injury for 300 weeks. In 1973, Senate Bill 283 broadened the coverage of the act by increasing the weekly compensation rate from 60 percent to 66-2/3 percent of the employee's average weekly wage.

Following the reform in 1989, a new tiered-system of income benefits was implemented involving temporary income benefits, impairment income benefits and supplemental income benefits potentially entitling an injured employee to income benefits for up to 401 weeks. Temporary income benefits are paid to the injured employee while she remains unable to work, or for 104 weeks from the date of injury, whichever comes first. This benefit is paid at 70 percent of the employee's average weekly wage or 75 percent for the first twenty-six weeks (then reverting to 70 percent) for people with an average hourly wage of less than \$8.50. The next benefit type, impairment income benefits is one of the most significant departures in the new reform. These benefits are paid based on an impairment rating assigned by a treating, carrier, or designated doctor. An injured employee is entitled to receive three weeks of benefits at 70 percent of the average weekly wage for each percentage point of the impairment rating assigned by the doctor.

Medical Benefits

The original act provided that the insurer must cover the cost of reasonable medical care, hospital services, and medication necessary during the first week after the injury. Evident of the need for further treatment, in the revision of 1917, the act soon extended the period of medical coverage to two weeks and further regulated the conditions under which services were necessary. In 1957, through HB 433 passed by the 55th Texas Legislature, insurers were required to furnish unlimited medical aid including reimbursement to claimants for any out-of-pocket medical expenses associated with their on-the-job injury.

In at least three respects, the pre and post reform laws involving medical benefits are similar. First, workers with compensable injuries or illnesses are entitled to health care services and are paid for by the insurers. Second, the statute imposes no time or dollar limits on health care benefits. Finally, Texas continues to allow workers to have the initial choice of physician (Barth and Eccleston, 1995, 29). Although these aspects remain similar, fundamental changes in health care have occurred as a result of the reform.

Following the reform the Texas Workers' Compensation Commission (TWCC) was given the authority to establish criteria for screening doctors out of the system. The established criteria included a variety of reasons, among them were sanctions by the Medicare or Medicaid program, administrative violation under the workers' compensation law, and inappropriate billing or treatment practices (Barth and Eccleston, 1995: 30). Another differing aspect involving medical benefits established by the 1989 reform was the requirement of preauthorization by the insurer for certain health care

treatments and services. The TWCC has identified fifteen treatments and services that require preauthorization.⁵ The insurer is not liable for those services unless it has authorized treatment or treatment has been ordered by the TWCC. Finally, to assist in controlling medical costs, fee schedules for doctors, hospitals, pharmacies, dentists, and suppliers of durable medical equipment was established. According to Barth and Eccleston (1995: 31), the maximum fee is set at the lower of the provider's usual fee and charges or TWCC's guideline. To monitor the appropriateness of medical payments and ensure prompt payments are made, TWCC is required to audit those parties that pay health care bills. One purpose of the audit is to discern patterns of questionable, excessive, or illegal practices that no insurer or third-party payer would be able to detect from its own data alone (Barth and Eccleston, 1995: 32).

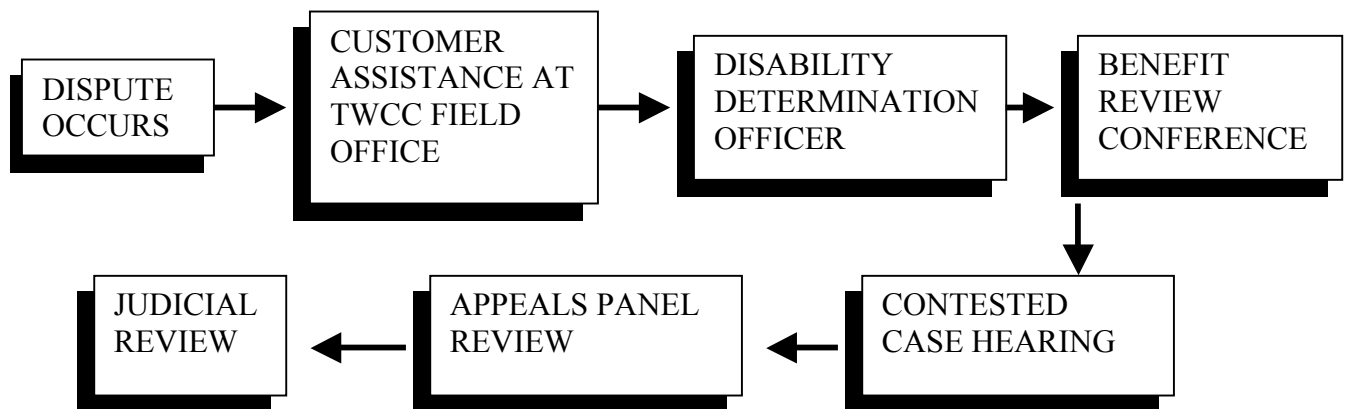
Dispute Resolution

The original establishment of the act created a three-member Industrial Accident Board composed of an employer, a wage earner, and a practicing attorney. In addition to rule-making authority, the board was given the power to order medical examinations of claimants, and other powers necessary to make findings of fact according to the law. In cases where liability or extent of injury could not be established by the board, upon approval by the board, compromise settlement agreements were allowed. Through the passing of SB 64 by the 61st Texas Legislature (1969), pre-hearing conferences presided by pre-hearing officers were established to resolve disputes including benefit

⁵ Recent changes to the Texas Workers' Compensation Act have resulted in new TWCC Rules relating to preauthorization. Since this research pertains to the 1989 Reform Act, these changes are not addressed in this paper. If interested, the new law and rules can be reviewed at www.twcc.state.tx.us

controversies, payment for medical services, the claimant's hardship, or settlement of claims. Approximately 85% of disputes were resolved through lump sum settlements (Lee, et al, 1998: 40). These settlements not only paid an injured worker a lump-sum of money, depending on the type and severity of the injury, but also limited an insurance carrier's liability for future medical costs to a period of time usually lasting one to three years. If a dispute was not settled through a compromise settlement agreement, then it normally ended up in district court where it was settled or withdrawn before reaching a jury verdict (Lee, et al, 1998: 40).

Figure 3.1
The Texas Workers' Compensation Administrative Dispute Resolution Process



Source: Research and Oversight Council on Workers' Compensation, 1998: 42.

The 1989 reform involving the dispute resolution system was created to relieve the overburdened courts from the weight of the workers' compensation dockets. The reformed system, diagramed in Figure 3.1, created a multi-level administrative dispute resolution system to allow disputes to be resolved informally, rather than in the courtroom. Once a customer assistant identifies a dispute, they will work with the

disability determination officer to attempt to resolve the issues through contact with both parties. Also established was an ombudsman program to assist unrepresented injured workers and employers through this process. The current workers' compensation administrative dispute resolution process includes three statutory levels: the benefit review conference (BRC); the contested case hearing (CCH); and the appeals panel (AP). The benefit review conference is an informal proceeding designed to explain the rights of respective parties to a workers' compensation claim, mediate, and resolve disputed issues. If the issue is not resolved at this level, but raised at the benefit review conference, the parties will present their case at a formal hearing, or contested case hearing after which an order will be issued. The appeals panel is the final level of dispute resolution provided through the Texas Workers' Compensation Commission. The AP consists of three administrative judges who evaluate the decision rendered at the CCH level and either affirm, reverse, or remand the earlier decision to the CCH level. Following this process, if either party remains unsatisfied with the results, they may seek judicial review of their compensability or claims for income or death benefits by filing suit in the applicable Texas district court. For all other issues, the State Office of Administrative Hearings under the Administrative Procedure Act conducts judicial review.

Conceptual Framework

Research of the workers' compensation system revealed that program cost is a great concern to both policymakers and participants within the system, however, all parties understand that appropriate benefits to injured employees are necessary. In an

effort to provide appropriate system coverage, while keeping control over the costs, monitoring of safety provisions in the workplace, income benefit and medical coverage, as well as the dispute resolution process have become highlighted issues in evaluating the revamped workers' compensation system. This study involves an analysis of the Texas Workers' Compensation System.

The next chapter links the standards to the methodology used to gauge whether the implementation of the 1989 reform successfully meets the mandates. Descriptions of the methods used as well as the formulas for analyzing the data are provided.

CHAPTER FOUR

METHODOLOGY

The purpose of this chapter is to describe the methodological approach used in the empirical portion of this study. The single case study method was selected to investigate the implementation of the 1989 Texas Workers' Compensation Reform Act and the standards in the areas of safety, income benefits, medical benefits, and dispute resolution recommended by the Joint Select Committee. This chapter examines the advantages and disadvantages of using surveys and analysis of existing data as the two sources of data used in the case study. The collected data necessary for this study is derived from the basis of the framework described earlier in this study. Following justification for the methodology type, operation of the research is provided.

Justification of the Case Study Design

A case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident. In this instance, the "case" is the implementation of the 1989 Texas Workers' Compensation Reform Act. Since implementation is a complicated phenomenon, comprehensive research strategy like the case study is well suited to the research question. This research strategy comprises a method of analysis with the logic of design incorporating specific approaches to data collection and to data analysis. In this sense, the case study is not either a data collection

tactic or merely a design feature alone, but a comprehensive research strategy (Yin, 1994: 13).

According to Yin, case studies are often used to better understand social, psychological, or political situations because they “retain the holistic and meaningful characteristics of real-life events – such as individual life cycles, organizational and managerial processes, neighborhood change, international relations, and the maturation of industries” (p. 3). Case studies usually involve observation of the event in its current, natural state, whereas an experiment deliberately separates a phenomenon from its context. Yin (1994: 8) explains that the case study’s unique strength is its ability to deal with a full variety of evidence beyond what might be available in the conventional historical study. In this study, survey analysis of health care providers’, insurance carriers’, and employers’ perception of the reform are used as well as analysis of existing data to determine whether the standards established by the reform were met.

The case study design has been viewed as a less desirable form of inquiry by many research investigators. One argument is this type of design allows for equivocal evidence or bias views to influence the direction of the findings and conclusions since the observation is performed in the objects natural state. Yin (1994: 10) points out that “what is forgotten is that bias also can enter into the conduct of experiments and the use of other research strategies such as designing questionnaires for surveys or conducting historical research. The problems are not different, but in case study research, they may have been more frequently encountered and less frequently overcome.” Scientists also argue that case study findings are inconclusive because they are difficult to recreate and not readily generalized to other situations in the real world. Yin (1994: 10), however argues that

single experiments are also not generalizable and, in fact, can only be generalized to their “theoretical propositions”.

To overcome these concerns, the existing data was sought through an open records request to the Texas Workers' Compensation Commission. The data requested was similar to what the agency already reports through both the System Data Report and the Agency's Strategic Plan. The design for this portion of the research therefore leaves little room for manipulation through analysis. Furthermore, the survey designed was carefully developed to correspond with the intent of the legislation as established by the Joint Select Committee and their research. Designing the framework on this basis lends to duplication of the research at various timeframes throughout the life of this reform.

The value of case studies is they are broad enough to include both quantitative and qualitative evidence. According to Perez (2000: 54), they can describe and explain real-life situations, evaluate program implementation, and “explore those situation in which the intervention being evaluated has no clear, single set of outcomes.” These attributes support the use of the case study analysis for the assessment of the 1989 Texas Workers' Compensation Reform Act. Triangulation will be used to determine the perceptions of system participant through the use of surveys as well as to ascertain the TWCC's success of meeting the standards established by the Joint Select Committee through the analysis of existing data.

Operationalization of the Conceptual Framework

Table 4.1 displays the standards relating to safety, income benefits, medical benefits, and dispute resolution recommended by the 1989 Texas Workers'

Compensation Reform Act and describes the research strategies used in this study to determine whether the evidence supports or fails to support the expectation that the standards are met.

**Table 4.1:
Analysis of Conceptual Framework through Survey and Existing Data**

Practical Ideal Type	Type of Evidence	Data Source other than Survey
<p>SAFETY</p> <p>The system should promote safety and health in the workplace.</p>	<p>SURVEY: Under the current workers' compensation system, employers are rewarded for providing a safe workplace for their employees.</p> <p>EXISTING DATA: a. Have nonfatal occupation injury rates increased or decreased since the reform? <i>Method of calculation: The measure is calculated as $(N/EH) \times 200,000$ where N is the total number of recordable injuries and illnesses in the year and EH is the total number of hours worked by all employees in that year. The multiplier (200,000) expresses the ratio as a rate equivalent to 100 full-time employees working 40 hour weeks 50 weeks per year, or 200,000 hours.</i></p> <p>b. Have the occupational injury rates in Texas remained below the national average?</p>	<p>SURVEY: Likert Scale: (2)Strongly Agree, (1)Agree, (0)Not Sure, (-1)Disagree, (-2)Strongly Disagree</p> <p>According to the TWCC Strategic Plan, the data comes from the Annual Survey of Occupational Injuries and Illnesses, which uses a stratified sample of private sector establishments by industry and size class to develop reliable estimates of occupational injury and illness rates in Texas. This is determined by using OSHA (Occupational Safety & Health Administration) standards for record-keeping and injury reporting. Data is collected by TWCC and is entered into terminals that are linked to the Bureau of Labor Statistics. Rates are developed by the Bureau of Labor Statistics on a calendar year basis. The incidence rate is based on the preceding calendar year. The national averages</p>

**Table 4.1 (continued):
Analysis of Conceptual Framework through Survey and Existing Data**

Practical Ideal Type	Type of Evidence	Data Source other than Survey
<p>INCOME BENEFITS</p> <p>The system should provide adequate income benefits.</p>	<p>SURVEY: Under the current system, the amount of income benefits an injured worker receives is adequate to replace most of his/her lost earnings and alleviate the economic hardships that often occur because of a work-related injury.</p> <p>EXISTING DATA: Is the average income replacement rate for injured workers who have missed work due to their on-the-job injury higher or lower than the minimum level of 80% recommended by the National Commission on Workmen's Compensation Laws? <i>Method of Calculation: Standard: The product of average weekly wage (AWW) as reported in the TWCC System Data Report and the appropriate tax rate (ITR). The product was multiplied by the 80% recommended wage replacement rate. TWCC Performance is determined through multiplying the AWW (which is gross) by the 70% paid in accordance with the Act.</i></p>	<p>SURVEY: Likert Scale: (-2)Strongly Agree, (1)Agree, (0)Not Sure, (-1)Disagree, (-2)Strongly Disagree</p> <p>EXISTING DATA: The average weekly wage reported in the TWCC System Data Report for each year studied was used for this analysis. The tax rate multiplier was gathered through the Tax Rate Schedules from the IRS.</p>
<p>The system should provide equitable income benefits to claimants in similar circumstances.</p>	<p>SURVEY: The current workers' compensation system provides similar amounts of benefits to injured workers who suffer the same kind of injury/illness.</p>	<p>SURVEY: Likert Scale: (-2)Strongly Agree, (1)Agree, (0)Not Sure, (-1)Disagree, (-2)Strongly Disagree</p>
<p>3. The system should provide income benefits in a timely, humane, and cost-effective manner.</p>	<p>SURVEY: The current Texas Workers' Compensation System ensures that injured workers receive fair and appropriate benefits in a timely manner.</p> <p>EXISTING DATA: Percentage of first income benefit payments timely made by insurance carriers. <i>Method of Calculation: Divide the number of timely initial temporary income benefits payments by the total number of paid indemnity claims in the period.</i></p>	<p>SURVEY: Likert Scale: (-2)Strongly Agree, (1)Agree, (0)Not Sure, (-1)Disagree, (-2)Strongly Disagree</p> <p>EXISTING DATA: 3. According to the TWCC Strategic Plan, the information used in this calculation is received by the Commission from insurance carriers and is maintained in the agency automated system.</p>

Table 4.1 (continued)
Analysis of Conceptual Framework through Survey and Existing Data

Practical Ideal Type	Type of Evidence	Source of Data
<p>MEDICAL BENEFITS:</p> <p>The system should ensure appropriate and quality medical care.</p>	<p>SURVEY:</p> <p>Under the current workers' compensation system, the injured employee receives appropriate medical care.</p>	<p>SURVEY:</p> <p>Likert Scale: (-2)Strongly Agree, (1)Agree, (0)Not Sure, (-1)Disagree, (-2)Strongly Disagree</p>
<p>The system should ensure timely medical care is received following the injury.</p>	<p>SURVEY:</p> <p>Under the current workers' compensation system, injured employees receive timely medical care following an injury.</p>	<p>SURVEY:</p> <p>Likert Scale: (-2)Strongly Agree, (1)Agree, (0)Not Sure, (-1)Disagree, (-2)Strongly Disagree</p>
<p>The system should ensure the amount of insurance carrier medical care expenditures is comparable to other systems.</p>	<p>EXISTING DATA:</p> <p>Average medical cost per Texas Workers' Compensation Case.⁶ <i>Method of Calculation: Divide the medical payments made during a two-year period (date of injury plus two years) by the total number of cases to obtain the average medical cost per case.</i></p>	<p>EXISTING DATA:</p> <p>3. According to the TWCC Strategic Plan, the data for this measure are maintained in the medical billing database and other agency automated systems. The TWCC System Data Report was used to gather this information.</p>

⁶ The only claims required to be reported to the TWCC are claims for injuries resulting in lost-time from work. Although insurance carriers must submit electronic information for all audits of medical bills, the information used for this request may include a mixture of reportable and non-reportable claims.

**Table 4.1 (continued):
Analysis of the Conceptual Framework through Survey and Existing Data**

Practical Ideal Type	Type of Evidence	Source of Data
<p>DISPUTE RESOLUTION:</p> <p>The system should encourage resolution of benefits disputes at the lowest possible level.</p>	<p>SURVEY: Under the current system, workers' compensation benefit disputes are decided in a fair and reasonable manner.</p> <p>EXISTING DATA: a. How does the number of dispute proceedings under new law compare to the approximately 60,000 informal hearings held each year under old law? <i>Method of Calculation: The measure is calculated by adding the number of benefit dispute cases received and identified in the dispute resolution information system during the reporting period.</i></p> <p>b. Percentage of Benefit Dispute Cases Resolved Prior to a Benefit Review Conference. <i>Method of Calculation: Estimate based on calculation of disputes resolved before a BRC request, added with disputes resolved between setting BRC and holding BRC, divided by total number of disputes concluded.</i></p> <p>c. Percentage of Benefit Dispute Cases Resolved at a Benefit Review Conference. <i>Method of Calculation: Estimate based on calculation of BRCs concluded minus CCHs concluded divided by total number of disputes concluded.</i></p>	<p>SURVEY: Likert Scale: (-2)Strongly Agree, (1)Agree, (0)Not Sure, (-1)Disagree, (-2)Strongly Disagree</p> <p>EXISTING DATA: a-c. According to the TWCC Strategic Plan, the data for this measure is maintained in agency automated applications. The percentages were gathered from the TWCC System Data Reports from 1999 and 2002.</p>

**Table 4.1 (Continued):
Analysis of the Conceptual Framework through Survey and Existing Data**

Practical Ideal Type	Type of Evidence	Source of Data
<p>DISPUTE RESOLUTION: (Continued)</p> <p>1. The system should encourage resolution of benefits disputes at the lowest possible level.</p>	<p>EXISTING DATA:</p> <p>d. Percentage of Benefit Dispute Cases Resolved at a Contested Case Hearing. <i>Method of Calculation: Estimate based on calculation of CCHs concluded minus Appeals Panel Decisions divided by total number of disputes concluded.</i></p> <p>e. Percentage of Benefit Dispute Cases Resolved at Appeals Panel Level. <i>Method of Calculation: Estimate based on calculation of Appeals Panel decisions minus requests for judicial review divided by total number of disputes concluded.</i></p> <p>f. Percentage of all disputes appealed to District Court. <i>Method of calculation: Estimate based on calculation of requests for judicial review divided by total number of disputes concluded.</i></p>	<p>d-f. According to the TWCC Strategic Plan, the data for this measure is maintained in agency automated applications. Percentages were obtained through the TWCC System Data Reports from 1999 and 2001.</p>

Survey

In order to gather the perception of the 1989 Texas Workers' Compensation Reform from system participants, a survey was administered within the case study. The survey instrument used in this study was developed using the standards established through the literature review and recommendations provide by the Joint Select Committee on Workers' Compensation Insurance. A sample of the survey instrument is provided in Appendix A. The survey questions for the current study were similarly designed based on a survey used in *An Examination of Strengths and Weaknesses of the Texas Workers' Compensation System*, a 1998 study conducted by the Research and Oversight Council on Workers' Compensation. Similar to this research, the scope of their project was to "assess the effectiveness of the Texas Workers' Compensation Reform Act adopted by the 71st Texas Legislature in 1989," (Lee et al, 1998: iv).

The survey instrument presented participants with statements and asked for a response based on a Likert scale of Strongly Agree (2), Agree (1), Not Sure (0), Disagree (-1) and Strongly Disagree (-2) according to their opinion toward the statement. Descriptive summary statistics were applied to the data to construe the perception of system participants.

Sample

The survey instruments were mailed with a cover letter and self addressed envelope to two hundred and sixty system participants. Names and addresses of system participants were collected from the Texas Workers' Compensation Commission through an open records request. One hundred surveys each to employers and health care

providers and sixty surveys were mailed to insurance carriers. Although injured employees are also system participants, they were excluded from this survey research due to privacy issues. Since insurance carriers and employers may have an incentive due to high expenditures and rates to keep injured employee benefits low, future research inclusive of the injured employee's perspective is strongly recommended.

Table 4.2: Summary of Survey Responses Rates

	Surveys Mailed	Number of Response	Number of Undeliverable	Response Rate
Insurance Carriers	60	11	0	18%
Health Care Providers	100	27	1	27%
Employers	100	28	6	30%
Total	260	66	7	26%

Table 4.2 summarized the distribution and response rates. Six of the two hundred and sixty surveys were returned as undeliverable. Taking these into account by subtracting them from the total number of surveys sent to respondents, a twenty six percent response rate was received by this survey administration. As a result of the small sample size and percentage of response rate, the results may be considered weak and future research is necessary for confirmation.

Justification: Survey Analysis

Although Yin (1994: 9) distinguishes survey research from case study research, he maintains that case study is flexible enough to include "more than one strategy". Yin explains that surveys, as a research strategy are "advantageous when the research goal is

to describe the incident or prevalence of a phenomenon or when it is to be predictive about certain outcomes. This research utilizes the surveys as an instrument within the case study design to assess the perception of system participants in regards to the 1989 Texas Workers' Compensation Reform Act. The individuals are the unit of analysis and their attitudes are measured. Since the population is simply too large to observe directly, survey research is suitable.

Babbie (1995: 273) indicates that one of the weaknesses of survey research is that standardized questionnaire items often represent the least common denominator in assessing people's attitudes. Since this portion of the study focuses on the perception of participants and not the specifics behind the perceptions, this weakness is not a concern.

Existing Data Analysis

The next type of research applied to the case study to address the established standards of the reform Act is the analysis of existing data. Table 4.1 illustrates how the ideal types for this study are operationalized. The data used for this research came from a variety of sources including several Research and Oversight Council on Workers' Compensation studies, research conducted by the Workers' Compensation Research Institute and the Texas Workers' Compensation Commission.

The analysis of existing data is used to determine the actual success of the 1989 workers' compensation reform based on four of the objectives identified by the Joint Select Committee assessed through this study. The success is determined through comparison of annual data results beginning with 1993. For the purpose of this research,

a year begins on September 1 and ends on August 31. Methodology related to each standard where analysis of existing data is used for research follows.

Safety

Data addressing the number of nonfatal occupational injuries was obtained through the TWCC Strategic plan. The percentage was calculated by dividing the total number of recordable injuries and illnesses in a year by the total number of hours worked by all employees in that same year and multiplying the result by the ratio equivalent of 100 full time employees working full time employees (200,000). The percentage result in Texas was compared to the national average to determine the support or non support of this standard.

Income Benefits

One of the main focuses of workers' compensation insurance is to ensure injured employees are able to recover from on the job injuries with minimal hardship. One means to prevent this hardship is to make sure injured and ill employees receive fair and appropriate income benefits in a timely manner.

Adequate Income Benefits

One of the major goals of the 1989 reform was to provide injured workers with indemnity benefits that replace a high proportion of after-tax lost earnings. According to Lee, et al, (1998: 29), the National Commission on State Workmen's Compensation Laws in 1972 recommended an after-tax income replacement rate of at least 80 percent of

the injured worker's pre-injury spendable income. This 80 percent threshold was recommended as the standard because the National Commission attempted to pinpoint an amount that did not create undue economic hardship on the workers, yet, at the same time did not reduce the incentive to return to work.

Since the Texas Workers' Compensation Commission Act bases the amount of income benefits an injured employee receives off a gross average weekly wage inclusive of fringe benefits, a conversion of the rate to post tax had to be performed to allow comparison. In order to conduct this conversion, the appropriate income tax rate was applied to the average weekly wage for each year studied as reported in the TWCC System Data Report. The product was multiplied by the 80 percent recommended by the National Commission on State Workmen's Compensation Laws in 1972 to determine the standard Texas Workers' Compensation should be performing. TWCC Act and Rules requires insurance carriers to pay benefits at a rate of 70% of the injured employee's average weekly wage. This formula was applied to the average weekly wage reported in the TWCC System Data Report to determine the commission's performance at meeting this regulation.

Timely Income Benefits

Indemnity benefits were designed to alleviate economic hardship and maximize efficiency in the workers' compensation system. Therefore, it is important that these benefits be provided in a timely manner. Temporary income benefits (TIBs) begin to accrue on the eighth day of disability.⁷ Under the provisions of the Texas Workers'

⁷ See Section 408.082 of the *Texas Labor Code*.

Compensation Act, insurance carriers are required to initiate the payment of TIBs to an injured worker within seven days of receiving written notice that benefits have accrued.

The existing data for this analysis was collected through an open-records request to the Texas Workers' Compensation Commission. Each insurance carrier paying income benefits to an injured employee is required by statute to report to the commission and the injured employee the amount, timeframe the payment covers, and the date the benefit was initiated. This information is maintained in the commission's automated system and was used in this analysis to determine whether timely income benefits are paid by carriers to injured employees unable to work as a result of their on the job injury. The percentage of timely payments was figured by dividing the number of timely initial temporary income benefit payments by the total number of eligible paid indemnity claims.

Medical Benefits

According to Lee, et al (1998, 18), under the old law, many insurance companies chose to reduce their future liabilities on workers' compensation claims by offering injured workers lump-sum settlement in return for no or limited future liability on their claims. As a result, many workers were limited on future medical care for their injuries. The reform in 1989 no longer allowed lump-sum settlements and guaranteed that workers would have lifelong access to reasonable and necessary medical care for their injury. To control the burden of medical care costs on the system, medical treatment regulations such as utilization review guidelines and preauthorization of medical care were implemented.

Medical Expenditures

While attempting to locate existing data related to medical benefits paid under Texas workers' compensation insurance, a discovery was made that this information is extremely limited due to an existing problem with the reporting of medical payments and billing audits from insurance carriers to the commission. As a result, the only available data related to the topic of medical benefits was obtained from the *TWCC System Data Reported* dated 1999 and 2002. This data reports the average medical expenditures for indemnity and non-indemnity claims and is used in this study to address the medical care expenditures.

Dispute Resolution

The Texas Workers' Compensation Reform Act of 1989 created a multi-level administrative dispute resolution system. The purpose was to allow disputes to be resolved informally, rather than directing them straight to the courtroom as established through the "old law" system. The objective established by the reform was to provide a means to encourage resolution of benefit disputes at the lowest possible level.

Prior to the 1989 reform, approximately 60,000 informal hearings were held each year. This research compares the number of proceedings each year since 1993 to the 60,000 informal hearings prior to the reform to determine whether the system change is successfully decreases the burden on the system.

The standard established through the reform mandates that disputes should be resolved at the earliest possible level of the process. To analyze this issue, data was

collected to determine the percentage of disputes brought before the commission and the level in the process that finally resolved the issue. The entire dispute population for the year being analyzed was used as the denominator to determine the percentages.

Justification: Analysis of Existing Data

According to Babbie (1998:319), frequently, researchers must undertake social scientific inquiry through the use of official or quasi-official statistics. One problem with the use of existing data for the basis of research, however, is that the researcher is often limited to data that already exists. To address this portion of the study, an open records request was submitted to the Texas Workers' Compensation Commission for existing statistics pertaining to the standards specifically relating to safety, income benefits, medical benefits, and dispute resolution established by the 1989 Texas Workers' Compensation Reform Act. For the purpose of ensuring accuracy, the research design and request replicates and utilizes data already reported to the Texas Legislature through Agency's Strategic Plan and statistics published in the System Data Report.

Summary

This chapter provides an overview of the methods used to perform the assessment. Each of the methodological approaches used are explained in detail as well as how the methods are used to measure the implementation of the reform Act against the established standards. The survey is administered to measure the participant's perception of the Reform Act at meeting the established standards. Once again, although injured employees are one of the key participants in the system, due to confidentiality issues, this

research does not include their perception. Existing data was collected from various sources and analyzed to gauge the agency's performance meeting the standards established by the Reform Act. The next chapter discusses the results of the study.

CHAPTER FIVE

RESULTS

The purpose of this chapter is to present and analyze the data to assess whether the implementation of the 1989 Texas Workers' Compensation Reform Act met the established intent of the legislation. The standards presented to the Texas Legislature by the Joint Select Committee are used in this research as a gauge to interpret whether the evidence supports the contentions in the aspects of safety, income benefits, medical benefits, and dispute resolution.

Safety

Data related to safety is presented and evaluated in this section to assess whether the system promotes safety and health in the workplace through an appropriate employer incentive program. Both survey and data analyses were used to address this issue.

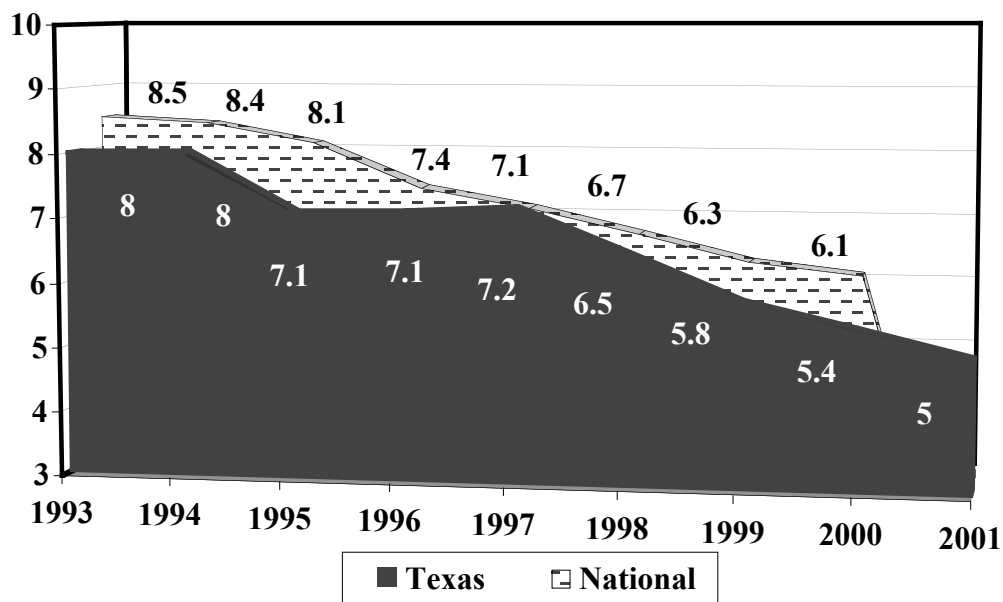
Table 5.1
Under the Current Workers' Compensation System, Employers Rewarded for Providing a Safe Workplace for their Employees

Participant Type	Agree	Not Sure	Disagree	Interpretation
All N – 65	17%	24.6%	58.5%	Somewhat Disagree
Employer N – 27	11.1%	22.2%	66.6%	Disagree
Insurance Carrier N – 11	36.4%	9.1%	54.6%	Somewhat Disagree
Health Care Provider N – 27	14.8%	33.3%	51.8%	Somewhat Disagree

Scale: Strongly Agree (2), Agree (1), Not Sure (0), Disagree (-1), Strongly Disagree (-2)

To address this issue, system participants were surveyed about whether they believed that employers are rewarded for providing a safe workplace for their employees. Table 5.1 summarizes the survey results. Overall, the system participants disagreed (although weakly) with the statement. Employers expressed the strongest disagreement (66.6%).

Figure 5.1
Texas and National Occupational Injury Rates per
100 Full-time Workers (1993-2000)



1

Source: *Annual Survey of Occupational Injuries and Illnesses*, Texas Workers' Compensation Commission

Occupational injury and illness rates are also used to assess an increase or decrease in safety focus since the reform. To provide further analysis, a comparison of the Texas rate to the National rate is also conducted. Figure 5.1 indicates that since 1993, the nonfatal occupational injury and illness rate has decreased from 8 injuries per 100

full-time workers in 1993 to 5.0 in 2001. Furthermore, Texas injury and illness rates have consistently remained below the national averages.

In summary, the decline in injuries since the reform reveals that the attention paid to safety and risk management programs has paid off for Texas employers. Interesting, however, is the survey results indicating a somewhat negative response to the system providing rewards for a safe workplace.

Income Benefits

Three standards concerning income benefits were introduced by the reform. The Joint Select Committee recommended that the system should provide: 1) adequate income benefits; 2) equitable income benefits to claimants in similar circumstances; and 3) income benefits in a timely, humane, and cost-effective manner. Triangulation consisting of survey administration and analysis of existing data were used for this assessment.

Adequate Income Benefits

Through a survey, system participants were to respond with their level of agreement to the statement that under the current workers' compensation system, the amount of income benefits an injured worker receives is adequate to replace most of his lost earnings and alleviate the economic hardships that often occur because of a work-related injury.

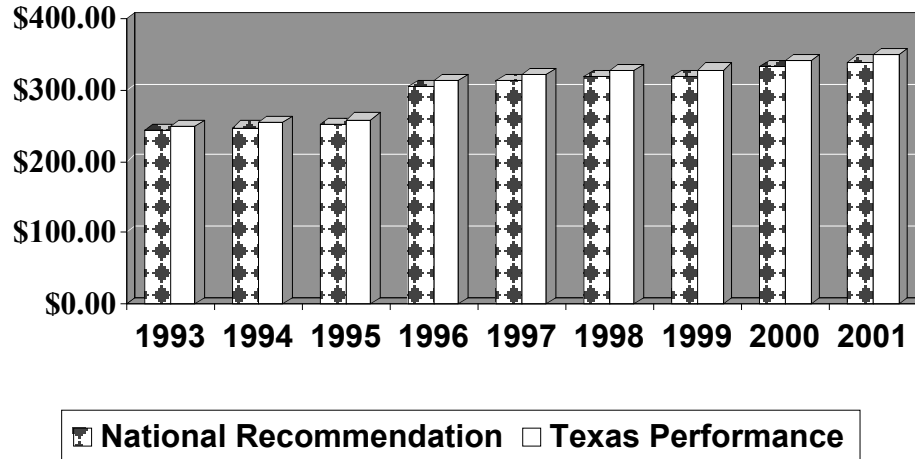
Table 5.2
Under the Current Workers' Compensation System, the Amount of Income Benefits an Injured Worker Receives is Adequate to Replace Most of His Lost Earnings and Alleviate the Economic Hardships that Often Occur Because of a Work-related Injury.

Participant Type	Agree	Not Sure	Disagree	Interpretation
All N – 64	57.8%	6.3%	36%	Somewhat Agree
Employers N – 27	81.5%	7.4%	11.1%	Agree
Insurance Carriers N – 11	91%	9.1%	0	Strongly Agree
Health Care Providers N - 26	19.2%	3.8%	76.9%	Disagree

Scale: Strongly Agree (2), Agree (1), Not Sure (0), Disagree (-1), Strongly Disagree (-2)

The results of this survey analysis, as demonstrated in Table 5.2, indicate that overall, system participants believe the current system provides injured workers with income benefits that are adequate to replace lost earnings. Insurance carrier responses strongly agreed with the statement while health care providers disagreed. The impact of the relationship insurance carriers and health care providers have with the injured employees receiving the income benefits may have an influence on their response to this statement. Insurance carriers are the party responsible for providing the payment and may sometimes question whether or not the claim is legitimate. Healthcare providers, on the other hand, have a more direct view of the hardship the injured employee may suffer, both physically and financially, as a result of the injury. Unfortunately, due to confidentiality issues, injured employees were unable to participate in this survey.

Figure 5.2
Comparison of Wage Replacement Rates in Texas to
National Recommendation



Based on Gross Annual Average Weekly Wage converted to net according to appropriate tax rate.
 Source: Average Weekly Wage information collected from 8/99 and 1/02 TWCC System Data Report

As illustrated in Figure 5.2 above, the wage replacement rate in Texas is slightly higher than the 80% post tax amount recommended by the National Commission on Workmen's Compensation Laws. The commission is successfully providing adequate income benefits to injured employees.

Equitable Income Benefits

Another standard implemented by the reform states that the system should provide similar benefits to claimants in similar circumstances and it should provide benefits that are reasonably proportionate to the severity of the injury. Through this assignment, the legislature appears to be concerned with ensuring that workers' compensation benefits would be consistent for injured workers with similar types of injuries. This issue was addressed through survey analysis.

Table 5.3
The Current Workers' Compensation System Provides Similar Amounts of Benefits to Injured Workers who Suffer the Same Kind of Injury/Illness

Participant Type	Agree	Not Sure	Disagree	Interpretation
All N – 61	42.6%	29.5%	27.9%	Somewhat Agree
Employer N – 25	48%	36%	16%	Somewhat Agree
Insurance Carrier N – 11	72.7%	9.1%	18.2%	Agree
Health Care Provider N - 25	44%	32%	44%	Somewhat Disagree

Scale: Strongly Agree (2), Agree (1), Not Sure (0), Disagree (-1), Strongly Disagree (-2)

System participants were asked to provide a response to the statement that the current workers' compensation system provides similar amounts of benefits to injured workers who suffer similar injuries or illnesses. Overall, as demonstrated in Table 5.3, compiled responses from system participants resulted in somewhat of an agreement with this statement. This research supports that the implementation of the reform has successfully met the established standards of income benefit equity.

Timely Income Benefits

To analyze participants' perception, a survey was provided to employers, insurance carriers, and health care providers requesting their response to the statement that the current workers' compensation system ensures that injured workers receive fair and appropriate benefits in a timely manner.

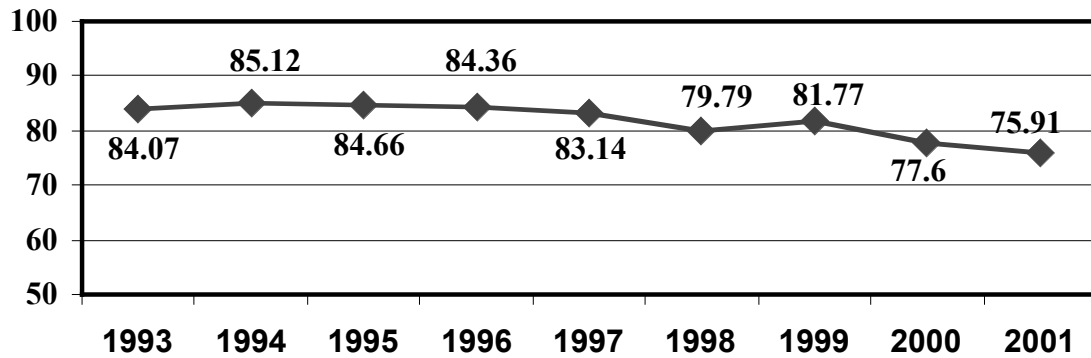
Table 5.4
The Current Workers' Compensation System Ensures that Injured Workers Receive Income Benefits in a Timely, Humane, and Cost Effective Manner.

Participant Type	Agree	Not Sure	Disagree	Interpretation
All N – 66	66.6%	9.1%	24.3%	Agree
Employer N – 28	92.9%	0	7.1%	Strongly Agree
Insurance Carrier N – 11	100%	0	0	Strongly Agree
Health Care Provider N - 27	25.9%	22.2%	51.8%	Somewhat Disagree

Scale: Strongly Agree (2), Agree (1), Not Sure (0), Disagree (-1), Strongly Disagree (-2)

Overall, per Table 5.4, the combined average response portrays that system participants surveyed agree with this statement. Health Care Providers are the only system participant surveyed that is not directly involved with this requirement. Interestingly, they are also the only participant group resulting in a somewhat disagreeing response to the statement.

Figure 5.3
Percentage of First Income Benefit Payments Made Timely by Insurance Carriers (1993-2001)



Source: Texas Workers' Compensation Commission, Automated-System

According to Figure 5.3, the percentage of first income benefit payments made timely by insurance carriers ranges from 76 percent to 85 percent during the period of 1993 through 2001. The rate is actually declining as time passes. The difficulty in determining the timeliness of benefit payments is that often, injured workers do not miss work in continuous periods of time. They may be out a couple of days, return to work for a week, and subsequently miss the remainder of the eight day waiting period to qualify for benefits. As a result, a tremendous amount of expedient communication and reporting must occur between the employer and the insurance carrier. The trend in this area does appear to be declining since 1993. As a result, some support that this standard is being met is apparent since the majority of the payments are timely, however, due to the declining trend; recommendations for improvement may be necessary.

Medical Benefits

The Joint Select Committee raised three issues pertaining to the medical care provided under workers' compensation insurance. First, the determination was made that the system should provide appropriate and quality medical care directed toward prompt restoration of the workers' physical condition and earning capacity. Next, the new reform should ensure timely medical care is received following the injury. Finally, concern was raised over the escalating medical costs prior to the reform. As a result, a policy objective to ensure the amount of insurance carrier medical care expenditures is comparable to other systems was employed by the reform. The analysis results of each of these ideal types implemented by the new law will be presented in this section.

Appropriate and Quality Medical Care

To administer this portion of the survey, system participants were requested to respond to the statement that under the current workers' compensation system, injured employees receive appropriate medical care.

Table 5.5
Under the Current Workers' Compensation System, Injured Employees Receive Appropriate Medical Care

Participant Type	Agree	Not Sure	Disagree	Interpretation
All N – 63	73%	1.6%	25.4	Agree
Employer N – 26	84.6%	3.8%	11.5%	Agree
Insurance Carrier N – 11	81.8%	0	18.2	Agree
Health Care Provider N - 26	57.6%	0	42.3%	Somewhat Agree

Scale: Strongly Agree (2), Agree (1), Not Sure (0), Disagree (-1), Strongly Disagree (-2)

According to Table 5.5, system participants queried agree with this statement. As a result, based on this analysis, the system is successfully meeting this standard

Timely Medical Care following an Injury

The final objective administered by the reform directed toward medical benefits is the provision of timely medical care following an injury. Medical benefits are designed to assist the injured worker during the healing process, and the quicker the initial treatment is provided; the sooner the recovery will begin. This, in turn, benefits both the employer and the injured worker.

Table 5.6
Under the Current Workers' Compensation System, Injured Employees Receive Timely Medical Care following an Injury

Participant Type	Agree	Not Sure	Disagree	Interpretation
All N – 64	79.7%	3.1	17.2	Agree
Employer N – 27	92.6%	7.4	0	Strongly Agree
Insurance Carrier N – 11	90.9%	0	9.1	Strongly Agree
Health Care Provider N - 26	61.5%	0	38.5	Agree

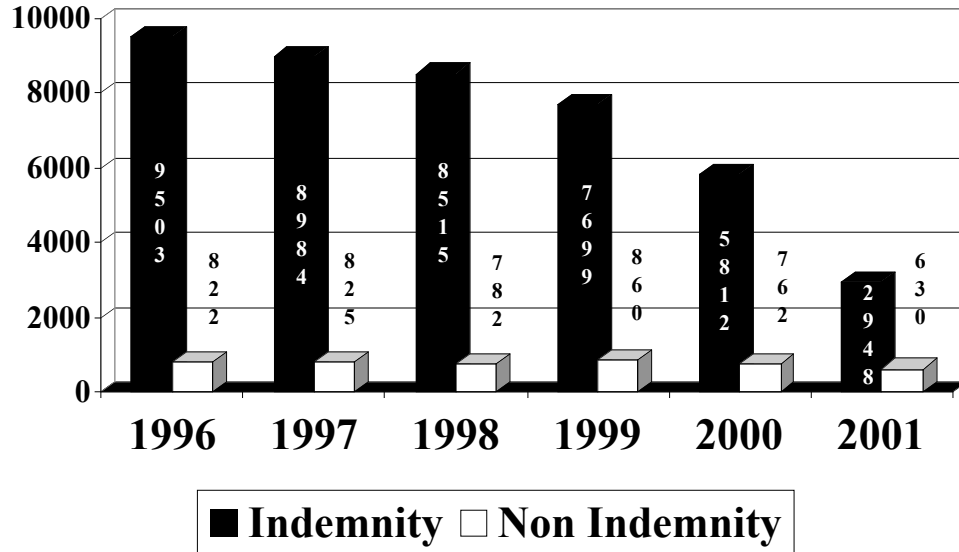
Scale: Strongly Agree (2), Agree (1), Not Sure (0), Disagree (-1), Strongly Disagree (-2)

Based on the survey response as demonstrated in Table 5.6, all participants believe the current system is successfully meeting the standards required through the reform. The current system, according to employers, insurance carriers, and healthcare providers, allows injured employees the right to receive timely medical care following an injury.

Medical Care Expenditure

The final sub-component of this research pertaining to medical benefits is a response to the reform objective that the system should ensure the amount of insurance carrier medical care expenditures is comparable to other systems.

Figure 5.4
Average Medical Costs Per Texas Workers' Compensation
Indemnity and Non-Indemnity Claim (1993-2001)



Source: Texas Workers' Compensation Commission System Data Report, 1999, 2001

As indicated in Figure 5.4^{8 9}, the average medical costs per Texas Workers' Compensation indemnity and non-indemnity claims appears to have declined. This data is deceiving, however, because as time passes, so does the age of the claim and the allowance of time for further medical treatment. Based on analysis, however, this research demonstrates compliance with the established standard.

Dispute Resolution

Both survey analysis and multiple analyses of existing data were used for this portion of the research.

⁸ The medical average only reflects those claims with medical accrued. Totals are higher in earlier years because older claims have had more time for either benefits to accumulate and/or medical bills to be submitted to the Commission.

⁹ The Commission has identified a problem with receiving medical payment information and is currently working on a solution. Therefore, the medical component of this measure may not include all information regarding services provided.

Table 5.7
Under the Current Workers' Compensation System, Workers' Compensation Benefit Disputes are Decided in a Fair and Reasonable Manner

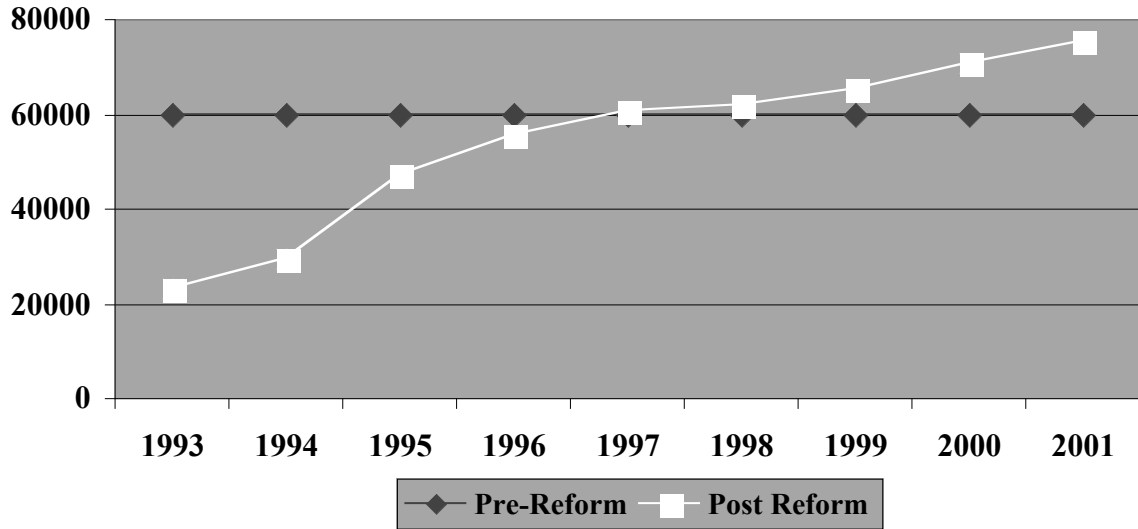
Participant Type	Agree	Not Sure	Disagree	Interpretation
All N – 66	37.9%	7.6%	54.5%	Somewhat Disagree
Employer N – 28	39.3%	10.7%	50%	Somewhat Disagree
Insurance Carrier N – 11	54.6%	9.1%	36.4%	Somewhat Agree
Health Care Provider N - 27	29.6%	3.7	66.7%	Disagree

Scale: Strongly Agree (2), Agree (1), Not Sure (0), Disagree (-1), Strongly Disagree (-2)

Results shown in Table 5.7 exhibit disagreeing responses from system participants to the statement that under the current workers' compensation system, workers' compensation benefit disputes are decided in a fair and reasonable manner. Insurance carriers, who probably have the most experience in this system were the only participants queried who somewhat agree that this standard is being met. Health care provider responses resulted in the strongest level of disagreement. Although health care providers do not routinely participate in the benefit dispute resolution process, this participant may suffer a consequence due to the limitation in medical treatment they provide or the decline in payment for medical treatment by insurance carriers until the course of dispute resolution is complete.

The next portion of this analysis summarizes the results from data collection for each level of dispute resolution. This will be used to respond to whether the system is successful at encouraging resolution of benefit disputes at the lowest possible level.

Figure 5.5
Comparison of Number of Dispute Proceedings Under 1989 Reform
to the Approximately 60,000 Informal Hearing Held Prior to the
Reform

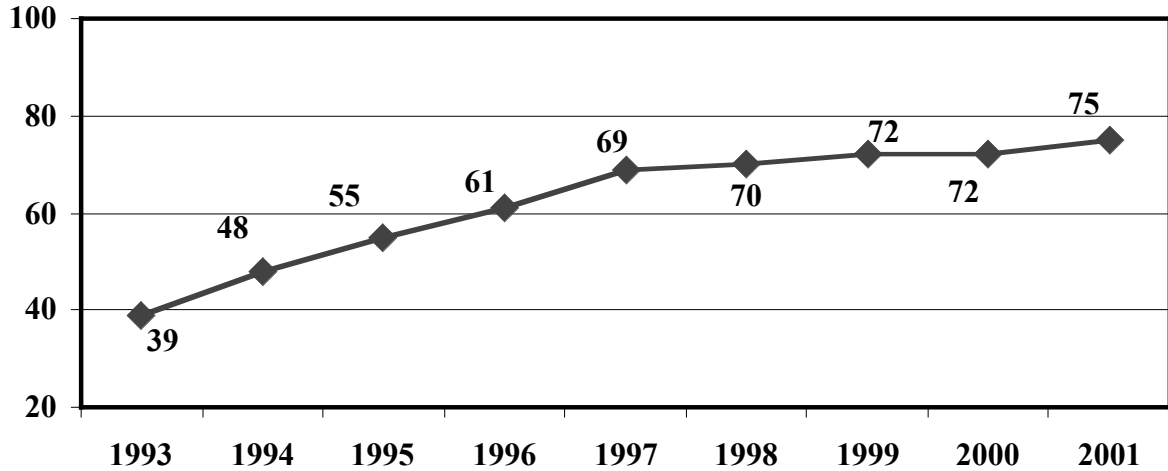


¹⁰Source: TWCC, *System Data Report*, 1999 and 2002

Figure 5.5 shows a continual increase in the number of proceedings held since 1993. Prior to the 1989 reform, approximately 60,000 informal hearings were held each year. Although the number of proceedings has continually increased since 1993, the increase did not exceed the pre-reform average until 1998.

¹⁰ This data was taken from the Total Number of Disputes Concluded as reported in the System Data Report from the TWCC. Concluded, according to this report, means the dispute was either resolved or forwarded to the next level for resolution. Estimate based on the number of disputes resolved prior plus the number of disputes resolved between setting and holding a BRC, plus the number of BRCs concluded.

Figure 5.6
Percentage of Benefit Dispute Cases Resolved Prior to a Benefit Review Conference (1993-2001)

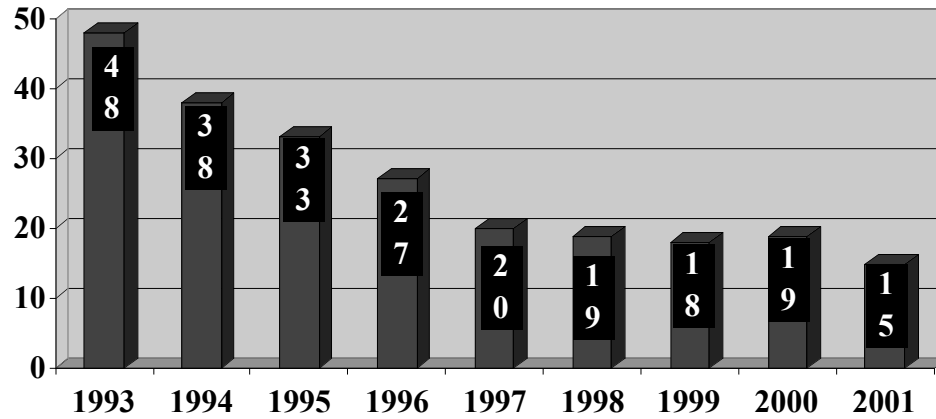


Source: *TWCC System Data Reports 8/99 and 1/02*

Calculation: Estimate based on calculation of disputes resolved before a BRC request, added with disputes resolved between setting BRC and holding BRC, divided by total number of disputes concluded.

According to Figure 5.6, the current system is successful at resolving disputes prior to a benefit review conference. The success rate may be due to a number of factors ranging from active involvement of Commission staff to contact the involve parties and mediate the issue to the denial of proceeding requests for disputes that cannot be resolved through these means due to raised issues. Regardless of the reason, the above figure shows a steady increase in dispute resolution prior to a BRC setting from 39 percent in 1993 to 75 percent in 2001.

Figure 5.7
Percentage of Benefit Dispute Cases Resolved at a Benefit Review
Conference (1993-2001)



Source: *TWCC System Data Report*, 8/99 and 1/02

Calculation: Estimate based on calculation of BRCs concluded minus CCHs concluded divided by total number of disputes concluded.

Figure 5.7 demonstrates a continual decrease in the percentage of resolution at the benefit review conference level of dispute resolution. This percentage is based on the entire population of disputes filed with the commission. Although it appears the percentage of resolution at this level has steadily decreased, when you factor in the increase in the number of disputes resolved prior to the benefit review conference, the dispute resolution system is apparently successful at resolving the disputes at the lowest possible level.

Table 5.8
Percentage of Benefit Dispute Cases Resolved at a Contested Case Hearing

Year	Percentage		Year	Percentage
1993	8		1998	6
1994	7		1999	5
1995	8		2000	5
1996	7		2001	5
1997	6			

Source: *TWCC System Data Report, 8/99 and 1/02*

Calculation: Estimate based on calculation of CCHs concluded minus Appeals Panel decisions divided by total number of disputes concluded. Denominator based on the entire dispute population.

Table 5.8 illustrates a steady decline in the percentage of dispute resolution at this level once again proving success of the system at resolving the disputes at the lowest possible level.

Table 5.9
Percentage of Benefit Dispute Cases Resolved at Appeals Panel

Year	Percentage		Year	Percentage
1993	4		1998	4
1994	5		1999	4
1995	4		2000	4
1996	4		2001	3
1997	4			

Source: *TWCC System Data Report, 8/99 and 1/02*

Calculation: Estimate based on calculation of Appeals Panel decisions minus requests for judicial review divided by total number of disputes concluded. Denominator based on the entire dispute population.

Table 5.9 reveals that, on average, only 4 percent of the participants appeal the findings at a contested case hearing to the appeals panel. In fact, after seven years, the percentage of benefit dispute cases resolved at appeals panel actually dropped from 4 in

2000 to 3 in 2001. This analysis supports resolution at a prior level of the dispute resolution process.

Table 5.10
Percentage of Benefit Dispute Cases Appealed to District Court

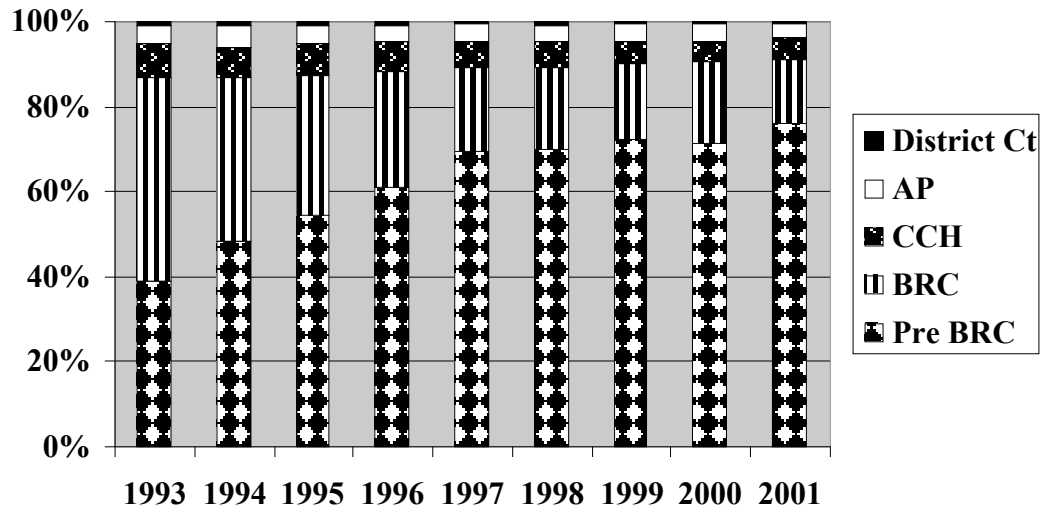
Year	Percentage		Year	Percentage
1993	1		1998	.8
1994	1		1999	.7
1995	1		2000	.6
1996	.8		2001	.6
1997	.6			

Source: *TWCC System Data Report, 8/99 and 1/02*

Calculation: Estimate based on calculation of request for judicial review divided by total number of disputes concluded. Denominator based on the entire dispute population.

According to Table 5.10, the 1989 reform has been successful at minimizing the percentage of benefit dispute cases appealed to district court. As of 2001, less than 1 percent of the benefit dispute population is presented in district court. On average, according to Lee, et al (1998:45), 60,000 informal hearings were held each year under the old law. The Industrial Accident Board process resolved about 85 percent of the disputed claims with compromise settlement agreements. Nearly one in seven disputes entered the court system (Barth, et al, 1989: 26). In comparison, this research concludes the prior burden on the court system has drastically reduced.

Figure 5.8
Combined Analysis of Dispute Resolution Successes
at Each Level of the Process



Source: *TWCC System Data Report*, 8/99 and 1/02

Figure 5.8 provides another view of the dispute resolution process and its success at resolving dispute at the earliest possible level. Accordingly, approximately 85 percent of the disputes are resolved prior to or during the benefit review conference.

CHAPTER SIX

CONCLUSION

The purpose of this research is to assess the 1989 Texas Workers' Compensation Reform Act through the analysis of participants' perceptions through survey administration and existing system data. Specifically, the study was designed to assess the system's emphasized importance on safety to reduce injuries in the workplace; the administration of an adequate, equitable, and effective delivery system of income benefits; the assurance of adequate medical care provided in a timely manner following the injury while maintaining insurance carrier expenditures at a comparable rate to other systems; and the outcome of the dispute resolution process.

Safety

Since the 1989 reform, the number of injury and illness rates per 100 full time employees has steadily declined. The analysis in this research does not lend itself to the actual determination of the cause; however, an indication that a positive change occurred is evident. The survey results reveal a somewhat negative response to the statement that employers are rewarded by the system for providing a safe workplace for their employees was surprising when coupled with the decline in injury and illness rates.

Income Benefits

The perception of system participants regarding the provision of adequate and equitable income benefits in a timely and humane manner was somewhat positive according to the survey results. Although, according to the results, healthcare providers

consistently fell into the “somewhat disagree” category throughout the income benefit portion of the survey. Their influence may result from their virtually one-sided contact with the injured worker throughout their participation in the system. Since injured workers were not participants in the survey administration, further research in this area is suggested.

Since the Texas Workers' Compensation Act establishes the amount of wage replacement based on an employee's gross wages, the appropriate tax rate was applied to determine whether the recommended wage replacement rate was being met. Research reveals the Texas Workers' Compensation System is successfully exceeding the recommended standard of 80% post tax wage replacement established by the National Commission on Workmen's Compensation Laws.

Finally, analysis of existing data revealed that since 1993, on average, 82 percent of the income benefit payments are timely. The system appears to be successful at meeting this objective.

Medical

In response to survey results, system participants appear to somewhat agree that the present system ensures appropriate and quality medical care is provided in a timely manner following the injury. Due to the lack of available medical cost data, a strong conclusion on the basis of average medical costs and its association with other systems was not made. Once again, further research is recommended to draw make this determination.

Dispute Resolution

Dispute resolution is the only ideal resulting in a negative response from the system participants. Their response, according to their perception of the current workers' compensation system deciding compensation benefit disputes in a fair and reasonable manner, was somewhat negative. Contrary to their perception, however, analysis of existing data strongly revealed that the system is successful at resolving disputes at the lowest possible level.

Conclusion

The Texas Workers' Compensation Commission, based on this research, appears to be meeting the expectations through the 1989 Texas Workers' Compensation Reform Act. Variations between the results of analysis from existing data and participants' perception were discovered in the areas of dispute resolution and safety. Further research, inclusive of perceptions from injured employees is recommended.

Table 6.1
Summary of Results

	Standard	Survey	Existing Data	Conclusion
<i>Safety</i>	The system promotes safety and health in the workplace.	Weak Disagreement	Agree	Somewhat Support
<i>Income Benefits</i>	The system provides adequate income benefits.	Weak Agreement	Agree	Somewhat Support
	The system provides equitable income benefits to claimants in similar circumstances.	Weak Agreement	Non Applicable	Somewhat Support
	The system provides income benefits in a timely, humane, and cost effective manner.	Agree	Somewhat Agree	Somewhat Support
<i>Medical Benefits</i>	The system ensures appropriate and quality medical care.	Agree	Non Applicable	Support
	The system ensures timely medical care is received following the injury.	Agree	Non Applicable	Support
	The system ensures the amount of insurance carrier medical care expenditures is comparable to other systems.	Non Applicable	Inconclusive	Inconclusive
<i>Dispute Resolution</i>	The system encourages resolution of benefit disputes at the lowest possible level.	Weak Disagreement	Strong Agreement	Somewhat Support

Table 6.2
Summary of Results and Recommendations

	Standard	Conclusion	Recommendations
<i>Safety</i>	The system promotes safety and health in the workplace.	Somewhat Support	Provide more incentive to employers for promoting a safe workplace; or, if an incentive, possible through lower premiums, already exists, ensure employers are aware of this occurrence.
<i>Income Benefits</i>	The system provides adequate income benefits.	Somewhat Support	Based on this analysis, the system is providing adequate income benefits. Further research with injured employees is recommended to thoroughly address this.
	The system provides equitable income benefits to claimants in similar circumstances.	Somewhat Support	This study reveals the benefits are equitable, however, further research with injured employees and comparisons across injury types is recommended to draw a stronger conclusion.
	The system provides income benefits in a timely, humane, and cost effective manner.	Somewhat Support	Literature review revealed a potential problem timely initiating benefits when the accrual period is not consecutive. Research for best practices may be necessary to address this issue.
<i>Medical Benefits</i>	The system ensures appropriate and quality medical care.	Support	System participants surveyed are satisfied, however, based on the lack of statistical data, future research is recommended.
	The system ensures timely medical care is received following the injury.	Support	System participants surveyed are satisfied, however, based on the lack of statistical data, future research is recommended.
	The system ensures the amount of insurance carrier medical care expenditures is comparable to other systems.	Inconclusive	Although existing data portrays a decline in the amount of medical expenditure, future research is recommended.
<i>Dispute Resolution</i>	The system encourages resolution of benefit disputes at the lowest possible level.	Somewhat Support	The analysis of existing data demonstrates a strong level of success in this standard. System participants appear to be dissatisfied, however. Further research to identify the cause of dissatisfaction is recommended

BIBLIOGRAPHY

- Babbie, Earl. *The Practice of Social Research*. New York, NY: Wadsworth Publishing Company, 1998.
- Ballantyne, Duncan S. *Dispute Prevention and Resolution in Workers' Compensation: A National Inventory, 1997-1998*. Workers' Compensation Research Institute, 1998.
- Ballantyne, Duncan S. & Mazingo, Christopher J. *Measuring Dispute Resolution Outcomes: A Literature Review with Implications for Workers' Compensation*. Workers' Compensation Research Institute, 1999.
- Barling, Julian, & Hutchinson, Ian. (2000). Commitment vs. Control-Based Safety Practices, Safety Reputation, and Perceived Safety Climate. *Canadian Journal of Administrative Sciences*, 17(1), 76-84.
- Barth, Peter S. & Eccleston, Stacey M. *Revisiting Workers' Compensation in Texas, Administrative Inventory*. Workers' Compensation Research Institute, 1995.
- Barth, Peter S., Victor, Richard B., & Eccleston, Stacey M. *Workers' Compensation in Texas, Administrative Inventory*. Workers' Compensation Research Institute, 1989.
- Boden, Leslie I. & Fleischman, Charles A. *Medical Costs in Workers' Compensation: Trends and Interstate Comparisons*. Workers' Compensation Research Institute, 1989.
- Bureau of Labor Statistics. United States Department of Labor, 1999. Available from [<http://stats.bls.gov/home.htm>].
- Butler, Richard J. and Worrall, John D. (1985). Work Injury Compensation and the Duration of Nonwork Spells. *The Economic Journal*, (9), 379, 714-724.
- Chirikos, Thomas N. and Nestel, Gilbert. (1984) Economic Determinants and Consequences of Self-Reported Work Disability. *Journal of Health Economics*, (3) 2, 117-130.
- Collins, Kathleen A. (1999). Constitutional Law: U.S. Supreme Court Clarifies Procedural Requirements for Workers' Compensation Benefits Claim. *Journal of Law, Medicine & Ethics* 27(2) 198-200.

- Eccleston, Stacey & Wang, Dongchun. *The Anatomy of Workers' Compensation Medical Costs and Utilization: A Reference Book*. Workers' Compensation Research Institute, 2000.
- Franklin, Paula A. and Hennessey, John C. (1979). Effect of Substantial Gainful Activity Level on Disabled Beneficiary Work Patterns. *Social Security Bulletin*, (42) 3, 3-17.
- Gable, Joan T.A. & Mansfield, Nancy R. (1998). The New Relationship Between Injured Worker and Employer: An Opportunity for Restructuring the System. *American Business Law Journal* 35(3) 403-443.
- Gardner, John A. *Return to Work Incentives: Lessons for Policymakers from Economic Studies*. Workers' Compensation Research Institute, 1989.
- Gotz, Glenn A. *The Implications of Changing Employment Relations for Workers' Compensation*. Workers' Compensation Research Institute, 1999.
- Internal Revenue Service. *Tax Rate Schedules, 1993-2001*. Available at www.irs.gov
- International Association of Industrial Accident Boards and Commissions (IAIABC). *Compliance Training Manual*, January, 1999.
- Johnson, Dave. (2000) Bringing the Injured Back to Work: How to Deal with Suspicious Minds [Website]. ISHN. Available from <http://www.ishn.com>.
- Joint Select Committee on Workers' Compensation Insurance. "A Report to the 71st Texas Legislature." (December, 1988).
- Joint Select Committee on Workers' Compensation Insurance. "Summary Research Papers of the Joint Select Committee on Workers' Compensation Insurance." (October, 1988).
- Kovach, Kenneth A. & Hamilton, Nancy Greer. (1997). Labor's Efforts Sustain Workplace Safety. *Labor Studies Journal* 22(3), 57-74.
- Lee, Amy, Adams, Ward, Irwin, Tom. (1998) *An Examination of Strengths and Weaknesses of the Texas Workers' Compensation System*. Research and Oversight Council on Workers' Compensation, 1998.
- Lewis, John. "An Evaluation of the Workers' Compensation System with Issues and Option." *Research Papers of the Joint Select Committee on Workers' Compensation Insurance*. (September, 1988).

- Lindblom, Charles E. & Woodhouse, Edward J. *The Policy-Making Process*, 3rd Edition. Upper Saddle River, New Jersey; Prentice-Hall, 1993.
- Masengarb, Linda. (1994). Formulating an In-House Disability Management Program. *Employment Relations Today*, (21)3, 307-317.
- Mont, Daniel, Burton, John, Reno, Virginia, and Thompson, Cecili. Workers' Compensation: Benefits, Coverage, and Costs, 1999 New Estimates and 1996-1998 Revisions. *National Academy of Social Insurance*, Washington, DC, 2001.
- 1913 Webster Revised Unabridged Dictionary*, G&C Merriam Co, 1913, 11.
- Perez, Shivaun. *Assessing Service Learning Using Pragmatic Principles of Education: A Texas Charter School Case Study*, Spring 2000.
- Schneider, Anne Larson & Ingram, Helen. *Policy Design for Democracy*. Kansas: University Press of Kansas, 1997.
- Shields, Patricia. "Pragmatism: Exploring Public Administration's Policy Imprint." *Administration and Society* 28, no.3 (November 1996): 390-411.
- Sims, Joann (1999). Improving Return-to-Work Strategies in the United States Disability Programs, with Analysis of Program Practices in Germany and Sweden. *Social Security Bulletin*, (59) 3, 41-50.
- Texas Workers' Compensation Act & Rules*. Texas Labor Code, Title 5, Subtitle A. (77th Legislature, 2001).
- Texas Workers' Compensation Commission. *System Data Report*. 1999.
- Texas Workers' Compensation Commission. *System Data Report*. 2001.
- Texas Workers' Compensation Commission, *Agency Strategic Plan 2001-2005*. June 2000.
- Victor, Richard B. & Fleischman, Charles A. *Designing Benefit Structures for Temporary Disability: A Guide for Policy Makers*. Workers' Compensation Research Institute, 1989.
- Yin, Robert K. *Case Study Research: Design and Methods*. California: Sage, 1994.

APPENDIX A

Survey of Employers' Perception of the 1989 Texas Workers' Compensation Reform Act

*Directions: Please answer all questions by **circling** the appropriate response.*

1. Under the current workers' compensation system, employers are rewarded for providing a safe workplace for their employees.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

2. Under the current Texas workers' compensation system, the amount of income benefits an injured worker receives is adequate to replace most of his/her lost earnings and alleviate the economic hardships that often occur because of a work-related injury.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

3. Under the current Texas workers' compensation system, injured workers receive similar amounts of benefits to injured workers who suffer the same kind of injury/illness.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

4. Under the current Texas workers' compensation system, income benefits are provided to injured employees in a timely, humane, and cost-effective manner.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

5. Under the current workers' compensation system, the injured employee receives appropriate medical care.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

6. Under the current workers' compensation system, injured employees receive timely medical care following the injury.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

7. Under the current workers' compensation system, workers' compensation benefit disputes are decided in a fair and reasonable manner.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

THANK YOU for completing the survey.

Please return the survey instruments in the envelope provided or you may fax it to the attention of Melissa West at (830) 833-2067.

Survey of Insurance Carriers'
Perception of the 1989 Texas Workers' Compensation Reform Act

Directions: Please answer all questions by **circling** the appropriate response.

1. Under the current workers' compensation system, employers are rewarded for providing a safe workplace for their employees.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

2. Under the current Texas workers' compensation system, the amount of income benefits an injured worker receives is adequate to replace most of his/her lost earnings and alleviate the economic hardships that often occur because of a work-related injury.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

3. Under the current Texas workers' compensation system, injured workers receive similar amounts of benefits to injured workers who suffer the same kind of injury/illness.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

4. Under the current Texas workers' compensation system, income benefits are provided to injured employees in a timely, humane, and cost-effective manner.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

5. Under the current workers' compensation system, the injured employee receives appropriate medical care.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

6. Under the current workers' compensation system, injured employees receive timely medical care following the injury.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

7. Under the current workers' compensation system, workers' compensation benefit disputes are decided in a fair and reasonable manner.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

THANK YOU for completing the survey.

Please return the survey instruments in the envelope provided or you may fax it to the attention of Melissa West at (830) 833-2067.

Survey of Health Care Providers'
Perception of the 1989 Texas Workers' Compensation Reform Act

Directions: Please answer all questions by **circling** the appropriate response.

1. Under the current workers' compensation system, employers are rewarded for providing a safe workplace for their employees.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

2. Under the current Texas workers' compensation system, the amount of income benefits an injured worker receives is adequate to replace most of his/her lost earnings and alleviate the economic hardships that often occur because of a work-related injury.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

3. Under the current Texas workers' compensation system, injured workers receive similar amounts of benefits to injured workers who suffer the same kind of injury/illness.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

4. Under the current Texas workers' compensation system, income benefits are provided to injured employees in a timely, humane, and cost-effective manner.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

5. Under the current workers' compensation system, the injured employee receives appropriate medical care.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

6. Under the current workers' compensation system, injured employees receive timely medical care following the injury.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

7. Under the current workers' compensation system, workers' compensation benefit disputes are decided in a fair and reasonable manner.

Strongly Agree(2) Agree(1) Not Sure(0) Disagree(-1) Strongly Disagree(-2)

THANK YOU for completing the survey.

Please return the survey instruments in the envelope provided or you may fax it to the attention of Melissa West at (830) 833-2067.