



**WORKERS' COMPENSATION:
NEEDED UPDATES TO BRING JUSTICE
TO NM'S INJURED WORKERS**

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- **Only member from New Mexico of the Board of Governors of The College of Workers' Compensation Lawyers (CWCL)**
- **An organization comprised of workers' attorneys, insurers' attorneys, college professors, and workers compensation judges.**

- **Only person from New Mexico on the Workers' Injury Law & Advocacy Group (WILG)**
- **A national organization that advocates for the rights of injured workers**



PURPOSE OF THE WORKERS' COMPENSATION ACT

NMSA 1978, Section 52-5-1

- Quick and efficient delivery of indemnity [money] and medical benefits to injured and disabled workers
- Reasonable cost to the employers

Martinez v. Darby Construction Company, 1989-NMSC-069

- Injured workers will receive some portion of their wages so as not to become dependent upon the welfare programs of the state

Morales v. Reynolds, 2004-NMCA-098

- Injured worker gives up right to sue employer for damages in return for covered medical expenses and wage benefits
- Employer gives up their defenses in return for immunity from a tort claim.



WORKERS' COMPENSATION PROCESS

The worker is injured on the job



The worker notifies her or his supervisor of the accident.



The worker's supervisor creates a first report of injury and notifies insurer.



The insurer investigates and approves or denies initial claim.



If the claim is approved

- Worker begins treatment
- Receives indemnity (money) benefits if taken off work for at least 7 days
- $66\frac{2}{3}$ of average weekly wage up to state cap



If the claim is denied

- Worker must use their own insurance if they have it.
- The insurer does not pay indemnity benefits.
- Worker has 1 year to file complaint with WC Administration
- Mandatory mediation
- Recommended Resolution
- Formal Litigation

THE GOALS OF 52-5-1 ARE NOT BEING ACHIEVED

- Employer/Insurer **can deny** claims and medical treatment **without showing a reasonable basis.**
- Employer/Insurer **can act unfairly or in bad faith with little or no fear of being held accountable** (NMSA 1978, Section 52-1-28.1 has no teeth).
- Doctors do not get compensated adequately to deal with the red tape and insurance denials.

- There is no mechanism to quickly resolve disputes about “reasonable and necessary” medical treatment.
- Employer/Insurer **can stop a worker’s checks without notice or judicial approval.**
- If a worker is terminated for “misconduct,” (possibly poor work performance) **they can lose tens of thousands of dollars in benefits.**
- Few attorneys are willing to take these cases due to their **complexity and the fee cap.**

REASONABLE WAYS TO CHANGE THE WORKERS' COMPENSATION ACT

REQUIRE

Employer/Insurer to have a reasonable basis to deny a claim or a procedure that a doctor has requested.

REMOVE

Bad faith from the WCA and require WC insurers to follow the same rules as every other insurer

REQUIRE

Train more doctors, pay doctors better, limit insurance denials & red tape when treatment would not be "reasonable & necessary".

CREATE

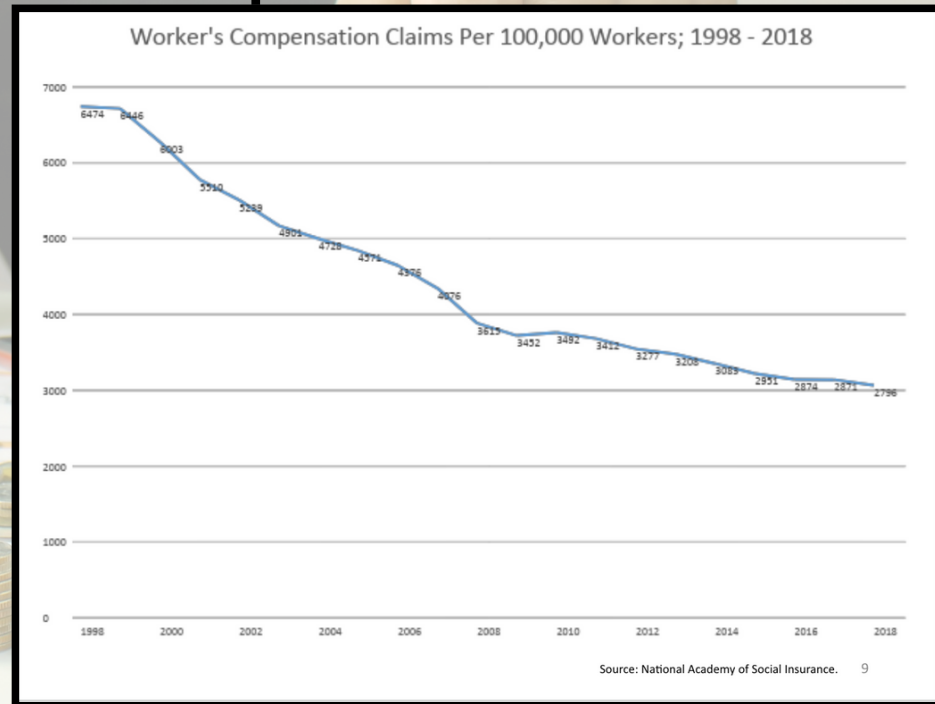
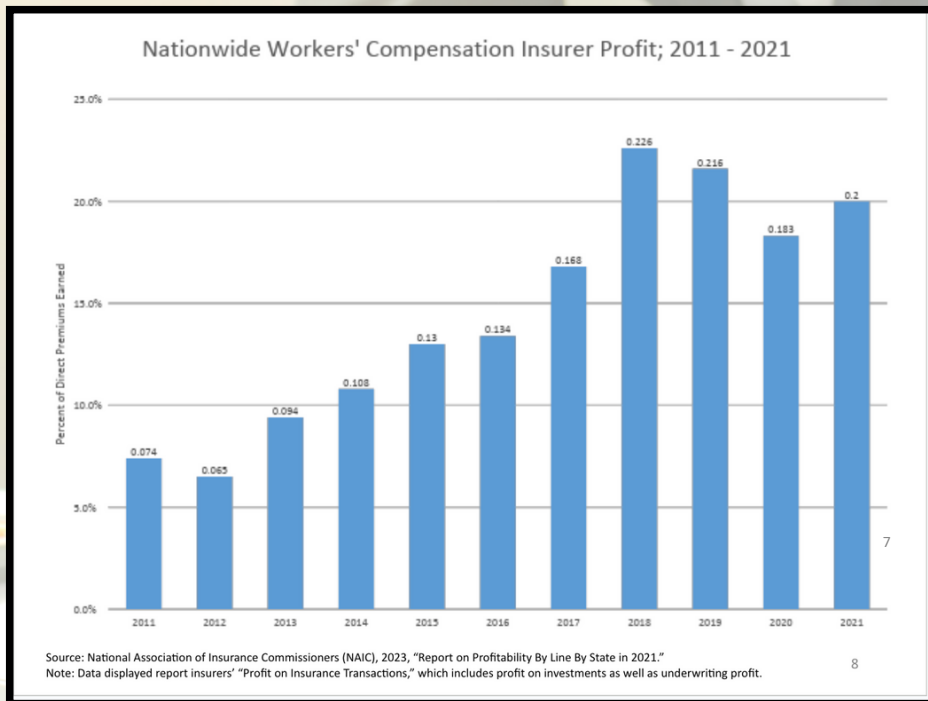
A mechanism for quick resolution of "reasonable and necessary" medical disputes.

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THERE IS NO INSURANCE CRISIS IN WORKERS' COMPENSATION

Worker's Compensation claims have steadily declined as profits have climbed



Workers' Compensation is the most profitable type of insurance