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ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

MEMORANDUM

September 17, 1980

TO: Representative Brian Rogers  
Senator Terry Stimson

FROM: Christine Johnson and Anne DeVries *Johnson*  
Research Staff *ADD*

RE: Summaries of Reports on Workers' Compensation Insurance

In response to your request, we have attached summaries of the following four reports on workers' compensation issues:

Identification and Elimination of the Causes of the High Cost of Workers' Compensation Insurance to Alaskan Employers, prepared by Richard L. Block & Associates, February 1980.

Workers' Compensation Problems in Alaska, prepared by Richard A Fineburg, January 1980.

Workers' Compensation Rates in Alaska, prepared by Woodward and Fondiller, Actuarial Consultants, February 1977.

Workers' Compensation: The Feasibility of Establishing a State Fund, prepared by Mr. Ken Humphreys, Research Division of the Legislative Affairs Agency, February 1977.

In each summary, we have briefly described the author's analysis and the conclusions that were reached. The analysis and conclusions that are presented in each summary are those of the report's author, not those of the House Research Agency. The Agency was not asked to provide a critical evaluation of these reports and we have not done so. However, in some cases, we have noted what appear to us to be inconsistencies and questionable derivation or use of statistics. These observations are found in the footnotes.

The authors of these reports have assumed that their audience is familiar with the terminology used in the workers' compensation insurance field; we share that presumption. Two of these reports were published over 3-1/2

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years ago; consequently, some of the data used and the conclusions reached may not be applicable to today's market conditions.

If you have any questions, please contact one of us at 465-3991.

CJ:AHD:bf

SUMMARY  
OF  
IDENTIFICATION AND ELIMINATION OF THE CAUSES  
OF THE HIGH COST OF WORKERS' COMPENSATION INSURANCE  
TO ALASKAN EMPLOYERS

BY  
RICHARD L. BLOCK & ASSOC.

February 1980

The report prepared by insurance consultant Richard L. Block & Associates was commissioned by the Alaska Conference of Employers and completed in February of 1980. Block was asked to identify the components of the workers' compensation system which contribute to high employer costs, and to propose changes which might reduce the expense of providing worker coverage.

The following summary is not organized in the same manner as the Block report. Block's findings appeared to us to support five general conclusions, and we have rearranged them accordingly. In addition, only a few of Block's thirty-four recommendations are cited in this summary, as it is our understanding that the recommendations from all four reports have already been compiled for your reference.

Conclusion 1: Employers are paying for excessively high benefit levels.

According to the Block report, the maximum weekly benefit payment in Alaska is significantly larger than the maximum payments in Washington, Oregon, Montana, and California. With the exception of California, each state's maximum weekly compensation payment is a percentage of the state's average weekly wage. As Block indicates, Alaska has a higher average weekly wage than the other states, as well as a larger percentage factor for determining maximum weekly compensation.

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This summary was prepared by the House Research Agency in response to a request by Representative Brian Rogers and Senator Terry Stimson. We were not asked to critically evaluate this report and have not done so. The analysis and conclusions presented here are those of Block & Associates, not of the House Research Agency. However, in some places, we have noted what appear to be inconsistencies in the text and problems with the use of data or statistics. The numbers in parentheses indicate where the reader can find more information in the report.

Average Weekly Wages, Maximum Workers' Compensation Benefits For  
Alaska, California, Oregon, and Washington

1979

(From Exhibit 12 - The Block Report)

| <u>State</u> | <u>Average Weekly<br/>Wage (\$)</u> | <u>Maximum Weekly<br/>Comp. Benefit (\$)</u> | <u>Fraction of Average<br/>Weekly Wage</u> |
|--------------|-------------------------------------|----------------------------------------------|--------------------------------------------|
| Alaska       | 393                                 | 656                                          | 1.67                                       |
| California   | NA                                  | 154 <sup>1</sup>                             | NA                                         |
| Oregon       | 242                                 | 242                                          | 1.00                                       |
| Montana      | 188                                 | 188 <sup>2</sup>                             | 1.00                                       |
|              |                                     | 94 <sup>3</sup>                              | 0.50                                       |
| Washington   | 251                                 | 188                                          | 0.75                                       |

1. In California, the maximum weekly compensation payment is set at \$154, without regard to the state's average weekly wage.
2. Maximum compensation for total disability and indemnity.
3. Maximum compensation for permanent partial disability.

Amounts reported by states' workers' compensation departments.

NA Not Applicable

According to a wage distribution table developed by Block (see Appendix 1), 83% of all workers eligible for compensation in 1979 would have been entitled to a full 66-2/3% of their salaries even if the maximum compensation payment had been 100% of the average weekly wage. The report quotes representatives from the State's Department of Commerce and Economic Development, who concur with this. According to the Department's estimates, fewer than 14% of the state's employees would receive benefit payments that were less than two-thirds of their weekly salary if the maximum weekly payment were reduced to 100% of State's average weekly wage.<sup>1</sup> Block cites

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<sup>1</sup> A 1973 wage distribution table developed by the National Council on Compensation Insurance does not support these claims (see Appendix II). According to the NCCI's data, only 58.4% of the state's workers would have been entitled to 66-2/3% of their salaries if the maximum compensation payment were reduced to 100% of the state's average weekly wage. (According to Don Koch of the State's Division of Insurance, the relationships shown in the NCCI table are valid, as trends indicated by wage distribution tables tend to remain constant over time.)

national statistics which indicate that if maximum compensation were set at 150% of the nation's average weekly wage, less than 6% of all qualified workers would receive benefits that were less than two-thirds of their normal weekly earnings.<sup>2</sup>

Block appears to be advocating a reduction in the level of maximum compensation payments on the basis of the argument that a ceiling on benefits of 100% or 150% of Alaska's average weekly wage would not impact a significant portion of the state's workers. According to the report, the workers' compensation system should assure that an injured employee does not suffer a reduction in his standard of living, but asserts that income above a certain level is discretionary, and is not used to provide commodities necessary to sustain the wage earner's standard of living. Block proposes that workers' compensation coverage should not fully replace the discretionary portion of an injured employee's earnings.

The report also points out that Alaska law currently permits injured workers to claim the highest wage earned during the three years prior to their injury as their pre-injury earnings. State law contained this provision so that a worker whose principal earnings come from seasonal employment would not lose the benefit of these earnings if he was injured while working at another job off-season. Block on the other hand recommends that injured employees be allowed to calculate their average weekly wage by dividing 52 into their total earnings for the last twelve months.

Conclusion II: The existing compensation system offers little incentive for injured employees to return to work.

According to Block, Alaskan "workers in high income brackets are earning nearly as much in workers' compensation benefits as they would realize in net take-home pay." This finding is supported by the following data presented in the report as Exhibit 13:

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<sup>2</sup>The NCCI wage distribution table suggests that Alaska's experience would be somewhat similar. Approximately 12.1% of the state's work force collect wages in excess of 150% of the state's average weekly wage, and would consequently receive compensation payments which were less than 66-2/3% of their pre-injury earnings.

Comparison of Maximum Workers' Compensation Benefits  
with Estimated Net Annual Take-Home Pay

| <u>Year</u> | <u>State Average Weekly Wage</u> | <u>Max. Weekly Compensation</u> | <u>Max. Annual Compensation</u> | <u>Annual Cut-Off Salary<sup>1</sup></u> | <u>Est. Annual Net Take-Home<sup>2</sup></u> |
|-------------|----------------------------------|---------------------------------|---------------------------------|------------------------------------------|----------------------------------------------|
| 1977        | 414                              | 552                             | \$28,704                        | \$43,034                                 | \$29,604                                     |
| 1978        | 456                              | 608                             | 31,616                          | 47,400                                   | 32,458                                       |
| 1979        | 393 <sup>3</sup>                 | 655                             | 34,067                          | 51,074                                   | 34,546                                       |
| 1980        | 405 <sup>3</sup>                 | 675                             | 35,107                          | 42,634                                   | 36,055                                       |
| 1981        | 445 <sup>4</sup>                 | 890                             | 46,280                          | 69,385                                   | 44,522                                       |

<sup>1</sup>Salary above which worker would receive less than 66-2/3% of his/her gross earnings in workers' compensation benefits.

<sup>2</sup>Gross net of federal withholdings, state withholdings, FICA for a married worker with one child. (All years based upon 1977 withholding schedule.)

<sup>3</sup>Division of Research and Analysis, Department of Labor estimate.

<sup>4</sup>1979 value increased 10% for inflation.

The report maintains that to the extent the State's workers' compensation benefits result in more take-home pay than could be generated by working, the compensation system is creating a disincentive to re-employment.

"Risk managers for self-insured risks in this state have observed that, particularly with respect to seasonal work or work that is subject to economic cycles, the high level of award based on high salaries creates a definite incentive to refrain from taking full-time employment at lower salary levels . . . ." (p. 35)

The Block report suggests that existing State policy encourages employees to treat their injuries as disabilities. A worker who loses both hands, both arms, both feet, both legs, both eyes, or any two of these is presumed by statute as permanently totally disabled in the absence of evidence to the contrary. However, Block asserts that "a worker's reaction to his injury and the degree to which his injury disables him are very personal and individual matters." The report recommends that permanent total disability should not be presumed, but should be determined on a case by case basis three years after an injured worker has reached maximum medical improvement, provided he has made an effort to seek employment and has not been able to find a job. The workers' compensation system should pay an injured worker first for his impairment and separately address the wage loss impact of his disability when the extent of the disability has been determined.

According to the Block report, the incentive for employees to overcome a disabling injury and return to the workforce is significantly reduced if there are not adequate rehabilitation and reemployment programs. Block claims that fear of unemployment or being turned down by employers because of an injury causes workers to unconsciously exaggerate their disability and consequently to recover more slowly. The report suggests that reemployment and rehabilitation efforts in Alaska are currently inadequate. He claims that injured workers should receive re-employment assistance as soon as possible as there is evidence that early intervention:

- . Speeds the recovery process or at least reduces the disability period.
- . Keeps injured workers focused on returning to work, and discourages them from developing a disability or no-work "habit".

The report also states that injured workers should receive vocational as well as physical rehabilitation; currently, Alaska's workers' compensation program concentrates on providing physical rehabilitation assistance. In addition, Block appears to advocate directing rehabilitation efforts at re-employment rather than extensive retraining. The former will prove less costly according to the report. Block cites the National Council on State Workers' Compensation Laws, which believes that industry should not be required to pay for rehabilitation that increases a workers' earning capacity significantly above what it was prior to injury. However, the federal and state vocational rehabilitation systems operate under the premise that disabled workers should be restored to "the fullest possible physical, mental, and economic usefulness," according to the report. The following guidelines for vocational rehabilitation are proposed by Block:

1. "Vocational training will be provided only when the worker's inability to return to work is the result of a vocational handicap arising from his disabling occupational injury or disease. When possible, a vocationally handicapped worker should be trained in a job related to his former regular employment and in a setting where he has the potential to be hired."
2. "A program to provide skills which would enable the worker to function at an employment level above his pre-injury level will not be undertaken unless the higher level is the only employment for which the worker can be trained."
3. "Vocational rehabilitation should emphasize early return to work. Therefore, where more than one resource offers a program consistent with the worker's vocational objective, the worker should be placed in the program which allows him to achieve his vocational objective the soonest. Formal school training shall be the very last alternative."

4. "Extensive re-employment assistance and disability prevention shall be the mission of the vocational rehabilitation effort. In all applicable cases, direct placement will be attempted as a first choice by actual job development, provision of job leads, teaching job search skills and providing other practical re-entry assistance."

Conclusion III: The State's Division of Workers' Compensation does not currently have enough staff or funding to efficiently administer the compensation program.

Block indicates that the Division's workload doubled between FY 1975 and FY 1979. He attributes much of the increase to pipeline-related activity. Although the workload could be expected to decline as the pipeline-related claims are resolved, in his opinion a steady downward trend is unlikely as work will begin soon on other major construction projects, such as the Northwest Gas Line.

According to the report, in order to assure that injured workers receive benefits as soon as possible, the State's Workers' Compensation Act imposes strict time constraints on employers and insurance carriers. However, because of its workload, the Division cannot be sure that the time requirements are being met. Even though an injured employee should receive his first benefit payment within 14 days of notifying his employers, the Division believes insurance companies comply with this deadline in only 30% of the cases. This is based on information collected in 1978.

Block claims that delays result in financial hardships for both injured workers and employers.

If a case or claim is controverted by the insurance company, all payments close at that point. If the hearing and subsequent opinion requires a period of time five times greater than that mandated by law, this only results in the injured claimant requiring no compensation for this period of time.  
(p. 68)

If an employer is ordered to make payment to an injured employee in a controverted case, the employer is also obligated to pay interest on the amount awarded. The amount of interest owing would, of course, be affected by any delay. Similarly, according to Block, if the Workers' Compensation Board decided an employee was not entitled to benefits he had received, a delay would increase the amount that had been expended unnecessarily.

Block also points out that due to its current workload the Division has not been able to adequately inform the public about the benefits and responsibilities connected with workers' compensation. The report suggests that misunderstandings resulting from lack of information on the part of workers and employers has contributed to the number of controverted cases and the amount of litigation.

Conclusion IV: There is no incentive for injured workers or physicians to contain medical costs, or limit use of the medical benefits in any way.

The report concludes that allowing injured workers to have complete discretion in choosing a physician results in duplicate treatment, concurrent treatment by physicians with different philosophies of care, and sometimes extensive "shopping" for a physician who will agree that an injury warrants a higher eligibility rating or long-term treatment.

Block proposes that even though physicians may be overcharging their clients who have medical coverage, it is not fees but sheer volume of care provided which is responsible for the high cost of providing medical care under workers' compensation. Block adds that physicians' fees are currently paid without question, as the Workers' Compensation Board has no direct knowledge of prevailing rates.

Block also observes that although the Workers' Compensation Board is confronted with complex medical questions, it presently has no professional expertise in medical matters.

Conclusion V: Employers face one of two problems with insurance providers: higher costs because of the inflexibility of rate-making system or the solvency of the carrier.

Loss reserves are set by State statute in order to assure carrier solvency and benefit payout. The State takes a conservative approach to reserving, requiring carriers to reserve 100% for the first three years and the present value of benefits to be paid after the third year discounted at 4%. According to Block, this is a prudent reserving policy. The State of Alaska wants to be assured that a carrier's loss reserve will cover the maximum possible payment. Therefore, it would not be in the state's best interest to permit the carrier to estimate his actual loss<sup>3</sup> and reduce his reserve accordingly. This, of course, works to an insurance company's advantage. Block maintains that the state's approach to calculating reserves should not be used for rate-making purposes. Instead, employers should be charged a rate which represents more closely the amount of money carriers finally pay out to claimants. In this way, rates would more accurately reflect employers' actual experience.

Block presents data indicating that the actual expense loading factor for insurance carriers operating in Alaska is significantly less than the factor established by the NCCI. According to the report, over the last three years, Alaska carriers experienced an average expense factor of 24%, while

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<sup>3</sup>Carrier's actual loss would be the present value of his payments, adjusted for incidence of remarriage, lump sum settlements, and findings of no liability, at current interest rates.

the factor on which the NCCI presently bases rates for Alaska is 31.6%.<sup>4</sup> Block indicates that the high expense factor has resulted in unnecessarily high rates for employers in the state. Block is of the opinion that premium discount may explain some of the discrepancy between the actual factor and the NCCI's, but cannot account for all of it. The report suggests that the NCCI should not continue to determine expense loading factors because of its close ties to the insurance industry. The NCCI should establish only pure loss rate, according to Block; carriers themselves should be permitted to determine their own expense factors. The State should develop a data system which will enable evaluation of the expense factors proposed by the carriers. At the present time, the State does not collect data which will permit any verification of the expense factors set by the NCCI.

The report also recommended that the premiums, losses and experience realized by projects of the magnitude of the trans-Alaska pipeline project should be segregated from Alaska's experience as a whole, and not be included in state rate-making. Block asserts that premium and loss data for Alyeska was entered into the NCCI data base along with all other data pertaining to Alaska, adversely affecting statewide experience. As a result, insurance rates rose for many employers whose experience during the pipeline period was not as poor as Alyeska's. Block proposes that a large, short-term project such as TAPS should be assigned its own experience rating, on which its insurance rate would be based.

In addition, the report indicates that employers with similar business activity, i.e., in the same industry, would realize a significant premium discount by taking advantage of 1977 legislation enabling the formation of safety groups. A group's collective annual premium would entitle them to the discounted, retrospective policies written for large insureds. Block suggests that safety groups could expeditiously be established through industry trade associations.

Block's discussion of self-insurance in the state relates the following findings and recommendations:

- . At present, neither the Division nor the Workers' Compensation Board adequately determines whether self-insurers possess the financial strength to absorb the full cost of providing compensation for workers' injuries.
- . Division staff do not have the technical expertise to rigorously evaluate applications for self-insurance.

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<sup>4</sup>Block does not indicate the source of his information concerning carriers' Alaska expenses, nor does he explain how the numbers were derived. According to Don Koch, of the Division of Insurance, it is almost impossible to isolate insurance companies' Alaska expenses from the expenses they incur elsewhere, as a significant portion of their Alaska-related business is handled out of state.

- . No criteria exist for approving or denying applications for self-insurance.
- . Employers who are granted permission to self-insure should have a risk which is predictable within relatively narrow parameters and should show adequate financial data, history, integrity, and liquidity to assure the ability to pay claims.
- . Even though it is almost impossible to calculate the cost to self-insurers of providing compensation coverage, self-insurance program managers maintain that a "commercial, retrospective, discounted workers' compensation policy is competitive with self-insurance in purely cost terms for most employers who self-insure."

Block concludes that the most significant financial advantage of self-insurance is that employers retain use of their workers' compensation reserves until payment is necessary. Block asserts that larger employers who are now commercially insured, could benefit in a similar manner if they were able to utilize a cash flow plan and pay premiums as their private carrier paid claims. According to the report, a cash flow plan is not advisable for most risks as it could jeopardize carrier solvency and raise the cost of coverage for those who purchase insurance in the traditional way. Block recommends that the concept be permitted for large employers who are capable of self-insuring but who want the protection of commercial coverage.

Although Block is unable to provide quantifiable evidence, he asserts in his report that claims against the Second Injury Fund exceed the fund's current balance and estimated income. In addition, the fund's cash flow is insufficient to reimburse carriers for lump sum payments they may have made to the fund prior to settling a claim with a compromise and release agreement. Block recommends that an appropriation be made to the Second Injury Fund sufficient to cover its liabilities, and that the fund be audited on an annual basis. Block suggests that an appropriation from the State's General Fund would be appropriate in any event, as the Second Injury Fund assists all handicapped people but is supported only by revenues derived from worker injuries.

According to the Block report, the State's assigned risk pool presently covers a significant number of small businesses which could not receive insurance through private carriers because of their size. Even though carriers may charge a minimum premium and an expense constant, small businesses are unattractive to insurers because of the cost of servicing them and the risk of loss. Block proposes that small employers who could not get private carrier coverage because of their size, should not be expected to pay the 8% surcharge on risks in the assigned risk pool. If the surcharge were eliminated, the total premium generated by the pool would be decreased by only 1%. Block also recommends that the surcharge on larger risks, those paying more than \$1,500 in annual premiums, should be increased to 10% in order to "more approximately charge premiums in proportion to propensity to incur risk."<sup>5</sup>

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<sup>5</sup> In this regard, Block notes elsewhere in the report that Alaska's manual rates for employer classes appear to be compressed compared to manual rates for Washington, Oregon, California and Montana. (Block claims that

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comparisons among these five states are valid because they have comparable economic and industrial mixes.) If this is true, employers in the state are not being charged rates proportionate to the risk they represent. However, this may be only a temporary trend according to the Block report: "the most recent rate filing submitted by the National Council and approved by the Division of Insurance...called for an overall rate increase of 1.8% spread among major hazard classes . . . ."

# APPENDIX I

## EXHIBIT 15

### Percent Distribution of Money Income, Wage and Salary for Persons Over 14 in Alaska Estimated for 1979

|                                                                  | <u>Total</u> | <u>\$1-<br/>1999</u> | <u>\$2000-<br/>3999</u> | <u>\$4000-<br/>5999</u> | <u>\$6000-<br/>7999</u> | <u>\$8000-<br/>9999</u> | <u>\$10,000-<br/>11,999</u> | <u>\$12,000-<br/>14,999</u> | <u>\$15,000-<br/>19,999</u> | <u>\$20,000<br/>24,999</u> | <u>\$25,000<br/>over</u> |
|------------------------------------------------------------------|--------------|----------------------|-------------------------|-------------------------|-------------------------|-------------------------|-----------------------------|-----------------------------|-----------------------------|----------------------------|--------------------------|
| Number of<br>Employees<br>over 14<br>years.<br>(in<br>thousands) | 213          | 35                   | 22                      | 19                      | 16                      | 16                      | 14                          | 14                          | 24                          | 17                         | 36                       |
| Percent                                                          | 100          | 16.4                 | 10.3                    | 8.9                     | 7.5                     | 7.5                     | 6.6                         | 6.6                         | 11.3                        | 8.0                        | 16                       |

Census Population Survey, Income Division, U.S. Bureau of Labor.  
(Telephone conversation with Mr. George Patterson.)

# APPENDIX II

## NATIONAL COUNCIL ON COMPENSATION INSURANCE

### ALASKA

#### LAW MEMO - EXHIBIT XVII

#### 1973 STANDARD WAGE DISTRIBUTION TABLE

R = Ratio to Average Wage

A = Percentage of workers receiving not more than the percentage of the average wage indicated by column R

B = Percentage of wages received by the percentage of workers in column A

| R    | A       | B       | R    | A       | B       | R    | A       | B       |
|------|---------|---------|------|---------|---------|------|---------|---------|
| .05  | .1068   | .0030   | 2.40 | 98.8243 | 96.4991 | 4.75 | 99.9210 | 99.5369 |
| .10  | .3511   | .0222   | 2.45 | 98.9702 | 96.8502 | 4.80 | 99.9245 | 99.5542 |
| .15  | .8384   | .0845   | 2.50 | 99.1283 | 97.2237 | 4.85 | 99.9277 | 99.5700 |
| .20  | 1.4357  | .1903   | 2.55 | 99.2172 | 97.4447 | 4.90 | 99.9290 | 99.5762 |
| .25  | 2.1432  | .3483   | 2.60 | 99.3278 | 97.7304 | 4.95 | 99.9316 | 99.5881 |
| .30  | 2.9058  | .5629   | 2.65 | 99.3962 | 97.9051 | 5.00 | 99.9337 | 99.5984 |
| .35  | 3.7375  | .8393   | 2.70 | 99.4464 | 98.0372 | 5.05 | 99.9357 | 99.6093 |
| .40  | 4.7328  | 1.2173  | 2.75 | 99.5127 | 98.2151 | 5.10 | 99.9390 | 99.6258 |
| .45  | 6.1073  | 1.8188  | 2.80 | 99.5551 | 98.3291 | 5.15 | 99.9415 | 99.6393 |
| .50  | 8.2201  | 2.8537  | 2.85 | 99.5867 | 98.4178 | 5.20 | 99.9438 | 99.6516 |
| .55  | 11.6032 | 4.6692  | 2.90 | 99.6240 | 98.5226 | 5.25 | 99.9453 | 99.6594 |
| .60  | 15.3290 | 6.7892  | 2.95 | 99.6515 | 98.6021 | 5.30 | 99.9483 | 99.6752 |
| .65  | 20.5672 | 10.1290 | 3.00 | 99.6742 | 98.6709 | 5.35 | 99.9488 | 99.6778 |
| .70  | 25.9600 | 13.7452 | 3.05 | 99.6888 | 98.7150 | 5.40 | 99.9498 | 99.6836 |
| .75  | 32.3089 | 18.2868 | 3.10 | 99.7116 | 98.7817 | 5.45 | 99.9508 | 99.6892 |
| .80  | 37.5110 | 22.2523 | 3.15 | 99.7288 | 98.8358 | 5.50 | 99.9539 | 99.7064 |
| .85  | 42.9709 | 26.6884 | 3.20 | 99.7427 | 98.8809 | 5.55 | 99.9552 | 99.7130 |
| .90  | 48.2321 | 31.2144 | 3.25 | 99.7614 | 98.9448 | 5.60 | 99.9559 | 99.7174 |
| .95  | 53.1109 | 35.7149 | 3.30 | 99.7825 | 99.0090 | 5.65 | 99.9569 | 99.7228 |
| 1.00 | 58.4036 | 40.9066 | 3.35 | 99.7922 | 99.0422 | 5.70 | 99.9584 | 99.7318 |
| 1.05 | 62.9643 | 45.6459 | 3.40 | 99.7995 | 99.0666 | 5.75 | 99.9607 | 99.7447 |
| 1.10 | 67.1858 | 50.1850 | 3.45 | 99.8141 | 99.1161 | 5.80 | 99.9623 | 99.7537 |
| 1.15 | 70.6767 | 54.0985 | 3.50 | 99.8211 | 99.1404 | 5.85 | 99.9636 | 99.7730 |
| 1.20 | 74.0989 | 58.1398 | 3.55 | 99.8308 | 99.1747 | 5.90 | 99.9674 | 99.7840 |
| 1.25 | 77.0678 | 61.7560 | 3.60 | 99.8403 | 99.2088 | 5.95 | 99.9684 | 99.7903 |
| 1.30 | 79.9516 | 65.5218 | 3.65 | 99.8457 | 99.2272 | 6.00 | 99.9701 | 99.8007 |
| 1.35 | 82.2534 | 68.5701 | 3.70 | 99.8511 | 99.2463 | 6.05 | 99.9712 | 99.8069 |
| 1.40 | 84.5435 | 71.7325 | 3.75 | 99.8575 | 99.2701 | 6.10 | 99.9722 | 99.8131 |
| 1.45 | 86.3620 | 74.3294 | 3.80 | 99.8616 | 99.2854 | 6.15 | 99.9727 | 99.8161 |
| 1.50 | 87.9326 | 76.6547 | 3.85 | 99.8657 | 99.3029 | 6.20 | 99.9734 | 99.8210 |
| 1.55 | 89.1240 | 78.4667 | 3.90 | 99.8731 | 99.3315 | 6.25 | 99.9753 | 99.8315 |
| 1.60 | 90.4193 | 80.4994 | 3.95 | 99.8774 | 99.3499 | 6.30 | 99.9758 | 99.8349 |
| 1.65 | 91.6370 | 82.4738 | 4.00 | 99.8800 | 99.3594 | 6.35 | 99.9763 | 99.8380 |
| 1.70 | 92.4497 | 83.8454 | 4.05 | 99.8835 | 99.3739 | 6.40 | 99.9775 | 99.8468 |
| 1.75 | 93.2448 | 85.2260 | 4.10 | 99.8871 | 99.3886 | 6.45 | 99.9780 | 99.8504 |
| 1.80 | 93.9290 | 86.4398 | 4.15 | 99.8949 | 99.4207 | 6.50 | 99.9816 | 99.8762 |
| 1.85 | 94.5674 | 87.5957 | 4.20 | 99.8970 | 99.4295 | 6.55 | 99.9831 | 99.8855 |
| 1.90 | 95.1329 | 88.6605 | 4.25 | 99.9000 | 99.4429 | 6.60 | 99.9848 | 99.8964 |
| 1.95 | 95.7436 | 89.8715 | 4.30 | 99.9033 | 99.4574 | 6.65 | 99.9851 | 99.8978 |
| 2.00 | 96.2339 | 90.8451 | 4.35 | 99.9058 | 99.4689 | 6.70 | 99.9861 | 99.9047 |
| 2.05 | 96.6383 | 91.6662 | 4.40 | 99.9086 | 99.4807 | 6.75 | 99.9871 | 99.9118 |
| 2.10 | 97.1239 | 92.6803 | 4.45 | 99.9091 | 99.4831 | 6.80 | 99.9877 | 99.9149 |
| 2.15 | 97.4920 | 93.4767 | 4.50 | 99.9122 | 99.4965 | 6.85 | 99.9892 | 99.9259 |
| 2.20 | 97.8424 | 94.2425 | 4.55 | 99.9142 | 99.5052 | 6.90 | 99.9897 | 99.9290 |
| 2.25 | 98.1208 | 94.8736 | 4.60 | 99.9155 | 99.5113 | 6.95 | 99.9902 | 99.9321 |
| 2.30 | 98.3723 | 95.4400 | 4.65 | 99.9173 | 99.5197 | 7.00 | 99.9917 | 99.9429 |
| 2.35 | 98.6285 | 96.0369 | 4.70 | 99.9197 | 99.5309 |      |         |         |

## SUMMARY

OF

WORKERS' COMPENSATION: THE FEASIBILITY OF ESTABLISHING A STATE FUND

BY

KEN HUMPHREYS, RESEARCH DIVISION, LEGISLATIVE AFFAIRS AGENCY

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At the same time that the Woodward and Fondiller report was issued, the Research Division issued its analysis of the feasibility of establishing a state fund in Alaska. The report is divided into five sections covering: background material, comparative overhead costs of state funds versus private carriers, comparative service levels, the projected costs of establishing an Alaska state fund<sup>1</sup> and finally, general factors to be considered in evaluating this alternative. The background material in the first section was printed almost verbatim in the recent Block report and is summarized in our review of that report.

### Comparative Costs

The author begins his analysis of the comparative costs of delivering benefits through private insurance carriers versus state funds<sup>2</sup> by noting that direct comparisons are impossible because of differences in wages, benefits, etc. In addition, the report notes that:

The extent to which injured workers are receiving the medical care, rehabilitation and compensation to which they are entitled under the law in a timely manner is a paramount consideration when one is weighing cost factors. (p. 19)

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<sup>1</sup>This chapter was prepared by Woodward and Fondiller.

<sup>2</sup>The author does not specify whether he is considering exclusive state funds or competitive ones.

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This summary was prepared by the House Research Agency in response to a request by Representative Brian Rogers and Senator Terry Stimson. We were not asked to critically evaluate this report and have not done so. The analysis and conclusions presented here are those of Ken Humphreys, not of the House Research Agency. However, in a few places, we have noted what appear to be inconsistencies in the text and problems with use of data or statistics. The numbers in parentheses indicate where the reader can find more information in the report.

The author uses "apparent overhead" as the indicator of the cost of delivering benefits. Apparent overhead is derived by subtracting dividends and incurred losses from net earned premiums to calculate the amount retained by the carrier. As the report notes, the amount retained is used to cover expenses, taxes, additions to reserves and surplus and profits. The amount retained by a carrier is usually related to the carrier's premium or loss level and stated as a retention ratio. The author compares retention both as a percentage of premium and of loss, for private carriers and state funds.

Two studies of retention ratios, stated as a percentage of premium, are cited in the report:

- . In a comparative study of the private carriers and competitive state fund in California, a researcher found a difference in retention of 22.3% of earned premium. Private carriers averaged a retention of 29.3% between 1957 and 1961 while the state fund averaged 7.0%.
- . A study of Oregon carriers found that private carriers retained 22.2% of earned premiums, 16.9% more than the 5.3% retained by the State Accident Insurance fund. The study included the years 1966-1975. The only "effective subsidy" reported by the Oregon state fund personnel was exemption from federal income tax. (p.24) <sup>3</sup>

The report presents data on the experience of Alaska carriers in the period 1971-1975, and concludes that the 23.7% of earned premium which Alaskan carriers retained is somewhat higher than the 21.8% average for private carriers (nationwide). <sup>4</sup>

Premium levels are subject to fluctuation because of discounts; therefore,

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<sup>3</sup> Exemption from federal income tax may, in fact, be a significant subsidy. The tax implications of a state fund were not analyzed by either Woodward and Fondiller or Humphreys. It may be one of the reasons why the return on investment for state carriers was so much higher than for private carriers, as noted in Woodward and Fondiller.

<sup>4</sup> This comparison may be somewhat misleading. In Alaska, non-participating stock companies comprise 78.2% of the market (1975), whereas in the U.S. as a whole, they have only 51.6% of the market (1971-1975). As these companies retain 31.4% to 34.2% more than mutual and participating stock companies, Alaska average data is skewed upward because of the market share difference. The relevant comparison would be to compare like types of companies in Alaska and the Lower 48 to see if Alaskan costs are higher. It may also be interesting to question what it is about the Alaskan market which causes the market dominance of ostensibly higher overhead companies and what impact those market factors would have on a state fund.

apparent overhead may be distorted when stated as a percent of premium.<sup>5</sup> In order to remove the influence of premium level, the report suggests expressing ratios as a percentage of losses rather than of premiums.<sup>6</sup> The report concludes that, compared in this way, private carriers' retention is about four times as great as that of state funds instead of being three times as great as is indicated by the earlier comparison using retention as a percent of premiums. (p. 27)

#### Use of Investment Income

The report goes on to discuss the use of investment income by state funds and private carriers. It cites the findings of a major report on workers' compensation insurance prepared for the U.S. Government:

The private carriers in the aggregate paid out about 70% of earned premiums over the three-year period (1972-1974) as incurred losses. State funds had much higher loss ratios. However, while the private carrier received net investment income which came to about 6% of earned premium on the average, the state funds received much larger amounts from that source. When losses incurred were related to earned premium plus net investment, the ratios for five state funds were 65% or less . . . Thus, the ability of the state funds to pay out such large amounts in loss payments and in dividends is supported to a great extent by that source of income. (p. 30)

Source: Workers' Compensation Insurers: An Operational Analysis  
A Draft Report to the Interdepartmental Task Force, by  
Teknekron, Inc., October 1976.

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<sup>5</sup> For example, if a company retained 30% of premium while charging manual rates, it would retain 33% if rates were discounted by 10% with no change in actual overhead costs.

<sup>6</sup> This ratio is not inherently better than the previous one. Just as premiums can be subject to discounts, losses may be a reflection of reserve policies, the quality of risks insured, or management of loss control activities, etc. Two firms with the same overhead expense may show different retention to loss ratios depending on how they reserve for losses, the risks they insure, etc.

### Subsidies and Lower Expenses

Responding to the inevitable question of the impact of subsidies, "hidden or otherwise" on the expense level of state funds, the report analyzed the experience of four state funds - Arizona, California, Oregon and Pennsylvania. It concluded that a four percent allowance for subsidies (exemption from taxes - premium, real estate, etc., but not federal taxes - use of state property, etc.) seems more than adequate. After making the indicated allowance for subsidies, state funds retain 11 to 12 percent less of earned premium than private carriers, but may not provide whatever advantages in service and overall performances exist with a private carrier system.

In addition to greater investment earnings, state funds have lower expenses in some areas. The report calculates a 17% (of premium) difference in expense ratios between state funds and private carriers and attributes most of that difference to lack of acquisition costs for the state fund (10%) and the profit reported by private carriers (3.5%),<sup>7</sup> in addition to the 4% allowance for subsidies. (p. 35)

### Carrier Services

The report then goes on to evaluate the services provided by workers' carriers: loss control, claim management and other activities, including agency or brokerage services. With respect to the safety program aspect of loss control, the author cites the Teknekon report:

Employers and self-insurers apparently perceive that private carriers and state funds generally provide minimal or no safety services, particularly for smaller establishments. There is no present evidence to indicate that one type of carrier is perceived as more effective than any other type in the provision of safety services. (p. 44)

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<sup>7</sup> The table to which the 3.5% profit is attributed to does not show that figure.

A similar conclusion is reached by the author in regard to claims management services:

Present data cannot support any opinion that one type of insurer is more effective than any other in the management of the injured. (p. 56) . . . Until accounting and reporting standards become more uniform, it is unlikely that convincing evidence will be presented on behalf of either system.

In the third area of service, including brokerage and other activities, private carriers are seen as having a clear advantage:

In the delivery of other types of service, private carriers enjoy a clear, but very difficult to quantify, advantage . . . . Private carriers (either directly or through agents) are usually in a position to provide a wider variety of coverage; they can provide a small employer with "package" coverage and have greater flexibility in tailoring coverage to fit any given business.<sup>8</sup> (p. 56)

#### Capital and Operating Expenses of a Competitive State Fund

Capital and operating expenses of a state fund are analyzed in a section of the report prepared by Woodward and Fondiller.

A capital fund provides a cushion against the financial impact of unusually large losses, inadequate estimation of liability for unpaid losses (inadequate loss reserves), inadequate rates and unexpectedly poor investment results. On the subject of inadequate rates, the report cited the following potential problem for a state fund:

The danger of inadequate rates is heightened by requirements that a state fund accept every risk submitted for insurance, thus in effect becoming an assigned risk pool through adverse selection. Rates are promulgated for the average risk. Risks poorer than average have to be subsidized and this constitutes an additional burden on capital funds. (p. 58)

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<sup>8</sup> Private carriers are able to provide this service because they are reimbursed for it

The report estimates that an insurance company will generally set aside a capital fund equal to one fourth or more of the premium it expects to write. The amount of state carrier capital funds ranged from insolvency (Pennsylvania) to an excess of 100% of premium volume. (p. 82)

#### Alternative Financing Methods

Three alternative initial financing schemes are considered for an Alaskan fund: (p. 59)

- . A fund equal to 50% of anticipated written premium (termed a conservative approach).
- . A fund equal to 25% of anticipated written premiums (termed a moderately conservative approach).
- . A fund equal to 10% of the first year's anticipated premium (considered the "least conservative" approach).

Under the last alternative, the report predicts that insolvency during the first four years "should occasion no great surprise." The report recommends a fund equal to at least 25% of the premium and expects that later contributions to capital would be obtained from the net operating results of the fund.<sup>9</sup> (p. 59)

In its estimation of income for the projected state fund, the report makes the following assumptions about the fund:

- . It is a competitive state fund with 5% of an estimated 1978 market of \$80 million. Expenses to generate this \$4 million of written premiums would total \$632,000.
- . It grows by \$2 million worth of written premiums a year for the first two years and \$3 million a year afterward. (This is termed a high-growth model and corresponds to a 5% market share of a \$4 million in year 2.)

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<sup>9</sup> At this point, the report is not clear about how the opportunity cost of using state monies to finance this insurance fund will be reflected in the rates.

Premiums would be written at 20% off manual rate. Losses are estimated at 75.9% of premium (60.7% of manual), expenses at 19.1% of premium (15.3% manual) and a safety factor 10 is estimated at 5% (4% of manual). Apparently, expenses are to drop to 15% (12.0% of manual) when steady volume is achieved.

Based on the foregoing assumptions, the report projects the following growth in income:

Projected Income  
Model I - High Growth Model  
(Thousands of Dollars)

| <u>Year</u> | <u>Annual<br/>Premium<br/>Writings</u> | <u>Earned<br/>Premium</u> | <u>Expense<br/>Income<br/>Earned</u> | <u>Actual<br/>Expenses</u> | <u>Surplus/<br/>Deficit</u> |
|-------------|----------------------------------------|---------------------------|--------------------------------------|----------------------------|-----------------------------|
| 1           | 2,000                                  | 1,000                     | 191                                  | 600                        | -409                        |
| 2           | 4,000                                  | 3,000                     | 574                                  | 750                        | -176                        |
| 3           | 6,000                                  | 5,000                     | 956                                  | 1,200                      | -244                        |
| 4           | 9,000                                  | 7,500                     | 1,434                                | 1,580                      | -146                        |
| 5           | <u>12,000</u>                          | <u>10,500</u>             | <u>2,008</u>                         | <u>2,030</u>               | <u>- 22</u>                 |
| Total       |                                        |                           | 5,163                                | 6,160                      | -997                        |

Source: Exhibit 6, (p. 74)

The low growth model shows a premium level of \$6 million by year 5 and a surplus of \$77,000.<sup>11</sup>

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<sup>10</sup> We believe a 5% provision for profit and contingencies, better characterized as a 'safety factor' in the case of a state fund, is necessary because of the greater risk associated with operating in a single state with only one line of business."

<sup>11</sup> It is not possible to relate the statistics on the above table with those on a previous table in the Research Division report which estimate expenses at the end of year 2 at \$632,000. It is not clear whether the increase in the size of the Alaskan market or increase in market share. It is not stated where the additional capital to support premium growth comes from, since it cannot come from operating deficits. It is also not clear how the deficit is being financed.

No taxes were assumed in the above projections. As the report states, if the fund is taxed, as some if not all competitive state funds are, the cost would have to be met in one of three ways: reduced safety factors; longer period of deficit operation; or higher rates.

An estimated 20 employees would be required for a state fund with \$4 million annual premium volume.

#### Cost of Establishing an Exclusive State Fund

The foregoing discussion deals with the cost of establishing a competitive state fund. In considering the possibility of an exclusive state fund, the report reaches the following conclusions: (p. 66)

- . We do not favor a lower standard of operation for an exclusive state fund than for a competitive one.
- . To protect financial stability, the report suggests an initial capital of \$12.25 million (17.5% of an estimated 1978 market of \$70 million)<sup>12</sup> and a future target of 25% ratio of net worth to annual written premiums.

The report notes that solvency is not a major problem of either private or state funds. A private carrier is regulated in its financial activities by the state and subject to assessment to provide for the liabilities of insolvent carriers. With a state fund, the situation is different:

A monopolistic fund is always in a position to maintain solvency by virtue of its captive market. Policies which lead to insufficient reserves can be offset by higher rates in the future. Greater care must be taken to insure the solvency of a competitive fund but, even if the state does not guarantee the solvency of the fund, it is possible to manage the fund in a fiscally sound manner. (p. 82)

On the question of profitability in workers' compensation insurance, the report notes that "some writers have maintained that any profit from such social insurance is morally unacceptable." The report notes that in spite of this argument, an allowance for underwriting profit by private carriers (usually 2.5% of premium)<sup>13</sup> has been generally accepted and is

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<sup>12</sup> It is unclear whether the estimated 1978 market is \$80 million as noted earlier, or \$70 million.

<sup>13</sup> In the projection for a state fund, a "safety" factor for profit and contingencies of 5% (4% of manual premium) was used.

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built into most rating systems. The report goes on to note that investments are also a source of income to the carrier.

SUMMARY  
OF  
WORKERS' COMPENSATION RATES IN ALASKA

BY  
WOODWARD AND FONDILLER

February, 1977

The Woodward and Fondiller report is organized into two sections: a description and brief analysis of different rate making procedures and an analysis of the adequacy of underwriting and investment income in providing a return to the insurance carriers. The material in the first section will be highlighted briefly. As the second section deals with more technical analysis, it will be summarized in greater detail.

Rate Making Procedures

Woodward and Fondiller report that between January 1, 1970 and November 1, 1976, legislated benefit levels in Alaska increased 128.4% (a compound annual rate of 12.5%) while premium rates increased at a slower rate. Premium rates in 1976 were 118.5% higher than 1970 rates (a compound annual increase of 11.8%). Favorable experience offset legislated benefit increases to a slight extent, slowing the rate of premium growth. (IV-3)

The November 1, 1976 rate filing by the National Council on Compensation Insurance (NCCI) resulted in a 3.7% overall rate increase. Woodward and Fondiller objected to the introduction of a 'Serious Loss Contingency Factor' in this rate filing. This factor had the effect of increasing premiums by 1.8% and of increasing profit and contingency loading from 2.5% to 3.7%. The authors noted three objections: the method of introduction used, i.e., as part of an annual rate filing; its application to Alaska - was it applied elsewhere?; and, its application as a 'special factor' instead of simply increasing the profit and contingency factor to 3.7%. (V-5)

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<sup>1</sup> The material in the published report is an edited version of a draft submitted to the Legislative Affairs Agency on February 14, 1977. Some of the appendices and exhibits referred to in the published report are found only in the draft copy. A copy of this draft has been provided to the Commission.

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This summary was prepared by the House Research Agency in response to a request by Representative Brian Rogers and Senator Terry Stimson. We were not asked to critically evaluate this report and have not done so. The analysis and conclusions presented here are those of Woodward and Fondiller, not of the House Research Agency. However, in a few places, we have noted what appear to be inconsistencies in the text and problems with the use of data or statistics. The numbers in parentheses indicate where the reader can find more information in the report.

The Woodward and Fondiller report describes the rate-making systems of the NCCI, and compares them with those of the exclusive funds of Washington and West Virginia and the rate-making boards of New York and California. The following are the major distinctions that were noted in the report (II-2,3):

- . Treatment of investment income - the NCCI does not reduce rates in recognition of investment income . . . however, rates in the exclusive fund states of Washington and West Virginia are reduced in recognition of investment income.
- . Basis of premium charge - rates set by the NCCI and those in West Virginia, California, and New York are established per \$100 of payroll. Washington state uses manhours as the basis for its rates.
- . Treatment of small employers - the NCCI establishes an expense constant which is applied to employers with premiums under \$500. New York follows the NCCI approach. California sets minimum rates and each carrier is able to set its own minimum premiums and expense constants. Washington sets a nominal minimum premium of \$24/year. West Virginia has no minimum charges or expense constants.
- . Treatment of large employers - NCCI rates permit premium discounts for large policies. Of the four states under consideration, only New York permits premium discounts.
- . Retrospective rating, experience rating, schedule rating - retrospective rating is permitted under the NCCI and in California and New York. Both of these states and the NCCI also use experience rating. None of the four states uses schedule rating plans; however, these plans are used by the NCCI.
- . Estimation of ultimate loss - the NCCI uses loss development factors to estimate the ultimate loss on a past accident; New York also uses loss development factors. California projects trends in loss development factors and uses this adjusted data. Washington and West Virginia use loss reserve techniques rather than factors.
- . Forecasting techniques - the NCCI forecasts loss ratios by a technique that weights each period of experience equally. California uses a system which weights recent data more heavily.

New York forecasts increases in premium and indemnity costs and medical costs from wage data, medical fee schedules and compensation payout statistics (number of claims, duration of claims, etc.). The New York approach is termed a more comprehensive treatment of trends than that of the NCCI.

- . Expense loadings - the NCCI bases its expense loadings on country-wide data, as do New York and California. Washington and West Virginia use state experience.

Woodward and Fondiller acknowledges that the NCCI's rate-making procedures are generally accepted as the standard for the industry. However, the report cited two criticisms: first, the failure of the NCCI to project expenses at their reasonably anticipatable ratio to premium in face of rate increases and, second, the inadequacy of NCCI's procedure in estimating the ultimate cost of losses. After citing these criticisms, the report goes on to state that:

The foregoing criticisms are not trivial, but neither are they so serious as to discredit the overall soundness of the National Council's procedures, which we generally endorse. (I-13)

After its analysis of the rate-making systems in Washington, West Virginia, California and New York, the report makes four recommendations for the improvement of NCCI procedures (III-3):

- . Accident year data should replace the mixture of policy year and calendar year data used by the NCCI for rate levels. The change is recommended because accident year data is termed more accurate than calendar year data and more recent than policy year data. Accident year statistics are used in California, Washington and West Virginia. (III-11)
- . Estimates of losses that will ultimately be paid on claims should be based on loss reserve techniques rather than on loss development factors. The justification for using loss reserves techniques will be discussed in a later section.
- . Trending procedures, if adopted, should consider economic data, in addition to insurance experience. NCCI use of trending techniques incorporating data from outside the insurance industry is seen as a way of "removing some of the need for prediction" and tying remaining demands for prediction to "factors about which more information is available than a simple sequence of old loss ratios." (III-12)

- . The NCCI should project losses and expenses separately in determining expense loadings. The report does not expand on this fourth recommendation.

#### Underwriting and Investment Income

The Woodward and Fondiller report begins its discussion of the adequacy of underwriting and investment income to the carriers by reviewing their compensation experience for the last five years. The report concludes that:

The rate-making system has failed to produce adequate rates in Alaska or country-wide . . . After paying dividends, companies suffered an underwriting loss of 5.0% from 1970 - 1975 . . . Alaska results have been generally worse than country-wide results. (VI-2)

The report speculates that the "2.5% loading for underwriting profit and contingencies plus an additional 1.2% serious loss contingency loading . . . may not be sufficiently large to ensure the availability of the necessary capital for the industry." The report goes on to discuss investment income, money earned on the investment of its assets, as the other source of income to the carrier. Woodward and Fondiller reached the following conclusions from their analysis:

- . Rate-making which allows an underwriting profit in addition to investment income is proper if the insurance market is competitive.
- . The discounted cash flow technique is the correct way for a rate-maker to measure the amount of investment income. The return on United States Government securities is the proper interest rate for calculating investment income for a line of insurance.
- . At 5% interest, investment income on compensation reserves is approximately 12% of losses.<sup>2</sup>
- . The country-wide after-tax return on capital for compensation insurance in 1968-1975 was 4.2%. This is below the targets permitted in Massachusetts and New Jersey.<sup>3</sup> (VII-2,3)

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<sup>2</sup> This relationship is not indicative of the current ratio of investment income to losses, as interest rates are now well above the five percent level.

<sup>3</sup> The targets that are referred to apply to automobile insurance. The report does not indicate why it is valid to compare auto insurance rates of return to those for workers' compensation lines.

While rates in exclusive funds states, such as Washington and West Virginia, are reduced in recognition of investment income, the report concludes that nearly all of the investment income is excluded from the NCCI rate-making process. The report describes how investment income is not a factor in calculating policy year losses, calendar year losses and benefit level changes (VII-3,4):

- . Policy Year Losses: Initially, reserves are set aside which reflect the discounted value of the loss. However, the use of loss development factors to increase the amount of the initial reserve to the nominal amount of the loss offsets the use of investment income in establishing the initial reserve. (A simplified illustration is found in Appendix I.)
- . Calendar Year Losses: In a period of rising benefits and losses, calendar year losses are slightly discounted, including roughly 98% of the nominal loss. The use of an equal weighting for policy year losses and calendar year losses in rate-making dilutes the discount found in calendar year losses by one-half.
- . Benefit Level: The use of discounting in calculating the cost of benefit level changes, which may have a downward effect on rates, is offset by including losses at the new benefit level for rate-making.

Woodward and Fondiller contrast the use of investment income by the NCCI and other rate makers. New York, for example, reduces the calendar year losses by the income (estimated at 3%) earned on reserves for policies more than four years old. It does not make any adjustment to policy year losses. The impact of this treatment of investment income is a 1% reduction in rates. The exclusive state funds of Washington and West Virginia calculate rates from fully discounted losses. As the report states, the National Council in its rate making leaves investment income as potential profit for companies. (VII-6)

#### Methods of Calculating Investment Income

Woodward and Fondiller describe the typical calculation of investment income as "strictly historical". An average after-tax return is applied to an average of loss reserves available for investment to determine investment income.

The report asserts that the historical, accounting oriented, approach of determining investment income is not relevant to the rate-making process: "for the purpose of rate-making, it is necessary to determine the amount of investment income that will be generated from a policy year's premium before all claims from that policy year are paid out." (VII-9)

The report defines investment income as the difference between total policy year losses and the amount that would need to be reserved, invested at an assumed interest rate, in order to pay the benefits attributable to those losses. Investment income is expressed as a percentage of losses, and is derived by discounting the percentage of the loss that is paid out in each year and summing the present values of these losses. An example of this calculation is attached in Appendix I.

Woodward and Fondiller explain their preference for the discounted cash flow method of determining investment income over the historical accounting calculation in this way:

Our figure is the investment income that will accrue over the life of, and from the premium collected for, a policy year. This figure is one which is relevant to rate setting, because the goal of the rate setting is to determine the rate that will permit an insurer to cover costs and earn a return on owners' capital for a policy year.

The report also recommends that the interest rate on U.S. Government securities be used to discount future losses to their present value. The use of other return on investment criteria, such as interest and dividends to invested assets either misstate the real return (because unrealized capital gains and losses are not considered) or reflect on the success or failure of the firm's investment strategy.

#### Return on Capital

The objective in determining investment income as a percent of losses (or premiums) is to calculate a rate of return on the owners' capital. The report estimates that a carrier must have capital equal to 50% of its premium volume in order to absorb any unforeseen losses or excessive expenses. It is noted that many insurance companies maintain capital balances equal to 33-1/3 percent of premiums and that this percentage has been declining over the past decade.

Even though the capital required to support various lines of insurance differ, the report uses this average rate in its analysis of the rate of return on capital for workers' compensation insurance. As the report notes, there is "no single accepted way of allocating capital by line of business. The most straightforward procedure is to assign the same premium to capital ratio to all lines of business." (VII-14)

Based on assumptions concerning the discount rate (interest rate), the capital employed in compensation insurance and the effective tax rate, Woodward and Fondiller have estimated the return on capital for workers' compensation insurance carriers. Their calculations for the 1975 country-wide return on capital is shown below:

Workers' Compensation Insurance  
 Country-Wide Rate of Return on Capital  
 1975

(\$ Millions)

|                                              |                |
|----------------------------------------------|----------------|
| Net Earned Premium                           | \$5,896        |
| Losses and Loss Adjustment Expenses          | (4,852)        |
|                                              | <u>(1,156)</u> |
| Underwriting Profit (Loss)                   | ( 112)         |
| Dividends                                    | ( 388)         |
| Underwriting Profit (Loss) - after dividends | ( 500)         |
| Investment Income (Estimated)                | <u>582</u>     |
| Net Results after Investment Income          | \$ 82          |
| Ratio of Income to Premium                   | 1.4%           |
| Assumed Ratio of Capital to Premium          | 50.0%          |
| Ratio of Income to Capital                   | 2.8%           |
| Ratio of After-Tax Income to Capital         | 1.5%           |

Investment income has been assumed at 12% of losses, based on a discount rate of 5%. The capital employed in the business has been assumed at 50% of premium and the income tax rate is figured at the statutory 48%. (VII-20)

The same calculations were made based on Alaska's premium and loss history. 1974 data showed that insurer's earned 6.4% on capital, even though in the period 1969 to 1974, the average return was only 1.2%. Woodward and Fondiller make the following comments on Alaska's performance:

It is clear that private insurers have earned very little profit in Alaska. In addition, we must remember that the Alaska premium has grown from \$11 million in 1969 to \$26 million in 1974. To support this premium growth, carriers have had to increase their capital by \$7.50 million. The total profit after taxes, however, was only \$0.53 million. Thus, insurers have had to contribute capital from other states to support their Alaska workers' compensation writings. (VII-15)

Return on capital is also used by regulatory bodies to establish rate levels. Massachusetts and New Jersey are cited as examples of states in which the total return from underwriting and investment income is compared to the capital that has been invested. Regulators make an estimate of the capital required to run the business, then determine an appropriate rate of return based on comparative returns in other industries. The return is then used to determine the rates that the insurance carrier can charge. The report concludes this section by stating:

Whether this approach to the question of underwriting profit and investment income will be workable remains to be seen. One large automobile insurer has stopped writing insurance in New Jersey and others are refusing to accept new policymakers. These market problems are not completely due to the close regulation of profit loadings, but such regulation increases the carrier's perception of the state as unprofitable. (VII-8)

#### Competitive and Exclusive State Funds, Self Insurance

The report also briefly considers public policy options regarding workers' compensation insurance. The authors conclude that:

- . We favor the formation of a competitive state fund
- . . . and we do not favor the formation of an exclusive state fund.

- . Self-insurance should be closely regulated . . . and with Alaska's high benefit levels, strict adherence to the intent of the statute in awarding benefits is necessary. (VIII-2)

The report relates the following arguments for a competitive state fund: (VIII-3):

1. Lower costs to employers through lower expenses (no commissions or advertising, for example).
2. The availability of insurance to any risk.
3. The retention of premium dollars in the state, assuming they are invested locally.
4. The creation of jobs for state fund employees.
5. The establishment of a "yardstick" with which to measure the performance of commercial carriers.

Arguments against a competitive state fund include (VIII-6):

1. A state fund is socialistic competition with private enterprise.
2. State funds are typically poorly managed like other government bureaucracies.
3. A state fund is not needed because private enterprise is doing the job.

Brief comments are made on each argument and the report concludes by saying that "On balance, we see the arguments for a competitive state fund as somewhat stronger than those against."

The opportunity for lower costs to employers, the availability of insurance and the retention of capital within the state are also cited as arguments for an exclusive state fund. In addition, the report states that a larger saving may be available to employers since rates would not be set at levels to support the higher expense levels of private carriers. However, in presenting arguments against an exclusive fund, the report cites the potential for:

Social costs inherent in the tendency of some exclusive funds to be less rigorous in accident prevention, in payroll auditing, and in claim supervisions than private carriers or competitive funds. These abuses are difficult to prevent in the absence of the checks and balances provided by competition. (VIII-8,9)

In addition, efforts by legislators to hold down costs result in:

Budgets (which are) inadequate for adequate performance in the areas mentioned, not to mention data processing and statistics where data of the grade demanded of private carriers have, at least until lately in a few exceptional cases, been unheard of . . . .

For these reasons, we are profoundly skeptical of the longrun social benefit in establishing an exclusive fund. It will doubtless achieve a high ratio of benefits to expenses, but will it be a real insurance operation or a claim mill? . . . .

It seems to follow logically from the foregoing that if there is to be a state fund, it should be competitive. Whether there should be one at all is more a matter of social philosophy than of economics, since the figures are clearly on the side of having a state fund if insurance is to be available at the lowest possible cost. (VIII-8, 9)<sup>4</sup>

The report also recommends that self-insurers be subject to more regulatory scrutiny and suggests that "a mechanism is definitely needed for regular review of self-insurer claim liability and up-dating of whatever bonds or letters of credit they are required to post so as to assure payment." (VIII-11)

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<sup>4</sup> No where in this report have the authors presented an analysis which would lead to the definitive conclusion that a state fund provides insurance at the lowest possible cost.

Woodward & Fondiller  
September 17, 1980  
Page 11

Impact of Administrative Policies on Costs

The report concludes with a brief comment about the impact of administrative practices on the costs of providing workers' compensation insurance. Higher costs are to be expected when:

Laxity enters and claims are awarded on scanty evidence, where cases are reopened and awards augmented solely for hardship reasons, where claims are not properly investigated, where workmens' compensation becomes an adjunct to unemployment insurance and welfare . . . (VIII-12)

## WOODWARD AND FONDILLER SUMMARY

### APPENDIX I

#### Illustration I

The following is our attempt to illustrate how loss development factors might offset the use of loss reserve techniques under the NCCI procedures, based on the description in the Woodward and Fondiller report. In addition, the illustration shows how calendar year losses equal policy year losses, if the company's premiums and losses do not grow over time. If growth does occur, the calendar year losses would understate policy year losses.

#### Assumptions

A new insurance company incurs a loss of \$600 in each of the first five years of its operations. For each loss, it must pay benefits in three equal annual installments, beginning one year after the injury. Assuming a 5% discount rate, the reserve is established at the present value of the loss payments - \$544.5. This calculation of present value is shown in the footnote to the illustration. The initial reserve is 'developed' at a constant rate over the three year period, until the total amount added to reserves for each loss equals the amount paid out. These additional reserves are not needed to insure benefit payments, assuming the carrier is able to achieve a 5% return on his initial reserve.

ILLUSTRATION I (continued)

|                                           | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> | <u>Year 4</u> | <u>Year 5</u> |
|-------------------------------------------|---------------|---------------|---------------|---------------|---------------|
| <u>Policy Year Loss</u>                   | \$600.0       | \$600.0       | \$600.0       | \$600.0       | \$600.0       |
| <u>Calendar Year Loss</u>                 |               |               |               |               |               |
| Change in Reserve for<br>Current Loss     | \$544.5*      | \$544.5       | \$544.4       | \$544.5       | \$544.5       |
| Change in Reserve for<br>Loss Development |               |               |               |               |               |
| Year 1                                    | -             | 17.9          | 18.5          | 19.1          | -             |
| Year 2                                    | -             | -             | 17.9          | 18.5          | 19.1          |
| Year 3                                    | -             | -             | -             | 17.9          | 18.5          |
| Year 4                                    | -             | -             | -             | -             | 17.9          |
| Year 5                                    | -             | -             | -             | -             | -             |
|                                           | <hr/>         | <hr/>         | <hr/>         | <hr/>         | <hr/>         |
| Total Change in Reserves                  | \$544.5       | \$562.4       | \$580.9       | \$600.0       | \$600.0       |

\* Footnote to Illustration I

The formula for discounting cash flows to their present value, at an assumed rate of return is shown below, where  $r$  is the interest rate expressed as a percentage.

$$\text{Present Value of a Series of Payments} = \frac{\$ \text{ to be paid in Year 1}}{(1 + r)^1} + \frac{\$ \text{ to be paid in Year 2}}{(1 + r)^2} + \frac{\$ \text{ to be paid in Year 3}}{(1 + r)^3} + \dots + \frac{\$ \text{ to be paid in Year N}}{(1 + r)^N}$$

Therefore, the present value, discounted at 5%, of a payment of \$200 a year for each of three years is calculated as follows:

|                            | <u>Year 1</u>          |   | <u>Year 2</u>            |   | <u>Year 3</u>            |
|----------------------------|------------------------|---|--------------------------|---|--------------------------|
| Present Value of Benefit = | $\frac{\$200}{(1.05)}$ | + | $\frac{\$200}{(1.05)^2}$ | + | $\frac{\$200}{(1.05)^3}$ |
| =                          | \$190.4                | + | \$181.3                  | + | \$172.7                  |
| =                          | \$544.4                |   |                          |   |                          |

This money, invested at 5% would provide the required stream of benefit payments:

|                               | <u>Year 1</u>    | <u>Year 2</u>    | <u>Year 3</u>    |
|-------------------------------|------------------|------------------|------------------|
| Initial Investment of Reserve | \$544.5          | \$371.7          | \$190.3          |
| 5% Interest Income            | <u>27.2</u>      | <u>18.6</u>      | <u>9.5</u>       |
| Balance at Year End           | \$571.7          | \$390.3          | \$199.8          |
| - Benefit Payment             | <u>(\$200.0)</u> | <u>(\$200.0)</u> | <u>(\$200.0)</u> |
| Balance at Year End           | \$371.7          | \$190.3          | (\$ .2)*         |

\*Totals do not add to zero because of rounding error.

## ILLUSTRATION II

Woodard and Fondiller use the discount formula to calculate investment income as a percentage of loss. With the loss equal to 1, the report subtracts the present value of the percentage of that loss paid out in each year, in order to determine the percentage of that loss left as investment income:

$$\frac{\text{Investment Income}}{\text{Loss}} = 1 - \left[ \frac{\% \text{ of loss paid in Year 1}}{(1+r)^1} + \frac{\% \text{ of loss paid in Year 2}}{(1+r)^2} + \dots + \frac{\% \text{ of loss paid in Year N}}{(1+r)^N} \right]$$

In Illustration 1, 33.3% of the loss of \$600 was paid out in each of three years. The calculation below shows what percentage of the loss remained as investment income:

$$\begin{aligned} \frac{\text{Investment Income}}{\text{Loss}} &= 100\% - \left[ \frac{33.3\%}{(1.05)} + \frac{33.3\%}{(1.05)^2} + \frac{33.3\%}{(1.05)^3} \right] \\ &= 100\% - [31.74\% + 30.23\% + 28.79\%] \\ &= 100\% - 90.76\% \\ &= 9.24\% \end{aligned}$$

The same answer can be calculated by simply using the numbers that were derived in Illustration I, as shown below:

$$\frac{\text{Investment Income}}{\text{Loss}} = \frac{\$600 - \$544.5}{\$600} = \frac{\$55.5}{\$600.0} = 9.25\%$$

\$600 equals 100% of the loss; \$544.5 equals the present value of the payout, the difference between the two equals what is termed by Woodward and Fondiller as "investment income." This difference divided by the loss equals the "investment income" as a percentage of the loss.

ALASKA WORKERS' COMPENSATION  
ARE ALTERNATIVES PRACTICAL?

1. PURPOSE

To discuss costs associated with Alaska Workers' Compensation and alternatives to traditional insurance coverages.

2. DISCUSSION

a. Alaska Workers' Compensation rates reflect the cost of benefits in the form of loss payments and insurance company costs associated with providing coverage for such benefits.

b. Alaska statistics on losses incurred as a percentage of premium for a five year period are as follows:

|        |       |
|--------|-------|
| - 1975 | 61.4% |
| - 1976 | 74.5% |
| - 1977 | 71.2% |
| - 1978 | 95.8% |
| - 1979 | 87.4% |

c. Average insurance company expenses related to workers' compensation are 29.5% of premium.

d. In order to reduce workers' compensation rates, these costs must be lowered. Costs associated with benefits can only be lowered by:

- Reducing the frequency and severity of accidents

- Reducing benefit levels and medical fees associated with work-related injuries

e. Reducing insurance company costs cannot be done merely by eliminating the insurance company, since most of these costs are needed to administer the payment of benefits - even under self-insurance or other alternative programs.

f. Other factors:

1. Group insurance programs do not directly reduce accidents or costs associated with such accidents unless through such a group program accident frequency and severity can be reduced.

2. Insurance company costs are not significantly reduced under a group insurance program. Claims adjustment expense, premium taxes and other acquisition costs will be the same for the insurer, again unless the frequency of losses can be reduced.
3. The potential for dividends under group insurance programs again are dependent upon the ability to reduce the costs of losses or company operating expenses. If these factors cannot be reduced, dividends will not be earned.
4. Captive insurance companies are just that - insurance companies. Forming a captive does not reduce benefits, reduce losses and surely does not lower expenses since the captive will incur the same operating expenses as an insurance company.

3. CONCLUSION

- a. Only by reducing costs associated with workers' compensation can premium levels also be reduced. Alternatives that merely group employers or create alternative insurance company mechanisms do not function to reduce costs.
- b. Alternatives to insurance that impose a liability on the participants for ultimate program costs could function to increase insurance premiums. Note the industry-wide loss ratios for 1978 and 1979.
- c. Only by reducing accident frequency and severity and/or reducing benefit levels can workers' compensation premiums be reduced. The former is a function of loss prevention activity and the latter is a function of the Alaska legislature.

DEN/jps

SECOND INJURY FUND  
Budget Request FY 82

Administrative Costs:

|                                            |       |
|--------------------------------------------|-------|
| Personnel, Travel, Supplies & Contractural | 182.4 |
| A.G.'s Office                              | 26.7  |

Grants & Claims:

|                                     |       |
|-------------------------------------|-------|
| Benefits to individuals (Voc Rehab) | 589.5 |
| Claims (Reimbursement)              | 765.4 |

|       |         |
|-------|---------|
| TOTAL | 1,564.0 |
|-------|---------|

SECTION ANALYSIS - AS23.30.155(n)

This proposed amendment would authorize the Board to award a lump sum for all types of compensation whenever it determines that it is in the best interest of the employee and does not cause substantial hardship to the employer.

Currently, the Board may only award lump sums for unscheduled permanent partial disability under AS23.30.190(20). There is no authority to award lump sums on the other disability types or death benefits, except through a compromise and release agreement. This places the employee or beneficiary at a particular disadvantage in that under the terms of an agreement all future compensation for temporary total, temporary partial, permanent partial or permanent total disabilities are waived, and, in many instances, the lump sum is reduced to present value. This severely restricts the options of the employee or beneficiary who may feel it is in the best interests to settle the claim in a lump sum, but may only do so through a compromise and release.

The Board also questions the appropriateness of having the authority to approve lump sum settlements through an agreement process, while unable to do so through the hearing process.

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**PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT**

*Waller Comp*

Presentation  
of  
Preliminary Findings  
of a  
Comprehensive Study of Vocational Rehabilitation  
in the  
Alaska Workers' Compensation Program

Presented by

Zee Pamplin Jackson  
Rehabilitation Consultant  
P.O. Box 3130  
Anchorage, Alaska 99510  
(907) 264-2460

January 26, 1982

Abstract, Summary of Recommendations, Overview

## ABSTRACT

This study was conducted to determine the effectiveness of the delivery system for rehabilitation benefits to injured workers covered by the Alaska Workers' Compensation Act. Factors examined in evaluating the system included the average time from the date of injury to the date of referral to rehabilitation, the percentage of lost-time cases receiving rehabilitation benefits, the percentage successfully rehabilitated, the average time spent in rehabilitation programs, and the average cost of such programs. The primary sources of information and data were the state Division of Vocational Rehabilitation and one of the private rehabilitation firms doing business in Alaska. Another source of data was a survey of injured workers who had previously participated in rehabilitation programs, and of workers who had signed compromise and release agreements in which the right to participate in such programs as part of the compensation system was waived. The rehabilitation programs used in two other state workers' compensation systems were evaluated, in order to show examples of the potential savings to be derived from a properly structured and managed system, and to examine procedures to be considered in developing an effective delivery system for rehabilitation. Gathering quantifiable data from all sources was difficult, due to the incomplete nature of the available records.

The study found that the delivery system is not providing timely and adequate rehabilitation services to a substantial number of those workers who could benefit from them, for two primary reasons. First, the system does not afford prompt referral of appropriate cases to rehabilitation facilities. Second, the Division of Workers' Compensation is not consistently advising workers of their potential entitlement to these services, nor is it monitoring the services being provided, primarily due to a lack of resources and trained personnel, as well as the absence of established guidelines and procedures for monitoring the system.

## SUMMARY OF RECOMMENDATIONS

### RECOMMENDATION 1

That insurers/employers report to the Division of Workers' Compensation:

- a. All injured workers who experience continuous time loss of 90 to 120 days from the date of injury, depending on the staffing level of the Division, and
- b. All acutely injured workers where an immediate determination can be made that the worker will not likely be able to return to the job held at the time of injury.

### RECOMMENDATION 2

That the Workers' Compensation Division screen reports no later than 5 working days from the date each report is received.

### RECOMMENDATION 3

That subsequent to, or during the screening process, the Workers' Compensation Division contact each reported worker. The purpose for contact is to explain the benefits to which the worker may be entitled, and to set the tone for a positive rehabilitation outcome by explaining the objective of rehabilitation, the worker's rights and responsibilities in the rehabilitation effort.

### RECOMMENDATION 4

That the Workers' Compensation Division establish and publish the procedural mechanism to support the reporting, screening and contact activities.

### RECOMMENDATION 5a

That pursuant to the adoption of regulations on vocational rehabilitation, (See Exhibit 1 ) the Workers' Compensation Division establish, publish and distribute guidelines for providers of rehabilitation services in accordance with recommendation 5b through 5e, and the following time frames:

- Completion of Vocational Evaluation and Plan Recommendation - 6 weeks
- Complete Development of Plan - 6 weeks
- Direct Placement Program - 3 months
- On-The-Job Training - 3 to 6 months, depending on the skills to be acquired coupled with the skill level of the injured worker.
- Vocational Training - 52 weeks (extensions subject to prior approval by the Board)

#### RECOMMENDATION 5b

That rehabilitation providers issue a report within 30 days of initial contact with an injured worker. Background information regarding the worker's age, education, work history, and general medical condition, as well as a summary of activities conducted during the 30 day period should be included in the report. Information regarding the next immediate plan of action should also be included.

#### RECOMMENDATION 5c

That plans submitted for approval contain pertinent information as outlined in proposed regulations on Vocational Rehabilitation 8 AAC 47.040(b)(1) through (9).

#### RECOMMENDATION 5d

That subsequent to implementing plans, rehabilitation providers issue monthly progress reports sufficient in content and scope to inform all interested parties of the progress being made toward achieving the vocational goal of the plan.

#### RECOMMENDATION 5e

That approval by the Board must be obtained prior to amendment, suspension or termination of an approved rehabilitation plan.

#### RECOMMENDATION 6

That insurers provide assistance to employers in developing programs for re-employment of injured workers.

#### RECOMMENDATION 7

That insurers/employers arrange for counselor services to include on-site-job analyses and assistance in modification of jobs to enhance reemployment opportunities of an employer's injured employees.

#### RECOMMENDATION 8

That the Workers' Compensation Division encourage the development and implementation of reemployment programs by providing positive monitoring/endorsement of the efforts of parties.

#### RECOMMENDATION 9

That contractual agreements be negotiated for reemployment/rehabilitation of injured union members.

#### RECOMMENDATION 10

That insurers/employers increase their efforts to effectively and timely communicate with injured workers by contacting them as soon after the injury as possible to explain their entitlement to benefits and the procedure for securing these benefits.

#### RECOMMENDATION 11a

That in the case of workers experiencing time loss, who may need rehabilitation services, insurers/employers assign a counselor to contact the worker as soon as this determination can reasonably be made.

#### RECOMMENDATION 11b

That insurers/employers consider hiring a rehabilitation professional to enhance their ability to effectively communicate with, and timely provide services for injured workers.

#### RECOMMENDATION 12a

That insurers assist employers by providing loss control services to assure appropriate rating consistent with their safety record and reemployment practices.

#### RECOMMENDATION 12b

That to supplement the loss control services provided by insurers, employers seek the assistance of the States Division of Insurance in rating matters and methods.

#### RECOMMENDATION 13

That counselors enhance their efforts to place injured workers by informing employers of Targeted Jobs Tax Credit provisions and by providing assistance necessary to facilitate employer participation in the program.

#### RECOMMENDATION 14

That language in AS 23.30.040(e) be changed to remove the dollar amount and provide for necessary costs of rehabilitation services subject to Board approval.

#### RECOMMENDATION 15

That the Workers' Compensation Division increase employer awareness and encourage employer use of the Second Injury Fund in employment of industrially injured workers. Increased publicity and eligibility interpretation will enhance this effort.

#### RECOMMENDATION 16

That cooperative agreements involving transfer of Second Injury Fund monies to the Division of Vocational Rehabilitation be discontinued.

#### RECOMMENDATION 17

That criteria for development, recommendation and implementation of rehabilitation plans, in accordance with recommendations 5a through 5e, be applied to all providers of vocational rehabilitation services to injured workers covered by the state compensation laws.

#### RECOMMENDATION 18

That as a general policy, the Board deny settlement of claims, prior to an injured worker's completion of a supervised rehabilitation program.

#### RECOMMENDATION 19

That the Division of Workers' Compensation acquire the necessary staff to develop and implement a workers' compensation rehabilitation program designed to administer and monitor the rehabilitation benefits of industrially injured workers covered by the Alaska Workers' Compensation Act.

## OVERVIEW OF REHABILITATION

### IN WORKERS' COMPENSATION

#### A. HISTORY OF REHABILITATION PROVISIONS FOR INDUSTRIALLY INJURED WORKERS.

Rehabilitation in workers' compensation programs in the United States has been paid increasing attention over the past 10 years following publication of the 1972 Report of the National Commission on State Workmen's Compensation Laws. However, the realization that workers' compensation laws should include provisions of rehabilitating industrially injured workers was manifested by the Massachusetts Industrial Accident Board as early as 1914, when a member of that board went to study the German program. Pursuant to that study, and a meeting in 1916 of the International Association of Industrial Accident Boards and Commissions (IAIABC), during which the delegates were advised that a primary goal of workers' compensation programs would be the rehabilitation of disabled workers, the first state vocational rehabilitation law was enacted in 1918 in Massachusetts. The law, administered by the Industrial Accident Board, covered only those persons disabled by industrial accidents and occupational diseases. Following Massachusetts' lead, other states enacted laws with similar rehabilitation provisions. Congress, through the passage of Public Law 236 in 1920, created the State/Federal Vocational Rehabilitation Program. Its statement of purpose provided for the promotion of vocational rehabilitation of industrially disabled workers. Thus, persons with occupational disability were the prime target for vocational rehabilitation services. Subsequent Congressional mandates, however, shifted the attention to other specific disability groups and resulted in obscuring the focus on industrially injured workers. This shift in focus, coupled with the existence of the common law tort liability in the compensation system with its inherent litigation, resulted in the failure of both systems to adequately provide rehabilitation services to the industrially disabled: a condition which still exists today, according to the report of the National Commission (National Commission on State Workmen's Compensation Laws, 1972) and Larson, who suggests that one-half of 1% of industrially injured workers are rehabilitated under the federal/state programs. Larson further suggests that 10% of workers currently being injured could benefit from vocational rehabilitation services. (Larson, 1980).

#### B. REHABILITATION DEFINED.

The increased emphasis on the inclusion of rehabilitation benefits in a modern workers' compensation system has prompted attempts by those in the system to define rehabilitation. A noteworthy observation is made by Sawyer in this regard, wherein he makes a distinction between the philosophical differences in rehabilitation of the workers' compensation system and the state/federal program. He observes that the objective of workers' compensation rehabilitation is to restore the industrially injured worker to a state of employability equal to, or as near as possible to that of his pre-injury status, through the provision of only those services necessary to achieve this objective. On the other hand, Sawyer notes, the state vocational program seeks to rehabilitate disabled persons to their maximum potential through the provision of

educational and other services deemed necessary by the disabled worker to achieve a chosen vocational objective. (Sawyer, 1978).

A further distinction can be made through examination of the primary funding source of each program. The state vocational rehabilitation program is supported by federal and state funds, while the cost of rehabilitation in a workers' compensation system is borne by private industry through contributions to a special or second injury fund and direct payment to private rehabilitation providers. The employer further contributes to the rehabilitation of industrially injured workers through payment of compensation benefits during the period of rehabilitation.

A third distinction, perhaps more revealing than the first two, is the difference in population served by each system. As was previously discussed, Congressional mandates have directed the focus of the state/federal program to give priority to specific disability groups classified as severely disabled. These include developmental disabilities, congenital, orthopedic and neurological conditions, and catastrophic injuries resulting in paraplegia and quadriplegia. The bulk of individuals in these disability categories are adolescents and young adults, most of whom have never participated in the world of work. Therefore, the process employed in making them work ready is habilitation, as opposed to rehabilitation. Since their backgrounds do not include significant work experience which would have imparted marketable skills, their plans usually include long-term pre-vocational and vocational preparation centered around academic training toward a specific career goal chosen by the individual. Contrast this to the industrially injured group, who for the most part, have not been severely disabled by their injuries according to state/federal guidelines, and whose pre-injured work experiences have imparted skills which can usually be marketed in the workplace. On the whole, their natural orientation is not likely to be toward academic or classroom training, as they did not choose this method to enter the world of work to begin with, and they have not usually chosen to engage in academic pursuits at any point in their work life prior to the injury and subsequent visits to the state vocational rehabilitation office. It is reasonable to conclude that the approach taken in assisting them to return to the workplace will differ considerably from that taken for the other group.

The socially underlying concept of rehabilitation embraced by rehabilitation professionals is the intrinsic dignity of man, his feeling of self-worth and his right to life, liberty and the pursuit of happiness. In a workers' compensation system, this concept cannot realistically exist independent of economic wisdom. The timely return of an industrially injured worker to a safe employment status, commensurate with that held at the time of injury, through the investment of necessary resources, is a logical goal in a workers' compensation system. The end result is an economic as well as a social asset to the injured worker, the compensation system and society. Well-managed, cost-effective rehabilitation will enable many disabled workers to return to productive jobs and thus reduce compensation costs.

#### C. THE APPROPRIATENESS OF REHABILITATION IN A WORKERS' COMPENSATION SYSTEM.

In 1976, the Rehabilitation Committee of the International Association of Industrial Accident Boards and Commissions conducted research on rehabilitation in state compensation agencies. The Committee called for the inclusion of rehabilitation services in all state workers' compensation programs and went

on to submit a model program of medical care and rehabilitation which was adopted by the IAIABC in 1977. The stated purpose of the model program was the assurance and coordination of efficient and timely delivery of services necessary to restore the industrially disabled employee to optimum physical and vocational well-being. (Ross, 1976).

The need for rehabilitating injured workers was stressed in the 1977 report of the President's Interdepartmental Workers' Compensation Task Force. The report which stressed reemployment, advocated increased private rehabilitation efforts by employers and insurance companies. (Interdepartmental Workers' Compensation Task Force, 1977).

The Insurance Rehabilitation Study Group is an organization whose purpose is to provide a forum for members of the insurance industry to explore and develop concepts and programs of rehabilitation and medical administration applicable to all phases of insurance. The group undertook a project to develop guidelines and language dealing with rehabilitation and subsequently published a report which in part stated:

While insurance losses and benefits are usually stated in monetary terms, the full consequences of human disability cannot be measured by money alone. Earnings lost due to accident or sickness can be replaced and medical expenses can be reimbursed, but there is no meaningful way to financially translate the value of an arm or a leg, or the personal dignity of being able to contribute to society as a useful member rather than merely existing disabled and dependent.

The study group went on to state that:

If insurance is to protect against these human losses, it must do more than provide financial compensation alone. It must also strive to restore such losses. Insurance should provide the means for disabled workers to return to gainful employment whenever possible, and to regain as much functional independence as they can, even if they cannot return to work. Compensation cannot accomplish these goals without rehabilitation. (Insurance Rehabilitation Study Group, 1975).

The Study Groups' report included its model rehabilitation program.

Based on the cited research and studies conducted by recognized authorities in workers' compensation, it is clear that the consensus among those in the compensation system supports the premise that rehabilitation is an effective tool which should be included in workers' compensation if the system is to fulfill its total responsibility to the industrially injured worker and to society within the economy.

#### D. WHO SHOULD FUND REHABILITATION IN WORKERS' COMPENSATION

Leading insurance companies, employers and other members of the workers' compensation community support the belief that all costs of the system should

be borne by the employer and not by the general public. Sawyer suggests:

While some individual insurers and self-insured employers still approach the subject of rehabilitation with varying degrees of acceptance, the matter of involvement is no longer an option. Through a tition of either basic legislative changes or administrative regulation, the responsibilities of carriers and employers to provide rehabilitation services specifically directed toward returning injured workers to suitable gainful employment are spreading to all jurisdictions. (Sawyer, 1981.)

E. THE ROLE OF THE STATE WORKERS' COMPENSATION AGENCY IN REHABILITATION.

The National Commission on State Workers' Compensation Laws suggested that a state agency has six primary obligations in a workers' compensation program. Those obligations are applicable to rehabilitation and will be used for the purpose of this discussion.

First, the agency must ensure that the basic objective of rehabilitation is met by taking the initiative to administer the laws relative to rehabilitation.

Second, the agency must continually review the performance of the rehabilitation program and make procedural changes to improve the program when change is indicated.

Third, the workers' compensation agency is obliged to advise workers of their rights and obligations under the law and to assure that they receive the rehabilitation benefits to which they are entitled.

Fourth, the agency should apprise employers and carriers of their responsibilities and rights under the law. Physicians and attorneys must also be informed of their obligations in the rehabilitation process.

Fifth, the agency should assist in voluntary and informal resolution of rehabilitation issues and assure that such resolutions are consistent with the law.

Sixth, in the absence of voluntary resolutions, the workers' compensation agency must make adjudicatory decisions to resolve issues affecting rehabilitation.

The compensation agency must have sufficient authority and staff to fulfill these six obligations. Moreover, the skills and background of the staff must be consistent with the functions to be served and the tasks to be performed.

PART ONE

Five Specific Goals of Rehabilitation  
in a  
Workers' Compensation Program

## PART ONE

### Five Goals of Rehabilitation in a Workers' Compensation Program

#### I. Early Identification of Injured Workers Who Potentially Need Rehabilitation

Workers who may not be able to return to regular employment after suffering job related injuries should be referred to rehabilitation as soon as this determination has been made or can be reasonably predicted. Proponents of the early involvement theory share the common realization that time can be a deadly enemy to successful rehabilitation. Benign neglect of what originally may be a minor disability can result in a protraction of the condition to the point where an unwholesome outlook regarding return to work becomes permanent and fixed, and the psychological hurdle required to overcome this is extremely difficult if not impossible to achieve.

##### Needs:

1. A funding source (employer/insurer)
2. A non-adversary approach (employer/carrier)
3. Effective administration by workers' compensation
  - a. Screen reports
  - b. Contact workers
  - c. Monitor services
  - d. Settle disputes

#### II. Use of Competent Rehabilitation Providers

The unusual characteristics of workers compensation and the different approach required for successful rehabilitation, as this report has previously elaborated, are strong arguments for the use of counselors trained in industrial rehabilitation. While this training does not require an intimate knowledge of the law, it should include the ability to recognize the needs of the industrially injured population and the compensation community alike. The backgrounds of most rehabilitation professionals include formal training in rehabilitation or a behavioral science. However, institutions have traditionally failed to include substantial courses on workers' compensation in rehabilitation programs. Thus, the degree of competence required to achieve success in a workers' compensation rehabilitation program has generally been acquired through well designed, in-service programs and practical hands on training.

### Critical Elements Needed:

1. Sound background in basic rehabilitation principles
2. Ability to work with multiple parties
3. Willingness to deliver according to needs of the system
  - direct placement approach
  - on-the-job training
  - appropriate evaluation (timely and limited)
  - timely developed training (as needed only)
  - timely issued reports (information)
4. Respect for, and responsive to Board authority

### III. Provide Opportunities for Return to Direct Employment

The success of rehabilitation in a workers' compensation program rests on the attainment of one of its most critical goals: the earliest possible return of workers to direct employment. Members of the workers' compensation community share the widely held belief that the fewer changes made in the life of an injured worker in the rehabilitation process, the more successful that process is likely to be. Conversely, a more complex rehabilitation plan requiring numerous changes in the life of the injured worker, and requiring a proportionate period of time to implement, diminishes the chance of a successful outcome.

#### Needs:

1. Employer Responsibility
  - modify old job
  - offer new job  
(Use on-site job analysis)
2. Employee Responsibility
  - cooperate w/employer efforts
  - timely accept job offer
  - maintain flexibility
3. Union Support and Involvement
  - go to bat for member (negotiate)
  - negotiate contract agreements to support light duty and rehabilitation

#### 4. Counselor Role

- consult physician for sound work restrictions
- perform on-site job analysis
- counsel worker toward accepting job
- keep all interested parties informed

#### 5. Attorney Obligation (for both parties)

- remain on side line and advise respective clients to cooperate

#### 6. Workers' Compensation Agency

- advise, assist, monitor

#### 7. Board

- settle disputes

### IV. Maintenance of Atmosphere Conducive to Rehabilitation

Rehabilitation is a process which does not occur in isolation. The conditions and atmosphere surrounding this process are primary determinants of its eventual outcome. The screening and early identification of injured workers who potentially need rehabilitation services will not necessarily result in a successful outcome if the process is fraught with hostilities, mistrust and excessive litigation. Certain elements which may be conveniently termed the "Four C's" must be present to ensure successful rehabilitation.

1. Concern - employer/carrier for worker
2. Communication - employer/carrier - worker - workers' compensation agency - counselor - physician - attorney
3. Coordination - counselor
4. Commitment/Cooperation -- all parties

### V. Provide Incentives, Remove Disincentives to Rehabilitation

A rehabilitation program which makes early identification of workers needing rehabilitation, provides for early return to direct employment, uses competent rehabilitation providers and maintains an atmosphere conducive to rehabilitation, may fall short of fully achieving the primary objective of a workers' compensation system unless it maintains sufficient incentives and removes disincentives in its rehabilitation program. Caution must be exercised so that expectations regarding rehabilitation are not solely based on the premise that good faith efforts will spontaneously occur. There must be a realization that basic human nature usually requires the existence or application of stimuli necessary to create sufficient incentives before actions are taken to achieve a desired goal.

## A. Incentives

### 1. Proper Rating of Employers.

Authorities in workers' compensation have suggested that internalizing the costs of workers' compensation by properly rating small, as well as large employers would provide an incentive for reemploying injured workers.

- a. Experience Rating - provides for a before the fact look at safety and reemployment record for recent years. A good record results in credit toward future premium.
- b. Retro Rating - employer pays advance premium based on classification rate times estimated payroll. Losses are assessed after period of months (pre-determined). Depending on experience, employer may get reimbursed.

### 2. Targeted Jobs Tax Credit

- Incentive for private employers who hire certain targeted groups (vocational rehabilitation clients included)

50% of first \$6000 wages for first year

25% of first \$6000 wages for second year

### 3. Second Injury Fund

- Widely publicized
- Adequate eligibility interpretation
- Effectively managed - guard against abuse

### 4. Additional maintenance for extra expense during rehabilitation

### 5. Monitoring by workers' compensation agency

## B. Removal of Disincentives

- 1. Prevention of premature and inappropriate compromise and release settlements
- 2. Eliminate excessive litigation

## C. Other Stimuli

- 1. Penalty for non-cooperation (Both Parties)
- 2. PPD determination should reflect non-cooperation

PART TWO

Findings, Conclusions, Recommendations

## SUMMARY AND INTERPRETATION OF DATA

The primary providers of vocational rehabilitation services to injured workers in Alaska are the state vocational rehabilitation agency and two private rehabilitation firms. The state agency and one of the private firms, offered data retrieved from their automated data systems. Collection of data from the other private firm was precluded due to incomplete records which lacked essential information pertinent to the study. Limitations do exist for the purpose of comparing data collected from the two sources.

First, data for the state rehabilitation program reflects a three year period from FY 78 through FY 81. Data supplied by the private rehabilitation firm is for the FY 81 period.

Second, terms common to rehabilitation of disabled persons have several definitions for the purposes of statistics, depending on who collects the data. For example, a workers' compensation rehabilitation program, for purposes of closure statistics, defines a successfully rehabilitated worker as one who has 1) maintained paid employment for at least sixty days; 2) in a job consistent with the restrictions imposed by the disabling condition. The state rehabilitation program defines a successfully rehabilitation person as one who has completed a rehabilitation program and has 1) maintained paid employment for at least 60 days in a job which may or may not be consistent with restrictions imposed by the disabling condition; or 2) has not returned to work, but has been restored to an optimum level of function as an unpaid home maker. In this case, the private rehabilitation firm describes a successful case as one in which the injured worker 1) returned to paid employment in a job which may or may not be consistent with restrictions imposed by the disabling condition; or 2) whose claim was closed or denied as a result of the involvement of the rehabilitation firm. Again, it is important to keep these limitations in mind when making comparisons between data presented for the two sources.

Tables 1 and 2 present data received from the state vocational rehabilitation program. Tables 3 and 4 present data received from the private rehabilitation firm.

Although data limitations do not allow us to make any unequivocal conclusions concerning workers' compensation rehabilitation in Alaska, several widely accepted ideas are supported by the figures presented here. For both the state/federal program and the private sector rehabilitation firm, the earliest referrals become, on average, the least expensive cases. While there is an anomaly in the trend at 19-24 months (where both providers experienced an unexplainable dip in cost), the general direction is one of increased costs as the time between date of injury and date of referral increases. There do appear to be differences between the state program and the private firm in terms of average cost. In Table 3a, the private rehabilitation firms shows 75% of the sample cases with costs below \$2500. The comparable figure for the state is 64% below \$2500, seen in Table 2a. This difference can be explained several ways. First, as seen in Table 1, the average time between date of injury and date of referral for the state/federal program is 16.8 months. A similar figure for the private firm is 11.8 months. Given the relationships expressed in Tables 2b and 3b, one would then expect the state program's average costs to be higher. A second factor affecting costs is the average time spent in the rehabilitation

process. Table 1 shows the state program's clients spending 27 months, on average, in rehabilitation in FY 80. A similar figure from the private firms was 7.4 months, on average, between referral and closure. A third explanation for cost differences between the State program and the private firm is found in Table 1 which shows a significant percentage of the state/federal program's cases received college training in FY 80. While no similar figure exists for the private rehabilitation firm, meetings and discussions revealed that very few of their clients received college training. Given rising tuition costs, this would clearly add significant expense to the State program's services.

Table 1 shows that as the percent of clients receiving college training has decreased since FY 78, the percent of clients successfully rehabilitated has increased. This inverse relationship supports studies which have been conducted outside Alaska and concluded that shorter, less expensive programs tend to be more successful than longer and more expensive rehabilitation plans.

Table 1 also shows 54% of DVR's eligible referrals experienced successful outcomes in FY 80, although it is not known how many unpaid homemakers, or workers whose jobs were not consistent with restrictions imposed by the disabling condition, were included in this figure. A similar figure in the private firm's survey, seen in Table 4, is 55%. However, it is important to note that in the private firm survey, 34 cases were closed "via cash settlement/account denies coverage," and were classified as "successful" even though it was not known whether these persons returned to productive employment consistent with restrictions imposed by the disability. Subtracting these cases from the total number of successful cases then, reduces the success factor to 20.7%.

While many inferences and suggestions can be drawn from the data presented in Tables 1-4, one must remember that the percentage of clients involved in rehabilitation with respect to the total number of time-loss cases is quite small. For FY 81, the Second Injury Fund officer estimated 200-250 cases were determined eligible for second injury rehabilitation funds. From FY 78 - FY 80, the Workers' Compensation Division processed an average of 6838 time-loss cases. Because of the referral time lag mentioned earlier, it cannot be stated that a certain percentage of time-loss cases from a given year will receive rehabilitation. However, an estimated 3 to 4 percent of time-loss cases in a given year, eventually become eligible for rehabilitation. The Second Injury Fund officer has also reported that in a recent purge of 45 active rehabilitation files, only 17 (38%) had completed a program and returned to work. He cited the signing of compromise and release agreements as a major reason for workers dropping out of a program. In fact, the survey of 142 workers eligible for rehabilitation found almost 70% of them had signed compromise and release agreements, and most of these were after rehabilitation had begun.

What conclusions do these figures suggest? Because they represent such a small number of injured workers, a pure statistician could take any one piece of data mentioned here and find it is not statistically valid. But when all pieces are considered together, the data begins to support itself. Early referrals should cost less, and they do in Alaska. A longer period between injury and referral should raise costs, and it appears to do so for both programs.

## **GOAL I**

### **Early Identification of Injured Workers Potentially Needing Rehabilitation.**

#### **CONCLUSION**

There is no universally accepted, hard and fast rule regarding the point at which an injured worker should be referred to rehabilitation. Among the workers compensation agencies with organized rehabilitation units, the range is 60 to 120 days of continuous time loss from the date of injury. Immediate reporting is encouraged for workers with acute or catastrophic injuries.

Based on available data, it appears that the average time from the date of injury to referral of injured workers to rehabilitation is 14.3 months in Alaska. (See Tables 1 & 3) In light of the existing trends among those agencies with organized rehabilitation units, coupled with the results of two of the units discussed in the main report, it appears that the Alaska system could benefit from changes which would enhance its efforts to achieve the early identification goal.

#### **RECOMMENDATION 1**

That insurers/employers report to the Division of Workers' Compensation:

- a. All injured workers who experience continuous time loss of 90 to 120 days from the date of injury, depending on the staffing level of the Division, and
- b. All acutely injured workers where an immediate determination can be made that the worker will not likely be able to return to the job held at the time of injury.

#### **RECOMMENDATION 2**

That the Workers' Compensation Division screen reports no later than 5 working days from the date each report is received.

#### **RECOMMENDATION 3**

That subsequent to, or during the screening process, the Workers' Compensation Division contact each reported worker. The purpose for contact is to explain the benefits to which the worker may be entitled, and to set the tone for a positive rehabilitation outcome by explaining the objective of rehabilitation, the worker's rights and responsibilities in the rehabilitation effort.

#### **RECOMMENDATION 4**

That the Workers' Compensation Division establish and publish the procedural mechanism to support the reporting, screening and contact activities.

## GOAL II

### Provision of Rehabilitation Services by Competent Counselors

#### CONCLUSION

Counselors presently providing rehabilitation services to injured workers covered by the Act are presumed to have sound backgrounds in basic rehabilitation principles. However, a review of rehabilitation plans, reports and correspondence, as well as views expressed by these counselors, raises questions regarding whether the remaining three critical elements are sufficiently present to meet the objective of a workers' compensation rehabilitation program. (See discussion of Critical Elements Needed Under Goal II in Part One). First, some counselors appear not to understand their roles as they attempt to interpret laws regarding a worker's entitlement to rehabilitation benefits to the Board and they inappropriately make recommendations to the Board regarding settlement of workers' claims.

Second, it appears that some counselors are unable/unwilling to deliver services in a manner consistent with supporting the objective of the system. Services are not timely delivered (six months to complete a vocational evaluation and make recommendations). Training plans are developed prior to pursuing opportunities for direct return to employment. Some plans do not clearly define the vocational objective of the worker, or provide information regarding the type, scope and time frames within which services are to be provided. In cases where the vocational goal is defined, subsequent reports do not reflect specifically what has been accomplished toward achieving the goal.

Third, some counselors believe the system should afford a "pure" environment within which rehabilitation services can be provided to workers: They should not be required to interact with insurance adjusters, attorneys or the Board, as this interferes with their ability to effectively deliver services.

Finally, some counselors seem unprepared/unwilling to accept the Board's authority to make decisions regarding the rehabilitation of injured workers covered by the Act. Board requests for information in support of recommended plans are questioned and in some cases ignored. In some instances, attempts to coerce Board approval of second injury fund expenditures are made simultaneous to the counselor's overt resistance to Board requests for information needed to support a plan recommended by the counselor.

Clearly, the lack of regulations, definitive procedures and guidelines for vocational rehabilitation, has affected the performance of counselors providing services to injured workers covered by the Act.

#### RECOMMENDATION 5a

That pursuant to the adoption of regulations on vocational rehabilitation, (See Exhibit 1) the Workers' Compensation Division establish, publish and distribute guidelines for providers of rehabilitation services in accordance with recommendation 5b through 5e, and the following time frames:

- Completion of Vocational Evaluation and Plan Recommendation - 6 weeks

TABLE 1

DVR<sup>1/</sup>

|      | Eligible<br>Cases<br>Closed | Avg. Time<br>in Rehab.<br>Process | %<br>College<br>Training | Successful<br>Rehabs. | Avg. Cost<br>Per Eligi-<br>ble Case | Avg. Cost/<br>Successful<br>Case |
|------|-----------------------------|-----------------------------------|--------------------------|-----------------------|-------------------------------------|----------------------------------|
| FY80 | 61                          | 27(mos.)                          | 21%                      | 33 (54%)              | \$2280                              | \$3505                           |
| FY79 | 50                          | 23                                | 36%                      | 22 (44%)              | 1615                                | 2821                             |
| FY78 | 48                          | 32                                | 38%                      | 20 (42%)              | 1468                                | 3021                             |

\* Through 7/1/81 -

Average time between date of injury and date of referral (includes cases still open): 16.8 Months.

<sup>1/</sup>Table 1 is data received from DVR off the R-300 form.

TABLE 2

DVR<sup>2/</sup>

For 72 Eligible Closed Cases Referred through 7/1/80:

| a. Cost       | #  |           | b. Referral Period    | #  | Avg.<br>Cost/Case |
|---------------|----|-----------|-----------------------|----|-------------------|
| 0-500         | 18 |           | 0-6 Months after inj. | 14 | \$2168            |
| 500-1000      | 9  |           | 7-12                  | 26 | 2391              |
| 1000-1500     | 9  | 64% below | 13-18                 | 10 | 2494              |
| 1500-2000     | 7  | \$2500    | 19-24                 | 7  | 975               |
| 2000-2500     | 3  |           | 25-30                 | 10 | 2332              |
| 2500-3000     | 3  |           | 30-36                 | 4  | 2492              |
| 3000-3500     | 2  |           | 36 and over           | 1  | 8258              |
| 3500-4000     | 7  |           |                       |    |                   |
| 4000-4500     | 1  |           |                       |    |                   |
| 4500-5000     | 3  |           |                       |    |                   |
| 5000-and over | 10 |           |                       |    |                   |

The average time between injury and referral was derived from DVR data and injury dates produced from AK Workers' Comp. files.

<sup>2/</sup> Since these figures reflect only closed rehabilitation files, an average referral period derived from Table 2b will not correlate with the corresponding figure presented in Table 1 of 16.8 months.

TABLE 3  
PRIVATE REHAB.

For 188 case files closed between 7/1/80 and 7/31/81

| a. Cost       | #  |           | b. Referral Period    | #  | Avg. Cost/File |
|---------------|----|-----------|-----------------------|----|----------------|
| 0-500         | 40 |           | 0-6 Months after inj. | NA | \$1414         |
| 500-1000      | 36 |           | 7-12                  | "  | 1670           |
| 1000-1500     | 28 | 75% below | 13-18                 | "  | 2003           |
| 1500-2000     | 25 | \$2500    | 19-24                 | "  | 1875           |
| 2000-2500     | 13 |           | 25-30                 | "  | 1926           |
| 2500-3000     | 12 |           | 30-36                 | "  | 2198           |
| 3000-3500     | 11 |           | 36 and over           | "  | -              |
| 3500-4000     | 10 |           |                       |    |                |
| 4000-4500     | 4  |           |                       |    |                |
| 4500-5000     | 2  |           |                       |    |                |
| 5000 and over | 7  |           |                       |    |                |

\* The average length of time between date of injury and date of referral: 11.8 months.

TABLE 4  
PRIVATE REHAB.

|                                                                  | Cases | %     |
|------------------------------------------------------------------|-------|-------|
| Total                                                            | 188   | 100.0 |
| Successful Rehabilitation.....                                   | 91    | 48.4  |
| (Due to Company Involvement)                                     |       |       |
| Return to Work.....                                              | 39    | 20.7  |
| Case Closed via Cash Settlement/<br>Account Denies Coverage..... | 34    | 18.1  |
| Other.....                                                       | 18    | 9.6   |
| General Success.....                                             | 13    | 6.9   |
| Other.....                                                       | 84    | 44.6  |
| Evaluation Only Requested.....                                   | 15    | 8.0   |
| Lack of Cooperation by One of the Involved Parties..             | 11    | 6.0   |
| Company Requests Closure - Costs Not Warranted.....              | 38    | 20.0  |
| Other.....                                                       | 20    | 10.0  |

- Complete Development of Plan -- 6 weeks
- Direct Placement Program - 3 months
- On-The-Job Training - 3 to 6 months, depending on the skills to be acquired coupled with the skill level of the injured worker.
- Vocational Training - 52 weeks (extensions subject to prior approval by the Board)

#### RECOMMENDATION 5b

That rehabilitation providers issue a report within 30 days of initial contact with an injured worker. Background information regarding the worker's age, education, work history, and general medical condition, as well as a summary of activities conducted during the 30 day period should be included in the report. Information regarding the next immediate plan of action should also be included.

#### RECOMMENDATION 5c

That plans submitted for approval contain pertinent information as outlined in proposed regulations on Vocational Rehabilitation 8 AAC 47.040(b)(1) through (9).

#### RECOMMENDATION 5d

That subsequent to implementing plans, rehabilitation providers issue monthly progress reports sufficient in content and scope to inform all interested parties of the progress being made toward achieving the vocational goal of the plan.

#### RECOMMENDATION 5e

That approval by the Board must be obtained prior to amendment, suspension or termination of an approved rehabilitation plan.

### GOAL III

#### Provide for Early Return to Direct Employment

The extent to which injured workers are provided opportunities for return to direct employment is a primary determinant of the ultimate success of rehabilitation in a workers' compensation program. Administrators of rehabilitation programs for the Idaho Industrial Commission and the Office of Workers' Compensation Programs (OWCP) as well as others in the industrial rehabilitation community, support this premise. The Idaho program states as its primary goal: the earliest possible return of the injured worker to meaningful safe work. (See Exhibit 2). The OWCP, in an effort to improve its rehabilitation program has developed/endorsed return to work programs for injured workers covered by the Longshoremen's and Harbor Worker's (LHCA) and the Federal Employee's Compensation Acts (FECA). According to information received from the OWCP, 763 injured workers were successfully rehabilitated under the FECA for FY 81. Sixty eight percent of these workers were reemployed by their previous employers. Savings in compensation payments alone totaled 7½ million dollars. During the same fiscal year, 368 workers were successfully

rehabilitated under the LHCA, resulting in actual savings of 3½ million dollars in compensation payments. Twenty-three percent of these rehabilitated workers were reemployed by their previous employers. (See Table 5 for comparative figures on the rehabilitation programs of the Federal Acts, the States of Idaho and Alaska Compensation Acts)

Insurance companies can be exceedingly instrumental in helping their insureds develop reemployment programs. A carrier for a large employer covered under the LHCA reports services provided the employer in establishing a reemployment program approved by the OMCP, resulted in the employer rehiring 18 injured workers over a nine month period during FY 82. A 1½ million dollar savings in projected compensation payments resulted from this effort. Additionally, the employer reported higher morale and reduction in suspected fraudulent claims as additional payoffs. That tremendous benefits are derived by the reemployment of injured workers by employers at the time of injury is too obvious for further elaboration.

#### CONCLUSIONS

There is little evidence in support of Alaska employers providing measurable opportunities for reemployment of injured workers. Only one self-insured reported having an organized return-to-work program. Figures to substantiate this effort were not afforded. The risk manager of a major employer indicated an extensive feasibility study has been conducted over the past year in preparation for developing a comprehensive reemployment program. A precious few employers reported a limited effort of temporarily assigning employees to light duty. On the whole, employers readily proclaimed the nature of their business precludes rehiring their injured employees: Their operations simply cannot accommodate workers with less than full body integrity. Insurer's comments contributed little to modify or change the complexion of this proclamation. Neither party admitted to having particular knowledge on how to improve this present state of affairs, although the suggestion of some insurers regarding performance of on-site-job analyses in cases of reemployment, dispels the notion of complete unawareness in this matter.

#### RECOMMENDATION 6

That insurers provide assistance to employers in developing programs for reemployment of injured workers.

#### RECOMMENDATION 7

That insurers/employers arrange for counselor services to include on-site-job analyses and assistance in modification of jobs to enhance reemployment opportunities of an employer's injured employees.

#### RECOMMENDATION 8

That the Workers' Compensation Division encourage the development and implementation of reemployment programs by providing positive monitoring/endorsement of the efforts of parties.

A few union representative claimed favorable dispositions to contractual agreements providing for reemployment of injured workers. However, previous

TABLE 5

## Comparison Data for Four Workers' Compensation Acts with Provisions for Rehabilitation Benefits

| Program                         | No. of Time Loss Workers | Received Rehabilitation Services |                | Worker's Successfully Rehabilitated |                                |                        |                                         |
|---------------------------------|--------------------------|----------------------------------|----------------|-------------------------------------|--------------------------------|------------------------|-----------------------------------------|
|                                 |                          | No.                              | % of Time Loss | No.                                 | % of Workers Received Services | % of Time Loss Workers | % of Return to Work w/previous employer |
| <u>1/</u> Alaska                | 6,356                    | 249                              | 3.9            | 72                                  | 28.9                           | 1.1                    | Unknown                                 |
| <u>2/</u> Idaho                 | 7,800                    | 1431                             | 18             | 344                                 | 24                             | 4.4                    | 38                                      |
| <u>3/</u> OWCP - <u>4/</u> FECA | 47,982                   | 7608                             | 16             | 763                                 | 10                             | 1.6                    | 68                                      |
| OWCP - <u>5/</u> LHCA           | 19,082                   | 4947                             | 26             | 386                                 | 7.8                            | 2.0                    | 23                                      |

Remarks: 1/ Figures based on information collected for FY 80 and 81.  
2/ Figures obtained from FY 81 statistics of Idaho Industrial Commission  
3/ Office of Workers' Compensation Programs  
4/ Federal Employees' Compensation Act  
5/ Longshoremen's Harbor Workers' Compensation Act

efforts in this regard were reportedly rebuffed by management and were thus abandoned by labor. Trust fund sponsored, on-the-job training programs are provided for injured union members by at least two locals.

#### RECOMMENDATION 9

That contractual agreements be negotiated for reemployment/rehabilitation of injured union members.

#### GOAL IV

Maintenance of Atmosphere Conducive to Rehabilitation

#### CONCLUSIONS

The element of concern is sufficiently intangible to render itself unmeasurable in a quantifiable way. It is therefore difficult to present an elaborate discussion on the extent to which insurers/employers are concerned about their injured employees during the course of their claims. This would require a detailed examination of randomly selected files maintained by carriers, with particular notations made of such items as timeliness of first and subsequent compensation payments, timely and adequate provision of medical and rehabilitation services, the extent to which claimants were advised of their entitlement to benefits, etc. Moreover, the quality of contacts between the injured worker and the insurer/ employer would be difficult if not impossible to capture. The elements of communication, coordination and commitment lend themselves to more discussion, particularly in regards to rehabilitation.

In general, the extent and timeliness of communication with injured workers seem inadequate for the purpose of supporting a successful rehabilitation program. First, the lag between date of injury to date of referral as previously noted, supports the conclusion that injured workers are not timely contacted and advised of their entitlement or potential need for rehabilitation services. Second, rehabilitation reports and other correspondence reflect communication is sporadic and generally inadequate to ensure the rehabilitation effort of a successful and cost effective outcome. Progress in rehabilitation plans is not timely monitored or timely reported. Concurrently, coordination of activities necessary to develop realistic return to work plans is insufficient, so that inordinate delays and interruptions occur to the detriment of injured workers, the rehabilitation program and the compensation system alike.

As to the extent of commitment to rehabilitation in the Alaska system, the time lag from date of injury to referral for services, and the percent of time-loss workers provided services, (approximately 5.4), coupled with the percent of time-loss workers successfully rehabilitated, (approximately 1.1%) indicate this element too, is woefully inadequate to support a rehabilitation program.

#### RECOMMENDATION 10

That insurers/employers increase their efforts to effectively and timely communicate with injured workers by contacting them as soon after the injury as possible to explain their entitlement to benefits and the procedure for securing these benefits.

#### RECOMMENDATION 11a

That in the case of workers experiencing time loss, who may need rehabilitation services, insurers/employers assign a counselor to contact the worker as soon as this determination can reasonably be made.

There is a developing trend among leading insurance companies to hire a rehabilitation staff member who serves as a communication link between the injured worker and insurance company, as well as other appropriate parties in the system. This staff member assists in creating an atmosphere conducive to an early return to work and facilitates coordination and development of rehabilitation plans for those workers who may not be able to return to direct employment.

#### RECOMMENDATION 11b

That insurers/employers consider hiring a rehabilitation professional to enhance their ability to effectively communicate with, and timely provide services for injured workers.

#### GOAL V

Provision of Incentives, Removal of Disincentives

#### CONCLUSIONS

##### Incentives

##### A. Experience and Retro Rating

The extent to which these methods are used in rating Alaska employers is unknown and is beyond the presentation of this report. Their suggested use by authorities in workers' compensation has been sufficient to present them as incentives for employers to reemploy their injured workers.

#### RECOMMENDATION 12a

That insurers assist employers by providing loss control services to assure appropriate rating consistent with their safety record and reemployment practices.

#### RECOMMENDATION 12b

That to supplement the loss control services provided by insurers, employers seek the assistance of the States Division of Insurance in rating matters and methods.

##### B. Targeted Jobs Tax Credits

According to the Division of Employment Security, Alaska employers rarely take advantage of this tax credit when employing the industrially injured worker. Several factors, such as eligibility criteria and employer awareness may be influencing this. Whether counselors adequately advise employers of this incentive when attempting to place injured workers is unknown.

### RECOMMENDATION 13

That counselors enhance their efforts to place injured workers by informing employers of Targeted Jobs Tax Credit provisions and by providing assistance necessary to facilitate employer participation in the program.

#### C. Additional Maintenance

Injured workers undertaking a rehabilitation program can receive up to two hundred dollars in additional maintenance to defray extra expenses incurred during their rehabilitation program. This provision appears to be adequately serving the purpose for which it was established.

#### D. Second Injury Fund

The Alaska Workers' Compensation Act has provisions for a Second Injury Fund to be administered in accordance with orders and awards of the Board. AS 23.30.040(a). Subsection (e) authorizes expenditures for rehabilitation expenses and maintenance during the period of rehabilitation which may not exceed \$10,000 for one person. When it comes to placing limitations on rehabilitation benefits in a workers' compensation system, there is an inherent problem in stating these limitations in monetary terms: Expectations and rehabilitation plans are designed around the upper limits of the dollar amount, rather than around what services are actually needed to make the injured worker employable. The worker believes his is an undeniable right to a program which costs \$10,000, even though a less expensive program may be more appropriate to restore his employability. The counselor views the \$10,000 as the worker's personal account which he has a right to exhaust by charging the costs of items and services superfluous to his rehabilitation program. In settlement negotiations, the attorney seeks to include \$10,000 in the total figure for rehabilitation benefits, which he argues is his client's right.

All parties appear to have forgotten a basic tenet in a workers' compensation rehabilitation program: An injured worker's right to rehabilitation services coexists with the need of the worker for such services. The type, scope and duration of a rehabilitation program will vary with each injured worker, depending on such factors as skill level, education, age and extent of disability. It is therefore, a reasonable assumption, that the costs of services will vary for individual programs. Provisions for rehabilitation should be made with this in mind which is the current practice in most state compensation programs.

### RECOMMENDATION 14

That language in AS 23.30.040(e) be changed to remove the dollar amount and provide for necessary costs of rehabilitation services subject to Board approval.

This provision would enhance continual efforts of the Board to provide necessary expenditures for workers seeking to rehabilitate themselves back to the work place and at the same time, protect the investment of insurers/employers who support the Fund.

There appears to be a lack of employer awareness regarding the existence or purpose of the Second Injury Fund and its provision for pre-existing conditions, under AS 23.30.205. This incentive will not realize its basic purpose if employers are not aware of its nature or not encouraged to use it.

#### RECOMMENDATION 15

That the Workers' Compensation Division increase employer awareness and encourage employer use of the Second Injury Fund in employment of industrially injured workers. Increase publicity and eligibility interpretation will enhance this effort.

Provisions also exist for the Board to make cooperative arrangements with insurance companies, private organizations and institutions, and state or federal agencies to provide rehabilitation services to injured workers covered by the Act. Through the end of FY 81, the Board maintained a cooperative agreement with the Alaska Division of Vocational Rehabilitation. The agreement permitted transfer of lump sum funds from the Second Injury Fund on a fiscal year basis, to the Division of Vocational Rehabilitation, for the provision of rehabilitation services to injured workers in the compensation system. Currently, a cooperative agreement does not exist between the two agencies due to unresolved differences surrounding the Board's authority to approve rehabilitation plans submitted by counselors of the Division of Vocational Rehabilitation requiring Second Injury Fund expenditure. The wisdom of transferring lump sum Second Injury Funds to the agency, and attempting to renew a cooperative agreement between the two agencies is questionable for at least three reasons.

First, the traditional basis for forming cooperative agreements between a compensation and state rehabilitation agency may no longer exist. During the formative years of no fault workers' compensation, the sole provider of vocational rehabilitation services to the disabled population was the state vocational rehabilitation agency. However, the National Commission, as well as other authorities in workers' compensation, has detailed the past failures of state programs in general, to meet the needs of the workers' compensation system due to the philosophical differences of the two agencies. Additionally, there has been an emergence of private rehabilitation providers, who appear more able to gear their services to the needs of the compensation system. In view of these factors, cooperative agreements between the two agencies may well be obsolete.

Second, removal of Second Injury Fund monies from the administration of the Commissioner of Labor, by transferring them to another agency which has no administrative oversight in the workers' compensation system, undermines the commissioner's ability to effectively administer the Fund in accordance with the orders and awards of the Board.

The last reason has legal implications. As the law clearly assigns the administrative responsibility of the Fund to the commissioner, and transfer of monies from the Fund undermines the commissioner's ability to discharge that responsibility, it would appear that meeting the requirement of the law is precluded by a cooperative agreement. This issue is of particular

importance in view of the reluctance of the Division of Vocational Rehabilitation to respect the Board's authority to approve rehabilitation plans submitted by its counselors requiring expenditure of Second Injury Fund monies.

#### RECOMMENDATION 16

That cooperative agreements involving transfer of Second Injury Fund monies to the Division of Vocational Rehabilitation be discontinued.

#### RECOMMENDATION 17

That criteria for development, recommendation and implementation of rehabilitation plans, in accordance with recommendations 5a through 5e, be applied to all providers of vocational rehabilitation services to injured workers covered by the state compensation laws.

#### Disincentives

##### A. Premature Compromise and Release Settlements

Larson and other authorities in workers' compensation, are strong opponents to settlements which prematurely preclude an injured worker's participation in a supervised rehabilitation program. There is real concern for the worker who settles his claim and releases his rehabilitation benefits. He may quickly exhaust his settlement funds and find himself with inadequate skills to earn a living.

That workers submit applications for settlements to fund proposed self employment ventures, in lieu of participation in a supervised rehabilitation program, is common knowledge. Almost equally as common, and particularly disturbing in the Alaska system, and probably elsewhere, is the recommendation for such plans, without adequate documentation to support the soundness or feasibility of the proposals. The parties involved have varying motivations for this unfounded recommendation.

The injured worker views it as an opportunity to do what he has always wanted to do: Besides, he will not have to work as hard if he can work at his own pace.

The insurer/employer suggests it as a mutual agreement which affords an equitable solution toward the disposition of the claim: It will also relieve the insurer/employer of any future liability related to compensation and rehabilitation benefits.

Claimant's attorney argues it will allow his client to get on with resuming a normal life: It will also afford the attorney an immediate appreciable fee.

The rehabilitation counselor opines that: Given the workers vocational evaluation results, his interests and motivation to succeed, the proposed venture will afford him a realistic vocational goal: It will also provide the counselor with much needed relief from the task of developing a sound

rehabilitation plan, which has been difficult if not impossible to achieve in light of the worker's resistance to any plan other than the self employment venture.

In instances such as this, all parties seem to lose sight of the end goal of rehabilitation: The return of the injured worker to productive employment by restoring his ability to earn a living. The injured worker's desire to start his own business is inappropriately equated with the goal of rehabilitation. A self employment plan may restore the worker to productive employment which will afford him a livable wage, and thus is a means to an end. However, an unsound plan may not afford him a sufficient income and thereby fails to achieve the end goal of rehabilitation.

This is not to suggest that all self employment plans are unsound and thus should not be considered, or that all workers must participate in an approved rehabilitation plan before a claim can be settled. It is suggested however, that each plan must be carefully evaluated for its soundness and potential for successfully returning the worker to productive employment. In cases not involving self employment plans, claims should be settled only after a determination has been made that to do so is in the best interest of justice.

#### RECOMMENDATION 18

That as a general policy, the Board deny settlement of claims, prior to an injured worker's completion of a supervised rehabilitation program.

##### B. Excessive Litigation

Rehabilitation professionals providing services to injured workers in Alaska, readily attest to the activities of both the plaintiffs' bar and defense attorneys, as interfering in the rehabilitation process. Indeed this seems to be borne out by testimony during public hearings on Workers' Compensation and in the claims files of injured workers. Excessive litigation serves little if any useful purpose in the rehabilitation process and if allowed to exist, will undermine the primary objective of rehabilitation. It causes the focus to shift from restoring the worker's competitive earning ability to highlighting his disability. In the ensuing process, rehabilitation is not used as an effective, productive tool for the long range benefit of the injured worker. It becomes a bargaining stick employed by the claimant's attorney in his quest to obtain his client's pot of gold, and it is simultaneously used as a trade-off carrot by the defense attorney to limit the employer's/insurer's future liability. To an appreciable extent, the Board can provide a remedial solution to this problem. Regulations, guidelines and well defined procedures regarding rehabilitation, will remove much of the need and opportunity to litigate issues surrounding the rehabilitation process. (See recommendations 1 through 5e).

##### C. Other Stimuli

Parties who refuse to cooperate or who sabotage the rehabilitation effort by passive-aggressive means, should be encouraged to cooperate through the application of remedial penalties acting upon both the insurer/employer and

the injured worker similarly. The Board has the authority to apply such remedies. A review of its more recent decisions and orders reflects an increased effort to make sufficient applications in support of the rehabilitation objective.

#### Delivery of Rehabilitation in Alaska's Workers' Compensation System

The Alaska Workers' Compensation program must have an effective rehabilitation delivery system if it is to meet its six obligations as outlined in the overview section of this report, and achieve the five specific goals of rehabilitation. Administrative monitoring and positive assistance to injured workers and all other members of the workers' compensation community, require the adoption of the recommendations set forth in this report. Despite the on-going efforts of the Division of Workers' Compensation to improve its delivery system to the workers' compensation community, it continues to lack the resources and staff necessary to achieve a successful rehabilitation program which will ultimately reduce the cost of the compensation system.

The savings experienced in other compensation programs cited in this report, resulted from the delivery of well managed, cost effective rehabilitation benefits. These results did not occur independent of the economic wisdom of administrators for those programs, who realized that a relatively small investment of resources would yield tremendous gains in the reduction of compensation costs to employers, injured workers and society.

#### RECOMMENDATION 19

That the Division of Workers' Compensation acquire the necessary staff to develop and implement a workers' compensation rehabilitation program designed to administer and monitor the rehabilitation benefits of industrially injured workers covered by the Alaska Workers' Compensation Act.

## PHYSICIANS' CONCERNS

1. Rehabilitation counselors should consult with treating physician before contacting injured worker. The counselor often gives advise which conflicts with physician's planned course. Physician can pave the way and make the prospects of rehabilitation less threatening if he is aware of the counselor's contact in advance.
2. Workers should be advised of benefits from day one of injury. Rights and responsibilities of worker should be spelled out. This would reduce adversary atmosphere.
3. Employers engage in inappropriate hiring practices to begin with. Thorough pre-hiring physical exam should be conducted. Conditions incompatible with physical demands of certain jobs would be detected at that time.
4. Workers' compensation should take natural aging process into account. Wear and tear process should not be financed by workers' compensation system.
5. Remedies should be more vigorously applied to workers who fail to follow doctor's orders.
6. Attorneys are too involved in the rehabilitation process. Counselor, physician and injured worker should be primary parties involved.
7. Rehabilitation benefits should be consistent and uniformly delivered. There is no control in the present system. Physician and patient need rules to play by.
8. Employer must assume more responsibility to provide light duty work until worker can resume regular job.
9. Union dispatch precludes loyalty to the employer - Union regarded as the "employer".
10. Union rules should be more flexible to support rehabilitation.
11. Unions must assure worker's who are dispatched are physically able to perform the duties of the job.
12. Professional rehabilitation providers inadequate. A more clearly defined system would encourage more providers to practice in Alaska's system.
13. Services provided by DVR are not particularly geared to industrial workers - more effective with catastrophically disabled population.
14. Insurance adjusters have inadequate backgrounds in medicine and human behavior. Inappropriate actions against claimants result in adversary behavior by claimant; (foot dragging and going against doctor's recommendations.) Adjusters must use more amiable approach.

## REHABILITATION COUNSELORS' CONCERNS

1. Attorneys often interfere with rehabilitation. Some attorneys forbid their clients to see counselors, insist on being present at every counseling session, attempt to dictate what program should be developed for the injured worker, and often advise their clients not to cooperate with the counselor by using passive aggressive tactics. Counselors would like to see guidelines or regulations developed which forbid attorneys to interfere or attempt to run the rehabilitation process.
2. The workers' compensation system expects counselors to be miracle workers. Successful rehabilitation of injured workers in the compensation system is difficult if not impossible in light of the following:
  - a. Inadequate requirements of workers to cooperate with the counselor.
  - b. Ineffective enforcement of the vague rules presently existing in the system when evidence clearly shows the worker has been uncooperative.
  - c. Some insurance companies act in good faith in attempting to arrange rehabilitation services for workers who need them. Other companies fail to make such arrangements and may even interfere when workers seek services on their own.
  - d. Those companies that support the rehabilitation effort are often penalized as the Board allows uncooperative workers too many chances to cooperate. Limitations should be placed on these chances.
3. The Workers' Compensation agency should be staffed with rehabilitation professionals who determine which agency will provide services to injured workers in disputed cases. This would reduce the level of excessive "rehabilitation shopping" by all parties which presently exists, and it would eliminate dual assignment of rehabilitation providers by both sides.
4. Counselors have too little time as it is to provide adequate services to the disabled population. Requiring counselors to appear in hearings and other judicial processes further reduces the time counselors should be devoting to rehabilitating the disabled population.

## INJURED WORKERS' CONCERNS AND REACTIONS

1. The system has gotten so complex that an attorney is absolutely necessary in proceeding with many cases. Yet, some injured workers were not advised that they needed an attorney until it was too late.
2. Injured workers have reported receiving "high pressure" from carriers to settle for smaller settlements than required by law. This included threats of holding up final settlement unless the injured worker agrees to carrier's terms.
3. Injured workers who realized later that they needed rehabilitation assistance, were not given any indication that the option was available, at the time of injury.
4. Benefits are either cut-off without notice or held up as part of pressure tactics. In cases of jobs which pay by commission, an injured worker reported that benefits stopped immediately upon taking the job, although it was 4 months before he received his first commission check.
5. There were positive reactions to some insurance companies' case management, in addition to positive feelings about some injured workers' rehabilitation experience.
6. There is concern expressed that DVR does not cooperate with the injured worker's interest in rehabilitation. This point was expressed in a case where the injured worker reported the counselor stalled 6 months in getting the program started and took 2 months in getting the purchase of a calculator approved.
7. Concern has been expressed over the proper medical treatment. The use of chiropractors is more helpful in some cases, yet is discouraged by some doctors.
8. Injured workers are frustrated that some of the jobs they are retrained for are not available on the job market when the rehabilitation program is completed. They wind up returning to their old job or taking a position which has a high probability of reinjury.

## INSURER/EMPLOYER CONCERNS

1. The Act requires insurers/employers to provide rehabilitation services to injured workers. Thus, the insurer/employer should be able to determine which rehabilitation agency the worker will be referred to for these services. This would eliminate the current practice of workers/attorneys shopping around to find the counselor who will recommend the longest training program.
2. Claimants' attorneys should be restricted from practicing "rehabilitation" and submitting training/rehabilitation plans for their clients.
3. Insurers/employers should not be required to provide rehabilitation services to workers who refuse reemployment offers by employers. There should be a limit placed on the time an injured worker has to accept the offer.
4. When training plans are presented for approval, the Board should make every effort to ensure the need for training before approving the plan and requiring the insurer to continue total compensation payments. Training should be approved on the basis of need as opposed to the desire of workers who merely want a new career.
5. Counselors should be used to perform on-site-job analysis to determine if the job is compatible with the worker's restrictions. Presently, the physician, who does not have sufficient knowledge of the world of work, makes this decision based on the whims of the patient, who often misrepresents physical demands of a given job.

## ATTORNEYS' CONCERNS

1. Alaska has an inadequate number of competent rehabilitation counselors. Often, workers do not have a choice and must use DVR.
2. Particular counselors are inconsistent in serving injured workers; engage in power playing to control worker's life; dabble in claims and legal matters; incorrect information given worker, sometimes intentionally, if worker has not followed the counselor's "rules".
3. Present system does not have mechanism to make rehabilitation work. No one to monitor system and keep parties in line, particularly counselors who behave in questionable manner.
4. Disputes regarding rehabilitation should be promptly heard and decisions timely issued. Delays destroy motivation for rehabilitation.
5. Artificial rehabilitation hurts workers with serious injuries.  
EX: Sixty-one year old worker w/65% rating. Has fifth grade education and no work skills other than heavy labor. Ineligible for retirement by 4 years. Placed in pie shop as a part-time wrapper. Paid \$4.00/hr = \$60/week = approx. \$200/month. Counselor issued a report of "successful rehabilitation" so worker was found PPD, thus \$60,000 limit applied. Questionable whether worker will be able to continue in work force due to severity of injury, age, and limited skills. If unable to continue working, \$60,000 inadequate source of income for worker's remaining lifetime. If PTD, rating is precluded by "successful rehabilitation" stamp.
6. Board should penalize insurers/employers who misrepresent the law. Failure to advise worker of entitlement to rehabilitation is misrepresentation.

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APPENDIX OF EXHIBITS

## CHAPTER 47

### VOCATIONAL REHABILITATION

**8 AAC 47.010. GOAL OF VOCATIONAL REHABILITATION.** The board shall direct and provide for the vocational rehabilitation of employees entitled under the Act. Vocational plans formulated under the Act and this chapter must be designed to restore the injured employee to gainful employment. (Eff. / / , Register ).

Authority: AS 23.30.005  
AS 23.30.040

**8 AAC 47.020. DUTIES OF THE PARTIES.** (a) The employer, the self-insurer, the insurance carrier, and the employee shall promptly recognize the need for the evaluation of vocational rehabilitation and shall initiate necessary action to restore the injured employee to gainful employment as expeditiously as possible.

(b) The employee shall cooperate in all phases of vocational rehabilitation. The employee shall promptly and responsibly participate in a board-approved vocational plan when ordered to do so by the board. If the employee does not choose to enroll in a vocational plan, nothing in this chapter is to be interpreted so as to require the employee to do so. However, in cases where the employee chooses not to enroll in a vocational plan, or unreasonably refuses to complete a vocational plan, the degree of permanent partial disability will be determined as though the employee had enrolled in, and successfully completed, the vocational plan. The employee shall notify the board and the employer within 14 days of the first consultation with a vocational rehabilitation representative.

(c) The vocational rehabilitation representative shall notify the board and all interested parties within 14 days of the first consultation with an employee. Thereafter, the vocational rehabilitation representative shall file regular monthly reports with the board during the consultation period. Within 14 days of the final consultation, the vocational rehabilitation representative shall file a report of consultation which must contain the findings, conclusions and recommendations regarding vocational rehabilitation. (Eff. / / , Register ).

Authority: AS 23.30.005  
AS 23.30.040

**8 AAC 47.030. EVALUATION ANALYSIS.** (a) No vocational plan may be initiated until board approval has been secured. Board approval may be secured by any party by filing a petition for initiation of a vocational plan, accompanied by a written evaluation analysis. Copies of the petition and the evaluation analysis must be served upon all parties and the administrator of the Alaska Second Injury Fund, in accordance with 8 AAC 45.060.

**CHAPTER 47**  
**VOCATIONAL REHABILITATION**

**Section**

- 10. Goal of vocational rehabilitation
- 20. Duties of the parties
- 30. Evaluation analysis
- 40. Vocational plans
- 50. Modification, suspension, or termination of vocational plans
- 60. Vocational rehabilitation definitions

(b) A written evaluation analysis must be accompanied by copies of all medical reports referred to in the analysis and must, in addition, include

(1) an assessment of the employee's employable skills, including a synopsis of his work history and educational background;

(2) a summary of the disabilities limiting the employee's employment opportunities; and

(3) a specific accounting of the employee's pre-injury wage and an assessment of his post-injury wage-earning capacity.

(c) After the complete, written evaluation analysis has been filed the board will review the factors discussed in the analysis and will determine whether the employee is able to return to his previous employment or to modified employment or whether, instead, direct job placement, on-the-job training or formal retraining is necessary in order to return the employee to gainful employment.

(d) If the board determines that formal retraining is necessary, it shall direct the employer or the employee, or both, to initiate a vocational plan in accordance with 8 AAC 47.040. The board will give preference to direct job placement and on-the-job training over a formal retraining program. (Eff. / / , Register ).

Authority: AS 23.30.005

8 AAC 47.040. VOCATIONAL PLANS. (a) Following evaluation in accordance with 8 AAC 47.030, a vocational plan may be initiated by direction of the board or by any person. Vocational plans must be developed by a qualified rehabilitation representative designated by either the employer, the carrier, the self-insurer, the employee, or the board.

(b) Proposed vocational plans must be submitted to the board in the form of a petition by the person responsible for initiating the vocational plan. The petition must be in writing and must include

(1) the gainful employment objectives of the vocational plan, including estimated earnings and reasonable availability of gainful employment;

(2) the name and location of the educational institution, public or private vocational training agency, or company or business involved in the vocational plan;

(3) the nature, extent, and duration of services to be provided during the period of rehabilitation;

(4) the dates of commencement and expected completion of the vocational plan;

(5) a statement regarding the general financial condition of the employee;

(6) the amount of weekly income maintenance benefits, tuition, fees, and transportation costs, if any, and the time and manner of such payments to the employee during the period of rehabilitation;

(7) the employee's written acceptance of the plan, plus any comments the employee desires to make a matter of record concerning why the plan is in his best interests;

(8) the name of the rehabilitation representative who prepared the plan, a complete description of his or her qualifications, and the name and address of the representative's institution, agency, or company; and

(9) all medical, psychological, and vocational evaluation reports related to the case.

(c) Objections to a vocational plan must be filed in writing with the board within 10 days of the date of service of the plan upon the board.

(d) Upon receipt of written objections, or where it appears obvious that the employee and the employer are unable to reach agreement on the terms of the vocational plan, a prehearing conference will be scheduled. If agreement is reached at the conference, the board may approve the plan. If the differences cannot be resolved at the prehearing conference, the matter shall be set for a hearing. Hearings shall be held in accordance with the provisions of this chapter.

(e) Upon receipt of a proposed vocational plan acceptable to all parties concerned, or following a hearing, and after review the board shall approve, disapprove, or modify the plan.

(f) Implementation of the plan must begin as soon as the employee is capable of participating in the program and medical opinion indicates the employee's recovery will not be impeded by participation in the plan. The plan shall begin upon the date of board approval or the date specified in the plan, whichever occurs last.

(g) In the event

(1) a vocational plan is not offered by the employer; or

(2) an employer-offered plan or a rehabilitation agency-offered plan is not accepted by the employee; or

(3) the board finds that the employee is eligible for a plan but the proposed plans are not effective

the board, on its own motion or upon the petition of any party, shall

make a determination by means of a hearing or hearings of the services necessary to restore the employee to gainful employment. (Eff. / / , Register ).

Authority: AS 23.30.005  
AS 23.30.040

**8 AAC 47.050. MODIFICATION, SUSPENSION, OR TERMINATION OF VOCATIONAL PLANS.** Any party may petition the board for modification, suspension, or termination of a plan. The petition shall be treated as any other petition under § 050 of this chapter. The board shall order the modification, suspension, or termination if it finds

(1) satisfactory progress is not being made in the approved plan; or

(2) the plan is not likely to prepare the employee for gainful employment due to unexpected contingencies; or

(3) the employee refuses to complete the vocational plan approved by the board; or

(4) a more suitable plan becomes available. (Eff. / / , Register ).

Authority: AS 23.30.005

**8 AAC 47.060. VOCATIONAL REHABILITATION DEFINITIONS.** As used in this chapter

(1) "Gainful employment" means employment which is reasonably attainable and which offers an opportunity to restore the employee as soon as possible to maximum self-support, due consideration being given to the employee's qualifications, physical and mental condition, interests, motivation and incentives, pre-injury earnings and future earning capacity, and the present and future labor market.

(2) "Implementation of a plan" means commencement by the employee of an actual return-to-work plan of direct job placement, on-the-job training or vocational training in accordance with an approved vocational rehabilitation plan.

(3) "Initiation of a plan" means the creation and drafting of a written vocational rehabilitation plan.

(4) "Vocational rehabilitation" means a program of services, not limited to medical services, designed to restore an injured or disabled employee to gainful employment.

(5) "Vocational rehabilitation representative" means a person who possesses the special skills, knowledge, education, training, and experience necessary to develop and implement vocational rehabilitation plans.

(6) "Vocational rehabilitation plan" means the planning and providing of services, not limited to medical services, reasonably necessary to restore an employee to gainful employment. Such services include, but are not limited to, vocational evaluation, counseling, retraining, on-the-job training, and job placement assistance. (Eff. / / , Register ).

Authority: AS 23.30.005  
AS 23.30.040

**Idaho**

**Industrial Commission**

317 Main Street, Boise, Idaho 83720

Phone 334-2193

## Rehabilitation Division Offices

**Boise**

317 Main Street

Boise, ID 83720

Phone: 334-2461

**Caldwell**

109 N. Kimball

Caldwell, ID 83606

Phone: 459-0016

**Coeur d'Alene**

401 Front Street

Coeur d'Alene, ID 83814

Phone: 667-9714/3056

**Idaho Falls**

101 Park Avenue

Idaho Falls, ID 83401

Phone: 523-4011

**Lewiston**

1118 "F" Street

Lewiston, ID 83501

Phone: 746-3936

**Pocatello**

Center 151 Bldg. — Suite 106

Pocatello, ID 83201

Phone: 234-2810

**Twin Falls**

630 Blue Lakes Blvd. N.

Twin Falls, ID 83301

Phone: 734-8300

**COMMISSIONERS**

Gerald A. Geddes - Lawrence G. Sirhall - Will S. Defenbach

# Worker Rehabilitation



Exhibit 2

Idaho  
Industrial Commission  
Rehabilitation Division

## The Rehabilitation

**Division** was established by the 1978 Legislature in an effort to reduce the period of temporary disability resulting from industrial injury or disease and to aid in restoring the disabled employee to gainful employment with the least possible physical impairment.



## What Are Our Goals?

- To provide for the earliest possible return of the injured worker to meaningful, safe work
- To return the injured worker to as near his pre-injury status as possible
- To reduce the period of temporary benefits paid injured workers

## Who Is Eligible For Our Services?

Workers receiving Idaho Workmen's Compensation benefits for whom the Rehabilitation Division can be of assistance in reducing the period of temporary disability or aiding the worker in a return to employment compatible with his disability.

## What Services Are Provided?

Services provided are those necessary to return the worker to a job with his former employer, or to a job similar to the one held prior to becoming injured.

Services available include:

- Vocational evaluation
- Job site evaluation
- Vocational counseling
- Assistance in job modification
- Training in job seeking skills
- Placement
- Follow-up
- Reporting system to those involved in the rehabilitation process

## Who Benefits from Our Services?

- Disabled workers
- Employers
- Attorneys
- Physicians
- Society

## Who Should Be Referred?

- Workers requiring a change of occupation.
- Cases with long periods of disability
- Injuries resulting in restrictions of function
- Cases with a potential for high financial exposure



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