

WORKERS' COMPENSATION REFORM

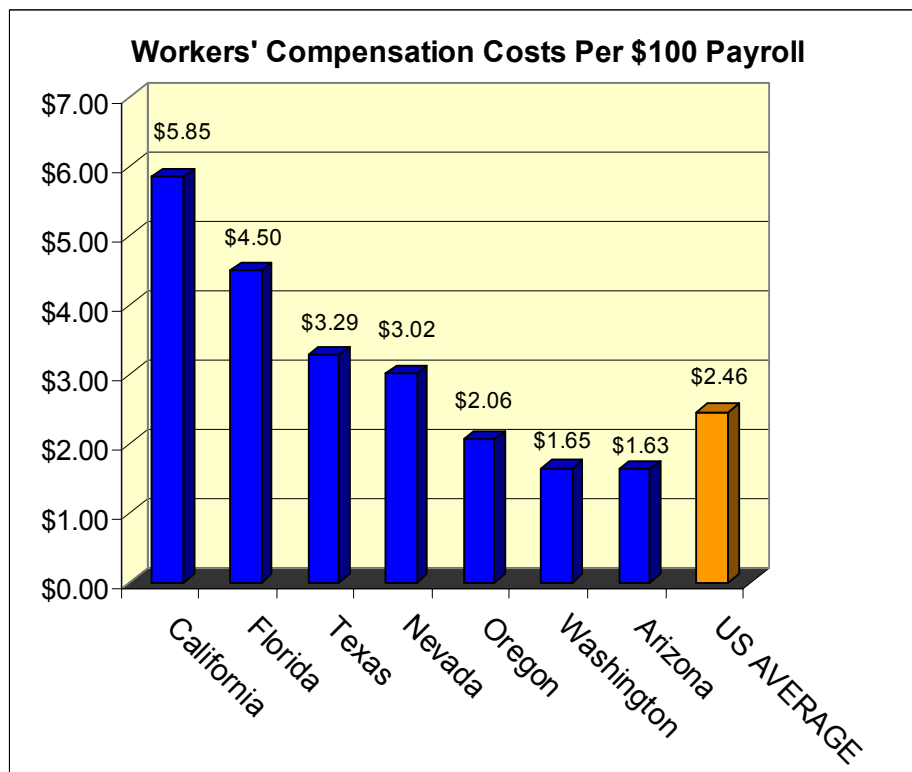
OVERHAUL OF A BROKEN SYSTEM

THIS PROPOSAL:

- Enhances benefits for the most severely injured, once California's workers' compensation system is brought to the national average in costs.
- Reduces the cost to business by attacking the cost drivers from a multi-pronged approach – through managing medical costs and restructuring indemnity payments.
- Builds on and fine-tunes SB 228 and AB 227, the workers' compensation bills passed earlier this year.

THE PROBLEM

California's workers' compensation rates are the highest in the nation and are significantly higher than our competitor states.



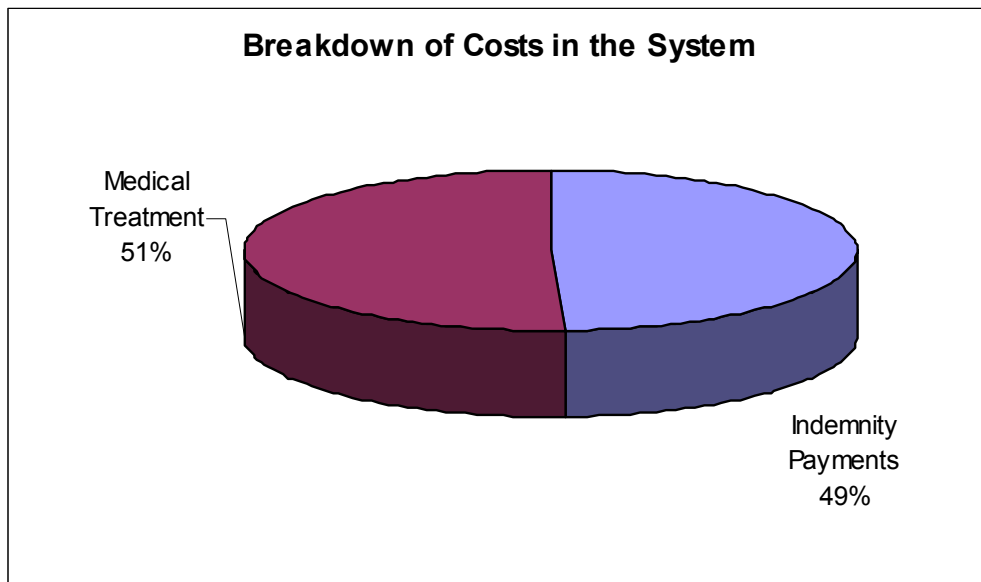
SOLVING THE PROBLEM

ENHANCING BENEFITS FOR THE MOST SEVERELY INJURED

The benefit increases put forth in last year's AB 749 will go into effect incrementally over the next three years. This proposal fully funds those increases. Additionally, this proposal goes one step further. If the California workers' compensation system is brought to the national average, then an additional benefit increase will go into effect for the most severely injured.

GOAL #1: AFFORDABILITY

We must bring affordability to California's workers' compensation system so that costs are at or below the average rate for the entire country by reducing the average cost per \$100 of payroll from \$5.85 to \$2.46. This equates to an \$11.3 billion reduction in overall costs, from next year's projected costs of \$24.9 billion.



Costs of the workers' compensation system are equally divided between cost to medically treat the worker and indemnity payments to the worker to compensate for loss of wages and permanent disability.

Indemnity Costs

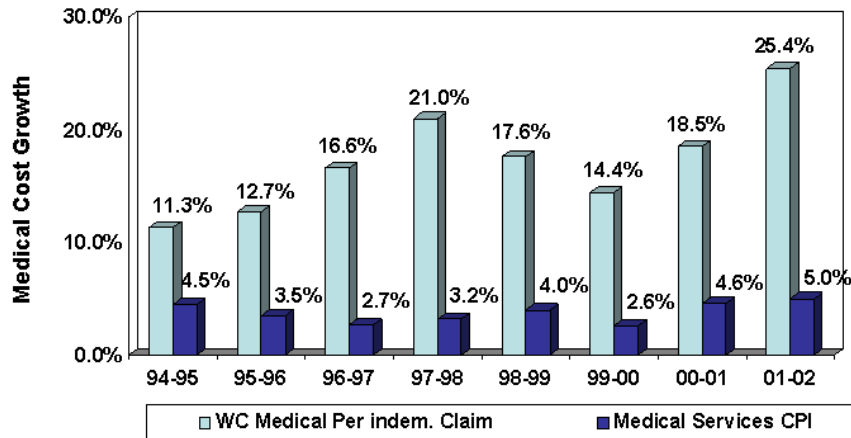
California's number of disability claims is almost 3 times the countrywide rate – in 2002 California had 1,221 claims per 100,000 workers, while the countrywide average was only 434. The cost of permanent disability per injured worker in California is also three times the average of that in other states.

Solutions:

- Mandate use of objective medical findings.
- Outline the use of nationally recognized guidelines, like the American Medical Association guidelines, for impairment to improve consistency of awards.
- Curb the use of permanent disability (PD) benefits by limiting awards for those who return to their previously held job or who are offered, but refuse to return to their job, or an equivalent paying job.
- Bring rationality to the apportionment determination, so that a person cannot continue to receive new PD awards for the same injury.
- There are two kinds of injuries – cumulative injuries and specific injuries. Ensure that cumulative injuries are truly “work-related” by applying the standard of “predominant cause” to those kinds of injuries. For all other specific injuries, apply a 10% standard.
- Clearly define “permanent and stationary” so that claims cannot continue unresolved.
- Require that medical physicians be the ones to determine permanent disability.

Medical Costs

36. Year-to-Year Growth Avg Medical per Calif. WC Indemnity Claim vs. Nat'l Medical Services CPI (indexed to 1992)



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California has developed two duplicative health care systems, each with their own administrative costs and each with their own set of rules. Employers who opt to provide health care to their workers are burdened with the expense of this duplication and employees find the dual systems confusing. Medical costs have been one of the fastest growing factors in the workers' compensation system in recent years. Some injuries treated in the workers' compensation system are up to five times more expensive than the same injury treated in the group health system.

Solutions:

Part A: Systemic Changes Throughout the System

- Allow for an employee to change doctor after 30 days or to pre-designate a doctor only if it is mutually agreed to by the employer.
- Make clear that the mandate to "cure and relieve" is based on sound, proven principles of medical necessity.
- Establish an independent medical review process; ensure that the "qualified medical examiner" (QME) process is used solely for PD determinations.

- Improve on the utilization controls created in SB 228 so that the abuse of over-utilization of the system is truly curtailed.

Part B: Optional “Door-to-Door” Coverage

For employers offering health insurance to their employees, Optional “Door-to-Door” Coverage would provide, in addition to the savings outlined in Part A, the advantage of a combined insurance policy that maximizes the benefits of the group health model while still ensuring adequate coverage to employees.

For employers, who are not quite able to provide health insurance, allow the same combined medical coverage options as well as all of the savings from the Part A benefits.

Administrative Costs

Solutions:

- Amend Labor Code 5814 so that the penalty is assessed on the actual late payment rather than the entire claim – past, present, and future.
- Allows an insurer or employer the ability to self-impose a penalty upon themselves so that an unintentional violation can be quickly remedied.

Other Issues

- Exclusive Remedy Issue – Restore the exclusive remedy and reduce the possibility for lawsuits for employers who follow the law.
- Eliminate prisoners from being eligible for compensation.
- Eliminate the requirement included in SB 228 for all insurers to inspect the safety program of every single business.
- Modify the Alternative Dispute Resolution (ADR) Program provisions of SB 228 so that all industries can avail themselves of the successful model of ADR currently authorized for the construction trades.

GOAL #2: AVAILABILITY

The State Compensation Insurance Fund – the government-run insurance carrier – has increased its market share from 25% to over 60% in just a few years. The dysfunctional market has forced competition out of the market and reduced consumer choice.

Solutions:

- Perform an independent audit of the State Fund.
- Small Group Self-Insurance Changes – Expand small group insurance laws to create additional options for group insurance pools. The bill requires that these provisions be consistent with the model act of the California Association of Insurance Commissioners.