

SUBSEQUENT INJURY FUND (SIF)

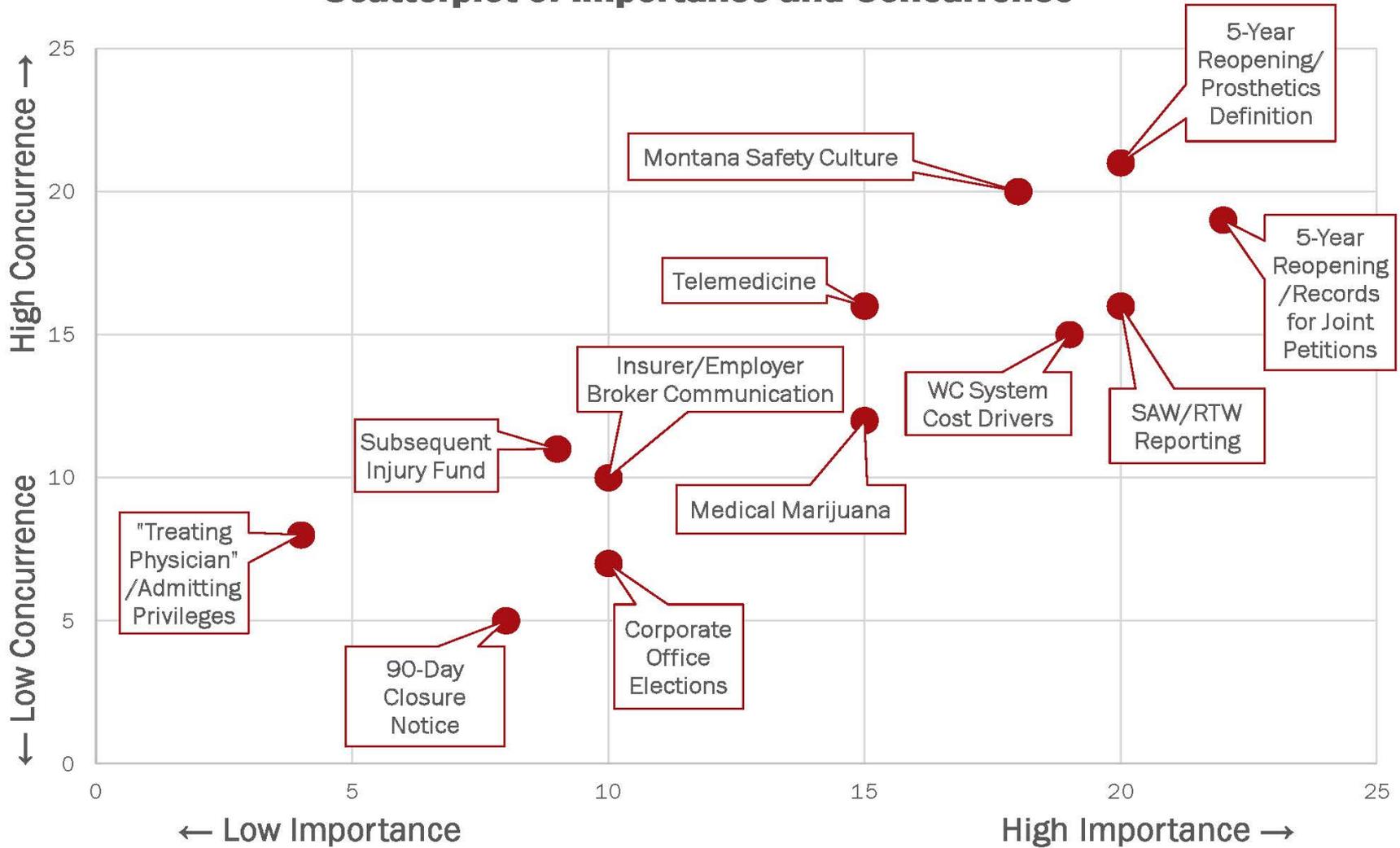
History and Overview
LMAC – January 8, 2020



Montana Department of
LABOR & INDUSTRY

Future Work Plan Topics for LMAC

Scatterplot of Importance and Concurrence



SIF - Basics

- **Background:**

- Established by the Legislature in 1973 – assists persons with disabilities become employed by offering a financial incentive to employers to hire certified workers
 - **Definition of person with a disability:** A person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or ... reemployment ... considering the person's age, education, training, experience and employment rejection
- Part of a larger package of bills updating WCA
 - No \$ limit and lifetime medical services
 - Other benefits under 39-71-701, 39-71-702 & 39-71-703
 - Before SIF, employers could openly discriminate against individuals based on medical history & disability status
 - Now forbidden under ADA & parallel provisions of MT Human Rights Act
 - Originally paid for 1st 104 weeks of benefits – provided greater incentive to employers to hire/retain worker certified as “industrially handicapped”. That changed in 1987 to paid after 1st 104 weeks.
- If SIF eliminated moving forward, future employers would pay for SIF liabilities already incurred - whether known or not
 - Very long liability “tail”

- Pass-through assessment costs to employers

- Through surcharge if Plan 2 or 3 or assessment if Plan 1

- **Nationally:**

- 39 states have some type of second injury or subsequent injury fund
- 9 states no longer have their funds – AL, KS, KY, NE, NM, NY, SC, VA & WV
- 3 states never had a fund - ME, WY & OR
- 26 states enacted their funds before 1955 – Massachusetts was the last in 1986
- 30 funded through assessment or surcharge – 4 are tax on premiums



SIF – How it Works

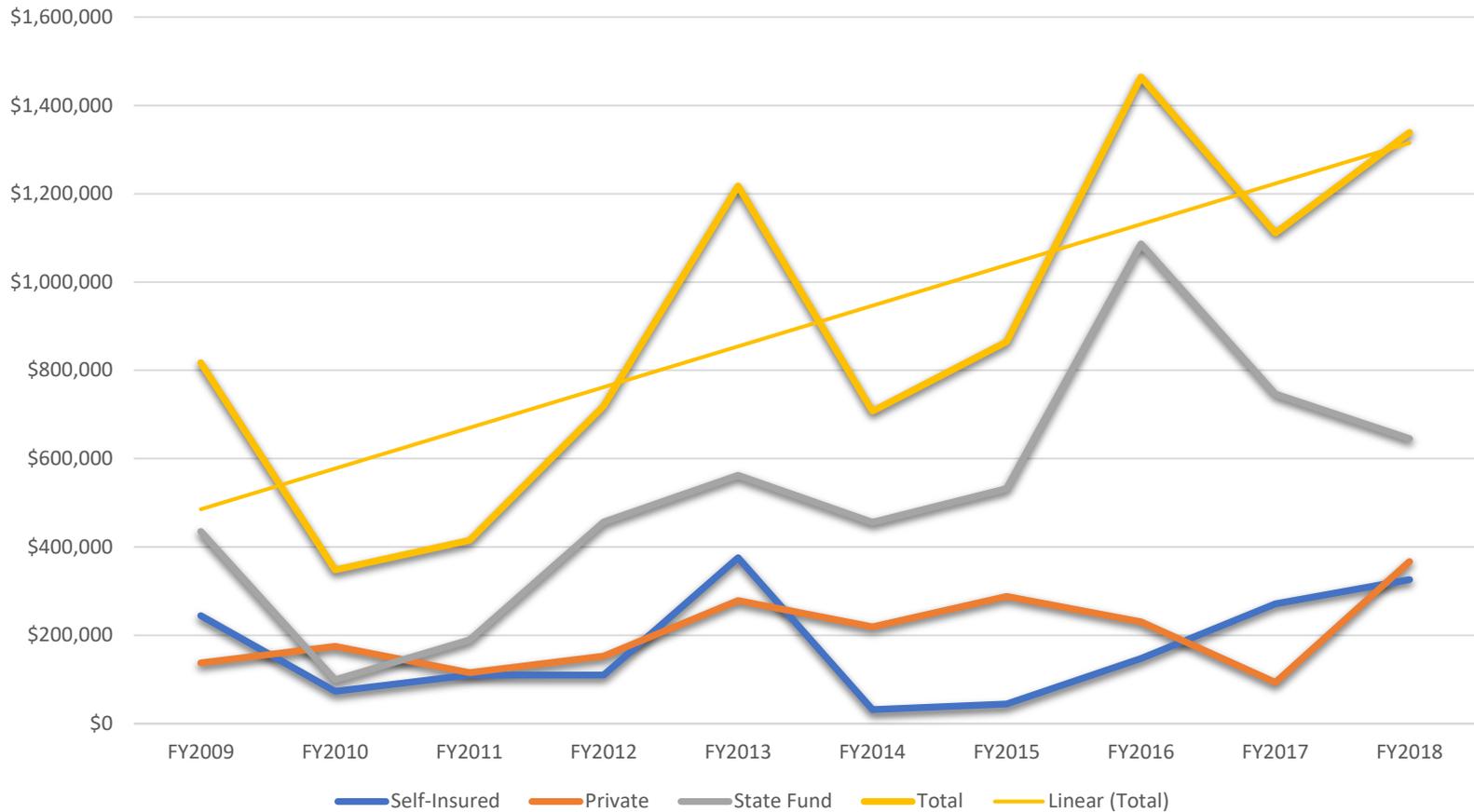
- **Benefits:**

- **Worker:** Certified workers are more likely to be hired:
 - Limit on the employer's workers' compensation liability if worker injured or reinjured on the job to 104 weeks
 - IW are entitled to all benefits due under the WCA and certification applies to any new injury
- **Employer:** By hiring person certified by Department:
 - Limits work comp liability
 - Fund assumes all remaining liability on claim after 1st 104 weeks if worker is injured or reinjured
- **Insurer:** Reimbursement on claim expenses (medical and indemnity) after 104 weeks

- **How It Works:**

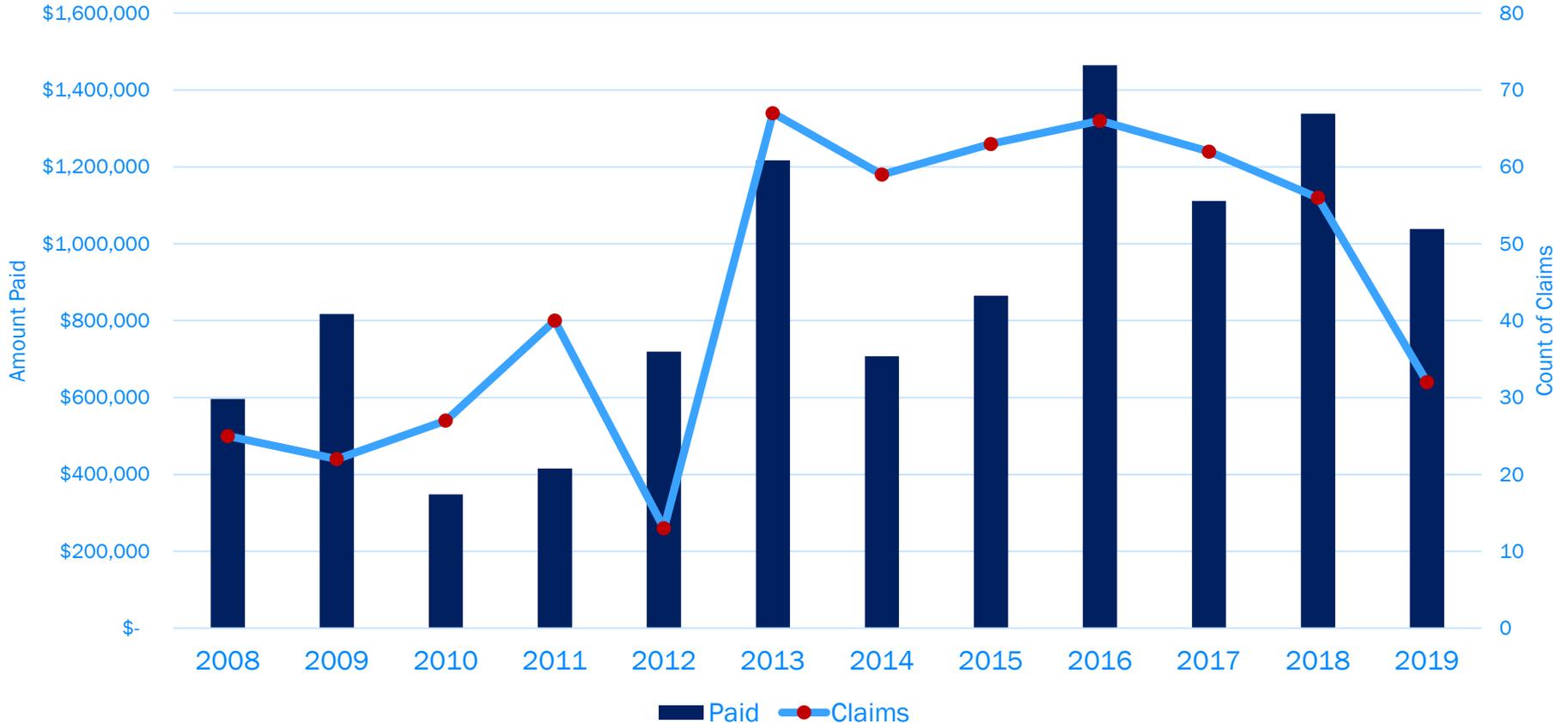
- Worker applies for certification with the Department
- If a subsequent injury occurs, Department notifies the insurer the injured worker is SIF certified
- After 104 weeks of making payments, insurer contacts Department to have claim certified
- Insurer submits reimbursement requests every six months to the Department
- If insurer and injured worker desire settlement, they contact the department for concurrence
- If employer is experience rated, insurer may not base that factor on those claim costs reimbursed by SIF
- SIF expenses are annually assessed to employers through insurers by:
 - Plan 1 - direct assessment
 - Plan 2 & 3 - surcharge on insurance bill

SIF Payments by FY

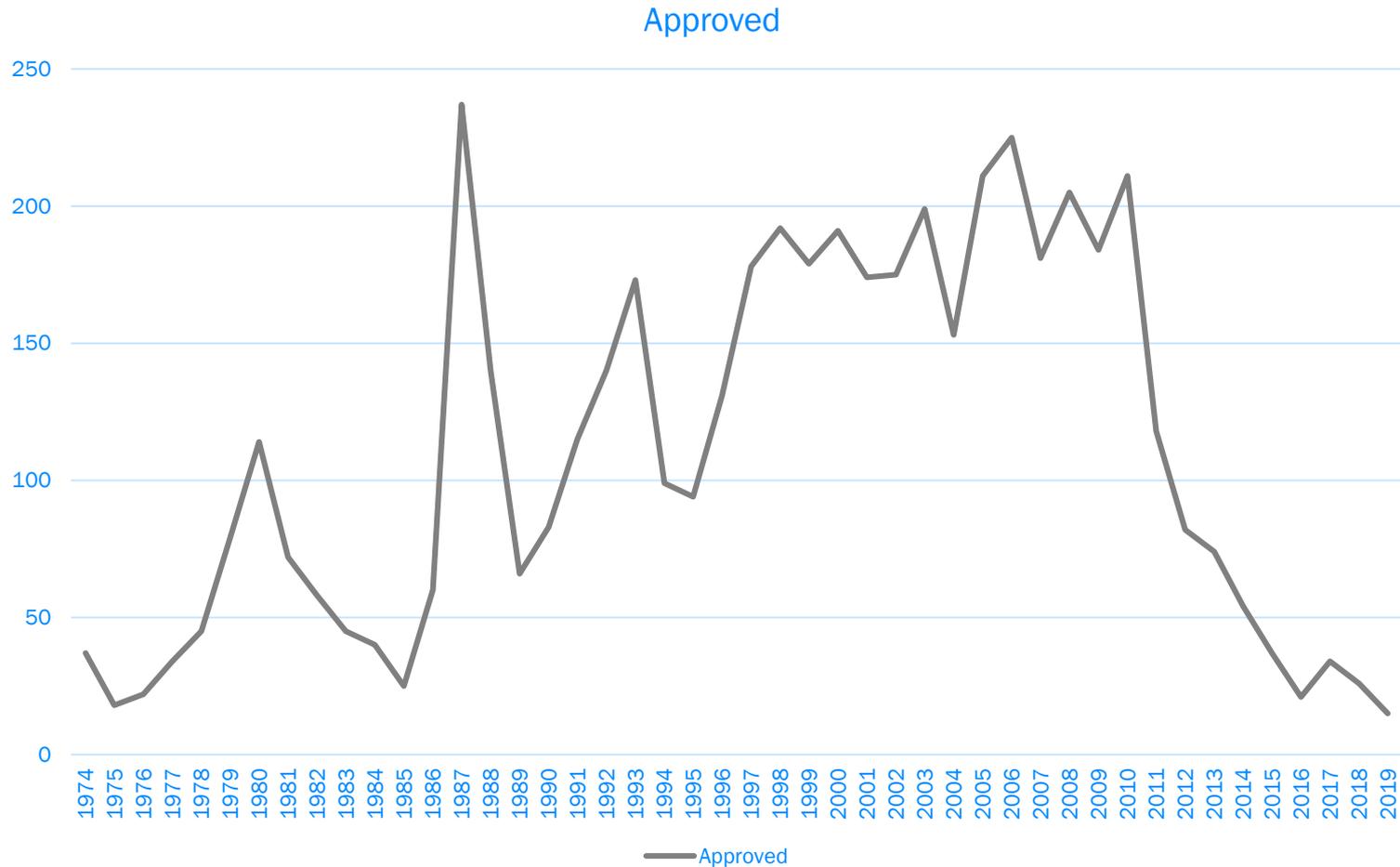


Number of Claims

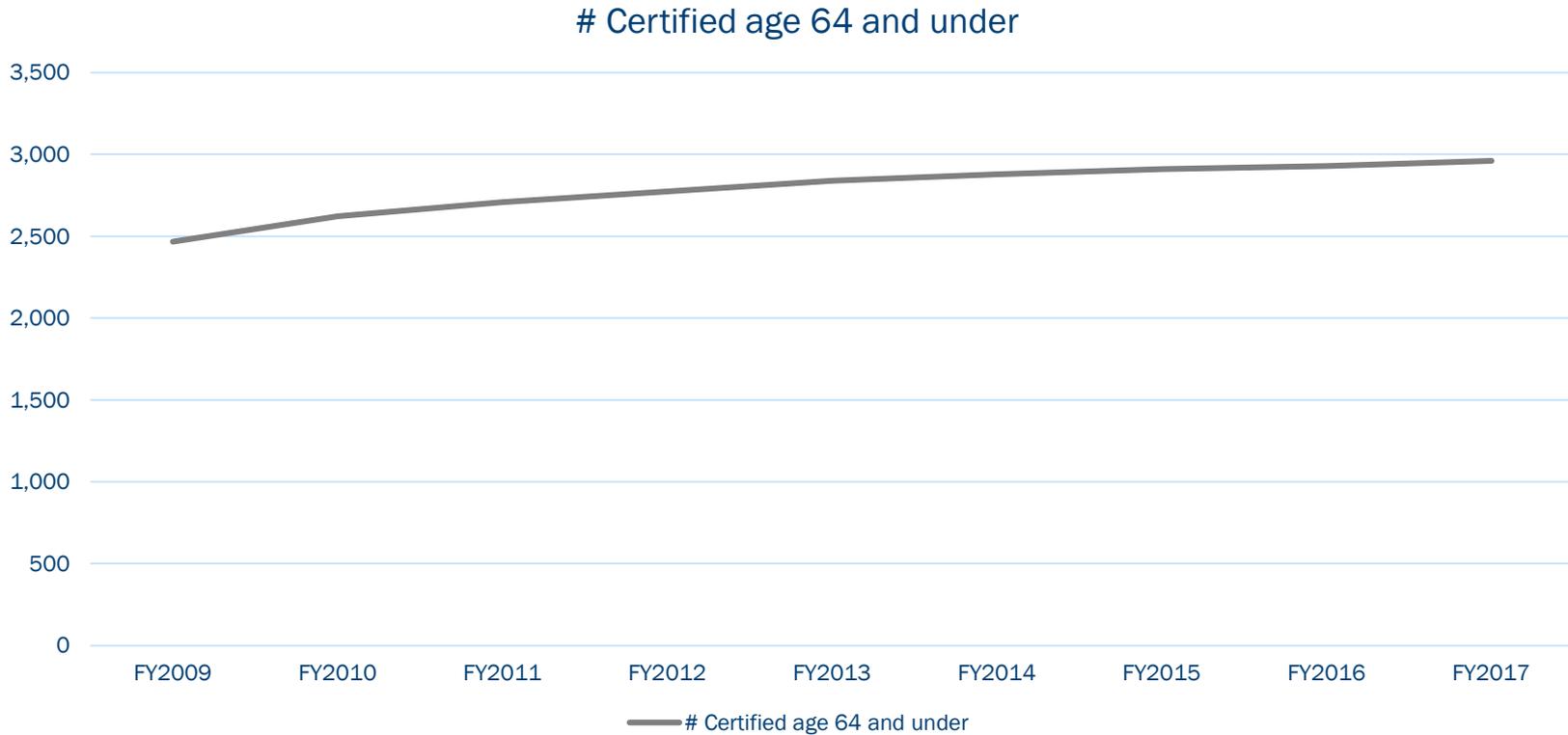
SIF Claims by Fiscal Year - Count and Amount Paid



SIF Approved Applications by FY



Working Age Eligible SIF Certified



Americans with Disabilities Act (ADA)

- **Background:**
 - Civil rights law - prohibits discrimination against individuals with disabilities in all areas of public life
 - Became law in 1990
- **Purpose: To ensure people with disabilities have the same rights & opportunities as others**
 - Prior to ADA, employers could ask about disabilities and SIF certification status as part of hiring process
 - Prohibits discrimination in employment, public services, public accommodations & telecommunications
- **What Is Covered:**
 - Applies to private employers, state & local governments, employment agencies, labor organizations and labor-management committees
 - Prohibits discrimination against employees & job applicants who have physical or mental impairments that substantially limit “major life activities” - **Ex:** caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking
 - Covered disabilities: **Ex:** Deafness, blindness, diabetes, cancer, epilepsy, intellectual disabilities
- **Employer Tax Credits Available:**
 - **Small businesses:**
 - Tax credit up to \$5,000/year for providing reasonable accommodations in previous year
 - Gross receipts not exceeding \$1M
 - No more than 30 full-time employees during preceding tax year
 - Available for ½ the cost of “eligible access expenditures” <\$250 but >\$10,250
 - **Architectural or transportation barriers:**
 - Full tax deduction up to \$15,000/year
 - For removing qualified architectural or transportation barriers
 - Expenses covered include: barriers created by steps, narrow doors, inaccessible parking spaces, restroom facilities and transportation vehicles

Has SIF outlived it's purpose?

- Is SIF still producing a benefits to workers with disabilities and Employers as proposed in 1973
 - Workers – Remove a barrier to employment
 - Because of the ADA, likely no impact
 - Employers – lesson potential of work comp liability by hiring SIF Certified worker
 - Pays assessment/surcharge for amount expended to replenish SIF
 - Caps liability to existing population of certified workers
 - Experience rating is heavily weighted to the first three years of benefits paid. SIF doesn't step in until after two years so this benefit is unknown
 - 39-71-916 – experience rating (mod) or similar rating technique

Questions

Employment Relations Division
Bill Wheeler, Deputy Administrator
bwheeler@mt.gov
406.444.6541