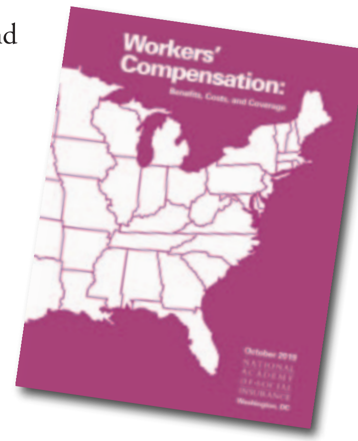
Workers' Compensation Spotlight

NATIONAL ACADEMY OF SOCIAL INSURANCE

MISSOURI

Bucking the Trend with Increases in Worker Benefits and Costs for Employers



While, across the country, benefits fell for workers in almost all states between 2013 and 2017, workers in Missouri saw substantial increases in both medical benefits per $100 of covered wages (of 11.8%) and in cash benefits/$100 of covered wages (of 9.6%).[1] The latter represents the largest increase of any state and the only substantial one (the other two states that did not experience declines are Alaska and Wyoming, where cash benefits were virtually flat, at 0.6% and 0.5% increases over the five years, respectively.) Overall, benefits for Missouri workers rose by 10.8%. Employer costs for workers' compensation also increased in Missouri, albeit more modestly, by 5.6%, or $0.07 per $100 of covered wages, over the 5-year period.

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Missouri enacted several significant restrictions in 2005 that were designed to reduce benefits (both cash and medical). As a *ProPublica* report notes, the legislative changes: "Strictly limited what injuries are covered, making it more difficult for workers with occupational diseases and repetitive stress injuries to qualify… Reduced insurers' and employers' liability when the work injury aggravates an existing condition caused by aging or prior injuries… Reduced benefits by 25-50% if the injury was caused by a failure to follow the company's safety rules [and] Increased burden of proof for permanent partial and total disability."[2] Our data, however, reveal a substantial decline in standardized benefits from $1.08 in 2004 to $0.89 in 2006, before these changes would have had an impact, followed by a more modest decline to $0.79 in 2013 and then a rebound from 2013 to 2017.[3]

Two characteristics unique to Missouri may help explain the differences in benefits trends that it has experienced relative to other states. First, Missouri is one of only seven of the 36 states studied by the Workers' Compensation Research Institute (WCRI) to have no controls or fee schedules in place with respect to medical benefits (other than employer control of physician choice). This has contributed to Missouri's being one of the

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1 All references to "benefits" refer to our standardized measure of benefits—benefits per $100 of wages covered by the workers' compensation system. Total benefits increased by 8.4 percent from 2013 to 2014, with a much smaller 2.2 percent increase in the subsequent three years (2014-2017).

2 *Workers Compensation Reforms by State*. 2015. Yue Qiu and Michael Grabell. *ProPublica*.

3 Plaintiffs' attorney John Boyd asserts that "in the run-up to the 2004 election for governor, in 2001-2003, efforts were made to restrict coverage. Those of us who represent the workers and their unions saw the phenomenon of under-reporting of injuries, probably in part due to the campaign to demonize injured workers as fraudulent as well as the negatives from fear of losses of employment and possible discrimination." Elaine Weiss correspondence with John Boyd, October 2, 2019.

4 *WCRI index*, 2018, Figure 2: Interstate Comparison of Priced Paid for Professional Services, WCRI MPI-WC in 36 States, 2018. Professional services are defined as "professional services billed by physicians, physical therapists, and chiropractors. The medical services fall into eight groups: evaluation and management, physical medicine, surgery, major radiology, minor radiology,

most expensive states in the country with respect to professional services, fourth out of those 36 as of 2018 (with an indexed price of 150, vs. the median of 100).[4] In addition, its 40% growth rate in costs for professional services between 2008 and 2018 was the second highest of 31 studied; only Wisconsin experienced greater growth in that respect.[5]

Second, several of the changes enacted in 2005 that reduced benefits were moderated in 2013 through legislative changes. The 2005 legislation also capped employer payments to Missouri's Second Injury Fund, resulting in inadequate resources to pay injured workers covered by that fund. Indeed, In a March 2011 memorandum to the Missouri Chamber of Commerce, the Chamber's Director of Regulatory Affairs noted that "[c]urrently all newly awarded Permanent Total Disability (PTD) benefit recipients are not receiving their benefit checks as there are insufficient funds to pay prior awards and the administration of the fund until the end of the fiscal year," and urged the Chamber to take action, because "sitting idle while the Second Injury Fund goes bankrupt is irresponsibly inviting fiscal disaster on Missouri's workers' compensation market."[6] As of the memo's production, Permanent Partial Disability settlement offers had been suspended, with 27,500 such cases in limbo.

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In response to growing concern expressed by the Chamber, labor leaders, and others, and with mounting evidence that the severe underinvestment was causing financial harm/instability in the labor market, the state passed legislation in 2013 to increase employer payments for the Second Injury Fund.[7] This move likely contributed to the benefits increase documented in this year's report, as Missouri workers' attorney and counsel to the Missouri AFL-CIO John Boyd notes:

> *"Because of the [2005] reduction, there was a considerable backlog of accrued but unpaid claims. A legislative change was enacted in 2013. More compensation payments were thus made in recent years for accrued losses from prior years. So in addition to the current year's losses, multiple years' prior losses were paid."*[8]

In summary, the 2005 legal changes that brought about a decline in standardized benefits in Missouri also led to a backlog for payments owed from the Second Injury Fund. As a result, the relief from workers' compensation liability that employers had sought was moderated in the past few years, at least in part, by legislation passed in 2013.

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neurological and neuromuscular testing, pain management injections, and emergency care." The other three expensive states – Indiana, New Hampshire, and Wisconsin – are also non-fee schedule states. Rebecca (Rui) Yang and Olesya Fomenko, *WCRI Medical Price Index for Workers' Compensation, 10th Edition* (MPI-WC).WCRI Index, Figure 3: Comparison of Cumulative Growth Rate in Prices Paid for Professional Services Across 31 States, 2008 to 2018. John Boyd points to the increase in self-insured and group self-insured entities over this period as another likely factor, since that move made the medical case managers who were formerly in-house in insurance firms an added cost for employers, along with costly expert witnesses who fall under the "professional services" umbrella. Elaine Weiss correspondence with John Boyd, October 23, 2019.

5 Memorandum to Members of the Missouri Chamber of Commerce and Industry from Richard Moore, Assistant General Counsel & Director of Regulatory Affairs. March 23, 2011. Re: Second Injury Fund Legislation.

6 Memorandum from John B. Boyd to Les Boden, September 20, 2019.

7 Memorandum from John B. Boyd to Les Boden, September 20, 2019.