

# State of Delaware

## Department of Labor

18<sup>th</sup> Annual Report

on the

Status of Workers' Compensation

Case Management



## 2015 Highlights

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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 Workers' Compensation Oversight 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 work accomplished in 2015, three issues stand out as having tremendous and far-reaching effects on Workers' Compensation in Delaware:

1. In July 2015, HB 166 was adopted. The purpose of this bill is to allow injured workers who seek medical care from out-of-state, non-certified health care providers, payment of their medical expenses. This revision will correct a flaw in the current statute that was exposed by the Delaware Supreme Court in the case of *Wyatt v. Rescare Home Care*, 81 A. 3d 1253 (Del. 2013) and *Vanvliet v. D&B Transportation*, 105 A.3d 390 (Del. 2014.). This bill removes the certification requirement for health care providers who are not licensed in Delaware, but licensed in another state. It changes the allowable payment for these non-certified, out-of-state providers to the lesser of the health care provider's usual and customary fee, the other state's maximum reimbursement, Delaware's maximum reimbursement, or a negotiated contract rate. The bill adds utilization review as a recourse for non-certified, out-of-state providers. This bill allows the Workers' Compensation Oversight Panel to realize the 2016 and 2017 mandated medical cost savings in the Delaware workers' compensation system through any component of the health care payment system, not just the fee schedule. The last benefit of this bill is that it allows the Workers' Compensation Oversight Panel to create regulations pertaining to the use of electronic billing in the workers' compensation healthcare payment system.
2. In December 2015, the Workers' Compensation Oversight Panel voted to accept the recommendation of the Fee Schedule Subcommittee for a uniform 7% reduction before the current fee schedule to be applied to every health

care code and service. In addition, the anesthesia codes were reduced by another 20% in order to bring those codes in line with the current reduction as well as the 20% reduction that was implemented in the January 2015 fee schedule. These reductions were reflected in the fee schedule beginning January 31, 2016. The purpose of these reductions is to meet the 5% reduction in aggregate workers' compensation medical expenses that is required by Title 19, §2322B(3)(a).

3. From an operational standpoint, OWC has achieved some impressive accomplishments. Despite an increase in the number of petitions filed in 2015, the average dispositional speed for the processing of a petition remained the same as it was in both 2013 and 2014. The number of pending petitions at the end of the year decreased from the number pending at end of 2014. The agency saw only 38 appeals to Superior Court. In addition to the ongoing update to the SCARS case management system, OWC is continuing to look at additional ways of streamlining processes.

# Year in Review 2015

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The Delaware Workers' Compensation Health Care Payment System (HCPS) marked its seventh anniversary on May 23, 2015. The 6 major components of the HCPS, which fall under the purview of the Workers' Compensation Oversight Panel and its subcommittees, are:

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
6. Data Collection

The 24 member WCOP contains representatives from the medical, legal, labor, business and insurance communities, including the Secretary of Labor and Insurance Commissioner. Since its expansion in July 2014, the Panel has convened without one of the "insurance carrier" representatives.

In 2015, the WCOP and its subcommittees met 21 times. The Panel met 5 times and its subcommittees met 16 times. A smaller subgroup worked diligently under a tight deadline to assist in the passage of HB 166.

The OWC medical component supports the operations of the HCPS. In 2015, the medical component fielded a significant number of telephone calls, letters, and electronic mail regarding the HCPS. Increased volume in 2015 primarily came from the "providers," "carriers," "other states/entities," and "general" categories. Some of the continued high volume may be attributed to the statutory changes occurring with HB 166. Provider certification and fee schedule represented the largest number of contacts.

The Department of Labor's website contains comprehensive information on all five components of the HCPS, as well as links to send e-mail questions,

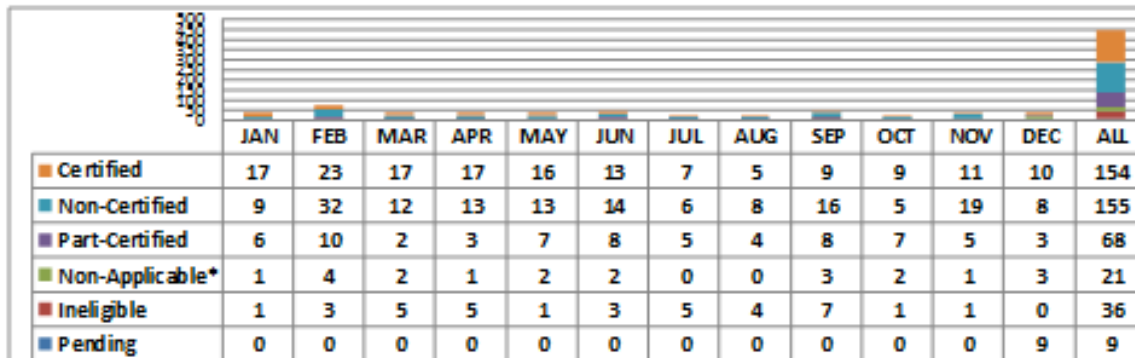
subscribe/unsubscribe to the ListServ, download the current certified health care provider list, view frequently asked questions, download the fee schedule data, download forms, access the Administrative Code (“the regulations”), access to the Workers’ Compensation Act and complete the required continuing education course for certified health care providers.

Utilization review (UR) 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 for a specific worker’s injury. OWC deems a UR request “ineligible” when the request falls outside the specified purview of UR or does not comply with the “required content, presentation and binding method” for materials submitted for review. The like-specialist reviewer deems a UR request “non-applicable” when the appropriate practice guideline does not address the treatment under review.

In 2014, OWC received 415 requests for utilization review. In 2015, OWC received 397 requests for utilization review, which constituted a 4% decrease.

## OWC Health Care Payment System (HCPS) 2015 Utilization Review Program\*

UR statistics are compiled on a one-month lag based on date of receipt.



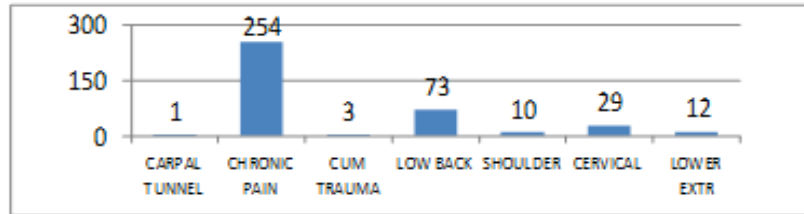
\*The "Notice of Non-Applicability for Utilization Review" went into effect on 8/1/12, for instances when the injury does fall under one of the 7 Practice Guidelines, but the treatment to be reviewed is not addressed within those Guidelines. This determination is made by the UR contractor.

UR Requests	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Total - month	31	49	34	34	38	40	23	21	41	21	34	30
Total - YTD	31	80	114	148	186	226	249	270	311	332	366	386
Total - Since 6/23/08	2342	2381	2426	2469	2497	2637	2680	2681	2822	2843	2877	2707

Chronic pain treatment, particularly pain medication, continued in 2015 to represent the treatment most challenged through utilization review. OWC participate on the Prescription Drug Action Committee (PDAC), which continued moving forward its recommendations to reduce prescription drug abuse in Delaware.

## OWC Health Care Payment System (HCPS) 2015 UR Practice Guidelines through 12/31/15

UR statistics are compiled on a one-month lag based on date of receipt.

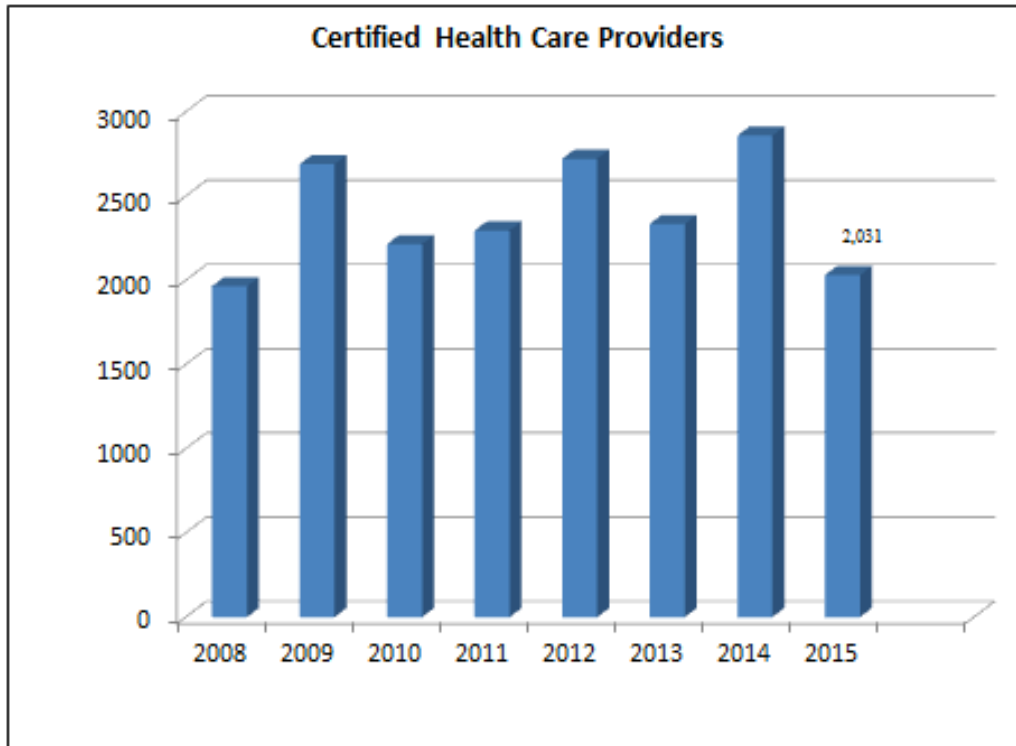


•Individual UR requests may involve multiple Practice Guidelines.

In an effort to further utilize available technology the OWC Utilization Review program recently began sending review requests to some of our UR contractors via secure email instead of certified mail. In addition to the contractor receiving the UR request in a shorter period of time, this change is also allowing OWC to realize a large cost savings by no longer sending the large number of documents included in a UR request through certified mail. OWC is working towards entering into this same arrangement with all of its UR contractors.

The number of certified health care providers decreased from 2,859 in 2014 to 2,031 in 2015. This represents an almost 30% drop. Biennial compliance with the statutorily mandated continuing education course was the most common reason providers lost their certification. In September 2013, the anchor date for completion of the course changed from the provider's initial certification date to the provider's license renewal date. 2015 marked the second full year of this changed, which helped providers better track the deadline.





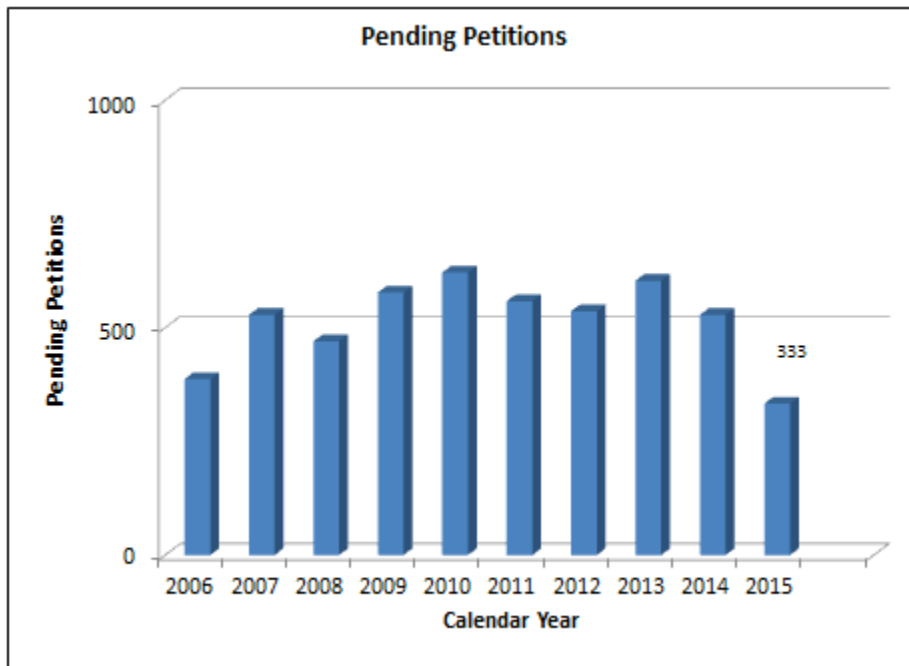
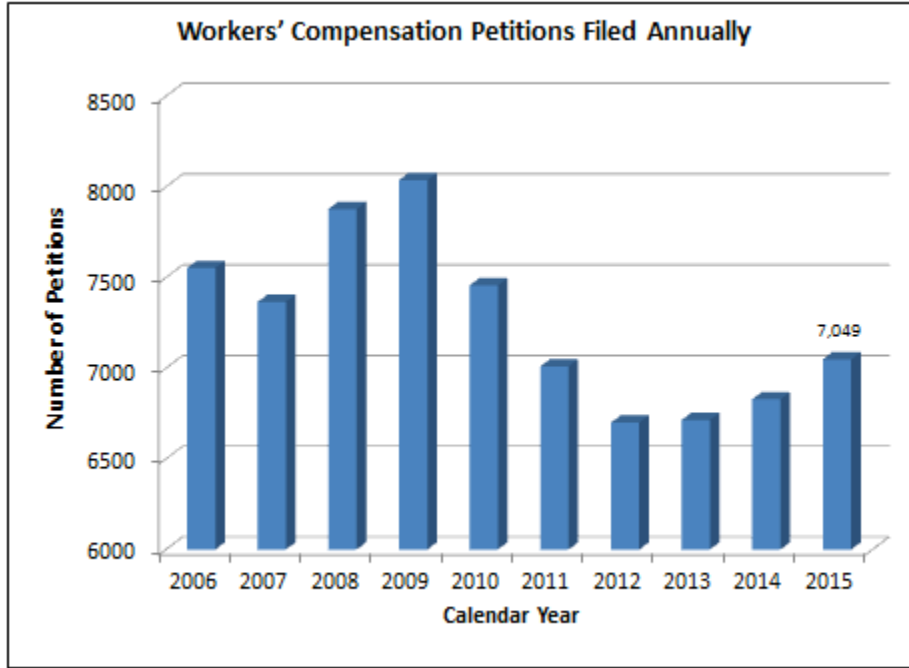
In 2012, OWC finalized an agreement with the Department of Health and Social Services, Division of Child Support Enforcement to share data on claimants collecting workers' compensation benefits who may be subject to wage attachment for child support. OWC continues to participate in this agreement.

In 2015, approximately 1,921 stakeholders participated in OWC's ListServ, which represents a 6% increase over the 1,800 subscribers at the end of 2014. Launched in 2009, the OWC ListServ provides a no-cost, quick, and effective tool to broadcast important changes and information via email. OWC also maintains a Facebook page at [www.facebook.com/DelawareOWC](http://www.facebook.com/DelawareOWC).

The Office of Workers Compensation takes pride in its website full of valuable information and links, including a list of available services, the ability to search for employer insurance coverage, access to the Workers' Compensation Act, frequently asked questions, and forms:

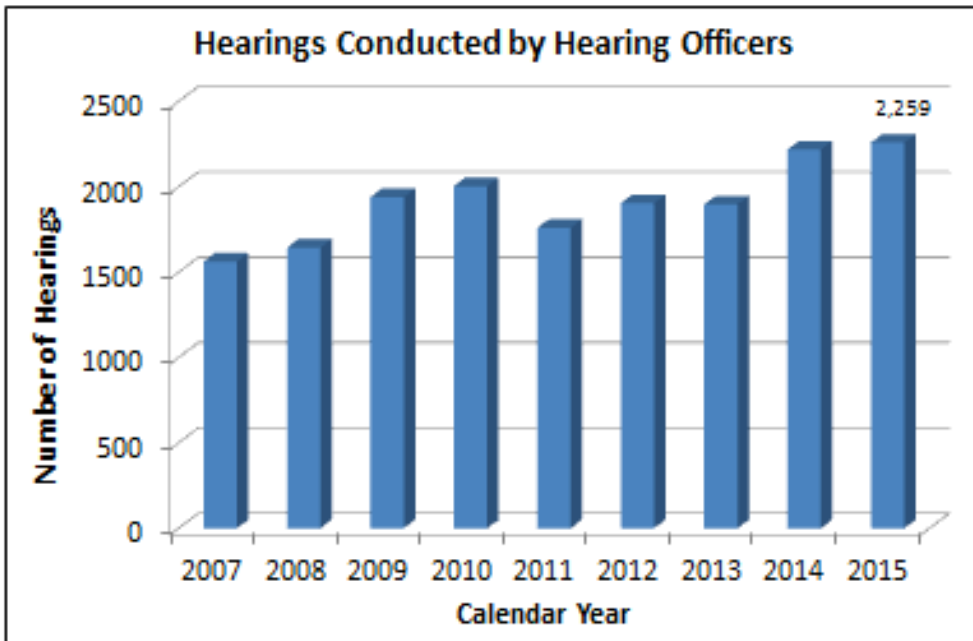
<http://dia.delawareworks.com/workers-comp/>

During 2015, 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 7,049 petitions were filed in 2015.



The workers' compensation specialists assisted 3,417 callers. Other than injured workers, the additional contacts included attorneys, insurance carriers and employers. The agency received 18,104 electronic requests for assistance this year, as compared to 24,965 in 2014 and 25,233 in 2013. This high level of electronic requests illustrates the public's preference for online information and electronic communication.

Hearing officers conducted hearings in 2,259 cases which would have otherwise been heard by the Industrial Accident Board (IAB).



## Petitions Heard by the Board/Hearing Officers

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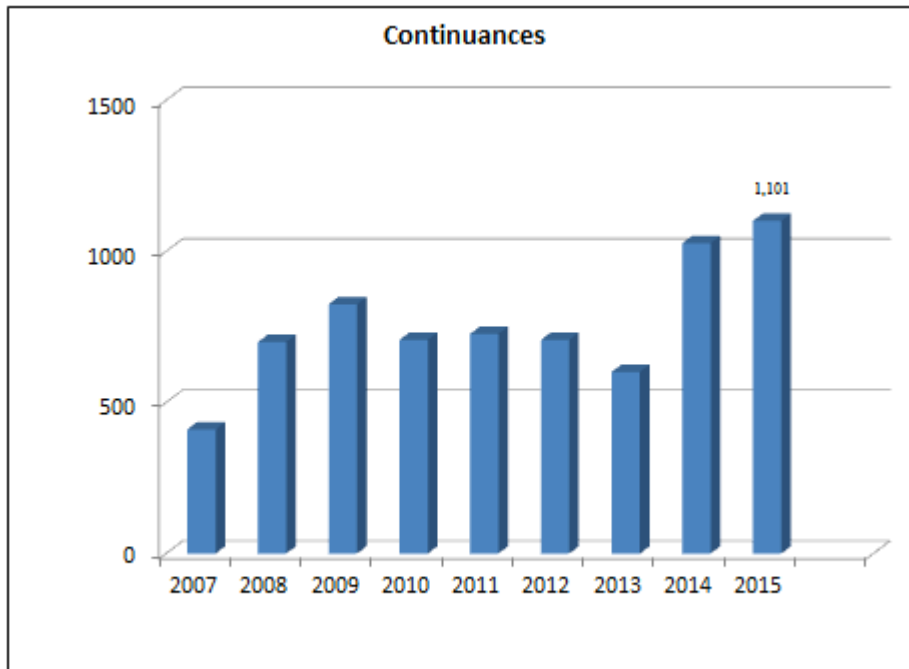
As seen in the chart on page 8, the number of petitions filed annually increased by over 200 in calendar year 2015, as compared to 2014. The number of petitions heard by the Industrial Accident Board or by Hearing Officers also increased by 135 as shown on the graph below.



# Continuances

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In 2015, a total of 1,101 continuances were granted, which represents a 7% increase from the 1,027 continuances granted in 2014. This increase is primarily caused by the unavailability of a medical witness.



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)	841
A justifiable substitution of counsel for a party	2
Any unforeseen circumstance beyond the control of the parties:	
• Employee missed employer-scheduled medical exam	59
• Records unavailable for review by parties prior to hearing	45
• Unforeseen circumstances	119
• Inadequate notice	10
• Case bumped	42

## Board Member Activities

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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 2015. 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
Buckley *	11	7
Brady	119	59
Crane **	54	21
Daniello	157	84
Dantzler	155	78
Doto	157	84
Groundland	153	104
Hare	154	69
Mauil	167	82
Medinilla ***	126	57
Mitchell	161	77
Shannon ****	155	71

\* Term began 11/5/15

\*\* Term Began 6/10/15

\*\*\* Resigned effective 10/26/15

\*\*\*\* Retired effective 5/31/15

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

<b>Board Member</b>	<b>Number of Hearings on the Merits</b>
Buckley	6
Brady	54
Crane	24
Daniello	96
Dantzler	75
Doto	82
Groundland	110
Hare	66
Mauil	79
Medinilla	60
Mitchell	87
Shannon	20

## Caseload of Individual Hearing Officers

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Hearing Officer	Number of Decisions, Orders and Rearguments Written
E. Boyle	50
J. Bucklin *	63
S. Mack	46
D. Massaro *	45
J. Pezzner	64
J. Schneikart	45
H. Williams	76
K. Wilson *	62
C. Baum, Chief	64
<b>Total</b>	<b>515</b>

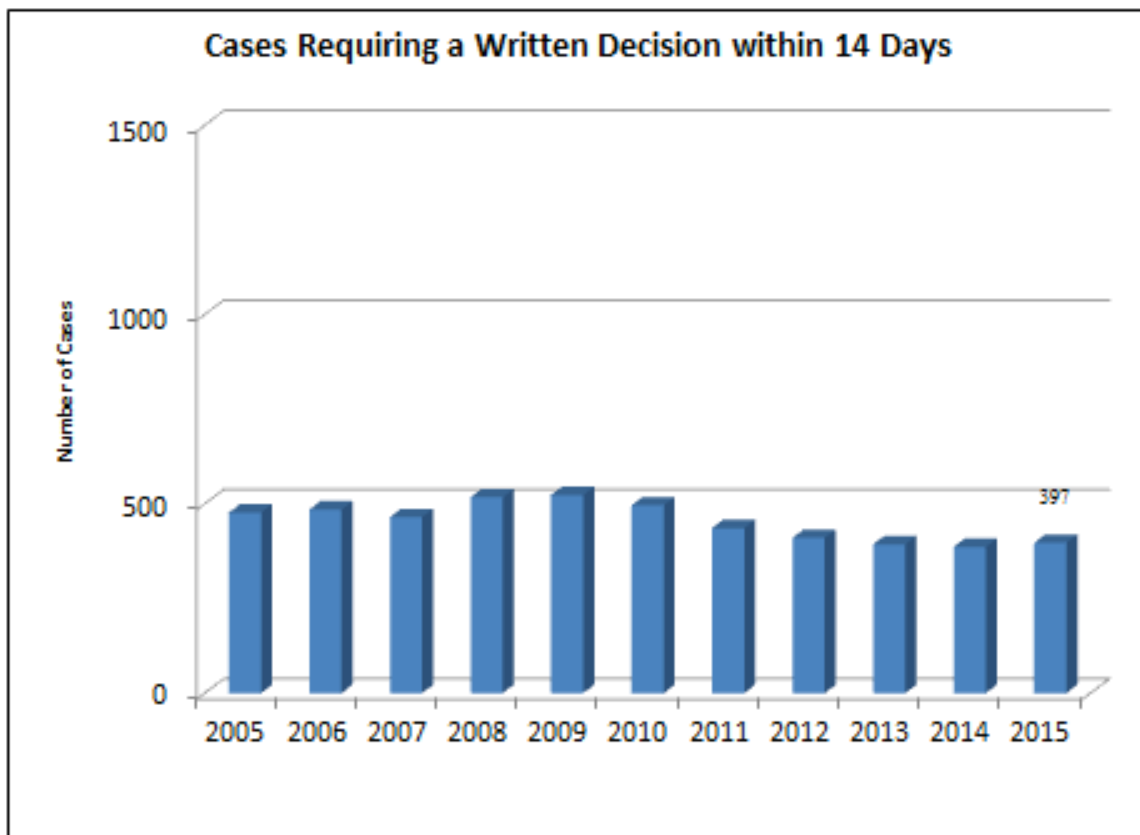
\* In addition, in 2015, J. Bucklin, D. Massaro and K. Wilson each did a workers' compensation mediation pursuant to DEL.CODE ANN. Tit. 19, §2348A.



## Compliance with Hearing & Decisional Deadlines

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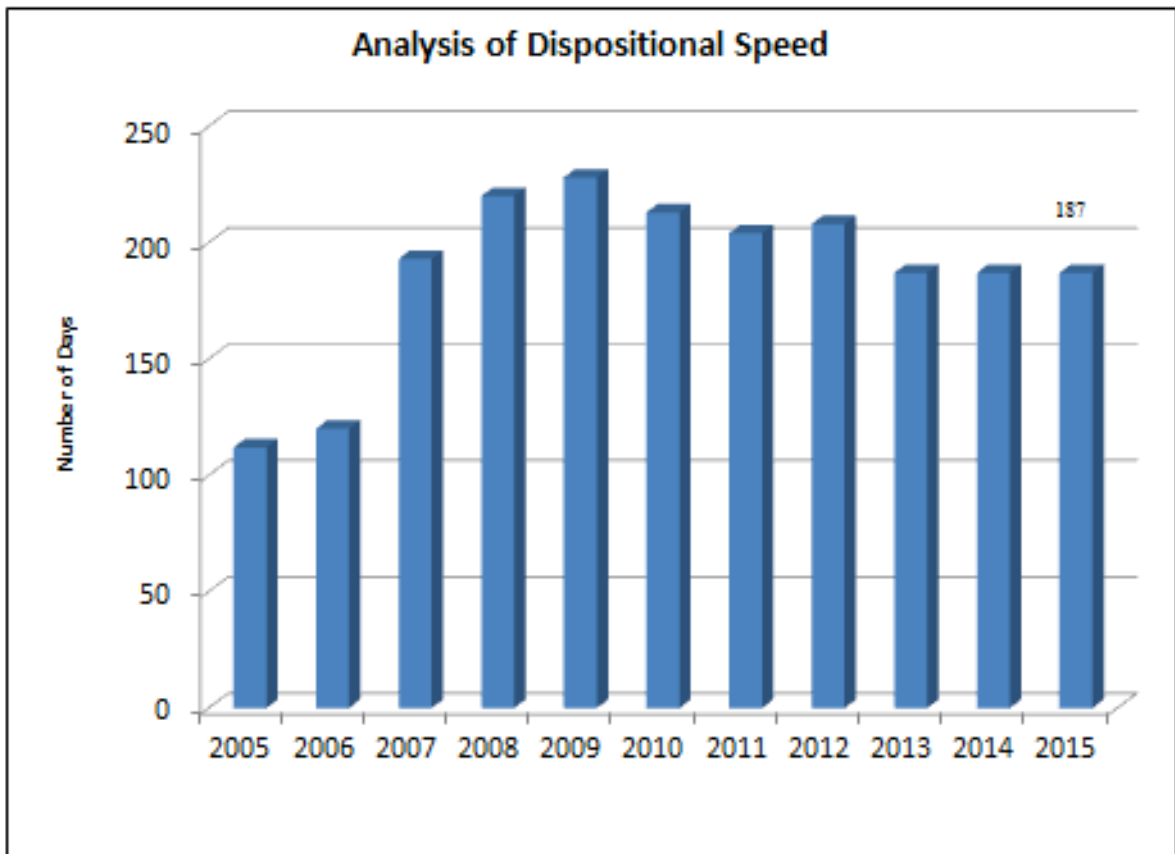
In 2015, 397 cases were heard which required a written decision within 14 days from the IAB or hearing officers. The agency met the 14-day requirement in the vast majority of cases. The number of appeals continued to remain low, with only 38 appeals in 2015.



# Analysis of Dispositional Speed

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In 2015, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 187 days. The agency's efforts to find innovative ways to reduce this number by processing cases more quickly and efficiently and increasing the speed of decisions has allowed this average to remain steady from 2013 to 2015.



# Summary of Appeals

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(Status of appeals taken as of December 31, 2015)

In the last five years, the Board (or Hearing Officers) have rendered 2,023 decisions on the merits. Of those decisions, 246 (approximately 12.16%) were appealed (an average of 49.2 per year). 222 of those appeals have been resolved. Only 21 decisions have been reversed and/or remanded, in whole or in part. This represents a “reversal rate” of only **1.04%** of all decisions rendered in those five years.

<b>Year Appeal Taken In:</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Total Number of Decisions:	437	429	394	370	393
Total Number of Appeals:	67	62	38	41	38
Affirmed:	30	33	23	18	8
Reversed and/or Remanded:	7	5	5	2	2
Dismissed/Withdrawn:	29	24	10	19	7
Pending: <sup>1</sup>	1	0	0	2	21

<b>Five-Year Cumulative</b>	
Total Number of Decisions:	2,023
Total Number of Appeals:	246
Affirmed:	112
Reversed and/or Remanded	21
Dismissed/Withdrawn	89
Pending:	24

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<sup>1</sup> 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 2010, some of those appeal results may change in the future because of decisions by the Supreme Court.

# Departmental Recommendations

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## Workers' Compensation Oversight Panel (WCOP)

On November 17, 2015, the Insurance Commissioner announced increases in workers' compensation rates of 7.09% in the residual (assigned risk) market and 7.20% in the voluntary market. These increases were effective December 1, 2015 for new and renewal business. OWC will continue to provide the administrative support necessary for the Workers' Compensation Oversight Panel to further its efforts at reducing costs associated with the increases in workers' compensation rates. WCOP has been reviewing the Delaware Compensation Rating Bureau's rate filing to determine causes for the increase in rates and it is working to address those items.

WCOP is also researching electronic billing for workers' compensation healthcare providers. Electronic billing would enable providers to receive payment for services more expeditiously.

## Case Management

OWC will continue to work to update our case management software. The completed update will consist of a more user friendly appearance as well as the ability to better track Utilization Review statistics. OWC is also exploring other aspects of case management where processes may be streamlined.

## Uninsured Employers

OWC continues to work to address the problem of employers in Delaware operating without workers' compensation insurance coverage. Our efforts began and continue with steps to educate employers about workers' compensation and what is required of them. Further steps have been taken to fine employers who repeatedly refuse to obtain proper coverage. OWC is also reviewing current workers' compensation statutes to ensure that they contain the tools necessary to pursue non-compliant companies.