

The background image shows a modern building with large windows and a concrete facade. The words "WORKERS'" and "COMPENSATION" are visible on the building's exterior. The image is overlaid with a blue tint and a white grid pattern.

Analysis of Attorney Fee Cap Increases on Benefits Proportionality in Workers' Compensation

2023 HM 83 Attorney Fee Cap Task Force

February 2024

Introduction

In March 2023, New Mexico House Memorial 83 (HM 83) received approval from the New Mexico House of Representatives. HM 83 directed the Workers' Compensation Administration (WCA) to convene a task force for a detailed examination of the effects of attorney fees and their caps on the New Mexico workers' compensation system. Following this directive, the WCA convened the HM 83 Task Force (Task Force), which began its work accordingly. As of February 2024, the Task Force is nearing the end of its work and is in the process of preparing recommendations for the legislature. As part of its recommendations, the Task Force is proposing that the attorney fee cap be increased from \$22,500 to \$32,500, or an increase of 44.4%. This recommended increase accounts for legal inflation during the period since it was last increased in 2013.

A significant concern with raising the fee cap is the potential for a larger portion of compensation awards being allocated to legal fees rather than aiding in recovery and compensation for lost wages. In other words, the increase could reduce the *net compensation* available to injured workers. Conversely, an attorney fee cap that is set too low can discourage skilled and experienced attorneys from practicing workers' compensation. This could in turn result in inadequate legal representation for both injured workers and employers, inefficiency in the workers' compensation legal system, and create other issues related to a general lack of access to justice. The Task Force asked the Economic Research & Policy Bureau (ERPB) of the WCA to prepare an analysis examining the potential economic impact of the proposed fee cap increase on benefits proportionality when compared with the 2013 increase.

It is critical to balance the need for fair legal compensation with ensuring injured workers receive a substantial share of their compensation. The previous fee cap increase was determined by the legislature to be adequate to ensure qualified attorneys would be available to represent injured workers



and employers. The system functioned stably after 2013, until recent increases in the rate of inflation changed the economic balance of attorney fee caps. As was noted previously, the proposed fee cap increase accounts for legal inflation since 2013. Because the supply of attorney services is tied to the relative compensation in competing legal practice areas, this inflation adjustment ensures that the new attorney fee cap will remain competitive. It seeks to preserve the historically well-functioning equilibrium.

However, access to justice is only one half of the balance. The other consideration is the impact of the fee cap increase on the net compensation available to injured workers. While ensuring that attorneys are adequately compensated is crucial for maintaining access to skilled legal representation, it is equally important to safeguard the portion of compensation that directly benefits injured workers.

Compensation awarded to injured workers is composed of reimbursement for medical services and indemnity benefits that replace a portion of a workers' lost wages resulting from their accident. The net compensation provided to injured workers is the sum total of these benefits less the attorneys' fees that are paid out of the injured workers' award. In order to estimate the impact that the fee cap increase will have on net compensation, ERPB examined the change in these factors since the fee cap was last increased in 2013.



Indemnity Proportionality Methodology

In New Mexico, the amount of indemnity benefits awarded to injured workers is directly proportional to the workers' weekly wage. Typically, as a rule-of-thumb, an injured worker is awarded two-thirds of their weekly wage in indemnity benefits. While the exact application of the two-thirds rule is subject to modification depending on specific case circumstances, those modifications are also proportional to the weekly wage. As a result, whenever the weekly wage changes, the indemnity benefits awarded will change by the same percentage, all else being held equal. Because this direct proportionality between weekly wage and indemnity benefits consistently applies, we can extend this principle from individual cases to assess the broader economic impact of adjusting the fee cap at a statewide level. This approach allows for the comparison of the percentage changes in the statewide average weekly wage (AWW) against the percentage change in the fee cap to infer how adjustments to the fee cap might affect the proportion of a worker's indemnity benefits that are paid to an attorney. Essentially, the relationship observed on a micro-level provides insight into how changes in the fee cap could influence the portion of benefits received by workers after attorney fees are paid on a statewide scale.

Medical Benefits Exclusion

Medical benefits are directly tied to the healthcare needs of the injured worker and are subject to a wide range of variables that are independent of the legal process. For instance, changes in medical practice standards, technological advancements, and the availability of skilled doctors can all impact the amount of medical benefits awarded for otherwise similar injuries. This variability makes it challenging to directly correlate changes in attorney fees with changes in medical benefits received by workers.

Unlike indemnity benefits, which are calculated based on a worker's average weekly wage with one-to-



one proportionality depending on case circumstances, different case circumstances can result in proportionally different amounts of medical benefits irrespective of medical inflation. Further, only medical benefits that have already been received as of the time that a case is decided or settled are subject to attorneys’ fees. Data on the portion of medical benefits or types of services that are subject to attorneys’ fees is not available. For these reasons, this analysis excludes a comparison of medical benefits proportionality to the proposed attorney fee cap.

Analysis

Table 1 compares changes in the statewide average weekly wage (AWW) and state minimum wage to the proposed increase in the attorney fee cap. The proposed increase from \$22,500 to \$32,500 represents an increase of 44%. This increase is slightly larger than that of the AWW over the same period, which increased by 40% from \$745.98 to \$1,041.79. Conversely, the minimum wage increased from \$7.50 to \$12.00, or an increase of 60%.

Table 1: Percentage Change in Fee Cap Compared to AWW			
Year	Proposed Cap	AWW	Minimum Wage
2013	\$22,500	\$745.98	\$7.50
2024	\$32,500	\$1,041.79	\$12.00
% Increase	44%	40%	60%

The comparison demonstrates that attorneys’ fees under the proposed fee cap are estimated to be proportionally similar to indemnity benefits when compared to the 2013 fee cap increase. Further, while the average proportion of proposed attorneys’ fees to indemnity benefits is slightly larger for workers making the AWW than after the 2013 increase, the proposed fee cap is relatively less burdensome for the most economically vulnerable employees.



Table 2 provides a detailed comparison of how attorneys' fees relate to indemnity benefits across four scenarios, illustrating both the AWW and the minimum wage for a standard 40-hour work week in 2013 and 2024. Each scenario assumes an award of 500 weeks of indemnity benefits at two-thirds of the workers' wage and that the attorney fee cap is reached. Finally, each scenario assumes that 50% of the workers' attorney fee is paid by the employer, which is common under workers' compensation statutes.

Table 2: Comparison of Fee Cap with 500 Weeks of Indemnity Benefits				
Year & Wage Type	Weekly Wage	Indemnity Awarded	Attorney Fee Cap	Fee Cap as a % of Benefits
2013 - AWW	\$745.98	\$248,660	\$22,500	4.5%
2013 - Minimum Wage	\$300.00	\$100,000	\$22,500	11.3%
2024 - AWW	\$1,041.79	\$347,263	\$32,500	4.7%
2024 - Minimum Wage	\$480.00	\$160,000	\$32,500	10.2%

The scenarios in Table 2 show that the proposed 2024 limit will result in a very similar proportion of awarded indemnity benefits going directly to workers making the AWW when compared to 2013. In this scenario, these workers received only 0.2% less of their award in 2024. Further, the most economically vulnerable workers received 1.1% more of their benefits than they would have in 2013. Given the system's efficient functioning after the 2013 increase, this analysis concludes that the proposed attorney fee cap increase will not result in a significant detriment to injured workers' net compensation as it relates to indemnity benefits. Furthermore, the increase will support the continuing availability of skilled legal representation for workers' compensation cases, contributing to the system's efficacy and fairness. The Task Force's recommendation carefully balances the dual imperatives of maintaining access to justice and ensuring that injured workers retain a significant portion of their compensation, adjusting for economic realities without imposing an undue financial burden on the beneficiaries of the system.

