Alabama Workers' Compensation Program

Analysis of Selected Issues

Prepared for:

The Alabama Council of Association Workers' Compensation Self Insurance Funds

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Introduction

Workers' Compensation: A system whereby an employer must pay, or provide insurance to pay, the lost wages and medical expenses of an employee who is injured on the job.

Workers' compensation law is governed by statutes in every state. Specific laws vary with each jurisdiction, but key features are consistent.

- An employee is automatically entitled to receive certain benefits when she suffers an occupational disease or accidental personal injury arising out of and in the course of employment.
- Benefits may include cash or wage-loss benefits, medical and career rehabilitation benefits, and in the case of accidental death of an employee, benefits to dependents.
- The negligence and fault of either the employer or the employee usually are immaterial.

For employers who fully insure their workers' compensation obligation, premium payments for workers' compensation insurance coverage ranged from 1% of payroll costs in North Dakota to more than 3% in Montana in 2010. Alabama's workers' compensation premiums were slightly less than 2.5% of payroll costs in the same year.

The costs of workers' compensation for employers who "self-fund" their obligation vary from state to state and from industry to industry, from as much as 20% of payroll costs for "high risk" industries (e.g., timber workers) to as little as 1% of payroll costs for low risk industries (e.g., office workers).

Many states and many industry organizations, recognizing that the rising cost of workers' compensation contributes to eroding their competiveness in the marketplace, have enacted significant legislative, regulatory, and workplace practice changes directed at managing workers' compensation costs more effectively.

In Alabama, the Alabama Association of County Commissioners (AACC), as a member of the Alabama Council of Association Workers' Compensation Self Insurance Funds (Council), was interested in learning from the experiences in other states, particularly in the Southeast.

To that end, the Council asked AUM's Center for Government to research practices in other states and analyze whether adopting other states' practices might lower costs for self-insured employers in Alabama. Specifically, AUM's charge was to:

- Review the literature about Workers' Compensation to find "best practice" statutes;
- Review and analyze information from the International Association of Industrial Accident Boards and Commissions (IAIABC) on "best practice" statutes;
- Interview key staff from The Council, the IAIABC, and other Workers Compensation subject matter experts about best practices;
- Prepare gap analysis, describing the differences between Alabama's Workers Compensation statutes and "best practice" statutes from other states.

Executive Summary

This report is an analysis of the issues of most concern to the Council about Alabama's Workers' Compensation program:

1. Medical care costs;
2. The use and abuse of pain medication (opioids);
3. Payment rates and benefit periods for permanent partial and permanent total disabilities;
4. Causation and pre-existing conditions; and
5. The dispute resolution process.

Medical Care Costs

Alabama's employers have reduced worksite injuries by 50% over the last 15 years and enjoy one of the lowest incidences of worksite injuries of any state in the country. However, their strong performance in reducing injuries has not translated into lower Workers' Compensation costs and insurance premiums.

Workers' Compensation costs include the indemnity costs, the payments to injured workers for lost wages resulting from worksite injuries, and medical care costs for treating worksite injuries. Alabama's indemnity costs are in line with the indemnity costs in the Southeastern region and nationally; but, the State's medical care costs are not.

Several factors contribute to Alabama's higher medical care costs:

1. The professional fees Alabama's employers pay physicians and other health care providers for treating workers' compensation patients are higher than the fees Blue Cross and Blue Shield of Alabama and the Medicare program pay the same providers for the same services—by 41% and 80%, respectively;

2. One of every four prescriptions for workers' compensation patients were filled from physicians' offices, at costs that range from 60%-300% higher than if the same prescriptions had been filled from pharmacies

The use and abuse of pain medication (opioids)

Workers who use multiple opioids:

a) Cease getting pain relief from the medicine early in their recovery from worksite injuries;
b) Are nearly three times as likely to be "off work"; and
c) Are "off work" five times longer than workers who are not using opioids.

Several other states that have implemented programs to address this problem could serve as good models for a program in Alabama.

Payment rates and benefit periods for permanent partial and permanent total disabilities

Alabama's payment rates for permanent partial disabilities are the lowest in the Southeastern region. This low payment level may induce judges to classify more workers compensation cases as permanent total disabilities, a possibility supported by the fact that Alabama has a disproportionately low percentage of cases in the permanent partial disability category than the Southeastern states and countrywide.

Causation and pre-existing conditions

Alabama has not updated its Workers' Compensation statutory language around employer liability for injured workers with pre-existing conditions, conditions that may or may not contribute to the severity of a disability, since 1992. Two Southeastern states have updated their statutes on this issue. Both establish threshold levels for the "major contributing cause" of an injury and responsible party for determining "major contributing cause". These states may serve as models for a more contemporary approach to this complex challenge.

Dispute Resolution

Most states, including a majority of Southeastern states, have moved away from the judicial process to an administrative process for the resolution of workers' compensation claims. AUM was not able to find any studies describing whether

"outcomes" from an administrative are different than those from the judicial process.

It is the general consensus of the experts AUM interviewed that an administrative process is less expensive and more consistent with regard to outcomes than the judicial process; however, an administrative process is expensive to put in place and must be managed carefully to be successful.

Methodology

The Council asked AUM to focus the research on a list of issues of most interest to the Council's members. The list included:

1. Identifying practices in other states, particularly Southeastern states, which limit unnecessary exposure of employers to the costs of worksite injuries. Specific practices of interest to the Council were:

    a. Limits on the period of time injured workers can receive indemnity and medical care benefits;
    b. Determination of "causation" of injuries and the segregation of the cost of treating "pre-existing conditions" from the cost of treating worksite injuries;
    c. Practices in other states to limit the abuse of Opioid prescription drugs.

2. Identifying and analyzing the "cost drivers" of medical care costs in Alabama's Workers' Compensation program;

3. Comparing Alabama's payment schedule for workers whose disabilities due to injury on-the-job are defined as Permanent Partial Disabilities to the payment schedules for the same disability classification in other states;

4. Researching the costs and benefits of non-judicial system dispute resolution venues and processes.

The Council appointed a small task force of its members to assist AUM in gathering data, interviewing experts, researching the literature, and reviewing findings. The task force, which met with AUM staff bi-weekly from early September, 2012, through mid-October, 2012, was instrumental in conducting the analysis.

To address the list of issues, AUM's staff:

1. Compared Alabama's Workers' Compensation statutes with those of Southeastern states and with states identified in the Workers' Compensation literature as leaders on issues of interest to the Council.

2. Researched the Workers' Compensation literature, including studies from the National Council on Compensation Insurance, the Workers' Compensation Research Institute, the Oregon Department of Consumer Business and Services, Workers' Compensation Coalition for Business and Industry—Associated Industries of Florida, the American Insurance Association, and the Commission on Health and Safety and Workers Compensation—State of California.

3. Interviewed Workers' Compensation researchers, attorneys, judges, and Pharmacy Benefit Managers.

4. Analyzed medical claims data from the Alabama Retail Association and the Alabama Self-Insured Workers' Compensation Fund.

Findings

A. Alabama's Worksite Safety Performance

Alabama's employers have done an excellent job at limiting and reducing the incidence of worksite injuries; however, the premiums they pay for Workers' Compensation insurance do not reflect their strong performance on worksite safety.

1. Over the last 15 years, Alabama's employers have reduced the frequency of workers' compensation claims per $1 million of workers' compensation insurance premiums by 50%

	2010	2005	2000	1996
Claim Frequency (claims/$1 million of WC premium)	17	21	28	35

2. Alabama has one of the lowest rates of claims per 100,000 workers in the country and the lowest of the seven (7) Southeastern states.

	Alabama	Region	Countrywide
Claim Frequency (claims/100,000 workers)	723	840	970

Figure 1: Workers' Compensation Alabama's Performance

3. The premiums Alabama's employers pay for workers' compensation insurance were the 10th highest in the country in 2010 and the 21st highest in 2012. All but one of the Southeastern states has lower premium rates than Alabama in 2012.

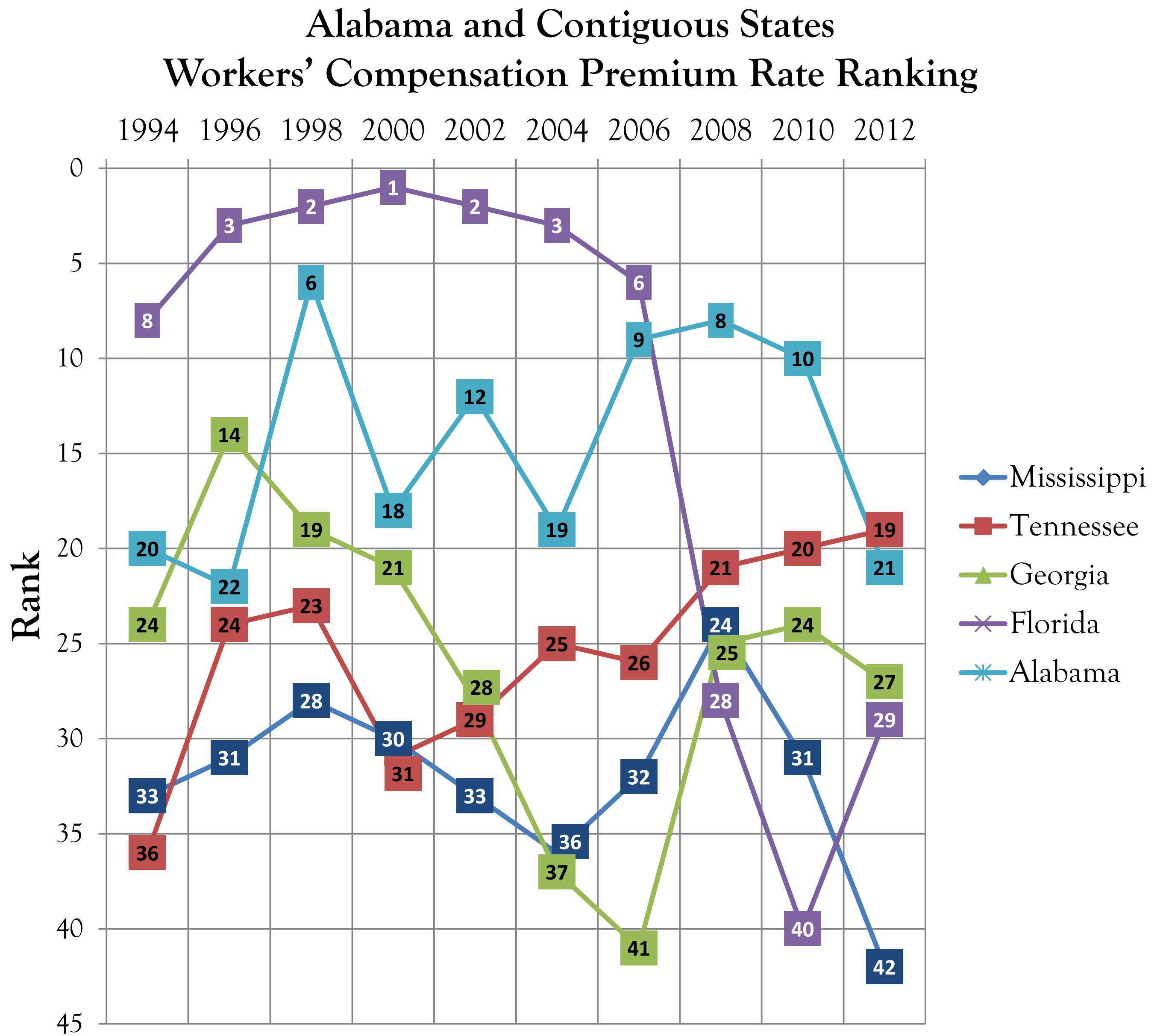

Figure 2: Alabama and Contiguous States Workers' Compensation Premium Rate Ranking

4. Florida's workers' compensation premiums were among the highest in the country before the state passed legislation in 2003 to "reduce litigation, combat fraud, and revise certain indemnity benefits for injured workers". Today, Florida ranks 29th in premium rates, down from 2nd in 2002.

   Among other changes to the statute, the bill:

   - Specified that, to be a "a major contributing cause," the work related accident must be more than 50% responsible for the injury and subsequent disability (proven only by medical evidence).
   - Ceased permanent total disability benefits at age 75, PTD benefits cease at age 75 unless employee not eligible for S/S due to not working sufficient quarters. If accident occurs after 70th birthday, then PTD benefits will not exceed 5 years
   - Eliminated the social security language from the definition of "catastrophic injury"
   - Changed criteria for a person to be an independent contractor rather than an employee
   - Tightened definitions of "occupational disease" and "repetitive trauma", requiring claimant to show both causation and sufficient exposure to support causation
   - Limited each side to only one independent medical examination (IME) per accident and required each party to be responsible for the cost of their IME

It appears that the medical care costs of Alabama's Workers' Compensation program are a major contributor to its relatively high premium costs despite its success in reducing the incidence of the state's Workers' Compensation claims to some of lowest in the nation. The figure below shows that the program's indemnity costs for lost-time claims have been at or below those of the rest of the country for the last fifteen years; but its medical care costs have been much higher in the same time period.

Average Indemnity Cost and Medical Care Cost per Lost-Time Claim Alabama vs. Countrywide 1996-2010

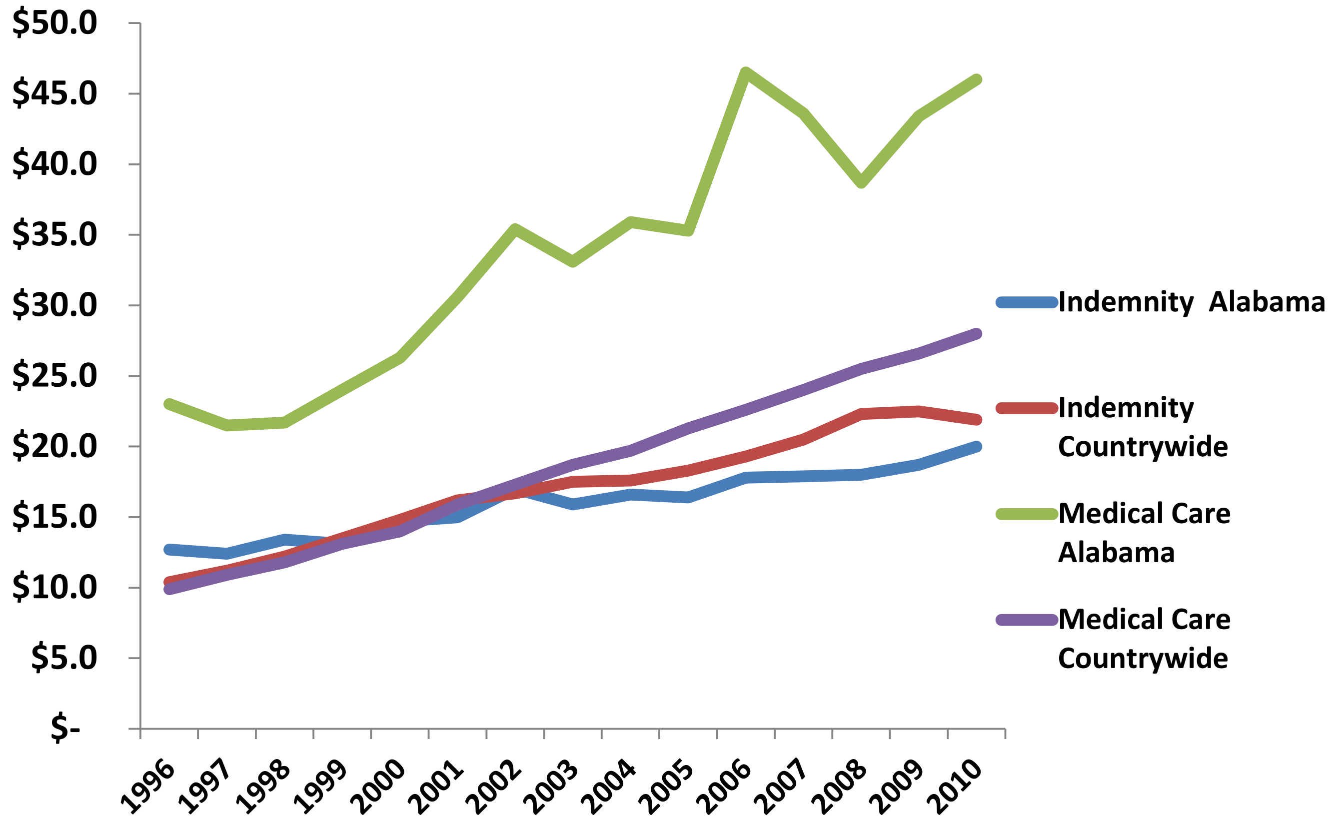

Figure 3: Average Indemnity Cost and Medical Care Cost per Lost-Time Claim Alabama vs. Countrywide 1996-2010

B. Medical Care Costs

Alabama's medical care costs are high compared to the rest of the country. Possible drivers of these high costs include a workers' compensation fee schedule for professional services that is dramatically higher than prevailing fee schedules in the Alabama and an increase in the number of prescriptions filled in physicians' offices, at much higher costs than if the same prescriptions were filled at pharmacies.

AUM's findings about medical care costs include the following:

1. Medical costs consume a larger portion of Workers' Compensation claims costs in Alabama (72%) than in the Southeastern states (65%) and Countrywide (59%).

	Alabama	Southeastern Region	Countrywide
Medical costs as % of total WC claims costs	72%	65%	59%
Medical costs per WC claim	$46,000	$32,500	$28,000
Indemnity costs per WC Claim	$20,000	$21,300	$21,900
Southeast Region and Countrywide vs. Alabama Total Costs		(18.5%)	(24.4%)

Figure 4: Workers' Compensation Medical Care Costs

2. Alabama's Workers' Compensation fee schedule for professional services is much higher than Blue Cross Blue Shield of Alabama's (41%) and Medicare's (80%).

	Alabama's Workers' Compensation Fee Schedule	Southeastern Region Workers' Compensation Fee Schedules	Countrywide Workers' Compensation Fee Schedules
Compared to Blue Cross Blue Shield of Alabama's Fee Schedule*	+ 41%	n/a	n/a
Compared to Medicare's Fee schedule**	+ 80%	+ 61%	+8% to + 215%

Figure 5: Workers' Compensation Medical Care Costs Professional Fees

3. Physician-dispensed prescription drugs accounted for 8% of Alabama's prescription drug cost per medical claim in 2005 and 26% in 2009.

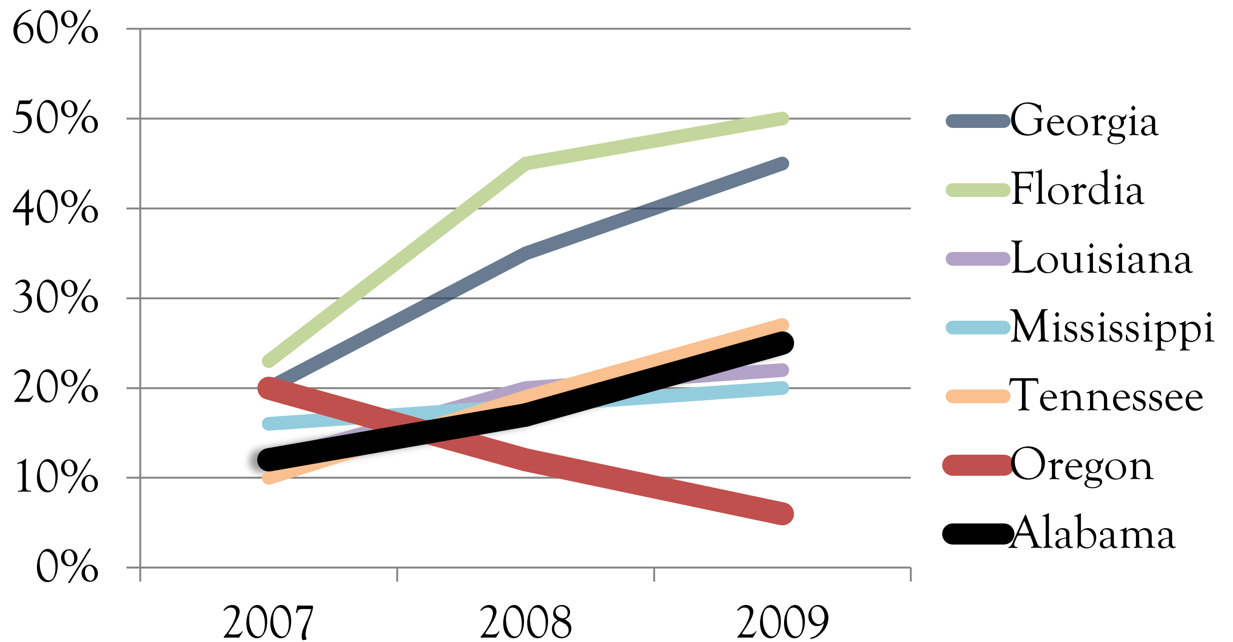

Figure 6: Physician-Dispensed Prescriptions as a Percent of Total Prescription Drug Costs

4. The cost per prescription for prescriptions filled in Alabama pharmacies rose 16% between 2005 and 2009 while the cost per prescription dispensed from Alabama physicians' offices rose 230% in the same time period.

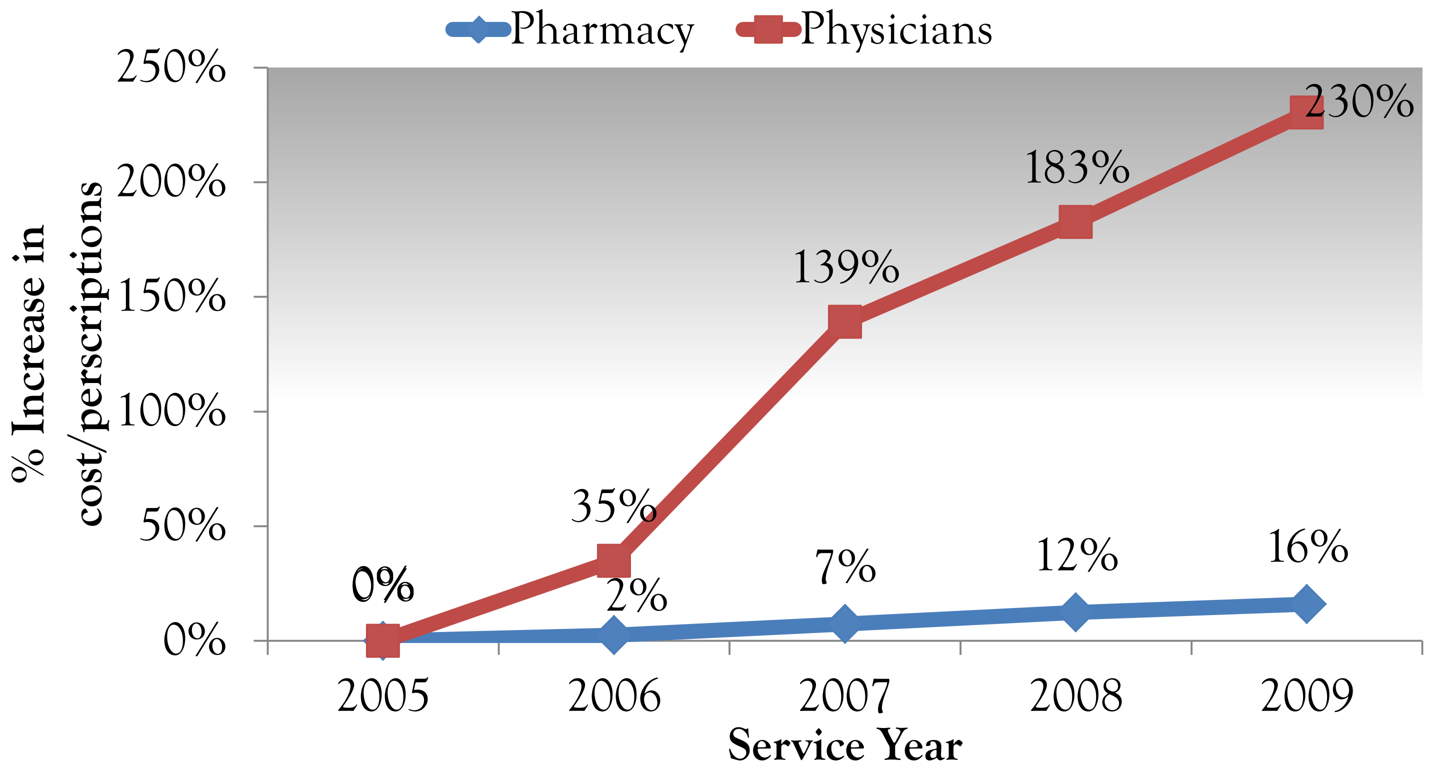

Figure 7: Physicians in Alabama have Shifted to Dispensing More Expensive Prescriptions

5. On a national level:

   a. Prices paid for physician-dispensed drugs were substantially higher than if the same drugs were dispensed by a retail pharmacy. In 2010/2011, the price/pill when dispensed by a physician was 60-300 percent higher than the same prescriptions dispensed at a retail pharmacy;

   b. Prices paid to dispensing physicians rose rapidly for medications that were commonly dispensed by physicians, while the prices paid to pharmacies for the same drugs changed little or fell;

   c. Dispensing physicians wrote prescriptions for and dispensed certain drugs (e.g., omeprazole [Prilosec®] and ranitidine HCL [Zantac®]) that are available without a prescription in a drug or grocery store at a much lower price. When they did so, prices were 5-15 times higher than MSP retail prices.

6. Physician-dispensed drug costs in the eight (7) Southeastern states and in twenty-three (23) other states account for more than 15.5% of total drug costs. They account for less than 10.5% of prescription drug costs in eight (9) states.

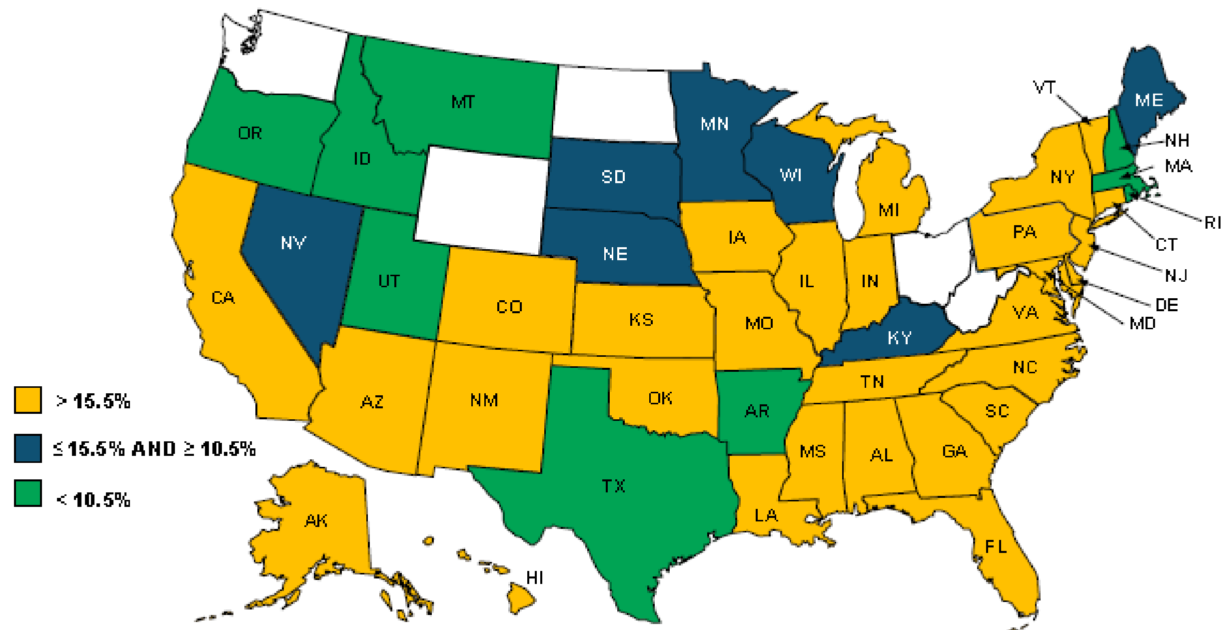

Figure 8: Many States have Substantial Physician Dispensing

7. Oregon has reduced physician-dispensed drug costs from 20% of total drug costs in 2007 to 6% in 2009.

C. Opioids (Narcotics)

AUM was not able to find Alabama-specific data on the prescription and use of opioids in the workers' compensation program; however, the use and abuse of opioids is of great concern among in workers' compensation administrators nationwide. Here's why:

1. Workers with multiple opioid prescriptions are:
   a. 2.7 time more likely to be off work, and
   b. Off work 5 times more days than workers who do not have multiple opioid prescriptions
2. The top 10% of claimants receiving narcotics account for 80% of all workers' compensation narcotics costs.

One state, Texas, has tackled the opioid issue as part of a larger initiative to control prescription drug costs. In 2010, Texas established a statewide closed formulary for prescription drugs and began requiring preauthorization before the dispensing of a list of 150 drugs (N-drugs)—with dramatic results one year later:

1. A 60% reduction in the number of injured employees receiving N-drugs
2. A 71% reduction in the number of prescriptions for the ten most-prescribed N-drugs
3. An 81% reduction in the cost of N-drugs
4. An increase in the generic substitution rate from 52% to 71% in one year.

D. Payment Levels and Benefit Periods for Permanent Partial and Permanent Total Disabilities

Among the Southeastern states, Alabama has the lowest payment level for Permanent Partial disabilities and the highest percentage of claims classified as Permanent Total disabilities. The majority of Southeastern states limit the benefit period for Permanent Total disabilities: Specifically:

1. Alabama's payment level for permanent partial disabilities is 50% less than the next lowest of any of the Southeastern states ($220/week vs. $437/week).

2. Three (3) of seven (7) Southeastern states, including Alabama, do not limit the benefit period for permanent total disabilities.

	Permanent Partial		Permanent Total	
	Payment	Length of Benefits	Payment	Length of Benefits
Alabama	$220	300 weeks	$755	Length of Disability
Arkansas	$438	450 weeks	$584	Length of Disability
Florida	$803	• 2 weeks for 1-10% of impairment • 3 weeks for 11-15% • 4 weeks from 16-20%; • 6 weeks for over 21%	$803	450 weeks Payable to age 75. If injury occurred after age 70, not to exceed 5 years
Georgia	$500	300 weeks	$500	400 weeks
Louisiana	$577	520 weeks	$577	Length of Disability
Mississippi	$436.68 to $196,506	450 weeks	$436.68	450 weeks
Tennessee	$789	400 weeks	$789	Until Social Security eligibility age or 260 weeks if injured at or after age 60

Figure 9: Payment Levels and Length of Benefits Permanent Partial and Permanent Total Disabilities

3. Alabama has a lower percentage of permanent temporary disability indemnity costs and a higher percentage of permanent total disability indemnity costs than the other Southeastern states and countrywide.

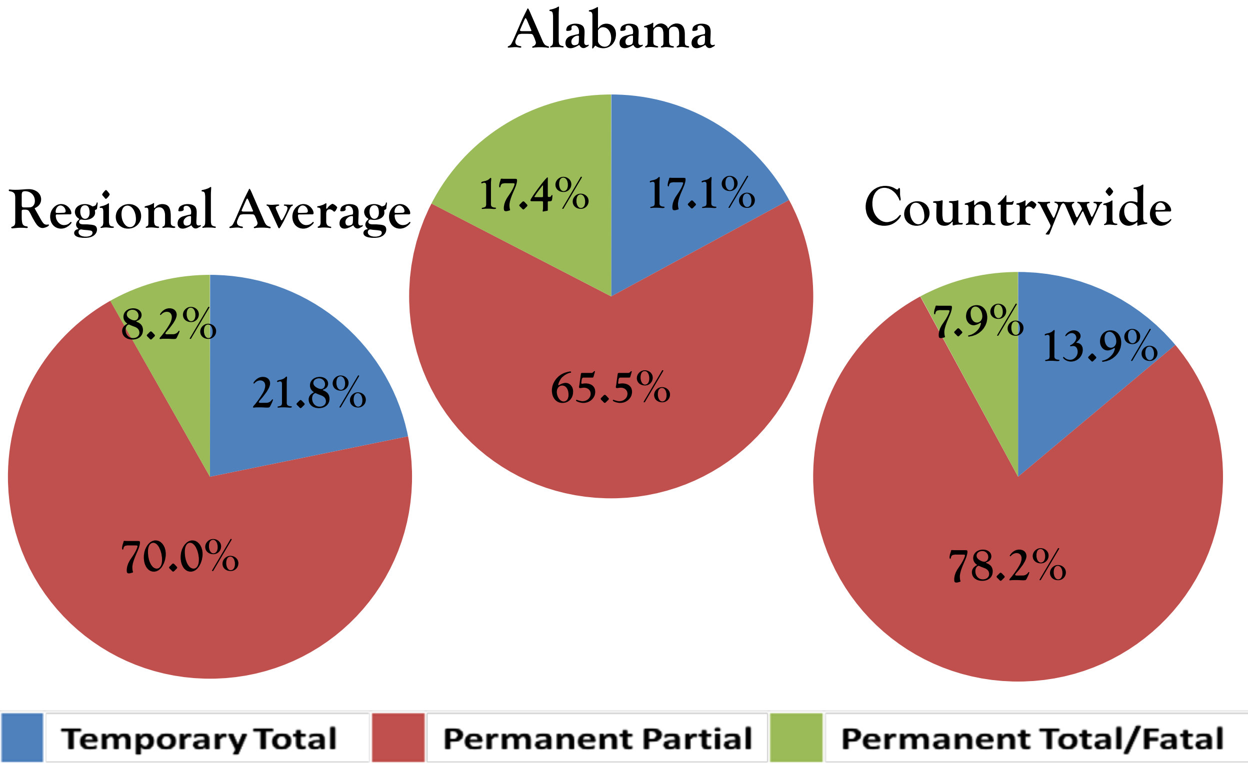

Figure 10: Alabama's Indemnity Loss Distribution by Injury type

E. Causation and Pre-Existing Conditions

Alabama has not updated its Workers' Compensation statutory language around employer liability for injured workers with pre-existing conditions, conditions that may or may not contribute to the severity of a disability. Two Southeastern states have updated their statutes on this issue. Both establish threshold levels for the "major contributing cause" of an injury and responsible party for determining "major contributing cause". Specifically:

1. Florida
   a. Established a "compensability threshold" that holds that the accidental compensable injury must be the major contributing cause of any resulting injuries. "Major contributing cause" means the cause which is *more than 50%* responsible for the injury.

   b. Asserted that "major contributing cause" must be demonstrated by medical evidence only.

   c. Established that if a work-related injury combines with preexisting condition to cause or prolong disability the employer must pay compensation to the extent that the injury arising out of and in the course of employment is *more than 50%* responsible for the injury as compared to all other causes combined and remains the "major contributing cause" of the disability or need for treatment.

Establishment of Compensability	Compensability Threshold	Compensable Injury Combined with Preexisting Conditions	Burden of Proof	Other Comments
The injury or disability must be established to a reasonable degree of medical certainty, based on objective relevant medical findings	50% Threshold: The accidental compensable injury must be the major contributing cause of any resulting injuries. "Major contributing cause" means the cause which is more than 50% responsible for the injury. Major contributing cause must be demonstrated by medical evidence only. (Florida Statute 440.09 (1))	50% Threshold: If an injury arising out of and in the course of employment combines with preexisting condition to cause or prolong disability the employer must pay compensation to the extent that the injury arising out of and in the course of employment is more than 50% responsible for the injury as compared to all other causes combined and remains the major contributing cause of the disability or need for treatment		

2. Arkansas
    a. Established a "compensability threshold" of more than 50% for temporary benefits for injuries not caused by a specific incident or which are unidentifiable by time and place (repetitive motion injury, back injury, and hearing loss) and for permanent benefits awarded if a compensable injury was more than 50% of the cause of disability.
    b. Asserted that compensability must be established by medical evidence supported by objective findings and that the worker bears the burden of proof of a work-related injury.
    c. Set "more than 50%" as the threshold injuries must contribute for workers to receive permanent benefits.
    d. Also placed the "burden of proof" for occupational disease cases on the worker who must prove a "causal connection between employment and the disease by clear convincing evidence."

Establishment of Compensability	Compensability Threshold	Compensable Injury Combined with Preexisting Conditions	Burden of Proof	Other Comments
Compensability must be established by medical evidence supported by objective findings	"Major Cause" threshold of more than 50% exists: Threshold of more than 50% for temporary benefits exists for injuries not caused by a specific incident or which are unidentifiable by time and place (repetitive motion injury, back injury, and hearing loss). **Permanent benefits** awarded if a compensable injury was more than 50% of the cause of disability.	More than 50% in order to receive permanent benefits.	Employee has to demonstrate by a preponderance of evidence; In occupational disease cases, Arkansas requires the worker to prove the causal connection between employment and the disease by clear convincing evidence. (Ark. Stat. Ann 11-9-601)	Arkansas Code 11-9-102

Figure 11: Causation and Pre-existing Conditions, Florida and Arkansas

F. Dispute Resolution

Most states, including a majority of Southeastern states, have moved away from the judicial process for the resolution of workers' compensation claims to an administrative process. AUM was not able to find any studies describing whether "outcomes" from an administrative process are different than those from the judicial process.

It is the general consensus of the experts AUM interviewed that an administrative process is most likely less expensive and more consistent with regard to outcomes than the judicial process. It is also the general consensus that an administrative process:

1. Can be expensive to put in place;
2. May be more expensive to operate;
3. Requires constant and consistent training and orientation efforts of "case workers" and ALJ's;
4. Still relies on the court system to settle individual issues of law as cases are being processed.

State	Court System, only?	
Alabama	Yes	Primarily determined in Circuit Court. Ombudsman can be used to mediate settlements.
Arkansas	No	Administrative Law Judge- Can be appealed to the court system for final adjudication
Florida	No	Ombudsman, then referred to the Judge of Compensation Claims
Georgia	Yes	Mediation or formal, then the case goes to the courts
Louisiana	Yes	Pre-trial hearings used to prevent a case going to trial
Mississippi	No	Commission rulings subjects to judicial review
Tennessee	No	Workers' Compensation Commission and then to the courts if not settled

Figure 12: Dispute Resolution

Figures Used in the Report

Figure 1. *Workers' Compensation Alabama's Performance*, Page 9. Presentation by National Council on Compensation Insurance, Inc. (NCCI) at the Alabama State Advisory Forum of 2012, September 19, 2012.

Figure 2. *Alabama and Contiguous States Workers' Compensation Premium Rate Ranking*, Page 10. Bi-Annual "Workers' Compensation Premium Rate Ranking Report" published by State of Oregon Dept. of Consumer & Business Service, October, 2012.

Figure 3. Average Indemnity Cost and Medical Care Cost per Lost-Time Claim Alabama vs. Countrywide 1996-2010. Page 12, "Indemnity Severity" and "Medical Severity"—NCCI Presentations to Alabama State Advisory Forum 2012, September 19, 2012

Figure 4. *Workers' Compensation Medical Care Costs*, Page 13. Presentation by National Council on Compensation Insurance, Inc. (NCCI) at the Alabama State Advisory Forum of 2012, September 19, 2012.

Figure 5. *Workers' Compensation Medical Care Costs Professional Fees*, Page 15. Analysis of workers' compensation medical claims from Alabama Retail Association and the Alabama Self-Insured Worker's Compensation Fund in 2012, Auburn Montgomery-Center for Government, September.

Figure 6. *Physician-Dispensed Prescriptions as a Percent of Total Prescription Drug Costs*, Page 16. "Workers' Compensation Drug Study, 2011 Update", NCCI Holdings, Inc., August 2011.

Figure 7. *Physicians in Alabama have Shifted to Dispensing More Expensive Prescriptions*, Page 17. Derived from sample data provided by carriers, October, 2012.

Figure 8. *Many States have Substantial Physician Dispensing*, Page 18. "Workers' Compensation Drug Study, 2011 Update", NCCI Holdings, Inc., August 2011.

Figure 9. *Payment Levels and Length of Benefits Permanent Partial and Permanent Total Disabilities*, Page 20. National Academy of Social Insurance, in their report entitled: Workers' Compensation: Benefits, Coverage, and Costs, 2010, Appendix I, Table 1; 2010.

Figure 10. *Alabama's Indemnity Loss Distribution by Injury Type*, Page 21. Regional states are FL, GA, MS, and TN; based on NCCI's Statistical Plan data, September, 2012.

Figure 11. *Causation and Pre-existing Conditions, Florida and Arkansas*, Pages 23-24. "Background Paper on Workers' Compensation Causation and Apportionment", Commission on Health and Safety and Workers Compensation, State of California, May, 2004.

Figure 12. *Dispute Resolution*, Page 25. Compiled by the Auburn University Montgomery Center for Government, from various sources, October, 2012.

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