

# Workers' Compensation

Putting “Worker” Back In Worker’s Compensation

**SB 112**

**Senator Cathy Giessel**

**Senate District N**



# You know me as...



*Senator  
Cathy Giessel*

*Northeast Anchorage  
Anchorage Hillside, Indian  
Bird, Girdwood and Portage.*

# But I'm also...

- Masters of Science in Nursing
- Advanced Nurse Practitioner
- Fellow, American Academy of Nurse Practitioners



# Systems Protecting and Caring for Workers ...

- Since Ancient **Greece, Rome, China**





## ... To FDR

- **1906 and 1908** Federal Employers' Liability Acts –  
contributory negligence less restrictive

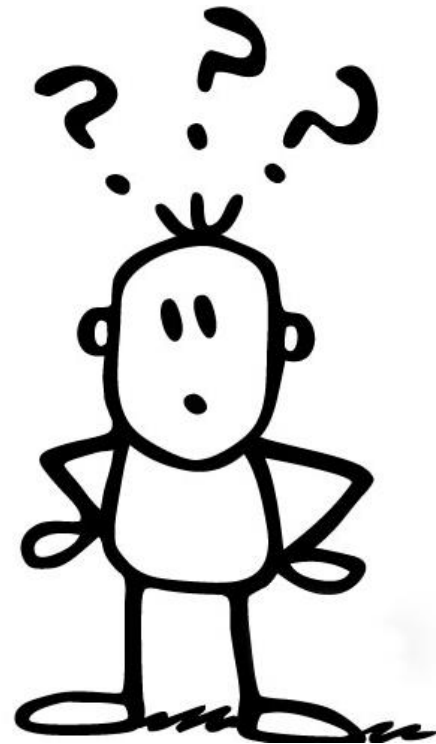


# Today's Workers and Employers...

- **“Nobody gets Hurt” Above All**
- **Focus on Safety**
- **Training and Re-Training**
- **Safety Equipment**



# How is “Worker” missing?



# Workers' Compensation in Alaska is Broken!

## Forgets injured Worker!

- System not getting Workers back on the job
- Worker caught in endless treatments and tests

## Money to others, not injured Worker!

- Middlemen
- Lawyers





# Alaska's Current Work Comp System

## Not Effective

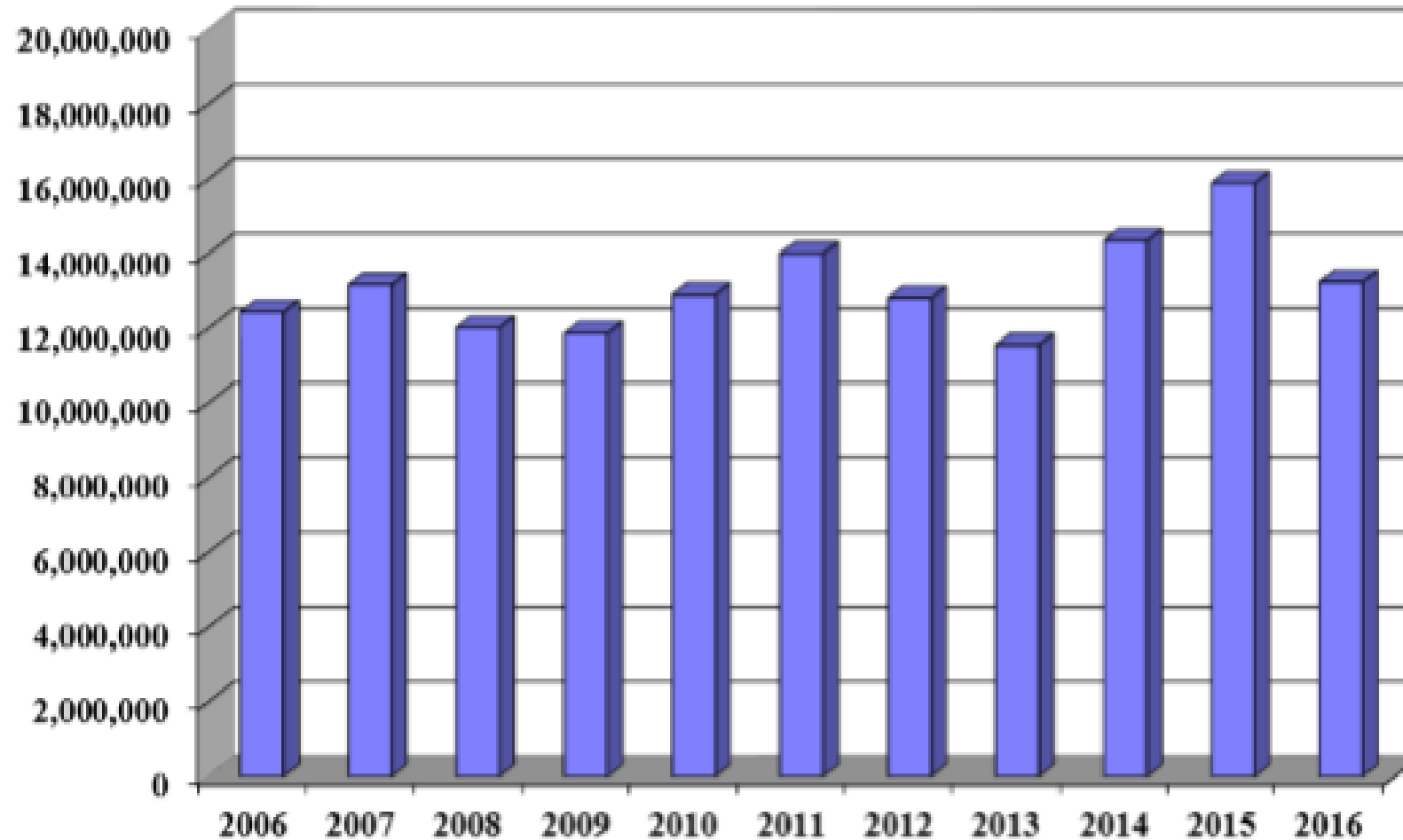
- **Vocational rehabilitation and reemployment** doesn't help worker develop new skills
- **Only 8% complete**
- **92% cash out for \$50,000-\$70,000**
- **No new skills for the Worker**

# 2016 ANNUAL REPORT

## Compensation Payment Excerpts

Department of Labor and  
Workforce Development  
DIVISION OF WORKERS'  
COMPENSATION  
Web: <http://labor.state.ak.us/wc>

### Rehab Payments



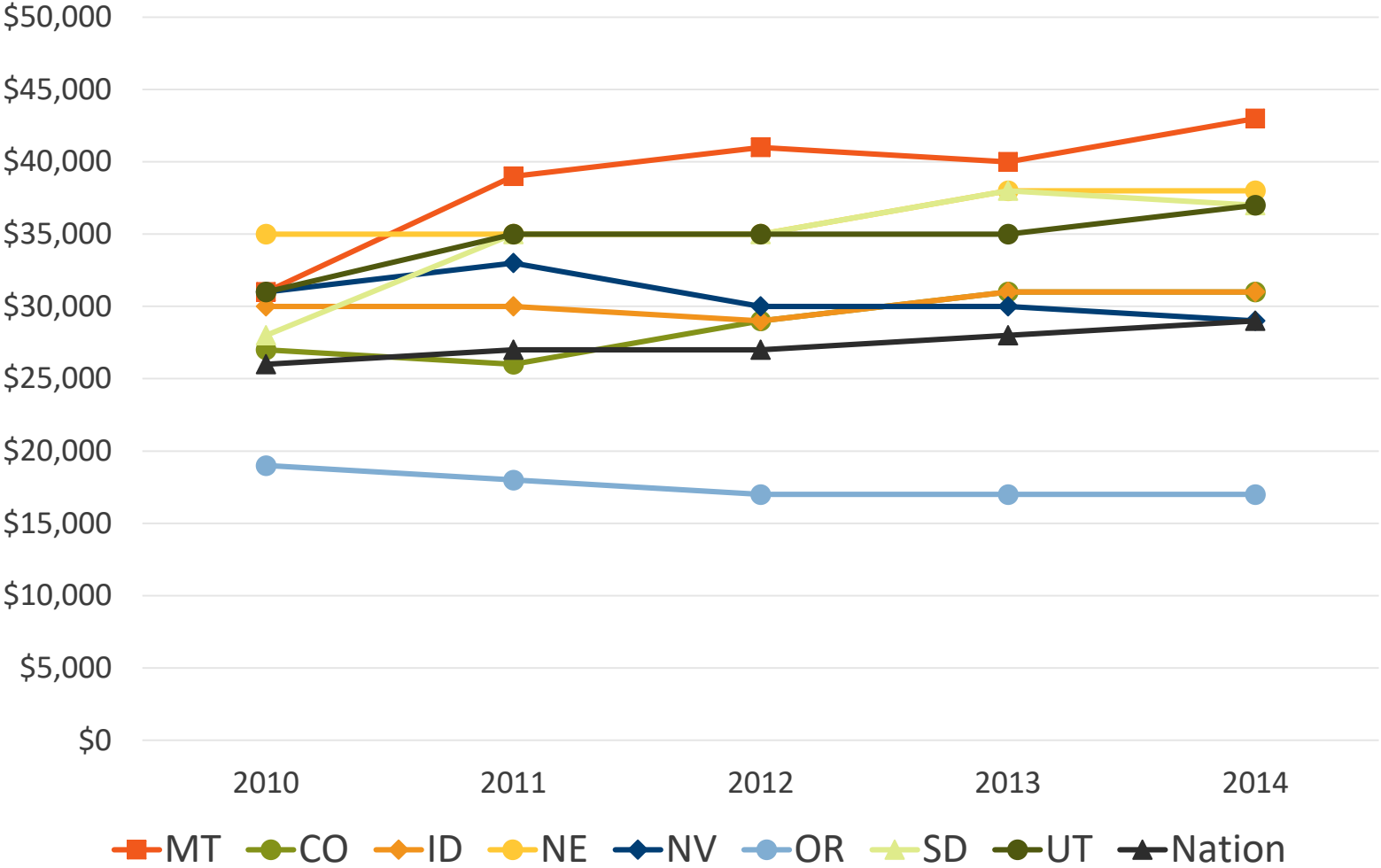
# Alaska's Current Work Comp System

## Unaffordable and Unsustainable

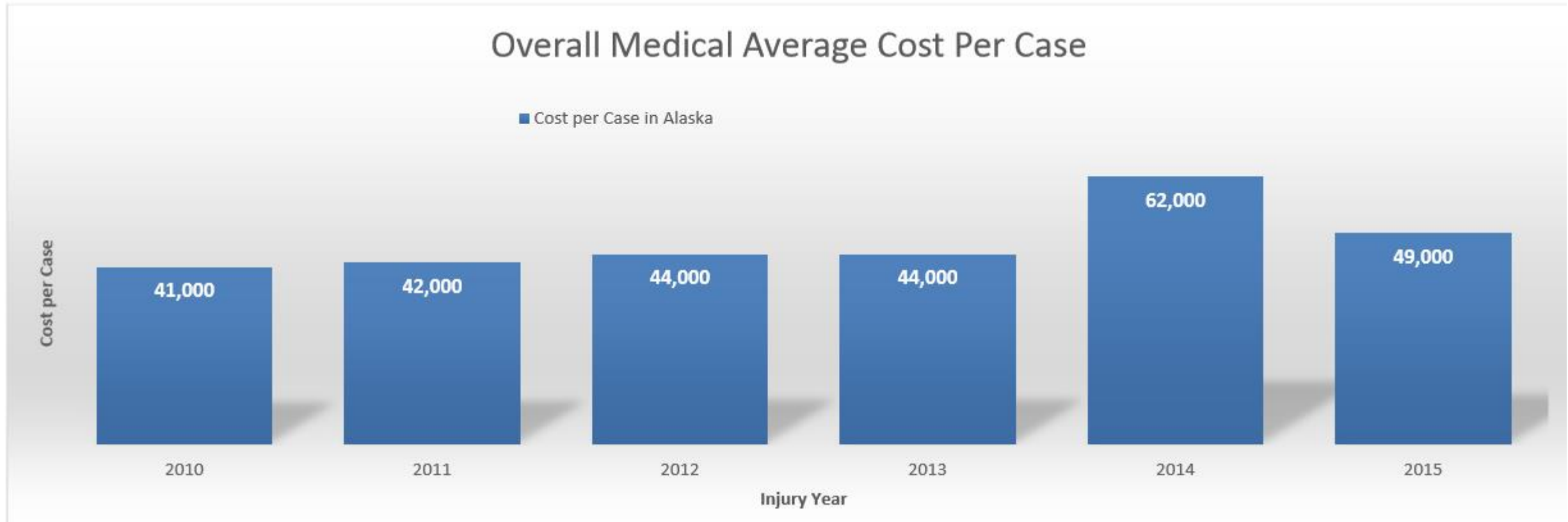
- Average Medical Claim but **delayed CURE**
  - **Alaska - \$49,000 in 2015** (2014 - **\$62,000**)
  - **US - \$28,500**

(Average costs for indemnity claims only)
- Medical costs among largest costs for Alaska businesses and Alaskan governments

# Average Medical Cost per Lost-Time Claim by State and Policy Year (NCCI)



# Medical Services Review Committee



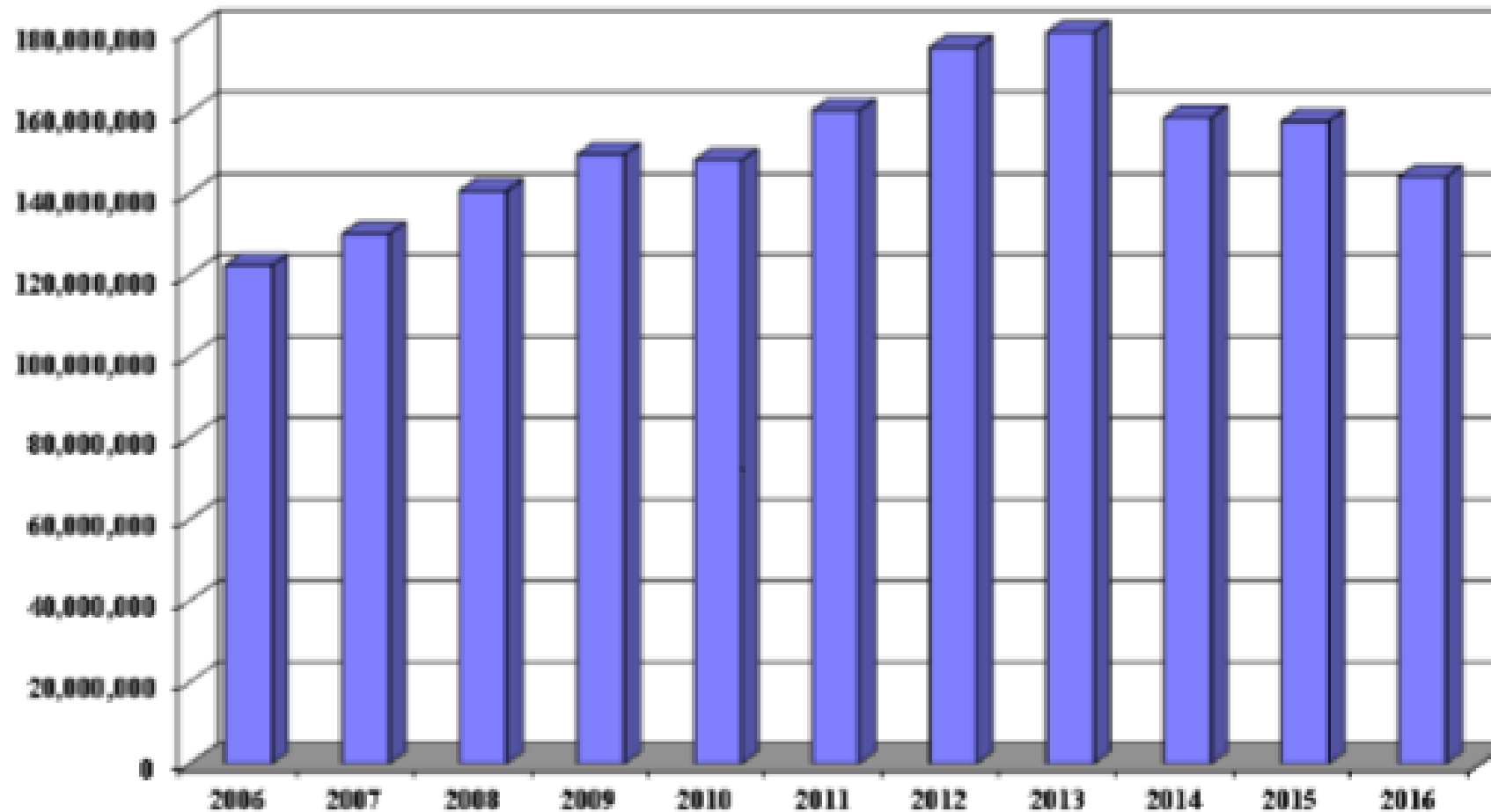


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### Medical Payments



# Alaska's Current Work Comp System

## Contentious and Combative

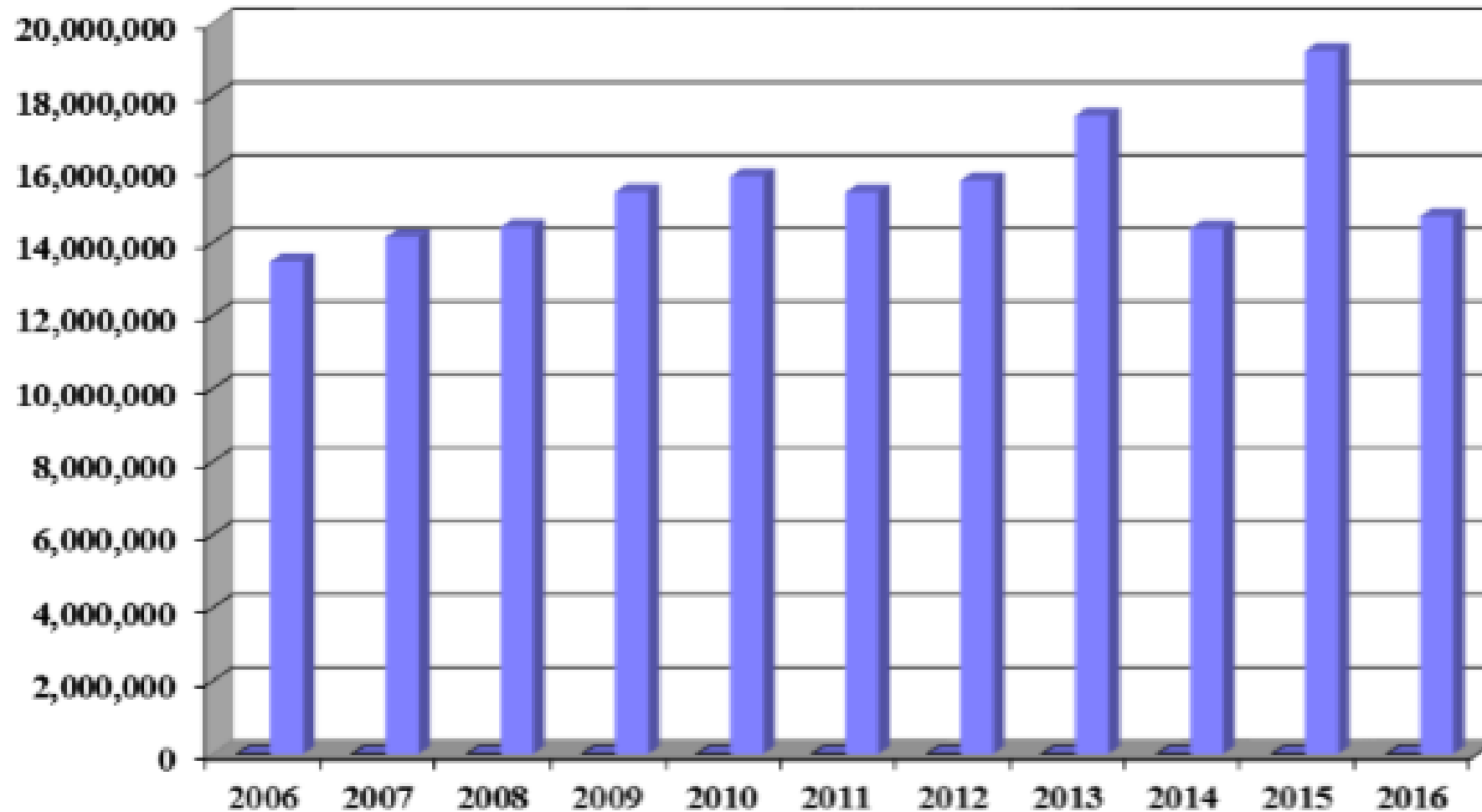
- Time spent on conflict and courtroom time
  - **Not CARE** for worker

# 2016 ANNUAL REPORT

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### Legal Payments

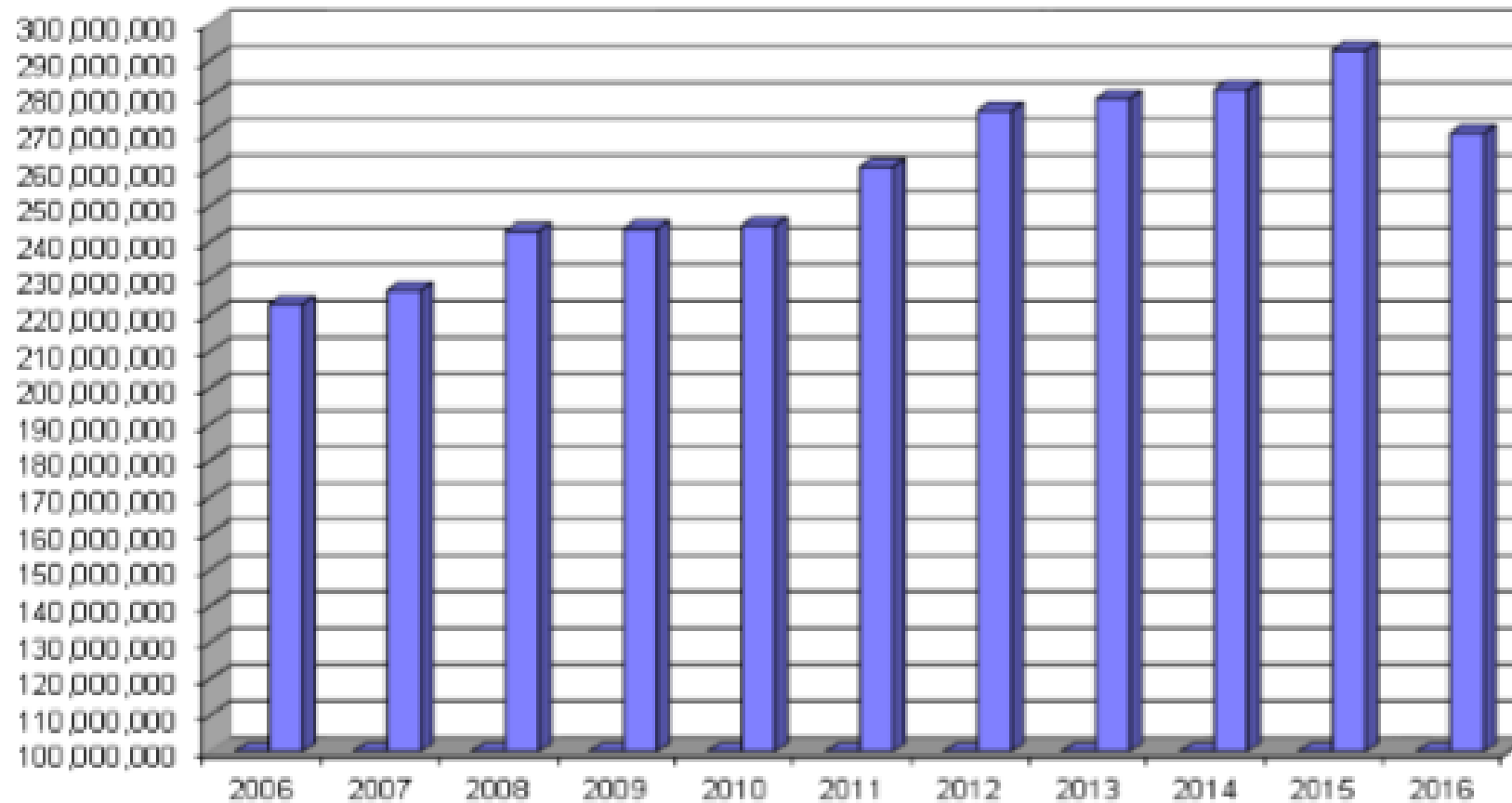


# 2016 ANNUAL REPORT

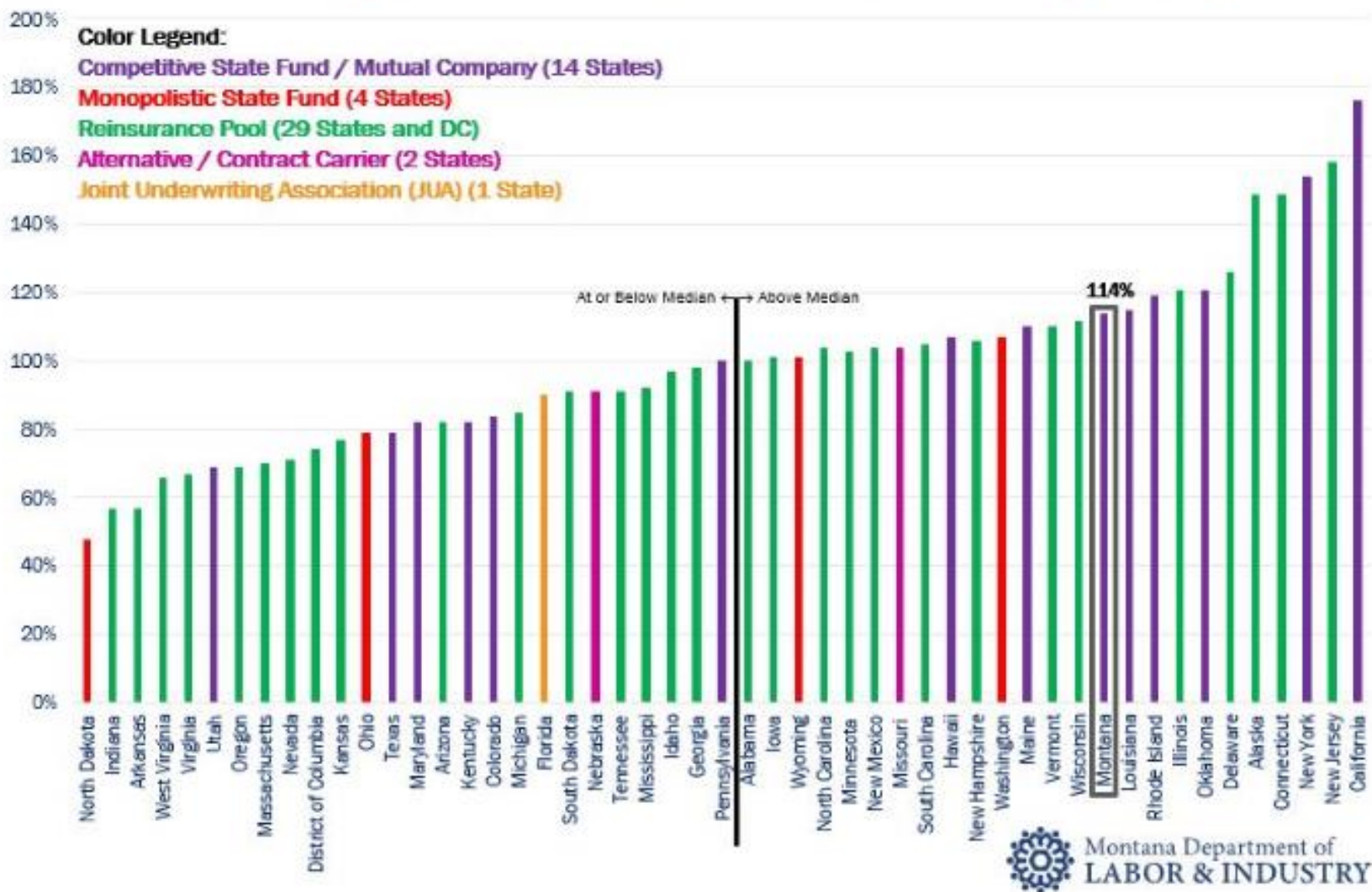
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### Total Compensation Payments



# Percent of Premium Median by State and by Structure of Workers' Compensation Insurance Market (2016)





# Worker's Compensation in Alaska is Broken... this is Not News

January 2015 report from the **Alaska Health Care Commission**

IV. Engage employers to improve health plans and employee wellness

4)...enact **changes** in the **State Work Comp Act** to **contain medical costs** and **improve quality of care and outcomes**

- a) **evidence-based guidelines**
- b) Restrict repackaged pharmaceuticals
- c) **Restrict reimbursement for opioid prescriptions**
- d) Revise fee-for-service fee schedule



# Priority for many Alaskans



## **Other State Issues; e.g. Workman's Comp, PERS/TRS:**

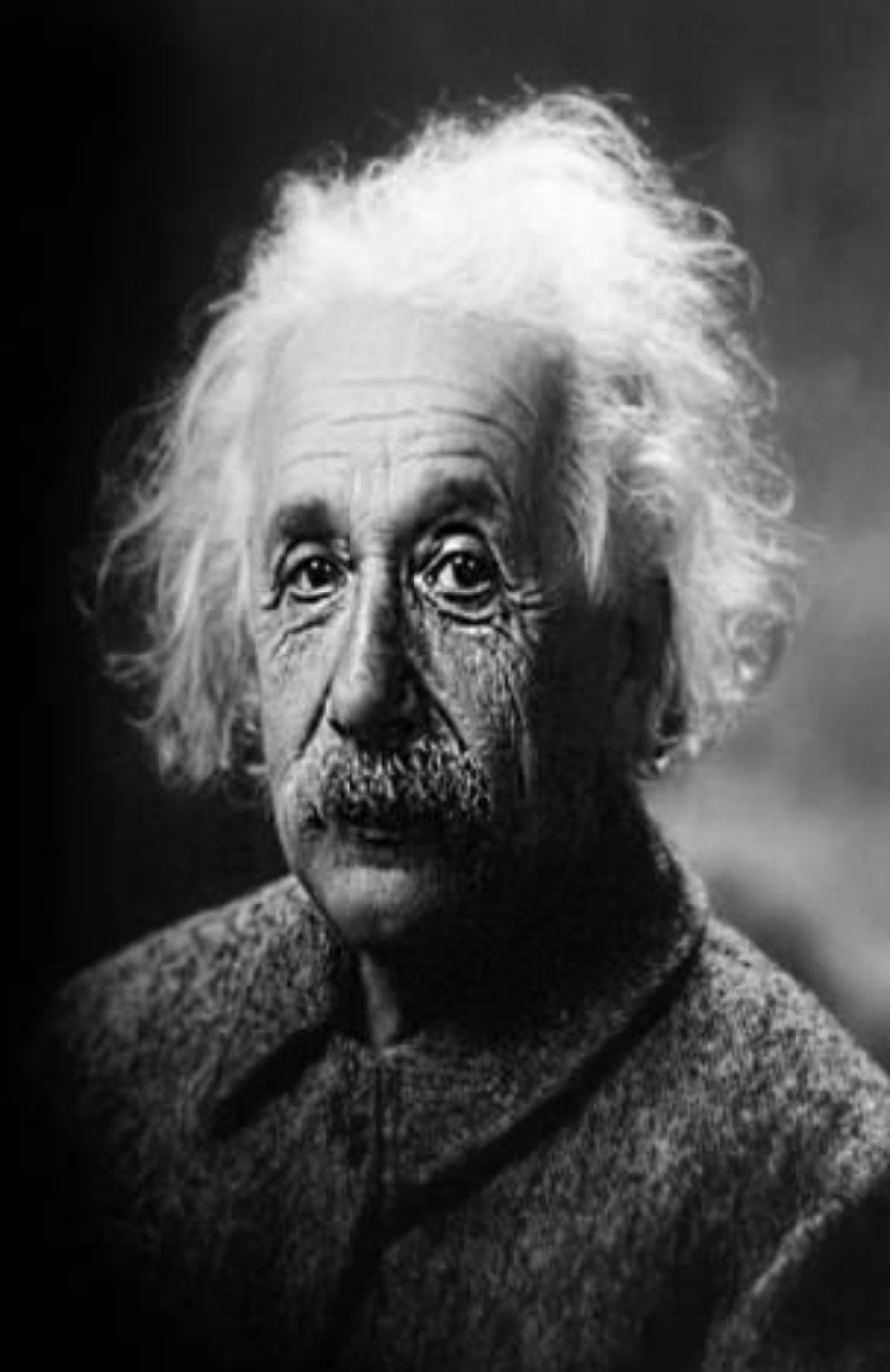
- The state should continue efforts to control the cost of Worker's Compensation claims, including adoption of medical treatment guidelines, improved management of claims and an improved Reemployment Benefits process.

# Alaska's Current Work Comp System

- One of the most expensive in the world
- Fails getting workers healthy and back to work
- Puts employers and workers in court to fight with no end in sight
- Failures harm Alaskan families, Alaskan businesses, and Alaskan jobs

“Insanity: doing  
the same thing  
over and over  
again and  
expecting  
different  
results.”

Albert Einstein



"NURSE, GET ON THE INTERNET,  
GO TO SURGERY911.COM, SCROLL  
DOWN AND CLICK ON THE  
'ARE YOU TOTALLY LOST?' ICON."



# Senate Bill 112

## Goals:

- Best healthcare for injured worker
- Get workers healthy and back to work
- Focus and fund Care and Cure, not courts and conflict



# We all share same Goals!

- Safe, productive workplaces
- Healthy, safe employees
- **More ...**
  - Alaska Jobs
  - expanded Alaska businesses
  - increased wages to support Alaska families

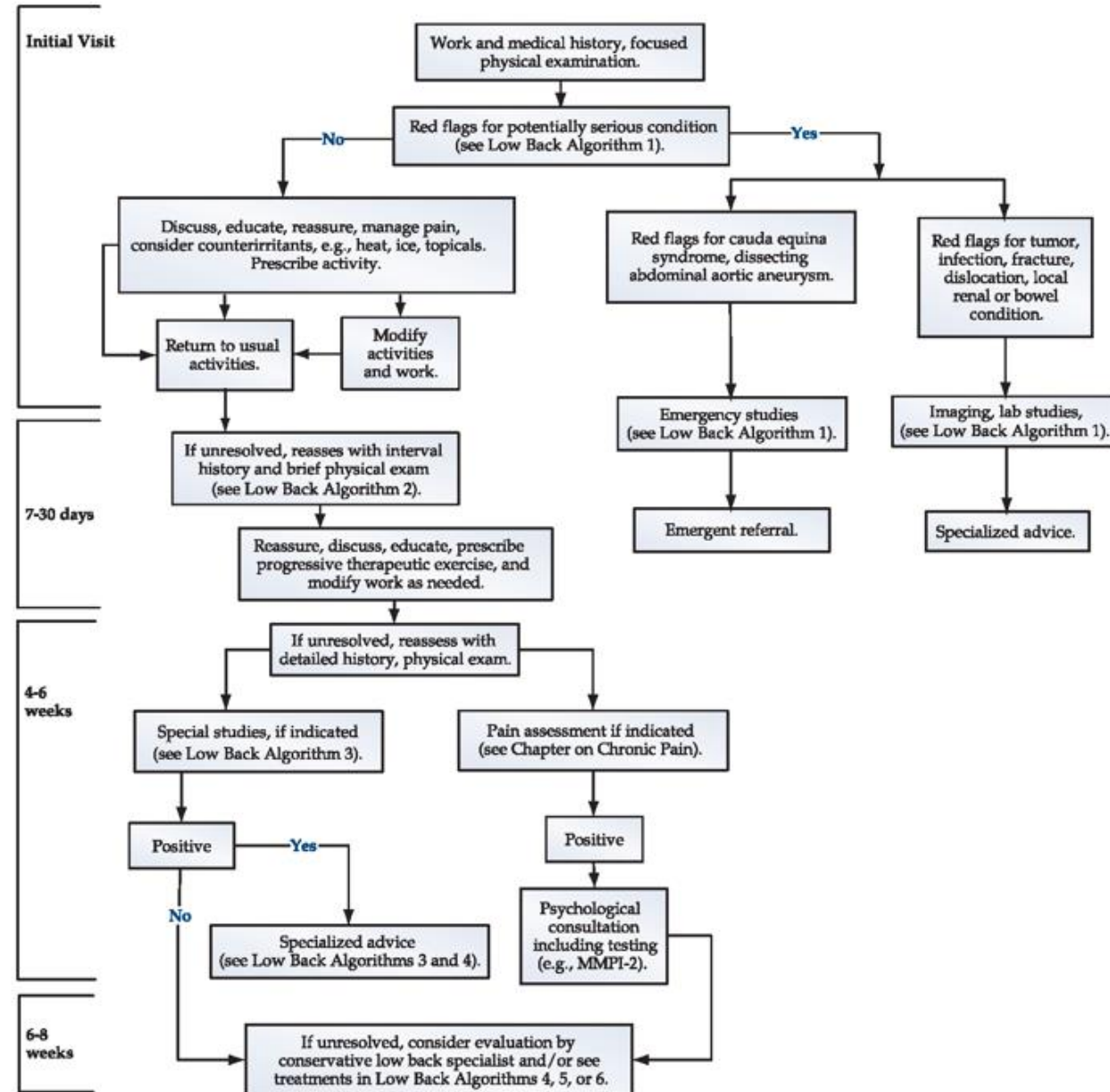


# #1. Focus on **WORKER**



**SB 112 = Best CARE for Injured Worker**

- **Evidence-Based Treatment guidelines**
  - **Why? Because they Work! (Sec. 26, 32)**



# Low Back Pain

## CONTENTS

## ICD-9-CM

## ICD-10-CM

## ICD-10 (WHO)

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## Related Terms

- Low Back Syndrome
- Lumbago
- Lumbosacral Pain

## Workflows

[ACOEM Guidelines for Care of Acute and Subacute Low Back Pain](#)[Initial Evaluation of Acute and Subacute Low Back and Radicular Pain](#)[Initial Follow-up and Management of Acute and Subacute Low Back and Radicular Pain](#)[Evaluation of Subacute or Slow-to-Recover Patients with Low Back Pain Unimproved or Slow to Improve \(S>4 Weeks\)](#)[Surgical Considerations for Patients with Evidence of Nerve Root Compression and Persistent Low Back Symptoms](#)[Further Management of Subacute Low Back Pain](#)[Further Management of Chronic Low Back Pain](#)

## Overview

Low back pain is a symptom, not a specific disease. Low back pain is usually described as discomfort in the lumbosacral region of the back that may or may not radiate to the legs, hips, and buttocks. The pain may be due to a variety of causes, and many individuals may never receive a clear

## Low Back Pain

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handcuffs or intoxication, which have been called primary risk factors,(50) and have been reviewed elsewhere.(51) Suicidality though is a potentially fatal complication, which makes it a more severe complication than cauda equina.

### Diagnostic Criteria



Determining whether or not there is lumbosacral nerve root compromise (and if so, the level of compromise) is important. Symptoms correlating with specific myotomal levels of compression and possible motor weakness are shown in the following table.

**Symptoms of Lumbar Nerve Root Compromise**

Root Level	Pain or Paresthesia	Motor Weakness
L1	Back, radiating to upper anterior thigh and groin	Hip flexion
L2	Back, radiating to anterior mid-thigh	Hip flexion and adduction, knee extension
L3	Back, radiating to anterior thigh and inner knee	Hip flexion and adduction, knee extension
L4	Back, radiating to lateral thigh, front and medial leg, and medial foot	Hip adduction, knee extension, foot inversion, foot dorsiflexion
L5	Back, radiating to lateral leg and dorsal foot (especially first web space)	Hip abduction, foot and great toe extension. Resisted extensor hallucis longus is considered the best of these as it is an L5 function.
		Knee flexion, plantar flexion. Plantar flexion is the best of these as it is purely an S1 function. It



## Low Back Pain

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help decrease or prevent recurrence.

## Failure to Recover

If an individual fails to recover within the expected maximum duration period, the reader may wish to consider the following questions to better understand the specifics of an individual's medical case.

### Regarding Diagnosis

- Is this individual's first episode of pain, or is it recurrent?
- Have infection and cancer been ruled out in the individual?
- Was adequate testing done for individual to establish the diagnosis?
- Has an MRI been obtained?
- Have conditions with similar symptoms been ruled out?
- Does individual's pain radiate to either leg?
- Did individual experience a recent fall or stumble?
- Has a second opinion been obtained from an appropriate specialist?

### Regarding Treatment

- Is individual active in physical therapy?
- How did individual respond to conservative treatment?
- Was it necessary for individual to have surgery?

### Regarding Prognosis

# #1. Focus on **WORKER**



**SB 112 = Best CARE for Injured Worker**

- **Controlled Substance prescribing guidelines** protect the worker – Sec 34
  - **Enable the Worker to continue to function**
    - **Documented**
    - **Select pain management specialist**

# Low Back Pain

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## Treatment

Pain without an underlying diagnosis is treated conservatively with tolerable activity and reassurance. Simple analgesics and nonsteroidal anti-inflammatory drugs (NSAID) may be appropriate. Muscle relaxants are frequently prescribed, but their effectiveness comes from their sedative action. Use of light support corsets is sometimes suggested to help with the pain, but their value has come under question. For acute back pain, it has been found that the resumption of activity as tolerated is superior to bed rest (activity facilitates recovery), but short periods of bed rest may be necessary for severe symptoms. In cases of [chronic pain](#) that is unresponsive to conservative treatment, some doctors may choose to administer steroids and other injections in an effort to decrease pain and inflammation. Types of injections and the likelihood of their use vary among physicians ("Back Pain").

Spinal manipulation may decrease the pain, especially in the first 4 to 6 weeks after the onset of pain.

In the vast majority of cases, surgery is not needed for simple low back pain. Underlying conditions and diseases that may necessitate surgery include herniated discs, spinal stenosis, vertebral fractures, and [degenerative disc disease](#).

# Opioids Guideline

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[Contributors](#)[Overview](#)[References](#)[↕ REORDER](#)[Contributors to the ACOEM Opioids guideline](#)

## Overview



Opioids are a class of prescription medications that are used to help manage severe pain, typically in acute or post-surgical settings, for a limited period of time. These powerful medications act on receptors in the central and peripheral nervous systems to inhibit the transmission and perception of pain, and are derived from natural sources (e.g., morphine) and synthetic sources (e.g., codeine, fentanyl, oxycodone). The primary benefit of opioid pain medication is to provide profound analgesia, but the many drawbacks include suppression of respiration and heart rate (bradycardia), sedation, euphoria, and, in some individuals, nausea and vomiting. Because of the potential for serious harms that include physical dependence, addiction, overdose, and death, guidelines for opioid prescription must adhere to strict criteria for safe and effective use.

Please see the [Opioids ACOEM Practice Guidelines](#) for evidence-based treatment recommendations, and the [Opioid Dependence](#) topic for detailed information about opioid use disorder.

## References

[References for the ACOEM Opioids guideline](#)

# #1. Focus on **WORKER**

SB 112 = **CARE** during recovery



- Make Re-employment Benefits Work Again
  - Pay for specific services, not blank checks that don't move careers forward.
  - Sec. 22 - >5% PermPartImpair, chosen by Worker, 5 years after injury, Voc Rehab Specialist
  - Expand return to work opportunity

## #2. Worker's CURE

### SB 112 = Return to Work

- **Temporary Total Disability benefits (TTDs)** – capped at 104 weeks (2 years). Exceptions and appeals available.
- **Permanent Partial Impairment benefits (PPIs)** - ends when worker returns to work, same employer, at wage greater or equal to that at the time of injury
- **Permanent Total Disability (PTD)** ends at retirement (TTD Benefits continue) Sec. 69



## #2. Focus on CURE

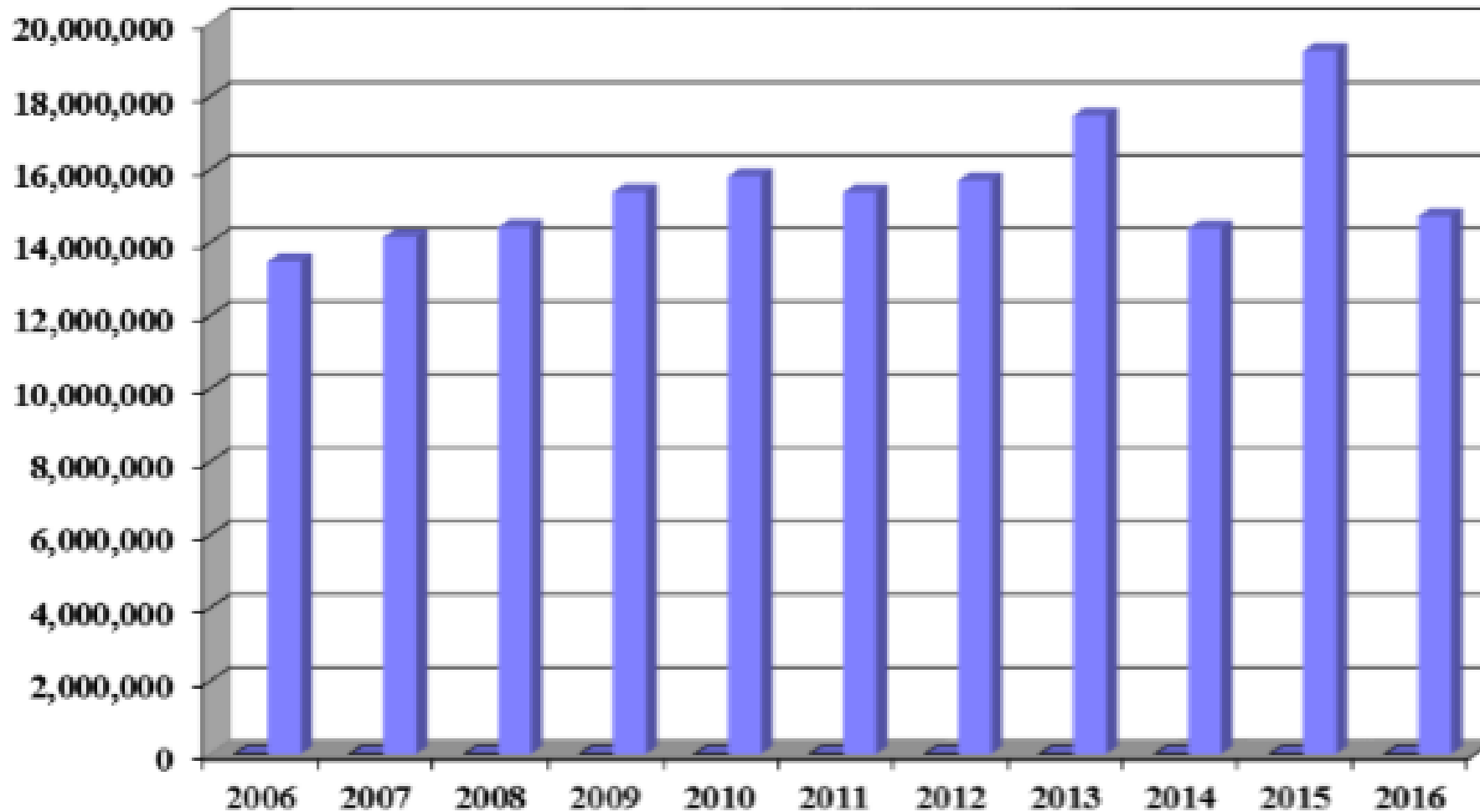
- **Employee chooses doctor.** Change to Specialist in another specialty allowed. Sec 26
- **Recurring Injury covered.** Sec. 18
- Still provide **ongoing medical treatment** with medications, insulin, dialysis, transfusions. Sec. 26
- **Durable Medical Equipment** – vendors accredited through Centers for Medicare and Medicaid Services to assure quality. Sec. 26 and 33

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### #3. **CARE and CURE**, **not** Courts and Conflict

**SB 112 = its WORKERs' Compensation...**

**not Attorneys' Compensation**

- **Cap attorneys' fees (Sec. 63)**
  - Cap is maximum percent of costs
- **Less time in court, more time in treatment training, and returning to work**



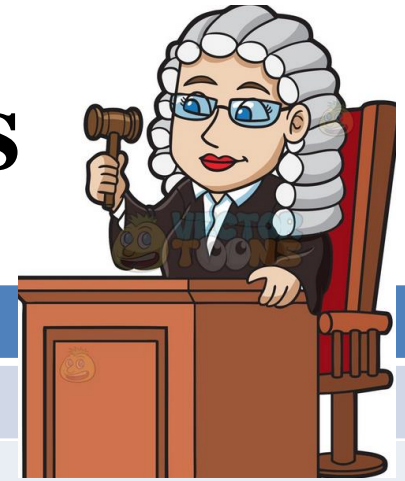
# #3. Less Courts and Conflicts

- Non-compromise and release hearings move from Work Comp Board to the Office of Administrative Hearings (Administrative Law Judge)
- **Prescribed timeline for dispute to be heard.**
  - Telephonic hearings allowed
  - Transparent timelines

Reduce fear and uncertainty for worker and family.



# #3. Less Courts and Conflicts



Hearing Officer	Administrative Law Judge
Legal education	Legal education
Not required to be admitted to Alaska Bar	Must be admitted to Alaska Bar
Must be member of Alaska State Employees Union	Exempt employee, impartial
Department of Labor	Department of Administration
Appointed by Commissioner of Labor	Hired by Dept of Administration
	Defined timeline
	Adjudicates long list of topics from professional boards to Medicaid claims

**20,000 workplace injuries per year. 1,200 go through the hearings process**

# #3. Less Courts and Conflicts

- Clear and Convincing Evidence – Sec. 15, 24, 48
- Major Contributing Cause 50%
- Objective Medical Evidence – Sec. 50
  - Medical Records Admitted and Quoted. Sec. 39
  - Evidence given equal weight. Sec. 52
  - Lay testimony allowed but not to decide factual disputes about medical facts. Sec. 44, 52



# #3. 2<sup>nd</sup> Independent Medical Examination

- SIME - Alaska is the **ONLY STATE** that provides for SIME
- **PROCESS**
  - Worker's MD and Employer MD disagree
  - Hearing Officer orders SIME
  - List of **doctors** created by Work Comp Board - **ALL out of state**
    - Worker travels
    - Exam is **extensive and expensive**
  - Hearing officer and Board have **option to disregard**
  - Cost - **\$20,000 minimum**



# You may hear...

Strips Worker of MD choice	See Sec. 26
Medical Services Review Committee changed	No. See Sec. 31
Kicked off care for long-term injuries	No. See Sec. 26
Unnecessary litigation	No. ALJ defined timeline
Denies AN traditional knowledge	This is not used for work injuries
Does nothing for family of single worker killed on job	This is not the intent of the bill.

# Independent Contractor

- Section 75
- Clarifies what constitutes an Independent Contractor related to requirement for Worker's Compensation Insurance.

# Senate Bill 112:

It's Worker's Compensation

Not

Middlemen Compensation

Not

Lawyer Compensation



# SB 112: Sharing the Same Goals!

**Alaska Worker – proud legacy**

Let's innovate and transform to....

- create and train for more Alaska Jobs
- boost economy with Alaska businesses
- good wages supporting Alaska WORKERS and their families



# Questions?



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