

# Temporary Disability Outcomes in California Workers' Compensation

Accident Years 2002 – 2009

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## BACKGROUND

Prior to April 2004, California law capped temporary partial disability (TPD) payments for single injury claims at a maximum of 240 compensable weeks within five years from the date of injury. In 2004, SB 899 amended California Labor Code Section 4656 to expand the cap to encompass temporary total disability payments and to revise the time limit to 104 weeks of paid temporary disability within 2 years of the first TD payment date. SB 899 allowed an exception for specified injuries that usually require extended medical treatment and recuperation including hepatitis, amputations, severe burns and others. These specific types of injuries are eligible for 240 weeks of TD payments within 5 years of the date of injury.

Temporary disability benefits are paid at a weekly rate during the time when a physician determines that an injured worker is unable to work due to injury, but anticipates that the worker's condition will improve with medical treatment. The TD rate is set at two-thirds (66 percent) of the employee's gross earnings, subject to minimum and maximum amounts set by law. For injuries occurring in 2000 and 2001, the maximum rate was \$490 per week, but in 2002, state lawmakers enacted legislation increasing the maximum TD rate over three years. After that, both the minimum and maximum weekly TD payments on claims for injuries occurring in 2006 and each year thereafter were tied to increases in the state's average weekly wage. For claims involving 2012 injuries, the maximum weekly temporary disability rate will rise to \$1,010.50 per week; up 2.4 percent from the maximum of \$986.69 for 2011 injury claims.

In 2007, Governor Schwarzenegger signed AB 338, once again modifying the TD cap for most injuries. The revised cap applies to all claims with dates of injury on or after January 1, 2008 and allows up to 104 weeks of TD payments to be paid within five years of the injury date. Examining the effect of AB 338's extension of the time frame in which TD benefits can be paid is beyond the scope of this analysis. In a previous report, CWCI estimated that AB 338 would increase California workers' compensation TD costs by an estimated 6.5 percent.<sup>1</sup>

This report is the fourth Institute study to measure temporary disability outcomes following the enactment of SB 899. The first study, published in 2008, examined claims with dates of injury through June 2006. That report showed that temporary disability reform was associated with lower average TD payments, fewer paid TD days and fewer claims involving injuries that are exempt from the 2-year cap on TD payments.<sup>2</sup> In two subsequent reports, CWCI extended the analysis to include claims with dates of injury first through December 2007 and again through March 2008. The second and third reports showed that TD reform continued to be associated with lower average TD payments and shorter TD duration, that there was no material change in the proportion of claims exempt from the 2-year cap, and that there were fewer non-exempt claims with TD payments beyond the 2-year cap.<sup>3</sup> This report again extends the analysis of temporary disability to claims with dates of injury through June 2009.

1 Comparison of SB 899 and AB 338 2-Year Temporary Disability Caps, CWCI Bulletin, November 9, 2007

2 Analysis of California Workers' Compensation Reforms Part 2: Temporary Disability Outcomes Accident Years 2002 – 2006 Claims Experience. CWCI Research Update, January 2008

3 California Workers' Compensation Reform Monitoring Part 3: Temporary Disability Outcomes Accident Years 2002 – 2007 Claims Experience. CWCI Research Update, January 2009

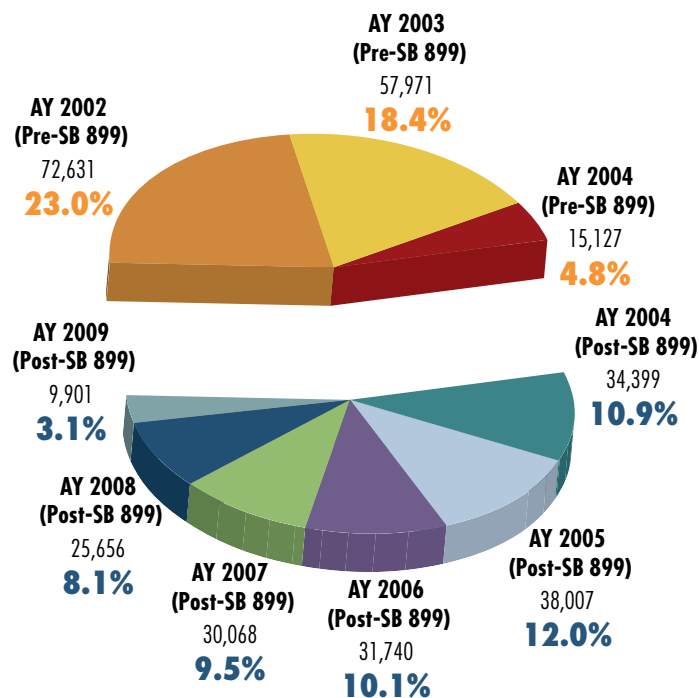
## DATA AND METHODS

In order to analyze the association between the statutory TD reforms and changes in outcomes on TD payments and duration, the authors compiled data on TD payments and other key data on injured workers from CWCI's Industry Claim Information System (ICIS).<sup>4</sup> The analysis of early indicators determined:

- 1) the average amount of TD paid within 12 and 24 months of the first TD payment;
- 2) the average number of paid TD days within 12 and 24 months of the first TD payment;
- 3) the percentage of TD claims involving diagnoses exempt from the 2-year cap; and
- 4) the percentage of TD claims that are not exempt from the 2-year cap in which temporary disability benefits were paid beyond 24 months of the first TD payment.

For this analysis, the authors compiled a sample of 315,500 California workers' compensation temporary disability claims with January 2002 through June 2009 dates of injury from the ICIS database. The ICIS data contained policy and claim detail including the dates of all disability payments, accumulated temporary disability payments and associated disability days. The final data set used in this study allowed the authors to calculate average temporary disability dollars paid per claim and average temporary disability days and the number of days from first to final temporary disability payment. To control for statutory increases in TD benefit levels that occurred from 2002 through 2010, the authors adjusted all TD payments in the study sample to 2010 levels.<sup>5</sup> Each claim in the study was assigned to one of two subsamples (pre-SB 899 or post-SB 899) based on the month and year of the injury. Exhibit 1 shows the distribution of the pre- and post-SB 899 TD claims used in the analysis by accident year.

**Exhibit 1: CWCI Study Sample**  
Distribution of TD Claims by Date of Injury Pre- vs. Post-SB 899



<sup>4</sup> ICIS is a proprietary database maintained by the California Workers' Compensation Institute that contains detailed information, including employer and employee characteristics, medical service information, and benefit and other administrative cost information on more than 3 million workplace injuries with dates of injury between 1993 and 2009(v11A). The datasets were evaluated as representative of the California insured population of injured workers (58.1 percent of the insured market in 2008).

<sup>5</sup> Factors used to adjust average TD benefits to the AY 2009 level were: 2002 – 1.152, 2003 – 1.070, 2004 – 1.048, 2005 – 1.033, 2006 – 1.023, 2007 – 1.017, 2008 – 1.010, 2009 – 1.005, 2010 – 1.000 (WCIRB, 2011)

## RESULTS

### Adjusted TD Payments & Number of Paid TD Days Per Claim At 12 and 24 Months

Exhibit 2 compares the average adjusted TD payments and the average number of paid TD days for the pre- and post-reform periods of this study. The results are measured at 12 and 24 months after the first TD payment.

**Exhibit 2: Average Adjusted TD Paid and Number of Paid TD Days at 12 and 24 Months, Pre- vs. Post-Reform**

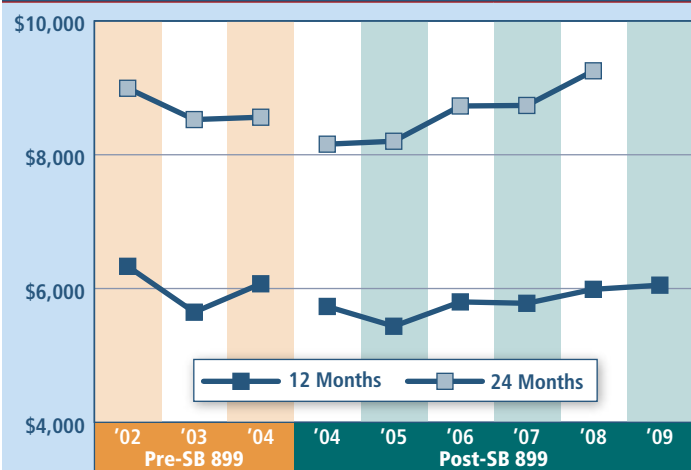
Accident Year	Average Adjusted TD Paid <sup>6</sup>		Average Number of Paid TD Days	
	12 Months	24 Months	12 Months	24 Months
<b>Pre-SB 899</b>				
<b>2002 – April 19, 2004</b>	<b>\$6,032</b>	<b>\$8,763</b>	<b>98.2</b>	<b>129.0</b>
<b>Post-SB 899</b>				
<b>Apr 19, 2004 thru 2009</b>	<b>\$5,744</b>	<b>\$8,567</b>	<b>95.3</b>	<b>130.5</b>
<b>Post-SB 899 Difference</b>	<b>-4.8%</b>	<b>-2.2%</b>	<b>-3.1%</b>	<b>1.1%</b>

After adjusting for the statutory benefit increases, claims from the post-reform period (April 19, 2004 through June 2009 injury dates) have averaged \$5,744 in TD payments during the first 12 months following the initial payment, 4.8 percent less than the \$6,032 average paid on pre-reform claims (January 2002–April 19, 2004 injury dates), as the average number of TD days at the 12-month valuation fell 3.1 percent (from 98.2 to 95.3 days). Likewise, at the 24-month benchmark, the average amount paid in TD was 2.2 percent less on the post-reform claims than on the pre-reform claims (\$8,567 vs. \$8,763) even though the average number of TD days at the 24-month valuation edged up 1.2 percent (from 129.0 days to 130.5 days).

These results, however, only represent the aggregated figures for the 27-month pre-reform period compared to the aggregated figures from the 62-month post-reform period. Exhibit 3 and 4 display the results from each accident year revealing the post-reform growth trends in the average amount of TD paid and the average number of TD days per claim.

As in the Institute's earlier analyses on temporary disability outcomes, the year-to-year comparisons confirm that the average amount of TD paid per claim declined immediately after the 2004-2005 reforms took effect, but by AY 2006, average TD payments began to climb.

**Exhibit 3: Adjusted TD Payments Per Claim At 12 & 24 Months, By Accident Year Pre- vs. Post-Reform**

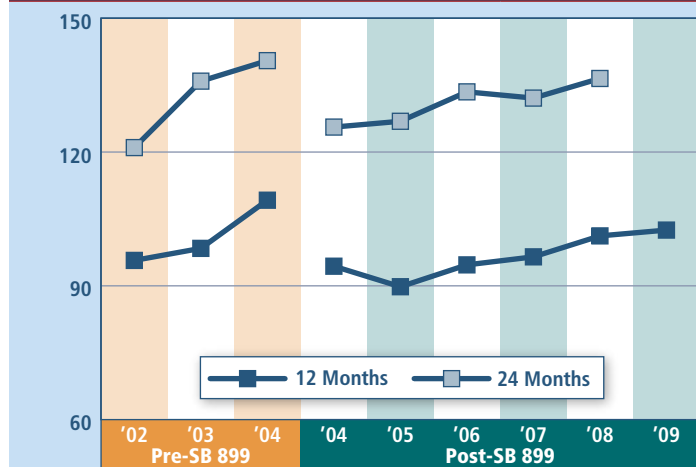


Accident Year	Average Adjusted TD Paid	
Pre-SB 899	12 Months	24 Months
<b>2002</b>	\$6,332	\$8,994
<b>2003</b>	\$5,646	\$8,526
<b>2004 (Jan 1 – Apr 19)</b>	\$6,071	\$8,561
Post-SB 899	12 Months	24 Months
<b>2004 (Apr 19 – Dec 31)</b>	\$5,732	\$8,158
<b>2005</b>	\$5,436	\$8,202
<b>2006</b>	\$5,800	\$8,729
<b>2007</b>	\$5,779	\$8,737
<b>2008</b>	\$5,988	\$9,255
<b>2009</b>	\$6,050	NA

The accident year trend data summarized in Exhibit 3 show that since hitting the post-reform low in AY 2005, the average amount of TD paid at 12 months has risen 11.3 percent (from \$5,436 to \$6,050), as the average number of paid TD days has increased from 89.8 to 102.5 (Exhibit 4). Similarly, the average amount of TD paid at 24 months has increased by 13.4 percent from a post-reform low of \$8,158 in AY 2004 to \$9,255 in AY 2008, as the average number of paid TD days has climbed from 125.6 to 136.5.

<sup>6</sup> Factors used to adjust average TD benefits to the AY 2009 level were: 2002 – 1.152, 2003 – 1.070, 2004 – 1.048, 2005 – 1.033, 2006 – 1.023, 2007 – 1.017, 2008 – 1.005, 2010, 2009 – 1.005, 2010 – 1.000 (WCIRB, 2011)

**Exhibit 4: Paid TD Days Per Claim At 12 and 24 Months, By Accident Year Pre- vs. Post-Reform**



Accident Year	Average Number of Paid TD Days	
	12 Months	24 Months
<b>Pre-SB 899</b>		
2002	95.7	121.0
2003	98.4	135.9
2004 (Jan 1 – Apr 19)	109.2	140.5
<b>Post-SB 899</b>		
2004 (Apr 19 – Dec 31)	94.4	125.6
2005	89.8	126.9
2006	94.7	133.5
2007	96.5	132.1
2008	101.2	136.5
2009	102.5	NA

## Percentage of TD Claims Exempt From the Two-Year Cap

As noted earlier, SB 899 included an exception to the two-year cap for specific injuries that can require extended medical treatment, including amputations, severe burns, eye burns, eye injury, hepatitis, HIV, lung disease and pulmonary fibrosis (see Appendix 1 for a full list).

Exhibit 5 shows the percentage of claims that fall into these exempt injury categories in the pre- and post-reform years.

**Exhibit 5: Distribution of Temporary Disability Claims Exempt from the 2-Year Cap**

Exempt Categories	Pre-SB 899	Post-SB 899
Amputation	1.8%	1.9%
Burns	1.2%	1.4%
Eye Burns	0.1%	0.1%
Eye Injury	0.6%	0.6%
Hepatitis	0.2%	0.3%
HIV	0.0%	0.0%
Lung Disease	1.2%	1.4%
Pulmonary Fibrosis	0.1%	0.1%
<b>Sub-total: Exempt</b>	<b>5.2%</b>	<b>5.8%</b>
<b>Non-Exempt</b>	<b>94.8%</b>	<b>94.2%</b>
<b>Grand Total</b>	<b>100.0%</b>	<b>100.0%</b>

The percentage of TD claims that are exempt from the 2-year cap increased marginally from 5.2 percent of claims prior to SB 899 to 5.8 percent of claims after SB 899.<sup>7</sup> In both the pre- and post-reform samples, claims involving amputations, lung disease, and burns accounted for most of the claims that were exempt from the two-year cap.

Exhibit 6 shows the percent of non-exempt TD claims in which TD benefits were paid beyond two years from the initial TD payment.

**Exhibit 6: Non-Exempt TD Claims with More Than 2 Years of TD Payments**

	Pre-SB 899	Post-SB 899
Less than 2 Years Paid TD Days	96.3%	97.6%
Two Years+ Paid TD Days	3.7%	2.4%
<b>Grand Total</b>	<b>100.0%</b>	<b>100.0%</b>

The percent of non-exempt TD claims with payments that extended for more than 104 weeks following the initial TD benefit payment decreased from 3.7 percent prior to SB 899 to 2.4 percent after SB 899.

<sup>7</sup> Changes to TD benefit caps went into effect on claims with dates of injury on or after April 19, 2004

## DISCUSSION

As noted in Exhibit 3, average TD payments fell immediately after the reforms, but bottomed out in 2005 and are now on the rise. The latest 12-month results show first-year TD payouts on AY 2009 claims averaged \$6,050, up 11.3 percent from the post-reform low and just below the \$6,071 average for pre-reform claims from AY 2004; while the 24-month results show average TD payments of \$9,255 on AY 2008 claims, up 13.4 percent from the post-reform low and above the pre-SB 899 high of \$8,994 in AY 2002. TD duration is also well above the post-reform lows, with the average number of paid TD days at the 12-month valuation up by 12.7 days (+14.1 percent), and by 10.9 days (+8.7 percent) at the 24-month valuation.

The finding that the percentage of temporary disability claims that involve injuries that are exempt from the 2-year TD payment cap has remained small confirms results noted in prior CWCI TD studies, though the volume of exempt

claims could increase in the future pending the outcome of a proposal currently before the California Legislature (AB 947, Solorio) which would extend the exemption to injured workers if their course of treatment lasts longer than two years. The prospects for that bill remain uncertain, however, as employer opposition stiffened following an August 2011 legislative hearing at which a cost estimate prepared by the Commission on Health and Safety and Workers' Compensation was released.<sup>8</sup> According to the Commission's estimate, expanding the exemption from the TD payment cap as outlined in AB 947 would add about \$210 million a year in costs to the state's workers' compensation program -- not counting the additional medical costs that would likely be incurred -- an increase that may prove untenable given the current state of the California economy. In any case, the Institute will continue to monitor the proportion of TD claims that are exempt from the 2-year payment cap, as well as changes in the cost and duration of temporary disability claims.

<sup>8</sup> Senate Appropriations Committee AB 947 (Solorio) Bill Analysis.

[http://info.sen.ca.gov/pub/11-12/bill/asm/ab\\_0901-0950/ab\\_947\\_cfa\\_20110815\\_141129\\_sen\\_comm.html](http://info.sen.ca.gov/pub/11-12/bill/asm/ab_0901-0950/ab_947_cfa_20110815_141129_sen_comm.html) Fiscal Summary based on work conducted by Commission on Health & Safety & Workers' Compensation staff. Presented at Senate Appropriations Committee Hearing 8/15/2011.

## Appendix 1: Injuries and Associated ICD-9 Codes Exempt from the 2-Year TD Cap

Exempt Category	Associated ICD-9s	ICD-9 Description
<b>Acute and chronic hepatitis B</b>	070.30	Hepatitis, viral, type B (acute)
	070.20	Hepatitis, viral, type B (acute), with hepatic coma
	V02.61	Hepatitis, viral, type B (acute), with carrier status
	070.32	Hepatitis, viral, type B, chronic
	070.41	Hepatitis, viral, type B, chronic with hepatic coma
<b>Acute and chronic hepatitis C</b>	070.51	Hepatitis, viral, type C (acute)
	070.41	Hepatitis, viral, type C (acute), with hepatic coma
	V02.62	Hepatitis, viral, type C (acute), with carrier status
	070.54	Hepatitis, viral, type C, chronic
	070.44	Hepatitis, viral, type C, chronic with hepatic coma
<b>Amputations</b>	997.6-997.69	Amputation, stump (surgical or posttraumatic), abnormal, painful or with late complication
	885-885.1	Amputation, traumatic, of thumb
	886-886.1	Amputation, traumatic, of other finger
	887-887.7	Amputation, traumatic, of arm and hand
	895-895.1	Amputation, traumatic, of toe
	896-896.3	Amputation, traumatic, of foot
	897-897.7	Amputation, traumatic, of legs
	878-878.9	Amputation, traumatic, of external genitals
	874.9	Amputation, traumatic, of head
<b>Severe burns</b>	940-940.9	Burn confined to eye
	941-941.5	Burn of face, head or neck
	942-942.5	Burn of trunk
	943-943.5	Burn of upper limb, exc. wrist and hand
	944-944.5	Burn of wrist and/or hand
	945-945.5	Burn of lower limb
	946-946.5	Burn of multiple specified sites
	948.2-948.9	Burn, by extent of body surface
	949.2-949.5	Burn, unspecified site
<b>Human immunodeficiency virus (HIV)</b>	042	HIV disease
	V08	HIV infection, without overt disease
	079.53	HIV, type 2 disease
<b>High-velocity eye injuries</b>	870.3-870.4	Penetrating wound of orbit of eye
	871-871.9	Open wound of eyeball, with laceration or penetration
	921.3, 921.9	Contusion of eyeball
<b>Chemical burns to the eyes</b>	940-940.9	Chemical burn of eye or eye area
<b>Pulmonary fibrosis</b>	515	Post-inflammatory pulmonary fibrosis



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