



# Workers' Compensation & Effective Incident Management

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# Employer Obligations

- Basic Employer Requirements & Obligations
  - Statute Based
  - Represents Mandatory Compliance
  - Often Shared with your Insurance Carrier

# Employer Obligations

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  - Statute Based
  - Represents Mandatory Compliance
  - Often Shared with your Insurance Carrier
    - There's a Statute for That!

# Employer Obligations

## Must Obtain Workers' Compensation Insurance

- Any employer with five or more employees falls within the jurisdiction of the Missouri Workers' Compensation Statutes and must obtain coverage.

Section 287.030.1

- If the employer is not insured his liability shall be primary and direct. If properly insured, the insurance carrier is instead primarily and directly liable.

Section 287.300

# Employer Obligations

## Timely Claim Submission

- The employer must report all injuries to its insurance carrier or third-party administrator, within five days of the date of injury or within five days of the date the injury was reported to the employer by the employee, whichever is later.
- The carrier then has 30 days after knowledge of an injury to file a First Report of Injury with the Division under the rules and in such form and detail as the Division may require.

Section 287.380.1

# Employer Obligations

## Timely Claim Submission, (cont.)

Timely submitted claims preserve a two year Statute of Limitations. If a claim is not timely submitted by the employer, in accordance with Section 287.380, a three year Statute of Limitation applies.

Section 287.430

# Employer Obligations

## Medical Benefits

- The employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

Section 287.140.1

# Employer Obligations

## Temporary Disability (wage replacement)

- Payable after three lost time days
- Initial Disability to be Paid Within 14 Days
  - Section 287.160.1 & 2
- Not Eligible to Employees Receiving Unemployment Compensation
- Not Eligible to Employees Terminated for Post-Injury Misconduct

Section 287.170.3 & 4

# Employer Obligations

## Permanent Partial Disability

- Additional compensation in the form of a settlement, allowed for loss by severance, total loss of use, or proportionate loss of use of one or more members in the schedule of losses.

Section 287.190.1

- "Permanent partial disability" means a disability that is permanent in nature & partial in degree, demonstrated & certified by a physician and made in accordance with a settlement approved by an administrative law judge.

Section 287.190.6

# Employer Obligations

## Death Benefits

- Burial Expenses, not to exceed \$5000  
Section 287.240.1
- Weekly Disability Benefits, paid to the surviving dependent spouse until death or remarriage, or dependent children until 18 years of age or 22 if enrolled in an accredited educational institution  
Section 287.240.2
- Upon any remarriage, the surviving spouse is to receive a lump sum of 2 years of benefits  
Section 287.240.4(a)

# Other Statutes of Interest

## Definition of Accident

- Unexpected traumatic event or unusual strain identifiable by time and place and producing objective symptoms of injury caused by a specific event during a single work shift.
- Injury is not compensable if work was a triggering or precipitating factor.
- An injury shall arise out of employment only if it does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal non-employment life.

Section 287.020

# Other Statutes of Interest

## Prevailing Factor

The prevailing factor is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

Section 287.020.3(1)

2005 changes in Missouri Workers' Compensation Act

# Other Statutes of Interest

## Occupational Disease

- An identifiable disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed shall not be compensable.
  - Includes Repetitive Motion
  - Includes Hearing Loss
  - Includes Diseases of the Lungs, Respiratory Tract, Heart or Cardiovascular System
- An injury by occupational disease is compensable only if the occupational exposure was again, the “prevailing factor.”

Section 287.067

# Other Statutes of Interest

## Occupational Disease, (cont.)

- Mental injury resulting in work-related stress requires the employee to show that the stress is...
  - Extraordinary and unusual in nature
  - Not the result of any disciplinary action, work evaluation, transfer, layoff, etc. or similar action taken in good faith by the employer

Section 287.120.8-9

- Section 287.120.10 exempts firefighters from the above provisions, requiring they only establish the stress as the prevailing factor in causing mental injury.

# Other Statutes of Interest

## Occupational Disease, (cont.)

- An exposure to repetitive motion for less than 3 months could revert liability to the prior Employer
  - A Rule of Convenience

Section 287.067.8

Strict Construction, post-2005, removed the protection of *Exclusive Remedy* in claims for occupational disease, allowing for civil actions.

# Other Statutes of Interest

## Going to and From Work

- Injuries that an employee sustains going to and coming from their employer's principal place of business are not compensable.
- Injuries, in company owned or subsidized automobiles, that occur while traveling from the employee's home to the employer's principal place of business or vice versa are not compensable.

Section 287.020.5

2005 changes in Missouri Workers' Compensation Act

# Other Statutes of Interest

## Going to and From Work, (cont.)

The “extension of premises” doctrine is abrogated (abolished) to the extent it extends liability for accidents that occur on property not owned or controlled by the employer. Even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from his place of employment.

Section 287.020.5

# Missouri Revised Statutes

## Chapter 287, Workers' Compensation Law

Location: [WWW.moga.mo.gov/statutes/c287.htm](http://WWW.moga.mo.gov/statutes/c287.htm)

# Workers' Compensation & Incident Management

## WC Best Practices & Effective Injury Management

# Effective Injury Management

## Workers' Compensation Best Practices & Procedures Meant to Maximize Overall Claim Outcomes:

- Improved Medical Treatment/Outcomes
- Reduced Medical Costs
- Improved eMod
- Reduced Insurance Costs
- “Other,” Non-Occupational Claim Cost Savings

# Effective Injury Management

## Incident Management Program

An effective Incident Management Program requires a partnership between all parties:

- Employer
- Insurance Carrier
- Medical Providers
- Injured Worker

# Effective Injury Management

## Incident Management Program

Direct, control and manage both the injury & accident scene as soon as the loss occurs or upon notification.

# Effective Injury Management

## Incident Management Program

A company-wide plan of action, in place before accidents occur, meant to manage on the job injuries. An effective Injury Management Program should include:

- Drug & Safety Policies
- Thorough Accident Scene Investigation & Documentation
- Post-Accident Communication Between all Parties
- Pre-planned Direction of Authorized Medical Care
- Early Return to Work Program

# Effective Injury Management

## Incident Management Program

Every Missouri Employee Deserves a Safe, Healthy,  
Drug-Free & Injury-Free Workplace

Employer Obligation?

# Effective Injury Management

## Incident Management Program - Drug Policy

- Drug Free Workplace, implement a substance abuse policy.
- Denies or reduces benefits by up to 50% in instances of positive post-accident drug tests by assuming the drugs or alcohol were the proximate cause of the injury.

Section 287.120.6

- Post-Accident (workers' compensation)
- Pre-Employment
- Random/Probable Cause

# Effective Injury Management

## Post-Accident Drug Testing, Challenges!

Recent OSHA ruling prohibits “blanket” drug testing meant as retaliatory or to deter accident reporting. However, ....

- Section 4(b)(4) of the Act prohibits OSHA from *superseding or affecting workers’ compensation laws.*

29 U.S.C. 653(b)(4)

- If an Employer conducts drug testing to comply with the requirements of a state or federal law or regulation, the Employer’s motive would not be retaliatory and the rule would not prohibit such testing.

# Effective Injury Management

## Incident Management Program – Safety Policy

- Safe Workplace, Implement a Safety Policy
- If the employee fails to use safety devices provided by the employer or fails to obey safety rules, compensation is reduced by 25 - 50%.

Section 287.120.5

- Initial Employee Orientation Training
- Signed Receipt of Employee Manual
- Ongoing Safety Training Logs

# Effective Injury Management

## Incident Management Program – Safety Policy, cont.

- Recent Court of Appeals decisions reinforce the statutory burden of proof on an employer in showing they “...made a reasonable effort to cause its employees to obey the safety rule”

Section 287.120.5

- Initial Employee Orientation Training
- Signed Receipt of Employee Manual
- Ongoing Safety Training Logs

# Effective Injury Management

## Incident Management Program

- Accident Investigation & Documentation

It is vital for an employer to have an internal investigation process in place to collect incident details, in order to prevent future occurrences and provide their insurance carrier with sufficient information to assist in the claim investigation and compensability determination.

# Effective Injury Management

## Incident Management Program

- Accident Investigation & Documentation
  - *Supervisor Investigation Form* - Identify causes of accident, identify witnesses, verify facts & employee details, and determine any safety violation. Was the accident preventable? Does the accident description make sense?
  - *Employee Statement* - Signed & dated by the employee.
  - *Witness Statements* - To confirm accident details.
  - *Corrective Action Form* – Document steps taken to prevent future occurrences. Places “ownership” of safety with supervisor. Conduct root-cause analysis.

# Effective Injury Management

## Incident Management Program

- Accident Scene Documentation
  - Photographic Documentation – Preserves & documents the accident scene, providing evidence towards the causes of the incident. Can also document a lack of any cause or defect!
  - Machinery Involved – Any product liability.
  - Third Party Involved – Any *subrogation* potential.
  - Safety Violation – Any potential safety penalty on the part of the Injured Worker

# Effective Injury Management

## Incident Management Program

- Post-Accident Communication w/ your Employee
  - This Employer-Employee relationship continues even in cases of attorney representation. Communicate Leave of Absence policies, FMLA requirements and other fringe benefits. Coordinate these benefits!
  - Treat your injured employee like any other employee. Post-injury misconduct which results in termination, no longer results in the employee becoming eligible for reinstated Temporary Disability benefits.

Section 287.170(4)

# Direction of Medical

## Avoiding Uncontrolled Losses

*If you are not directing medical treatment, you're experiencing uncontrolled losses*

# Direction of Medical

## Take Advantage of the Missouri Statute:

If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense.

Section 287.140.1

# Effective Medical Management

## Avoiding Uncontrolled Losses

- Direction/Control of Medical Provides the Opportunity to Promote:
  - Improved medical treatment for Missouri injured workers
  - Treatment that is timely delivered
  - At reduced medical costs for Missouri employers
  - Improved overall claim outcomes
  - “Other,” non-occupational claim cost savings

# Effective Medical Management

## Avoiding Uncontrolled Losses

- Pre-planned Direction of Authorized Medical Care
  - Designate an occupational health provider for all initial medical treatment
  - Insure all supervisors and staff are trained in and aware of the authorized medical provider – Including evening and weekend shifts!
  - Insure that authorized medical treatment is offered in all instances (Priority #1)

# Effective Medical Management

## Avoiding Uncontrolled Losses

- Pre-planned Direction of Authorized Medical Care
  - If treatment is not specifically offered, you as the Employer run the exposure to unauthorized medical billing
  - And uncontrolled medical results in ineffective occupational treatment for the Injured Worker and increased claim costs (medical severity) for the Employer

# Effective Medical Management

## Designated Occupational Health Providers

- For all authorized initial (non-emergency) medical treatment
- Provide adequate training to supervisors & employees and post notice of the Designated Occupational Health Provider

# Effective Medical Management

## Designated Occupational Health Provider

- Trained in the treatment of occupational injuries

# Effective Medical Management

## Designated Occupational Health Provider

- Trained in the treatment of occupational injuries
  - Avoid the use of family physicians, etc., untrained in Occupational Health
  - Not the Emergency Room
  - Provides appropriate, effective and timely (efficient) occupational medical care

# Effective Medical Management

## Designated Occupational Health Provider

- Benefit from a working relationship with your Occupational Health Provider so the medical provider is knowledgeable of and assists in:

# Effective Medical Management

## Designated Occupational Health Provider

- Benefit from a working relationship with your Occupational Health Provider so the medical provider is knowledgeable of and assists in:
  - Your modified duty program
  - Your post-accident drug policy
  - Your employee's essential job functions/physical requirements
  - Your pre-employment screening

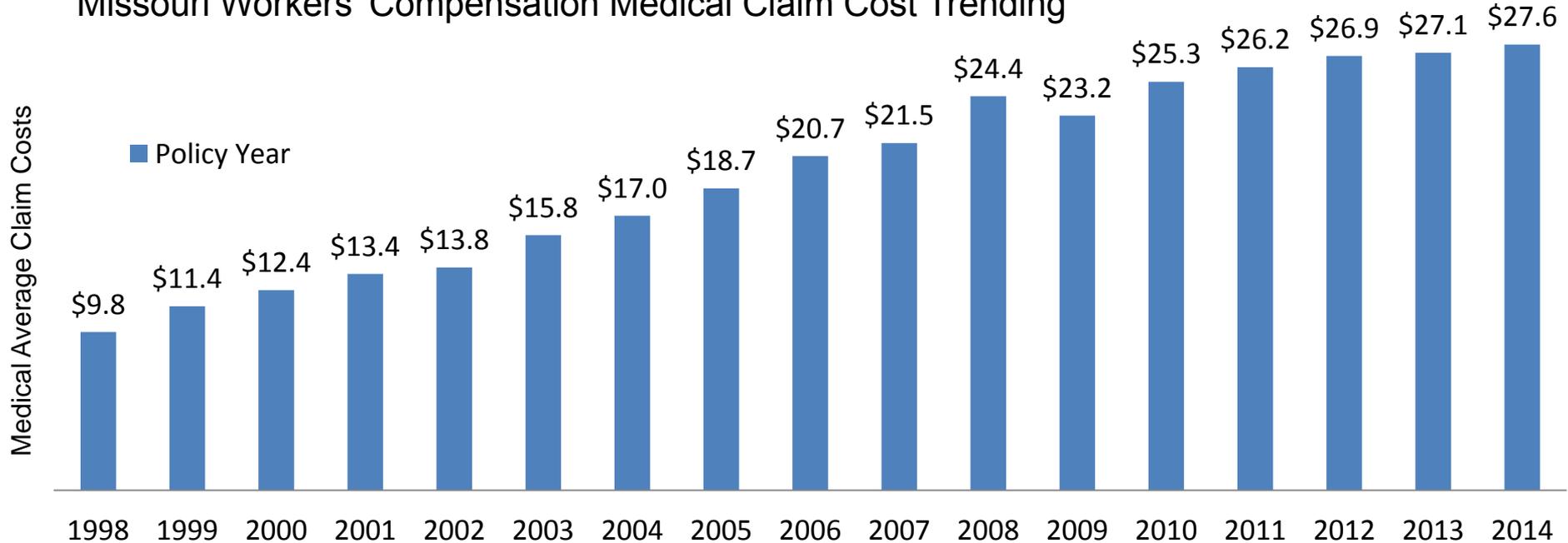
# Effective Medical Outcomes

## Why the Focus on the Costs of Medical Treatment Within Workers' Compensation?

- Medical treatment is the #1 claim outcome as perceived by the Injured Worker
- Medical costs are on the rise, both in terms of severity and as a percentage of overall total claim costs

# Rising Medical Costs

Missouri Workers' Compensation Medical Claim Cost Trending



Source: National Council on Compensation Insurance, Inc.

# Rising Medical Costs

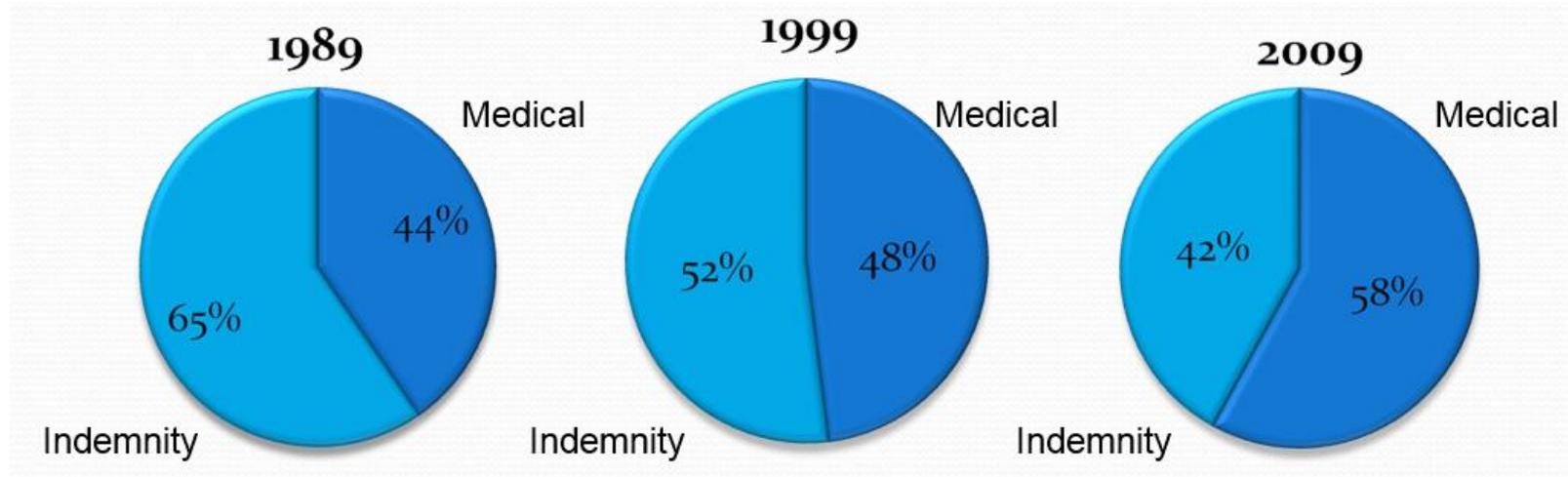
Also as a percentage of overall or total claim costs:

- Medical expenses accounted for approximately 40% of workers compensation costs a decade ago
- Medical expenses accounted for nearly 60% of workers compensation costs in 2010

Source: Medical Losses, Top Line Growth Top Challenges for Workers' Comp, *Insurance Journal* – Feb 2011

# Rising Medical Costs

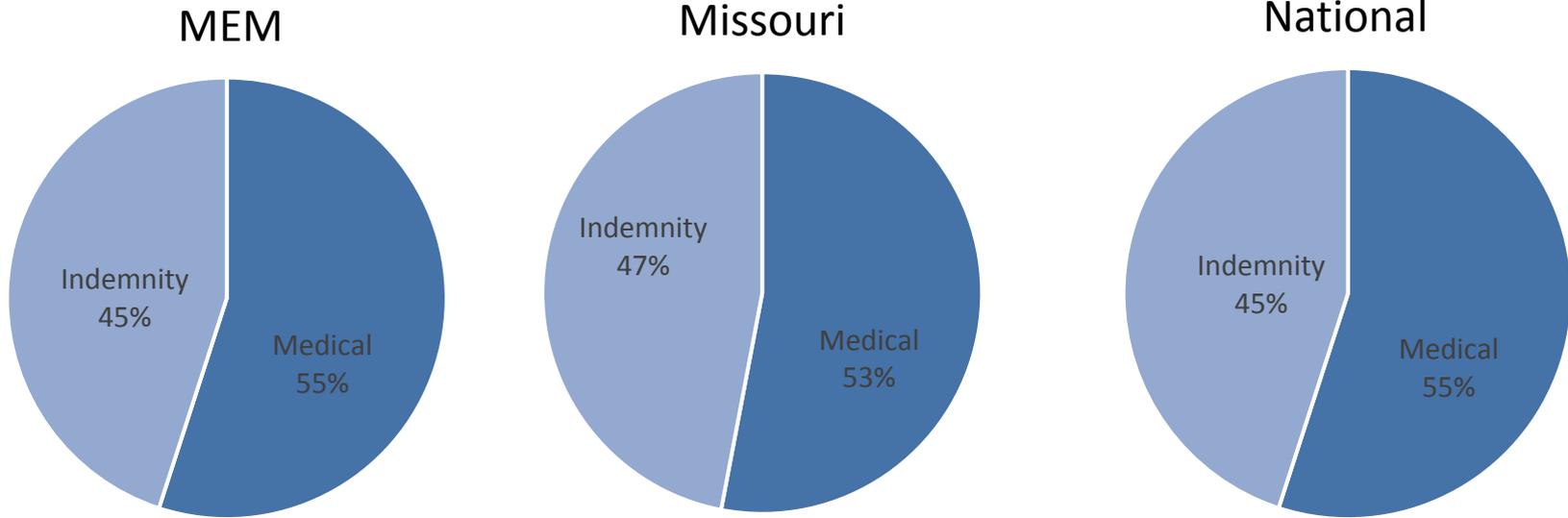
## Medical Losses in Missouri: Increasing Percentage of Total Claim Costs



Source: National Council on Compensation Insurance, Inc.

# Rising Medical Costs

## 2015 Percentage of Total Claim Costs



Source: National Council on Compensation Insurance, Inc.

# Rising Medical Costs

Also as a percentage of overall claims spend, or total claim costs:

*“The biggest single change in the past 20 years has been a shift from indemnity losses as the primary driver of loss costs to medical losses”*

Source: Medical Losses, Top Line Growth Top Challenges for Workers' Comp, *Insurance Journal* – Feb 2011



# Rising Medical Costs

Given increasing medical costs, lets not loose sight of what we're paying for:

- Effective occupational medical treatment for our Injured Employees
- Timely delivered medical treatment
- Improved medical and claim outcomes

# Effective Medical Management

## Avoiding Uncontrolled Losses

- Direction/Control of Medical Provides the Opportunity to Promote:
  - Improved medical treatment for Missouri injured workers
  - Treatment that is timely delivered
  - At reduced medical costs for Missouri employers
  - Improved overall claim outcomes
  - “Other,” non-occupational claim cost savings

*Everyone Benefits!*

# Med-Only Self-Pay Option

## An Option Available to Missouri Employers:

No adjustment to the eMod of an employer if the total medical cost does not exceed twenty percent of the current split point and the employer pays ... the medical costs and there is no lost time ... other than the first three days or less of disability. An employer opting to utilize this provision maintains an obligation to report the injury.

Section 287.957

# Med-Only Self-Pay Option

- The employer pays the billing for minor medical-only claims (no compensable lost time and no permanency)
- The employer therefore does not incur a Medical-Only claim with their insurance carrier
- The 2005 law changes increased the medical limit from \$500 to \$1000 (...and now to \$3300 as of 01/01/2017)

# Med-Only Self-Pay Option

## SB 700:

- Effective for dates of loss as of 08/28/16
- Increases the amount an Employer can self-pay to 20% of the current NCCI “split-point” of primary and excess losses under the uniform experience rating plan
- Currently at \$3300, or 20% of \$16,500

# Med-Only Self-Pay Option

- The employer is still required to timely submit all such Medical-Only claims to their carrier, as *report-only claims*  
Section 287.380
- As always, timely claim submission preserves a two year Statute of Limitations, rather than three  
Section 287.430

# Med-Only Self-Pay Option

## The Benefit:

- Report-Only claims have no financial reserves, and therefore reduce both the number (frequency) of claims and the claim dollars (severity) incurred
- This option provides you with the ability to directly and favorably impact your Experience Modification through reduced frequency and severity

# Med-Only Self-Pay Option

## Or is There a Benefit?

- Missouri Experience Rating Adjustment
  - NCCI Rule Adoption, eff. 07/01/11
  - Medical-Only losses (06 claims) reduced by 70% towards experience rating formula (i.e., weighted at 30%).
  - Further promotes Early RTW, in order to avoid lost-time claims.

*Please consult with your Agency professionals for assistance*

# Med-Only Self-Pay Option

ERA

Example:

Type	Incurred	Primary Loss	Mod w/o	Impact	Premium Costs	
					1 yr.	3 yr.
<b>FREQ</b>	<b>\$1,158</b>	<b>\$1,158</b>	1.0773	0.0023	\$581	<b>\$1,743 100%</b>
MED	\$2,097	\$629	1.0784	0.0012	\$303	\$909
<b>FREQ</b>	<b>\$6,013</b>	<b>\$6,013</b>	1.0673	0.0123	<b>\$3,107</b>	<b>\$9,321 100%</b>
MED	\$118	\$35	1.0796	0.0000	\$0	\$0
SEV	\$23,409	\$7,500	1.0561	0.0235	\$5,936	\$17,808
SEV	\$43,536	\$7,500	1.0457	0.0339	\$8,563	\$25,689
<b>MED</b>	<b>\$1,577</b>	<b>\$473</b>	1.0787	0.0009	\$227	<b>\$682 30%</b>
SEV	\$45,633	\$7,500	1.0447	0.0349	\$8,816	\$26,447
SEV	\$20,508	\$7,500	1.0576	0.0220	\$5,557	\$16,671
MED	\$1,002	\$301	1.0790	0.0006	\$152	\$455
FREQ	\$652	\$652	1.0783	0.0013	\$328	\$985
MED	\$3,557	\$1,067	1.0775	0.0021	\$530	\$1,591
MED	\$4,128	\$1,238	1.0771	0.0025	\$631	\$1,894

# Return to Work Program

## Known by Many Names:

- Early RTW Program
- Transitional Duty Program
- Light Duty
- Modified Duty
- Temporary Work Assignment

# Early RTW Program

A work assignment, temporary in nature, which safely accommodates the authorized physician's work restrictions and provides the employee with continued and active employment during their recovery.

- Temporary in duration
- Provided during recovery/treatment
- Occupational medical conditions
- Maintains injured worker activity

# Early RTW Program

## Benefits of Early RTW

- Promotes lower insurance premiums through reduced disability and medical costs
- Promotes improved medical outcomes for the Injured Worker

# Early RTW Program

## Benefits of Early RTW

- Decreased indemnity costs

# Early RTW Program

## Benefits of Early RTW

- Decreased indemnity costs
  - Temporary Total Disability ends when an Injured Worker returns to work, resulting in lower indemnity reserves with your insurance carrier.

# Early RTW Program

## Benefits of Early RTW

- Decreased indemnity costs
- Lower premiums for Policyholders through better controlled workers' compensation costs

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# Early RTW Program

## Benefits of Early RTW

- Decreased indemnity costs
- Lower premiums for Policyholders through better controlled workers' compensation costs
- Improved medical outcomes
  - Injured Employees who return to work early seek less medical treatment and realize improved medical outcomes. Some studies have suggested that “unemployment is at least as important as disability in health outcomes of claimants.”

Source: ACC Review – Return to Work,  
Issue 27 April 2006

# Early RTW Program

## Benefits of Early RTW

- Decreased indemnity costs
- Lower premiums for Policyholders through better controlled workers' compensation costs
- Improved medical outcomes
- Non-Occupational benefits for the Policyholder and Injured Worker, through cost savings from replacing/retraining, job retention/maintained employment, etc.

# Early RTW Program

## Short Term Absence – Opportunities!

- Missouri Experience Rating Adjustment
  - Your “eMod”
  - NCCI Rule Adoption, effective July 1, 2011
  - Medical-Only claims reduced by 70% towards your experience rating calculation (weighted at 30%)

# Early RTW Program

## Short Term Absence – Opportunities!

- Missouri Experience Rating Adjustment
  - Your “eMod”
  - NCCI Rule Adoption, effective July 1, 2011
  - Medical-Only claims reduced by 70% towards your experience rating calculation (weighted at 30%)
- Effective RTW within the 1st 3 days may result in a medical-only claim and avoid a lost-time claim
  - Directly & favorably impact your eMod!

# Early RTW Program

## Long Term Absence - RTW Statistics

- If someone is out of work for 6 months  
Only a 50% chance of achieving RTW
- If someone is out of work for 1 year  
Only a 25% chance of achieving RTW
- If someone is out of work for 2 years  
Virtually no chance of achieving RTW

Source: Bureau of Labor Statistics

# Early RTW Program

## Let's Hear the Excuses!

### Common Resistance/Pushback:

- I must have my employees at Full Duty
- They're only going to get hurt again
- I have a union shop
- I'll never get Executive, Supervisor, etc., buy-in

# Early RTW Program

## Sample Transitional Duty Jobs

- Perform regular job function with restricted tasks removed
- Clean & improve premises, work-sites
- Light painting, grounds keeping duties
- Sort & inventory supplies/parts
- Clean/repair tools & equipment
- Spotter or flagman

# Early RTW Program

## Sample Transitional Duty Jobs, cont.

- Dispatch, answer phones
- Clerical, address correspondence, filing
- Receptionist

*You can “float” the Injured Worker to another department, location or even shift!*

# Early RTW Program

## Alternative RTW Programs

- Volunteer placement
  - Red Cross
  - Food Bank
  - Other non-profit organizations
- MEM/Alaris Partnership
  - Administrates the outplacement
- MEM RTW Coordinator
  - Individual assistance working directly with MEM Policyholders towards specific RTW challenges

# Workers' Compensation & Effective Incident Management

**Thank You!**

**Steve Summers**

