

State of New Mexico Workers' Compensation System Challenges

Darin A. Childers, Director, Workers' Compensation Administration
Kevin McGinley, Chair, Advisory Council on Workers' Compensation
and Occupational Disease Disablement
James Magoffe, Vice Chair, Advisory Council on Workers'
Compensation and Occupational Disease Disablement

November 2015

Administration Mission

- To assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to employers.

See NMSA 1978, § 52-5-1.

- To assure that every person who suffers a compensable injury with resulting disability should be provided with the opportunity to return to gainful employment as soon as possible with minimal dependence on compensation awards.

See NMSA 1978, § 52-1-26.

Advisory Council Mission

- The mission of the Advisory Council on Workers' Compensation and Occupational Disease Disablement is:
 - to monitor the performance of the workers' compensation and occupational disease disablement system; and
 - to make recommendations to the Governor, Legislature, regulatory agencies and participating industries, related to the adoption of rules and legislation and the method and form of statistical data collections;in order to assure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to employers.

See NMSA 1978, § 52-1-1.2.

System Challenges

- Lack of clarity in the law
 - The system depends on clarity in the law so that claims can be paid predictably and consistently . . . and without WCA involvement and adjudication
- Incentives for return-to-work eroded
 - 1990 legislative reforms sought to encourage return to work and discourage reliance on compensation benefits

2016 Legislative Opportunities

“Intoxication”

- clarify what happens in the event drugs or alcohol cause an on-the-job injury
- New Mexico appellate courts have ruled that the current statutory provisions are confusing and unworkable
- 67% of respondents in recent ABQ Journal poll supported legislation that would deny or decrease benefits in such cases

References: NMSA 1978, §§ 52-1-11, -12, and -12.1.
Villa v. City of Las Cruces, 2010-NMCA-099.
Dan Boyd, *A Question of Compensation*, ALBUQUERQUE JOURNAL, Sept. 22, 2014.

2016 Legislative Opportunities

Return to Work

- Clarify standards and outcomes when an employer offers an injured employee work
- Workers' outcomes are much better when they can return to work with the at-injury employer (34 days v. 478 days).
- Recent appellate cases discourage return to work by requiring employers to pay benefits even when they offer the injured employee a return to work offer, but the employee declines.
- Encourage employers to make return to work offers while clarifying employers' rights when an injured worker, after rehire, engages in misconduct or is terminated for cause unrelated to the work injury

References

An Evaluation of NM Workers' Compensation Permanent Partial Disability and Return to Work, RAND Institute for Civil Justice, 2001

Cordova v. KSL Union, 2012-NMCA-083

Hawkins v. McDonald's, 2014-NMCA-048

Make an Appropriation for Evaluation of the New Mexico Workers' Compensation System

1. Evaluate return-to-work; Lifetime medical benefits; vocational rehabilitation and related programs:

a) Analyze return to work (RTW) by evaluating current processes and maximum medical improvement (MMI), cost effectiveness of available options, best practices in other states (including retraining and career transition, modified/reduced work options and incentives) and lifetime impact of modified work and RTW;

b) Analyze New Mexico's lifetime medical benefits (LMB) by evaluating the pros and cons of LMB, with respect to intermediate and long-term impacts on system-wide costs and system sustainability;

c) Evaluate vocational rehabilitation programs in New Mexico's workers' compensation system and compare to other states regarding performance and cost;

d) Evaluate New Mexico's Permanent Partial Disability (PPD) Formula:

Evaluate the current Permanent Partial Disability (PPD) Formula with respect to scheduled versus whole body injuries, loss of use, modifier and stacking of injuries/body parts, number of weeks of benefits, and system stability, equity, adequacy, and cost effectiveness.

Appropriation for Evaluation (continued)

2. Analyze key medical cost components, and measurable medical care outcome indicators in New Mexico workers' compensation:

a) To include physician costs, hospital costs, medicine, physical therapy, durable medical equipment and supplies, medical inflation and demographics, and recommend solutions for controlling workers' compensation costs in the state;

b) Identify outcome indicators and measure outcomes experienced by injured workers;

c) Evaluate the quality of medical care, cost of drugs and "what works" versus "what does not work" and compare New Mexico to other states.

Claim Costs

Insurance Carrier and Self Insurer Paid Losses and Total Claims by Calendar Year

Year	Total Paid Losses	Total Claims	Carrier Paid Losses	Self-Insured Paid Losses
2008 ^r	\$254,920,084	51,905	\$161,891,802	\$93,028,282
2009 ^r	\$256,549,981	46,402	\$165,674,823	\$90,875,158
2010	\$283,590,181	42,473	\$195,090,470	\$88,499,711
2011	\$286,790,072	44,556	\$191,166,613	\$95,623,459
2012	\$315,110,547	46,724	\$214,720,582	\$100,389,965
2013	\$311,260,984	44,050	\$216,329,626	\$94,931,358
2014	\$317,849,969	43,806	\$216,818,811	\$101,031,157

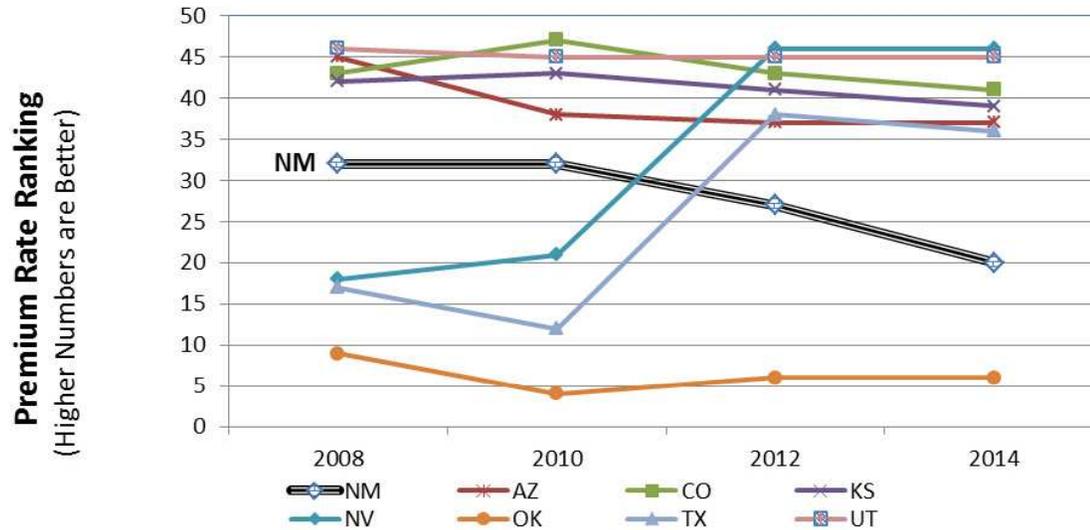
^rRevised data

Source: New Mexico Workers' Compensation Administration, *Annual Expenditure Report, 2008-2014*.

All New Mexico employers are affected by the cost of workers' compensation claims. Employers covered by commercial coverage see the effects of rising and falling claim costs reflected in the premium they pay, while self-insured employers see those effects directly in their operating results. Overall, paid losses increased by 4.1 percent in 2014.

The table compares the paid losses of carriers and self-insurers.

Workers' Compensation Premium Cost Ranking



A national workers' compensation premium cost ranking by the Oregon Department of Consumer and Business Services (DCBS) includes a ranking for New Mexico. The DCBS compiles a premium rate ranking summary based on NCCI data for 51 jurisdictions every two years. New Mexico ranked 20th out of 51 (lower numerical ranking is worse than higher numerical ranking) in 2014. The ranking is worse than the 2012 report, where New Mexico ranked worse than Utah (45th) Colorado (41st), Kansas (39th), Arizona (37th), and Texas (36th). Of the sub-regional states that New Mexico compares itself to regarding medical and other costs, only Oklahoma (6th) performed worse than New Mexico (see figure).