



State of Delaware

Department of Labor

13th Annual Report

on the

Status of Workers' Compensation

Case Management

2010 Highlights

The Department of Labor is proud of the continuing progress in the processing of workers' compensation cases. The department wants to thank the members of the Industrial Accident Board for their hard work in adjudicating cases, the Health Care Advisory Panel for their substantial efforts in fine-tuning the Health Care Payment System, and the members of the Delaware General Assembly for their ongoing support.

Reflecting on the success of 2010, two accomplishments stand out as having tremendous and far-reaching effects on Workers' Compensation in Delaware:

- 1. On February 19, 2010, the state-approved continuing education course for certified health care providers went live exclusively on the DOL website. By the end of 2010, as many as 1400 providers had successfully completed the online course, thereby affirming their commitment to treating Delaware's injured workers in adherence with the Health Care Payment System.*
- 2. Workers' Compensation Hearing Officers issued a record-setting 629 written decisions. This is no fortuitous statistic, but rather a result of exceedingly hard work. Without exception, every Hearing Officer wrote more decisions than they had hearings – clear evidence of a remarkable effort to reduce the level of outstanding decisions.*

Year in Review 2010

The Delaware Workers' Compensation Health Care Payment System (HCPS) marked its second anniversary on May 23, 2010. The Governor appointed Health Care Advisory Panel (HCAP) established and maintains the HCPS in accordance with 19 Del.C. §2322. The HCAP created subcommittees to hone in on the following 5 major components that comprise the HCPS:

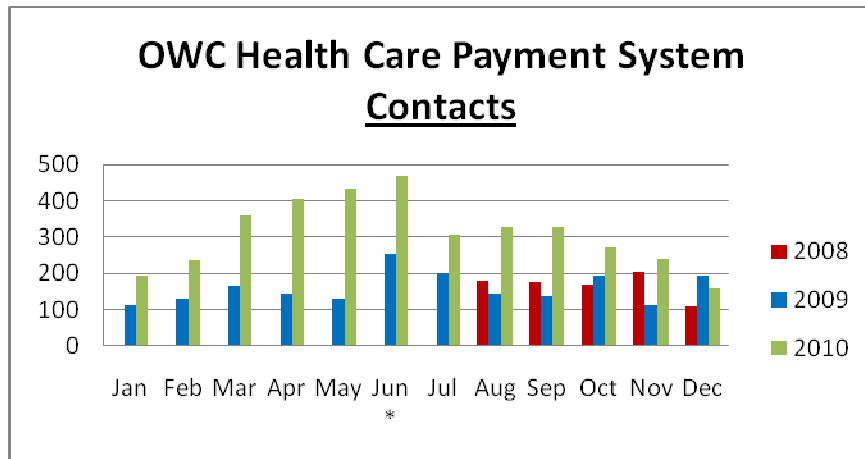
1. A Fee Schedule
2. Health Care Practice Guidelines
3. A Utilization Review program
4. A Certification process for health care providers
5. Forms for employers and health care providers

The 17 member HCAP contains representatives from the medical, legal, labor, business and insurance communities. The HCAP convened without an insurance representative from July 2009 to May 2010, when the Governor appointed a representative from the insurance industry to fill the vacant spot on the Panel.

In 2010, the HCAP met four times. In addition, the subcommittees met five times, while smaller sub work groups for those committees, comprised of medical and legal experts, held additional meetings to work on specific issues. The Office of Workers' Compensation (OWC) held one Public Meeting in May 2010, prior to the approval of substantive updates to the HCPS Administrative Code.

The OWC medical component – Medical Component Manager, HCAP Coordinator, Administrative Specialist II, and Administrative Specialist I (added 5/24/10) – support the operations of the HCPS. Until the end of May 2010, the initial three person unit operated short-handed. At that time, the Office of Workers' Compensation repurposed an Administrative Specialist I position in response to the growth in the complexity and breadth of the HCPS.

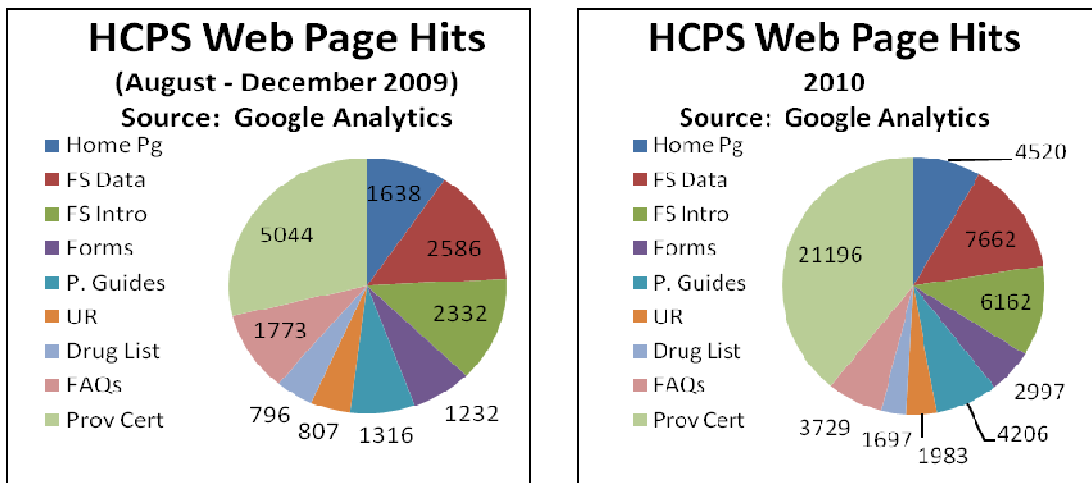
In 2010, the medical component fielded a significant number of telephone calls, letters, and electronic mail regarding the HCPS. The 3,718 total contacts in 2010 represented a 94% increase over the 1,921 total contacts recorded in 2009. The 2010 number drastically increased from March through June as the medical component fielded technical and informational questions from certified health care providers regarding the state-approved continuing education course, available exclusively on the DOL website. The course went live on February 19, 2010, giving certified providers ample time to complete the online course prior to their first deadline. Completion of the course is required every two years from initial certification.



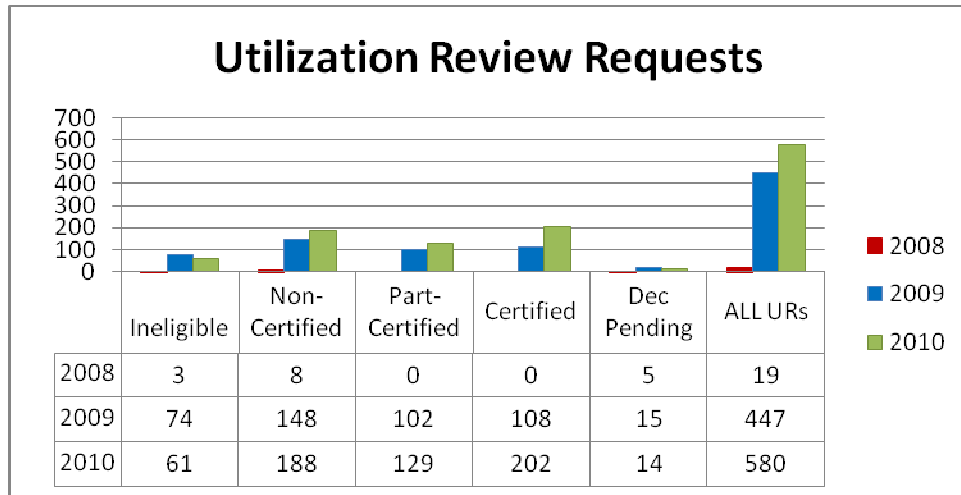
The Department of Labor’s web site contains comprehensive information on all five components of the HCPS, including an electronic mailbox for questions; subscribe/unsubscribe buttons for the ListServ; the current certified health care provider list; frequently asked questions; the fee schedule data; downloadable forms; access to the Administrative Code (“the regulations”); a link to the Workers’ Compensation Act; and the required continuing education course for certified health care providers (new in 2010).

<http://dowc.ingenix.com/DWC.asp>

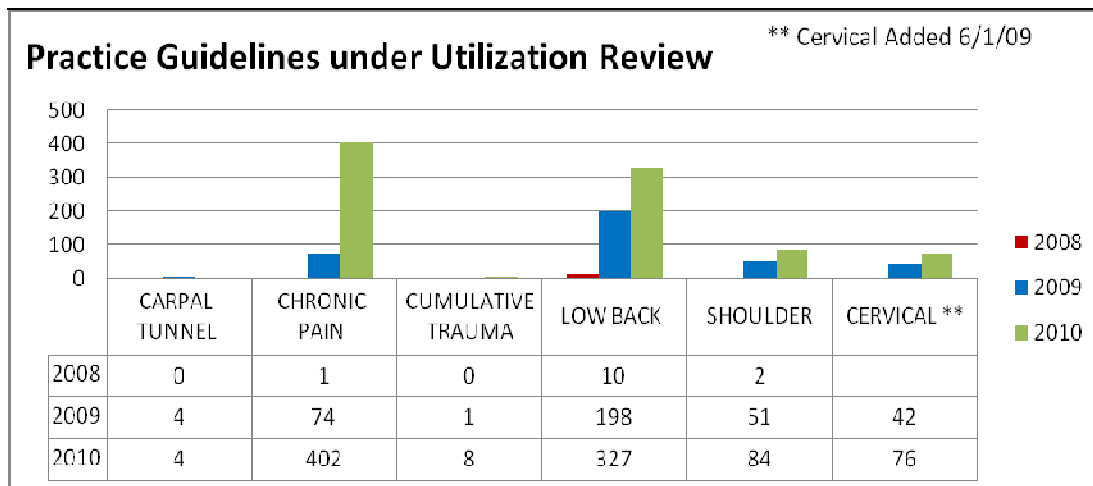
2010 marked the first full year OWC tracked the number of people who accessed information concerning the HCPS through the Department of Labor’s web site. This past year, the HCPS web pages received a total of 54,152 “unique visitors.” The *Google Analytics* program defines “unique visitors” as unduplicated (counted only once) visitors to the website over a specific time period. Provider certification represented the largest category of information accessed, especially in April and May as health care providers completed the first biannually required continuing education course.



In 2010, OWC received 580 requests for Utilization Review (UR), which represented a 30% increase over the previous year (447 total UR requests in 2009). This dramatic change stemmed from carrier and self-insured employers’ increased familiarity with the process, as well as an increase in UR requests for proposed treatment. Utilization review provides prompt resolution of compliance issues related to proposed or provided health care services within the practice guidelines for those claims acknowledged as compensable. Parties may then appeal UR determinations to challenge the assumption that treatment specified within a practice guideline is the only reasonable and necessary course of treatment for a specific worker’s injury. Currently, no definitive method exists to separate UR appeal issues from other petitions to determine additional compensation due (DACD); however, OWC plans to launch a dedicated UR appeal petition in 2011.

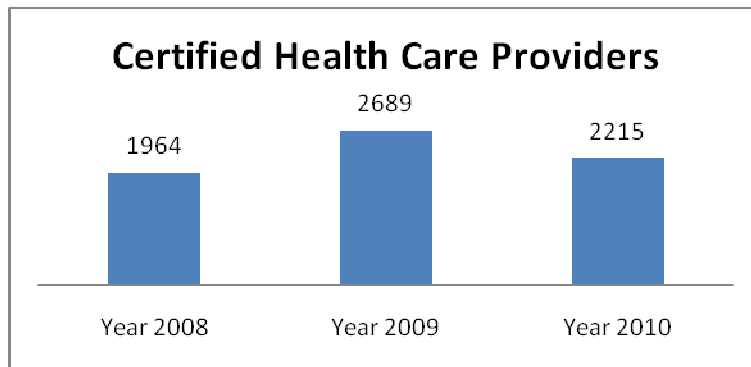


As predicted in the 2009 Annual Report, the “chronic pain” practice guideline surpassed “low back” as the treated injury most challenged through utilization review. Within the purview of chronic pain, prescription pain medication represented the most prevalent treatment given and consequently challenged through the UR process. The practice guidelines subcommittee hopes to introduce a “lower extremities” guideline in 2011.



2010 marked the first deadline for health care providers to complete a required continuing education course within two years of their initial certification. OWC posted the online course to the HCPS web site on February 19, 2010. OWC sent out numerous personal and ListServ e-mail reminders, as well as personally telephoned non-compliant providers. At the end of 2010, approximately 1,400

certified providers completed the required continuing education course. As expected, providers who did not treat significant numbers of injured workers opted to let their certification lapse rather than complete the required course. The published certified health care provider list therefore ended year 2010 with 474 less health care providers than it contained at the end of 2009.



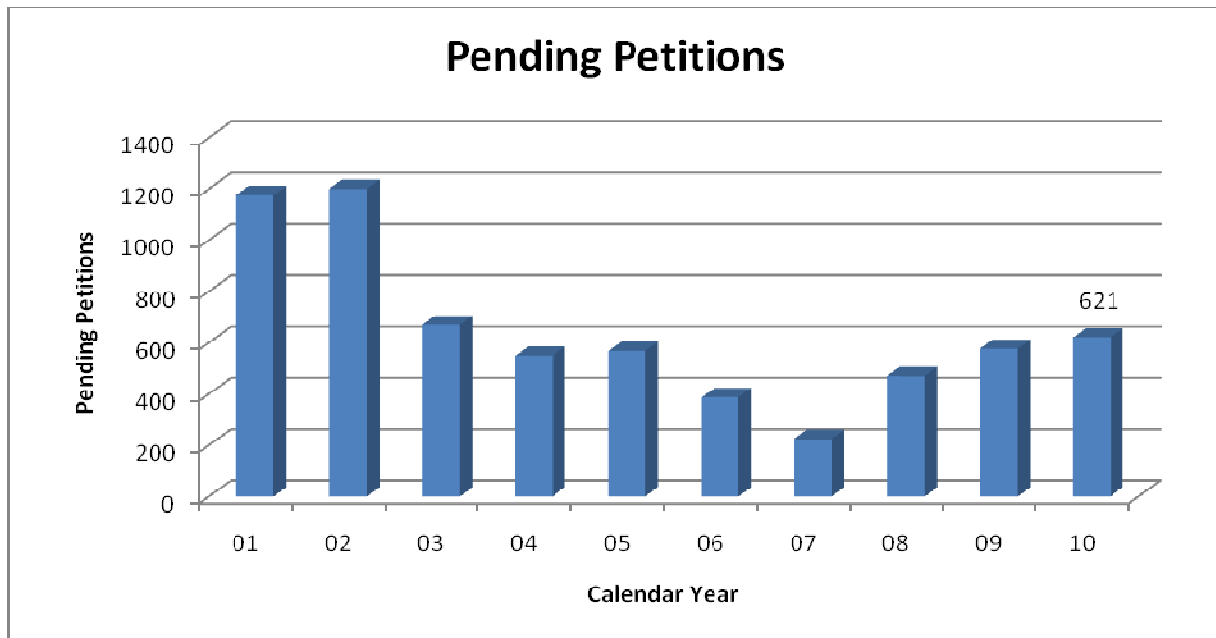
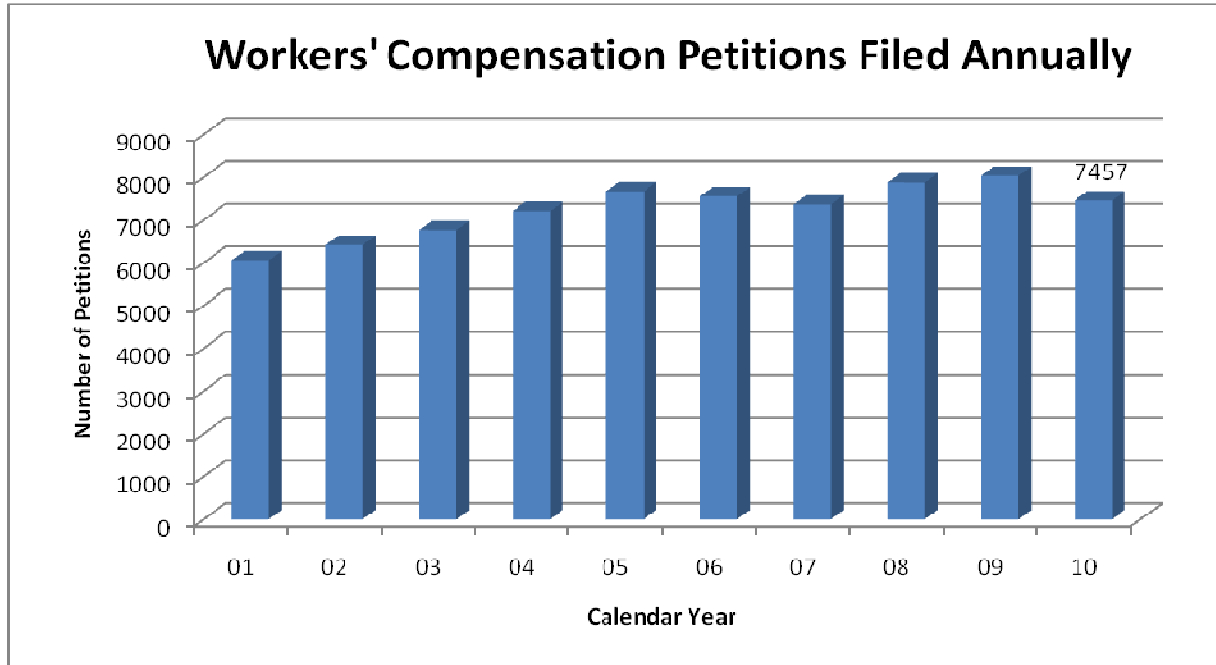
The Office of Workers Compensation takes immense pride in its website which contains valuable information and links, including a list of services available through the office, the ability to search for employer insurance coverage, frequently asked questions, and forms:

<http://www.delawareworks.com>

The OWC continued to refine its automated computer system, SCARS (Scheduling Case Management Accounting Reporting System). The electronic filing of fiscal information by insurance carriers and self-insured employers went live in 2010.

In conjunction with Office of Labor Law Enforcement, the agency utilized investigative procedures to identify and prosecute uninsured employers. In 2010, one hundred and forty-three (143) potential uninsured employers were investigated by the OWC. This represents an increase of 91%. In addition to the cooperative interaction with Labor Law Enforcement, this sizeable increase can also be attributed to a data sharing effort on the part of the Delaware Compensation Rating Bureau (DCRB).

During 2010, the Office of Workers' Compensation successfully maintained its “no backlog” status. A backlog is defined as more than four months worth of petitions. A total of 7,457 petitions were filed in 2010.¹

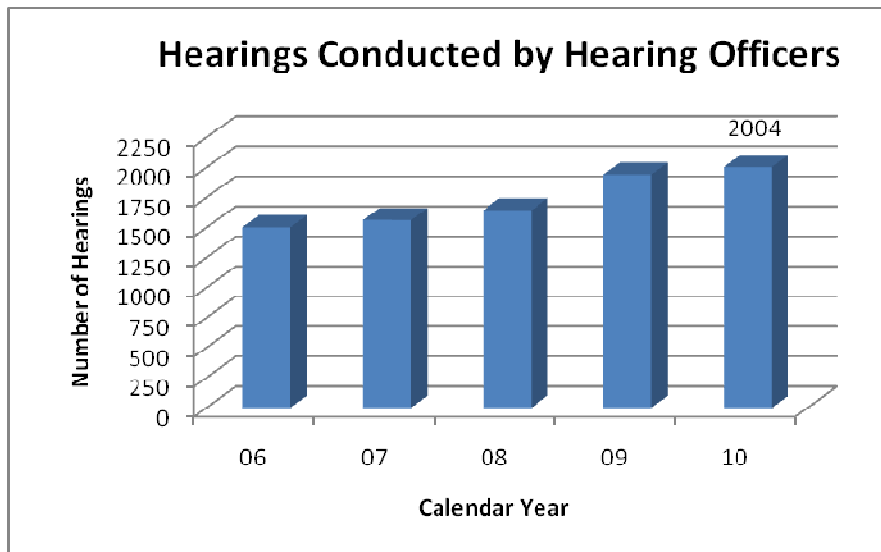


¹ See page 8 for an explanation of the decrease in petitions filed annually.

The workers' compensation specialists assisted 2,430 injured workers in processing their claims for benefits. They also provided assistance to 7,774 callers. Other than injured workers, the additional contacts included attorneys, insurance carriers and employers. The agency received 21,675 electronic requests for assistance this year, as compared to 13,140 in 2009. This represents an increase of 65% in electronic requests specifically, and highlights the public's preference for online information and electronic communication. Fortunately, OWC is willing and technologically able to respond in this way.

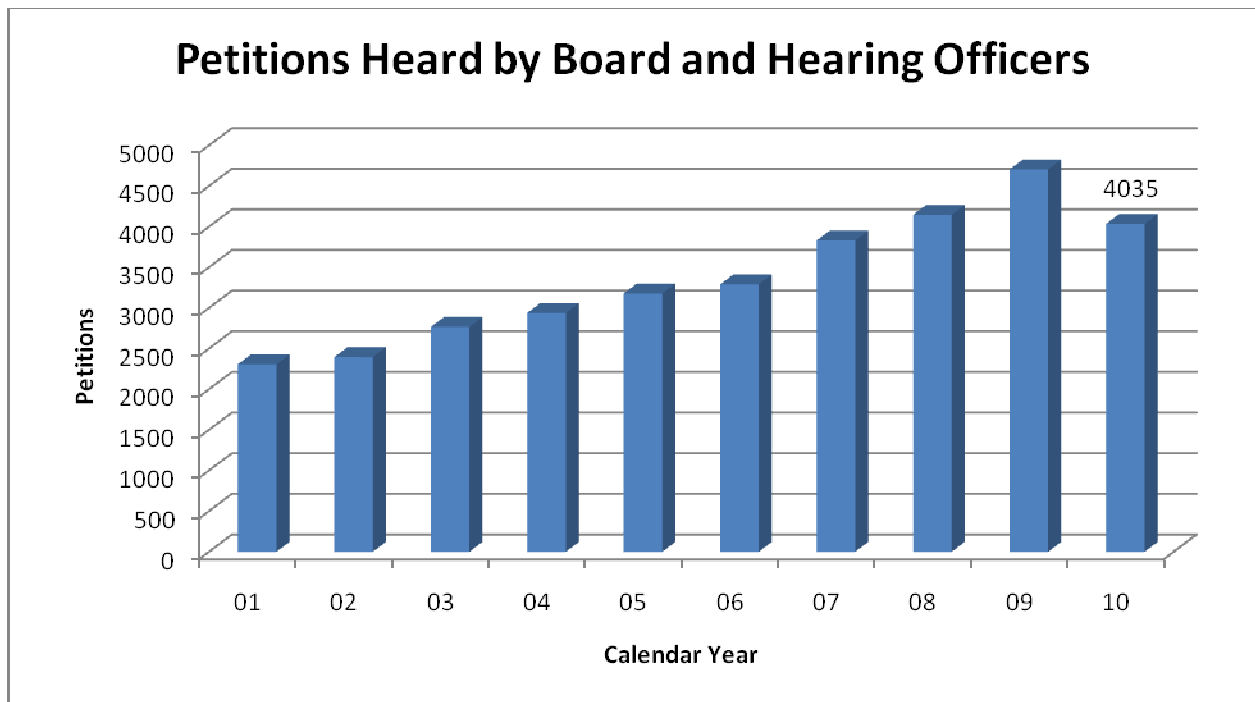


Hearing officers conducted hearings in 2,004 cases which would have otherwise been heard by the Industrial Accident Board (IAB). This represents a 3.3% increase from 2009.



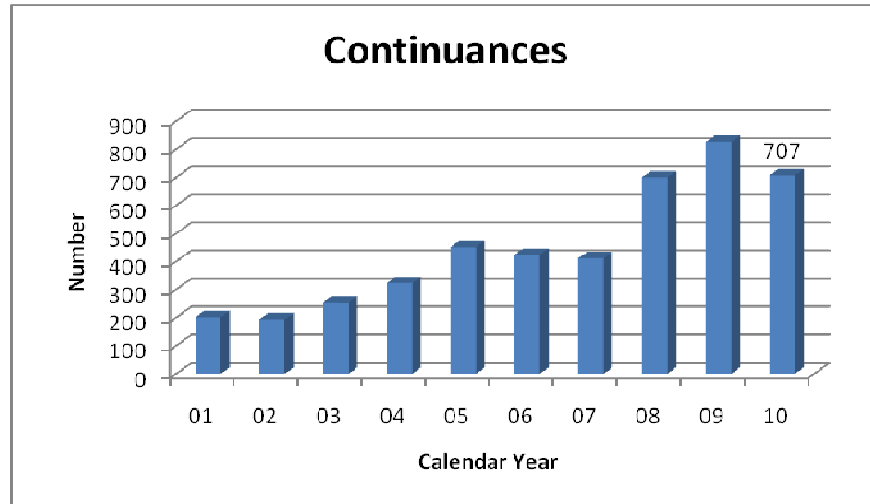
Petitions Heard by the Board/Hearing Officers

As seen in the chart on page six, the number of petitions filed annually decreased from calendar year 2009 to 2010. For the first time in over 10 years, the number of petitions heard by the Board or Hearing Officers also decreased. From 2009 to 2010, the total went from 4,704 to 4,035. This decrease of nearly 700 petitions is due, in large part, to the Utilization Review process (a component of the Health Care Payment System). As anticipated, the UR process successfully led to a reduction in the number of Petitions to Determine Additional Compensation Due (DACD) specifically.



Continuances

In 2010, a total of 707 continuances were granted.



Grounds for Continuances	Number of Occurrences
The unavailability of a party, attorney, material witness or medical witness for reasons beyond their control (illness, conflicting court appearance, emergency)	518
A justifiable substitution of counsel for a party	11
Any unforeseen circumstance beyond the control of the parties:	
• Employee missed employer-scheduled medical exam	84
• Records unavailable for review by parties prior to hearing	39
• Defendant(s) or issues added prior to hearing	1
• Consolidation of issues	7
• Additional medical testing	27
• Case pending settlement	3
• Case pending appeal of Utilization Review	5
• Employer bankruptcy; cases put on temporary “hold” status	1
• State offices closed due to inclement weather	5
• Internal OWC staff meeting	5
• Claimant named incorrect defendant	1

Board Member Activities

The following table shows the number of days individual board members were scheduled to conduct hearings, as well as the number of days they actually conducted hearings in 2010. Scheduled days versus actual days differ due to case settlements and continuances.

Board Member	Number of Days Scheduled to Conduct Hearings	Number of Days Actually Conducted Hearings
Barber	151	76
Bowen*	56	33
Daniello	178	81
Dantzler	151	61
del Tufo**	86	50
Doto	166	92
Epolito	147	72
Groundland	179	109
Hare***	22	10
Medinilla***	19	11
Mitchell	155	89
Shannon	173	85

*Resigned 5/31/10

**Resigned 8/1/10

***Appointed to the Board on 9/21/10

Beginning in April 2010, OWC compiled statistics on the number of Hearings on the Merits conducted by each Board Member.

Board Member	Number of Hearings on the Merits (4/1/10 – 12/31/10)
Barber	45
Bowen*	15
Daniello	74
Dantzler	48
del Tufo**	31
Doto	83
Epolito	49
Groundland	93
Hare***	4
Medinilla***	6
Mitchell	92
Shannon	73

*Resigned 5/31/10

**Resigned 8/1/10

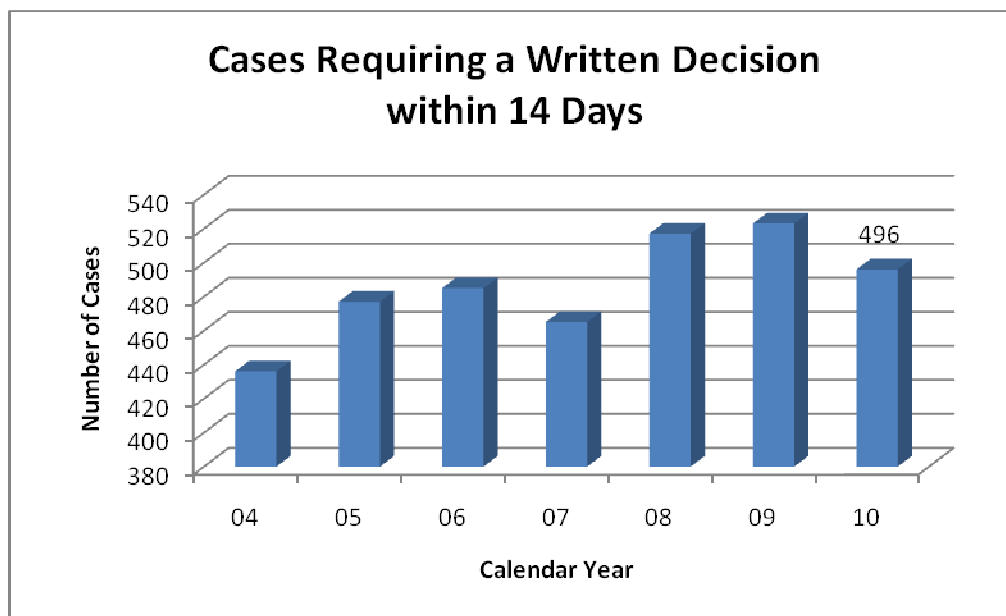
***Appointed to the Board on 9/21/10

Caseload of Individual Hearing Officers

Hearing Officer	Number of Decisions, Orders and Rearguments Written
L. Anderson	85
J. Bucklin	84
A. Fowler	115
S. Mack	74
D. Massaro	76
J. Pezzner	98
J. Schneikart	74
K. Wilson	73
C. Baum, Chief	135
Total	814

Compliance with Hearing & Decisional Deadlines

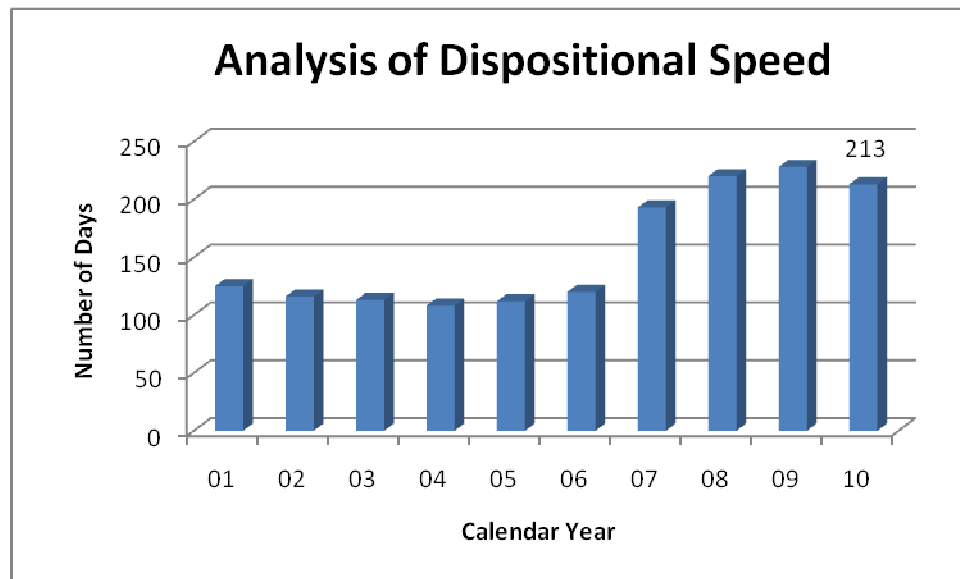
In 2010, 496 cases were heard which required a written decision within 14 days from the IAB or hearing officers. The agency did not meet the 14-day requirement in all cases, despite the fact that 814 writings were issued (as compared to 647 in 2009), which included 629 written decisions (as compared to 471 in 2009). This delay is attributable to the number of cases and because appellate court rulings have continued to require a greater degree of sophistication in the decisions. The number of appeals continued to remain low, with only 66 appeals in 2010.



Analysis of Dispositional Speed

In 2010, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 213 days, down from 228 days in 2009. The agency worked dilligently to find ways to reduce this number, and succeeded in 2010.

- In 2009, The Office of Workers’ Compensation made a commitment to address the increased time needed to issue decisions and instituted several measures to alleviate the problem.
- In 2010, Hearing Officers worked to streamline the writing process in order to reduce the time needed to write decisions. Without exception, every Hearing Officer wrote more decisions than they had hearings. In total, the Hearing Officers sat on 496 hearings, yet wrote 629 decisions – 133 more decisions than hearings over the course of one year. This is clear evidence of the remarkable effort to reduce the level of outstanding decisions.



Summary of Appeals

(Status of appeals taken as of December 31, 2010)

In the last five years, the Board or Hearing Officers have rendered 2,449 decisions on the merits. 324 of those decisions (approximately 13.2%) were appealed (an average of 64.8 per year). 276 of those appeals have been resolved. Only 39 decisions have been reversed and/or remanded, in whole or in part. This represents a “reversal rate” of only **1.59%** of all decisions rendered in those five years.

Year Appeal Taken In:	2006	2007	2008	2009	2010
Total Number of Decisions:	459	419	471	471	629
Total Number of Appeals:	68	53	74	63	66
Affirmed:	30	19	35	23	6
Reversed and/or Remanded:	11	8	10	7	3
Dismissed/Withdrawn:	27	25	29	31	12
Pending: ²	0	1	0	2	45

Five-Year Cumulative	
Total Number of Decisions:	2,449
Total Number of Appeals:	324
Affirmed:	113
Reversed and/or Remanded	39
Dismissed/Withdrawn	124
Pending:	48

² For purposes of these statistics, an appeal is no longer considered “Pending” once a Superior Court decision has been issued. Some Superior Court decisions have been appealed to the Delaware Supreme Court. If a Supreme Court decision is different from that given by the Superior Court, the statistics will be updated to reflect the final holding. Therefore, for example, while no cases are “Pending” from 2008, some of those appeal results may change in the future because of decisions by the Supreme Court.

Departmental Recommendations for Legislative Action or Board Rule Change

Board Rule Change

In 2010, the Department of Labor met with the Industrial Accident Board and members of the Workers' Compensation section of the State Bar Association to assist in amending the board rules to comply with the new statute. A public hearing will be scheduled in early 2011.

Based on recommendations of the Health Care Advisory Panel (HCAP), the department will recommend "housekeeping" legislation regarding the Health Care Payment System.