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ALASKA WORKERS' COMPENSATION SYSTEM

BACKGROUND

The industrial revolution that took place in the United States during the 19th century was accompanied by a significant increase in workplace accidents. At that time, the only way injured workers could obtain compensation was by suing their employers for negligence. However, proving negligence was a time-consuming and costly effort, for both the injured worker and the employer. In response, by the 20th century, states began adopting legislation establishing a social contract between employees and employers that would compensate injured workers while protecting employers from lawsuits.

Wisconsin passed the nation's first workers' compensation act in 1911, and by 1920 all but eight states had enacted similar laws. Alaska's first compensation act enacted by the Alaska Territorial Legislature in 1915. By 1949, all states had a workers' compensation system that provided compensation to workers hurt on the job. These social contracts made the employer liable for work-related injuries and disease regardless of fault.

However, compensation benefits varied greatly from state to state, and rules were far from uniform. In response, as part of the Occupational Safety and Health Act of 1970, Congress established the National Commission on State Workmen's Compensation Laws to "undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation" for injured workers and employers.

In July 1972, the Commission released its findings and recommendations to the President and Congress. The Commission made recommendations about which employees and employers should be covered; under what working conditions employees should be covered; which injuries and diseases should be compensated; and what type of benefits should be provided. The Commission made 84 recommendations and described 19 of the recommendations as "essential". The full Commission report can be found online at www.workerscompresources.com.

In the four decades since the Commission's report, state legislatures have struggled to strike a balance between providing adequate and fair compensation to injured workers and doing so at a reasonable cost to employers. These ongoing changes in public policy have impacted many areas of workers' compensation systems, including the adequacy of benefits, the efficiency of benefit delivery, timely dispute resolution, expeditious return to work of the injured worker, the affordability of workers' compensation insurance, and the prevention of workplace injuries and diseases.

Workers, employers, insurance carriers, medical providers, state officials, and other parties to workers' compensation want to find the best balance to strike on these important issues. This briefing is an attempt to address that question, by identifying best practices used by various jurisdictions. In doing so, studies, surveys, and other resource material from several organizations have been used, including the National Council on Compensation Insurance (NCCI), the International Association of Industrial Accident Boards and Commissions (IAIABC), the Workers' Compensation Research Institute (WCRI), and the National Academy of Social Insurance (NASI).

HOW THE SYSTEM WORKS

Excluding federal programs like the Federal Employer Liability Act and the Longshore and Harbor Workers' Act (both administered by the U.S. Department of Labor), approximately nine out of 10 people in the nation's workforce are protected by state-administered workers compensation programs. Employers can purchase workers compensation coverage from private insurance companies or state-run agencies, known as state funds. Four states are monopolistic states, meaning workers' compensation coverage can only be purchased through a state-administered fund: North Dakota, Ohio, Washington State, and Wyoming. The only state in which workers compensation coverage is optional is Texas, where about one-third of the state's employers are so-called nonsubscribers. In the event of a serious accident, those employers opting out of the Texas system can be sued by employees for failure to provide a safe workplace. In Alaska, workers' compensation insurance is obtained from private insurance companies (voluntary market), or through a state administered pool (assigned risk market). Alaska does not have a state fund.

Some businesses finance their own workplace injury benefits through large deductible insurance policies or by becoming a self-insured employer. Businesses in these programs must prove that they have the financial ability to cover their workers' compensation losses. They usually protect their assets by purchasing insurance coverage for catastrophic losses or losses in excess of a specific threshold. Alaska does allow employers to self-insure their workers' compensation liabilities only when they are deemed eligible to do so after completing the required application and approval process. Currently, 24 Alaska employers are authorized to self-insure, covering approximately 20% of all Alaskan employees.

Workers' compensation covers an injured worker's medical care and provides disability benefits to compensate them for economic loss from the initial date of injury to the date they are able to return to work. In cases where the injury prevents the injured worker from returning to pre-injury employment, the injured worker may receive reemployment retraining. In severe cases, the injured worker may be permanently disabled and receive lifetime benefits. In cases involving a fatality, the worker's dependents are provided disability benefits to compensate them for the loss of income.

The cost of workers' compensation insurance to employers is determined by insurance actuaries who predict future losses based on the employer's prior loss history. Rates are determined by classification groups, such as office/clerical, construction, manufacturing, etc. Most states use contracted rating bureaus to perform this actuarial analysis. The National Council on Compensation Insurance (NCCI) is the largest rating bureau, used by over 900 insurance companies and 40 states, including Alaska. The rating bureaus make premium rate recommendations to state regulators, who make the final decision on whether to adopt the proposed rates. Premium rates can also be impacted by investment markets. When insurance companies are getting high returns in the investment markets, they can use those earnings to offset premium increases.

COST DRIVERS & BEST PRACTICE RESPONSES

Workers' compensation costs are one of the many factors that influence businesses to expand or relocate in a state, generating jobs. When premiums rise, employers call for reforms. Statistical data indicates rising loss costs are attributable to changing market conditions, an uptick in claim frequency, rising indemnity benefit costs, escalating medical costs, legal costs, and reemployment benefits costs.

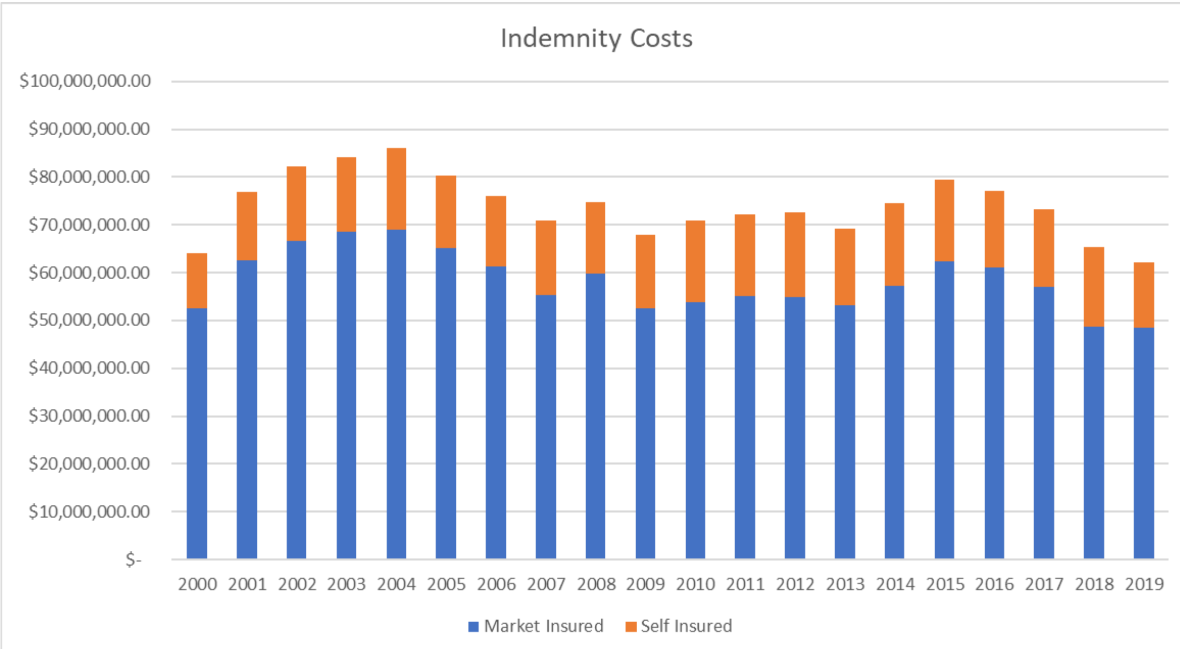
Changing Market Conditions

Insurance, particularly commercial insurance, is a cyclical industry marked by hard and soft markets. In 2000 as the economy expanded, premiums started rising, ushering in a hard market, when demand outstripped supply. Between January 2000 and December 2006, premium rates rose in Alaska by 61.8%. In 2007, with a generally softening market and a weakening economy, premiums began dropping again. Between January 2007 and December 2010, premium rates in Alaska fell 41.9%. Beginning in 2011, as the economy began to improve and markets began to harden, rates started to rise again. However, the implementation of a medical fee schedule and changing job types have assisted in moderating rates for insurance in Alaska. Calendar year 2020 will be the eighth consecutive year of premium reductions for workers' compensation insurance in Alaska.

Best practices adopted by states to address changing market conditions include modifying experience modification formulas, implementing incentives to move employers out of residual markets, strengthening reserve requirements, and approving rate increases. Several states are considering adopting the Texas model, allowing employers to opt-out of mandatory coverage.

Claim Frequency & Indemnity Benefits

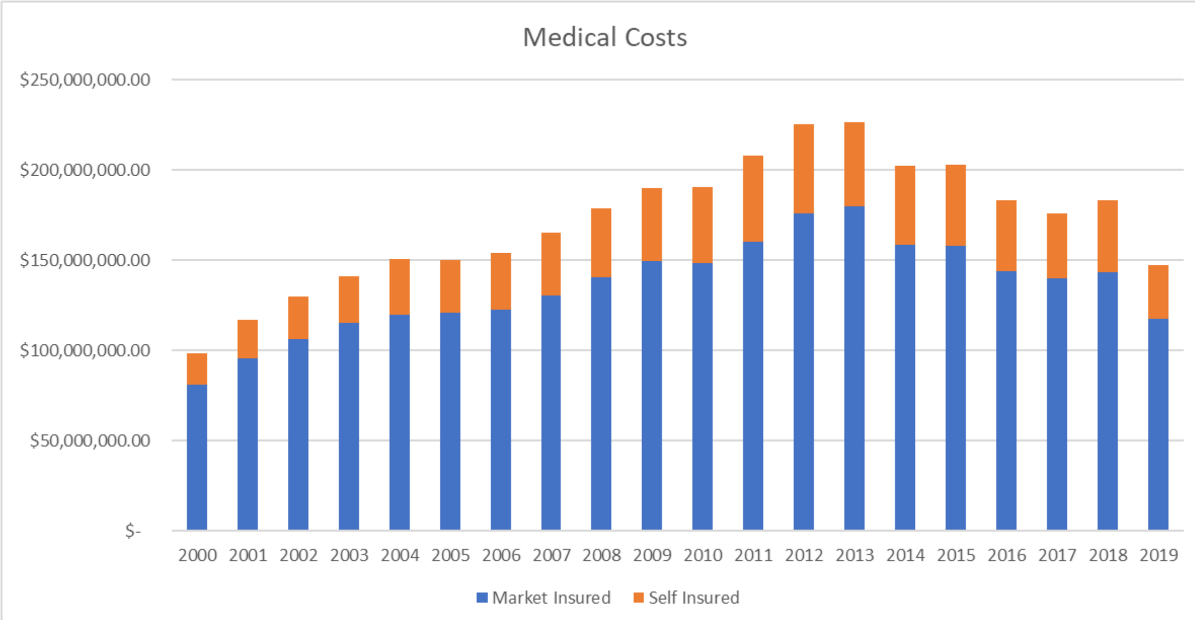
After almost 20 years of decline, in the early 2010s Alaska saw a slight increase in the frequency of workers' compensation claims and the average duration of indemnity benefits. NCCI attributed the increase to the recession, rising comorbidities (such as an aging workforce, obesity, and diabetes), and increased prescription of opioid pain medication. With the implementation of medical fee schedules and an emphasis on monitoring prescription practice in the mid 2010 decade, the last five years have shown a decline in claim duration.



Best practices to address rising frequency and indemnity benefit costs include focusing on stay-at-work and return-to-work programs, implementing medical reforms which return injured workers to work sooner, and increasing efforts on implementing and improving workplace safety programs. Alaska’s, and indeed the entire country’s, next challenge is implementing programs that promote retention and retraining of injured workers to reduce the overall burden on workers’ compensation and other social service costs.

Medical Costs

Three plus decades ago, indemnity costs made up the greater part of total losses. In 1986, indemnity costs represented 55 percent of the total. By 1996, indemnity and medical had changed places, with indemnity at 48 percent of losses and medical at 52 percent. By 2011, as medical care costs continued to rise, medical costs accounted for 59% of claim costs. For calendar year 2019, medical costs had risen to 64.1% of all costs in workers’ compensation in Alaska. The continued work of the Medical Services Review Committee has slowed and even reduced the overall medical costs; however, the indemnity percentage has stagnated due to static amounts set several years in the past.



Best practices to address rising medical costs include implementation of medical fee schedules based on Medicare's resource based relative value scale, implementing treatment guidelines to address over-utilization, modifying regulations permitting physician repackaging of prescription drugs, and implementing guidelines regulating the prescription of opiate drugs.

Legal Costs

Workers' compensation programs were originally intended to be "no-fault" systems and therefore litigation free. However, over time, attorney involvement has increased up to as much as 20 percent in systems where the number of disputes is high, and in roughly a third of claims where the worker was injured seriously. Attorney involvement boosts claim costs by 12 to 15 percent.

Best practices addressing rising legal costs include use of mediation in the dispute resolution process, establishing ombudsman positions to assist pro-se litigants, capping attorney fees, and undertaking steps to simplify workers' compensation systems to make them easier to understand and more "user friendly".

Reemployment Costs

The aim of the workers' compensation system is to help workers recover from work-related accidents and illnesses and to return to the workplace. A fast return to work is desirable for the employer because it lowers claim costs, and for the employee because studies show that long absences from work have a negative impact on the worker's future employment opportunities and socioeconomic well-being.

Best practices to address rising reemployment benefit costs include implementing stay-at-work and return-to-work programs, requiring treating physicians to take occupational medicine courses as part of their continuing education, and working with employers to develop modified workplace programs. These programs have shown good results and the USDOL is currently assisting six states in this process. Alaska has no program mandates for a return to work process, and the Workers' Compensation Board is working to implement a change to assist.

Challenges and Other Cost Drivers

State processes have adopted electronic data interchange (EDI) systems, utilizing standards promoted by the International Association of Industrial Accident Boards and Commissions for proof of insurance filing, claims reporting, payment reporting, and medical bill payment. While this system has streamlined some processes, vendors have informed the Division of issues. Many of these are addressed in the latest of updates, but an ongoing process to ease customer adoption and reporting to the Board is necessary.

Fraudulent activities drive up overall claim costs as well. Best practices have been to establish investigative units to aggressively prosecute fraudulent activity, seek restitution, and develop public awareness and reporting programs. This program has been productive in Alaska but needs statutory assistance strengthening the effectiveness of curtailing uninsured employers who rely on the Benefits Guaranty Fund to cover injured workers and to address claimant fraud more effectively.

Finally, states are also evaluating more effective processes in working with injured employee representation. Self represented, or pro se, claimants constitute a large portion of the claims that involve multiple prehearings and hearings. Division personnel expend considerable time answering procedural questions and explaining processes and forms to pre se clients. Enhanced services are used to communicate with non-English speaking clients and assist with procedural issues.

2020 Ranking	2018 Ranking	State	Index Rate	Percent of study median	Effective Date	Percent of 2018 study median
1	3	New Jersey	2.52	175%	January 1, 2020	167%
2	1	New York	2.23	155%	October 1, 2019	181%
3	9	Vermont	2.21	153%	April 1, 2019	123%
4	2	California	2.16	150%	January 1, 2020	169%
5	13	Hawaii	2.08	144%	January 1, 2020	118%
6	8	Connecticut	1.99	138%	January 1, 2020	129%
7	4	Delaware	1.97	137%	December 1, 2019	148%
8	10	Louisiana	1.95	135%	January 1, 2019	121%
9	7	Rhode Island	1.93	134%	August 1, 2019	132%
10	5	Alaska	1.86	129%	January 1, 2020	148%
11	12	Wisconsin	1.74	121%	October 1, 2019	119%
12	11	Montana	1.69	117%	July 1, 2019	119%
13	23	Oklahoma	1.66	115%	January 1, 2020	103%
14	25	Missouri	1.65	115%	January 1, 2020	101%
15	6	Georgia	1.64	114%	July 1, 2019	134%
16	19	Maine	1.62	113%	January 1, 2020	108%
17	28	Minnesota	1.61	112%	January 1, 2020	98%
19	21	Idaho	1.56	108%	January 1, 2020	106%
19	14	South Carolina	1.56	108%	April 1, 2019	115%
20	17	Pennsylvania	1.55	108%	April 1, 2019	109%
21	30	Iowa	1.54	107%	January 1, 2020	96%
22	16	Washington	1.53	106%	January 1, 2020	110%
23	24	South Dakota	1.48	103%	July 1, 2019	102%
24	22	Illinois	1.46	101%	January 1, 2020	106%
26	16	Wyoming	1.44	100%	January 1, 2020	110%
26	27	Nebraska	1.44	100%	February 1, 2019	100%
27	21	Florida	1.41	98%	January 1, 2020	106%
28	27	New Hampshire	1.37	95%	January 1, 2020	100%
29	34	New Mexico	1.34	93%	January 1, 2020	88%
30	29	Alabama	1.33	92%	March 1, 2019	97%
31	19	North Carolina	1.31	91%	April 1, 2019	108%
32	41	Virginia	1.28	89%	April 1, 2019	76%
33	35	Colorado	1.25	87%	January 1, 2020	84%
34	31	Mississippi	1.20	83%	March 1, 2019	91%
35	38	Massachusetts	1.17	81%	July 1, 2018	81%
37	37	Michigan	1.14	79%	January 1, 2020	81%
37	39	Maryland	1.14	79%	January 1, 2020	78%
38	33	Kentucky	1.13	78%	October 1, 2019	89%
39	46	Kansas	1.12	78%	January 1, 2020	68%
40	36	Ohio	1.11	77%	July 1, 2019	82%
41	32	Tennessee	1.09	76%	March 1, 2019	89%
42	44	Nevada	1.07	74%	September 1, 2019	70%
43	40	Arizona	1.05	73%	January 1, 2020	78%
44	42	District of Columbia	1.04	72%	November 1, 2019	74%
45	**46**	**Oregon**	**1.00**	**69%**	**January 1, 2020**	**68%**
46	43	Texas	0.98	68%	July 1, 2019	71%
47	47	Utah	0.85	59%	January 1, 2020	62%
48	48	West Virginia	0.79	55%	November 1, 2019	59%
49	50	Indiana	0.77	53%	January 1, 2020	51%
50	49	Arkansas	0.72	50%	July 1, 2019	53%
51	51	North Dakota	0.67	47%	July 1, 2019	48%

Notes: Starting with the 2008 study, when two or more states' Index Rate values are the same, they are assigned the same ranking. The index rates reflect adjustments for the characteristics of each individual state's residual market. Rates vary by classification and insurer in each state. Actual cost to an employer can be adjusted by the employer's experience rating, premium discount, retrospective rating, and dividends. Previous reports and summaries.

Employers can reduce their workers' compensation rates through accident prevention, safety training, and by helping injured workers return to work quickly.

In 2012, Alaska was number one in premium rates for all fifty states and the District of Columbia, making Alaska the most expensive location for workers' compensation insurance in the United States at 160% of the median price charged. In 2020, Alaska now ranks tenth overall and has reduced the premium amount to 129% of median.