



**Workers'  
Compensation  
Board**

# 2021



# Annual Report

**Kathy Hochul, Governor**  
**Clarissa M. Rodriguez, Chair**

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# Executive Summary

**T**he New York State Workers' Compensation Board (Board) is pleased to submit its 2021 Annual Report. Pursuant to Workers' Compensation Law § 153, this report states in detail the work the Board has done in hearing and deciding cases and related aspects of the Board's operations, including assembly and adjudication of workers' compensation claims and payer compliance.

In 2021, the Board continued its efforts to maximize process and legislative enhancements, while effectively responding to the challenges posed by the ongoing COVID-19 pandemic. From issuing new guidance, to implementing new regulations, and building the first phase of the Board's new business information system, while also pivoting outreach efforts to safely educate workers and stakeholders through a series of highly-attended webinars, the Board was able to accomplish a great deal, on top of our most critical work — ensuring the uninterrupted and timely flow of benefits to the injured workers of New York State.

## COVID-19 RESPONSE

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Amid the ongoing pandemic, the Board continued to take swift and effective actions to keep both the public and Board staff safe, while ensuring continuity of the workers' compensation system.

The Board adopted emergency amendments and regulations, issued important guidance regarding process and other changes, continued to hold all hearings remotely to enable participation while maintaining public safety, and engaged in extensive outreach to help workers understand their rights and how to access benefits for work-related COVID-19.

In 2021, the Board:

- Held approximately 1,000 virtual hearings per day, enabling all parties in a workers' compensation hearing to participate remotely.
- Kept telemedicine in effect through emergency regulations, and proposed a permanent regulation to make telehealth a part of the workers' compensation system post pandemic.
- Adopted a permanent regulation to allow reimbursement for COVID-19 testing when there is a claim due to a workplace exposure.
- Continued relief of original signature requirements on 27 Board-prescribed forms.
- Suspended Labor Market Attachment requirements until mid-August 2021.
- Held monthly webinars, attended by nearly 9,600 participants, to educate employers and workers regarding their rights and responsibilities, including specifics on COVID-19, and published recordings of webinars on the Board's website to further extend reach of this important information.
- Kept stakeholders informed on all COVID-19-related activities through a dedicated webpage – [wcb.ny.gov/covid-19](https://wcb.ny.gov/covid-19).

## RECORD HEARING PARTICIPATION

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After switching to 100% remote hearing attendance in March 2020 due to the pandemic, the Board saw a dramatic increase in the rate of participation among injured workers via telephone and the virtual hearings system. In 2021, the rate of attendance for injured workers themselves (not their legal representatives) was over 85%, the highest recorded since the Board began tracking this information. That rate was 70.1% for 2019, the last full year of in-person hearings. The Board continued efforts to encourage injured workers to participate in their hearings. For much of the year, in addition to making sure information on attending hearings remotely was widely available, the Board contacted injured workers without legal representation to inform them of remote attendance options, and had Workers' Compensation Law Judges call injured workers at the start of their hearings.

## PROMPT PAYMENT

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Continued efforts to educate payers, monitor their performance against legal time frames, and systematically penalize lapses have resulted in insurers paying timely lost-wage benefits to injured workers.

In 2021, nine in 10 injured workers received their first benefit payment timely (within 18 days of disability or 10 days from the worker notifying the employer of an injury, whichever is later).

In 2021, the Board also focused on two new measurements as part of its ongoing Payer Compliance initiative: Suspensions of Benefits to Claimants (SROI Suspension) and Semi-Annual Statement of Benefits (SROI Sub Annual). The first measurement implemented was the timely filing of the documentation for SROI suspensions, which are required to be filed within 16 days after payments to injured workers have stopped. Measuring timeliness of these filings helps ensure that any cessation of benefits is done in accordance with applicable laws and regulations. After a six-month period of extensive outreach to payers on the requirements, the Board began its monitoring, and by the second quarter, the statewide average was already above the performance goal.

## ADMINISTRATIVE APPEALS

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The Board continued to work toward the prompt resolution of appealed claims. As of January 1, 2022, 86% of these claims were pending less than six months. The overall inventory remains low as compared to six years ago when just 67% of appealed claims were pending less than six months. The Board has made significant progress in reducing the overall inventory from where it stood in 2016 (6,740) to where it is today (3,550), an indication of quicker resolution.



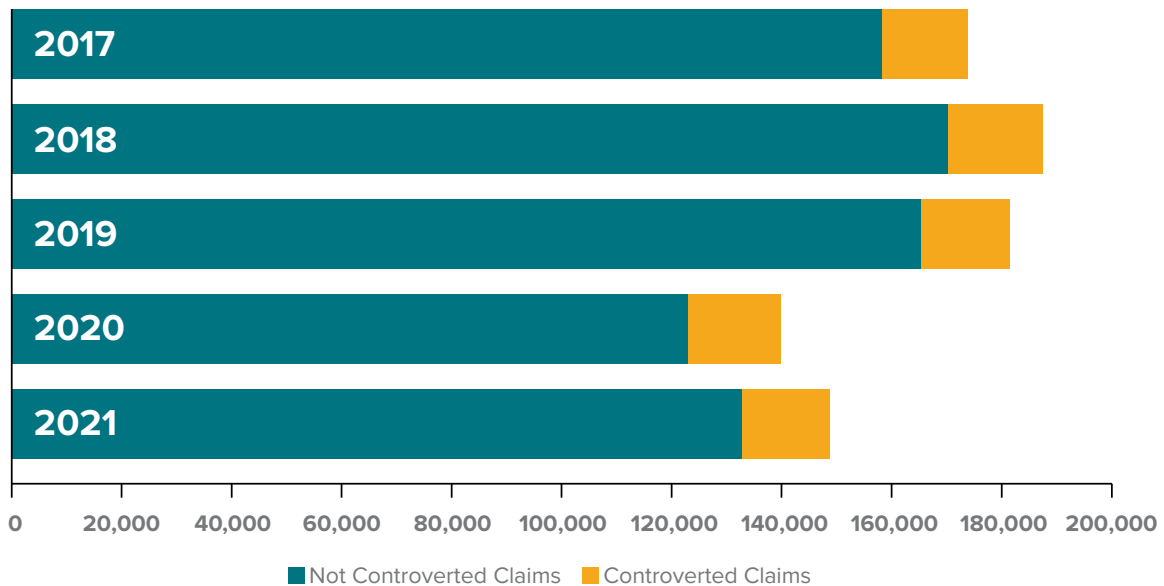
# Claims

## CLAIMS OVERVIEW

In 2021, the Board received more than 11 million claims documents, filed by a variety of system stakeholders, including health care providers, injured workers, employers, attorneys, and insurers.

The number of claims assembled in 2021 totaled 148,751. This was again far less than usual since fewer people were working as a result of the COVID-19 pandemic. Although workers' compensation is a no-fault insurance system, the insurance carrier or self-insured employer disputes or "controverts" the injured worker's eligibility for workers' compensation benefits in a small number of cases. When a claim is disputed, the Board strives to resolve it within 90 days through its expedited hearing process. The Board has consistently scheduled pre-hearing conferences for controverted claims within approximately 26 days of receiving a complete claim.

### Claims assembled — Controverted vs. not controverted from 2017-2021



Year	Total Claims Assembled	Controverted Claims	Not Controverted
2017	173,771	15,499	158,272
2018	187,485	17,167	170,318
2019	181,536	16,147	165,389
2020	139,762	16,739	123,023
2021	148,751	16,173	132,578

A **controverted claim** is one for which the Board has received:

- 1) "Notice That Right to Compensation Is Controverted" indicating that the carrier disputes the claim, and
- 2) qualifying medical documentation.

The assembled claim and controverted claim counts are cumulative and vary from prior annual reports. Due to the statutory due date of the Annual Report on February 1 each year, a significant number of claims are not "complete" when the data is queried for the report in mid-January each year. As additional claim documentation is received, the claim counts are expected to increase.





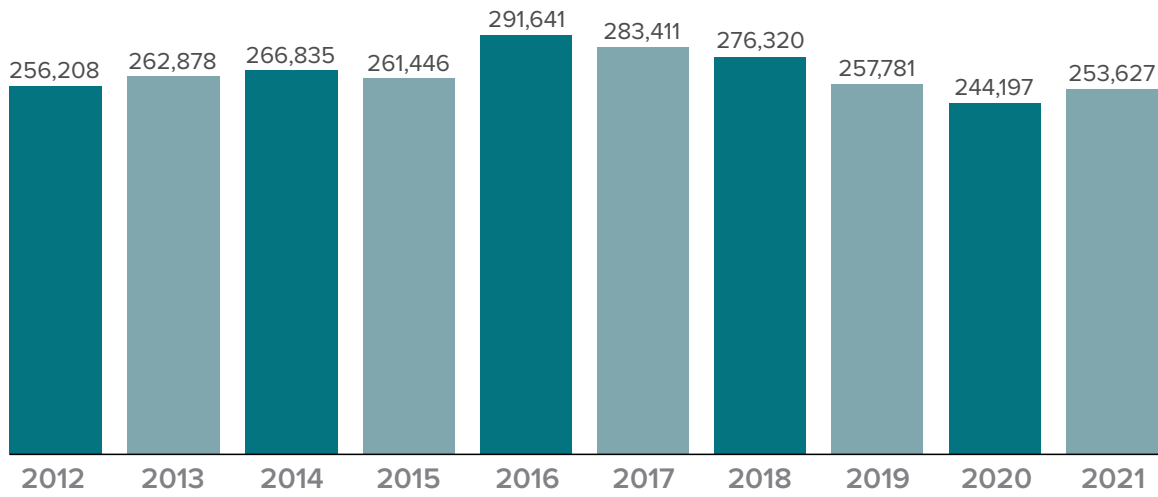
# Hearings



## HEARINGS HELD

In 2021, the Board held more than 253,000 hearings. This is consistent with the number of hearings held prior to the COVID-19 pandemic. As noted above, the Board's virtual hearings system enabled the hearing process to continue without interruption the entire time.

### Number of hearings held from 2012 to 2021



YEAR	TOTAL HEARINGS HELD
2012	256,208
2013	262,878
2014	266,835
2015	261,446
2016	291,641
2017	283,411
2018	276,320
2019	257,781
2020	244,197
2021	253,627

Through 2015, the number of hearings excludes commissioner hearings, board panel reviews and Section 32 waiver agreements. It includes hearings held at district offices, customer service centers and hearing point locations. Starting in 2016, the count includes Section 32 hearings.

If a hearing was held to resolve the issues in more than one claim for an individual injured worker, then the total number of hearings in this report reflects the total number of claims addressed at the hearing.



# Resolution Process

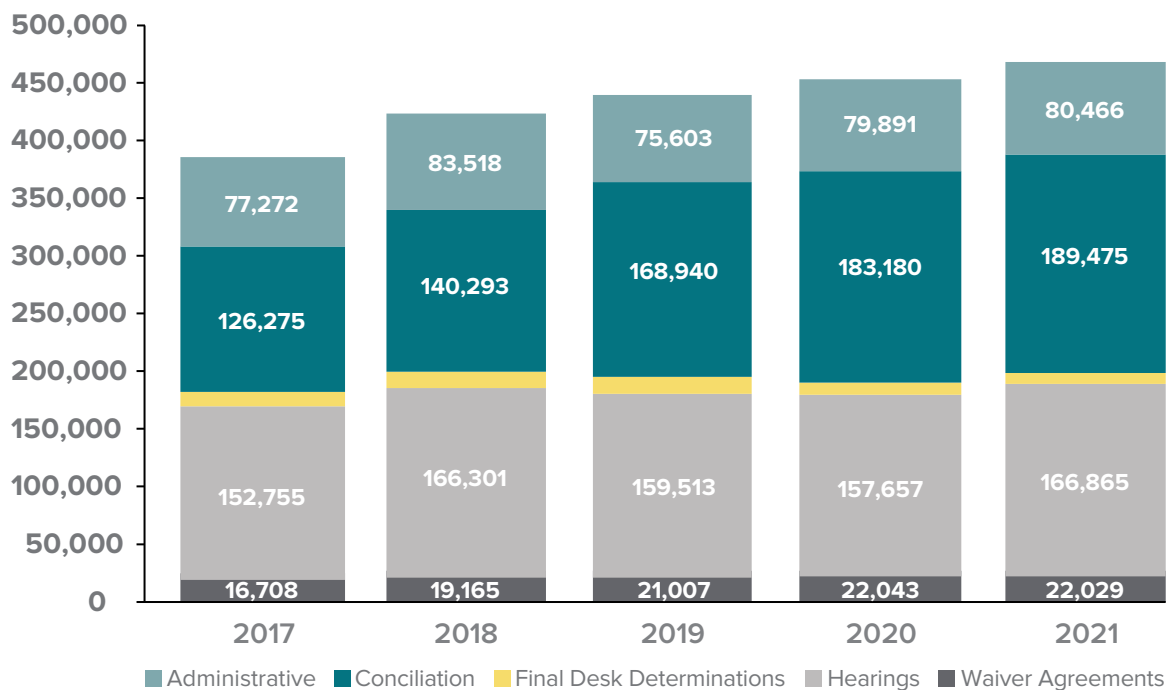
## RESOLUTION PROCESS

The Board adjudicates issues either formally or informally. Formal resolution is achieved via an actual hearing in front of a Workers' Compensation Law Judge. Despite the COVID-19 pandemic, the Board increased resolutions in 2021 to its highest level ever. The Board held over 253,000 hearings in 2021, during which approximately two thirds resolved the issue(s) at that hearing.

Informal resolution includes administrative actions such as issuing desk decisions and proposed decisions based on the submitted documents. The types of issues that are treated as informal resolutions include, but are not limited to, legal objections to medical bills, penalties, procedural decisions on schedule loss development, and undisputed periods of lost time.

In 2021, nearly 60% of resolutions were resolved through informal methods, including Conciliation decisions, which reached an all-time high due to a concerted effort to route as many issues as feasible through this process. Using informal resolution methods allows the Board to spend more time on formal hearings for more complex disputes. Resolving a case may take more than a single hearing or informal decision. In 2021, the Board issued 468,306 claim resolutions.

### Claim resolution by Board processes 2017 to 2021



## Claim resolution by Board processes 2017 to 2021

CLAIM RESOLUTIONS	RESOLUTION YEAR				
	2017	2018	2019	2020	2021
<b>Informal</b>	216,117	237,872	259,123	273,596	279,412
Administrative	77,272	83,518	75,603	79,891	80,466
Conciliation	126,275	140,293	168,940	183,180	189,475
Final Desk Determinations	12,570	14,061	14,580	10,525	9,471
<b>Formal</b>	169,463	185,466	180,520	179,700	188,894
Hearings	152,755	166,301	159,513	157,657	166,865
Waiver Agreements	16,708	19,165	21,007	22,043	22,029
<b>Total</b>	<b>385,580</b>	<b>423,338</b>	<b>439,643</b>	<b>453,296</b>	<b>468,306</b>

**Administrative** includes Administrative Determinations, Administrative Closures, and Claim Consolidations.

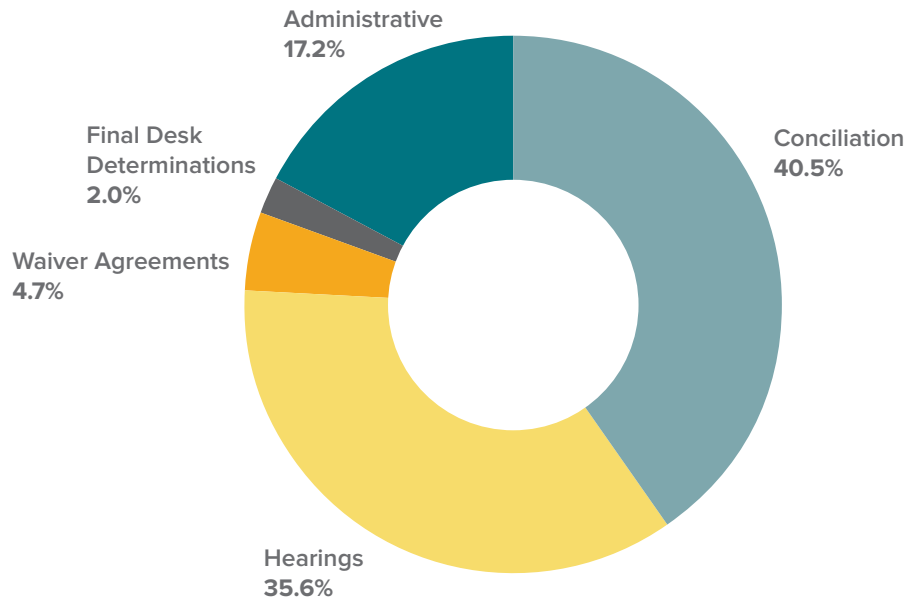
**Conciliation** provides an informal and prompt resolution of the claim based upon the cooperation of both parties: the injured worker and the insurance carrier/self-insured employer.

**Final Desk Determinations** reflect resolutions outside the hearing process, which include the following types of Board decisions: Notice of Stipulated Decision (Non-Scheduled Loss), Notice of Stipulated Decision (Scheduled Loss), Desk Decision Death with Dependents, Desk Decision Death without Dependents, and Proposed Decision (Section 32). The Proposed Decision (Section 32) waiver agreement has been in effect since March 1, 2016. The stipulation agreements have been in effect since November 2, 2016.

A claim resolved by the **hearing** process is one for which a judge has determined that no further action by the Board is necessary at the conclusion of the hearing; this includes pre-hearing conferences. A pre-hearing conference provides a mechanism for the identification of issues and relevant evidence and permits parties of interest to assess their case and to resolve outstanding issues prior to scheduling a hearing regarding those issues. The count of hearings also includes Administrative and Full Board Review resolutions.

**Waiver agreements** settle any or all issues in a claim for workers' compensation benefits, subject to the Board's approval.

## Claim resolution by Board processes in 2021



CLAIM RESOLUTIONS	NUMBER OF RESOLUTIONS	PERCENTAGE OF RESOLUTIONS
<b>Informal</b>	<b>279,412</b>	<b>59.7%</b>
Administrative	80,466	17.2%
Conciliation	189,475	40.5%
Final Desk Determinations	9,471	2.0%
<b>Formal</b>	<b>188,894</b>	<b>40.3%</b>
Hearings	166,865	35.6%
Waiver Agreements	22,029	4.7%
<b>Total</b>	<b>468,306</b>	<b>100.0%</b>

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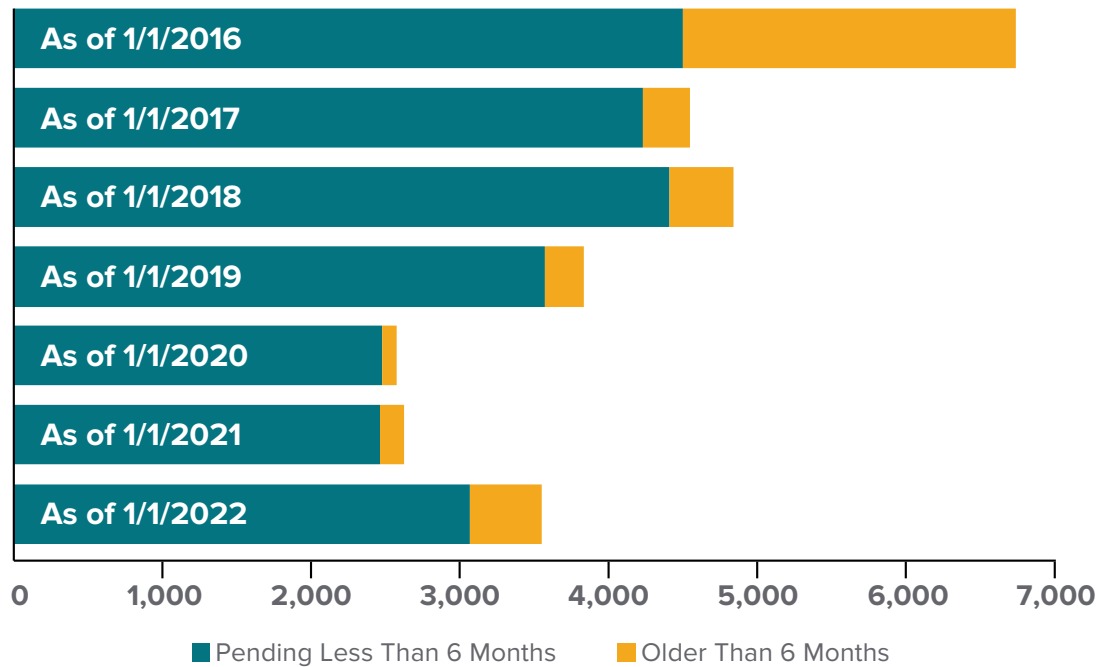
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If either party disagrees with the judge's decision, they may request review of the decision by a panel of three Board Members. As of January 1, 2022, the inventory of pending appeals was 3,550, and less than 500 of those were more than six months old.

### Appealed claims inventory



AS OF DATE	INVENTORY	OLDER THAN 6 MONTHS	PERCENTAGE PENDING < 6 MONTHS
1/1/2016	6,740	2,240	67%
1/1/2017	4,547	315	93%
1/1/2018	4,840	430	91%
1/1/2019	3,834	262	94%
1/1/2020	2,575	96	96%
1/1/2021	2,626	162	94%
1/1/2022	3,550	481	86%

Age is measured from the application date of the administrative review. Accuracy of age depends on availability and accuracy of the "Appeal Application Date" of the claim.



# Improving Systems and Enhancing Care



## PREPARING FOR ONBOARD: LIMITED RELEASE

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In 2021, the Board made tremendous strides in building, testing, and planning for the release of OnBoard: Limited Release, the first phase of the Board's new and improved business information system. As the Board fine-tuned the solution, the first users, primarily health care providers and payers, were briefed on the new system functionality and workflows, as well as how to prepare for the early 2022 launch. The Board held numerous live, interactive webinars, issued targeted emails, and published recorded presentations, facts sheets, guides, and FAQs on the Board's website. The new solution will provide a streamlined, paperless process for the authorization of medical treatment, non-formulary medications, durable medical equipment, and provider submission of unpaid medical bills.

## MAKING TELEHEALTH PERMANENT

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The COVID-19 pandemic has had a dramatic effect on medical care in general, with telehealth now widely practiced for safety, convenience and improved patient access to care. Based on the success of allowing telehealth for workers' compensation, made possible through a series of emergency regulations, the Board proposed a regulation to make telehealth an option, permanently. Having reviewed public comments on the proposed regulation, the Board made plans to issue a revised proposal early in 2022, with formal adoption anticipated by mid-year.

## NEW AND UPDATED MEDICAL TREATMENT GUIDELINES

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In 2021, the Board adopted or proposed nearly a dozen new or updated *New York Medical Treatment Guidelines (MTGs)*. These will all become effective in 2022, as part of the phased rollout of OnBoard: Limited Release.

The Board made training available on the new and updated *MTGs*. Each training provides an overview of the General Guideline Principles, diagnoses associated with the body part or condition, as well as diagnostic and treatment recommendations.

Continuing Medical Education (CME) credit was made available for each course, along with non-CME training presentations for those who did not need CME credit.

## ATTRACTING HEALTH CARE PROVIDERS

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The Board continued efforts to bring more health care providers into the New York State workers' compensation system through an easy online authorization and renewal application process, and by simplifying medical billing.

In 2021, nearly 3,500 health care providers were authorized or reauthorized by the Board to treat injured workers in New York State, providing injured workers with more treatment options and better access to care. This included adding providers in specialties that were new to the system as of 2020, such as acupuncturists, licensed clinical social workers, and nurse practitioners.

At the same time, the Board continued its transition to the universal medical billing form, the *CMS-1500*, to simplify medical reporting and reduce administrative burden on Board-authorized providers. By the end of 2021, treating providers could voluntarily transmit *CMS-1500* medical bills and all workers' compensation payers were required to electronically accept them. The final phase of the transition, in which provider use of the *CMS-1500* form is fully mandated, is targeted for mid-2022.

## BETTER FOR WORKERS BETTER FOR BUSINESS BETTER FOR PROVIDERS

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While continuing to navigate the challenges of the COVID-19 pandemic in 2021, the Board furthered its efforts to create a system that's better for workers, better for business, and better for providers. In 2022, the Board will build on these improvements through the launch of a new business information system, implementation of new treatment guidelines, and by leveraging technology to further educate and assist injured workers and other Board stakeholders.



**Workers'  
Compensation  
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The New York State Workers' Compensation Board protects the rights of employees and employers by ensuring the proper delivery of benefits and by promoting compliance with the law.

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