



# State of Delaware

## Department of Labor

15<sup>th</sup> Annual Report

on the

Status of Workers' Compensation

Case Management

## 2012 Highlights

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

*Reflecting on the work accomplished in 2012, two issues stand out as having tremendous and far-reaching effects on Workers' Compensation in Delaware:*

- 1. Governor Markell signed SB 238 into law on August 7, 2012. This amendment changed the methodology used to calculate hospital and ambulatory surgery center (ASC) fees, in order to facilitate their compliance with the medical cost savings measures required by the Workers' Compensation Health Care Payment System (HCPS). The statutory change represents significant effort by the Health Care Advisory Panel, who worked cooperatively with representatives from hospitals and surgery centers in Delaware.*
- 2. In their proposed rate filing for the period beginning December 1, 2012, the Delaware Compensation Rating Bureau (DCRB) recommended a staggering 38.27% increase in standard policy premiums (voluntary market) and a 43.53 % increase in assigned risk premiums (residual market). In addition, prior reductions mandated by the Court of Chancery were no longer required. The DOL and HCAP launched a staunch initiative against the proposed increases. The DCRB revised their filing and instead requested a 14.6% increase in the voluntary market and a 19.0% increase in the residual market. Due to the expiration of the Chancery Court decision, however, the new filing resulted in overall average increases of 21.7% in the voluntary market and 26.1% in the residual market.*

# Year in Review 2012

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The Delaware Workers' Compensation Health Care Payment System (HCPS) marked its fourth anniversary on May 23, 2012. The Governor appointed Health Care Advisory Panel (HCAP) established and maintains the HCPS in accordance with 19 Del.C. §2322. The HCAP created subcommittees to hone in on the following 5 major components that comprise the HCPS:

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

The 17 member HCAP contains representatives from the medical, legal, labor, business and insurance communities. The HCAP convened without a primary care representative from the Medical Society of Delaware, since June 2011, and without one of the public representatives since March 2012.

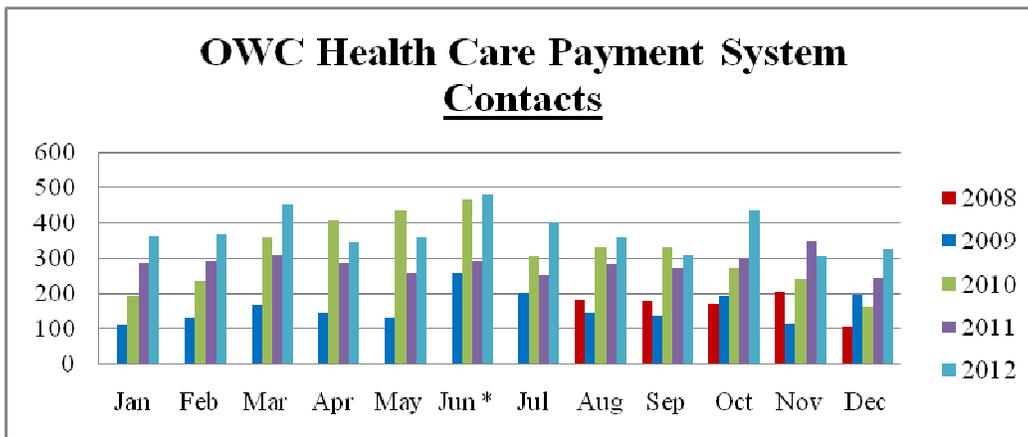
In 2012, the HCAP met four times. In addition, the subcommittees met six times, while smaller work groups for those committees, comprised of medical and legal experts, held additional meetings to work on specific issues. The Office of Workers' Compensation (OWC) held one Public Meeting in May 2012, prior to the approval of updates to the HCPS Administrative Code ("the regulations") that became effective on June 11, 2012, and added the injured worker's attorney of record to the utilization review determination distribution list.

On August 7, 2012, the Governor signed SB238 into law, which significantly changed the fee methodology for hospitals and ambulatory surgery centers. Prior to this change, hospitals and ambulatory surgery centers annually updated each fee they charged based on the change in the consumer price index (CPI) for medical, as published by the U.S. Department of Labor. The new methodology uses the same CPI change, but updates the overall percent of charge and aligns workers

compensation medical billing with the mandatory uniform billing standards required of other health care programs.

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

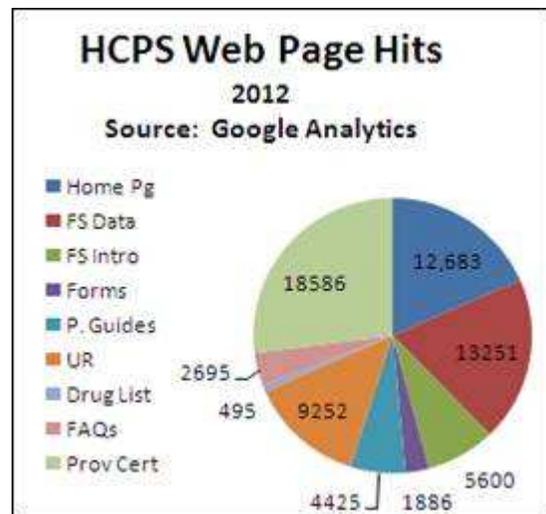
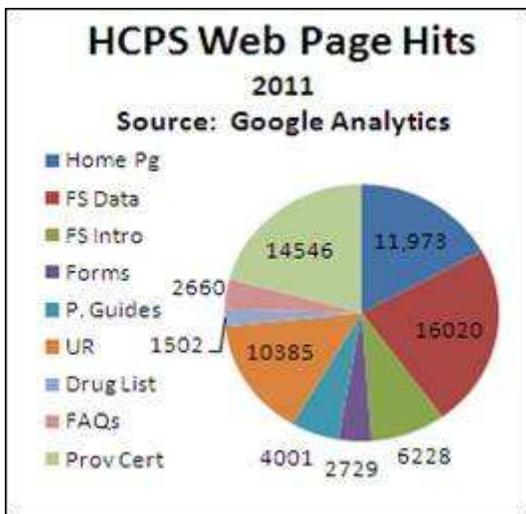
In 2012, the medical component fielded a significant number of telephone calls, letters and electronic mail regarding the HCPS. The 4,488 total contacts in 2012 represented a 32% increase over the 3,404 total contacts recorded in 2011. The significant 2012 increase in volume comes from the “providers,” “other states/entities,” and “general” categories. The increase may be attributed to 1) the second 2-year cycle for certified health care providers to complete the “state approved” continuing education course; 2) the hospital and ambulatory surgery center fee methodology significantly changed in October; and 3) an increase in information sharing with other entities/workers’ compensation programs.



The Department of Labor’s website contains comprehensive information on all five components of the HCPS, including links to e-mail questions; subscribe/unsubscribe to the ListServ; download the current certified health care provider list; view frequently asked questions; download the fee schedule data; download forms; access the Administrative Code (“the regulations”); access the Workers’ Compensation Act; and complete the required continuing education course for certified health care providers.

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

In 2012, the HCPS web pages received a total of 68,872 “unique visitors,” which represented a 2% decrease over the 70,287 “unique visitors” reported in 2011. The *Google Analytics* program defines “unique visitors” as unduplicated (counted only once) visitors to the website over a specific time period. In May and June, the “Home Page,” “FS Data,” and “UR” web pages experienced a sharp spike in “unique visitors.” The parent company of OWC’s contractor contributed to this surge during those two months, which repeated a similar surge in October and November of 2011. The counts returned to normal levels in July 2012. The provider certification and fee schedule data pages represented the largest number of “unique visitors,” not counting the May and June spikes.

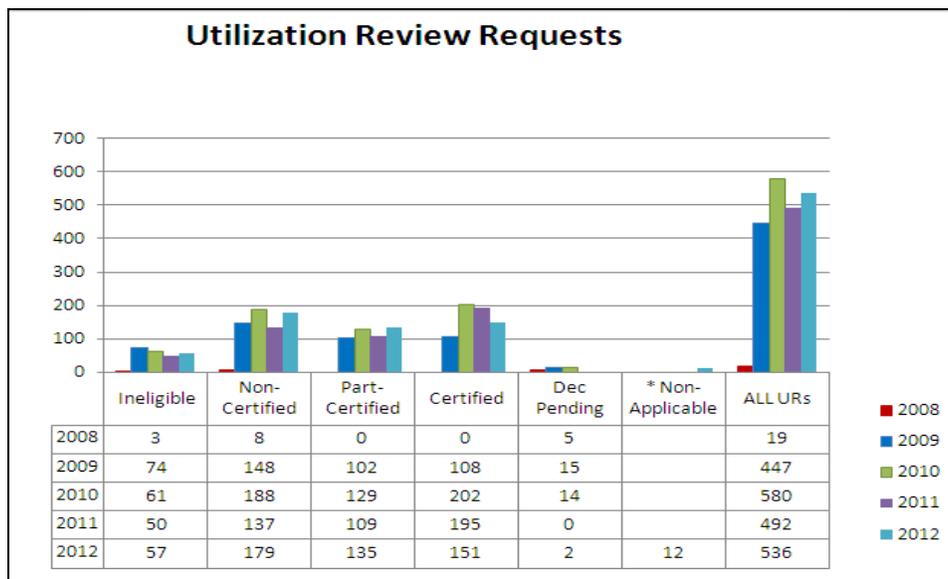


Utilization review (UR) provides prompt resolution of compliance issues related to proposed or provided health care services within the practice guidelines for those claims acknowledged as compensable. Parties may then appeal UR determinations to challenge the assumption that treatment specified within a practice guideline is the only reasonable and necessary course of treatment for a specific worker’s injury. In 2012, OWC received 536 requests for utilization review, which represented a 9% increase from the previous year.

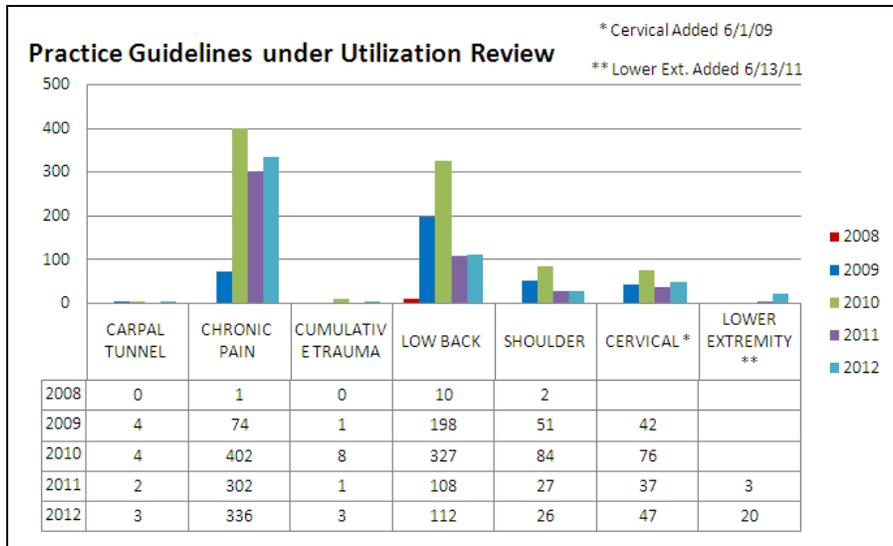
OWC received the first dedicated “Petition to Appeal a Utilization Review” determination in June 2012. SCARS (Scheduling Case Management Accounting Reporting System) cannot yet electronically track UR appeal petitions; however, 62 (23% of the 274 total UR requests received June through December) were

manually counted. 9 (15%) of those 62 petitions were filed past the 45 day appeal deadline, which is currently being challenged in the Delaware Supreme Court.

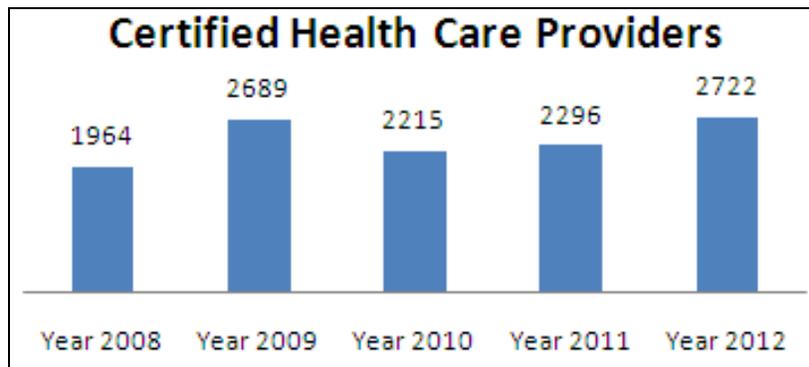
2012 UR statistics contain a new category, “non-applicable.” This designation occurs when payers appropriately challenge treatment through the UR process, but the applicable practice guideline(s) does not address the treatment. Parties must then resolve the issue through the normal petition process. Capturing this information helps targets missing pieces within the voluminous practice guidelines.



Of the 547 total practice guidelines involved in utilization review last year, chronic pain treatment, particularly prescription pain medication, continued to represent the treatment most challenged (61%). In 2012, Governor Markell convened a Prescription Drug Action Committee to address the prescription drug abuse problem in Delaware, and OWC participates on that committee.



The number of certified health care providers rose 19% by the end of 2012 and marked the second 2 year cycle certified health care providers were required to complete the “State-approved” on-line continuing education course.



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

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



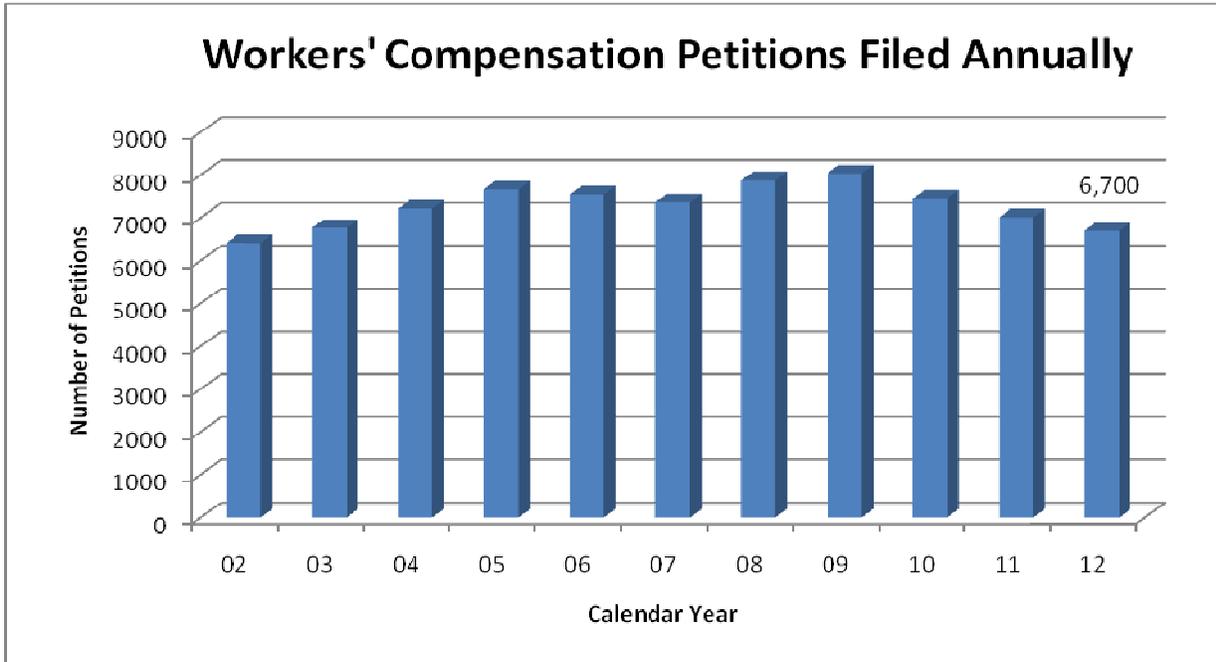
Quick Response (QR) Code to OWC's website

In 2012, approximately 1,200 stakeholders participated in OWC's ListServ, which represents a 20% increase over the 1,000 subscribers at the end of 2011. Launched in 2009, the OWC ListServ provides a no cost, quick, and effective tool to communicate important changes and information concerning Delaware workers' compensation. In support of Governor Markell's initiative for state agencies to use social media as a communication tool, OWC maintains a Facebook page at [www.facebook.com/DelawareOWC](http://www.facebook.com/DelawareOWC).

In 2012, the OWC finalized an agreement with the Department of Health and Social Services, Division of Child Support Enforcement, to share data on claimants collecting workers' compensation benefits who may be subject to wage attachment for child support. The system should be up-and-running in the first quarter of 2013.

In conjunction with the Office of Labor Law Enforcement, the agency utilized investigative procedures to identify and prosecute uninsured employers. In 2012, 247 potential uninsured employers were investigated by the OWC. This represents an increase of 64%. In addition to the cooperative interaction with Labor Law Enforcement, this increase can also be attributed to a data sharing effort on the part of the Delaware Compensation Rating Bureau (DCRB).

During 2012, the Office of Workers' Compensation successfully maintained its “no backlog” status. A backlog is defined as more than four months worth of petitions. A total of 6,700 petitions were filed in 2012.<sup>1</sup>

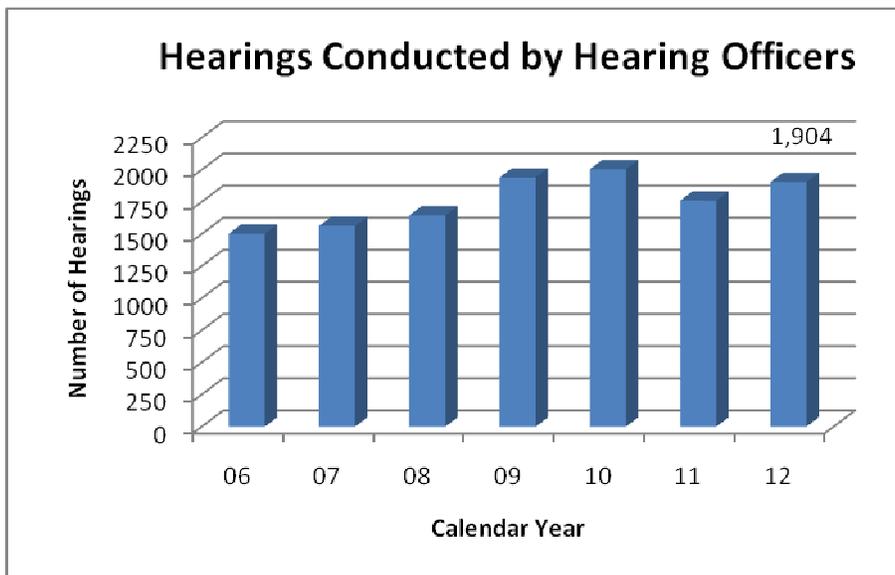


<sup>1</sup> See page 9 for an explanation of the decrease in petitions filed annually.

The workers' compensation specialists assisted 1,537 injured workers in processing their claims for benefits. They also provided assistance to 5,276 callers. Other than injured workers, the additional contacts included attorneys, insurance carriers and employers. The agency received 23,468 electronic requests for assistance this year, as compared to 27,895 in 2011 and 21,675 in 2010. This high level of electronic requests illustrates the public's preference for online information and electronic communication. Fortunately, OWC is willing and technologically able to respond in this way.

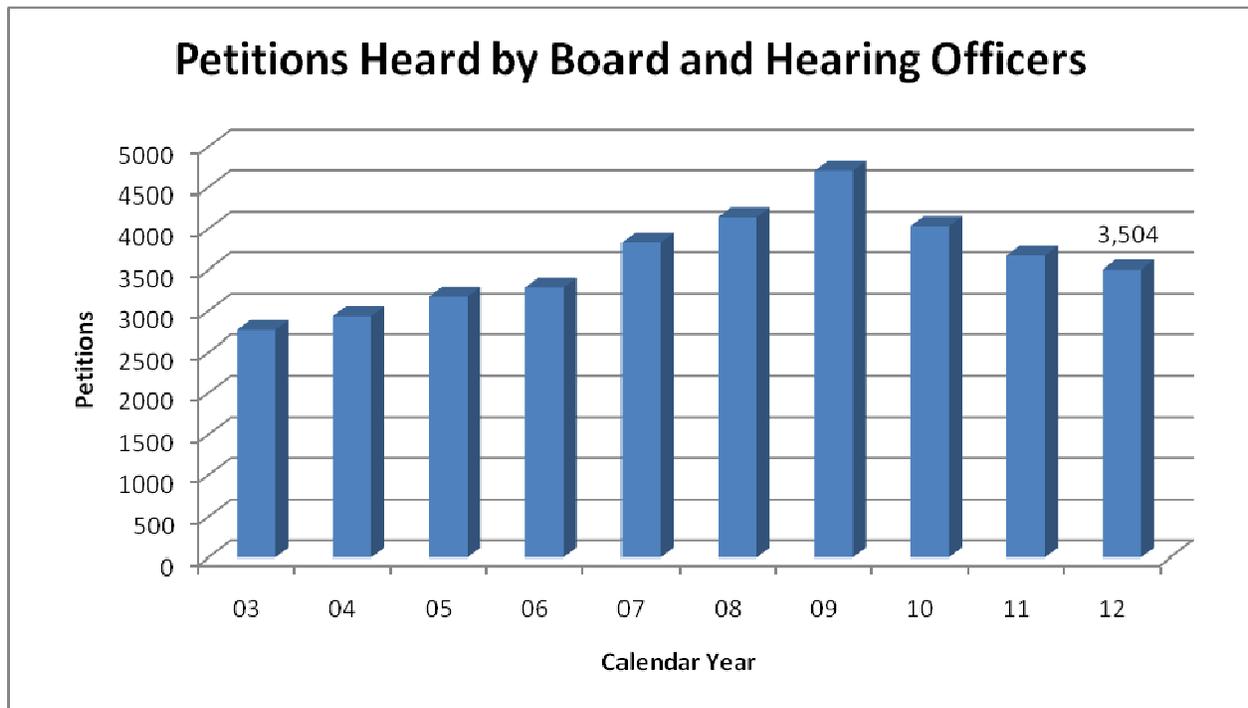


Hearing officers conducted hearings in 1,904 cases which would have otherwise been heard by the Industrial Accident Board (IAB).



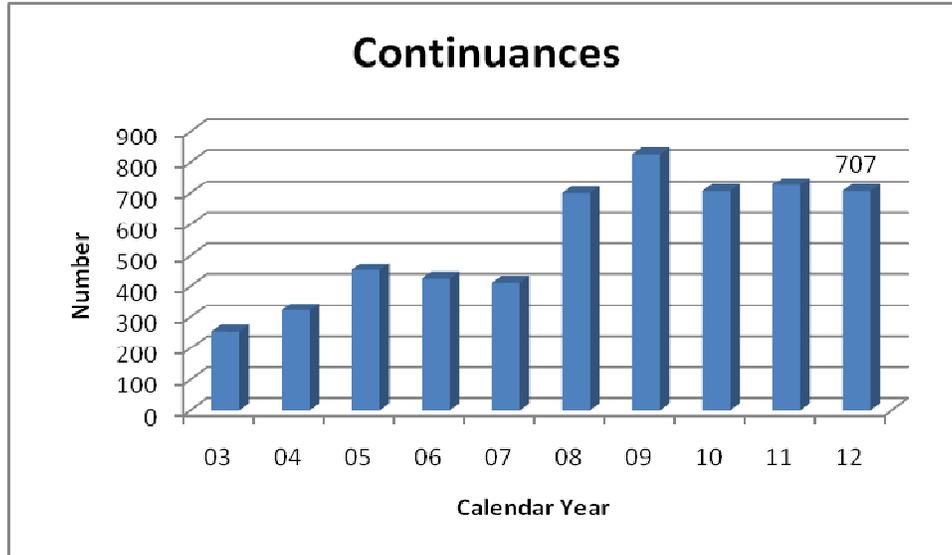
## Petitions Heard by the Board/Hearing Officers

As seen in the chart on page 7, the number of petitions filed annually decreased from calendar year 2011 to 2012. For the third time in over 10 years, the number of petitions heard by the Board or Hearing Officers also decreased. From 2011 to 2012, the total went from 3,673 to 3,504. This decrease of 169 petitions is due, in large part, to the Utilization Review process (a component of the Health Care Payment System). As anticipated, the UR process successfully led to a reduction in the number of Petitions to Determine Additional Compensation Due (DACD) specifically.



# Continuances

In 2012, a total of 707 continuances were granted.



Grounds for Continuances	Number of Occurrences
The unavailability of a party, attorney, material witness or medical witness for reasons beyond their control (illness, conflicting court appearance, emergency)	581
A justifiable substitution of counsel for a party	4
Withdrawal of counsel	3
Any unforeseen circumstance beyond the control of the parties:	
• Employee missed employer-scheduled medical exam	55
• Records unavailable for review by parties prior to hearing	39
• Defendant(s) or issues added prior to hearing	3
• Consolidation of issues	10
• Additional medical testing	8
• Case pending settlement	2
• Case pending appeal of Utilization Review	1
• State offices closed due to inclement weather	1

## Board Member Activities

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The following table shows the number of days individual board members were scheduled to conduct hearings, as well as the number of days they actually conducted hearings in 2012. Scheduled days versus actual days differ due to case settlements and continuances.

Board Member	Number of Days Scheduled to Conduct Hearings	Number of Days Actually Conducted Hearings
Barber*	51	32
Brady**	69	31
Daniello	154	91
Dantzler	155	78
Doto***	127	66
Epolito	157	56
Groundland	148	80
Hare	150	86
Medinilla	152	74
Mitchell	144	73
Shannon	148	74

\* Retired 4/30/12

\*\* Appointed 6/20/12

\*\*\* Extended Medical Leave

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

<b>Board Member</b>	<b>Number of Hearings on the Merits</b>
Barber	35
Brady	25
Daniello	105
Dantzler	89
Doto	72
Epolito	70
Groundland	90
Hare	75
Medinilla	72
Mitchell	84
Shannon	90

## Caseload of Individual Hearing Officers

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Hearing Officer	Number of Decisions, Orders and Rearguments Written
L. Anderson*	6
E. Boyle**	39
J. Bucklin	68
A. Fowler	76
S. Mack	51
D. Massaro	60
J. Pezzner	61
J. Schneikart	56
K. Wilson***	41
C. Baum, Chief	109
<b>Total</b>	<b>567</b>

\* Retired January 2012

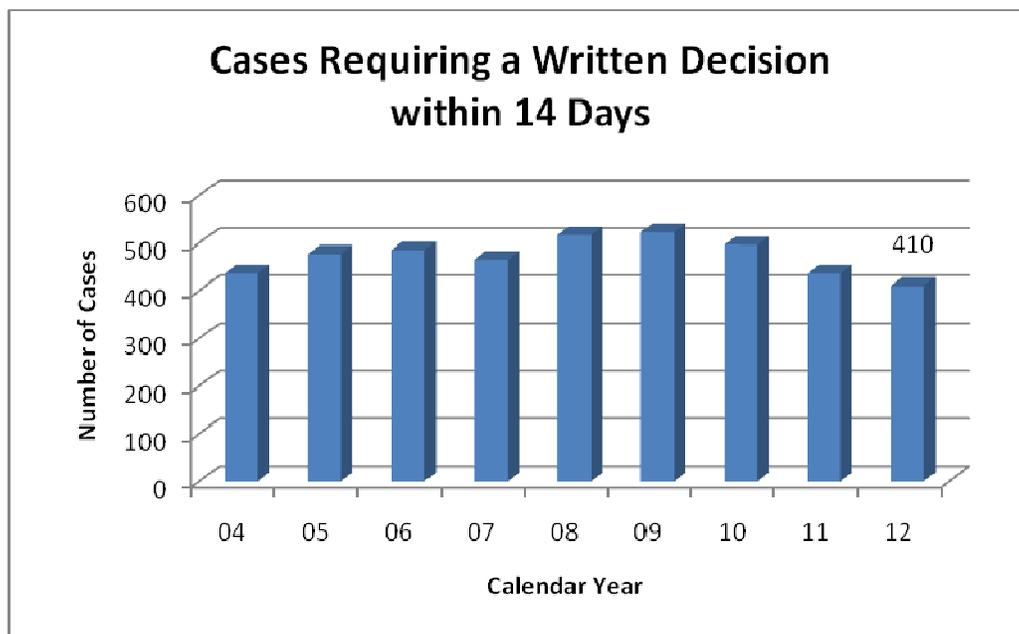
\*\* Hired April 2012

\*\*\* Maternity Leave March to June 2012

## Compliance with Hearing & Decisional Deadlines

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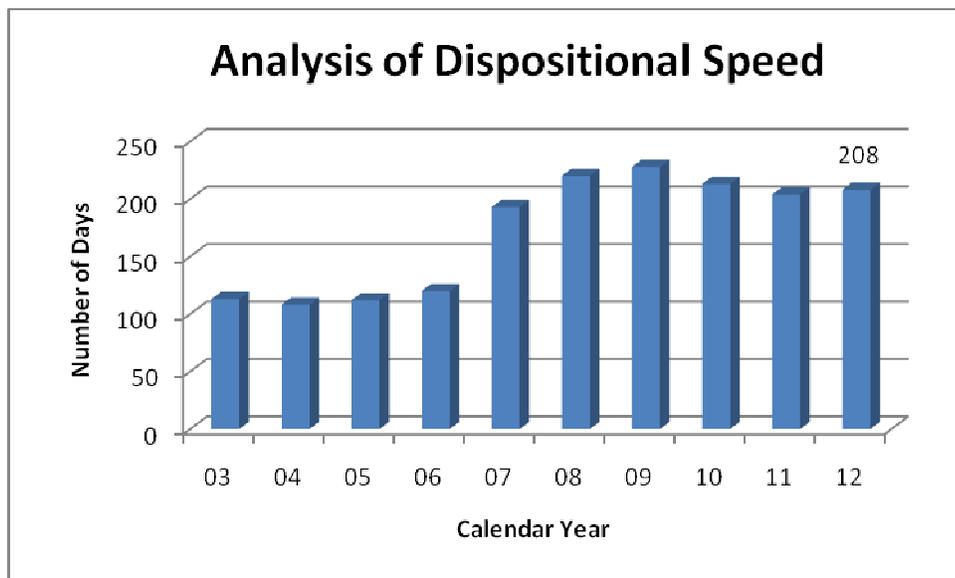
In 2012, 410 cases were heard which required a written decision within 14 days from the IAB or hearing officers. The agency did not meet the 14-day requirement in all cases, despite the fact that 567 writings were issued. This delay is attributable to the number of cases and because appellate court rulings have continued to require a greater degree of sophistication in the decisions. The number of appeals continued to remain low, with only 62 appeals in 2012. In fact, this is the fewest appeals since 2007.



## Analysis of Dispositional Speed

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In 2012, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 208 days. The agency has worked dilligently to find ways to reduce this number.



## Summary of Appeals

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(Status of appeals taken as of December 31, 2012)

In the last five years, the Board (or Hearing Officers) has rendered 2,437 decisions on the merits. 332 of those decisions (approximately 13.6%) were appealed (an average of 66.4 per year). 292 of those appeals have been resolved. Only 42 decisions have been reversed and/or remanded, in whole or in part. This represents a “reversal rate” of only **1.7%** of all decisions rendered in those five years.

<b>Year Appeal Taken In:</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Total Number of Decisions:	471	471	629	437	429
Total Number of Appeals:	74	63	66	67	62
Affirmed:	35	22	28	27	11
Reversed and/or Remanded:	10	11	13	7	1
Dismissed/Withdrawn:	29	30	24	29	15
Pending: <sup>2</sup>	0	0	1	4	35

<b>Five-Year Cumulative</b>	
Total Number of Decisions:	2,437
Total Number of Appeals:	332
Affirmed:	123
Reversed and/or Remanded	42
Dismissed/Withdrawn	127
Pending:	40

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<sup>2</sup> For purposes of these statistics, an appeal is no longer considered “Pending” once a Superior Court decision has been issued. Some Superior Court decisions have been appealed to the Delaware Supreme Court. If a Supreme Court decision is different from that given by the Superior Court, the statistics will be updated to reflect the final holding. Therefore, for example, while no cases are “Pending” from 2009, some of those appeal results may change in the future because of decisions by the Supreme Court.

# Departmental Recommendations for Legislative Action

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## Workers' Compensation Task Force

House Joint Resolution No. 3 established a Workers' Compensation Task Force to review the recent increases in workers' compensation rates. Governor Markell has appointed Lt. Governor Denn as chair of the Task Force. Membership will include a broadly representative group with expertise in workers' compensation matters from both public and private sectors. In addition to reviewing the recent increases, the Task Force is further charged with proposing findings and recommendations to the Governor and General Assembly on or before May 14, 2013. The Secretary of Labor will serve as a member of the Task Force, and OWC will provide staff support.

## Health Care Advisory Panel

The Health Care Advisory Panel (HCAP) has an aggressive meeting schedule for the first half of 2013 to pro-actively identify and address systemic medical cost-drivers in workers' compensation. The Panel plans to propose both statutory and regulatory changes in the coming year.

## Hearings before the Industrial Accident Board (IAB)

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