



State of Delaware

Department of Labor

14th Annual Report

on the

Status of Workers' Compensation

Case Management

2011 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 2011, two accomplishments stand out as having tremendous and far-reaching effects on Workers' Compensation in Delaware:

- 1. Revised Industrial Accident Board Rules went into effect on December 12, 2011, signifying the first major change to the rules since 1998. The extensive revisions were the result of collaboration between Board members, DOL staff and members of the Delaware State Bar Association. The changes bring the Board Rules into conformance with the 2007 Workers' Compensation Reform and technological advances in the administrative procedures of the DOL.*
- 2. Workers' Compensation Hearing Officers issued 604 written rulings (decisions, orders, rearguments). This is no fortuitous statistic, but rather a result of exceedingly hard work. More decisions were issued than there were hearings – clear evidence of the ongoing effort to reduce the level of outstanding decisions. With this, the reversal rate on appeals to Superior Court is calculated at 1.6% of all decisions issued within the last five years. This is a substantial reduction of the rate as it was even a few years ago, when it was calculated at 2.5% (see 10th Annual Report). This attests to the high quality of the decisions being issued.*

Year in Review 2011

The Delaware Workers' Compensation Health Care Payment System (HCPS) marked its third anniversary on May 23, 2011. 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 a primary care representative from the Medical Society of Delaware for the second half of 2011.

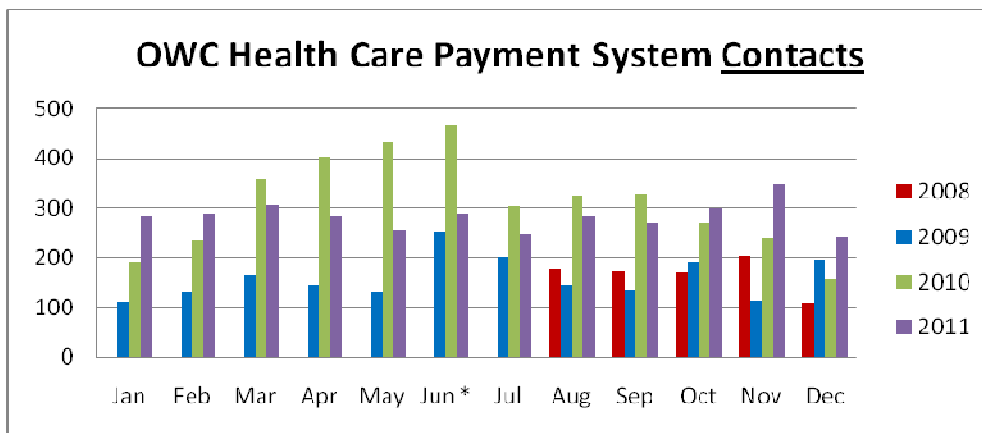
In 2011, the HCAP met four times. In addition, the subcommittees met eleven times, while smaller sub work groups for those committees, comprised of medical and legal experts, held additional meetings to work on specific issues. The Office of Workers' Compensation (OWC) held one Public Meeting in May 2011, prior to the approval of two substantive updates to the HCPS Administrative Code ("the regulations") that became effective on June 13, 2011 – 1) streamlined documentation required for a utilization review request; and 2) added a seventh health care practice guideline, "Part G Lower Extremity."

On August 16, 2011, the Governor signed SB108 into law, which contained two important revisions – 1) changed the out-of-state provider fee methodology for providers who also have practices in Delaware; and 2) changed the trigger for the "Employer's Modified Duty Availability Report," from directly after the injury

occurred to directly after the employer received the “Physician’s Report of Workers’ Compensation Injury.”

The OWC medical component – Medical Component Manager, HCAP Coordinator, Administrative Specialist II, and Administrative Specialist I – support the operations of the HCPS.

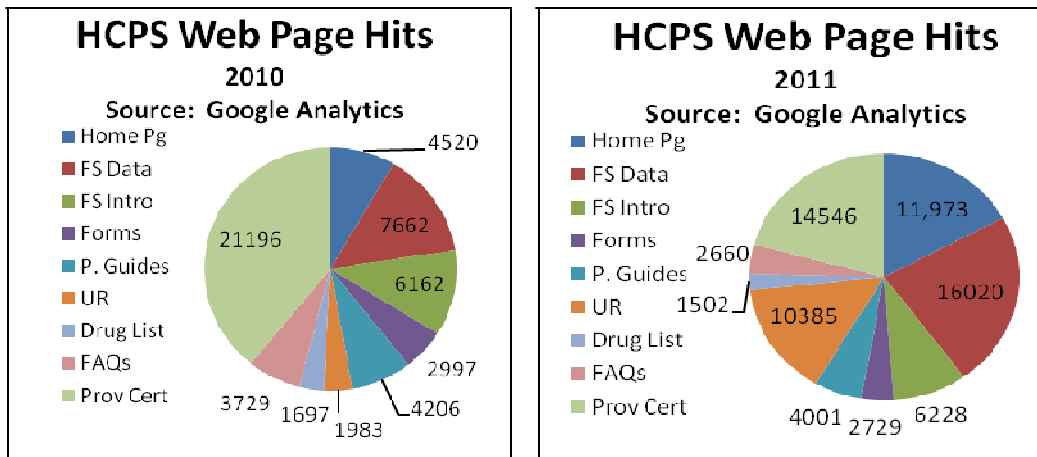
In 2011, the medical component fielded a significant number of telephone calls, letters, and electronic mail regarding the HCPS. The 5,415 total contacts in 2011 represented a 46% increase over the 3,718 total contacts recorded in 2010. Although much higher overall, the 2011 number shows a drastic decrease from March through June because 2010 marked the first 2 year cycle for certified health care providers to complete the “state approved” continuing education course. 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 links to e-mail questions; subscribe/unsubscribe to the ListServ; download the current certified health care provider list; view frequently asked questions; download the fee schedule data; download forms; access the Administrative Code (“the regulations”); access the Workers’ Compensation Act; and complete the required continuing education course for certified health care providers.

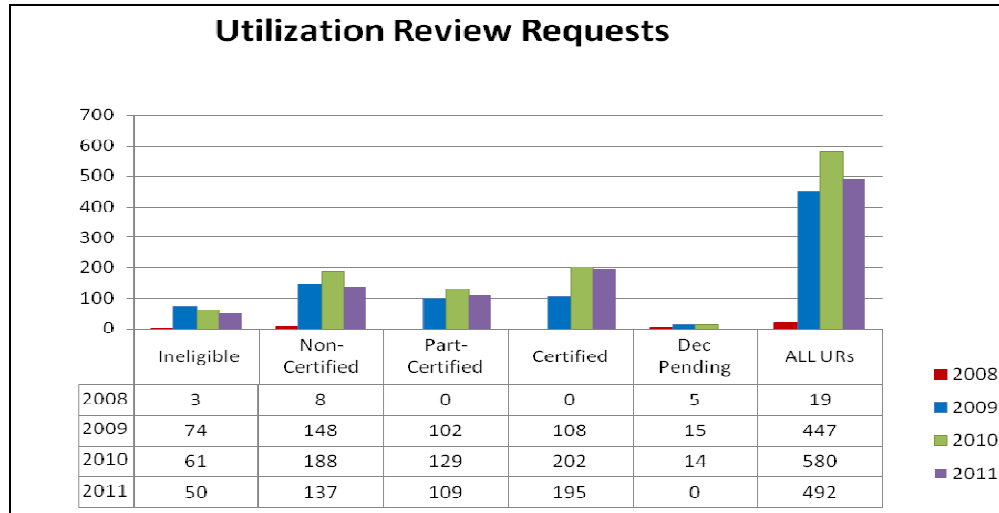
<http://dowc.ingenix.com/DWC.asp>

In 2011, the HCPS web pages received a total of 70,287 “unique visitors,” which represented a 30% increase over the 54,152 “unique visitors” reported in 2010. The *Google Analytics* program defines “unique visitors” as unduplicated (counted only once) visitors to the website over a specific time period. In November and December, the “Home Page,” “FS Data,” and “UR” web pages experienced a sharp spike in “unique visitors.” The parent company of OWC’s contractor contributed over 4,000 “unique visitors” for each of the three pages during those two months. The counts returned to normal levels, once a filter was put in place to remove the anomaly. The provider certification and fee schedule data pages represented the largest number of “unique visitors,” not counting the October and November spike.

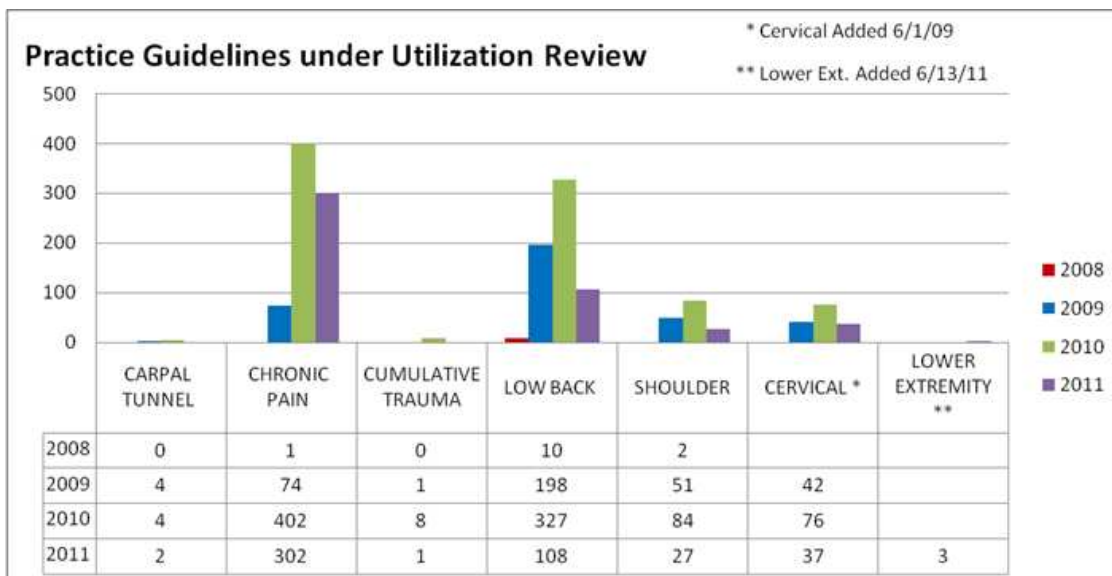


Utilization review provides prompt resolution of compliance issues related to proposed or provided health care services within the practice guidelines for those claims acknowledged as compensable. Parties may then appeal UR determinations to challenge the assumption that treatment specified within a practice guideline is the only reasonable and necessary course of treatment for a specific worker’s injury. In 2011, OWC received 492 requests for Utilization Review (UR), which represented a 15% decrease from the previous year. Whereas the marked increase in 2010 came from a better proficiency with the UR process, the 2011 decrease seemed to stem from a better understanding in the appropriateness of UR, particularly in two areas – 1) the nuance of “proposed” versus “prospective” treatment; and 2) the application of the practice guidelines (e.g. number of treatments, levels of chronic pain medications, etc.). At the end of 2011, OWC launched a petition to determine additional compensation due dedicated to

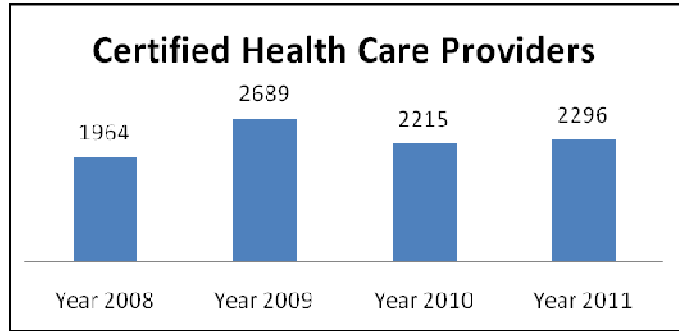
utilization review appeals. In 2012, OWC plans to incorporate the new UR Appeal petition into SCARS (Scheduling Case Management Accounting Reporting System), which will allow OWC to electronically track UR appeals.



In 2011, the Department of Labor added a seventh and final health care practice guideline, lower extremity, which marks the last injury type identified by the HCAP as one of the most frequent or most costly injuries in Delaware workers' compensation. Of the 480 total practice guidelines involved in UR last year, chronic pain treatment, particularly prescription pain medication, continued to represent the treatment most challenged (63%) through UR.



The number of certified health care providers rose 3.7% by the end of 2011. OWC plans to launch an updated continuing education course in the first quarter of 2012, which will mark the second two-year cycle certified health care providers must complete the required course.



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://dia.delawareworks.com/workers-comp/>



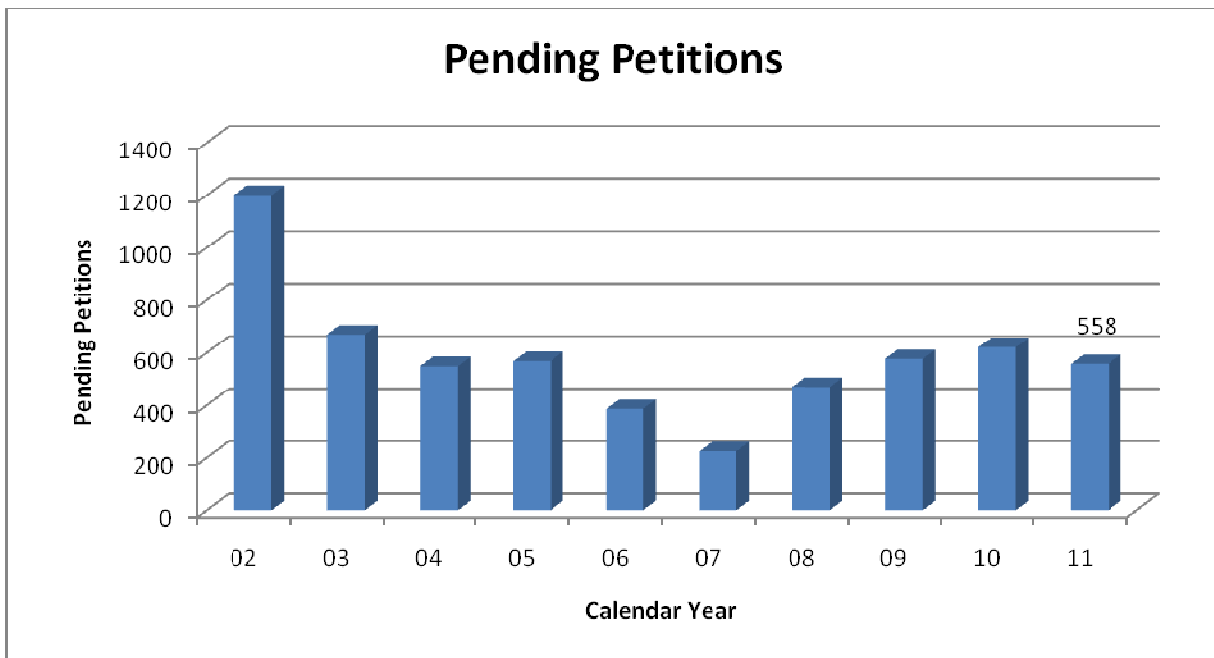
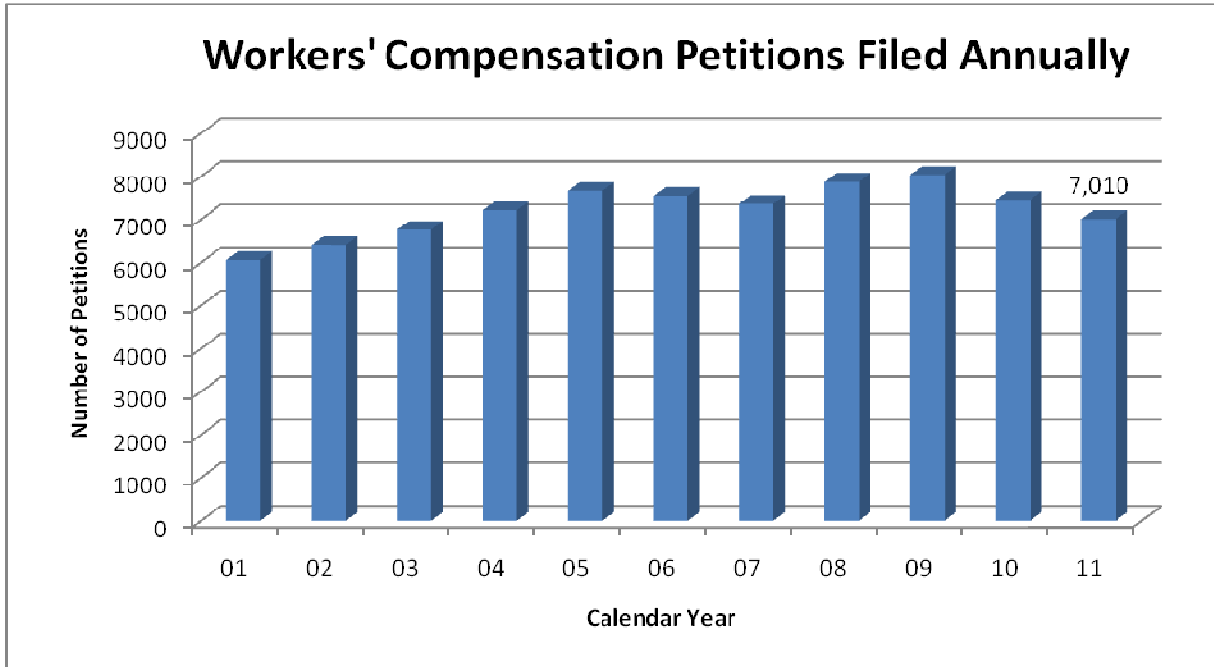
Quick Response (QR) Code to OWC's website

In 2011, approximately 1,000 stakeholders subscribed through OWC's website to receive ListServ e-mail notices. Launched in 2009, the OWC ListServ provides a no cost, quick, and effective tool to communicate important changes and information concerning Delaware workers' compensation. This past November, OWC launched a Facebook page (www.facebook.com/DelawareOWC), which supports Governor Markell's initiative for state agencies to expand the communication repertoire into social media applications.

In 2011, the OWC entered into an agreement with the Department of Health and Social Services, Division of Child Support Enforcement to share data on claimants collecting workers' compensation benefits who may be subject to wage attachment for child support.

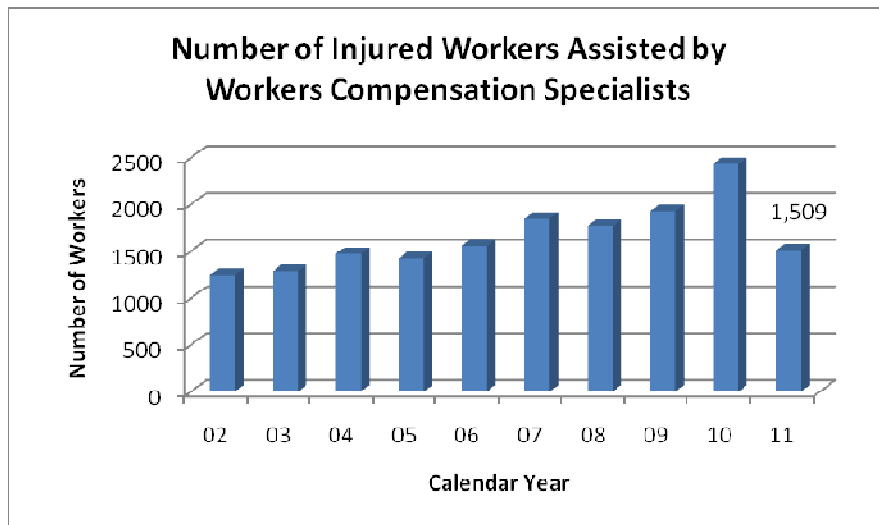
In conjunction with the Office of Labor Law Enforcement, the agency utilized investigative procedures to identify and prosecute uninsured employers. In 2011, 150 potential uninsured employers were investigated by the OWC. This represents an increase of 5%. In addition to the cooperative interaction with Labor Law Enforcement, this increase can also be attributed to a data sharing effort on the part of the Delaware Compensation Rating Bureau (DCRB).

During 2011, 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 7,010 petitions were filed in 2011.¹

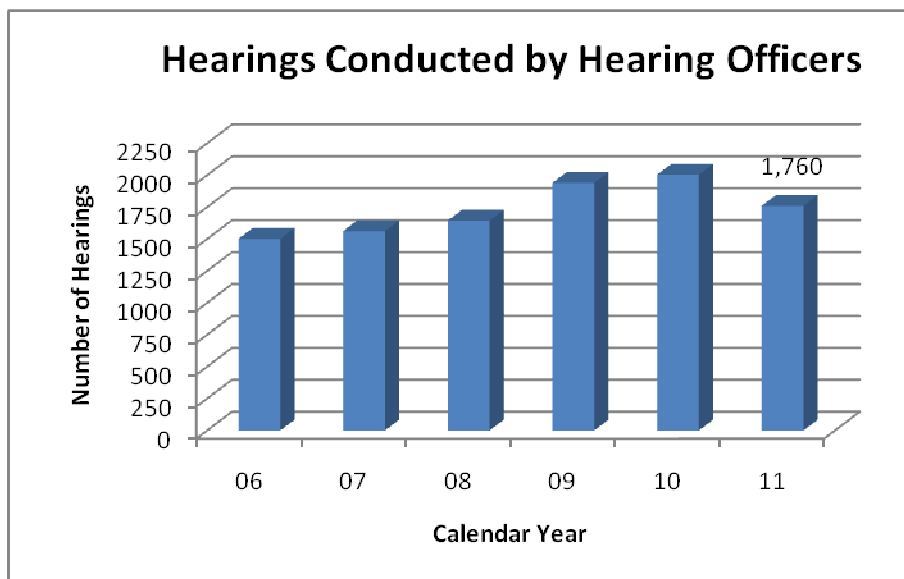


¹ See page 8 for an explanation of the decrease in petitions filed annually.

The workers' compensation specialists assisted 1,509 injured workers in processing their claims for benefits. They also provided assistance to 7,032 callers. Other than injured workers, the additional contacts included attorneys, insurance carriers and employers. The agency received 27,895 electronic requests for assistance this year, as compared to 21,675 in 2010 and 13,140 in 2009. This represents an increase of 23% 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.

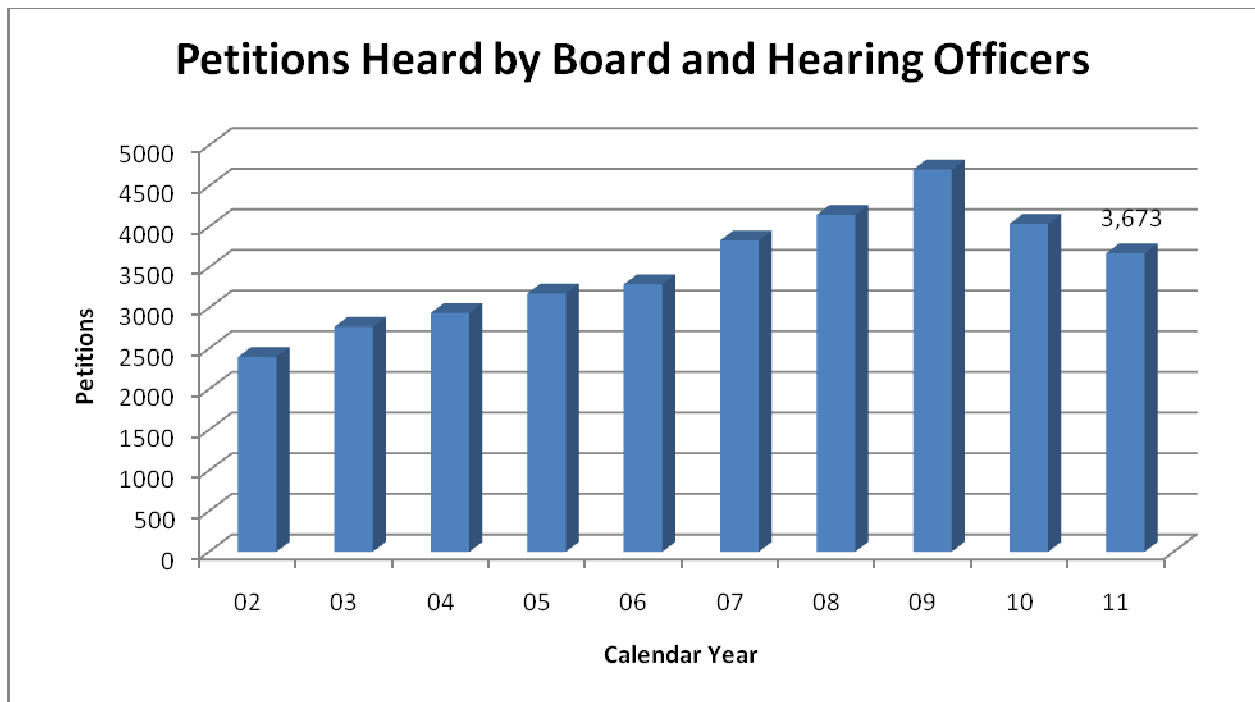


Hearing officers conducted hearings in 1,760 cases which would have otherwise been heard by the Industrial Accident Board (IAB).



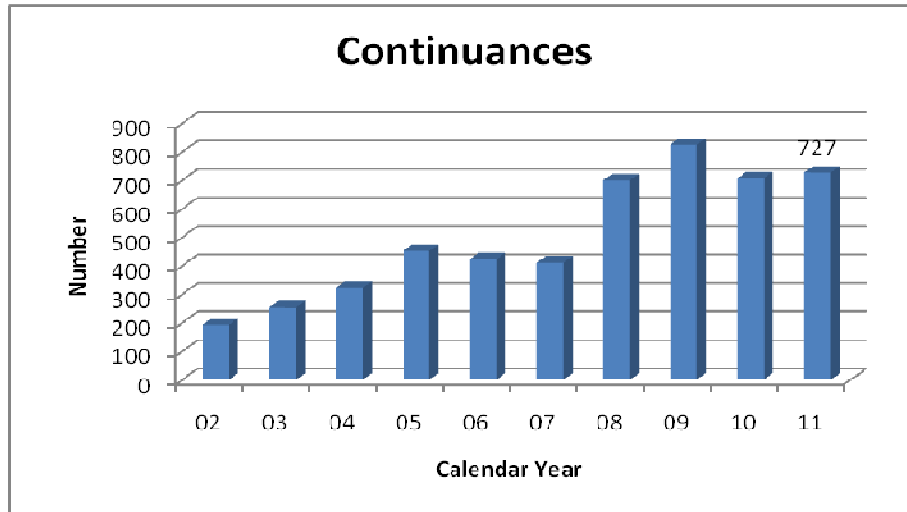
Petitions Heard by the Board/Hearing Officers

As seen in the chart on page six, the number of petitions filed annually decreased from calendar year 2010 to 2011. For the second time in over 10 years, the number of petitions heard by the Board or Hearing Officers also decreased. From 2010 to 2011, the total went from 4,035 to 3,673. This decrease of 362 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 2011, a total of 727 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)	544
A justifiable substitution of counsel for a party	2
Withdrawal of counsel	2
Any unforeseen circumstance beyond the control of the parties:	
• Employee missed employer-scheduled medical exam	94
• Records unavailable for review by parties prior to hearing	33
• Defendant(s) or issues added prior to hearing	6
• Consolidation of issues	11
• Additional medical testing	15
• Case pending settlement	11
• Case pending appeal of Utilization Review	6
• State offices closed due to inclement weather	1
• All day hearing	2

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 2011. 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	162	84
Daniello	152	76
Dantzler	141	74
Doto	152	84
Epolito	156	71
Groundland	148	93
Hare	122	76
Medinilla	144	91
Mitchell	131	69
Shannon	150	71

The following table shows the number of Hearings on the Merits conducted by each Board Member.

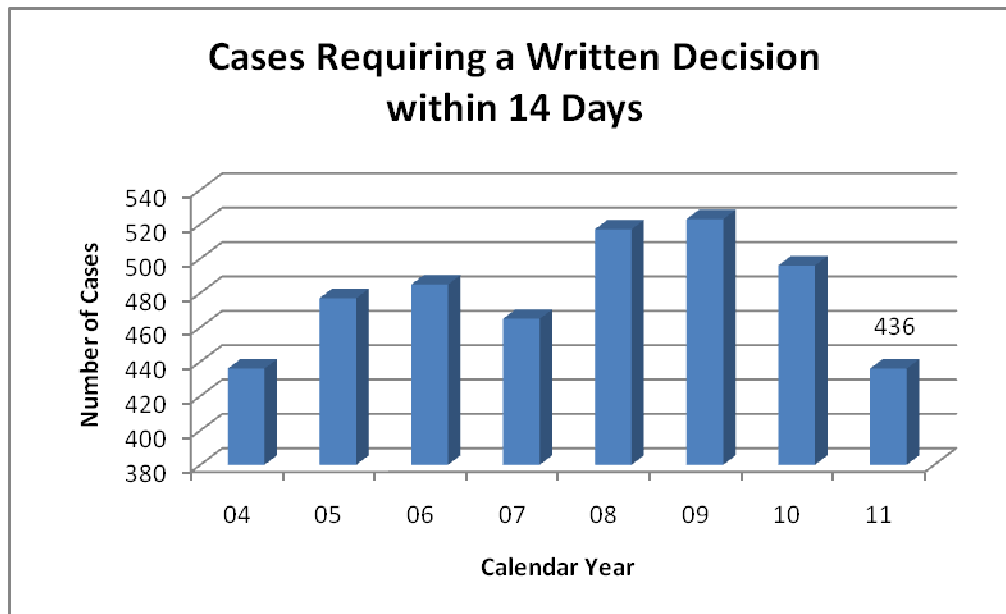
Board Member	Number of Hearings on the Merits
Barber	52
Daniello	70
Dantzler	55
Doto	62
Epolito	44
Groundland	65
Hare	50
Medinilla	65
Mitchell	64
Shannon	65

Caseload of Individual Hearing Officers

Hearing Officer	Number of Decisions, Orders and Rearguments Written
L. Anderson	39
J. Bucklin	87
A. Fowler	75
S. Mack	51
D. Massaro	71
J. Pezzner	72
J. Schneikart	60
K. Wilson	63
C. Baum, Chief	86
Total	604

Compliance with Hearing & Decisional Deadlines

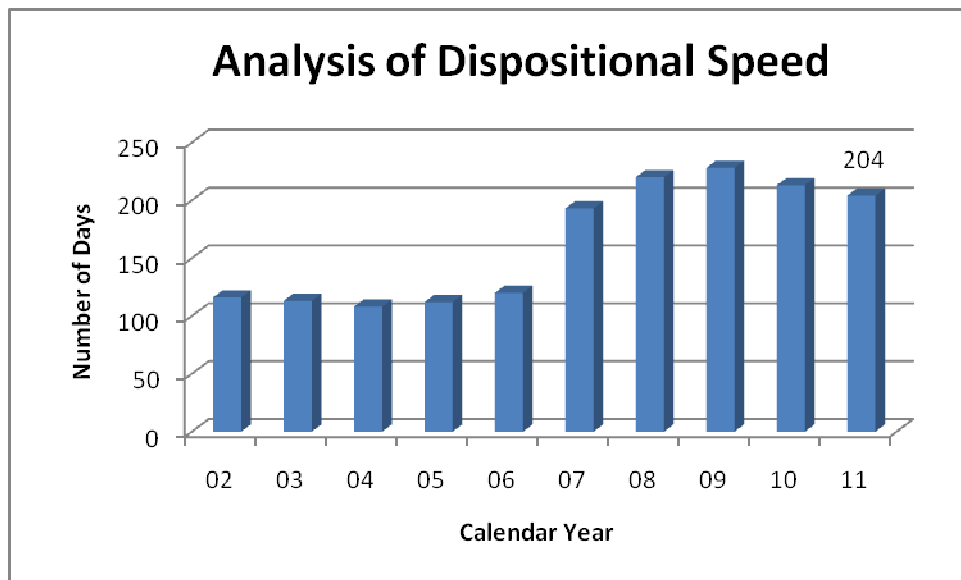
In 2011, 436 cases were heard which required a written decision within 14 days from the IAB or hearing officers. The agency did not meet the 14-day requirement in all cases, despite the fact that 604 writings were issued. This delay is attributable to the number of cases and because appellate court rulings have continued to require a greater degree of sophistication in the decisions. The number of appeals continued to remain low, with only 67 appeals in 2011.



Analysis of Dispositional Speed

In 2011, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 204 days, down from 213 days in 2010. The agency worked dilligently to find ways to reduce this number, and succeeded in 2011.

- In 2011, Hearing Officers worked to streamline the writing process in order to reduce the time needed to write decisions. In total, the Hearing Officers sat on 436 hearings, yet wrote 437 decisions.



Summary of Appeals

(Status of appeals taken as of December 31, 2011)

In the last five years, the Board or Hearing Officers have rendered 2,427 decisions on the merits. 323 of those decisions (approximately 13.3%) were appealed (an average of 64.6 per year). 281 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 **1.6%** of all decisions rendered in those five years, a sizable reduction from just a few years ago (2.5% in 10th Annual Report).

Year Appeal Taken In:	2007	2008	2009	2010	2011
Total Number of Decisions:	419	471	471	629	437
Total Number of Appeals:	53	74	63	66	67
Affirmed:	19	35	23	27	9
Reversed and/or Remanded:	8	10	9	11	1
Dismissed/Withdrawn:	26	29	30	24	20
Pending: ²	0	0	1	4	37

Five-Year Cumulative	
Total Number of Decisions:	2,427
Total Number of Appeals:	323
Affirmed:	113
Reversed and/or Remanded	39
Dismissed/Withdrawn	129
Pending:	42

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

Hospital Reimbursement

Based on recommendations from the Health Care Advisory Panel (HCAP), the department will recommend legislation regarding the Health Care Payment System, specifically a new reimbursement methodology for hospitals and ambulatory surgery centers.

Hearings before the Industrial Accident Board (IAB)

Based on recommendations from the IAB, the department will recommend legislation to allow, with the consent of the parties, one board member to hear a case when a second board member is precluded from hearing the case and no substitute member is available to form a panel.