

State of New Mexico Workers' Compensation System Challenges



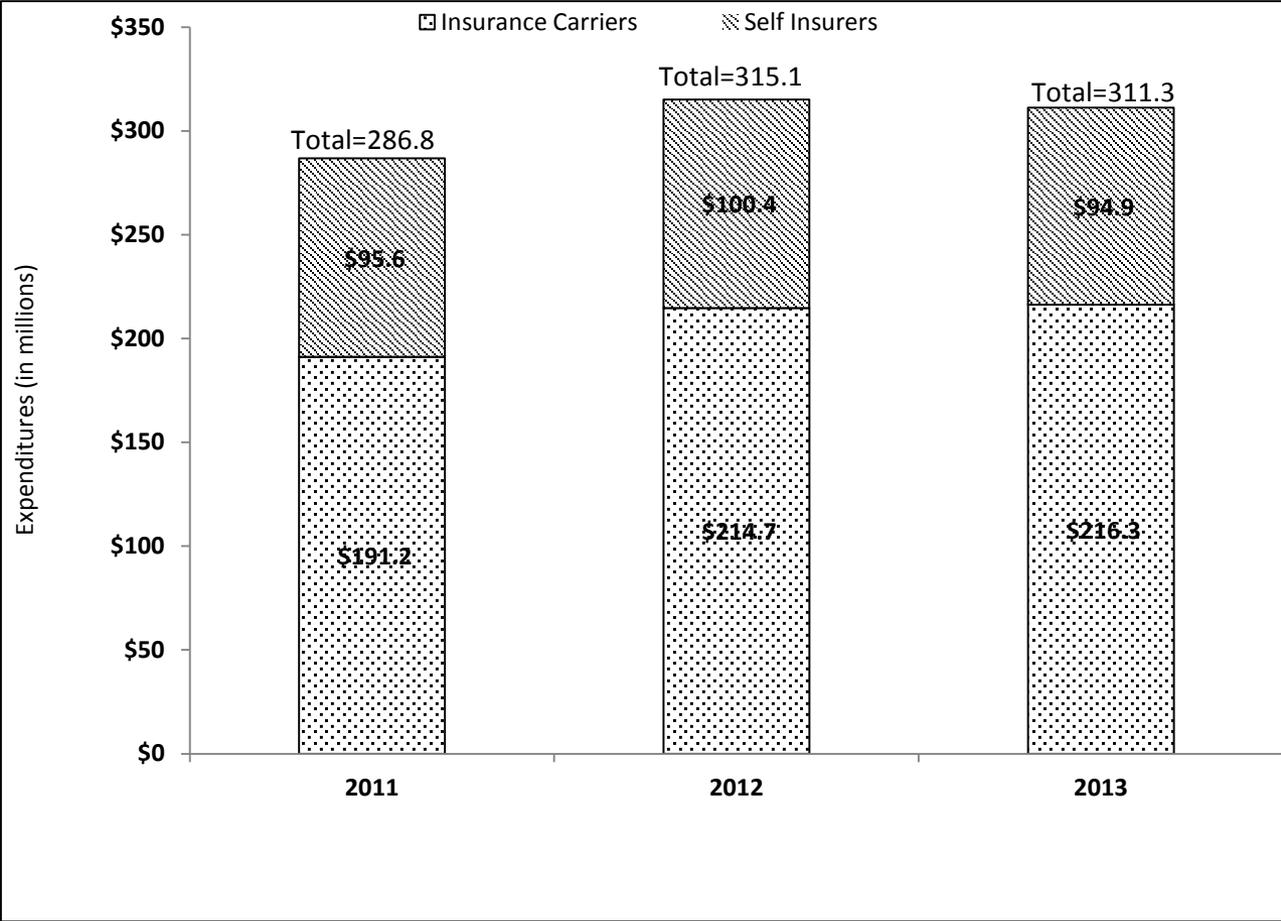
Darin A. Childers, Director, Workers' Compensation Administration

Kevin McGinley, Chair, Advisory Council on Workers' Compensation
and Occupational Disease Disablement

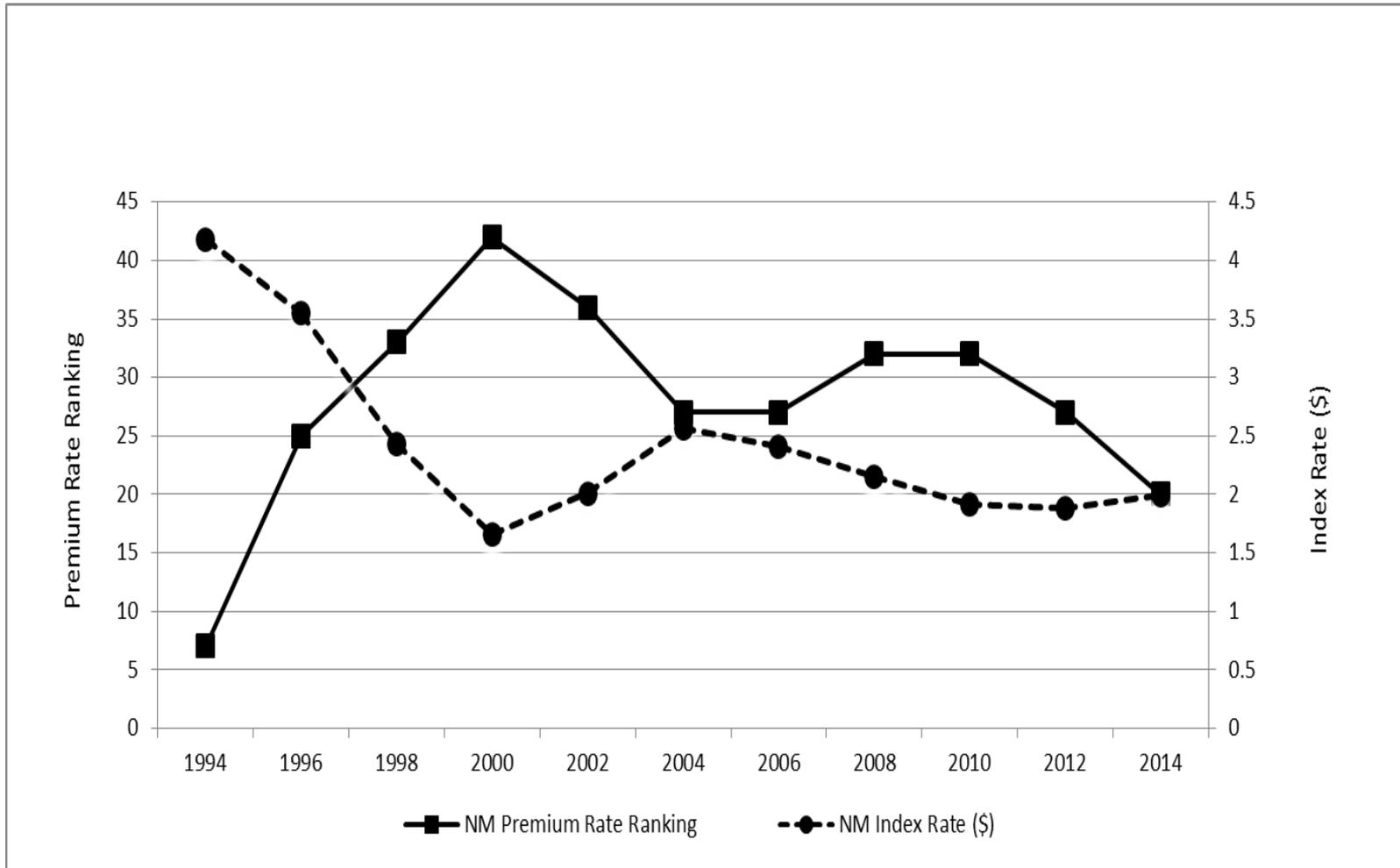
James Magoffe, Vice Chair, Advisory Council on Workers'
Compensation and Occupational Disease Disablement

November 12, 2014

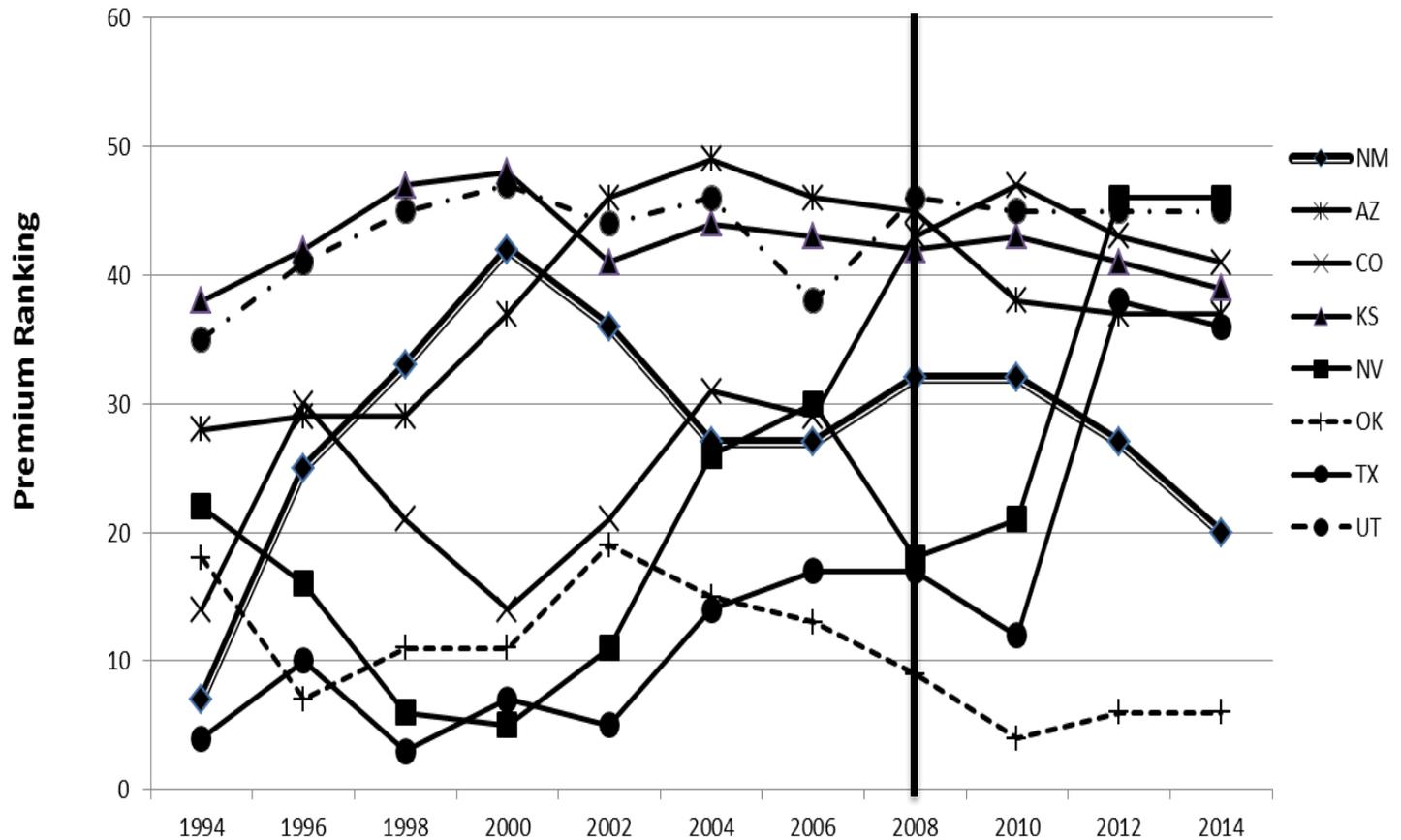
Workers' Compensation Benefit Payments, 2011-2013 Compared



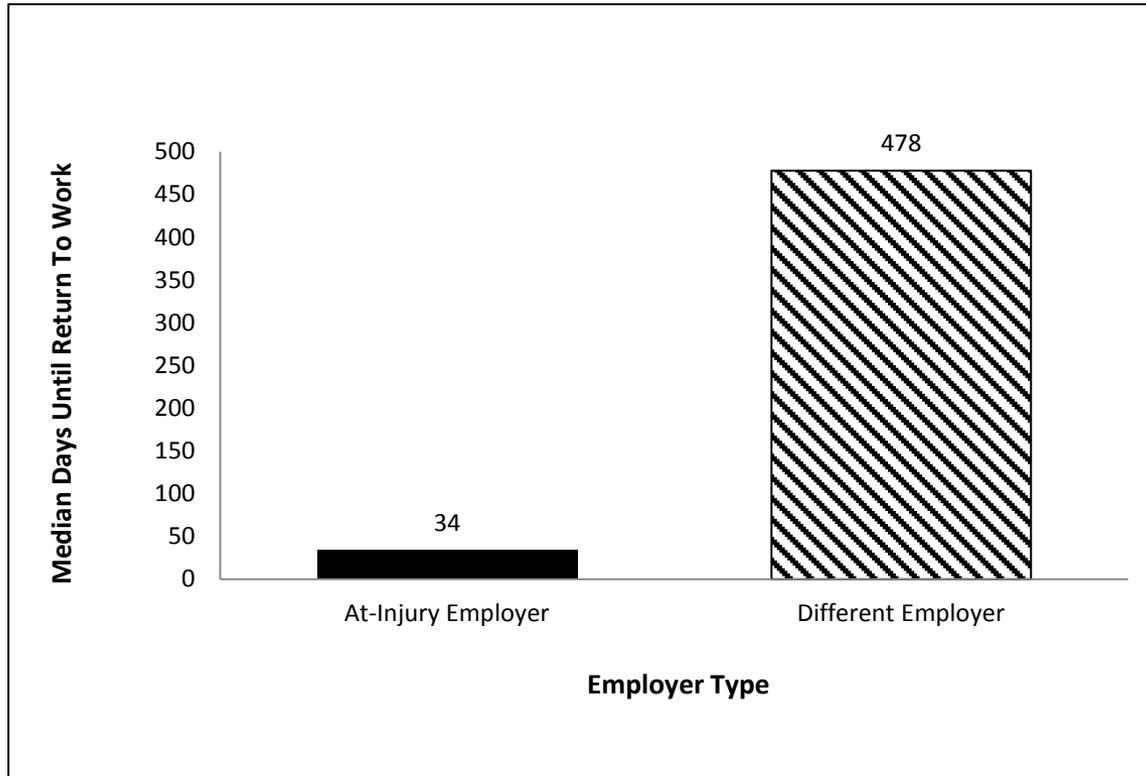
New Mexico: Oregon Index Rates and Premium Rate Ranking (1994 -2014) (Higher Ranking and Lower Index Rate are Better)



Southwest Sub-region: Oregon Premium Rates Ranking (1994-2014)



New Mexico Median Duration of Time-off-Work (Days): At-Injury Employer vs. At Different Employer



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

2015 Legislative Opportunities

1. “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.

2015 Legislative Opportunities

2. Temporary Disability Payments

- Clarify time period and/or limitations on payment for temporary disability, and restore balance to the work comp system
- Work comp community and WCA has historically understood 700 weeks as maximum benefit period
- Recent Supreme Court case held that temporary disability payments are not subject to 700 week limit
- Without limitation, insurance premiums for employers may increase and reserves may be difficult to set, especially for NM's self insured employers

Reference: *Fowler v. Vista Care*, 2014-NMSC-019.

2015 Legislative Opportunities

3. 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

New Mexico Advisory Council on Workers' Compensation and Occupational Disease Disablement

- Kevin McGinley, *Chair*
- James Magoffe, *Vice-Chair*
- Melinda Joy Pattison
- Scott Le Fevre
- Tom Willis
- Dain Symes