



**NYS Workers' Compensation Board Testimony**  
**NYS Senate Labor Committee hearing on May 15, 2024**

Good morning and thank you, Senator Ramos, for inviting the NYS Workers' Compensation Board to participate in this hearing about the state of the workers' compensation system.

Today, we continue to build momentum on an important dialogue that started with one-on-one meetings with members of the Senate Labor Committee, as well as Senator Ramos' March visit to the Workers' Compensation Board, when you met our board members, asked questions, and shared your concerns and priorities.

We greatly appreciated you taking time to meet with us so we could get to know each other directly, and for the opportunity to learn more about the issues facing your constituents, and share information about the Board's work.

It is critical for you – lawmakers who care deeply about the needs of workers – to be fully informed about the workers' compensation system, the agency, and the work we're doing. This helps ensure that when legislation passes, and is signed by the Governor, the Board can implement it – confidently, efficiently, and successfully. My hope is that together, with the groundwork we have already begun to lay, we can build a new era of regular communication and engagement between us, which has been my goal since becoming Chair of the Board.

**Sharing progress, looking ahead**

While I am aware there is more work to be done, I am excited to share the tremendous progress we have made in implementing new policy and making significant improvements to both the system and the agency since I began serving as Chair, but in particular, under Governor Hochul's leadership.

I will also discuss my vision for the future, which includes resolving claims faster, bringing more specialty health care providers into the system, continuing our modernization efforts, and ensuring that workers and employers know and understand their rights and responsibilities under the law.

I hope that after today's hearing you will see alignment in our goals and clear progress on accomplishing them. To them and to you, I say - I know that we are here today because there are real issues in the system, and if you take nothing else from my testimony today, know that you have my commitment to continue making meaningful improvements to the system.

**My background**

I had the honor and distinct pleasure of joining the Board in 2016, when this Committee confirmed my appointment as one of the 13 Board members who decide administrative appeals at the agency. A year later, I was elevated to Chair, the very first Latina to head the agency - the highest honor of my life and not one that I take lightly. This Committee recently confirmed my second term, through 2029.

My parents emigrated from the Dominican Republic in the early seventies and went on to raise four children in “Washington Heights” in Northern Manhattan. Like other children of the Dominican Diaspora, I was the first college graduate in my family.

Having personally experienced many socio-economic struggles, I dedicated myself to working on social justice issues on behalf of poor and marginalized communities in several non-profit organizations throughout NYC. It was in those roles that I made the decision to go to law school to use my degree as a tool for social change. Not surprisingly, these collective experiences are deeply ingrained in all the work I do here at the Board.

## About the Board

Born in the wake of the tragic Triangle Shirtwaist Factory fire of 1911, the Board’s core mission is to *“protect the rights of employees and employers by ensuring the proper delivery of benefits and promoting compliance with the law.”* We do this primarily by resolving disputes in the system, authorizing health care providers, monitoring compliance with the law, and penalizing bad actors. I spend a great deal of my time thinking about how best to live up to our mission and make it easier and faster for workers to access critical benefits, while reducing the costs to employers that we can control. We do not control WC insurance premiums, for example. In addition to workers’ comp, the Board administers benefits for volunteer firefighters, volunteer ambulance workers, and some volunteer civil defense workers. The Board also administers short-term disability benefits and as of 2018, New York’s landmark Paid Family Leave, which has been significantly enhanced by this body and Governor Hochul.

The Board is a “special revenue” executive agency. Employers pay assessments that fund our agency. We have about 960 employees and an annual budget of approximately \$219 million to oversee nearly 170,000 new workers’ compensation claims each year. (See the Board’s [2023 Annual Report](#), also attached as an exhibit, for more details.) The Board does not actually pay workers’ compensation claim benefits: that is the role of the insurers in the system. (The Board will advance payments when there’s a claim against an uninsured employer – we then bill that employer for reimbursement.) Our most prominent role is acting as the “court system” for an almost \$9 billion annual workers’ compensation system and ensuring everyone is in compliance with the law.

During my tenure we’ve also expanded our work to go beyond simply being a court system. I firmly believe that Government is supposed to care for the public welfare of those we serve. Private industry has no incentive to do so, and advocates and labor can’t go it alone. Yes, we administer the claims filed and resolve disputes, but we also educate the public - workers, employers, medical providers, and the insurance industry alike, on their rights and responsibilities under the law. I have personally conducted many Know-Your-Rights presentations in both English and Spanish and have presented to businesses directly about why it’s important to know their legal responsibilities. We also work with other state agencies on various initiatives to help improve the system, such as the Department of Financial Services, the NYS Fraud Inspector General, the Department of Labor, the NYS insurance fund, among others.

## Resolving claims

In most workers’ compensation claims, the worker only needs medical treatment, rather than compensation for time lost from work. In these cases, the Board’s role is to ensure that workers obtain the medical benefits they need to get well and then resume their normal lives.

There are both informal and formal resolution paths for workers' comp claims:

- **Informal resolutions** are generally findings and awards of benefits, where there is no issue in dispute, or the dispute may be resolved by review of documents in the case folder.

In 2023, the Board issued nearly 300,000 informal claim resolutions that were accepted by the parties without a hearing. These informal resolutions were primarily two types: proposed administrative decisions, which had a 90% acceptance rate by the parties, and proposed conciliation decisions, which parties accepted at a rate of over 85%. This informal resolution process expedites findings and claim awards.

How does this play out in dollars? Last year, the Board issued \$484 million in schedule loss of use awards for workers via proposed conciliation decisions. *That is nearly half a billion dollars in benefits that moved much more quickly and efficiently than if the claims had been sent into the hearing process.* And in the 10-15% of instances where the parties did not accept the proposed resolution, of course those claims went into a hearing. This is how we maximize the finite amount of hearing calendar time.

- **Formal resolutions** are used when the law requires the Board to make findings at a hearing before one of our Workers Compensation Law Judges, at the request of the parties, to resolve an actual, disputed issue.

Prior to the COVID-19 pandemic, the Board developed our virtual hearings system, which enables all parties to participate in hearings remotely over a computer or mobile device. It is essentially a teleconference; we even have apps to make it easier. We originally intended it to help injured workers, so they would not need to travel to a hearing point or miss time from work. *Some system professionals opposed this idea when we introduced it,* but this technology allowed the Board to continue hearings uninterrupted during the pandemic.

Unlike every other court and adjudicatory body in the state, the Board continued holding our customary 1,000 hearings per day. We also saw more workers attending their now virtual hearings. Before the pandemic, 70% of workers attended their own hearings, whereas today, 87% of workers are attending hearings.

Like many other employers, we have grappled with shortages in the labor market. One of those shortages impacted the speed and number of hearings we were holding. Having fewer workers' compensation law judges was particularly impactful to our hearing process. In 2022, in recognition of how critical hearings are to advancing our mission, we took steps to increase the number of law judges and within the last 18 months, we've been able to add 30% more judges. We are continuing this initiative, but it does take considerable time to recruit, hire, and train judges. Fortunately, it does not take extra time to diversify the judges, a goal of mine that we are working on in parallel.

Last year, we held just shy of a quarter million hearings (244,458). That's close to 20,000 (18,596) more hearings than in 2022. With our expanding pool of judges, we expect that the number of hearings held will continue to increase. This also means that we can schedule hearings more quickly. The number of claims awaiting a scheduled hearing date has been reduced by over 75% since late 2022. Today, the average timeframe for a hearing is six to eight weeks, which includes three weeks for the mailing of the hearing

notice to all parties. This is down from a year ago when the average timeframe was seven to nine weeks. Also, we are leveraging technology to identify cases that go beyond the average so as to get them on statewide catch-up calendars.

Of course, there is more work to do on this front, and we will continue working to expedite the scheduling of hearings, working with system professionals and advocates to accomplish this. We are committed to getting claims that need hearings on the calendar as soon as possible.

In 2017, the legislature amended the statute [WCL 25(2)(a)] to provide for a hearing within 45 days of request if the claim was not disputed, or controverted, but the disabled worker was losing time from work and not receiving required lost wage benefits, as the law indicated was due.

As we examined ways to improve our hearing process, we realized that this provision was not being utilized to obtain hearings. So, we engaged in educational outreach to the attorneys who represent workers to see how we could encourage the use of this provision. We learned some things that inspired modifications to facilitate its usage. For example, we learned workers' attorneys were not comfortable with a certification requirement on the form, so we removed that certification. We are committed to further improving our hearing process, by identifying those claims that need to be expedited and speaking with system professionals about issues they experience.

The statute contains an expedited hearing process for controverted cases – claims where the payer legally contests the occurrence of a compensable accident or occupational disease. The expedited hearing process – also known as “rocket docket” - provides for a pre-hearing conference within 30 days and expedited processes thereafter, but only when a notice of controversy is filed. Around 10% of all cases are controverted each year, and 80% of controverted cases are resolved within 90 days. This corrected a decades-long problem.

## **Building a better Board**

As Chair, I have also worked hard to improve how all parties, but especially injured workers, interact with the Board. I doubled the size of our Office of the Advocate for Injured Workers, now including a Spanish-speaking advocate, and developed a robust roster of social workers and vocational counselors ready to assist workers in need. These Board employees help injured workers navigate our system and advise me in helping to achieve one of my priorities, which is to make this system less complex and more easily understood by all. They also helped us create a substantial [Return-to-Work website](#), with information and resources to help employers bring back injured workers, who only want to get better and back to their lives.

In addition, I appointed a [Language Access Coordinator](#) whose sole job is to facilitate language access services. The Board is committed to providing communications to injured workers in their preferred language and to providing interpretation at hearings. We will provide translation of any document upon request. I often do Spanish-language outreach myself to help employers and workers understand their rights and responsibilities, and I would welcome opportunities to come to your districts and do the same.

In 2023, over 44,000 hearings included language interpreters, which is about 18% of all hearings. This represents a 50% increase when compared to the prior five-year period. In 2023,

approximately 83% of the language interpreters were Spanish interpreters, and our Queens district alone had more than 13,300 hearings with language interpreters. We have added additional time (five minutes) to every hearing where interpretation services are requested to ensure there is sufficient time for the injured worker to be heard, and we continue to review our limited English proficiency (LEP) services for additional improvements.

Additionally, during my tenure as Chair, we have:

- Successfully implemented the 2017 legislative reforms to the workers' compensation system, as well as the Expanded Provider law, which added more specialty medical providers to our system, and the Farm Laborers Fair Labor Practices Act, which provided much needed protections to farm workers.
- Implemented New York's landmark Paid Family Leave (PFL) law, one of only four states with PFL at the time, ours being the nation's strongest and most comprehensive. Other states contacted us to learn from our experience, as similar programs were being considered across the U.S.
- Implemented our Payer Compliance initiative in 2017 to monitor and ensure that insurance payers make timely first payments. We educated payers, then began measuring performance against legal time frames and systematically penalizing lapses. As a result, insurers began paying injured workers far faster than ever before. Before monitoring, only 38% of first payments were made timely. In 2022 and 2023, nine in 10 injured workers received their first benefit payment timely, meaning within 18 days of disability or 10 days from the worker giving the employer notice of an injury or illness, whichever is later. That was a game changer.
- We took several sensible, overdue steps to encourage health care provider participation in the comp system and improve injured workers' access to care. This included increasing provider payments, shifting to the universal billing form, launching an online authorization process, and creating a delegated credentialing process so we can authorize providers from hospitals as groups. We are continually talking about new ways to make it easier for providers to join this system, in particular specialty providers related to mental health services.
- Throughout the pandemic, we issued emergency regulations to enable injured workers to obtain necessary medical care via telehealth. This access to care initiative proved so successful that we, made telehealth a permanent option in the workers' comp system in July 2023. The permanent telehealth regulations were developed after extensive outreach and engagement with affected stakeholders and have been very well received.
- We never shy away from speaking directly to those using the system about the challenges they faced. The Chair, Medical Director, and Advocate for Injured Workers have traveled to Buffalo for a productive and collegial meeting with the AFL-CIO and the Western New York workers' comp group, and also joined them virtually. This collective of concerned advocates comprises union leadership, legislators and staff, attorneys, and medical providers. They brought issues directly to our attention, and we are working with the AFL-CIO to hold similar discussions in other regions. We've had another conversation with the NYC Central Labor Council, DC 37, and we look forward to continuing these engagements. We are accessible, willing to listen, learn, and then act, because these conversations are yielding both small and big changes.

- We ramped up outreach and began engaging with stakeholders in new ways. We held regional educational conferences across the state; we launched our popular and free-to-the-public lunch & learn webinar series featuring sessions on Workers' Comp 101 and 202, COVID-19 and workers' comp, Paid Family Leave and more; and we held focus groups, stakeholder meetings, and participated in industry events to gather meaningful and actionable feedback.
- Last year, we held our first-ever virtual workers' advocate conference on May Day, bringing together government, labor, research institutes, and community-based organizations to share resources and build community among those advocating for vulnerable workers. By providing important workers' rights information and discussing issues and concerns, with half the sessions going beyond workers' comp, the conference positioned advocates to share critical information to workers within their broad networks and we aim to do this annually.
- We significantly ramped up our focus and efforts on diversity, equity, inclusion, and accessibility, to create a better Board for staff and external stakeholders alike. We hired our agency's first Chief Diversity Officer, created an employee DEI Council, removed gendered language from our website, updated Board forms to include an X option for gender, and began providing live American Sign Language interpretation for our monthly public meetings of the Board.
- We created an [Injured Worker's Toolkit](#), bringing together, in plain language, all the information someone new to workers' comp needs to know. The toolkit can be translated on our website into the 12 major languages as required under state law.
- We took action to protect vulnerable workers by joining a broader state effort to shield noncitizen workers from retaliation and deportation during labor disputes by supporting Deferred Action by the federal government, in partnership with Make the Road New York and Workers' Justice Project.
- And most importantly, thanks to the legislature, the minimum and the maximum workers' comp weekly benefits for injured workers have risen to their highest levels to date, while we continue reducing the cost to employers to operate the system, in the form of lower assessment rates.

## Looking ahead

Of course, improvements are ongoing, and we have many impactful projects underway, including claims indexing and our OnBoard modernization program.

We are committed to properly indexing claims, and we're using technology to efficiently accomplish this. By statute, a notice of controversy must be filed within 25 days of a notice of indexing by the Board. We are currently developing a technology enhancement that will index claims when a report of injury and medical evidence – a complete claim – is filed with the Board. This means that 25 days after indexing, the payer will have waived most defenses to the claim unless they have timely filed a denial of the claim with the Board and the worker claiming benefits.

The Board is also amid a historic multi-year business modernization program called OnBoard. Aside from operational efficiencies, it will provide significantly easier access for system

stakeholders to interact with one another and the Board. When fully implemented, OnBoard will replace outdated and inefficient paper workflows with a modern, data-driven design that will enable automated system workflows. OnBoard will redesign and overhaul our eCase web portal that injured workers use to view the status of their claim, and the new OnBoard eCase will include improved claim data views specifically designed for workers, providing greater transparency into claim status, along with many self-service features not available today. OnBoard will truly transform the Board and will ultimately lead to higher levels of prompt and timely payment of benefits to injured workers.

In May 2022, the Board launched the first phase of OnBoard, moving the paper prior authorization request (PAR) process to an online portal with automated tracking and resolution features. As with many technical projects, the sudden volume of PARs, the new portal, and the learning curve for all parties, including the Board, resulted in delays. Those delays are gone. Overall, the data shows that PARS are significantly expedited since the paper days of three years ago. Since May of 2022, 1.7 million PARs have been resolved; fewer than 1% resulted in a hearing. We hired more medical staff, because these are medical questions, and their impact was felt immediately. Ninety to 95 percent of payer denials of medication, behavioral health, and durable medical equipment PARs are now resolved by the Board's Medical Director's Office within one day or less. The remaining five to 10% are resolved within two to three days. The Board continues extensive outreach to all stakeholders, which has resulted in 75 enhancements, many based on public feedback. We continue listening to our stakeholders and plan additional enhancements to maximize the efficiency of the PAR process.

Additional OnBoard projects are in the works, including moving key forms for attorneys online. The Board has held open, constructive focus groups with injured worker attorneys and their technical associates to share plans and learn the public's needs. We're now gathering interest from injured worker attorneys on becoming a testing partner. The Board values this engagement, which is better now than it has been in some years. We will continue outreach and training because OnBoard is enterprise software, a fully integrated new claims system, and we appreciate the public support and input.

We are also ready to begin working directly with the AFL-CIO, PEF, and NYCOSH to recreate the Workers' Compensation Navigator program. This was popular, in-depth public education on the system for laypeople. We all recognized this was missing and needed, so this team is going to get to work at redesigning and relaunching it.

Of course, there have been challenges. We recognize them, but good government must overcome them in the public interest. Despite a national staffing shortage that has knowledgeable workers retiring at a faster rate – and the enduring tragedy of the COVID pandemic – the Board has continued to innovate, create efficiencies, engage with stakeholders, and improve injured workers' access to medical care. We now have approximately 100 Judges who conduct about 1,000 hearings a day. We have just hired approximately 40 claims examiners from recently certified civil service lists, with another 10 claims examiners expected to be hired as well. These additional claims examiners will help us expedite claims processing and hearing scheduling.

My primary concern is ensuring that workers can access these lawful benefits, with minimum friction and effort, including unnecessary hearings. If a benefit is due, it should be paid. That is a great thing for workers, but it also lowers employers' system costs. There are different ways to achieve this. One of my goals is to establish a productive, working relationship with the legislature, so that we both move in the same direction because I'm sure we agree this is in the best interests of New York.

Through it all, my personal commitment has been to ensure workers obtain the benefits they are due, and that employers are treated justly under the law. My commitment to workers and employers, the two parties who struck the original “Grand Bargain” in 1914, has never wavered.

In what I hope is our new era of engagement and communication, my commitment to all of you is open and honest communication, mutual knowledge sharing, respect, a willingness to listen with an open mind, and always acting in good faith and for the betterment of the people of this great state.

Thank you for your time and attention.

A handwritten signature in cursive script that reads "Clarissa Rodriguez".

**Clarissa M. Rodriguez** (she/hers/ella)  
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