What ProPublica/NPR Got Wrong for California

In March 2015, *ProPublica (PP)* and *National Public Radio (NPR)* published a jointly-reported series on state workers' compensation systems titled "Insult to Injury." The centerpiece of the series, "The Demolition of Workers' Comp," makes a series of claims about state workers' compensation systems and legislative reforms that don't match the facts for California.

In summary:

- PP/NPR claim states have "slashed benefits," but California benefit payments per claim are among their highest levels ever and have been increased multiple times since 2002. Reductions stemming from the adoption of a new rating system in 2004 were later diluted by court rulings and changing claims practices.
- PP/NPR claim that employers are paying the lowest premiums in 25 years, but premium rates in California are 30% higher than they were four years ago and premiums have fluctuated wildly during the past two decades.
- PP/NPR claims reforms are pushed by "big business" under the "false premise" of high costs, but California did experience an indisputable cost crisis and its most recent reform was negotiated and supported by employers and organized labor.
- PP/NPR claim that states have reduced benefits to save costs, but benefits make up only a portion of total employer costs (approximately 2/3 of costs in California). California's most recent reform aimed at cutting frictional expense costs and costs stemming from abusive practices by service providers – not reducing worker benefits. Moreover, some reforms may be characterized as benefit cuts that improve other performance metrics – such as return-to-work rates and quality medical care – that lead to better long-term outcomes for workers.
- PP/NPR claim that workers' compensation systems have been dismantled over the past decade, but California has seen both major benefit increases and legislative efforts to make the system less costly during that period of time. Meanwhile, there is an ever-growing cottage industry of workers' comp attorneys, medical providers, and countless other vendors looking to influence policy, legal rulings and business practices to make the system bigger and more profitable.

What PP/NPR Claim: "Over the past decade, states have slashed workers' compensation benefits"

Fact Check for CA:

- Since 2004, average total benefits per claim in California have <u>increased</u> by 35%, or $18,000 per claim. Average payments for medical benefits per claim <u>increased</u> by 40%. Average indemnity (cash) benefits paid to injured workers <u>increased</u> by 27%.
- Since 2002, California lawmakers <u>increased</u> permanent disability benefits <u>three times</u> for the most severely disabled workers.

- In 2002, state lawmakers enacted a major benefit increase (AB 749) for permanent, temporary and other cash payments, estimated to increase benefits by 23% and cost $3.5 billion. By starting its analysis in 2004, PP/NPR ignores the impacts of this benefit increase, enacted when costs in California were already spiraling out of control.
- The only statutory reduction in the schedule of PD benefits was made via SB 899 in 2004 for the least severely injured workers – dollars that were redirected to increase benefits for the most severely injured workers.
- Permanent disability ratings were reduced as a result of the adoption of a new, objective rating system based on guides published by the American Medical Association and requirement that disability be apportioned between industrial and non-industrial causes. Benefits themselves were not reduced. Moreover, research shows that the reduction in permanent disability ratings starting in 2005 were offset by improving return-to-work rates among injured workers[1] and diluted by changing practices by attorney, judges and medical examiners to increase ratings.[2]
- Benefit costs did decline briefly after enactment of SB 899 (2004). However, this trend only lasted for three years and costs declined by only 17% before beginning to increase again in 2006.
- Even though the decline in permanent disability benefits were later offset and benefit costs were increasing due to non-legislative factors, stakeholders in California remained concerned that disability benefits were cut too deeply in 2004. In response, state lawmakers enacted another major benefit increase in 2012, estimated to increase benefits by 30% and cost $1.2 billion.[3] This legislation increased both the rate of benefit payments, disability ratings and created a special $120 million fund for supplemental payments.

What PP/NPR Claim: "Even in states dominated by Democrats, worker advocates have been forced to make major concessions to achieve slight increases in benefits — sometimes just to keep up with inflation."

Fact Check for CA:

- In addition to multiple statutory increases in weekly payments and weeks per percentage of disability, temporary and permanent disability payments have been indexed to changes in California's Statewide Average Weekly Wage since 2002, leading to automatic annual increases.
- Since 2003, weekly life pension and death benefits have been subject to Cost of Living Adjustments (COLA).

[1] The aim of PD benefits is to reduce long-term wage loss due to injury, which can be addressed through benefits or measures that return workers to their at-injury employer more quickly. Research shows return-to-work is the most beneficial outcome for reducing long-term wage loss.

[2] Changing claims filing practices by attorneys have include an increase in cumulative trauma injuries, addition of multiple body parts and secondary conditions to disability claims, as well as legal rulings that expanded the use of more generous rating approaches. Research shows that, absent any policy change, disability ratings increased 8-10% annually between 2007 and 2009 simply due to higher ratings by physicians.

[3] SB 863 enacted in 2012

What PP/NPR Claim: "Employers are paying the lowest rates for workers' comp insurance since the 1970s"

Fact Check for CA:

- Workers' comp insurance premiums in California are not at a 25-year low, as contended by PP/NPR. In fact, rates in 2014 are 30% higher than they were just four years ago.
- Comparing premiums in 1988 to those paid in 2014 ignores that workers' compensation costs are cyclical and are subject to dramatic increases and decreases. Between 1988 and 2000, premiums declined by 37%, but then increased by 82% between 2000 and 2004, before falling 56% between 2004 and 2010 and then increasing again by 30% between 2010 and 2014.
- The cyclical nature of employer premium costs underlies the history in California, which is of successive legislative "reforms" over the past 30 years that have alternatively increased and decreased costs in response to changing system behaviors.
- Looking at average statewide rates over the past 25 years is misleading because the "average" at this scale is influenced by California's changing industrial mix (*e.g.*, less manufacturing and more low-risk professional occupations) and improving workplace safety.
- There is not a direct correlation between employer premiums and worker benefits, since one-third of the system dollars in California are spent on "expenses," which also must be paid for by employers. Workers' compensation systems that spend less on administration and dispute resolution may have lower premium costs and higher benefits. California's experience has been the opposite, which has frequently had among the highest costs but not among the highest benefits.

What PP/NPR Claim: "And in 2013, insurers had their most profitable year in over a decade, bringing in a hefty 18 percent return."

Fact Check for CA:

- Average return on net worth for California workers' compensation insurers in 2012 was 3.9% -- the lowest return in nine years.
- Over past 10 years, the average return on net worth for California workers' compensation insurers was 8.6%, compared to an average return of 13.6% for all industries reported by Fortune Magazine.
- Over the past 15 years, the average return on net worth for California workers' compensation insurers was 3.8%, compared to a return of 13.2% for all industries reported by Fortune Magazine.
- Prior to 2003, insurers had four consecutive years of losses and 31 insurers went insolvent.

What PP/NPR Claim: "The changes, often passed under the banner of "reform," have been pushed by big businesses and insurance companies on the false premise that costs are out of control."

Fact Check for CA:

- California's most recent "reform" enacted in 2012 was negotiated and supported by business and organized labor. Its chief intent was to increase permanent disability benefit costs by more than $1 billion and to fund this benefit increase by reducing frictional expense costs. According to Governor Jerry Brown (D), SB 863 would help prevent an "imminent crisis of skyrocketing rates that would hurt both injured workers and businesses."
- Inexplicably, PP/NPR gives this benefit increase its harshest rating (dark red) for California "cutting benefits" in 2012 (*see interactive graphic*).
- If PP/NPR's claim is directed at SB 899 enacted in 2004, costs were indeed "out of control." As noted, employer costs had increased by more than 80% over a four-year span. The system exploded from approximately $10 billion to $25 billion. California's costs were the highest in the nation and nearly 40% higher than the next most expensive state. Just two years prior, California enacted a major benefit increase estimated to costs an additional $3.5 billion. Claim frequency, medical utilization, litigation costs were all very high in California relative to other states.
- Unfortunately, PP/NPR's reporting only leaves room for the conclusion that lower costs for "big businesses" are tantamount to "slashing" worker benefits. In fact, SB 863 and prior reforms took aim at costly and abusive practices by many of the service providers who rake in billions in profit from the system, often at the expense of the health of injured workers. These practices include reckless overprescribing of drugs, dangerous spinal surgeries done to exploit a billing loophole and involving counterfeit hardware, needless and fraudulent diagnostic testing, "accounts receivable consultants" clogging the courts seeking double payment for services, illegal kickback schemes for referrals, and more. Aside from a passing reference related to the debate in Oklahoma[4], the role of these vendors in the costs and performance of state workers' compensation systems was entirely ignored by PP/NPR.

What PP/NPR Claim: "When [SB 863] took effect in July 2013, the process [Independent Medical Review] quickly proved as problematic as the one it replaced – and insurance premiums went up. A process that was supposed to take less than six weeks often stretched to six months. And reviewer routinely rule against injured workers' doctors, denying treatment in in 91 percent of disputes according to preliminary data to be released this month by the CWCI."

Fact Check for CA:

- PP/NPR's facts pertaining to the timeframe associated with IMR were no longer accurate at the time of their report. Initially, the state and its IMR contractor were unprepared for the volume of IMR requests, which were being made at four times the estimated rate, including many duplicate and ineligible filings. As a result, decisions were taking approximately 130 days on

[4] "Lawyers had clogged the workers' comp courts while doctors approved costly, unnecessary medical care."

average. However, by September 2014, decisions were being issued in an average of 60 days and, by October 2014, within 30 days.

- The 8-step medical dispute resolution process that IMR replaced regularly took up to one year for a judge – not a medical professional – to render a decision about treatment.
- While it is true that IMR is upholding 91% of employer treatment decisions as correct, PP/NPR provided no context for what volume of medical treatment this represents. According to the California Workers' Compensation Institute, the source cited by PP/NPR, only 5% of some 20 million medical treatment requests are denied, delayed or modified through utilization review. This subset is the treatment subject to IMR.
- The treatment decisions made in the case of the injured worker featured in PP/NPR's story did not involve the IMR process.

What PP/NPR Claim: "In California, West Virginia, North Dakota and Oklahoma, lawmakers have placed time limits on wages for temporarily disabled workers, limiting such benefits to two years even for those who can't go back to work or need more medical care."

Fact Check for CA:

- California modified its two-year limit on temporary disability payments in 2007, precisely to provide for cases were medical treatment and recovery is required later in the claim. In lieu of a two-year limit from the first payment, injured workers may collect temporary disability within five years from their date of injury. The number of weeks for which the benefit is paid remains at 104 weeks.