Oregon Department of Consumer and Business Services

Information Management Division

Permanent Partial Disability Trends: 2011 Update to the Workers' Compensation Management Labor Advisory Committee

October 2011

Permanent Partial Disability Trends: 2011 Update to the Management Labor Advisory Committee

Highlights

This is the second biennial update on Permanent Partial Disability (PPD) benefits. Some of the trends we're observing in PPD are:

- Fewer cases, due primarily to fewer claims. The number of claims with new awards of PPD is down by more than a fifth since the pre-recession years.
- The maximum benefit is now nearly double the old unscheduled maximum 6 years after implementation. This is because benefits are tied to the state average weekly wage (SAWW) which has risen over this period.
- The average PPD amount per claim closed with PPD rose by over 16% from 2004 to 2010. One of the drivers of this trend was the change in SAWW.
- About 96% of the dollar value of PPD awarded system-wide in 2010 was by the new benefit structure (i.e. nearly all PPD claims involved post-2004 injuries).
- A higher share of the dollar value of PPD is being awarded at the insurer Notice of Closure (NOC) level as opposed to awards on appeal.
- There are more claims that negotiate a CDA before closure, rather than go the typical closure route. We're confident that many of these would have had PPD; although we don't know how many.

Introduction

In 2003, the Oregon Legislature passed Senate Bill 757, modifying Permanent Partial Disability (PPD) rating criteria and benefit calculations. Among the agreed goals of the designers of the PPD changes in SB 757 was that the new benefit structure, based on the wages and benefits being paid at that time, would be roughly cost neutral with the benefit structure it replaced. In order to give time to implement and observe the impact of the changes, the bill made the changes effective for dates of injury beginning 1-1-05, and included a sunset provision that would revert PPD benefits to their prior (2001) structure effective 1-1-08.

In 2005, the Legislature passed House Bill 2408, further modifying PPD rating criteria, and mandated that the Department of Consumer and Business Service collect data and report to the Seventy-fourth Legislative Assembly by January 30, 2007, on the impact to permanent partial disability awards in workers' compensation claims of each of these two law changes. One of the study goals was to formally assess the cost neutrality of the various benefit provisions.

The HB 2408 study was completed in July 2006. The principal finding of the HB 2408 study was that the new PPD benefit structure, and the associated implementing rules, were indeed cost neutral with respect to the baseline PPD benefits and wages in effect at the time the bill was drafted. This was evidenced by the lack of a statistically significant difference between the average PPD awards made under the old (pre-2005) PPD benefit structure and either of the new structures and their associated rating criteria. The study also confirmed that the new benefit structure redistributed PPD benefits from workers that are able to return to work more quickly, toward workers with longer-term injuries and work disability. This was based on a comparison of patterns of PPD awards within several quarters of injury, comparing new and old benefit PPD claims.

Based in part on the study findings, HB 2244 was passed in the 2007 legislative session. That bill made the new benefit structure permanent by removing the sunset, and also charged MLAC with a biennial review of PPD benefits. The purpose of this document is to provide current data on trends in PPD awards and benefits as background for that review, with a primary focus on awards of PPD made under the new benefit system. The data used in this document come in large part from data contained in the WCD Claims Information System on awards of PPD occurring system-wide.

System trends and PPD awards.

A number of factors influence PPD award trends, including:

- The economy, both in general and in high-hazard industries.
- Overall frequency of disabling claims and underlying injury severity.
- Trends in wages:
    - the state average weekly wage, which adjusts impairment benefits and overall benefit maximums, and
    - wages of injured workers, which drive work disability awards. Note that the wages of injured workers can have different trends than wages overall.
- The share of claims that settle (CDA) rather than go through the claim closure process. For claims that have a CDA instead of a closure, there is no way to know whether there would have been a PPD award. However, it is safe to say that without the settlement, some would have been awarded PPD.
- The share of claims that are awarded PPD at claim closure
- Trends in appeals on extent of disability.

Several of these system trends are detailed below. These charts draw from data recently published in the Oregon Workers' Compensation Biennial Report, Tenth Edition. In some cases we have been able to update these with 2010 data.

Despite rising award maximums and averages, pure premium rates declined or remained unchanged for six years since the new benefits were implemented.

Figure 1 shows the trend in the share of closed claims that are awarded PPD. Among accepted disabling claims, the share of claims with PPD was very stable at around 30%. While actual PPD award percentages have been stable, the share of claims with a CDA instead of a claim closure has been slowly increasing. It is likely that some of these would have been PPD claims also. The counts and rates described below include PPD from all injury years, and thus both old and new benefit types.

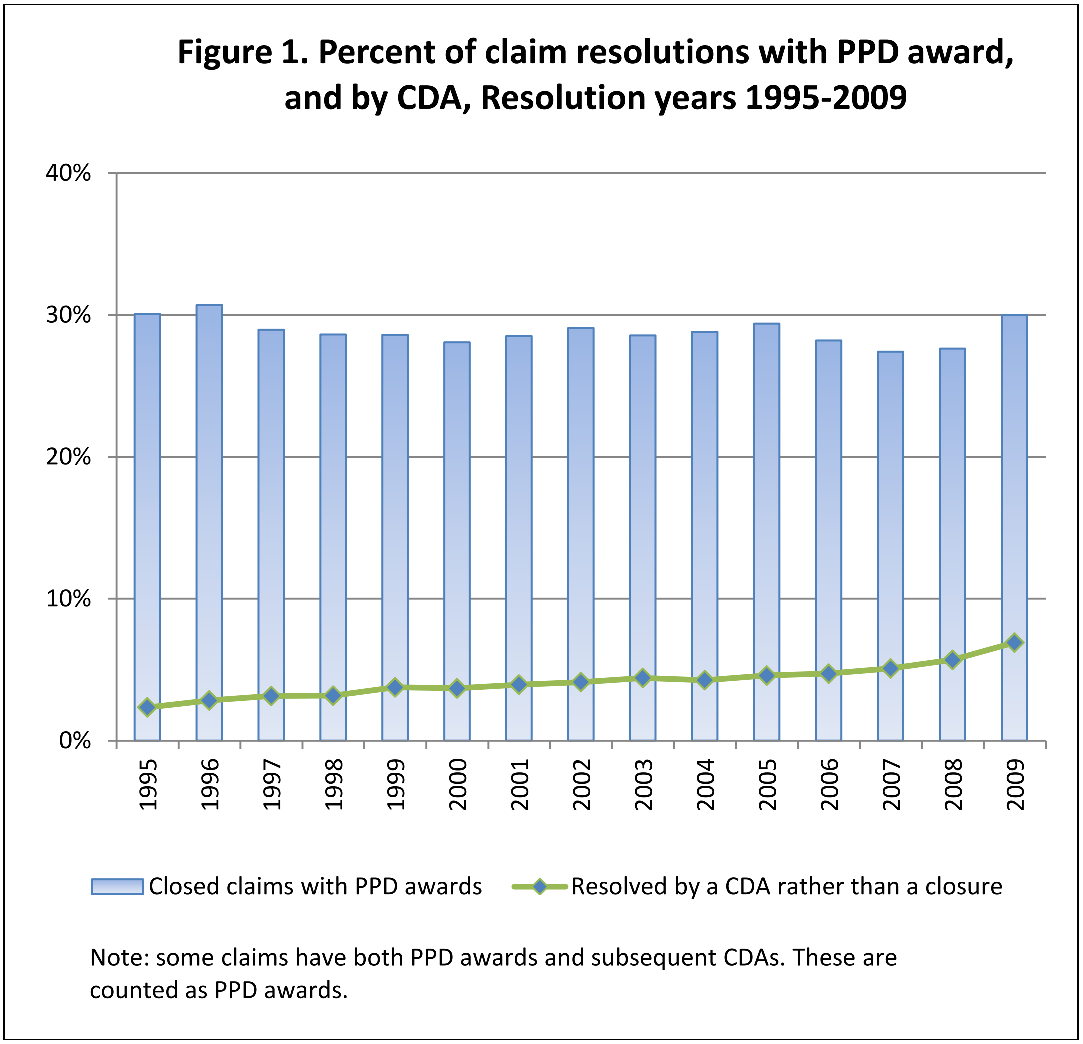


Figure 2, on the following page, shows trends for the count of PPD claims and average award amount by year of award. These trends affect the total dollars of PPD awarded. Over the period shown, counts of PPD claims have been declining or largely flat in recent years, while average dollar awards have been increasing steadily. The interaction of these two factors is the reason for the relatively flat dollar totals in PPD benefits awarded in recent years, seen in Figure 3. Note that these charts use data by year of closure, rather than year of injury, which factors out much of the effect of differences in claim maturity.

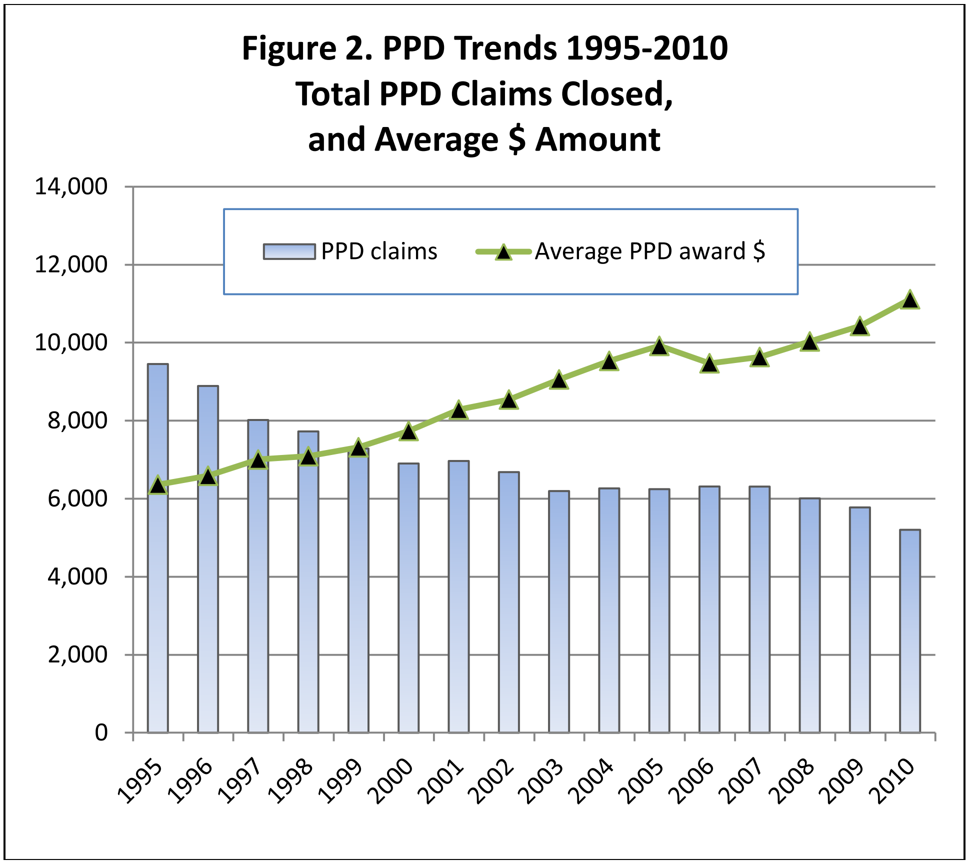


Figure 2. PPD Trends 1995-2010
Total PPD Claims Closed,
and Average $ Amount
14,000
12,000
10,000
8,000
6,000
4,000
2,000
0
PPD claims
Average PPD award $
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010

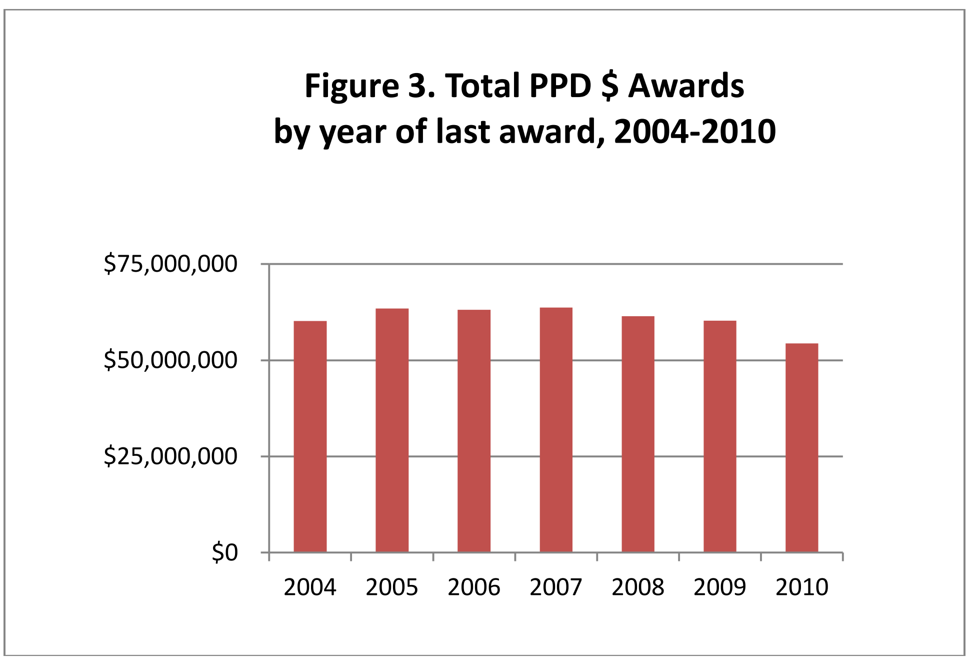
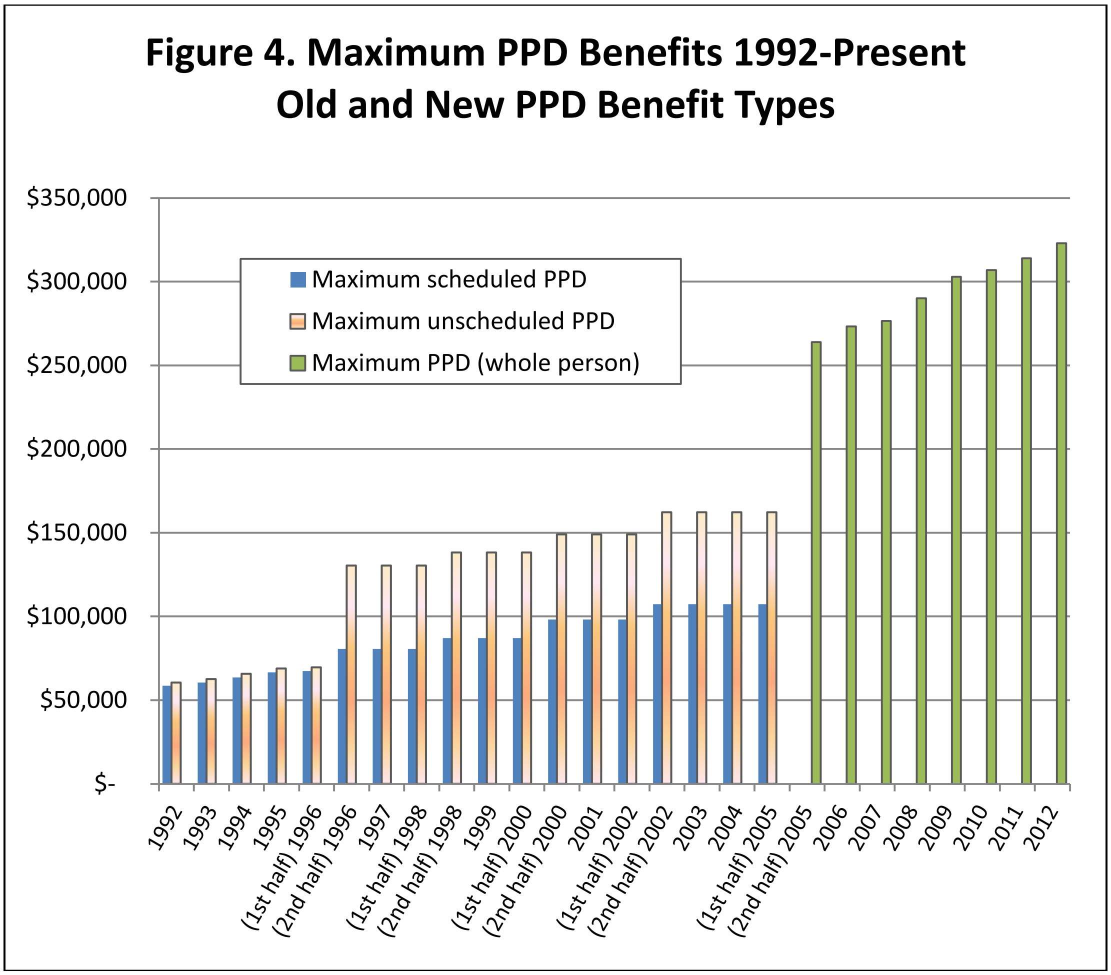


Figure 3. Total PPD $ Awards
by year of last award, 2004-2010
$75,000,000
$50,000,000
$25,000,000
$0
2004
2005
2006
2007
2008
2009
2010

Maximum statutory benefits

With the new benefit structure, Oregon no longer has Scheduled and Unscheduled PPD benefit types; instead, all disabilities are rated on the "whole person" basis. Benefit maximums rose substantially in the new benefit structure due to reallocation of benefits to those with greater economic loss, and annual adjustments keep benefits in line with wage changes. Figure 4 shows benefit maximums for the period 1992 to present. The FY 2012 maximum under the new structure is nearly double the old Unscheduled maximum.



Unfortunately, current data are not available to compare Oregon's maximum PPD benefits to other states. The last such publication by the US Department Labor was for 2006, and in that comparison Oregon's whole-person PPD maximum was at the 70th percentile of comparable states, or in the upper third nationally. Because states change benefit formulas infrequently, and Oregon benefits have been growing with average wages, it is likely that Oregon has maintained or improved its relative position since 2006.

One area of unanswered questions continues to be benefit adequacy, such as the share of lost wages that is replaced by disability benefits. Because of cost, complexity, and other concerns, very little new research has emerged in this area in the past half-decade.

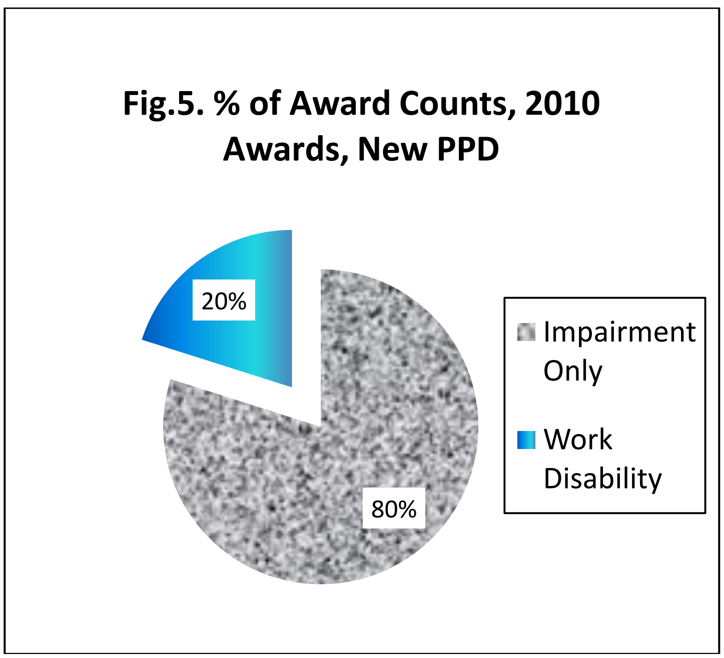
Benefit characteristics of post-2004 (new PPD) claims

New PPD benefits now constitute approximately 97 percent of PPD closures and 96 percent of the dollar amount awarded in the most recent full year of claim closures. The new PPD benefit structure consists of two benefit types, both of which can be paid in the same claim:

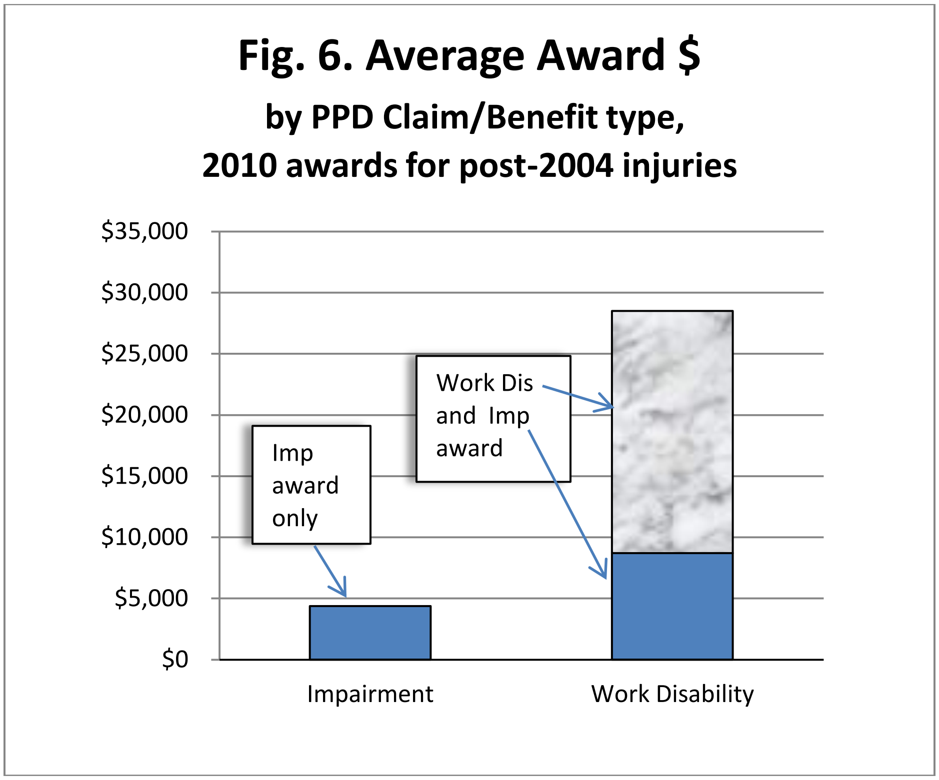
- Impairment, which is rated and paid for all PPD claims, and
- Work disability, which is rated and paid (in addition to impairment) when the worker is unable to return to regular work.

Figure 5 shows the distribution of benefit types in new PPD claims for a single year of awards, 2010. Claims that close in any particular year represent a mix of claims that arose in both that year and prior years. We use 2010 closures because they are least likely to be affected by maturity issues; in other words, they are likely to be representative of future results. About one in five 2010 PPD closures in the new system had work disability benefits. With more years under the new system, this proportion may increase gradually, as the average maturity of post-2004 claims increases among all closures.

Since injury-year 2006, the worker's release-to-regular-work status has been the threshold for work disability benefits. When the worker is not released to return to regular work, work disability benefits are awarded in addition to impairment benefits. Thus, some workers will receive one PPD benefit type (impairment) while others receive both types (impairment and work disability). The chart below shows the distribution of awards among these benefit/claim types.



Finally, Figure 6 shows the average award by PPD benefit type, including the relative contribution of impairment and work disability benefits to the average PPD claim with work disability. The work disability portion of benefits provides over two-thirds of the PPD award for these claims. These two benefits sum to over $28,500 for PPD claims with work disability awarded, compared to just under $5,000 for those with impairment only. Over 60% of PPD benefits are going to the most disabled 20% of claims—those receiving work disability.



Conclusion

PPD benefit amounts overall have been quite stable in recent years, despite the major changes implemented in the system since 2004. Declines in number and total dollar amounts are largely related to reductions in claims, and changes in settlement patterns, in the current economic environment. In the six years since changes took effect, PPD award characteristics appear to have remained consistent with original expectations and the policy decisions that were made at the time.