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

Submitted to the 126th Maine Legislature

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We are pleased to submit to the Governor and the 126th Legislature, First Regular Session, the ***Annual Report on the Status of the Maine Workers' Compensation System*** as required by Title 39-A § 358-A(1).

The Annual Report profiles the current status of the workers' compensation system in Maine and is submitted by the three State agencies most involved in the workers' compensation system – the Workers' Compensation Board, the Bureau of Insurance, and the Maine Department of Labor, Bureau of Labor Standards.

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EXECUTIVE SUMMARY

The Workers' Compensation Board, in consultation with the Superintendent of Insurance and the Director of the Bureau of Labor Standards, is directed in Title 39-A, Section 358-A(1) to submit an annual report on the status of the workers' compensation system to the Governor, the Joint Standing Committee on Labor, Commerce, Research and Economic Development, and Joint Standing Committee on Insurance and Financial Services by February 15 of each year.

WORKERS' COMPENSATION BOARD

The Workers' Compensation Board has adopted an approach to managing the Act that is focused on maintaining the stability of the workers' compensation system in Maine. Overall, dispute resolution is performing well; compliance with the Workers' Compensation Act is high; frequency of claims is down; compensation rates have dropped 59 percent since 1993; MEMIC has again declared a $12 million dividend to Maine businesses; and the Board has reduced the assessment to employers by approximately $3 million over the past two years. All of these contribute to our continuing effort to make Maine one of the more stable workers' compensation systems in the country.

During the past eight years the Workers' Compensation Board has transitioned from an agency whose focus was mainly dispute resolution to one which provides effective regulation, improved compliance, and is a strong advocate for injured workers. We are working to control medical costs through a recently adopted and updated fee schedule and are vigorously addressing the problem of employee misclassification.

It is important at this time to maintain the positive momentum generated by the Board in recent years. The political landscape has changed several times in the past few years. It is important for the Board to have a solid strategic plan to reassure the Governor and Legislature that the Board is fulfilling its mission "to serve the employees and employers of the State fairly and expeditiously…"

There was a major transition in staff leadership with key positions changing this year. The Executive Director is maturing into his position. In addition, key staff retired and were replaced. This annual report should provide the Governor and the Legislature with a framework from which to analyze the Board's workings and assess the effect these efforts have made.

The seeds of administrative changes at the Board were initially sown in 2004, when the Governor worked with both labor and management to ensure the passage of Public Law 2004 Chapter 608. The intent of this legislation was to eliminate gridlock on key issues and return a sense of normalcy to the Board's operations. The legislation changed the structure of the Board from eight to seven members. Three members represent labor and three represent management. The seventh is the Executive Director, who serves as Chair of the Board and at the pleasure of the Governor. Since the effective date of the legislation, the Board has worked to resolve all of the issues that caused gridlock and is now focused on setting policy for Board business. Some of the difficult issues the Board has, and is acting on, include: hearing officer appointments; hearing officer terms; budgetary and assessment matters; electronic filing mandates; Rule revisions; form revisions; legislation; compliance issues; independent medical examiners; worker advocate resources and reclassifications; dispute resolution issues; increases in compliance benchmarks; independent contractors; a Facility Fee Schedule; a data gathering project; and employee misclassification.

The importance of Chapter 608 cannot be overly emphasized. Maine has gradually improved its national standing on workers' compensation costs and an effective and efficient Board helps to perpetuate this positive

trend. Decisions are less regularly made by the Chair which means, in large part, the parties of interest are reaching consensus more often on decisions that impact their constituencies.

It was not too long ago that Maine was one of the costliest states in the nation for workers' compensation. Recent articles have highlighted Maine's achievements during the past few years. One noted: "The experience in Maine … clearly demonstrates that significant reduction in costs, medical, and total benefits are possible."

Various reports comparing Maine workers' compensation costs to the other states demonstrate Maine has improved significantly in lowering its costs. "Maine is one of the states with the largest decrease in benefit costs"; Maine is approaching the national average for indemnity benefits, medical benefits, and total cash and medical benefits; Maine's rank is 34th among the 51 jurisdictions requiring workers' compensation.

Maine has gone from one of the costliest states in the nation to one that is moving to the level of average costs for both premiums and benefits and has positioned itself to continue this trend. Maine is working towards a balance between reasonable costs and reasonable benefits, all within the Governor's policy of keeping Maine fair-minded and competitive.

In 2011, the Legislature carried over two bills that were enacted in 2012 and will have a significant impact on our workers' compensation system. The first, LD 1314, *An Act To Standardize the Definition of "Independent Contractor,"* provides a uniform definition used to determine who is an "independent contractor" and who is an "employee" for workers' compensation and employment security purposes. The second bill carried over, LD 1571, *An Act To Amend the Laws Governing Workers' Compensation*, was intended to overhaul much of the existing workers' compensation system. The focus was on addressing how partial incapacity benefits are paid and introduced provisions that might favor business interests. These bills were considered by the second regular session of the 125th Legislature. Both were considered by the Legislature, LD 1571 was rejected and LD 1913 was introduced. The new bill significantly changed major provisions of the Act. It will bring certainty to the system and should reduce costs. Our General Counsel's Report, in Section 13, provides a detailed analysis of these bills.

The Workers' Compensation Board made significant progress on controlling medical costs when it adopted a medical facility fee schedule in 2011. The legislature in 1992 mandated the adoption of a fee schedule to help contain health care costs within the system.

The objectives of the fee schedule include: providing access to quality care for all injured workers, insuring providers are fairly paid, reducing and containing health care costs, and creating certainty and simplicity in this complex area.

In the spring of 2011, the Board voted to adopt a schedule developed by staff in consultation with Ingenix consultants. The Rule was the subject of public comment, revision, and final adoption in November. It became effective on December 11th. The Rule in conjunction with the Legislature's enactment of LD 1244 is best characterized as a "work in progress." Although there is a fee schedule, it will be reviewed, possibly revised, and regularly updated. In December 2012, the fee schedule was updated and the update became effective on December 31, 2012.

This year, the Board reached consensus on a number of issues and has moved forward on matters that have hindered its efficiency and effectiveness in the past.

There is still much to do to improve the Maine Workers' Compensation system. We continue to work on employee misclassification, injured employees are being encouraged to explore vocational rehabilitation when

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

In recent years, the Maine Workers' Compensation Board has transitioned from an agency whose energies were mainly focused on dispute resolution to one which provides effective regulation, improved compliance, strong advocacy for injured workers, and open and equal treatment of the business community.

BUREAU OF INSURANCE

The advisory loss costs, the portion of the workers' compensation rates that account for losses and loss adjustment expenses, will decrease by 1.8 percent in 2013 after decreasing by 6.9 percent in 2012. The advisory loss costs are now, on average, nearly 51 percent lower than they were at the time of the last major reform to the workers' compensation system in 1993. The average indemnity cost per case has been decreasing since policy year 2007; however, the average medical benefit cost per case has risen significantly since policy year 2003. Policy year 2010 saw only a slight increase in medical benefit costs. Medical benefits constitute 55 percent of the total benefit costs in Maine. Medical costs and services are rising faster than overall inflation, as measured by the Consumer Price Index, and are rising faster than wages.

The decrease in the proposed advisory loss costs is not evenly distributed across all rating classifications, as seen below.

Industry Group	Percent Decrease
Manufacturing	-3.2%
Office Clerical	-0.5%
Contracting	-2.1%
Goods & Services	-1.5%
Miscellaneous	-2.1%

The change in loss costs for individual classifications within each group varies depending on the experience within each classification. Many employers will experience premium decreases while some will experience increases.

Maine Employers' Mutual Insurance Company (MEMIC) actively competes in the voluntary market and is the insurer of last resort in Maine. Although MEMIC's market share has dropped from 63.6 percent in 2006 to 59.4 percent in 2011, the workers' compensation insurance market is still very concentrated. Much of the business is written by a small number of companies. There are, however, continued signs that pricing has become more competitive.

Some insurers have lowered their rates in hopes of attracting business. Additionally, the number of insurance companies becoming licensed to provide workers' compensation coverage in Maine has increased for several years. Insurers other than MEMIC do not have to offer coverage to employers and can be more selective in choosing which employers to underwrite. In order to become eligible for lower rates, an employer needs to have a history of few or no losses, maintain a safe work environment, and follow loss control recommendations.

MEMIC had a 1.1 percent decrease in market share in 2011. MEMIC's market share has declined by 4.9 percent since 2004. Twenty-nine insurers wrote more than $1 million each in annual premium in 2011, eight more companies than in 2010. The top ten insurance groups wrote 92 percent of the workers' compensation insurance in the state in 2011, 2 percent less than in 2010.

Self-insurance continues to be a viable alternative to the insurance market for employers. Self-insured employers represented over 45 percent of the overall workers' compensation market in 2011, 2.5 percent less than in 2010.

BUREAU OF LABOR STANDARDS

The role of the Bureau of Labor Standards (BLS) of the Maine Department of Labor (MDOL) in the Workers' Compensation system is facilitating the prevention of occupational injuries and illnesses. This is accomplished by a variety of means.

Under Maine statute, Title 3 MRSA §42, the Bureau has the authority to collect and analyze statistical data on work-related injuries and illnesses and their effects. To minimize employer effort and maximize data quality and availability, the Bureau partners with the Maine Workers' Compensation Board (WCB) and federal agencies, coordinating data collection with them where possible.

Title 26 MRSA §42-A also charges the Bureau with establishing and supervising safety education and training programs directed towards helping employers comply with OSHA requirements and best practices for prevention. Additionally, MDOL is responsible for overseeing the employer-employee relationship in the state through enforcement of Maine labor standards laws and the related rules, including occupational safety, and health standards in the public sector. For enforcement purposes, the Bureau partners with the federal Occupational Safety and Health Administration (OSHA) and the Wage and Hour Division of the Employment Standards Administration in the federal Department of Labor, maximizing coverage while minimizing resources. By accomplishing its mandated functions, the Bureau complements the efforts of federal OSHA, WCB, and insurers, enabling employers with the means for the prevention of workplace injuries and illnesses. The employer visits the on-site training classes offered through the SafetyWorks! Training Institute, and the data and analysis are all currently available free of charge. These no-cost-to-the-employer services and resources are funded via a dedicated state revenue fund collected from insurers and self-insured employers and employer groups. The revenue for the fund is assessed on these insurers and self-insured employers based on their workers' compensation benefits (minus medical payments) paid out and assessed among them in proportion to the amounts they paid out to the total. The total of the amount the Bureau can collect is capped at 1 percent of the total benefits paid out through the system.

Over time, both the number and rate of injuries and illnesses have decreased. This, and efforts at directly curbing case costs, have driven down the benefits paid out by the insurers and self-insured employers. Likewise, the cap has steadily declined to the point that, in 2011 and in 2012, in order to sustain the services, the Bureau had to assess at the cap. The cap for 2012 was slightly higher than the previous year. The amount the Bureau needed to sustain its programs fluctuated from year to year because of holdovers—savings from one year carried over to the next. The holdovers were purposely not held longer than a year to avoid accumulating money that might be transferred to other uses. For the first time, transitioning from the state fiscal year 2011 to that for 2012, the Bureau had no holdover and had to assess the full amount to pay for the services. The same was true for the transition from 2012 to 2013.

Going forward, the Bureau may be faced with a decision to start cutting services or to request supplemental or alternative funding. The SETF is important to the services provided not only for the direct support the funds offer but also because they provide matching funds for several federal grants, these totaled about $900,000 in federal fiscal year 2012. In order to qualify for that federal money, the Bureau was required to match with an amount of about $210,000. The matching money comes from the SETF.

Highlights of this report

Each year, the Bureau has singled out an important trend or feature to be highlighted in the current report. Last year, it was noted that small year-by-year changes hide a significant trend over the long run. There is a striking contrast between where things were 20 years ago compared to 2011. These changes were seen in very large decreases in disabling Workers Compensation Cases and in Occupational Injuries and Illnesses as reported using the federal survey system.

This year, two very successful programs under the aegis of Workplace Safety and Health are noted.

SHARP and SHAPE Award Programs

Some employers have been so successful with adopting best practices that they have earned recognition from the Maine Department of Labor through the SHAPE and SHARP awards and MESHE program. As part of the award, the employer is presented a plaque in a ceremony and a flag to display at the workplace.

SHARP

SafetyWorks!, in partnership with federal OSHA, administers the Safety and Health Achievement Recognition Program (SHARP). Under this program, a private employer with 250 or fewer employees on-site who meets the program requirements for employee safety and health, including an exemplary safety and health program, is exempted from program inspection for two years. Employers successfully meeting SHARP requirements are publicly honored. There are 56 employer locations qualified as of December 2012, and they are listed at the end of this report.

SHAPE

In 2005, SafetyWorks! initiated the Safety and Health Award for Public Employers (SHAPE) program, a public-sector application of the federal private-sector SHARP program. SHAPE is a voluntary award program for all "public sector" employers/employees that are going above and beyond the safety and health requirements to provide a safe and healthy workplace and strive to keep injuries/illnesses down. To date there are 42 public-sector employers who have received SHAPE status and they, also, are listed at the end of this report.

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WORKERS' COMPENSATION BOARD

Section A: Workers' Compensation Board
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1. INTRODUCTION

The original agency, known as the Industrial Accident Board, began operations on January 1, 1916. There was a name change in 1978 when it became the Workers' Compensation Commission. On January 1, 1993, there was another name change and became the Maine Workers' Compensation Board.

The major programs of the Board fit into six areas: (1) Dispute Resolution; (2) Compliance – Monitoring, Auditing, and Enforcement (MAE) Program; (3) the Worker Advocate Program; (4) Office of Medical/Rehabilitation Services; (5) Technology; and (6) Central and Regional Office support.

With the implementation of Standard Operating Procedures (SOPs), our claims management process has experienced a reduction and, in some cases, an elimination of backlogs and a more efficient dispute resolution system. A Law Court decision in 2004 on our Independent Medical Examiner program reversed some of the progress. The Law Court holding in *Lydon v. Sprinkler Systems* resulted in a reduction in the number of independent medical examiners. This caused delays to the formal hearing process. The effects of this decision are still being experienced. Cases without need for an IME are processed within 8 months, while cases with an IME are taking over 11 months to make their way through the formal hearing system. The Board's ability to attract doctors in appropriate specialties to serve as independent medical examiners has been difficult and in order to ameliorate the problem the Board raised the fee schedules for the IME doctors. In addition, the Legislature enacted LD 1056 in 2011, *An Act To Increase the Availability of Independent Medical Examiners*, which has provided some help. The number of IME physicians was 30 pre- *Lydon*; 11 post- *Lydon*; and 19 currently. A concerted effort was made this past year to expand the pool of IME doctors. Our success has been modest at best.

The MAE Program has improved payment and filing compliance. MAE's goals are to (1) provide timely and reliable data to the Board and other policy-makers; (2) monitor and audit payments and filings; and (3) identify insurers, self-insurers and third-party administrators that are not complying with minimum standards. Compliance is near 90% in all categories, a major improvement since the inception of MAE.

The Worker Advocate Program gives injured workers access to representatives. This improves the likelihood of receiving statutory benefits. Nearly 50% of injured workers are represented by advocates at the mediation level and over 30% are represented by advocates at the formal hearing level.

The Board is not a General Fund agency. It is financed through an assessment on Maine's employers. The Legislature established this assessment as a revenue source for the Board. The assessment is capped by statute.

The Board's assessment was adequate to fund the Board's operations until FY97. In 1997, the Board implemented legislation expanding the Worker Advocate Program and created the MAE Program. The cost of these operations was in excess of the amount allocated for the tasks. The cost of these programs, increases in employee salaries and benefits, and general inflation created budgetary problems for the Board. In spite of the obstacles, the Board found the wherewithal to reduce the assessment to Maine's employers over the next several years by millions.

The Legislature, recognized the urgency of the Board's situation in FY02, and responded in two ways: (1) it authorized the use of $700,000 from the Board's reserve account; and (2) it authorized a one-time increase in the maximum assessment of $300,000 to provide temporary assistance to the Worker

Advocate Program. The Legislature also recognized the urgency of the Board's situation in FY03, and did the following: (1) authorized the use of reserve funds in the amount of $1,300,000; (2) increased the assessment to fund a hearing officer position in Caribou in the amount of $125,000; and (3) allocated funds from reserves to fund actuarial studies and arbitration services to determine permanent impairment thresholds, and to fund a MAE Program position in the amount of $135,000. These were short-term solutions and during the 2003 Legislative Term the Legislature increased the Board's assessment cap and use of the Board's reserve account. Through the use of the reserve account, the Board was able to fund the FY-06-07 budget. The Legislature increased the Board's assessment and requested an audit of the Board's performance for the past 10 years and a review of the Worker Advocate and Monitoring, Audit, & Enforcement Programs to determine if they were adequately funded.

The Blake Hurley McCallum & Conley audit and program report was submitted to the Governor, the 123rd Second Regular Session of the Legislature, the Workers' Compensation Board, and the Department of Administrative and Financial Services in January of 2008 relating to the Board's fiscal operations for the prior 10 years. The Board received a positive assessment for both its budgetary and assessment procedures along with a number of recommendations to further improve the efficiency of the Board's fiscal operations.

The Board is attempting to improve efficiency and lower costs through administrative efforts ranging from mandating electronic data interchange, enforcing performance standards in the dispute resolution process, and enforcing compliance through the MAE program and the Abuse Investigation Unit.

Prior to the inception of the Maine Workers' Compensation Act of 1992, Maine was one of the costliest states in the nation for workers' compensation coverage. Recent studies demonstrate an improvement in Maine in comparison to other states. Maine has gone from one of the costliest states in the nation to one that is approaching average costs for both premiums and benefits. Last year, we reported these reductions fit within the Governor's goal of making the system fair and competitive for the employees and employers of Maine. That is still true this year. We strive to control costs for employers, and at the same time provide meaningful benefits to injured employees.

2. Enabling Legislation and History of Maine Workers' Compensation

I. Enabling Legislation.

39-A M.R.S. § 101, et seq. (Maine Workers' Compensation Act of 1992)

On January 1, 1993, Title 39, which was the Workers' Compensation Act of 1991 and all prior Workers' Compensation Acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992.

II. Revisions to Enabling Legislation.

The following are some of the revisions made to the Act since 1993.

- **§ 102(11)(B-1).** Tightened the criteria for wood harvesters to obtain a predetermination of independent contractor status.
- **§ 102(13-A).** Tightened definition of independent contractor and made it consistent with the definition used by Department of Labor.
- **§ 113.** Permits reciprocal agreements to exempt certain nonresident employees from coverage under the Act.
- **§ 151-A.** Added the Board's mission statement.
- **§ 153(9).** Established the monitoring, audit & enforcement (MAE) program.
- **§ 153-A.** Established the worker advocate program.
- **§ 201(6).** Clarified rights and benefits in cases which post-1993 work injuries aggravate, accelerate, or combine with work-injuries that occurred prior to January 1, 1993.
- **§§ 212 and 213.** Changed benefit determination to 2/3 of gross average weekly wages from 80% of after tax wages for dates of injury on and after January 1, 2013.
- **§ 213.** Eliminates the permanent impairment threshold for dates of injury on and after January 1, 2013 and establishes 520 weeks as the maximum duration for partial incapacity benefits with certain exceptions.
- **§ 213(1-A).** Defines "permanent impairment" for the purpose of determining entitlement to partial incapacity benefits.
- **§ 224.** Clarified annual adjustments made pursuant to former Title 39, §§ 55 and 55-A.
- **§§ 321-A & 321-B.** Reestablishes the Appellate Division within the Board.
- **§ 328-A.** Created rebuttable presumption of work-relatedness for emergency rescue or public safety workers who contract certain communicable diseases.
- **§§ 355-A, 355-B, 355-C, and 356.** Created the Supplemental Benefits Oversight Committee.

- **§§ 151, Sub-§1.** Established the Executive Director as a gubernatorial appointment and member and Chair of the Board of Directors. Changed the composition of the Board from eight to seven members.
- See Executive Summary on the bills enacted by the 125th legislature.

III. STATE AGENCY HISTORY.

The original agency, the Industrial Accident Board, began operations on January 1, 1916. In 1978, it became the Workers' Compensation Commission. In 1993, it became the Workers' Compensation Board.

A. The Early Years of Workers' Compensation.

A transition from common law into the statutory system we know today occurred from 1915 through the early 1920s. Under our common law tort system, an injured worker had to sue his employer and prove fault to obtain compensation. Workers' compensation was conceived as an alternative to the tort system for injured workers. Instead of litigating fault, under this "new" system, injured workers would receive a statutorily determined compensation for lost wages and medical treatment. Employers gave up legal defenses such as assumption of risk or contributory negligence. Injured workers gave up the possibility of remedies, beyond lost wages and medical treatment, such as pain and suffering and punitive damages. This historic bargain, as it is sometimes called, remains a fundamental feature of workers' compensation. Perhaps because of the time period, financing and administration of benefit payments remained in the private sector, either through insurance policies or self-insurance. Workers' compensation disputes still occur in a no fault system. For example, disputes arise as to whether an incapacity is related to work; how much in weekly benefits is due the injured worker; and what, if any, earning capacity has been lost. Maine, like other states, established an agency to process these disputes and perform other administrative duties. Disputes were simpler. Injured workers rarely had lawyers. Expensive, long term, and medically complicated claims, such as carpal tunnel syndrome or back strain, were decades away.

B. Adjudicators as Fact Finders.

In 1929, the Maine Federation of Labor and an early employer group listed as "Associated Industries" opposed Commissioner William Hall's re-nomination. Testimony from both groups referred to reversals of his decisions by the Maine Supreme Court. This early feature of Maine's system, review of decisions by the Supreme Court, still exists, although today appeals are discretionary. The Supreme Court decides issues of legal interpretation; it does not conduct a trial de novo. In Maine, the state agency adjudicator has historically been the final fact finder.

Until 1993, Commissioners were gubernatorial appointments, subject to confirmation by the legislative committee on judiciary. The need for independence of its quasi-judicial function was one of the reasons why it was established as an independent agency, rather than as a part of a larger administrative department within the executive branch. The smaller scale of state government in 1916 no doubt also played a role.

C. Transition to the Modern Era.

Before 1974, workers' compensation coverage was voluntary. In 1974 it became mandatory. This and other significant changes to the statute were passed without an increased appropriation for the Industrial Accident Commission. In 1964, insurance carriers reported about $3 million in direct losses paid. By 1974, that number grew to about $14 million in paid direct losses. By 1979, direct losses paid by carriers totaled a little over $55 million. By 1984, this number grew to almost $128 million. These figures do not reflect benefits paid through self-insurance. The exponential growth of the system resulted from legislative changes during the 1970s and set the stage for a series of workers' compensation crises that occurred throughout the 1980s, into the early 1990s and some of the vestiges are still felt today.

In the early 1970s, time limits were removed for both total and partial wage loss benefits. Inflation adjustments or cost of living adjustments (COLAs) were added. The maximum weekly benefit was set at 200% of the state average weekly wage. Also, legislation was enacted making it easier for injured workers to secure the services of an attorney. The availability of legal representation greatly improved an injured worker's likelihood of receiving benefits, especially in a complex case. Statutory changes and evolving medical knowledge brought a new type of claim into the system. The law no longer required an injury happen "by accident." Doctors began to connect injuries such as carpal tunnel syndrome or repetition overuse conditions to work and thus brought these conditions within the coverage of workers' compensation.

This type of injury frequently required benefit payments for longer periods than many accidental injuries. These claims were more likely to involve litigation. Over the course of time, rising costs quickly transformed workers' compensation into a contentious political issue in the late 1980s and early 1990s.

In the 1980s, Commissioners became full-time and an informal conference process was introduced in an attempt to resolve disputes early in the claim cycle, before a formal hearing.

Additionally, regional offices were established in Augusta, Bangor, Caribou, Lewiston, and Portland supported by the central administrative office in Augusta.

In 1987, three full-time Commissioners were added, bringing the total from 8 to 11, in addition to a Chair. Today, the Board has eight Hearing Officers.

The workers' compensation environment of the 1980s and early 1990s was an extraordinary time in Maine's political history. Contentious legislative sessions directly related to workers' compensation occurred in 1982, 1985, 1987, 1991, and 1992. In 1991, then Governor John McKernan tied his veto of the state budget to changes in the workers' compensation statute. The consequence of this action was the shutdown of state government for three weeks.

In 1992, a Blue Ribbon Commission was created to examine and recommend changes. The Commission's report made a series of proposals which were ultimately enacted. Inflation adjustments for both partial and total benefits were eliminated. The maximum benefit was set at 90% of state average weekly wage. A limit of 260 weeks of benefits was established for partial disability. These changes represented reductions in benefits for injured workers, particularly those with long term incapacity. Additionally, the provision of the statute concerning access to

legal representation was changed making it more difficult for injured workers to secure the services of private attorneys.

Maine Employers' Mutual Insurance Company (MEMIC) was established. It replaced the assigned risk pool and offered a permanent source of coverage. Despite differing views on the nature of the problems within the system, virtually all observers agree MEMIC has played a critical role in stabilizing the workers' compensation environment in Maine.

Based on a recommendation of the Blue Ribbon Commission, the Workers' Compensation Board was created directly involving labor and management members in the administration of the state agency.

The Board of Directors was initially comprised of four Labor and four Management members, appointed by the Governor based on nomination lists submitted by the Maine AFL-CIO and Maine Chamber of Commerce. The eight Directors hired an Executive Director who ran the agency. In 2004, legislation was enacted reducing the Board to three Labor and three Management members. The Executive Director was made a gubernatorial appointment, confirmed by the Senate and serving at the pleasure of the Governor.

The Board appoints Hearing Officers who hear and decide formal claims. A two-step process replaced informal conferences: trouble shooting, and mediation.

In 1997, legislation was enacted providing more structure to the claims monitoring operations of the Board and created the Monitoring, Audit, and Enforcement (MAE) program. Also in 1997, a worker advocate program, created by the Board, was expanded by the Legislature. This program provides injured workers with legal counsel who provide guidance and prosecute any claims.

Over recent years, both the regulatory and dispute resolution operations of the Board have experienced significant accomplishments. The dispute resolution function has developed an efficient informal process. Between trouble shooting and mediation, approximately 75% of initial disputes are resolved within 80 days from the date a denial is filed. An efficient formal hearing process has reduced timelines to an acceptable 12.1 months for processing average claims.

The Board of Directors was gridlocked when appointing Hearing Officers in 2003 and 2004 resulting in slower claims processing at the formal level. This problem was exacerbated when the Law Court decided *Lydon v. Sprinkler Systems*. That decision significantly reduced the number of independent medical examiners (IME). The pool went from 30 to 11. (We now have 19 active examiners and are constantly recruiting.) The appointment of Hearing Officers gridlock was broken as Hearing Officers were appointed to seven year terms. The IME problem has improved through the addition of better compensation for independent medical examiners and making it easier to qualify as an IME doctor.

In an apples to apples comparison, matching the complexity of the dispute and the type of litigation, the Board's average time frame for formal hearings is reasonable compared to other states, and is quite good if compared to the civil court systems for comparable personal injury cases.

The agency was criticized for not doing more with its data gathering and regulatory operations during the late 1980s and early 1990s. The Board installed a relational database in 1996, and a modern programming language; the result was an improvement in data collection. Today, filings of First Reports and first payment documents are systematically tracked. Significant administrative penalties have been pursued in several cases. Better computer applications and the Abuse Unit have improved the task of identifying employers, typically small employers, with no insurance coverage. No coverage hearings are regularly scheduled. The Board mandated the electronic filing of First Reports beginning on July 1, 2005. The Board has also mandated the electronic filing of claim denials; this became effective in June 2006.

During the late 1990s, the Board of Directors deadlocked on important issues such as the appointment of Hearing Officers, adjustments to the partial benefit structure under section 213, and the agency budget. By 2002, this had become a matter of Legislative concern. Finally, in 2004, legislation was proposed and enacted to make the Board's Executive Director a tie-breaking member of the Board and its Chair. The Executive Director became a gubernatorial appointment, subject to confirmation by a legislative committee and Senate. The Chair serves at the pleasure of the Governor. With the new arrangement, gridlock due to tie votes is no longer an issue. The Executive Director casts deciding votes when necessary. However, the objective is still to foster cooperation and consensus between the Labor and Management caucuses. This now occurs regularly.

Chapter 208, *A Resolve to Appoint Members To and Establish Terms for the Workers' Compensation Board*, was enacted during the second session (2008) of the 123rd Legislature. The purpose of the Resolve was to change the membership on the Board while maintaining continuity. Governors have appointed new members to the Board since the adoption of this resolve.

3. DISPUTE RESOLUTION

I. INTRODUCTION.

The Workers' Compensation Board has five regional offices throughout the state that handle dispute resolution functions. The regional offices are responsible for troubleshooting, mediation and formal hearings. Regional offices are located in Augusta, Bangor, Caribou, Lewiston and Portland.

II. THREE TIERS OF DISPUTE RESOLUTION.

On January 1, 1993, Title 39, which encompassed the Workers' Compensation Act of 1991 and all prior Workers' Compensation Acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992. Title 39-A establishes a three tiered dispute resolution process.

Troubleshooting

At the troubleshooting stage, a claims resolution specialist informally attempts to resolve disputes by contacting the employer and the employee. In this process, the troubleshooter identifies issues and attempts to resolve them. Many times, additional information, often medical reports, must be obtained in order to discuss possible resolutions. If a resolution of the dispute is not reached after reviewing the necessary information, the claim is referred to mediation.

Mediation

At mediation, a case is scheduled before one of the Board's mediators. The parties attend or teleconference the mediation at a regional office. The favored and typical mediation is in person. At mediation, the employee, the employer, an insurance adjuster and any employee or employer representatives such as attorneys or advocates meet with the mediator in an attempt to reach a voluntary resolution of a claim. The mediator has each party discuss its position and tries to find common ground. At times, the mediator meets with each side separately to sort out the issues. If the case is resolved at mediation, the mediator completes a mediation agreement, which is signed by the parties. The terms of the agreement are binding on the parties. If the case is not resolved at mediation, it is referred for formal hearing.

Formal Hearing

A formal hearing is scheduled after a petition is filed. At the formal hearing stage, the parties are required to exchange information including medical reports and answer specific questions that pertain to the claim. After this information has been exchanged, the parties file a "Joint Scheduling Memorandum." This filing lists the witnesses who will testify and estimates the time needed for hearing. Depositions of medical witnesses are oftentimes scheduled to elicit or dispute expert testimony. At the hearing, witnesses for both sides testify and other evidence is submitted. In most cases, the parties are represented either by an attorney or a worker advocate. Following the hearing, position papers are submitted and the hearing officer issues a written decision.

The number of cases entering each phase for the period 2002 through 2012 is shown in the table below:

Cases Entering Dispute Resolution

Year	Trouble Shooting	Mediation	Formal Hearing
2002	9,677	3,507	2,481
2003	9,996	3,582	2,532
2004	9,356	3,303	2,458
2005	8,784	3,003	2,088
2006	8,962	2,652	1,915
2007	8,749	2,499	1,765
2008	8,384	2,428	1,680
2009	7,960	2,220	1,602
2010	8,546	2,928	1,561
2011	*13660	2,362	1,440
2012	14,526	2,766	1,398

*Beginning in 2011, the Board changed the way cases are counted. In the past, our count was based on the number of parties. In 2011, we started counting the "disputed issues." This change was made to more accurately report on the work of the Board, not just the number of participants within our system.

Through the years, of 100 disputes entering trouble shooting, less than half go on to mediation. Of those going to mediation, approximately half will continue to the formal hearing stage.

III. TROUBLESHOOTING STATISTICAL SUMMARY.

The following table shows the number of filings and dispositions at trouble shooting, the average timeframes, and number of filings pending at the end of each year for the period 2002 through 2012.

Troubleshooting
Filings Assigned, Disposed, and Pending

Year	Assigned	Disposed	Pending 12/31	Av Days at TS
2002	9,677	9,466	967	23
2003	9,996	10,269	838	27
2004	9,356	9,588	606	27
2005	8,784	8,724	666	27
2006	8,962	8,927	701	27
2007	8,749	8,719	731	27
2008	8,439	8,439	676	30
2009	7,960	7,913	723	29
2010	8,546	8,303	919	27
*2011	13,660	13,438	697	28
2012	14,526	14,514	685	24

*Beginning in 2011, the Board changed the way cases are counted. In the past, our count was based on the number of parties. In 2011, we started counting the "disputed issues." This change was made to more accurately report on the work of the Board, not just the number of participants within our system.

IV. MEDIATION STATISTICAL SUMMARY.

The following table shows the number of filings and dispositions at mediation, the average timeframes, and number of cases pending at the end of each year for the period 2002 through 2012.

Mediations
Cases Assigned, Disposed, and Pending

Year	Assigned	Disposed	Pending 12/31	Av Days at MDN
2002	3,507	3,655	603	54
2003	3,582	3,331	854	60
2004	3,303	3,395	666	62
2005	3,003	3,084	585	59
2006	2,652	2,741	496	61
2007	2,499	2,532	463	58
2008	2,428	2,488	443	55
2009	2,220	2,239	424	57
2010	2,928	2,868	452	59
2011	2,231	2,362	583	66
2012	2,766	2,738	555	50

V. FORMAL HEARING STATISTICAL SUMMARY.

The following table shows the number of filings and dispositions at formal hearing, the average timeframes, and number of cases pending at the end of each year for the period 2002 through 2012.

Formal Hearing
Cases Assigned, Disposed, and Pending

Year	Assigned	Disposed	Pending 12/31	Av Months to Decree
2002	2,481	2,400	1,324	7.1
2003	2,532	2,194	1,662	9.5
2004	2,458	2,414	1,706	10.9
2005	2,088	2,266	1,528	11.7
2006	1,915	2,173	1,270	11.7
2007	1,765	1,907	1,128	10.7
2008	1,680	1,728	1,080	8.4
2009	1,602	1,546	1,136	9.1
2010	1,561	1,486	1,211	8.5
2011	1,440	1,445	1,206	*10.8
2012	1,398	2,117	1,144	*12.1

* This figure represents all cases within the system. In prior years, certain cases were excluded. Claims processing has been slowed by a shortage of IME physicians in certain specialties, awaiting Medicare aproval, staff retirements, and more precise record keeping.

VI. OTHER.

The number of cases entering the dispute resolution process declined steadily until 2010, when an increase was experienced. The Board is monitoring this closely and adjusting resources.

4. Office Of Monitoring, Audit & Enforcement

I. History.

In 1997, the Maine Legislature, with the support of the Governor, enacted P.L. 1997, Chapter 486. It established the Office of Monitoring, Audit, and Enforcement (MAE) with the goals of: (1) providing timely and reliable data to policymakers; (2) monitoring and auditing payments and filings; and (3) identifying those insurers, self-administered employers, and third-party administrators (collectively "insurers") not complying with minimum standards under the Act.

II. Monitoring.

The key component of the monitoring program is the production of Quarterly and Annual Compliance Reports. To ensure the Compliance Reports would be as accurate as possible, a pilot project was undertaken. The goals of the pilot project were to: (1) measure the Board's data collection and reporting capabilities; (2) report on the performance of insurers; and (3) let all interested parties know what to expect from the Compliance Reports.

This section of our report, because of the way we collect and report data, traditionally provides information from the prior calendar year. We continue that approach this year. The 2011 Quarterly and Annual Compliance Reports were approved by the Maine Workers' Compensation Board. The 2011 quarterly compliance in Table 1 represents static results based upon data received by the deadline for each quarter. The 2011 Annual Compliance Report represents static results based upon data received by February 17, 2012. Tables 2 and 3 show continued improvement in the performance of insurers since the pilot project.

A. Lost Time First Report Filings

The Board's benchmark for lost time first report filings within 7 days is 85%.

Benchmark Exceeded. Eighty-seven percent (87%) of lost time first report filings were within 7 days.

B. Initial Indemnity Payments

The Board's benchmark for initial indemnity payments within 14 days is 87%.

Benchmark Exceeded. Eighty-nine percent (89%) of initial indemnity payments were within 14 days.

C. Initial Memorandum of Payment (MOP) Filings

The Board's benchmark for initial Memorandum of Payment filings within 17 days is 85%.

Benchmark Exceeded. Eighty-nine percent (89%) of initial MOP filings were within 17 days.

D. Initial Indemnity Notice of Controversy (NOC) Filings

The Board's benchmark for initial indemnity Notice of Controversy filings within 14 days is 90%.

Benchmark Exceeded. Ninety-five percent (95%) of initial indemnity NOC filings were within 14 days.

E. Utilization Analysis

Eighteen percent (18%) of all lost time first reports were "denied" and thirty-nine percent (39%) of all claims for compensation were denied.

F. Initial Indemnity Payments > 44 Days

$35,600 was issued to claimants in penalties under Section 205(3). These monies go to injured workers.

G. CAVEATS & EXPLANATIONS

1. General

- Employer delays in reporting of injuries may lower compliance.
- Question marks ("?") within the Compliance Reports indicate that the insurer did not provide all the data required to measure compliance.

2. Lost Time First Report Filings

- Compliance with the lost time first report filing obligation exists when the lost time first report is filed (accepted Electronic Data Interchange (EDI) transaction, with or without errors) within 7 days of the employer receiving notice or knowledge of an employee injury that has caused the employee to lose a day's work.
- When a medical only first report was received and later converted to a lost time first report, if the date of the employer's notice or knowledge of incapacity minus the received date was less than zero, the filing was considered compliant.

3. Initial Indemnity Payments

- Compliance with the Initial Indemnity Payment obligation exists when the check is mailed within the later of: (a) 14 days after the employer's notice or knowledge of incapacity, or (b) the first day of compensability plus 6 days.

4. Initial Memorandum of Payment (MOP) Filings

- Compliance with the Initial Memorandum of Payment filing obligation exists when the MOP is received within 17 days of the employer's notice or knowledge of incapacity.

5. Initial Indemnity Notice of Controversy (NOC) Filings

- Measurement excludes filings submitted with full denial reason codes 3A-3H (No Coverage).
- Compliance with the Initial Indemnity Notice of Controversy filing obligation exists when the NOC is filed (accepted EDI transaction, with or without errors) within 14 days of the employer receiving notice or knowledge of the incapacity or death.

Annual Compliance Summary

Table 1 2011 Quarterly Compliance Reports

	Benchmark	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Lost Time First Report Filings Received within 7 Days	85%	88%	89%	87%	87%
Initial Indemnity Payments Made within 14 Days	87%	90%	88%	91%	88%
Initial Memorandum of Payment Filings Received within 17 Days	85%	90%	87%	91%	86%
Initial Indemnity Notice of Controversy Filings Received within 14 Days	90%	95%	96%	94%	95%

Table 2 Annual Compliance

	1997[1]	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Lost Time First Report Filings Received within 7 Days	37%	82%	82%	86%	86%	84%	87%	89%	84%	86%	87%
Initial Indemnity Payments Made within 14 Days	59%	85%	86%	85%	87%	87%	87%	89%	89%	89%	89%
Initial Memorandum of Payment Filings Received within 17 Days	57%	81%	82%	83%	84%	84%	85%	88%	87%	86%	89%
Initial Indemnity Notice of Controversy Filings Received within 14 Days[2]				91%	92%	89%[3]	89%	90%	94%	94%	95%

Table 3 Percentage Change Over Time Since 1997

	1997[1]	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Lost Time First Report Filings Received within 7 Days	0%	122%	124%	133%	134%	130%	136%	141%	127%	132%	135%
Initial Indemnity Payments Made within 14 Days	0%	44%	44%	44%	46%	46%	47%	49%	49%	51%	51%
Initial Memorandum of Payment Filings Received within 17 Days	0%	42%	44%	46%	48%	49%	49%	55%	54%	51%	56%
Initial Indemnity Notice of Controversy Filings Received within 14 Days[2]				0%	1%	-2%	-3%	-1%	2%	3%	4%

[1] Based on sample data.
[2] The Initial Indemnity Notice of Controversy filing benchmark was changed in 2007 from 17 days to 14 days.
[3] Second quarter 2006 excluded.

III. AUDIT.

The Board conducts compliance audits of insurers, self-insurers and third-party administrators to ensure that all obligations under the Workers' Compensation Act are met. The functions of the audit program include, but are not limited to: ensuring that all reporting requirements of the Board are met, auditing the timeliness of benefit payments, auditing the accuracy of indemnity payments, evaluating claims-handling techniques, and determining whether claims are unreasonably contested.

A. Compliance Audits

Since implementing the program, two hundred twenty-one (221) audit reports have been issued. In addition to the amounts paid to employees, dependents and service providers for compensation, interest, or other unpaid obligations, $1,700,888.00 in penalties has been paid.

The following entities have all signed consent decrees for §359(2) under the provision of 39-A M.R.S.A. engaging in a pattern of questionable claims-handling techniques and/or repeated unreasonably contested claims:

ACE
AIG
Arch Insurance Group
Argonaut Insurance Group
Atlantic Mutual Insurance Company
Berkley Administrators of Connecticut
Broadspire Services
Cambridge Integrated Services
Chubb Insurance Group
Claimetrics
Claims Management (Wal-Mart)
CMI Octagon
CNA
Crawford & Company
ESIS
Fireman's Fund Insurance Group
Frank Gates Service Company
Future Comp
GAB Robins
Gallagher Bassett Services, Inc.
Gates MacDonald
Georgia Pacific
Hanover Insurance Company
Harleysville Insurance Group
Hartford
Helmsman
Liberty Mutual
Maine Employers' Mutual Insurance Company
Meadowbrook
National Grange Mutual Insurance Group (now NGM)
Old Republic
OneBeacon Insurance Group
Peerless Insurance Group
Public Service Mutual Insurance Group
Risk Enterprise Management
Royal & SunAlliance Insurance Group
Sedgwick Claims Management
Specialty Risk Services
St. Paul Insurance Group
THE Insurance Group
Travelers Insurance Group
Universal Underwriters Insurance Group
Virginia Surety Insurance Group
Wausau Insurance Group
XL Specialty Insurance
Zurich

The Board filed Certificates of Findings pursuant to this section with the Maine Bureau of Insurance for further action. Three of the above referrals (AIG, Hartford and Zurich Insurance Groups) resulted in consent agreements with the Maine Bureau of Insurance and Maine Office of the Attorney General.

B. Complaints for Audit

The audit program also has a Complaint for Audit form and procedure where the complainant asks the Board to conduct an investigation to determine if the insurer, self-administered employer or third-party administrator has violated 39-A M.R.S.A. Section 359 by engaging in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims and/or has violated Section 360(2) by committing a willful violation of the Act or committing fraud or intentional misrepresentation. The complainant also asks that the Board assess all applicable penalties. Since the form and procedure were implemented, three hundred sixty-five (365) complaints have been received. As a result of these investigations, $330,316.00 in unpaid obligations and over $183,600.00 in penalties have been paid.

C. Employee Misclassification

Public Law 2009 Chapter 649 allocated funds to enhance the enforcement of laws prohibiting the misclassification of workers by establishing one Management Analyst II position and one Auditor III position within the MAE Program. To date, the MAE program has completed 48 employee misclassification audits. The audits have covered 814 employees, $14,853,553.00 in payroll, $9,440,035.00 in "subcontractor" wages shown on 1099's, and $355,052.00 in "casual labor" wages not shown on 1099s and resulted in $8,439,394.00 in potentially misclassified wages, which may result in $1,356,158.00 in unpaid workers' compensation premiums.

IV. ENFORCEMENT.

The Board’s Abuse Investigation Unit handles enforcement of the Workers' Compensation Act. The report of the Abuse Investigation Unit appears at Section 12 of the Board’s Annual Report.

5. OFFICE OF MEDICAL/REHABILITATION SERVICES

I. MEDICAL FEE SCHEDULE.

A. BACKGROUND

P.L. 2011, c. 338 repealed and replaced the medical fee section of the Workers' Compensation Act of 1992. Specifically, 39-A M.R.S.A. § 209 was repealed and replaced with § 209-A. This change was the culmination of lengthy negotiations involving interested parties, stakeholders, legislators, and the Board. The legislation was designed to help facilitate the implementation and maintenance of a schedule of fees for medical services.

The goal of the fee schedule is "to ensure appropriate limitations on the cost of health care services while maintaining broad access for employees to health care providers in the State." 39-A M.R.S.A. § 209-A(2). The Board was initially tasked with establishing a medical fee schedule by December 31, 2011. See, 39-A M.R.S.A. § 209-A(4). The Board satisfied this requirement when the current iteration of its medical fee rule became effective on December 11, 2011. See, 90 M.A.R. 351, Ch. 5. The Board must now keep the rule current and consistent with the previously stated goal. The Board updated the fee schedule in December 2012. The update is effective on January 1, 2013.

B. METHODOLOGY

The Board's medical fee rule reflects the methodologies underlying the federal Centers for Medicare and Medicaid Services' ("CMS") inpatient, outpatient and professional services payment systems. See, 39-A M.R.S.A. § 209-A(2). In particular, the rule uses procedure codes, relative weights or values (together "relative weights") and conversion factors or base rates (together "conversion factor") to establish maximum reimbursements.

Procedure codes are used to identify specific services, products and supplies. They are updated annually. Specific services (as identified by procedure codes) are also assigned a relative weight. Relative weights establish the value of a particular service in relation to other services (i.e. – more complicated and expensive services will have a higher relative weight than less complicated and less resource intensive services). Relative weights are established by CMS and are updated annually to ensure they reflect the relative value of services in relation to each other.[4]

In the case of both procedure codes and relative weights, the Board does not exercise discretion in terms of assigning codes to procedures or relative weights to coded services. The Board simply incorporates the codes and weights established by the AMA and CMS into its fee rule.

The final piece of the equation is the conversion factor. To determine the maximum reimbursement for a particular service, the relative weight of a service is multiplied by the applicable conversion factor. The Board's rule contains separate conversion factors for professional services, anesthesia, inpatient and outpatient acute care facilities, inpatient and outpatient critical access facilities and ambulatory surgical centers.

C. ANNUAL AND PERIODIC UPDATES

Having established the required medical fee rule, the Board's focus now turns to ensuring the rule is kept up-to-date and consistent with the goal of "ensur[ing] appropriate limitations on the cost of health

[4] The updates are published in December. The Board, therefore, updates its fee schedule in December to take effect on January 1 each year.

care services while maintaining broad access for employees to health care providers in the State." 39-A M.R.S.A. § 209-A(2). To accomplish this, the Act requires two types of updates: annual updates by the Executive Director and periodic updates undertaken by the Board. As noted earlier, the 2012 annual update was done in December 2012.

II. MEDICAL UTILIZATION REVIEW.

The Board has 27 organizations certified to provide workers' compensation utilization management services pursuant to Title 39-A M.R.S.A. §210 and Board Rules Chapter 7.

III. EMPLOYMENT REHABILITATION.

The Board has 18 providers approved to provide employment rehabilitation services pursuant to Title 39-A M.R.S.A. §217 and Board Rules Chapter 6. Through October, 2012, the Board has received 42 applications for evaluation of suitability for vocational rehabilitation in 2012. Of the 42 applications, 33 were from injured workers, 5 from employers, 3 from hearing officers, and one by agreement.

IV. INDEPENDENT MEDICAL EXAMINERS.

The Section 312 Independent Medical Examiner System is critical to the Board's mission to serve the employees and employers of the state fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation.

A shortage of available independent medical examiners has resulted in a long waiting list of injured workers in need of independent medical examinations. In an effort to address these issues, the 125th Maine Legislature enacted as emergency legislation LD 1056, *An Act to Increase the Availability of Independent Medical Examiners under the Workers' Compensation Act of 1992*. This Act was signed into Public Law, Chapter 215 on June 3, 2011 by Governor LePage.

Currently, the Board has 19 health care providers on its list of qualified independent medical examiners pursuant to Title 39-A M.R.S.A. §312 and Board Rules Chapter 4. The Board is continuing its efforts to recruit physicians to serve as independent medical examiners.

Through October 2012, there have been 435 requests for independent medical exams in 2012. Of the 435 requests, 255 were from injured workers, 152 from employers/insurers, 2 from hearing officers, and 26 agreed upon by the parties.

6. WORKER ADVOCATE PROGRAM

I. INTRODUCTION.

The Worker Advocate Program provides legal representation to injured workers in Board administrative proceedings (mediations and formal hearings). In order for an injured worker to qualify to receive assistance, the worker's injury must have occurred on or after January 1, 1993; the worker must have participated in the Board's troubleshooter program; the worker must not have informally resolved the dispute; and finally, the worker must not have retained private legal counsel.

Traditional legal representation is the core of the program, the Advocate staff have broad responsibilities to injured workers, which include: attending hearings and mediations; conducting negotiations; acting as an information resource; advocating for and assisting workers to obtain rehabilitation, return to work and employment security services; and communicating with insurers, employers and health care providers on behalf of the injured worker.

II. HISTORY.

In 1992 the Maine Legislature re-wrote the Workers' Compensation Act. They repealed Title 39 and enacted Title 39-A. One of the most significant changes impacting injured workers was the elimination of the attorney fee "prevail" standard. Under Title 39, attorneys who represented injured workers were entitled to Board ordered fees from employers/insurers if they obtained benefits for their client greater than any offered by the employer, i.e., if they "prevailed". However, under Title 39-A (beginning in January of 1993), the employer/insurer has no liability for legal fees regardless of whether the worker prevails, and, in addition, fees paid by injured workers to their attorneys are limited to a maximum of 30% of accrued benefits with settlement fees capped at no greater than 10% of the settlement.

These changes, which undoubtedly reduced the cost of claims, made it difficult for injured workers to obtain legal representation—unless they had a serious injury with a substantial amount of accrued benefits at stake or a high average weekly wage. Estimates indicate that upwards of 40% of injured workers did not have legal representation after these changes were made to the statute. This presented dramatic challenges for the administration of the workers' compensation system. By 1995, recognition of this problem prompted the Workers' Compensation Board of Directors to establish a pilot "Worker Advocate" program.

The pilot program was staffed by one non-attorney Advocate and was limited to the representation of injured workers at the mediation stage of dispute resolution. Based on the pilot's initial success, the Board expanded the program to five non-attorney Advocates, one for each regional office; however, representation remained limited to mediations. Ultimately, in recognition of both the difficulties facing unrepresented workers and the success of the pilot program, the Legislature in 1997 amended Title 39-A creating the Worker Advocate Program.

The 1997 statute created a substantial expansion of the existing operation. Most significantly, the new program required Advocates to provide representation at formal hearings in addition to mediations. The additional responsibilities associated with this representation require much greater skill and many more tasks than previously required of Advocates. Some of these new tasks include: participation in

depositions, attendance at hearings, drafting required joint scheduling memorandums, drafting motions, drafting complicated post-hearing position letters, working with complex medical reports, conducting settlement negotiations, and analysis and utilization of statutory and case law.

III. THE CURRENT WORKER ADVOCATE PROGRAM.

At present, the Board has 12 Advocates working in five regional offices from Caribou to Portland. Advocates are generally required to represent all qualified employees who apply to the program. This is in contrast to private attorneys who can pick and choose who they represent. The statute provides some exceptions to this requirement where the program may decline to provide assistance. However, the reality is that relatively few cases are refused.

Cases are referred to the Advocate Program only when there is a dispute—as indicated by the employee, employer, insurer, or a health care provider. When the Board is notified of a dispute, a Claims Resolution Specialist (commonly referred to as a "troubleshooter") tries to facilitate a voluntary resolution of the problem. If not successful, the Board determines if the employee qualifies for the assistance of the Advocate Program, and if so, the referral is needed.

If troubleshooting is unsuccessful, cases are forwarded to mediation. To represent an injured worker at mediation, the Advocate Program must first obtain medical records and factual information concerning the injury and the worker's employment. Advocates meet with the injured worker to learn of and review the issues; they must also acquire information from health care providers. Advocates are also often called upon to explain the legal process (including Board rules and the Act) to injured workers. They often must explain medical issues and work restrictions and frequently must assist workers with unemployment and health insurance matters. They also provide injured workers with other forms of interim support, as needed. Many of these interactions produce evidence and information necessary for subsequent formal litigation, if the case proceeds to more formal processing.

At mediation, the parties meet with a Mediator, present the issues, and attempt to negotiate a resolution. The Mediator facilitates, but has no authority to require the parties to reach an agreement or to set the terms of an agreement. If the parties resolve the claim, the terms of the agreement are recorded in a binding mediation Record. A significant number of cases are resolved before, at, and after mediation; of every 100 disputes reported to the Board, approximately 25 require formal hearing.

Cases that are not resolved at mediation typically involve factual and/or legally complex disputes. These cases typically concern situations where facts are unclear or there are differing interpretations of the Act and case law. If a voluntary resolution of issues fails at mediation, the next step is a formal hearing.

The hearing process is initiated by an Advocate filing petitions (after assuring there is adequate medical and other evidence to support a claim). Before a hearing is held, the parties exchange information through voluntary requests and formal discovery. Preparation for hearing involves filing and responding to motions, examining the worker and other witnesses who will testify, preparation of exhibits, analysis of applicable law and review of medical and other evidence. At the hearing, Advocates must elicit direct and cross examination testimony of the witnesses, introduce exhibits, make objections and motions, and, at the conclusion of the evidence, file position papers which summarize the facts and credibly argue the law in the way most favorable to the injured worker. Along the way, the Advocates also often attend depositions of medical providers, private investigators, and labor market experts. Eventually, a

decision is issued or the parties agree on either a voluntary resolution of the issues or a lump sum settlement. In recent years, the average timeframe for the entire process is about 12 months, although it can be significantly shorter or longer depending on the complexity of medical evidence and the need for independent medical examinations.

IV. CASELOAD STATISTICS.

Injured workers in Maine have made substantial utilization of the Advocate program. Advocates represented injured workers at approximately 60% of all mediations in 2012. Given the relatively large number of mediations handled by Advocates, it bears noting that from 1998 through 2008, the program consistently clears a majority of the cases assigned in a given year for mediation. The following table reflects the number of cases at mediation from 2003 through 2012.

Advocate Cases at Mediation

	Assigned	Cases Disposed	Pending Dec 31st	% of All Pending
2003	1,981	1,899	390	46%
2004	1,816	1,969	237	50%
2005	1,915	1,841	311	53%
2006	1,522	1,533	280	56%
2007	1,397	1,434	243	52%
2008	1,405	1,437	211	48%
2009	1,205	1,195	221	52%
2010	1,006	1,156	271	60%
2011	975	896	246	42%
2012	1,703	982	294	53%

In 2012, the number of cases handled by Advocates at mediation represents an increase as compared to the number of cases taken to mediation by Advocates in 2011.[5] The Advocate Division handled over 50% of the mediations (statewide) in 2012.

Over the years, the Advocate Program has also represented injured workers in approximately 30% of all formal hearings before the Board. In some years, Advocates have cleared more formal cases than were pending at the start of the year. Given the much greater scope of responsibility inherent with formal hearing cases, Advocates have performed very well in their expanded role. The following table represents the number of cases handled by Advocates to formal hearing in years 2003 through 2012.

[5] Some of the increase is related to how cases are reported.

Advocate Cases at Formal Hearing				
	Assigned	Disposed	Pending 12/31	% of All Pending
2003	920	780	608	37%
2004	689	810	487	29%
2005	679	714	452	30%
2006	628	715	361	29%
2007	632	673	320	28%
2008	599	610	309	29%
2009	564	511	362	32%
2010	463	515	306	26%
2011	438	374	242	20%
2012	444	289	338	29%

In 2012, there was a slight increase in the number of cases handled by Advocates at formal hearing, as compared to the number of cases handled by Advocates at formal hearing in 2011.[6] There are more Advocate cases currently pending at the formal hearing level than in 2011.

It is also worth noting that the Advocate Program is currently handling 32% of all cases pending at the formal hearing level.

V. SUMMARY.

The Advocate Program was created to meet a significant need in the administration of the Workers' Compensation system. The statutory expansion of program duties in 1997 created unmet needs in the program. In order to meet the obligations in the statute, the Workers' Compensation Board has diverted resources from other work to the Advocate program. Currently the program has 12 Advocates with a support staff of 16 (two of whom are part-time) and a supervising Senior Staff Attorney. Services are provided in 5 offices; Caribou, Bangor, Augusta, Lewiston and Portland.

In its first 10 years, the Program has proven its value by providing much-needed assistance to Maine's injured workers, albeit with limited resources. As a result of the limited resources, the Advocate program has experienced periods of overly high caseloads which has led to chronic staff turnover. In one 12-month period, (2006–2007) 42% of existing Advocate Program positions were vacant. Nothing has greater potential to impact the quality of the services rendered to injured workers than insufficient staff. In response to ongoing concerns, the 123rd Legislature provided additional support for the Advocate program. Qualifications for Advocates and paralegals were increased and, in conjunction, pay ranges were upgraded. [Public Law 2007 Ch 312]. The changes, which went into effect in September 2007, are intended to attract and retain staff and to bolster stability of this program—which is an integral part of the workers' compensation system in Maine.

[6] This is related in part to the way cases are reported.

7. TECHNOLOGY

The Board, over the past year, has implemented a number of significant changes within our information systems and their delivery. By statute, many of the information delivery platforms and application are centralized into the Office of Information Technology (OIT).

We work with OIT to improve the service quality and support received. The technology budget continues to spiral upward as OIT computes all costs and attempts to allocate them on a pro-rata basis to the various agencies. Our current laptop/desktop hardware is over 6 years old and should be replaced. We have, over time, paid for replacement with OIT and have requested an upgrade of all WCB systems. We have met with OIT on a number of occasions but have not been able to achieve all of the goals we set with them.

The 121st Maine Legislature enacted legislation requiring the Workers' Compensation Board to adopt rules mandating electronic forms filing. The legislation directed the Board to proceed by way of consensus based rulemaking. A committee was formed consisting of representatives from the insurance companies, self-insureds, Board Directors and staff. Recommendations were forwarded to and unanimously approved by the Board of Directors.

The Board agreed on a timetable for implementation. First Reports of Injury and Denial submissions have been completed. Staff is currently engaged in completing the remaining payments phase. An internal group has completed the Trading Partner Tables which will provide a roadmap of the various payment functions and time frames required for each business event. The next step is shareholder review and comment before programming the necessary functions. The carriers require at least 12 months of lead time once the state's specifications are posted before they can initiate a test. Additionally, Board Rules will be updated to take advantage of the new process. The proposed rules will be reviewed with the Executive Director and the Board to find consensus on the issue.

We are working with the Department of Labor on updating the common Employer database. This common database is currently shared with 3 Divisions within the DOL and the WCB.

The WCB business application (Progress) has been updated for the new Appellate Division. There are still a few more functions to program but the bulk of the system is in production.

8. BUDGET AND ASSESSMENT

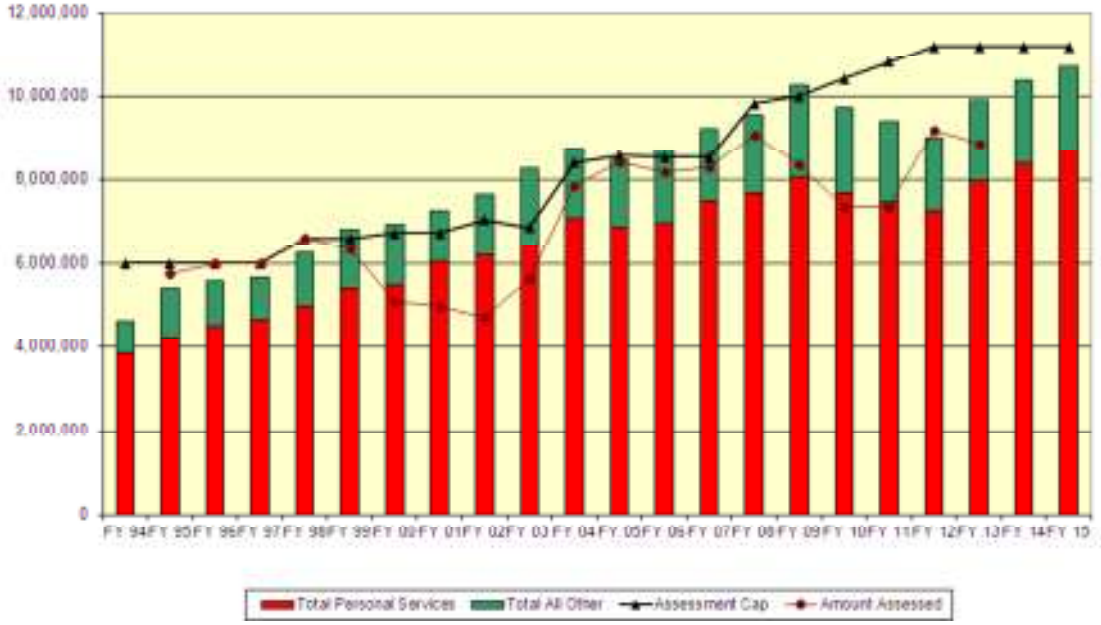
The Board is funded pursuant to a statutory assessment paid by Maine's employers, both self-insured and those with insurance. The Legislature, in creating this funding mechanism in 1992, intended the users of the workers' compensation system to pay for it. The agency was previously funded from a General Fund appropriation.

The Legislature established the assessment as a revenue source to fund the Board but capped the assessment limiting the amount of revenue which can be assessed.

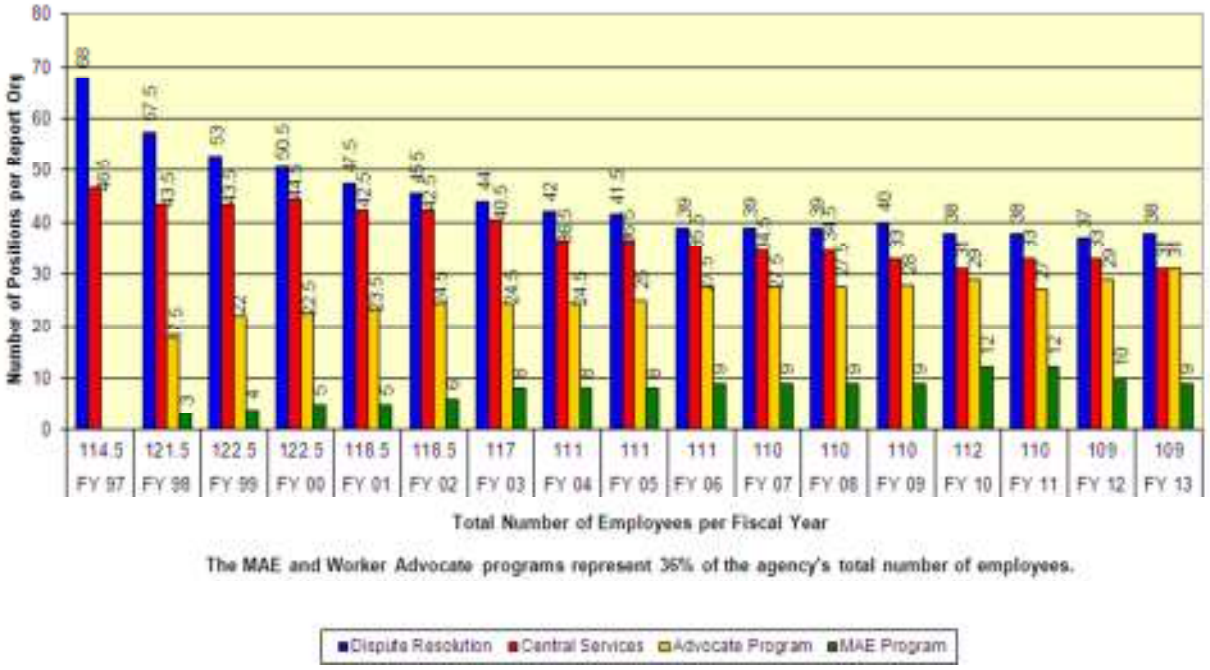
The Board cannot budget more than it can raise for revenue from the annual assessment and other minor revenues collected from the sale of copies of documents, fines and penalties. A majority of the fines and penalties are paid to the General Fund. The Legislature voted to raise the assessment cap beginning in FY08. This legislation increased the maximum assessment to $9,820,178 in fiscal year 2008, $10,000,000 in fiscal year 2009, $10,400,000 in fiscal year 2010, $10,800,000 in fiscal year 2011, and $11,200,000 in fiscal year 2012. These increases have enabled the Board to submit a budget that is balanced between expenditures and revenues. The Board-approved budget totals of $10,370,479 for FY14 and $10,698,456 for FY15.

P.L. 2003, C. 93 provides the Board, by a majority vote of its membership, may use its reserve to assist in funding its Personal Services and All Other expenditures, along with other reasonable costs incurred to administer the Workers' Compensation Act. The Bureau of the Budget and Governor approve the request via the financial order process. This provides greater discretion to the Board in the use of its reserve account. The bar chart entitled "WCB – 22 Year Schedule of Actual and Projected Expenditures" shows actual expenditures through FY12 and projected expenditures for FY13 through FY15. It also shows the assessment cap and the amounts actually assessed through FY13. The bar chart entitled "WCB – Personnel Changes Since FY97" demonstrates the Board's efficient use of personnel.

WCB - 22 Year Schedule of Actual and Projected Expenditures
Workers' Compensation Administrative Fund - 0183
October 2012



WCB - Personnel Changes Since FY 97
October 2012



The MAE and Worker Advocate programs represent 36% of the agency's total number of employees.

9. CLAIMS MANAGEMENT UNIT

The Claims Management Unit operates using a "case management" system. Individual claim managers process a file from start to finish. The insurance carriers, claims administrators, and self-insured employers benefit from having a single contact in the Claims Management Unit.

The Unit coordinates with the Monitoring Unit of the MAE Program to identify carriers who frequently file late forms or who may be consistently late in making required payments to injured workers. Case managers in the Claims Management Unit review the carrier's filings to ensure payments to injured workers are accurate and that the proper forms are completed and filed with the Board. The Unit participates in compliance and payment training workshops when requested.

Electronic Data Interchange (EDI) has created efficiencies in claims management. This allows managers to increase their claim management efforts through the electronic filing of the First Report of Injury and Notice of Controversy.

Upgrades of computer programs and screens have streamlined the workload making daily performance more efficient, automated functions, and helped reduce the time it takes to process claims and associated paperwork. All of these changes have provided time to address higher level and more serious problems which benefit the entire workers' compensation community. It has also helped identify filing requirements and deadlines for carriers while simply notifying them of problems or errors.

Claims staff searches the database for a claim that matches the information on each form that is received, checking by Social Security number, employee name and date of injury. This information is entered into the database after the Employer's First Report of Occupational Injury or Disease is filed with the Board. Claims Management Unit staff verify the accuracy of payment information on each claim that is filed with the Workers' Compensation Board for claims that have been open since 1966. Cost of Living Adjustments (COLA) are calculated on claims beginning with dates of injury on January 1, 1972 through December 31, 1992. Claims staff check to see that the COLAs are calculated correctly. The filing of forms with incorrect information causes Claims staff to spend time researching files and performing mathematical calculations, which is necessary to ensure correct payments are made to injured workers.

This Unit is responsible for annually producing the "State Average Weekly Notice." This notice contains information necessary to make COLAs on claims, to calculate permanent impairment payments, and determine whether to include fringe benefits when calculating compensation rates. The SAWW is determined by the Department of Labor each year. Claim staff uses this information to perform the mathematical calculations to determine the COLA multiplier and maximum benefit in effect for the upcoming year.

A brief description of the way various forms are processed is explained below:

Petitions – The file for the claim is located or created, the form is entered in the database, and the file is sent to the appropriate Claims Resolution Specialist in a regional office. A telephone call or e-mail message is directed to the person who filed the form if a claim cannot be found in our database. A request is made to provide an Employer's First Report of Occupational Injury or Disease so a claim file can be started.

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

Answers to Petitions - The file for the claim is located, the Answer is entered into the database and sent to the file.

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

Schedule of Dependent(s) and Filing Status Statements - The information on this form is entered into the database and the form is sent to the file room.

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

21-Day Certificate or Reduction of Compensation - The form is checked for accuracy, comparing dates, the rate, and the wage. The form is entered in the database if everything is correct. In cases where it is determined by Claims staff that there has been an improper suspension or reduction, Claims staff contact the person who prepared the form and ask for a correction. The file and form are sent to a Claims Resolution Specialist in a regional office if the form is not corrected promptly.

Lump Sum Settlement – The information on this form is entered into the database and the form is sent to the file room.

Statement of Compensation Paid – The information on this form is compared to information previously reported, the form is entered into the database, and the form is sent to the file room. A large number of these forms are found to have errors which results in staff having to research the file, contact the person who filed the form, and request corrected or missing forms.

The Claims Management Unit processed the following forms:

	Filed between Nov. 1, 2011 and Oct. 31, 2012[7]
Employer's First Report of Occupational Injury or Disease	35,286 electronic 108 paper filing
Notice of Controversy	9,927 electronic
Petitions	3,306
Answers to Petitions	3,327
Wage Statement	9,206
Schedule of Dependent(s) and Filing Status Statements	8,086
All Payment Forms, including:	17,344
Memorandum of Payment	
Discontinuance or Modification of Compensation	
Consent between Employer and Employee	
21-Day Certificate of Discontinuance or Reduction of Comp	
Lump Sum Settlement	
Statement of Compensation Paid	15,357

Forms currently filed electronically are the Employer's First Report of Occupational Injury or Disease and the Notice of Controversy. All others are filed in paper form and are manually entered into our system. Corrections to a Notice of Controversy cannot be made electronically and must be manually filed.

[7] This is the same time period reported in prior years.

10. INSURANCE COVERAGE UNIT

The Insurance Coverage Unit researches the history of employer insurance coverage in order to verify the accuracy of these records. This is important for many of the claims at formal hearing, especially when there is a controversy on the liability for the payment of the claim. Workers' compensation coverage in Maine is mandatory and this unit routinely provides assistance to the public on insurance coverage requirements.

Computer programming has helped to streamline data entry and enhance the ability to identify trends and problems with carriers. The program can link coverage and conduct employer updates more easily than in the past. This has resulted in a reduction of First Reports that cannot be matched to an insurer. In the early 1990s, the Board would receive approximately 600 First Reports in which coverage could not be identified. In 2011, this figure had been reduced to six. These upgrades and changes resulted in Coverage Unit staff being reduced to four employees.

The Board's database has been merged with the Department of Labor's resulting in greater collaboration with the Department of Labor and the Bureau of Insurance. The Unit processes proof of workers' compensation insurance coverage received electronically. A staff member is assigned for processing applications for waivers of workers' compensation coverage.

A staff goal is to process 100% of the proof of coverage filings received electronically within 24 hours of receipt and 90% of waiver applications within 48 hours of receipt. The Board received and processed 52,170 proof-of-coverage filings and processed 1,633 waiver applications between November 2011 and November 2012.

The Insurance Coverage Unit assists with problem claims including the identification of insurance coverage, the identification of employers, and identifying address changes for employers. This is done to properly process and assign claim files to the appropriate regional offices. The Coverage staff works closely with the Abuse Investigation Unit on problems associated with coverage enforcement. The Unit cooperates with the MAE program to identify carriers and self-insureds who consistently fail to file required information in a timely manner. They also assist the Bureau of Labor Standards to maintain an accurate, up-to-date employer database that is utilized by both agencies.

10A. PREDETERMINATION UNIT

The Predetermination Unit processes all applications for employment status predetermination. These are voluntary forms used by workers, employers and insurance companies to determine whether or not an individual worker or group of workers associated with an employer is an employee or an independent contractor. If someone is considered an employee, the employer must cover the employee with workers' compensation insurance. If they are an independent contractor, insurance coverage is not required unless the independent contractor has employees. Filing the forms is voluntary under the Maine Workers' Compensation Act.

The Board, in 2012, utilized five different predetermination applications; two of which are exclusive to wood harvesters. The first is titled Application for Certificate of Independent Status (Form WCB-262). This form is used by the wood harvester so he/she can apply for a certificate of independent status. The second form for wood harvesters is titled Application for Predetermination of Independent Contractor Status to Establish Conclusive Presumption (Form WCB-260). This is a two-party application completed by the land owner and the wood harvester. If both forms are approved, the wood harvester is not allowed to file a Workers' Compensation claim if he/she is injured on the job.

The third application used by the Board is an Application for Predetermination of Construction Subcontractor to Establish a Rebuttable Presumption (WCB-264). This form was used by construction workers who wish to be considered subcontractors. Upon approval, the Board issues a certificate which is provided to any hiring agent. An approved application does not relinquish the subcontractors' rights to be covered under the Maine Workers' Compensation Act. If injured on the job, an injured worker can still file a workers' compensation claim against the hiring agent.

The fourth application used by the Board is an Application for Predetermination of Freight Transportation or Courier & Messenger Services Subcontractor to Establish a Rebuttable Presumption (WCB-265). This form was used by freight and courier workers who wish to be considered subcontractors. Upon approval, the Board issues a certificate which is provided to any hiring agent. An approved application does not relinquish the subcontractors' rights to be covered under the Maine Workers' Compensation Act. If injured on the job, an injured worker can still file a workers' compensation claim against the hiring agent.

The fifth form is titled Application for Predetermination of Independent Contractor Status to Establish Rebuttable Presumption (Form WCB-261). This form was used by any worker, other than someone working in wood harvesting, construction or freight. It was a two-party form that was used by hiring agents to determinate whether or not a worker can be considered an independent contractor. Upon approval, a worker does not relinquish his/her rights to be covered under the Maine Workers' Compensation Act. There were 5,194 approved predeterminations between November 1, 2011 and October 31, 2012. All were processed within 14 days of filing.

The legislature adopted a new uniform definition of independent contractor status in 2012. The new definition is effective on January 1, 2013. Correspondingly, the Board has adopted a new application (WCB-266). The application was approved by the Board and replaced forms WCB-264, WCB-265 and WCB-261 starting in December 2012.

11. COORDINATION WITH OTHER AGENCIES

The Board has been active in its effort to coordinate and collaborate with other state and federal agencies.

An example of this effort is the Board's merging of its' employer database to the Department of Labor's (DOL) database. For years, the agencies operated with separate databases which was inefficient and resulted in unnecessary work. Information that was updated on one system, for example, would not always be updated on the other system. Now, with the merged databases, the Board can more accurately identify employers without coverage. Efforts are currently underway to coordinate other employer databases.

The Board also collects a significant amount of data on its forms to assist the Bureau of Labor Standards (BLS) in its task of producing statistical reports. An example of the Board's responsiveness in this area involves a form titled "Statement of Compensation Paid." At the request of BLS, the Board implemented changes BLS needed.

We also worked cooperatively with the Occupational Safety and Health Administration (OSHA). Maine is currently one of the few states in the nation that captures OSHA required data on its First Report of Injury. Because of this, Maine's employers only have to complete one form to meet both state and federal filing requirements. This has substantially reduced the paperwork burden on Maine employers.

The Board collaborates with the Bureau of Insurance (BOI) for its annual assessment. BOI provides information on premiums written, predictions on market trends, and paid losses information for self-insured employers. This information is utilized by the Board to calculate the annual assessment.

The Monitoring, Auditing, and Enforcement (MAE) Unit works directly with BOI on compliance and enforcement cases pursuant to 39-A M.R.S.A. § 359(2).The WCB certifies and forwards to BOI cases that involve questionable claims handling techniques or repeated unreasonable contested claims for appropriate action by BOI.

A coordinated effort is underway with the Office of Information Technology (OIT) to upgrade the WCB's computer hardware and software. Upgrades include desktops, network servers, a database server, network hubs, and a routed network. Major programming changes are underway. We anticipate these will continue into the foreseeable future.

The Board works with the Department of Health and Human Services (DHHS) to assist in recovering past due child support payments and to ensure MaineCare is not paying for medical services that should be covered by workers' compensation insurance.

Pursuant to P.L. 2007 Ch. 311, the Board works with MaineCare to ensure it receives appropriate reimbursement and notifies the Department of Health and Human Services within 10 days of an approved agreement or an order to pay compensation.

The Workers' Compensation Board worked with the Department of Labor and other interested parties to draft a uniform "independent contractor" definition that can be used for both workers' compensation and DOL purposes. The revised definition was enacted during the Second Regular Session of the 125th

Legislature. The Board and the Department of Labor continue to collaborate with respect to implementation, training and outreach.

Finally, the Board signed a memorandum of understanding with the Department of Labor for referring injured workers to DOL for employment rehabilitation services. This agreement is fairly new and it is too early to report on its effectiveness.

12. ABUSE INVESTIGATION UNIT

The Abuse Investigation Unit (AIU) is responsible for enforcing administrative penalty provisions of the Workers' Compensation Act including investigating allegations of fraud, illegal or improper conduct, and violations associated with mandatory filings, payments and insurance coverage. The Unit consists of five (5) professional staff members and the Board's Assistant General Counsel. AIU personnel perform investigations, file complaints and petitions, represent the Board at administrative penalty hearings, and decide penalty cases.

AIU enforcement efforts are focused on of the insurance coverage requirements of the Act. The AIU staff investigates whether qualifying businesses are complying with coverage requirements; file complaints if a business is out of compliance; represent the unit in administrative hearings for penalties; and negotiate consent agreements to resolve violations.

AIU coordinates its work with the Board's Coverage Division, and Monitoring, Audit and Enforcement Program. Pursuant to section 360(2) of the Act, AIU also cooperates with the Attorney General's office to identify and refer cases for criminal prosecution.

Year	Claims Filed	Claims Closed
2009	2,310	3,232
2010	4,252	2,136
2011	2,890	4,268
2012	2,039	2,636

13. GENERAL COUNSEL REPORT

I. RULES.

The Board amended 90 M.A.R. 351 Ch. 1, § ; the 14-day rule. The amendment:

- specifies to whom notice of a claim for incapacity benefits must be made;
- in the event a Notice of Controversy is not filed within 14 days of a claim for incapacity, benefits must be paid from the date the claim is made instead of the former requirement that benefits be paid from the date of incapacity;
- clarifies that the violation ends when a Notice of Controversy is filed and benefits are paid; and
- provides that the payment obligation ends even if the average weekly wage and/or compensation rate was calculated incorrectly as long as the payment was reasonable and based on information known at the time of the payment.

Pursuant to 39-A M.R.S. §328-B, firefighters are entitled to a presumption that certain cancers are work-related. Pursuant to 39-A M.R.S. §328-B(3):

> In order to be entitled to the presumption in subsection 2, during the time of employment as a firefighter, the firefighter must have undergone a standard, medically acceptable test for evidence of the cancer for which the presumption is sought or evidence of the medical conditions derived from the disease, which test failed to indicate the presence or condition of cancer.

The Board adopted a rule defining the phrase "a standard, medically acceptable test for evidence of the cancer for which the presumption is sought or evidence of the medical conditions derived from the disease[,]" contained in to 39-A M.R.S. § 328-B(3). The citation for this rule is 90 M.A.R. Ch. 1, § 10.

The Executive Director has updated codes and relative weights in the medical fee schedule to ensure the codes and relative weights remain consistent with current medical billing and coding systems. The updates are effective January 1, 2013.

II. LEGISLATIVE ACTIVITY.

The 125th Maine Legislature enacted LD 1913, *An Act to Review and Restructure the Workers' Compensation System*, which was signed into Public Law, Chapter 647 on April 18, 2012 by Governor LePage. The Act requires that the Workers' Compensation Board report, at least annually, to the Legislature on costs to employers associated with long-term partial incapacity benefits and permanent impairment ratings.

In addition, the Act makes the following changes to our Workers' Compensation Act effective August 30, 2012:

1. Eliminates the requirement that an employer, insurer or group self-insurer continue paying benefits to an employee pending a motion for findings of fact and conclusions of law or pending an appeal of a Hearing Officer decree by the employee;
2. Adds a presumption that work is unavailable for an employee participating in a rehabilitation

plan ordered by the Workers' Compensation Board for as long as the employee continues to participate in vocational rehabilitation;

3. Establishes the time from which the statute of limitations for filing a petition begins from either 2 years from the date an employer is required to file a first report of injury, or the date of the injury if no first report is required;
4. Creates a new Appellate Division made up of panels of no fewer than 3 full-time Hearing Officers and gives the board authority to adopt routine technical rules of procedure for any review made by the newly created Appellate Division; and
5. Eliminates the permanent impairment threshold index from an adjusted impairment threshold, based on an actuarial review of cases receiving permanent impairment ratings to a threshold of greater than 12% whole body for injured employees with partial incapacity for injuries on or after January 1, 2006 and before January 1, 2013.
6. The Act also made several changes for injuries on or after January 1, 2013:

   A. Shortens the time in which a notice of injury must be given from 90 to 30 days;

   B. Increases the percent of the state average weekly wage calculation from 90% to 100% for the maximum benefit level computation;

   C. Changes the calculation for determining the weekly compensation for total incapacity, partial incapacity, and death benefits from 80% of the injured employee's net average weekly wage, but not more than the maximum benefit level, to 2/3rds of the injured employee's gross average weekly wage, but not more than the maximum benefit level;

   D. Establishes 520 weeks as the end date of benefit eligibility for permanently partially incapacitated injured employees and changes the eligibility requirements for the extension of benefits for permanently partially incapacitated injured employees. In order to qualify for an extension, the following requirements must be met:
      - The injured employee must have a whole person permanent impairment rating resulting from an injury in excess of 18%. The injured employee must have worked 12 of the last 24 months. The injured employee's earnings over the most recent 26 week period must be 65% or less of the pre-injury average weekly wage;
      - The injured employee's actual earnings must be commensurate with the injured employee's earning capacity which includes consideration of the injured employee's physical and psychological work capacity as determined by an independent medical examiner.

In addition, while the injured employee is receiving extended partial incapacity benefits, the injured employee must complete and provide quarterly employment status reports and tax returns. If an injured employee's weekly earnings over the most recent 26-week period are equal to or greater than the injured employee's pre-injury weekly earnings, the extension of benefits is terminated permanently. Finally, if an injured employee does not qualify for an extension at the end of 520 weeks, the injured employee's benefits expire.

During the Second Regular Session of the 125th Maine Legislature, P.L. 2011, Ch. 643 was enacted. This law, commonly referred to as "L.D. 1314", creates a new definition of independent contractor for use by both the Department of Labor and the Workers' Compensation Board. It also creates a presumption that an individual is an employee. The new definition and presumption take effect January 1, 2013.

The new definition is designed to achieve a few different, but related, goals. It is intended to make it easier for employers, employees and independent contractors to determine whether or not an employer-employee relationship exists. Because it will be easier to determine who is and is not an employee, it is anticipated that fewer employees will be misclassified as independent contractors. An employee is misclassified when an employer treats the employee as an independent contractor for unemployment, workers' compensation and/or tax purposes.

The uniform definition will help eliminate the confusion that currently arises because of the different definitions of independent contractor used by the Department of Labor and the Workers' Compensation Board. An attempt was made to include the Department of Revenue Services in the bill, but this was not possible because Maine Revenue Services relies on the Internal Revenue Services' independent contractor definition. All is not lost on this front, however. Because the new definition in Maine contains some of the tests used by the IRS, and because Maine's definition may be somewhat stricter, an individual who is determined to be an independent contractor for purposes of workers' compensation or unemployment is likely to be an independent contractor for tax purposes as well.

III. EXTREME FINANCIAL HARDSHIP CASES.

Pursuant to 39-A M.R.S.A. § 213(1) the Board "may in the exercise of its discretion extend the duration of benefit entitlement … in cases involving extreme financial hardship due to inability to return to gainful employment."

No hardship cases were heard in 2012.

Previous decisions are available at:
http://www.maine.gov/wcb/Board_Decisions/section_213/section213.html

IV. BOARD REVIEW PURSUANT TO 39-A M.R.S.A. § 320.

The Board received three requests for review during 2012. None were accepted for review.

14. 39-A M.R.S.A. § 213 THRESHOLD ADJUSTMENT AND EXTENSION OF 260-WEEK LIMITATION

The Workers' Compensation Act provides for a biennial permanent impairment threshold adjustment and a study of whether an extension of weekly benefits is warranted. Section 213(2) provides, in part, that the Board, based on an actuarial review, adjust the permanent impairment threshold so that 25% of all cases with permanent impairment will be expected to exceed the threshold and 75% of all cases with permanent impairment will be expected to be less than the threshold. In 1998, the Board reduced the threshold from 15% to 11.8% based on an actuarial report compiled by Advanced Risk Management Techniques, Inc.

Pursuant to 39-A M.R.S.A. § 213(4), the 260-week limitation contained in Section 213(1) must be extended 52 weeks for every year the Board finds the frequency of cases involving the payment of benefits under Sections 212 and 213 is no greater than the national average. Based on a report provided by Advanced Risk Management Techniques, Inc., the limitation referenced in Section 213(4) was extended for 52 weeks on January 1, 1999.

The Workers' Compensation Board hired the actuarial firm of Deloitte & Touche to conduct the independent actuarial review for the 39-A M.R.S.A. §§ 213(2) and (4) adjustment and extension for 2000 and 2001. Based on the 2000 Deloitte & Touche actuarial report, the Board retained the 11.8% threshold and extended the limitation referenced in Section 213(4) by 52 weeks on January 1, 2000.

The Board did not extend benefits pursuant to Section 213(4) in 2001, 2002, 2003, 2004, 2005, or 2006.

Pursuant to P.L. 2001, Ch. 712, the Board referred the threshold adjustment for January 1, 2002 to an arbitrator appointed by the American Arbitration Association. The arbitrator determined that the permanent impairment threshold for January 1, 2002 is 13.2%.

Based on a report from Practical Actuarial Solutions, Inc., the permanent impairment threshold was adjusted, effective January 1, 2004, to 13.4% from 13.2%.

Based on reports from Practical Actuarial Solutions, Inc., the extension of benefits referenced in Section 213(4) was extended for 52 weeks to a total of 416 weeks effective January 1, 2007, to 468 weeks effective January 1, 2009 and to 520 weeks (the maximum duration) effective January 1, 2009.

Pursuant to P.L. 2011, Ch. 647, the permanent impairment threshold for dates of injury on January 1, 2006 and through and including December 31, 2012, is in excess of 12% to the whole body. Ch. 647 also eliminated the requirement that the Board adjust the threshold after December 31, 2012. (See, Section 13 General Counsel Report for a summary of the other changes affecting entitlement to partial incapacity benefits.)

SECTION B

BUREAU OF INSURANCE

Section B: Bureau of Insurance

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1. INTRODUCTION & BACKGROUND

This report examines different measures of competition in the Maine workers compensation insurance market. The measures are: 1) the number of insurers providing coverage; 2) insurer market share; 3) changes in market share; 4) ease of entry into and exit from the workers' compensation insurance market; and 5) comparison of variations in rates.

The tables in this report for accident year and calendar year loss ratios contain five years of information. Loss ratios are updated each year to account for how costs have developed for claims opened, claims closed, and any claims reopened during the year. Other tables and graphs contain up to ten years of information.

In 2012, the National Council on Compensation Insurance, Inc. (NCCI) received approval from the Bureau for an average decrease in the advisory loss costs of 1.8%. According to NCCI, the frequency of loss-time claims has decreased from 2000 to 2007. In 2008, the frequency increased slightly followed by a decrease in 2009 and a slight increase in 2011, the most recent year of data used in the filing. Average indemnity cost—a measure of severity—has also decreased. Medical costs continue to increase and now consume 55% of Maine's total benefit costs. Indemnity costs account for the other 45%.

Although Maine's market has become quite concentrated and MEMIC writes a large volume of business, there are still many insurers writing some workers' compensation coverage in Maine. Insurers, however, are still being conservative in selecting businesses to cover or to renew. An insurer can decide to non-renew business for any reason as long as it provides the policyholder with the statutorily required advance written notice. Self-insurance provides a viable alternative for some Maine employers.

I. ACCIDENT YEAR, CALENDAR YEAR AND POLICY YEAR REPORTING

Workers compensation is a long-tail line of insurance. This means that payments for claims can continue over a long period after the year in which the injury occurred. Thus, amounts to be paid on open claims must be estimated. Insurers collect claim, premium, and expense information to calculate financial ratios. This information may be presented on an accident year, calendar year, or policy year basis. This report primarily shows information on an accident year basis. A description of each method and its use in understanding workers' compensation follows:

- Accident year experience matches all losses for injuries occurring during a given 12-month period (regardless of when the losses are reported) with all premiums earned during the same period of time (regardless of when the premium was written). The accident year loss ratio shows the percentage of earned premium that is being paid out or expected to be paid out on claims. It enables the establishment of a basic premium reflecting the pure cost of protection. Accident year losses or loss ratios are used to evaluate experience under various laws because claims are tracked by year and can be associated with the law in effect at the time of the injury. This information is projected because claim costs change over time as claims further develop, with the ultimate result determined only after all losses are settled. Therefore, the ratios for each year are updated on an annual basis.

- Calendar year loss ratios match all losses incurred within a given 12-month period (though not necessarily for injuries occurring during that 12-month period) with all premiums earned within the same period. Because workers' compensation claims are often paid out over a long period, only a small portion of calendar year losses is attributable to premiums earned that year. Many of the losses paid during the current calendar year are for claims occurring in past calendar years. Calendar year loss ratios also reflect aggregate reserve adjustments for past years. For claims expected to cost more, reserves are adjusted upward; for those expected to cost less, reserves are adjusted downward. Calendar year incurred losses are used primarily for financial reporting. Once calculated for a given period, calendar year experience never changes.

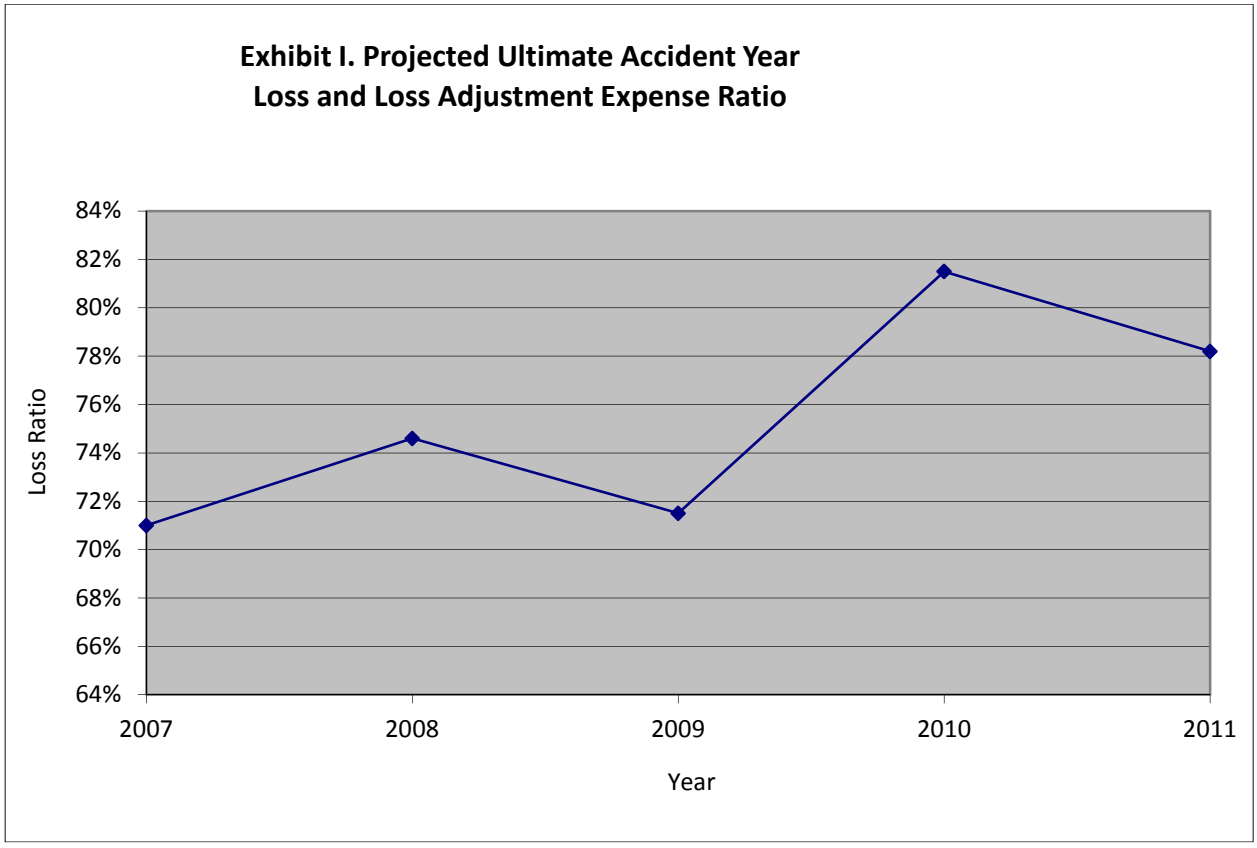
- Policy year experience segregates all premiums and losses attributed to policies having an inception or a renewal date within a given 12-month period. The total value of all losses for injuries occurring during the policy year (losses paid plus loss reserves) is assigned to the period regardless of when the losses are actually reported. They are matched to the fully developed earned premium for those same policies. The written premium will develop into earned premium for those policies. The ultimate incurred loss result cannot be finalized until all losses are settled. It takes time for the losses to develop, so it takes about two years before the information is useful. This data is used to determine advisory loss costs.

2. RECENT EXPERIENCE

I. ACCIDENT YEAR LOSS AND LOSS ADJUSTMENT EXPENSE RATIOS

The accident year loss ratio shows the percent of earned premium used to fund losses and their settlement. Loss ratios that exceed 100% mean that insurers are paying out more in benefits than they collect in premiums. A decrease in these loss ratios over time may reflect increased rates, improved loss experience, or changes in reserve (i.e., the amount of money expected to be paid out on claims). Conversely, an increase in the loss ratios may reflect decreased rates or worsening loss experience. The loss ratio does not include insurers' general expenses, taxes and contingencies, profit or investment income.

Exhibit I shows the accident year loss ratios for the most recent five years available. Loss ratios in this report are based on more mature data and may not match the loss ratios for the same years in prior reports. Claim costs and loss adjustment expenses for prior years are further developed, so the loss ratios reflect more recent estimates of what the claims will ultimately cost. The accident year loss ratio has ranged from 70% to 82% for the past five years. The 2011 loss ratio was 78.2%, indicating that $78.20 is expected to be paid out for losses and loss adjustment expenses for every $100 earned in premium.

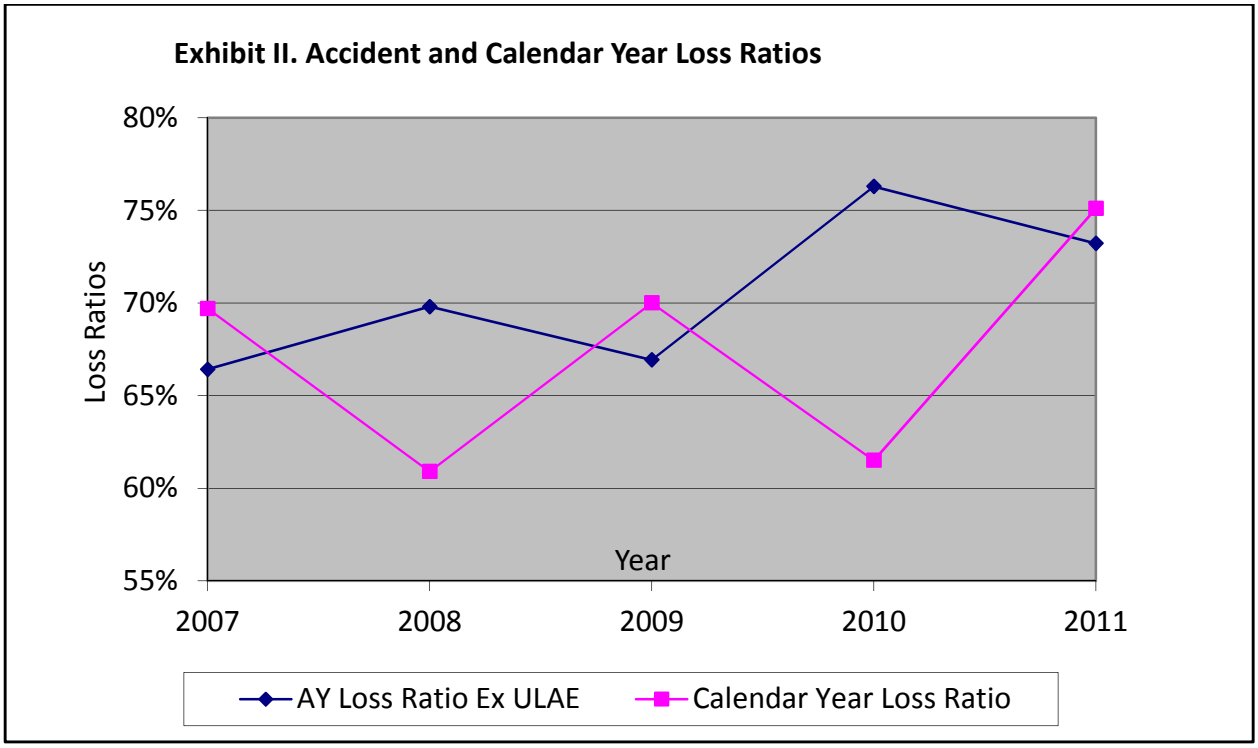


Source: NCCI

II. CALENDAR YEAR AND ACCIDENT YEAR LOSS RATIOS

Calendar year loss ratios compare losses incurred with premium earned in the same year (although only a small portion of the losses are attributable to premiums earned that year). Calendar year loss ratios reflect loss payments and adjustments to case reserves and incurred but not reported reserves on all claims during a specific year, including those adjustments from prior injury years. Calendar year data is relatively easy to compile and is useful in evaluating the financial condition of an insurance company; however, accident year data is more useful in evaluating the claim experience during a particular period because it better matches premium and loss information. In addition, the accident year experience is not distorted by reserve adjustments on claims that occurred in prior periods, possibly under a different law. These ratios also do not include amounts paid by insurers for sales, general expenses, and taxes, nor do they reflect investment income. The movement of the calendar year loss ratios from below to above the accident year loss ratios may reflect increases in reserves on prior accident years.

Exhibit II shows calendar year and accident year loss ratios. The calendar year loss ratio of 75.1% in 2011 was the highest in the period of 2007-2011. Prior to 2011, the calendar year loss ratios were oscillating between 60% and 70%. The accident year loss ratio has been trending upward over the period of 2007-2010, ranging from a low of 66.4% in 2007 to a high of 73.2% in 2010. In 2011, however, the accident year loss ratio decreased to 73.2%.



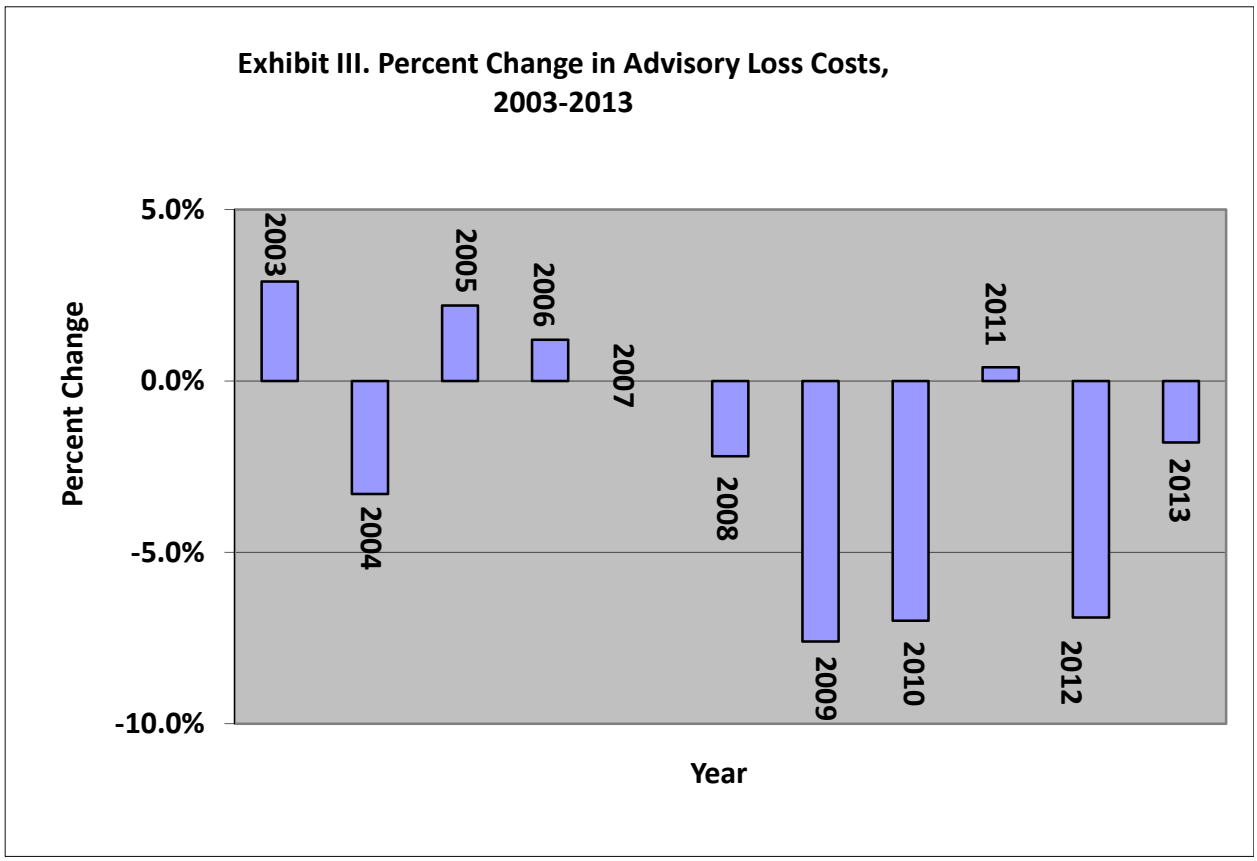
Source: NCCI
Note: ULAE means Unallocated Loss Adjustment Expense

3. LOSSES IN WORKERS' COMPENSATION

I. CHANGES IN ADVISORY LOSS COSTS

NCCI files advisory loss costs on behalf of workers' compensation carriers. Advisory loss costs reflect the portion of the rate that applies to losses and loss adjustment expenses. Advisory loss costs do not account for what insurers pay for commissions, general expenses, taxes, and contingencies, nor do they account for profits and investment income. Under Maine's competitive rating law, each insurance carrier determines what to load into premium to cover those items.

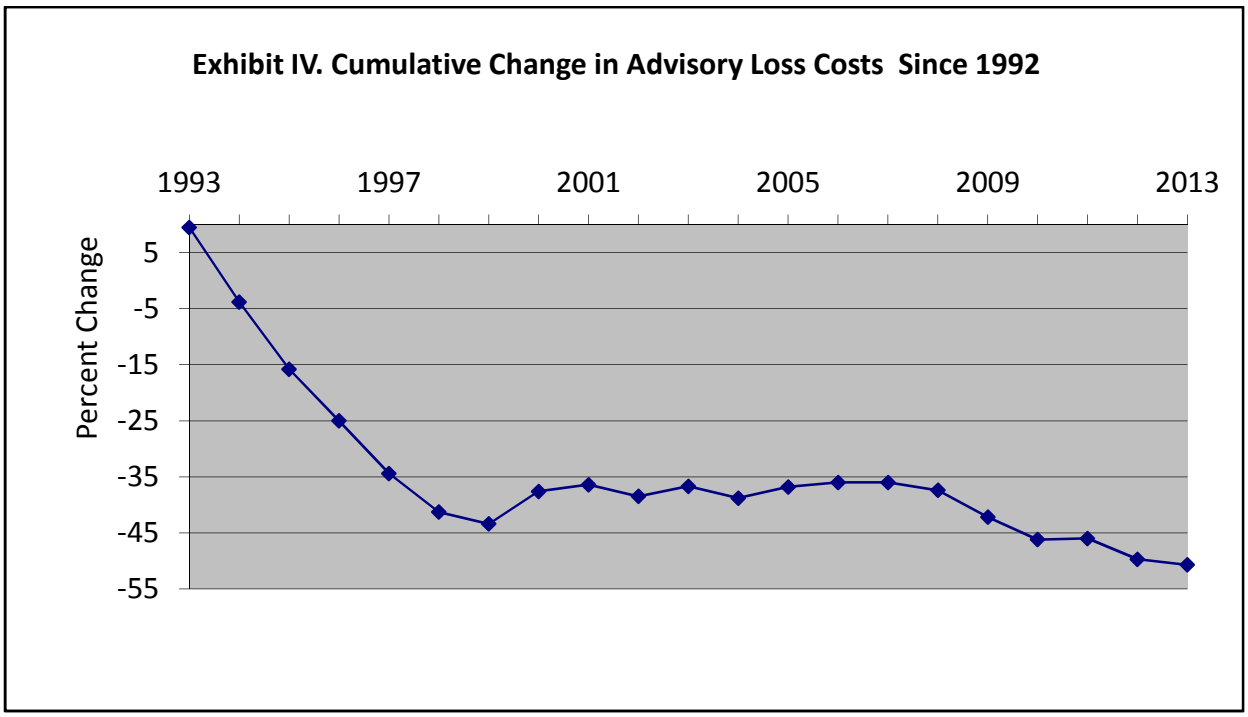
In 2012, the advisory loss costs decreased by 6.90%. The Bureau recently approved a 1.8% decrease in advisory loss costs effective January 1, 2013. Advisory loss costs will be about 21% lower than they were five years ago and nearly 51% lower than when the major reform of the workers' compensation system took effect in 1993. Changes in the advisory loss costs tend to lag behind changes in actual experience and to precede changes in rates.



Source: NCCI

II. CUMULATIVE CHANGES IN ADVISORY LOSS COSTS

Exhibit IV shows the cumulative changes in loss costs over the past 20 years. The advisory loss costs have declined over the past five years with the exeception of 2011, when the advisory loss cost increased by 0.4%.



Source: NCCI

4. MARKET STRUCTURE AND COMPETITION

I. MARKET CONCENTRATION

Market concentration is another measure of competition. Greater concentration means that there are fewer insurers in the market or that written insurance is concentrated among fewer insurers. The result is less competition. Conversely, less concentration indicates greater competition because more insurers are in the market.

As of October 1, 2012, the Bureau had authorized 329 companies to write workers' compensation coverage. This number is not the best indicator of market concentration because some insurers have no written premium. MEMIC accounts for over 59% of the written premium in the insured market. Although MEMIC has succeeded in retaining business, other insurers are selectively increasing their market share. The following table shows the number of carriers by premium level for those carriers writing workers' compensation insurance in 2011. Eight more companies in 2011 had more than $1 million in written premium.

Table I:
Number of Companies by Level of Written Premium, 2011

Amount of Written Premium	Number of Companies At That Level
>$10,000	140
>$100,000	91
>$1,000,000	29

Source: Annual statements filed with the Bureau of Insurance
Note: Total written premium for 2011 was over $206M.

Market concentration alone does not give a complete picture of market competition. A discussion of self-insurance, found in the Alternative Risk Markets section, gives a more complete perspective.

II. HERFINDAHL-HIRSCHMAN INDEX

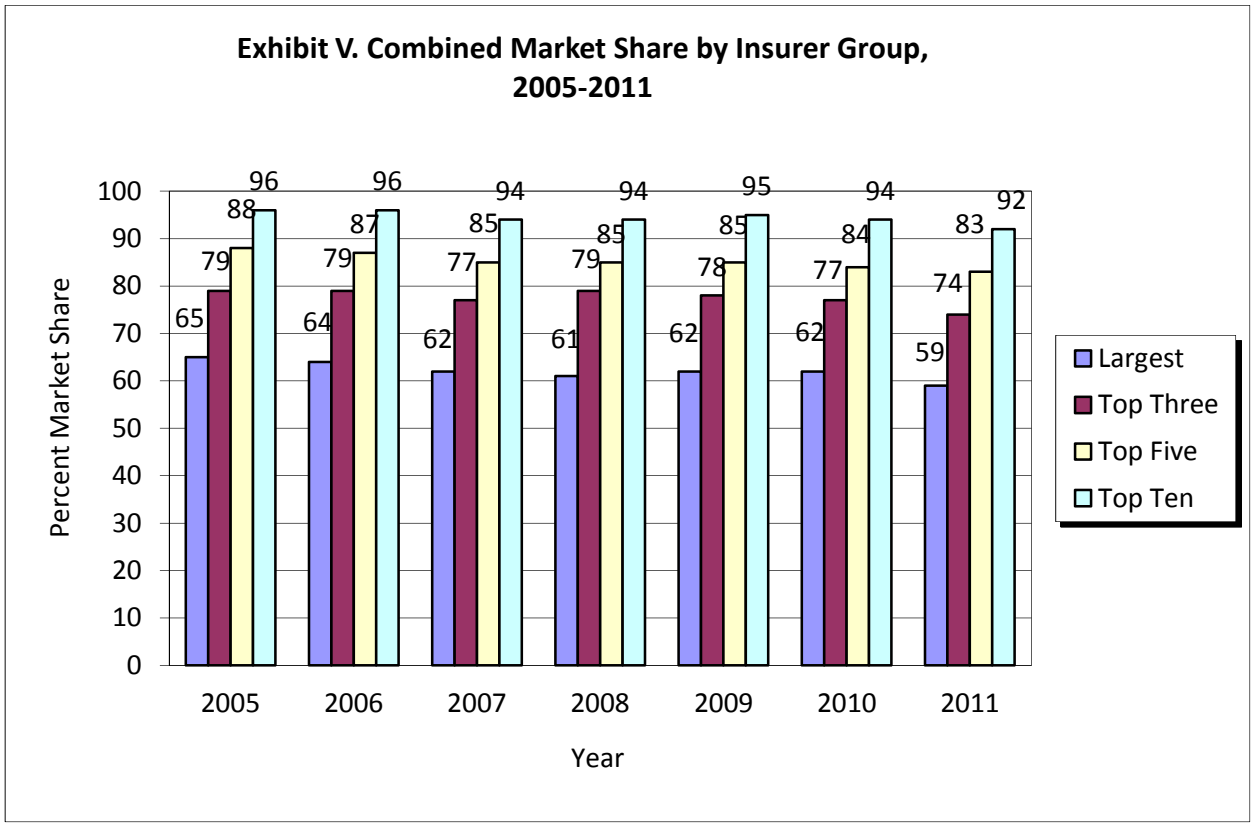
The Herfindahl-Hirschman Index (HHI) is a method to measure market concentration. The HHI is calculated by summing the squares of the market shares (percentages) of all groups in the market. The National Association of Insurance Commissioners (NAIC) publishes a Competition Database Report as a reference source of measures to examine the competitiveness of state insurance markets, and the HHI is one of the data elements in the report. The 2010 Database Report, which was prepared in 2011, shows that the HHI for workers' compensation insurance in Maine is 3,971. This is the second highest for all commercial lines in Maine behind Financial Guaranty and just ahead of Medical Professional Liability. The only other lines above 2,200 were Mortgage Guaranty (2,275) and Farmowners Multi-Peril (3,399). According to the Database Report, there is no precise point at which the HHI indicates that a market or industry is so concentrated that competition is restricted. The U.S. Department of Justice's guideline for corporate mergers uses 1,800 to indicate highly concentrated markets and the range from 1,000 to 1,800 to indicate moderately concentrated markets. A market with an HHI below 1,000 is considered not concentrated. Applying the HHI to Maine's workers' compensation market might not be a helpful gauge of this market for two reasons. First, the Maine Legislature created MEMIC to replace a highly

concentrated residual market in which other insurers were reluctant to write actively in this state. Second, the market has a high percentage of employers who self-insure either individually or in groups.

III. COMBINED MARKET SHARE

An insurance group is a carrier or group of carriers under common ownership. Exhibit V illustrates the percent market share of the largest commercial insurance group, in terms of written premium, as well as the percent market share for the top three, top five, and top 10 insurer groups. MEMIC has the largest market share. Its share fell below 60% in 2011 for the first time in the seven year range. The market share of the top ten insurer groups was 92% in 2011; other groups accounted for only 8% of the workers' compensation premium in Maine.

In terms of premium dollars, MEMIC wrote over $122 million in premium in 2011. The top three groups, including MEMIC, wrote over $153 million in business. The top five groups wrote nearly $171 million, and the top ten groups had over $190 in written premium. The reported amounts of written premium increased for MEMIC as well as for the top groups as a whole from 2010 to 2011.



Source: Annual statements filed with the Bureau of Insurance

IV. NUMBER OF CARRIERS IN THE MAINE INSURANCE MARKET

The number of carriers in the workers' compensation market has increased throughout the 13-year period shown in the table below. The number of carriers who may file rates and be eligible to write workers' compensation coverage has increased by over 56% since 2000. There currently are no significant barriers to entry.

Table II:
Entry and Exit of Workers Compensation Carriers, 2000-2012

Year	Number of Carriers	Number Entering	Number Exiting	Net Change (Number)	Net Change (Percent)
2012	329	17	1	16	5.1
2011	313	22	2	20	6.8
2010	293	6	5	1	0.3
2009	292	10	0	10	3.6
2008	282	13	4	9	3.3
2007	273	11	5	6	2.3
2006	267	14	4	10	3.9
2005	257	4	1	3	1.1
2004	254	5	2	3	1.2
2003	251	11	1	10	4.2
2002	241	15	2	13	5.7
2001	228	24	6	18	8.6
2000	210	12	0	12	6.1

Source: Maine Bureau of Insurance Records
Notes: Based upon the number of carriers licensed to transact workers compensation insurance as of October 1 of each year. Beginning in 2001, the number exiting the market includes companies under suspension.

V. PERCENT MARKET SHARE OF THE TOP INSURANCE GROUPS

Table III shows market share by insurance group from 2005-2011. The top ten groups combined write over 92 percent of the business. Information by group is more relevant when assessing competition because carriers in a group are under common control and are not likely to compete with one another.

Table III:
Percent Market Share for Top Insurance Groups, by Amount of Written Premium, 2005-2011

Insurance Group	2011 Share	2010 Share	2009 Share	2008 Share	2007 Share	2006 Share	2005 Share
Maine Employers' Mutual	59.4	61.5	62.2	61.3	61.6	63.6	64.8
Liberty Mutual Group	9.7	10.0	10.4	11.0	8.8	9.2	8.4
WR Berkeley Corp.	5.1	5.2	5.7	6.1	6.3	6.1	5.6
Travelers Group	4.4	3.9	3.5	2.7	2.2	1.9	1.6
American International Group	4.2	3.6	2.3	2.8	5.2	4.9	5.1
Hartford Fire & Casualty	3.1	3.2	3.4	3.7	3.6	3.3	3.8
Zurich Insurance Group	2.0	2.1	2.0	1.2	1.3	0.9	0.6
The Hanover Ins Corp.	1.6	1.5	1.6	1.8	1.7	2.1	1.9
Guard Insurance Group	1.5	1.4	1.7	1.8	2.0	2.3	2.1
CNA Insurance Group	1.1	0.6	0.9	1.2	1.2	1.1	1.1

Source: Annual statements filed by insurance carriers

VI. PERCENT MARKET SHARE OF THE TOP INSURANCE CARRIERS

Table IV shows the percent of market share for the top carriers for each calendar year from 2005 through 2011. Throughout the seven-year period, MEMIC has had in excess of 59% of the market, although its market share has dropped over five percent during that time. No other insurance carrier attained a 5% market share during this period. The top 10 companies combined write over 73% of the business.

Table IV:
Percent Market Share for Top Insurance Carriers, by Amount of Written Premium, 2004-2010

Insurance Carrier	2011 Share	2010 Share	2009 Share	2008 Share	2007 Share	2006 Share	2005 Share
Maine Employers' Mutual	59.3	61.5	62.2	61.3	61.6	63.6	64.8
Netherlands	2.3	2.7	2.6	2.1	1.4	0.9	0.3
Firemen's Ins Co of Wash DC	2.2	2.1	1.9	1.3	1.3	1.1	0.9
Acadia Insurance Company	2.3	2.6	3.4	4.2	4.5	4.5	4.3
Liberty Insurance Corp.	1.4	2.1	2.0	2.7	2.1	2.5	1.7
Standard Fire Ins Co	1.3	1.2	0.5	0.2	0.1	0.0	0.0
New Hampshire Ins Co	1.2	1.2	1.2	1.0	0.5	0.4	0.3
National Union Fire Ins Co	1.2	0.3	0.6	0.9	0.3	0.6	0.9
Zurich American Ins Co.	1.1	1.3	1.0	0.7	0.9	0.7	0.9
Charter Oak Fire Ins Co	1.1	1.2	1.0	0.9	0.8	0.6	0.5

Source: Annual statements filed by insurance carriers

5. DIFFERENCES IN RATES AND FACTORS AFFECTING RATES

I. RATE DIFFERENTIALS

There is a wide range of potential rates for workers' compensation policyholders in Maine, but most employers are not able to get the lowest rates. Insurers are selective in accepting risks for the lower-priced plans. Their underwriting is based on such factors as prior-claims history, safety programs, and classifications. An indication that the current workers' compensation market may not be fully price-competitive is the distribution of policyholders among companies with different loss cost multipliers or among a single company with multiple rating tiers. The Bureau surveyed the top ten insurance groups and all of the companies in those insurance groups, requesting the number of policyholders and the amount of written premium for in-force policies in Maine within each of their rating tiers. Annual statement reports show that carriers in the top ten groups accounted for 92% of the market and $190 million in written premium in Maine for calendar year 2011. The survey showed that over 63% of policies are written at rates equivalent to the MEMIC Standard Rating tier. Over 25% are written at rates lower than MEMIC's Standard Rating tier. Over 11% of policyholders have policies written at rates that are above MEMIC's Standard Rating tier.

Possible reasons that policyholders accept rates higher than MEMIC's Standard Rating tier are: 1) an insurer other than MEMIC provides workers' compensation coverage, although it might not otherwise, because it provides coverage for other lines of insurance, and the insurer provides a competitively priced overall insurance package to the insured; 2) an insurer other than MEMIC charges a higher rate but offers enough credits to lower the overall premium; or 3) the insured would have been placed in MEMIC's High Risk Rating tier because of its poor loss history.

Table V:
Percent of Reported Policyholders At, Above, or Below MEMIC's Standard Rating Tier Rates

Rate Comparison	2012 Percent	2011 Percent
Below MEMIC Standard Rate	25.3%	27.3%
At MEMIC Standard Rate	63.6%	63.8%
Above MEMIC Standard Rate	11.1%	8.9%

Note: Based upon the results of a survey conducted by the Bureau of Insurance

II. ADDITIONAL FACTORS AFFECTING PREMIUMS

Some insurers offer employers other options that may affect the premiums the employers pay for workers' compensation insurance. While these options might lower an employer's premium, they may also carry some risk of greater exposure.

Employers should carefully analyze certain options, such as retrospective rating (retros) and large deductible policies, before deciding on them. Below is a description of each:

- Tiered rating means that an insurer has more than one loss cost multiplier to use, based on where a potential insured falls in its underwriting criteria. Tiered rating may apply to groups of insurers that have different loss cost multipliers for different companies in the group. Bureau records indicate that over 71% of insurers either have different loss cost multipliers on file or are part of a group that does.

- Scheduled rating allows an insurer to consider other factors that may not be reflected in an employer's experience rating when determining an individual employer's premium. Factors including safety plans, medical facilities, safety devices, and premises are considered and can result in a change in premium of up to 25%. Over 81% of insurers with filed rates in Maine have received approval to utilize scheduled rating.

- Small deductible plans must be offered by insurers. These include medical benefit deductibles in the amounts of $250 per occurrence for non-experience rated accounts and either $250 or $500 per occurrence for experience rated accounts. Insurers must also offer deductibles of either $1,000 or $5,000 per claim for indemnity benefits. Payments are initially made by the insurer and then reimbursed by the employer. Each insurer files the percentage reductions applicable to employers who elect to have a small deductible plan and the amount of reduction varies by insurer.

- Managed Care Credits are credits offered by insurers to employers who use managed care plans. Eighteen percent of insurers offer managed care credits.

- Dividend Plans provide a return premium to the insured after the policy expires if losses are lower than average. Premiums are not increased if losses are greater than average. Because losses may still be open for several years after policy expiration, dividends will usually be paid periodically with adjustments for any changes in the amount of incurred losses. Dividends are not guaranteed. In calendar year 2011, MEMIC declared dividends of $12 million dollars. In September 2012, MEMIC announced it will pay a dividend totaling $13 million to about 19,000 Maine policyholders in November 2012. Employers who held policies with MEMIC for a full year, with a term beginning in 2009, will be eligible to receive the dividend. After the November 2012 dividend payment, MEMIC will have returned more than $146 million to policyholders in the form of capital returns and dividends since 1998.

- Retrospective rating means that an employer's final premium is a direct function of its loss experience for that policy period. If an employer controls its losses, it receives a reduced premium; conversely, if the employer has a bad loss experience, it receives an increased premium. Retrospective rating utilizes minimum and maximum amounts for a policy and is typically written for larger, sophisticated employers.

- Large deductible plans are for employers who agree to pay a deductible that can be in excess of $100,000 per claim. The law requires that the insurer pay all losses associated with this type of policy and then bill the deductible amounts to the insured employer. The advantage of this product is a discount for assuming some of the risk. It is an alternative to self-insurance.

- Loss Free Credits may be given to employers who have had no losses for specified periods of time. At MEMIC, loss free credits may be received by non-experience-rated accounts. As of August 31, 2011, 67% of non-experience-rated accounts -- 9,119 policyholders -- receive loss free credits of

between 8% and 15%. This represents a 0.5% increase from 2010 and represents 50% of all MEMIC policyholders.

- Terrorism Risk Insurance Act (TRIA) is a federal program to protect consumers and insurers by addressing market disruptions and ensuring the continued availability and affordability of insurance for terrorism risk. Under TRIA, the federal government shares the cost of terrorist attacks with the insurance industry. Federal payments in extreme events help eliminate the insolvency risk for the insurance industry. Terrorism coverage is a separate step in determining workers' compensation premium and, like state-required workers' compensation coverage, is a charge based upon payroll for federal terrorism coverage. Acts of terrorism cannot be excluded in workers' compensation insurance and, since September 2001, reinsurance contracts have excluded coverage for terrorist acts. In 2007, the Terrorism Risk Insurance Revision and Extension Act was approved and redefined terrorism to include domestic and foreign terrorism.

Insurers in Maine's top ten groups reported that nearly $15 in credits (for policies in force as of August 31, 2012) was provided for every $1 in debits. The amount of credits provided by companies in the top ten groups, for policies in force as of August 31, 2012, was over $27.6 million, slightly less than the prior year. The amount of debits, for policies in force as of August 31, 2012, was over $1.8 million, over $250,000 more than in the prior year.

6. ALTERNATIVE RISK MARKETS

I. PERCENT OF OVERALL MARKET HELD BY SELF-INSURED EMPLOYERS

Self-insurance plays an important role in Maine's workers' compensation market. Self-insured employers pay for losses with their own resources rather than by purchasing insurance. They may, however, choose or be required by the Bureau to purchase insurance for losses that exceed a certain limit. One advantage of being self-insured is better cash flow. Employers who self-insure anticipate that they would be better off not paying premiums. They are likely to have active programs in safety training and injury prevention. In 2011, nearly 45% of Maine's total workers' compensation insurance market, as measured by standard premium, consisted of self-insured employers and groups. The percent of the workers' compensation market has exceeded 40 percent in each of the twelve years listed in the table below.

The estimated standard premium for individual self-insurance is determined by multiplying the advisory loss cost by a factor of 1.2 as specified in statute, multiplying that figure by the payroll amount, dividing the result by 100, and then applying experience modification. As advisory loss costs, and therefore rates, decline, so does the estimated standard premium. Group self-insurers determine their own rates subject to review by the Bureau.

Table VI:
Estimated Standard Premium for Self-Insured Employers and Percent of the Workers' Compensation Market Held by Self-Insurers, 2000-2010

Year	Estimated Standard Premium	Percent of Workers' Comp. Market (in annual standard premium)
2011	$166,712,916	44.7
2010	$171,478,611	47.5
2009	$160,359,285	44.5
2008	$179,280,965	44.6
2007	$174,830,526	42.1
2006	$167,535,911	40.9
2005	$167,278,509	40.3
2004	$171,662,347	41.7
2003	$182,379,567	43.1
2002	$167,803,123	43.0
2001	$159,548,698	43.9
2000	$126,096,312	42.1

Source: Annual statements filed with the Bureau of Insurance
Notes:
1. Estimated standard premium figures are as of December 31of the year listed.
2. The percent of the workers' compensation market held by self-insured employers is calculated by taking the estimated standard premium for self-insured employers, dividing it by the sum of the estimated standard premium for self-insured employers and the written premium in the regular insurance market, and then multiplying that figure by 100.

II. NUMBER OF SELF-INSURED EMPLOYERS AND GROUPS

As of October 1, 2012, there were 19 self-insured groups representing 1,370 employers. The number of self-insured groups has remained the same for the past six years. The number of employers in self-insured groups has dropped by over 100 during that time. The number of individually self-insured employers has been in the high fifties for the past four years.

Table VII:
Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers, 2000-2011

Year	# of Self-Insured Groups	# of Employers In Groups	# of Individually Self-Insured Employers
2012	19	1,370	59
2011	19	1378	59
2010	19	1382	58
2009	19	1459	58
2008	19	1,461	70
2007	19	1,478	70
2006	20	1,437	71
2005	20	1,416	80
2004	20	1,417	86
2003	19	1,351	91
2002	19	1,235	98
2001	19	1,281	92
2000	19	1,247	98

Source: Bureau of Insurance records
Notes:
1. For the purposes of self-insurance, affiliated employers are considered separate employers.
2. The number of individually self-insured employers and self-insured group information beginning in 2001 is as of October 1 of the year listed. Figures for 2000 are as of the beginning of the year.

7. A LOOK NATIONALLY

I. OREGON WORKERS' COMPENSATION PREMIUM RATE RANKING

The State of Oregon collects information from other states on a bi-annual basis and it is used in premium rate rankings. In 2012, Maine ranked 10th highest in terms of workers' compensation premium rates for all industries. In the 2010 rankings, Maine ranked 8th highest overall and in the 2008 study, Maine ranked 5th highest. The Oregon premium rate rankings focus on 50 classifications based on their relative importance as measured by their share of losses in Oregon. Results are reported for all 50 states and for the District of Columbia.

II. AVERAGE LOSS COSTS BY STATE BASED ON MAINE'S PAYROLL DISTRIBUTION

NCCI developed a spreadsheet that shows the average loss cost for Maine compared to the average loss cost for other states based upon Maine's payroll distribution. Maine had the 8th highest average loss costs of the 38 states and the District of Columbia reporting information to NCCI. Last year Maine also ranked the 8th highest average.

State	Average Loss Cost	Rank
Montana	2.08	1
Illinois	2.04	2
Oklahoma	1.98	3
Connecticut	1.96	4
Alaska	1.82	5
N. Hampshire	1.80	6
Vermont	1.67	7
Maine	1.49	8
Georgia	1.49	9
Iowa	1.46	10
Rhode Island	1.42	11
N. Carolina	1.41	12
Louisiana	1.40	13
Tennessee	1.38	14
Kentucky	1.36	15
Maryland	1.36	16
Idaho	1.32	17
S, Dakota	1.32	18
Nebraska	1.31	19
S. Carolina	1.31	20

State	Average Loss Cost	Rank
Alabama	1.29	21
N. Mexico	1.29	22
Oregon	1.25	23
Colorado	1.18	24
Florida	1.16	25
Missouri	1.13	26
Arizona	1.12	27
Kansas	1.12	28
Mississippi	1.09	29
W. Virginia	1.06	30
Nevada	0.97	31
Hawaii	0.96	32
Virginia	0.92	33
Utah	0.90	34
Indiana	0.85	35
D.C.	0.81	36
Arkansas	0.70	37
Texas	0.67	38
Countrywide	1.25	

Note: Average loss cost does not include expense and profit loading and is an average using all payrolls. The actual average for an employer will depend on the type of business and payroll mix.

SECTION C

BUREAU OF LABOR STANDARDS

Section C: Bureau of Labor Standards

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1. INTRODUCTION

I. ROLE OF THE BUREAU OF LABOR STANDARDS IN PROTECTING MAINE WORKERS

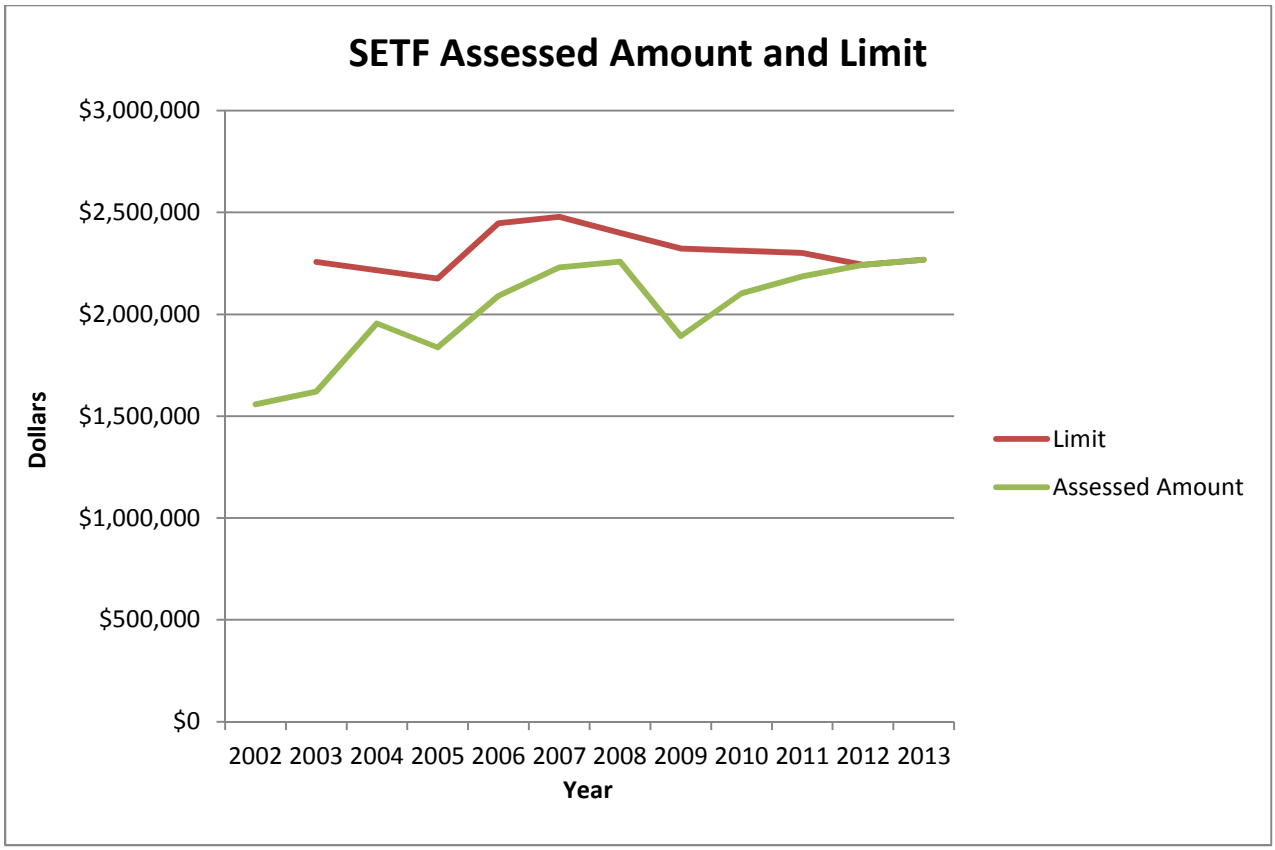
The role of the Bureau of Labor Standards (BLS) of the Maine Department of Labor (MDOL) in the Workers' Compensation system is to facilitate the prevention of occupational injuries and illnesses. This is accomplished by a variety of means.

Under Maine statute, Title 3 MRSA § 42, the Bureau has the authority to collect and analyze statistical data on work-related injuries and illnesses and their effects. To minimize employer effort and maximize data quality and availability the Bureau partners with the Maine Workers' Compensation Board (WCB) and federal agencies, coordinating data collection with them where possible.

Title 26 MRSA § 42-A also charges the Bureau with establishing and supervising safety education and training programs directed towards helping employers comply with OSHA requirements and best practices for prevention. Additionally, MDOL is responsible for overseeing the employer-employee relationship in the state through enforcement of Maine labor standards laws and the related rules, including occupational safety and health standards in the public sector. For enforcement purposes, the Bureau partners with the federal Occupational Safety and Health Administration (OSHA) and the Wage and Hour Division of the Employment Standards Administration in the federal Department of Labor maximizing coverage while minimizing resources. By accomplishing its mandated functions, the Bureau complements the efforts of federal OSHA, WCB, and insurers, enabling employers with the means for increased prevention of workplace injuries and illnesses.

The employer visits, on-site training, classes offered through the SafetyWorks! Training Institute, and data and analysis are all currently available free of charge because resources are provided by a dedicated state revenue fund collected from insurers and self-insured employers and employer groups. The fund is called the Safety Education and Training Fund or SETF, and the revenue for the fund is assessed on these insurers and self-insured employers based on their workers' compensation benefits (minus medical payments) paid out and assessed among them in proportion to the amounts they paid out to the total. The total of the amount the Bureau can collect is capped at 1 percent of the total benefits paid out.

Over time, both the number and rate of injuries and illnesses have decreased. This, and efforts at directly curbing case costs, have driven down the benefits paid out by the insurers and self-insured employers. Likewise, the cap has steadily declined to the point that last year, in order to sustain the services, the Bureau had to assess at the cap. The reasons for this decrease are discussed in detail later in this report. The diagram below illustrates the cap coming down to meet at the point of program budget needs. The amount the Bureau has needed to sustain its programs has fluctuated from year to year because of holdovers—savings from one year carried over to the next. (The holdovers were purposely not held longer than a year to avoid accumulating money that might be transferred to other uses.) For the first time, transitioning from the state fiscal year 2011 to that for 2012, the Bureau had no holdover and had to assess the full amount to pay for the services it provides.



Going forward, the Bureau may be faced with a decision to start cutting services or to request supplemental or alternative funding. The SETF is important to the services provided not only for the direct support the funds offer but also because they provide matching funds for several federal grants that totaled $885,708 in federal fiscal year 2013. In order to qualify for that federal money, the Bureau is required to match in the amount of about $200,000. The matching money comes from the SETF.

A. Summary of Services and Activities

Service	Jurisdiction / Funding Source	Activity Measures
Worker and Employer OSH Training	State SETF	438 classes 8,534 workers trained
Employer OSH Data Profiles	State SETF / Federal Bureau of Labor Statistics Grant	30 employer profiles generated
On-site Consultations	State SETF / Federal OSHA and MSHA Grants	723 employer onsite consultations and reports
Youth Employment Permit Enforcement	State General Fund	2,701 permits issued 75 denied
Wage & Hour Enforcement, Random Inspections	State General Fund	3,347 random employer inspections 357 violations 46 child labor violations
Wage & Hour Enforcement, Complaint Investigations	State General Fund	485 employer investigations 197 violations
Public Sector Safety Enforcement	State General Fund	74 employers 370 physical sites 2,370 violations $267,000 in penalties
Private Sector OSHA Enforcement	Federal OSHA	620 employer Inspections 1,106 violations $1,516,110 in penalties
OSHA Recordkeeping Employer Outreach	State SETF / Federal Bureau of Labor Statistics Grant	11 sessions in 2012 188 attendees in 2012 8 sessions planned in 2013

B. What the Data Show

There is a striking contrast between where things were 20 years ago compared to the latest data. In any given year the change from the year before is not striking. However, this report reveals marked longer-term changes.

While much of the activity appears to be funded through the state General Fund, that fund accounts for only eight full-time equivalent positions out of 41 in the Bureau, three of those 41 being unfilled.

C. Summary of Data Activities and Significant Measures

Data Programs	Funding	Result Measures
Workers' Compensation Case Data	State SETF/Federal Bureau of Labor Statistics Grant	• 13,536 disabling cases coded in 2011 ○ Increase of 471 (3.6%) from 2010 ○ Decrease of about 25% from 2001 ○ Decrease of about 67% from 1991
Survey of Occupational Injuries and Illnesses (SOII)	State SETF/Federal Bureau of Labor Statistics Grant	• 5.9 Total OSHA recordable incidence rate in 2011 ○ 5.6 from 2010 ○ Decrease of one-third from 2001 ○ Decrease of one-half from 1991 • 3.1 Days Away, Restricted or Job Transfer incidence rate in 2011 ○ 3.0 in 2010 ○ Decrease of one-third from 2001 ○ Decrease of one-half from 1991 • 1.6 Days Away From Work incidence rate in 2011 ○ 1.5 in 2010 ○ Decrease of one-third from 2001 ○ Decrease of two-thirds from 1991
Census of Fatal Occupational Injuries (CFOI)	State SETF/Federal Bureau of Labor Statistics Grant	• 19 fatalities in 2010 ○ Up from 16 in 2009 ○ Highest in 1999 with 32 ○ Lowest in 2005 with 15
OSHA Data Initiative (ODI)	Federal Occupational Safety & Health Administration	• 212 (47.0% of 451) surveyed employers had high incidence rates in 2011 ○ Down from a high of 55.5% emphasized in the 2007
Employer Substance Abuse Testing	SETF	• 3.4% total positive tests for 2011 ○ 4.3% in 2010 ○ Low of 3.4% in 2011 ○ Highs of 4.9% in 2002 and 2007 • 3.4% applicants positive for 2011 ○ 4.4 % in 2010 ○ Low of 3.4% in 2011 ○ Highs of 5.0% in 2002 and 2007 • 25.0% probable cause positive for 2011 ○ 16.2% in 2010 ○ Low of 0 in 2002 ○ High of 80% in 2007 • 1.9% random positive for 2011 ○ 2.6% in 2010 ○ Low of 1.9% in 2011 ○ High of 4.4% in 2009

The prevention of injuries and illnesses prevents workers from entering the WC system and is the most efficient and humane way to contain costs. Three studies on the 100 most-costly Maine WC cases found that almost any case can evolve into a high-cost case due to complications and the intricacies of the WC system. As explained later in this report, the reduction in high-cost cases and the number of cases is the rationale behind the Department's comprehensive education and training program

Note that a number of significant areas of employment have low levels of coverage by the WCB, notably commercial fishing and agriculture. Since the responsibilities of the MDOL extend to all Maine workers, the Bureau is working to build the means to acquire the data to allow assessment of services needed in these areas as well. This report, however, is largely limited to industries in common between the WCB system and the BLS.

II. ORGANIZATION OF THIS REPORT

The report is organized with an eye on providing the best possible picture of the prevention of occupational injuries and illnesses, including enforcement activities.

Part 2 of this report, **Prevention Services Available**, will describe the workplace injury and illness prevention activities of the Bureau and its partners in the occupational safety and health (OSH) community, including outreach, advocacy, and enforcement.

Part 3, Research and Data Available, will present research programs of the Bureau and some resulting data and conclusions.

Part 4, Challenges, will discuss how current information gathering and sharing can be improved and provide an update on the initiative in this area.

Part 5, Developments, will outline 2012 developments and some prospects for the immediate future.

2. PREVENTION SERVICES AVAILABLE

I. SAFETYWORKS!

Services provided by SafetyWorks! include on-site and off-site occupational safety and health training, consultations and outreach (non-enforcement), indoor air quality assessments and prevention functions of the Bureau of Labor Standards (BLS). Under its umbrella, a variety of free education, consultations, and outreach services are made available to Maine employers, employees, and educators. These services are voluntary and provided only at the request of the employer and are free of charge. These activities include use of the Maine Workers' Compensation Board (WCB) data supplementing the federal Bureau of Labor Statistics and OSHA data, to respond to requests for information from the OSH community and the general public on the safety and health status of Maine workers.

SafetyWorks! instructors may design their safety training programs based on industry profiles generated from data from the WCB *First Reports of Occupational Injury or Illness* (*First Reports*) among other sources. By analyzing the WCB data, SafetyWorks! consultants can see what types of injuries and illnesses are prevalent in different industry sectors in Maine. This information allows outreach and education activities to be tailored to those employers and their needs.

A. Employer and Employee Training and Education

General OSH Training - SafetyWorks! staff develop and offer industry-specific and problem-specific training. WCB data can suggest the need for, and direct the selection of the components of such training. In addition, the Bureau provides OSHA and Mine Safety and Health Administration (MSHA) approved regulatory compliance training. Approximately 50 different curricula of all types are offered, ranging in scope from 30-hour OSHA compliance courses to such tightly focused efforts as video display terminal (VDT) operator training requiring as little as two hours. This includes free training in OSHA recordkeeping, rare, if not unique to the state of Maine, and critical to collecting accurate federal data. Scheduled public training is offered at the SafetyWorks! Training Institute and at local CareerCenters. Employer training is delivered at the worksite at the employer's request. In fiscal year 2012, 438 safety classes were completed with 8,534 attendees. In 2012, the SafetyWorks! Training Institute was relocated from Fairfield to the Central Maine Commerce Center in North Augusta. This state-of-the-art training center has realistic, safety mock-ups for experiential, adult learning.

Youth Employment Education - A special emphasis for the Bureau is the education of young workers. As you will see in the data section, a high proportion of the injuries and illnesses reported occur to young workers and to workers with little experience. The Bureau regularly works with the vocational technical high schools to provide teen students with 10-hour standards training and with the Penobscot Job Corps to train their students prior to entering the workforce.

B. Employer Consultation

Employer Profiles - Using the data from the WCB's *First Reports* and the Survey of Occupational Injuries and Illnesses (SOII), the Research and Statistics Unit (R&S) of the Bureau can provide a Maine employer with a profile of that employer's injury and illness experience over a number of years. Such a profile shows the type of disabling injuries or illnesses that have been experienced by the company's workers. This profile also describes the nature of the injury or illness and the event or exposure that led to each incident. The employer uses this information to detect patterns while developing and refining the company safety program. Between November 1, 2011 and October 31, 2012, 30 employer profiles were requested.

On-Site Consultation - Also under SafetyWorks!, the Workplace Safety and Health (WS&H) Division of the Bureau provides consultation services to public and private sector employers at their request. In the private sector, the Bureau provides consultations to employers identified by Regional OSHA for inspection through its Local Emphasis Programs (LEPs). National OSHA and Regional OSHA both identify employers for LEPs and National Emphasis Programs (NEPs) based on summary data from the WCB and the OSHA Data Initiative (ODI). Consultations are also provided in both the public and private sector upon employer request.

A typical employer consultation can include:

- An evaluation of training records from the employer, including an analysis of the employer's Workers' Compensation cases and/or the OSHA Forms 300, 300A, and 301.
- An environmental evaluation (walk-through).
- Examination of mandated written safety programs and employer policies.
- An examination of work processes. Consultations are advisory and cooperative in nature. In fiscal 2012, 723 employer on-site consultations were requested and completed.

For more on the services offered by the SafetyWorks! program, go to: www.safetyworksmaine.com.

II. ENFORCEMENT

Despite all the voluntary resources available, there is a need to determine compliance on a non-voluntary basis if, for no other reason, as a check on the Bureau's voluntary process. In order to accomplish that, there are several enforcement programs in place. The Bureau keeps those separate from the SafetyWorks! programs to distinguish them from those which are voluntary. The enforcement activity is triggered through targeted random inspections, complaints and/or known issues which are typically discovered through analysis of one or more data sources (as outlined in section 3 of this report).

A. Youth Work Permits

To protect young workers, the Wage and Hour Division of the Bureau reviews and approves or denies work permit applications for workers under the age of 16. The approval process involves verifying the young worker's age, that the young worker has passing grades in school and that the work activity and environment is appropriate for the age of the worker. From July 1, 2011 to June 30, 2012, 2,701 work permits were approved and 75 permits were denied. About a third of the denials were due to the applicant being underage for the proposed employment in the restaurant industry.

B. Wage and Hour Enforcement

In addition to the issuance of work permits, the Wage and Hour Division inspects employers for compliance with Maine wage and hour and youth employment laws, which have an occupational safety and health component. The Division can use age data from the WCB *First Report of Injury or Illness* to select industries and employers for inspection. Employers are also identified for inspections based on combinations of certain administrative criteria and past complaints. From July 1, 2011 to June 30, 2012 the Division conducted 3,347 random inspections finding 357 separate violations. There were also 485 complaint assignments finding 197 violations. There were 46 youth employment violations, mostly involving the number of hours worked or the time of day the work was performed.

C. Public -Sector Site Safety Inspections

The Workplace Safety and Health (WS&H) Division of the Bureau enforces safety regulations based on federal OSHA standards *in the public sector only* and is therefore responsible for the health and safety of employees of state and local governments and quasi-state/municipal agencies. The Board of Occupational Safety and Health, whose members are appointed by the Governor, oversees public sector safety and health enforcement. WS&H prioritizes state and local agencies for inspection based on reports of deaths or serious injuries requiring overnight hospital stays, complaints from employees or employee representatives, the agencies' injury and illness data from the WCB and the results of the Survey of Occupational Injuries and Illnesses (SOII). WS&H compliance officers conduct randomly selected, unannounced inspections of the work environment and can cite the state and local employers

for non-compliance with safety and health standards, which may carry fines. Failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be asked to shut down the operation; however, this shutdown is not mandatory. By way of comparison with OSHA activity in the private sector (below), there were 74 public sector employers and 370 site inspections completed in federal fiscal year 2012 (October 2011 through September 2012); the inspections resulted in 2,370 violations cited and $267,000 assessed in penalties before reductions for size of the employer and good faith abatement efforts.

D. Private- Sector Site Safety Inspections (Federal/OSHA)

In Maine, the US Department of Labor, Occupational Safety and Health Administration (OSHA) enforces federal workplace health and safety standards in the private sector in parallel with the Bureau's enforcement in the public sector. OSHA prioritizes employers for inspection based on the employers' injury and illness data from the OSHA Data Initiative (ODI), Local Emphasis Programs (LEPs) or National Emphasis Programs (NEPs) – both typically developed using the ODI, and complaints from employees or employee representatives. OSHA compliance officers likewise conduct randomly selected, unannounced and complaint-based inspections of the work environment and can cite employers for non-compliance with safety and health standards, which usually carry fines. As in the public sector, failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be required to shut down the operation. OSHA conducted 620 inspections in Maine for federal fiscal year 2012 (October 2011 through September 2012) resulting in 1,016 citations and $1,516,110 in penalties.

Effective workplace injury and illness prevention services cannot be designed and delivered without a detailed working knowledge of all factors that contribute to occupational safety and health (OSH). This knowledge is gained by OSH research, through continuous injury surveillance programs, and through conducting focused studies.

3. RESEARCH AND DATA AVAILABLE

I. OCCUPATIONAL SAFETY & HEALTH SURVEILLANCE PROGRAMS

The Research and Statistics Unit (R&S) in the Technical Services Division (TSD) of the Bureau of Labor Standards (BLS) is responsible for the administration and maintenance of the following data sources:

- Maine Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*
- Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses (SOII)
- Federal Bureau of Labor Statistics Census of Fatality Occupational Injury Program (CFOI)
- Federal OSHA Data Initiative (ODI)
- Occupational Fatality Reporting Program

Combined, the results of these surveys provide a useful profile of occupational injuries and illnesses in Maine. The following are program overviews and data summaries generated by these programs.

A. Maine Workers' Compensation Board Employer's *First Report of Occupational Injury or Illness*

Since 1973, the Maine Bureau of Labor Standards has coded, tabulated, analyzed, and summarized data from the WCB *First Reports*. This activity began as a program called the Supplementary Data System (SDS) funded by the federal Bureau of Labor Statistics. When federal funding ended, this program was continued with state funding and is now called the Census of Case Characteristics. The Bureau data is directly linked to the WCB administrative data for each case and provides a wealth of information on individual cases. The database includes:

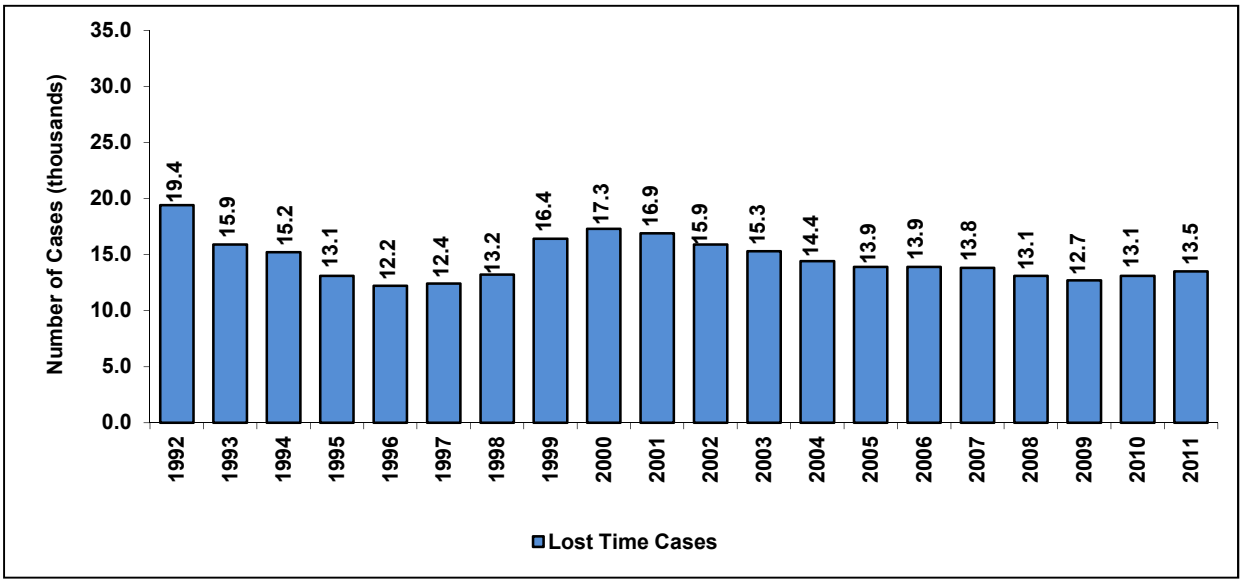
1) Characteristics of the employer
2) Characteristics of the employee
3) Characteristics of the workplace
4) Characteristics and results of the incident
5) Characteristics and results of the workers' compensation claim

Because the data are tied to the WCB administrative data, the consistency and completeness of administrative data is critical. The Bureau analyzes the WCB data and provides injury profiles to employers and safety professionals to use in prevention and training activities. The following is a summary of the data from this program.

i. Twenty-Year Pattern of Disabling Cases, Maine (1991–2011)

In 2011, there were 13,536 disabling cases reported to the Maine Workers' Compensation Board. A disabling case is a case in which a worker lost one or more days of work beyond the day of the injury. Figure 1 shows the twenty-year trend of disabling cases. The 2011 figure shows an increase of 471 cases from 2010. Even with the small increase in 2011, there has been a 14 percent reduction in disabling cases reported from 2002; about a 30 percent reduction since the 1992 reforms.

Figure 1: Twenty-Year Pattern of Disabling WCB Cases, 1992–2011



ii. Geographic Distribution of Disabling Cases, Maine (2008–2011)

In 2011, eight of the sixteen counties had an injury rate higher than the state rate. The eight counties were: Sagadahoc (consistently highest by a factor of one-and-a-half or more), Kennebec, Cumberland, Washington, Aroostook, Knox, Penobscot and Somerset. Table 1 describes the number of disabling cases by county for calendar years 2008 through 2010. The rate is calculated by dividing the number of disabling cases in each county by its respective employment in thousands. Geographic distribution data can be useful in health planning and setting enforcement and consultation priorities by region. This rate does not take into account overtime and part-time exposure hours.

Table 1: Geographical Distribution of Disabling Cases, Maine (2009–2011)

County	2009			2010			2011		
	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000
Sagadahoc	596	17,635	33.8	551	17,474	31.5	641	17,858	35.9
Kennebec	1,253	58,956	21.3	1,472	58,404	25.2	1,475	59,501	24.8
Cumberland	3,370	147,150	22.9	3,791	147,149	25.8	3,597	149,870	24.0
Washington	302	12,928	23.4	287	12,631	22.7	280	12,949	21.6
Aroostook	668	31,572	21.2	679	30,871	22.0	669	31,266	21.4
Knox	377	19,144	19.7	355	19,009	18.7	414	19,430	21.3
Penobscot	1,472	73,044	20.2	1,487	71,743	20.7	1,520	72,377	21.0
Somerset	414	22,218	18.6	406	21,945	18.5	466	22,353	20.8
Maine	**12,682**	**647,298**	**19.6**	**13,065**	**641,896**	**20.4**	**13,536**	**651,038**	**20.8**
Androscoggin	1,074	53,501	20.1	1,086	53,580	20.3	1,102	53,889	20.4
Piscataquis	127	6,555	19.4	107	6,542	16.4	123	6,691	18.4
Hancock	405	26,972	15.0	453	26,903	16.8	496	27,561	18.0
Oxford	356	25,501	14.0	380	25,160	15.1	415	25,912	16.0
Franklin	194	12,990	14.9	170	12,715	13.4	207	12,931	16.0
Lincoln	265	16,805	15.8	257	16,595	15.5	264	17,008	15.5
Waldo	223	17,557	12.7	166	17,385	9.5	239	17,884	13.4
York	1,218	104,770	11.6	1,329	103,790	12.8	1,348	103,562	13.0
Unknown*	368	----	----	89			29		

* Unknown represents WCB *First Reports* with missing location information.

Sources: The case data is from the Workers' Compensation Board *Employer's First Report of Occupational Injury or Illness*. The employment data is from the Center for Workforce Research and Information, Maine Department of Labor.

iii. Disabling Cases by Occupational Groups, Maine (2008–2010)

There are ten occupational groups that accounted for more than 70 percent of all reported disabling injuries in 2010. Table 2 describes the top ten occupational groups with corresponding rates. Further research is warranted to study the trends and patterns of injuries and illnesses within these ten occupational groups to identify the occupational risk factors. Of note, health care support and health care practitioner occupations, when combined, account for 12.3 percent of all disabling cases, slightly more than transportation and material moving occupations.

Table 2: Disabling Cases by Occupational Groups, Maine (2009–2011)

Occupational Groups	2009		2010		2011	
	Number	Percent	Number	Percent	Number	Percent
Transportation and Material Moving	1,821	14.4	1,390	10.6	1,649	12.2
Office and Administrative Support	1,046	8.2	1,256	9.6	1,207	8.9
Production	1,086	8.6	1,144	8.8	1,137	8.4
Installation, Maintenance, and Repair	993	7.8	1,062	8.1	1,111	8.2
Construction and Extraction	1,007	7.9	1,011	7.7	1,048	7.7
Healthcare Support	1,007	7.9	988	7.6	955	7.1
Food Preparation and Serving	872	6.9	991	7.6	934	6.9
Building and Grounds Cleaning and Maintenance	832	6.6	715	5.5	843	6.2
Sales and Related	840	6.6	691	5.3	700	5.2
Other Occupational Groups	3,178	25.1	3,817	29.2	3,952	29.2
Total	**12,682**	**100.0**	**13,065**	**100.0**	**13,536**	**100.0**

Source: Workers' Compensation Board *Employer's First Reports of Occupational Injury or Illness*

iv. Length of Service of Injured Worker, Maine, 2008–2010

One of the patterns that the Bureau has identified from the analyses of the WCB data is that more new hires (under one year of service) are being injured on the job when compared to those employees who have been with their employers for one year or more. New hires accounted for 28.6 percent of the disabling *First Reports* in 2011. (For each of the past three years, new hires comprise roughly one-quarter to one-third of all disabling cases.)

At the same time, the proportion of long-term workers with 15 or more years with the same employer has increased, from 10.3 percent of all claims in 2001 to 13.9 percent in 2011. Of specific concern, the proportion of workers with 20 or more years with the same employer has increased from 5.9 percent of all claims in 2001 to almost 10 percent in 2011. This change merits further investigation, but it is reasonable to speculate that the economic downturn of 2008-2012 has provided an incentive for older workers to delay retirement and for employers to use the workforce that they have in place (without recruiting new or additional employees).

Table 3a: Length of Service of Injured Worker, Maine, 2009–2011

Length of Service of the Injured	Disabling Cases					
	2009		2010		2011	
	Number	Percent	Number	Percent	Number	Percent
Under 1 Year	3,411	26.9	3,525	27.0	3,814	28.2
1 Year	1,656	13.1	1,520	11.6	1,491	11.0
2 Years	1,084	8.5	1,154	8.8	1,027	7.6
3-4 Years	1,653	13.0	1,929	14.8	1,532	11.3
5-9 Years	1,996	15.7	1,994	15.3	2,410	17.8
10-14 Years	885	7.0	1,010	7.7	1,234	9.1
15-19 Years	494	3.9	532	4.1	549	4.1
20+ Years	1,324	10.4	1,267	9.7	1,325	9.8
Unknown	179	1.4	134	1.0	154	1.1
Total	**12,682**	**100.0**	**13,065**	**100.0**	**13,536**	**100.0**

Source: Workers' Compensation Board Employer's *First Reports of Occupational Injury or Illness*

v. Age of Injured Worker, Maine, 2001, 2008–2010

Related to the Table "3a" on the previous page, the Bureau has been tracking the issue of the aging workforce as it applies to disabling Workers' Compensation Claims. As can be seen below in Table 3b, the proportion of injuries occurring to those workers age 50 and older has risen from 20.2 percent in 2001 to 34.6 percent in 2011. This is of concern since, according to the Maine Jobs Council's 2010 report: *Maine's Aging Workforce: Opportunities and Challenges,* "By 2018, nearly one-quarter of the labor force will be age 55 and older." (Note that the Maine Jobs Council is now known as the State Workforce Investment Board.)

Table 3b: Age of Injured Worker, Maine, 2001 and 2009-2011

Age of the Injured Worker	Disabling Cases							
	2001		2009		2010		2011	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Under 19	397	2.3	186	1.5	196	1.5	174	1.3
19-24	2,182	12.9	1,373	10.8	1,567	12.0	1,517	11.2
25-29	1,816	10.8	1,319	10.4	1,283	9.8	1,374	10.2
30-34	2,157	12.8	1,129	8.9	1,197	9.2	1,209	8.9
35-39	2,407	14.3	1,334	10.5	1,245	9.5	1,292	9.5
40-44	2,464	14.6	1,567	12.4	1,514	11.6	1,496	11.1
45-49	2,036	12.1	1,753	13.8	1,824	14.0	1,802	13.3
50-54	1,548	9.2	1,627	12.8	1,792	13.7	1,892	14.0
55-59	1,021	6.0	1,286	10.1	1,289	9.9	1,510	11.2
60+	849	5.0	1,108	8.7	1,158	8.9	1,270	9.4
Missing	3	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total	**16,879**	**100.0**	**12,682**	**100.0**	**13,065**	**100.0**	**13,536**	**100.0**

Source: Workers' Compensation Board *Employer's First Reports*

B. Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses (SOII) SHA Recordable Cases

Since 1972, the Maine Bureau of Labor Standards has partnered with the federal Bureau of Labor Statistics through a cooperative agreement to collect data through the annual Survey of Occupational Injuries and Illnesses (SOII). The results from this survey are summarized and published annually on the federal Bureau of Labor Statistics website at this link: http://www.bls.gov/iif/oshstate.htm#ME.

The data are generated from a random sample stratified by industry and establishment size. There are over 3,000 work establishments in the sample in any given year. For the year 2011 the Maine Bureau of Labor Standards surveyed 2,650 private establishments and 513 public sector agencies, asking these businesses about their injury experience with OSHA recordable injuries and illnesses. In addition, employers report their average employment and total hours worked at the reporting worksite. From this information, incidence rates are produced. The incident rate is the estimated number of incidents per 100 full-time workers, standardized to a full calendar year. Unlike the rates generated from employment as the denominator, these rates take into account part-time and overtime exposure hours.

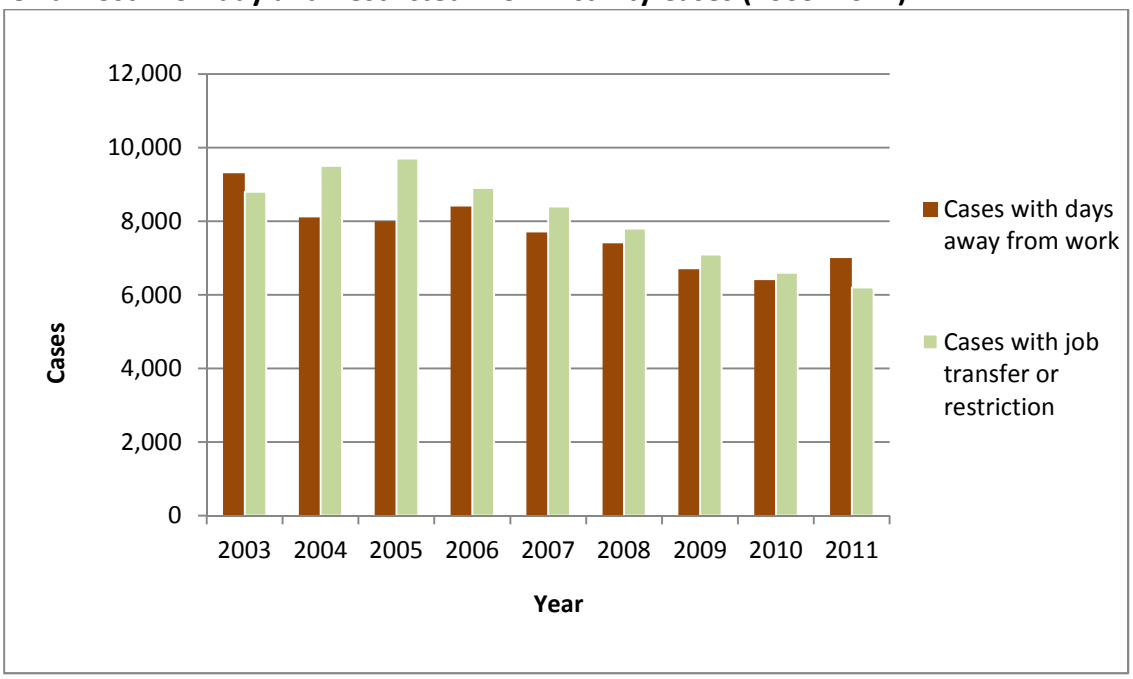
Figures 2a and 2b display results from the 2011 SOII. Data collected from this survey is not comparable with the WCB rate data for the following reasons:

- The two systems use different definitions of recordability of work-related cases.
- WCB rates are employment-based while the SOII rates are computed based on hours worked converted into full-time equivalents (FTEs).
- The WCB data is a census of disabling injuries and illnesses while the SOII data is a statistical sample. The SOII data is therefore subject to sampling errors.

i. OSHA Reportable Case Numbers and Rates

There has been an ongoing debate in the OSH community about using the number versus rates; thus, the SOII estimates both. Figure 2a provides the estimated number of recordable cases while Figure 2b depicts the rates. The rates take into account the number of hours workers were exposed to workplace risks. The exposure hours vary from industry to industry and year to year, and the rates take that into account.

Figure 2a: Lost Workday and Restricted Work Activity Cases (2003–2011)

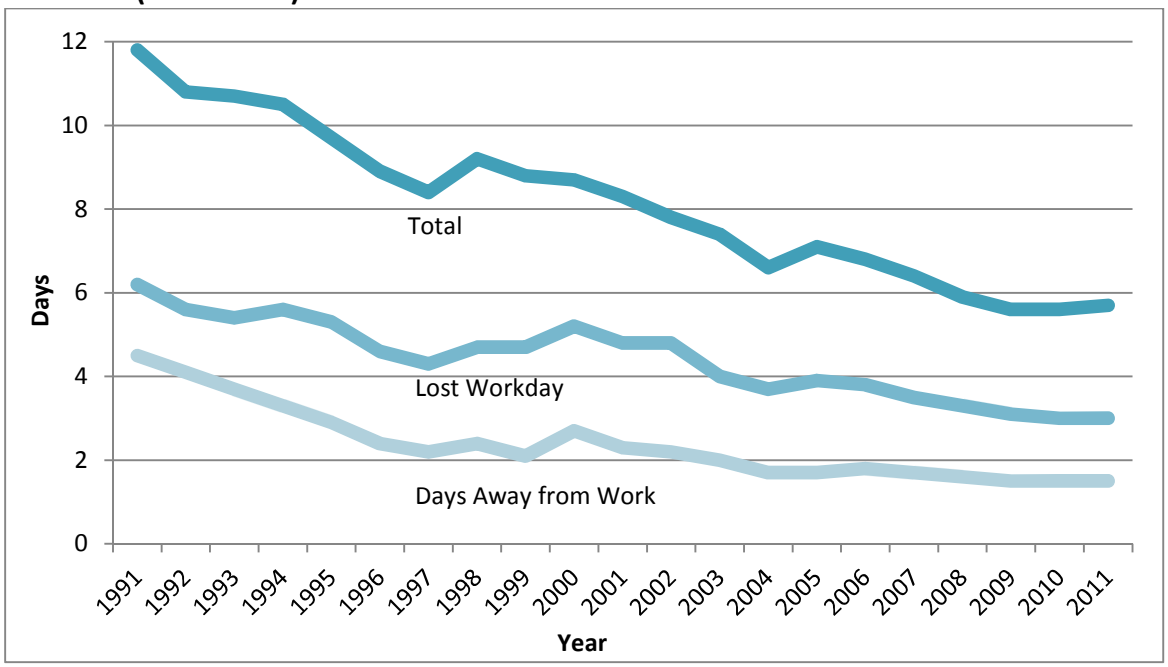


For 2011, there were an estimated total of 13,272 OSHA recordable injuries resulting in at least one day away from work and/or one day of job transfer or restriction beyond the day of injury. Of this total it was estimated that 7,049 cases resulted in at least one day away from work and 6,223 cases resulted in job transfer or restriction without any days away from work.

ii. OSHA Reportable Case Rates

A complement to the numbers generated from the WC and SOII data are the rates that, as mentioned, take into account differences in the hours worked and exposed.

Figure 2b: Total Recordable, Lost Workday or DART and Days Away from Work Cases per 100 FTEs (1991–2011)



Note: DART = Days Away from Work, Restricted Work Activity, or Job Transfer

Figure 2b shows the decline in the rate of injuries and illnesses reported. This table is per 100 full-time equivalents (FTEs) computed from employer-reported total hours worked. The 2011 incidence rate was 5.7 total cases per 100 FTEs, slightly higher than 2010. The Days Away, Restricted, Transferred (DART) incidence rate was 3.0, the same as in 2010. The cases with Days Away from Work rate was 1.5, the same as in 2010.

The Total and Lost Workday rates have decreased by one-third from 2001 and by one-half from 1991. The Days Away, Restricted, Transferred rate has decreased by one-third from 2001 and by two thirds from the 1991 Days Away From Work rate. Note that there was a change in this time period denoted by the break in the graph in the graph between the years 2001 and 2002 when OSHA recordkeeping definitions were changed. In any case this is a significant decrease, seen only as small decrements looking at them from year to year.

Again, more SOII rate data from 1996–2011 is published on the federal Bureau of Labor Statistics website at this link: http://stats.bls.gov/iif/oshstate.htm#ME.

iii. Industry Sector Data

According to the 2011 SOII (private sector), Transportation Equipment Manufacturing recorded the highest total recordable incidence rate of 14.9 per 100 FTEs. Table 3 describes the top ten private industry total recordable rates.

Table 3: Industries with the Top 10 Total Recordable Rates, Maine, 2011

Industry Group	Cases per 100 FTEs
Transportation Equipment Manufacturing	14.9
Landscaping Services	14.4
Nursing Care Facilities	12.5
Direct Selling Establishments	12.3
Foundation, Structure, and Building Exterior Contractors	11.8
Crop Production	11.5
Warehousing and Storage	11.2
Community Care Facilities for the Elderly	10.6
Wood Product Manufacturing	10.4
Fabricated Metal Product Manufacturing	10.3
Building Material and Garden Equipment Supplies and Dealers	10.0
All Private Industries	**5.7**

Source: Federal Bureau of Labor Statistics *Survey of Occupational Injuries and Illnesses*

The link at http://www.bls.gov/iif/oshstate.htm#ME has rates for most of the major industries.

C. Federal Bureau of Labor Statistics, Census of Fatality Occupational Injury Program (CFOI)

Since 1992, the Maine Bureau of Labor Standards has worked in partnership with the federal Bureau of Labor Statistics to administer the Census of Fatal Occupational Injuries (CFOI) program for Maine.

The CFOI program is a federal/state cooperative program to collect data on all fatal occupational injuries. It was created in 1990 by the U.S. Department of Labor, Bureau of Labor Statistics and includes all 50 states and the District of Columbia. The program was established to determine a true count of work-related fatalities in the United States. Prior to CFOI, estimates of work-related fatalities varied because of differing definitions and reporting sources. The CFOI program collects and compiles workplace fatality data that are based on consistent guidelines throughout the United States.

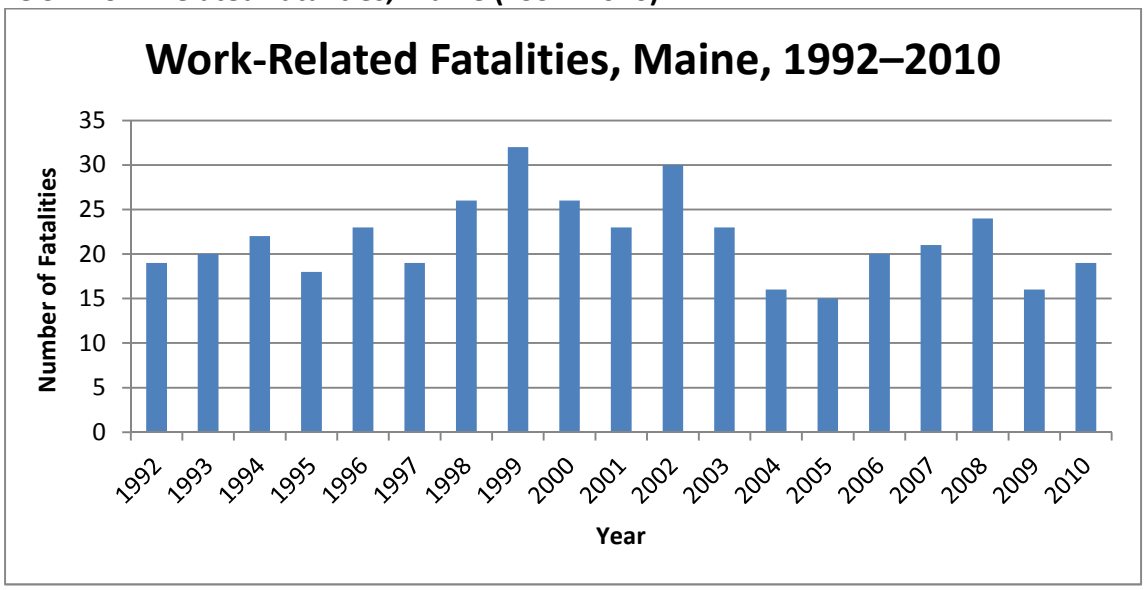
A death is considered work-related if an event or exposure resulted in an employee fatality while in work status, whether at an on-site or off-site location. Private and public sector (state, local, and county government) are included. Fatalities must be confirmed by two independent sources before inclusion in the CFOI. Sources in Maine include the WCB *Employer's First Reports of Occupational Injury or Illness,* and fatality reports from the following agencies and sources: 1) death certificates from Maine Center for Disease Control and Prevention, 2) the Chief Medical Examiner's Office, 3) the Department of Marine Resources, 4) investigative reports and motor vehicle accident reports from the Maine State Police, 5) investigative reports from the local police and sheriff's department, 6) the U.S. Coast Guard; OSHA reports, and 7) newspaper clippings and other public media.

Only fatalities due to injuries are included in the CFOI. Fatalities due to illness or disease tend to be undercounted because the illness may not be diagnosed until years after the exposure or the work relationship may be questionable.

i. Fatal Occupational Injuries, Maine (1992–2010)

Figure 3 shows the numbers of work-related fatalities recorded in Maine from 1992–2010.

Figure 3: Work-Related Fatalities, Maine (1992–2010)



Source: Maine Census of Fatal Occupational Injuries

ii. Fatal Occupational Injuries by Industry and Event/Exposure

Table 4 shows the number of fatal occupational injuries by industry and event/exposure for the years 1992 to 2010. Only fatalities that were publishable are provided. Fatality numbers that were not publishable are provided at the bottom of the chart in the category Other/Non-publishable & Unknown. (Restrictions on publishability are exercised in order to protect the identities of individuals when fatality information is not available through public/media sources.) Finalized numbers for 2011 fatalities will not be available until spring of 2013.

Note that "Transportation Accidents" account for more than 50 percent of the fatalities.

Table 4: Fatal Occupational Injuries & Illnesses by Industry and Event/Exposure Maine (1992–2010)

Industry	Assaults and Violent Acts	Contact with Objects and Equipment	Exposure to Harmful Sub-stances or Environment	Falls	Fire and Explosions	Transportation Accidents	Total
Accommodation and Food Services	3						**9**
Administrative and Support and Waste Management and Remediation Services		4		3		8	**17**
Agriculture, Forestry, Fishing, And Hunting		23	19	5		77	**125**
Arts, Entertainment, and Recreation							**7**
Construction		12	10	19	3	13	**57**
Finance and Insurance							**3**
Health Care and Social Assistance						10	**15**
Information						3	**6**
Manufacturing		13		9		10	**35**
Other Services (except Public Administration)	3	3				3	**11**
Professional, Scientific, and Technical Services							**3**
Public Administration	3					8	**13**
Real Estate and Rental and Leasing							**3**
Retail Trade	4			4		11	**22**
Transportation and Warehousing		7		3		47	**60**
Utilities							**5**
Wholesale Trade						15	**19**
Other/Non-publishable & Unknown	7	16	10	9	6	9	**2**
TOTAL	**20**	**78**	**39**	**52**	**9**	**214**	**412**

Source: Maine Census of Fatal Occupational Injuries

D. OSHA Data Initiative (ODI)

Every year since 1993, the Bureau has received a grant from Federal OSHA to collect data on specific worksite occupational injury and illness rates in Maine. The information is used by OSHA to target

establishments with high incidence rates for intervention through consultation or enforcement. Usually the regional office of OSHA initiates this activity under the federal OSHA Local Emphasis Program (LEP).

The survey instrument used is called the OSHA Work-Related Injury and Illness Data Collection Form. The data collected are from the same sources as the SOII survey (OSHA 300 Injury Log) but requiring less detailed information.

Targeted establishments are notified by Federal OSHA about their high injury rates, and these establishments are encouraged to utilize the safety and health consultation services provided by Maine Bureau of Labor Standards at no cost to employers.

Table 5: OSHA Data Initiative Sample Size and the Results of Survey Years 2007–2011

Variables	2007	2008	2009	2010	2011
Sample Size	421	475	455	451	376
National DART Rate	2.1	2.0	1.8	1.8	1.8
National DART Rate (Targeted)	5.0	4.5	2.5	2.0	(Not Available)
Maine Targeted Establishments	234 (55.5%)	243 (51.0%)	233 (51.2%)	212 (47.0%)	(Not Available)

Note: DART = Days Away from Work, Restricted Work Activity, or Job Transfer

E. Occupational Fatality Reports

Ten years ago, BLS piloted a fatality assessment, control and evaluation (FACE) program designed after the Federal FACE program conducted by the National Institute for Occupational Safety and Health (NIOSH). The program consisted of a series of publications regarding work-related fatalities, the conditions that contributed to them and measures that should or could have been taken to prevent them. With federal funding unavailable to continue the FACE program, BLS implemented its own Occupational Fatality Reporting Program (OFR) and published nine OFR reports through 2008 to draw attention to the work environments and behaviors resulting in worker fatalities.

In late 2012, the Bureau renewed this effort and is preparing a new OFR series that will identify fatality hazards in order to motivate employers and employees to embrace recommended safety practices and behaviors. The first report of the new OFR series entitled “Dying Alone on the Job,” January 2013, explores the causes of death while working alone and makes practical and industry-oriented recommendations for increased safety.

Planned future OFR topics include fatalities due to electrocution from direct or indirect contact with energized sources, tree cutting accidents, climbing/falling accidents and the general practices of situational awareness.

F. Employer Substance Abuse Testing

Under the Maine Substance Abuse Testing Law, the Bureau of Labor Standards reviews and approves or denies proposed drug testing policies of Maine employers who want to have a substance abuse testing program. Employers can either use a model testing policy available from the Bureau or develop their

own drug testing policy that complies with Maine drug testing laws (The Maine Substance Abuse Testing Law, Title 26 MRSA, Section 680 *et seq*.).

The Maine Substance Abuse Testing Law is intended to protect the privacy rights of employees, yet allow an employer to administer testing for several purposes: 1) to ensure proper testing procedures, 2) to ensure that an employee with a substance abuse problem receives an opportunity for rehabilitation and treatment, and 3) to eliminate drug use in the workplace. Regulation of testing for use of controlled substances has been in effect under Maine law since September 30, 1989.

The administration of this law is the collaborative effort of the following agencies:

- The Maine Department of Labor (MDOL), which:
  - Reviews and approves substance abuse testing policies.
  - Conducts the annual survey of substance abuse testing.
  - Analyzes testing data and publishes the annual report.
  - Provides models for Applicant and Employee Testing Policies.
- The Maine Department of Health and Human Services (DHHS), which licenses testing laboratories, and the Office of Substance Abuse Services within DHHS, which reviews and approves employee assistance programs (EAPs) for employers who do probable cause or random and arbitrary testing. (Any employer with more than 20 full-time employees must have a functioning EAP prior to testing their employees.)

In 2011, the annual survey indicated that a total of 16,100 tests were administered by employers with approved policies and 545 (3.4%) of these tests were positives. There were 15,580 applicants tested and 532 (3.4%) of the applicants tested positive for illegal substances. Table 6 shows the total and applicant test results for the last 10 years while Table 7 describes the corresponding results for probable cause and random testing.

For a full report, visit: www.maine.gov/labor/labor_stats/publications/substanceabuse. Survey data for 2012 will be available in 2013.

Table 6: Results of Overall and Applicant Testing (2002–2011)

Year	Approved Policies	Total Tests			Job Applicant Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
2002	252	13,128	642	4.9	12,595	624	5.0
2003	271	16,129	761	4.7	15,345	727	4.7
2004	287	17,428	826	4.7	16,702	803	4.8
2005	310	17,742	749	4.2	16,876	706	4.2
2006	325	18,112	853	4.7	17,364	824	4.7
2007	350	22,641	1,110	4.9	21,700	1,076	5.0
2008	384	23,437	1,086	4.7	22,477	1,045	4.7
2009	412	17,399	666	3.8	16,719	631	3.8
2010	433	21,388	931	4.3	20,267	897	4.4
2011	433	16,100	545	3.4	15,580	532	3.4

Table 7: Results of Probable and Random Testing (2002–2011)

Year	Approved Policies	Probable Cause Testing			Random Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
2002	252	10	0	-	523	18	3.4
2003	271	29	7	24.1	755	27	3.6
2004	287	6	1	16.7	720	22	3.1
2005	310	18	9	50.0	863	34	3.9
2006	325	18	2	11.1	730	27	3.7
2007	350	5	4	80.0	936	30	3.2
2008	384	13	2	15.4	947	37	3.9
2009	412	16	6	37.5	664	29	4.4
2010	433	39	6	16.2	1,082	29	2.6
2011	433	12	3	25.0	847	16	1.9

II. RESEARCH PROJECTS OTHER THAN ANNUAL REPORT

A. Capacity Building in OSH Surveillance

The Maine Bureau of Labor Standards is a member of a national work group that developed core occupational safety and health surveillance indicators. The membership of this work group is comprised of epidemiologists and researchers from 13 states, the Council for State and Territorial Epidemiologists (CSTE), and the National Institute for Occupational Safety and Health (NIOSH). In addition, the Workgroup has developed a "How to Manual" on generating these indicators. The manual is available on the CSTE website: http://www.cste.org/webpdfs/OHIdocumentrevised2008.pdf.

These occupational health indicators can provide information about a population's status with respect to workplace factors that can influence safety and health of workers. These indicators can either be measures of health (work-related disease or injury) or factors associated with health, such as workplace exposures, hazards or interventions. These indicators are intended to:

- Promote program and policy development at the national, state, and local levels to protect worker safety and health.
- Build core capacity for occupational health surveillance at the state level.
- Provide guidance to states regarding the minimum level of occupational health surveillance activity.
- Bring consistency to time-trend analyses of occupational health status of the workforce within states and to comparisons among states.

The funding for the project in Maine ended in 2005; however, since then the MDOL has continued to participate in the work group and the results of this initiative are available on the CSTE website: http://www.cste.org/OH/OHmain.asp.

B. OSHA Recordkeeping Employer Outreach Initiative

The Survey of Occupational Injuries and Illnesses and the OSHA Data Initiative survey depend on the accuracy of data tabulated from the OSHA Recordkeeping process. Additionally Federal OSHA enforces OSHA recordkeeping law and rules and fines employers for non-compliance. To ensure the accuracy of the data and to help employers comply with OSHA recordkeeping guidelines and avoid the fines, the

Research & Statistics Unit provides formal training, consultation, and outreach functions to Maine employers, free of charge.

In 2012, the BLS Research and Statistics training staff conducted 11 classes with 188 attendees in various locations in the state from Portland to Presque Isle. For 2013, there will be eight sessions offered throughout the state.

Of note, in Maine federal OSHA enforces OSHA recordkeeping rules (CFR1904) for private-sector establishments. Public-sector (state and local government employers) enforcement falls under the Bureau of Labor Standards, Workplace Safety and Health Division.

C. Special Projects

Using information from the Maine Workers' Compensation Board's *Employer's First Report of Occupational Injury or Illness*, the Research & Statistics Unit conducted the following special research projects in 2012:

- Lyme Disease in the Workplace
- Maine's Caregivers Injured by Violence and Aggression in the Workplace
- Custodian/Housekeeper Injuries at Healthcare and Educational Institutions
- Error Checker for Workers' Compensation Case Coding
- Tableau: An Interactive Workers' Compensation Database

i. Lyme Disease in the Workplace – A Thirteen-Year Retrospective, 1999–2011

In response to a research request from the Maine Center for Disease Control and Prevention, the number of work related incidents of Lyme disease for the years 1999 to 2011 were extracted from Workers' Compensation data and a report was prepared to present the collected and analyzed data. The data showed that the years with the highest incidents of work related Lyme disease cases were 2006 with 83 cases, 2007 with 34 cases, and 2011 with 32 cases.
Over the thirteen-year period, the total number of reported cases that resulted in days away from work numbered 276. Landscapers and Groundskeepers had the highest incidence of contracting Lyme disease during that period, with a total of 61 cases.

ii. Maine's Caregivers, Social Assistance and Disability Rehabilitation Workers Injured by Violence and Aggression in the Workplace in 2011

Observations that a significant number of caregivers were incurring injuries due to violence or aggression by care recipients prompted a review of the 2011 Workers' Compensation *First Reports of Occupational Injury or Illness*. Analysis of the report data resulted in the determination that 13.4 percent of injury reports submitted by Maine's Health Care and Social Assistance institutions were for injuries sustained due to violence/aggression by care recipients towards caregivers. A report published under this section's title provided detailed information drawn from the injury reports and included a breakdown of the number of reports submitted by healthcare and social assistance institution types, injury event characteristics, employee occupations, and body parts affected.

A separate section on human bites was included in the report in order to address the high number of bites sustained by workers and the associated risk factors of potential bacterial infection.

iii. Maine's 2011 Workers' Compensation Injuries of Custodians/Housekeepers Employed at Educational and Health Care Institutions

Observations that custodians/housekeepers working within healthcare and educational institutions incurred a significantly higher number of injuries than in other large scale Maine industries prompted the review of Maine's 2011 Workers' Compensation claims for this occupational category. Analysis of the claims resulted in the determinations that the rates of injury for custodians/housekeepers in healthcare and education were 6.0 and 5.9, respectively (rates of injury = injury incidents per 100 employees). Other major industries, Accommodation and Food Services and Administrative and Waste Services had rates of injury of 2.5 and 2.8, respectively. The rate of injury for all of Maine's custodians/housekeepers was 4.4.

Also provided in the report were safety recommendations made in two separate studies; one for reducing custodian injuries in educational institutions in Vancouver, British Columbia, and the other for implementing safety improvements in order to reduce custodian/housekeeper injuries in a Texas hospital.

iv. Workers' Compensation Case Coding Error Checker

The Research and Statistics Unit of the Bureau of Labor Standards codes 12,000 to 15,000 Workers' Compensation cases each year. Coding is conducted by one to two primary coders and up to two additional support coders. Injuries are coded using the federal Occupational Injury and Illnesses Coding System 2.0.1.

To guarantee consistency across cases and coders, an automated coding checker was built by the Bureau of Labor Standards to specifications utilized by the federal Bureau of Labor Statistics. The error checker is run on a monthly basis and typically any identified coding conflicts are then resolved within five business days. This process has also provided feedback to federal coding personnel to refine its coding system.

v. Tableau Interactive Web Database for Workers' Compensation Injury Data

In response to requests to publish characteristics of Workers' Compensation annual injury data, it was determined that the most effective method of graphic presentation would be via the interactive database software Tableau on the Department of Labor's web-site. This method of data presentation will allow data seekers easy access to Workers' Compensation injury data that will be updated on an annual basis and is anticipated to be available by February 15, 2013.

4. CHALLENGES

The following items are challenges identified this year or ones that continue from previous years.

I. SAFETY EDUCATION & TRAINING FUNDING

As mentioned in the introduction, funding for the Bureau's prevention efforts comes either through federal cooperative grants or the Safety and Education Training Fund (SETF). Four of the five federal grants require matching state funding. For the Bureau, those state matching funds come out of SETF. Due to the decline in claims and the declining cost of claims as illustrated by the data in the introduction, the cap has declined as the Bureau's expenses have climbed. The expense and revenue curves are meeting. The fund is currently capped at 1 percent of the payout from claims.
In a sense we have performed the ideal—putting ourselves out of business. The caution though is that this situation *may mean a decrease in the education, consultation, and research activities that maintain the decrease*. There is pressure, therefore, to resolve this in one or more of following three ways:

- Locate alternative funding sources for the current activities funded through the SETF
    - Seek additional grant funding where possible.
    - Seek additional General Fund monies if appropriate.
- Raise the cap on the fund.
- Cut services currently provided and funded by the SETF.

The most likely the short-term solution will be a combination of the three.

II. ELECTRONIC DATA INTERCHANGE AND MISSING DATA

As of January 1, 2005, all filings of the *Employer's First Report of Occupational Injury or Illness* were required to be submitted to the WCB through electronic data interchange (EDI), computer-to-computer, using one of two formats. One is the International Association of Industrial Accident Boards and Commissions (IAIABC) Claims Release 3.0 format. Under the new EDI standard, certain fields are classified as "required," that is, necessary for a claim to be processed. Others are classified as "expected," that is, not required for a claim to be processed but necessary to complete a report. Although the WCB will request missing "expected" data from the reporting entity, that data may not be available to the Bureau for coding in a timely manner.

Coders are given strict rules about coding items that are described but are not in the coding system ("Not Elsewhere Classified" or "NEC") versus situations where there is not enough information to determine a code ("Unspecified" or "UNS"), versus multiple code selection situations. Therefore, by looking at the code that indicates "Unspecified", we can tell if the reporting has more or less detailed information over time and with the EDI system change.

Looking at the prevalence of the "Unspecified" codes over time, it appears that the data quality overall has improved with the EDI process. This is as likely due to the fact that the EDI system consistently required responses and was tied to a fairly tight employer identity system. What is also clear, though, is that data quality afterwards has varied, and the reasons for that are unclear. This variance is likely due to other such changes as changes to reporting instructions, to programming, and/or in personnel. These may occur anywhere in the system — from the employees reporting to the employers at the beginning

of the process all the way to our coding at the end. Further research will be needed to determine the sources and causes of the variance so it may be addressed and minimized.

III. RETURN TO WORK DATA

In years past we focused on a missing date on the *First Report* called return to work. Over the years we noted from 18 to 20 percent of the cases seemed to lack that date when there was an incapacity date. Over the past year, staff from BLS and the Monitoring and Enforcement unit at the Workers' Compensation Board have determined where the date appears when it is not on the *First Report*. After research and redefinition of return to work to account for other events, what we find is that only about 5–15 percent of the cases are actually unresolved or "open" and therefore legitimately lack a return-to-work date. All the other cases are resolved or "closed," not necessarily with a return to work date, thus the change in the title of this work and its focus. (This case review is currently a work-in-progress and the figures for open and closed claims that appear in Table 8 should not be considered finalized at the time of the publication of this report.)

Returning to work for the same employer is the most favorable of the outcomes of a Workers' Compensation claim, and, from this research, we can now determine that almost 60 percent of the cases that occurred in the last five years returned to work for the same employer. From a tertiary prevention (reducing the social and economic cost of an injury or illness after it occurs) point of view, maximizing that percentage is desirable.

This is a major breakthrough in terms of prevention and determining the economic and social costs of workplace injuries and illnesses; once open and closed cases are determined, dates can be defined and, in turn, duration and lost productivity can be derived as well. These measures will augment counts and costs, will tell us something about the seriousness of the individual injuries and illnesses, and can be aggregated to prioritize and call attention to certain situations.

Table 8: Status of Lost Time Claims, Maine, 2007–2011

	Year of Injury Or Illness Report					
Claims Status	**2007**	**2008**	**2009**	**2010**	**2011**	**Grand Total**
Closed Claims	5,475	5,272	4,732	4,445	4,021	**23,945**
Resumed Work	3,430	3,307	2,986	2,778	3,029	**15,530**
% Resumed Work	58.5%	58.3%	57.9%	56.0%	65.0%	59.0%
Open Claims	392	397	428	520	639	**2,376**
% Open	6.7%	7.0%	8.3%	10.5%	13.7%	9.0%
Lost Time Claims	**5,867**	**5,669**	**5,160**	**4,965**	**4,660**	**26,321**

Source: Workers' Compensation Board *Employer's First Report of Occupational Injury and Illness* and subsequent payment reports.

IV. COST DATA

The individual-case cost data from the WC system is now available, and the Bureau is continuing to incorporate the cost data with injury research projects to compare and contrast groups of cases, as is done with the case counts now. As with days lost, the cost data suffers from the problem of it being a "snapshot" of the cases at a point in time, some of which are closed and are not accumulating further

expenses, while others are open and continue to accumulate data. The Bureau and WCB have now defined and made determinations for "open" and "closed" cases and are working on tabulating data based on that characteristic to distinguish between the two situations.

The range in duration and cost will open new possibilities as well, telling the Bureau what groups and types of cases have more uncertainty in their outcome. This, in turn, may allow the Bureau to focus attention on classes of cases where the medical treatment and case management is more a factor in what happens over the life of the case. This is consistent with research WCB and the Bureau have done on the 100 costliest cases, where findings show that some of the most costly cases are ones where the initial injury or illness was not well defined at the start (i.e., the treatment begins before the diagnosis is clear).

5. 2012 DEVELOPMENTS

I. GRANTS

The Bureau uses WCB data to supplement federal Bureau of Labor Statistics and OSHA data in developing OSH grant applications. OSH and other funds applied for by BLS in 2012 resulted in:

- Two OSH grant increases totaling $8,500 being awarded.
- One OSH two year grant not being awarded (investigating potential SOII under-reporting).
- Grant funding for a 2012 summer intern being awarded and the internship filled.
- Grant funding to study the relationship between occupation and early onset dementia being applied for but in pending status by the granting source for 2013.

II. PROGRAM INITIATIVES

From time to time, based on evident needs, the Bureau initiates or enters into partnerships initiating various programs promoting occupational safety and health. Those below were active during 2012.

A. Maine Occupational Research Agenda (MORA)

In 2000, following discussions at the first Maine OSH Research Symposium, the Bureau took the initiative to create a Maine Occupational Research Agenda (MORA) and the associated steering group. The MORA is modeled after the NIOSH National Occupational Research Agenda (NORA). The Technical Services Division, in collaboration with the MORA Steering Group members, developed the research agenda and is moving it forward. MORA Steering Group members include education and health professionals, members of several government agencies, and insurers. In 2012, MORA provided input to the Bureau on a variety of OSH issues through the review of relevant projects.

For more information on MORA, visit its web-site at www.maine.gov/labor/bls/MORA.htm.

B. Data Outreach Initiative

In 2004, the Research and Statistics Unit of the Bureau intensified its efforts to place its accumulated data and data-related services before the public. This outreach initiative took the form of such items as a promotional tri-fold, explaining the unit's profile service and describing its major data sources. These were distributed in various ways, including as handouts at seven annual conferences, such as the Maine Safety and Health Conference, Maine Municipal Association, Maine Firefighters Association, Workers' Compensation Summit, and Human Resources Conference. Unit personnel attended some of these meetings in order to answer questions and take requests for profiles.

C. SHARP and SHAPE Award Programs

Some employers have been so successful with adopting best practices that they have earned recognition from the Maine Department of Labor through the SHAPE and SHARP awards and MESHE program. As part of the award, the employer is presented a plaque in a ceremony and a flag to display at the workplace.

i. SHARP

SafetyWorks!, in partnership with federal OSHA, administers the Safety and Health Achievement Recognition Program (SHARP). Under this program, a private employer with 250 or fewer employees on-site who meets the program requirements for employee safety and health, including an exemplary safety and health program, is exempted from program inspection for two years. Employers successfully meeting SHARP requirements are publicly honored. There are 56 employer locations qualified as of December 2012, including:

BBI Waste/Blow Brothers, Old Orchard Beach
Borderview Rehab & Living Center, Van Buren
Cianbro Coating Corporation
Cianbro Companies, Portland
Cianbro Fabrication Corp., Pittsfield
CM Almy, Inc., Pittsfield
Comm. Living Assoc., Randall Ctr., Houlton
Dearborn Precision Tubular Products, Fryeburg
Deering Lumber, Biddeford
Deering Lumber, Kennebunk
Everett J. Prescott, Inc., Bangor
Everett J. Prescott, Inc., Gardiner
Everett J. Prescott, Inc., Portland
Fastco, Lincoln
Federal Distributors, Lewiston
Franciscan Home, Eagle Lake
French & Webb, Belfast
Hodgdon Yachts, Boothbay
HP Hood, Portland
Johanson Boatworks, Rockland
Jotul North America, Gorham
Kittery Point Yacht Yard,
Limington Lumber, E. Baldwin
Lonza, Rockland
Lucas Tree Experts, Portland
Lyman-Morse Fabrication, Thomaston
Marden's, Inc., Calais
Marden's, Inc., Biddeford
Marden's, Inc., Ellsworth
Marden's, Inc., Lewiston (Locust St.)
Marden's, Inc., Lewiston (Main St.)
Marden's, Inc., Lincoln
Marden's, Inc., Madawaska
Marden's, Inc., Rumford
Marden's, Inc., Waterville
Marden's, Inc., Waterville (Warehouse)
Marden's, Inc., Winslow (Warehouse)
Market Square Health Care Center, South Paris
Mathews Brothers, Belfast
Mid-State Machine, Waterville
Mid-State Machine, Winslow
Moose River Lumber Co., Moose River
Naturally Potatoes, Mars Hill
Northern Aquatics, Eagle Lake
Peavey Manufacturing, Eddington
Pleasant River Lumber
Portage Wood Products
Portland Yacht Services, Portland
Reed & Reed, Inc., Cumberland Mills Bridge
Reed & Reed, Inc., Veterans Memorial Bridge
Reed & Reed, Inc., Woolwich
Robbins Lumber, Searsmont
Sargent Corporation Fabrication Shop, Stillwater
Southridge Rehab & Living Center, Biddeford
SW Boatworks, Lamoine
Yachting Solutions, Rockport

ii. SHAPE

In 2005, SafetyWorks! initiated the Safety and Health Award for Public Employers (SHAPE) program, a public-sector application of the federal private-sector SHARP program. SHAPE is a voluntary award program for all "public sector" employers/employees that are going above and beyond the safety and health requirements to provide a safe and healthy workplace and strive to keep injuries/illnesses down. To date there are 42 public-sector employers who have received SHAPE status, including:

Aroostook Fire Protection, Fort Fairfield
Auburn Water & Sewage District, Auburn
Berwick Fire Department
Brooks Fire Department
Camden Fire Department
Caribou Fire and Rescue
Cary Medical Center, Caribou
City of Caribou
City of Presque Isle
Damariscotta Fire Department
Durham Fire Department
Farmingdale Fire Department
Farmington Fire and Rescue
Fort Fairfield Fire Department
Greater Augusta Utilities District
Hampden Water District
Harrington Fire Department
Houlton Water Company
Jay Public Safety (Fire/Police)
Kennebunk, Kennebunkport & Wells Water District
Kittery Water District
Limestone Fire Department
Loring Fire Department
Madawaska Lake Fire & Rescue
Mapleton Fire Department
Newcastle Fire Department
North Lakes Fire & Rescue, Caribou
Northern Penobscot Technical Center, Lincoln
Northport Volunteer Fire Department
Oakland Fire Department
Orono Fire Department
Paris Fire Department
Reg. Two School of Applied Tech., Houlton
Town of Brunswick
Town of Kennebunk
United Technologies Center, Bangor
Univ. of Maine, Aroostook Farm, Presque Isle
University of Maine Blueberry Farms, Jonesboro
Waldoboro Fire Department
Westbrook Public Services
Wilton Fire Department
York Water District

III. LEGISLATION

To date, there have been no new legislative initiatives by the 126th Legislature that would impact occupational health and safety under BLS.