ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1741 HLC 1/25/82 HB 159 - 1/27/82 HB 159

taken from the last version of HB 159. Sofo noted that almost all amendments in this draft have appeared in prior drafts.

Number 0190 — Section 4: Speaks to employer penalties and stop order authority. There was some clarification by Don Koch, Division of Insurance, and Jackie McClintock, Division of Workers Compensation.

Number 0210 — Section 5: Regards furnishing of medical care. One thing introduced is the concept of "health care provider" to include a broader range of services and care. Sofo noted that the last portion of the bill defines health care providers.

Number 0242 — There was discussion about reporting times. Rep Rogers preferred the draft committee substitute version of reporting times over those in the last version. Jeff Barry noted that when people don't show up for scheduled appointments for treatment, the health care provider notifies the Workers Compensation Board (under the draft CS).

Number 0279 — Sofo said that, in Section 5, the draft bill removes the two-year limitation on employer furnished medical services.

Number 0307 — Rep. Rogers noticed that, in Section 8, which appears on line 20, pg 4 of the draft bill, the word "benefits" replaces the word "compensation". He saw nothing wrong with that, but felt it should be consistent throughout the bill. Sofo pointed out that the Workers Compensation Act didn't consistently use the words "benefits" and "compensation". He tried to clarify the difference between the two.

Number 0346 — Sofo said that, in Section 10 of the draft CS, there appeared language new to the bill: AS 23.30.110(c) notice requirements are changed from 20 days to 30 days, and if a noticed hearing is not held, no additional notice is required.

Section 19: Sofo said that, on page 8, Section 19 of the bill, regarding weekly wage, they had tried to look at a compromise method of determining compensation by taking the three highest years' wages of the

preceding five years.

Number 0378 — There was discussion between Rep. Rogers and Sofo regarding clarifying the distinction between "compensation" and "benefits". Sofo felt there was also a problem with the definition of what is meant by "in the course of employment".

Number 0425 — There was discussion among Rep. Rogers, Sofo, and McClintock regarding scheduled and unscheduled payments.

Number 0443 — Section 23: Sofo said this section includes new definitions, the most controversial of which would probably be the definition of "in the course of employment".

Number 0456 — Committee discussion: Sofo said the greatest substance deleted in the draft version is self-insurance. Rogers noted that another new change is the repeal of AS 23.30.225(b). Sofo spoke to social security offset, saying the section didn't interact correctly with federal regulations, so to correct this discrepancy, language was deleted.

Number 0515 — Rep. Rogers noted that three factors must be met for a worker not to be considered performing "in the scope of employment": 1) outside working hours; 2) off site; and, 3) not under the supervision of the employer. Considerable discussion ensued regarding what activities fell under this definition.

Number 0570 — Sofo then addressed the five proposed amendments to the workdraft. He said they were deleted from the new workdraft for ease in dealing with the legislation.

Number 0595 — Rep. Rogers did not understand why people should be denied medical benefits on the basis of how many job referrals they received; he felt the language should perhaps be changed to job "offers". There was discussion of this point between Reps. Rogers and Martin.

Number 0672 — Sofo addressed the second proposed amendment, which requires injured employees to report wages earned or lose their benefits. He said this stands as a reporting requirement. Barry said the

question could be raised as to whether an additional insurance policy, such as loan insurance, could be construed as earnings. Rogers pointed out that the amendment specifically addresses reporting "wages", which are defined as something received from an employer.

Number 0701 — Koch asked what the Division of Insurance would be expected to do with information when it is received. McClintock added that her division hears claims, but doesn't adjust them. Sofo said this was discussed before, and that the workdraft does not give guidelines as to what the information will be used for.

Number 0721 — Sofo addressed the third proposed amendment, which referred to compensation for permanent partial disability. He said the language seems to delete the amount of time compensation could be collected, and lowers some benefits. Reps. Randolph and Rogers asked if lowering the benefit amounts had any affect on premiums, and asked the reasons for this action. Rep. Martin thought John Lewis, a consultant scheduled to give testimony later in the week, might be able to clarify this point. Barry pointed out that the effect would be that the lowest paid people would lose benefits. Rep. Rogers felt that, if low paid people were affected and higher paid people unaffected, they should look at the number of dollars, not the number of weeks. He said it would seem they would want to help the lower wage earners.

Number 0778 — Sofo said the fourth proposed amendment addresses unemployment compensation. There was discussion among the committee, Sofo, and Koch.

Number 0825 — Sofo said the fifth proposed amendment ensures that a worker eligible for workers compensation can't collect sick pay and workers compensation in a total amount that is more than 100% of a worker's normal pay. This provides incentive to return to work. Barry added that an example is a worker drawing holiday pay, vacation pay, and workers compensation. He noted that abuses have come in areas of non-compensable sick pay. There was discussion between the

committee and Barry.

Number 0883 — Jack Thompson, of WCCA/ACE, asked if a non-union employer gets a benefit a union employer would not. Barry said no; there was discussion between Barry, Thompson, and Koch on this point.

Number 0910 — Rep. Martin asked M.C. Morgan, of the Division of Vocational Rehabilitation, to address the committee.

Number 0932 — M.C. Morgan said that, in this legislation, Vocational Rehabilitation is one of the primary deliverers of services to people drawing workers compensation. During the year, 500-600 disabled will be placed in employment, 40% of whom are severely disabled. Approximately 5% of those clients are under workers compensation. He gave rehabilitation statistics, breakdowns, and observations on the differences between their general caseload and the workers compensation cases. He said that disincentives to returning to work were eligibility for workers compensation on the basis of permanent injury; greater extent of injuries; and greater extent of benefits. He said it is difficult for a vocational rehabilitation counselor to motivate a client when the client knows this could damage his claim. He said this helps to explain the longer timeframe and higher cost to rehabilitate a workers compensation client.

Number 1026 — At Rep. Martin's request, Morgan said he would draw up a list of suggestions, particularly suggestions to eliminate disincentives to return to work. He noted that 44% of the workers compensation referrals come 9-12 months after the injury; and 30% come 18 months after injury. He said these long referral times reduce the chances of rehabilitating the injured person. There was discussion between Martin and Morgan.

Number 1045 — Rep. Rogers said that, at a December meeting with the Workers Compensation Board, it was suggested that there should be separate methods of calculating average weekly wage for permanent and partial disabilities, the temporary disability rate being based on

recent employment, and the permanent disability figured over a longer term. Rep. Martin said they should wait for John Lewis's input on this subject.

Number 1058

As there was no further business to come before the committee, the meeting was adjourned at 2:47 p.m.

LABOR & COMMERCE COMMITTEE

DAILY COMMITTEE HEARING

Date: 1/25/82 Place: _____

Members	Present	Absent	Time Arrived	Time Left
Rep. B. Bylsma, V. Chair	✓	~~E~~	1:15	
Rep. D. Randolph	✓		1:18	
Rep. B. Rogers	✓		1:15	
Rep. T. Gardiner	✓		1:15	
Rep. T. Martin, Chair	✓	~~1:06~~	1:06	

Subject Matter:

House Bill No. HB 159

Senate Bill No. _____

Special Orders:

Alaska State Legislature

REPRESENTATIVE
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DURING LEGISLATURE
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January 5, 1982

To: All concerned about Alaska's Workers Compensation --an addition to report of December 17, 1981

From: Representative Terry Martin

Ref: More points of view to consider for Alaska's Workers Compensation legislation--HB 159, 1981

Changes have taken place in our state which now result in a number of claimants drawing excessively large benefit amounts or drawing benefits when they should not be entitled to them at all. An effort should be made to seek alternatives that would eliminate oversized, unearned benefits while still protecting the vast majority of the workforce. Necessary changes should result in compensation large enough for most claimants to survive on during time of recuperation and rehabilitation of injury suffered while on the job, and during period of temporary unemployment, while at the same time not reducing or eliminating the incentive to return to work.

Current policies and lack of regulations or laws result in very large benefit amounts when compared to some individuals' complete work histories. An example of this phenomena is the part-time and seasonal worker. The number of part-time/seasonal workers has grown dramatically in the past years and the projections are that the part-time/seasonal work force will continue to grow faster than the total work force. In Alaska, many seasonal and part-time workers seem to get injured in the closing days of their current jobs. For claimants

with a history of short working periods on an annual basis, a percentage of full-time workers compensation should be considered as to percentage of time worked in the immediate calendar year. The current policy is unfair to workers with full-time, long history of working, and also to employers. A strong duration formula will help to offset the adverse effects of a liberal benefit formula. Furthermore, support of persons only marginally in the labor force should be a welfare function and not a function of worker compensation.

Disqualification. Claimants should be disqualified for willful misconduct connected with work.

Gross misconduct may include acts of dishonesty, violation of safety rules, assault and battery, and destruction of employer's property as assessed by the Workers Compensation Board. The Board may also evaluate a percentage of workers compensation for willful misconduct connected with work. This would include willful acts which do not warrant a disqualification under the gross misconduct provision.

Job Refusal. Claimants may be disqualified by the Workers Compensation Board for refusal of suitable work after release by proper medical authority. Suitable work may be limited to jobs that had approximately the same pay as employment at time of injury.

Vacation Pay. The Workers Compensation Board may consider if vacation pay should postpone the individual from receiving workers compensation benefits for the weeks the vacation pay would cover. Worker compensation is designed to be a wage-lost replacement program, therefore the feeling that the employee is receiving continual wages, so it would not be appropriate to allow the individual to draw both benefits.

Unemployment Compensation. Normally an individual receiving workers compensation for any week would not be able to work, and therefore would not qualify for unemployment compensation. There are situations, however, where the person could be able to work but cannot perform his old job because of the disability. If he is receiving unemployment compensation for any such week, the worker compensation should reduce dollar for dollar any unemployment benefit the individual could otherwise receive.

Eliminate "socialized cost" of workers compensation from employers' premium rates. Rates assigned to employers should be designed to try and recoup from most employers the loss of employees wages and medical cost of injury. In many states, there has been a tendency to recognize that the cost of benefits of certain types should not be charged to individual employers; thus, the legislature should address the question of separating the socialized cost from workers compensation premiums paid by employers, and make the cost--eg, retraining and rehabilitation--the responsibility of proper State agencies. This switch in financing social cost would certainly make State agencies more consciencious of expenditures associated with so-called "retraining programs", when State revenues are used to support their non-controlled advocacies of social benefits, rather than a distant third or fourth party paying the bill, that has virtually no control over social cost of workers compensation. In evaluating the current rate formula in Alaska, the premiums may result in recouping more for socialized costs than what is necessary or fair to the employer. Since 1975, there has been an interplay where there was a large increase in benefit payments which are not recouped fast enough through the normal rate schedule.

The State legislature readily sees other factors that increase the cost of premiums for workers compensation that should be immediately addressed. These changes would reverse the incentives of staying on compensation rather than returning to work as soon as possible. For instance, the compensation formula should not result in an individual drawing more income monthly while on compensation than he or she took home while fully employed. Thus the formula should exclude from wages payments by the employer of the employee's tax for federal old age and survivors insurance, and payments from or to certain special benefits funds by employers. For monthly payments, other income from food stamps, medicaid, medicare, child care, unemployment compensation, and other social services should be not allowed or deducted.

In the state of Alaska, an employer should be subject to certain interest or penalty payments for delay or default in payments of

contributions and incur penalties for failure or delinquency in making reports of proper coverage for employees. The Workers Compensation Division or Department of Labor should be allowed authority to immediately close a business until there is proof that employees are covered for injuries received on the job and the premiums are paid up to date. It should be mandatory that insurance carriers notify the Division of Insurance within ten days when an employer has failed to pay premiums or suspended insurance policy.

Original employers, especially self-insured employers who will not for any reason rehire an employee who is re-seeking work, should be somewhat responsible to contribute to the second injury fund covering an ex-employee who is off workers compensation and working for a new employer. Such a policy may encourage reemployment by the original employer or encourage a new employer to hire previously injured or handicapped workers.

1-26-82

HB 159

HOUSE LABOR & COMMERCE
STANDING COMMITTEE
January 26, 1982
1:07 p.m.

Members Present: Rep. Martin, Chairman
Rep. Bylsma, Vice Chairman
Rep. Gardiner
Rep. Randolph
Rep. Rogers

Members Absent: No members absent.

COMMITTEE CALENDAR

HB 159 An act relating to workers' compensation; and providing for an effective date.

WITNESS REGISTER

Zee Jackson
Rehabilitation Consultant
PO Box 3130
Anchorage, Alaska 99510
264-2460
Position Statement: Presented preliminary results of survey of injured workers.

Jim Robison
W/C District Council of Laborers
Alaska State AFL-CIO
Box 899
Anchorage, Alaska
276-1640
Position Statement: Comments.

Barbara Grisson
Pacific Marine Insurance
201 Danner
Anchorage, Alaska
800-426-4115
Position Statement: Suggestions.

Jack Thompson
WCCA
2216 Post Road
Anchorage, Alaska 99501
Position Statement: Comments.

PREVIOUS ACTION

HB 159 — No previous action. No action taken this date.

Statutory Reference: AS 18.80; AS 23.30.

ACTION NARRATIVE

Tape #005
Recording
Number 1058 — The meeting was called to order by Chairman Martin at 1:07 p.m. He introduced Zee Jackson, who had prepared a study for presentation to the committee.

Number 1070 — Zee Jackson, rehabilitation consultant from Anchorage, presented the preliminary findings of a comprehensive study of vocational rehabilitation in the Alaska Workers Compensation Program. She went over the abstract prepared. Jackson noted that workers are not timely referred for rehabilitation, and Workers Compensation is not advising workers of their potential entitlement to vocational rehabilitation because of a lack of staff.

Number 1092 — Jackson gave her recommendations and an overview of rehabilitation in workers compensation (see page 10 of her report). Her recommendations were: 1) early identification of injured workers who potentially need rehabilitation; 2) use of competent rehabilitation providers; 3) provide opportunities for return to direct employment; 4) maintenance of atmosphere conducive to rehabilitation; and, 5) provide incentives and remove disincentives to rehabilitation. She said that getting people back to work is the crux of rehabilitations.

Number 1160 — Jackson referred to page 14 of her report, and presented a summary and interpretation of data. She said the primary sources of data were the state Division of Rehabilitation; two private rehabilitation firms; records of the Division of Workers Compensation; hearing testimony; and meetings of system participants, attorneys, medical community, insurers, and others. She pointed out the limitations of the data, such as different meanings to different people of some terms (eg, "successfully

rehabilitated worker").

Number 1199 — Jackson went over comparisons of public and private agency rehabilitations data (pages 18-19 of report). She explained comparison data for four workers compensations acts with provisions for rehabilitation benefits (Alaska, Idaho, and two federal programs)(p. 22 of report).

Number 1280 — Rep. Randolph had questions about actual costs of rehabilitation (see table 1, p. 18). There was discussion between the committee and Jackson regarding figures. Don Koch, of the state Division of Insurance, gave figures for insured workers compensation programs last year.

Number 1336 — Jackson referred to p. 16 of her report regarding findings and recommendations. She said there is no rule about when an injured worker is referred for rehabilitation. Many agencies use a timeframe based on injuries received, but referral generally runs 60-120 days from the date of injury. She said catastrophic injuries are referred right away. Jackson suggested instituting a reporting requirement for sending injury reports to Division of Workers Compensation. She also recommended the Division screen reports to ensure services are provided, and to notify injured workers of their rehabilitation rights. She referred to p. 17 of her report, and questioned counselors' qualifications to evaluate clients; she felt counselors may misperceive their roles; eg, advising people to settle cases or by giving advice to the Board, which is beyond the counselors' expertise. She felt the plans presented by counselors don't contain enough information (eg, specific goals, progress reporting timeframes). She said the problem exists because there are no guidelines or definitive procedures.

Number 1398 — Jackson said there seems to be a lack of understanding of roles in the system. There should be standards of time for evaluation, how long to implement plan, length of programs. She said counselors should be required to report consistently, and contents of report should be defined.

Number 1412 — Jackson noted that there is not much effort

on the part of employers to take injured workers back. She said there is a need to develop return to work programs with employers and injured workers. Rep. Randolph said if an employer puts an injured worker back to work, he is putting someone else out of work. There was discussion between the committee and Jackson about back-to-work programs.

Number 1476 — Rep. Martin asked Jackson which parties she had evaluated in her study; Jackson explained.

Number 1491 — Jackson went over the elements needed to maintain an atmosphere conducive to rehabilitation. She referred to page 24 of her report, and explained the need to provide incentives and remove disincentives to putting injured workers back to work. She gave examples of incentives and disincentives.

Jackson felt that putting a dollar limit on the second injury fund creates difficulties because the upper limit becomes a "goal" for people; they come to expect $10,000 worth of rehabilitation. She said the injured worker's right to money must be tied to the worker's need. She suggested rewording to leave a dollar amount and replace with language such as "all necessary costs". She felt this would not increase the cost of the program if properly managed.

Number 1625 — Jackson said the Workers Compensation Board needs to have unquestioned authority.

Number 1637 — Jackson discussed the risks of premature compromise and release settlements. She said self-employment plans often do not work. She felt settlements should be the exception rather than the rule. She went on to say that excessive litigation can impede successful rehabilitation. Jackson felt that attorneys don't really have a place in the system. She saw the need for a well-defined procedural mechanism for delivering rehabilitation to avoid excessive litigation. She felt that a major reason for litigation is a lack of information available to the worker. She said that void can be filled if there is a rehabilitation delivery system that sets the tone for a

positive rehabilitation program which, early on, lets the worker know his rights and responsibilities. She said this system has to have remedies when one party is not cooperating or not playing by the rules.

Number 1724 — Jackson went over commonly expressed concerns on the part of physicians, counselors, injured workers, insurer/employer, and attorneys (see p. 30 of report).

Number 1737 — Rep. Rogers said these were good suggestions, but only three or four required legislative action. He said that most of her suggestions could be within the administration, or in the self-interest of insurers and employers. Jackson responded that legislators could help. She said the primary ingredient is the ability of the administrative agency to provide assistance which all parties will need. She felt the Division doesn't currently have the staffing or background, and said they need a person with a good understanding of how to construct a program.

Number 1772 — Rep. Martin asked how far the state is from a reasonable program. Jackson replied that she was surprised no one was monitoring rehabilitation. She added that, as a counselor, she would never attempt to work with a client with an attorney present. She said the Board encounters resistance when trying to deliver assistance, and was surprised the Board's authority is taken so lightly. She saw a high element of "outlaw mentality". Jackson said the authority is in the law, but is not used. She felt that, because roles and procedures are not defined, it is hard for the Board to exercise authority. She said the state needs a defined procedures manual. She also noted that counselors are not given, and probably would not take, directions.

Tape 6, Side A,000 — Jim Robison, of W/C District Council of Laborers and the Alaska State AFL-CIO, commented on Jackson's presentation.

Number 0017 — Barbara Grisson, of Pacific Marine Insurance in Anchorage, said one incentive not mentioned is a 6% saving on Second Injury Fund tax when an employer re-employs an

injured worker.

Number 0036 — Jack Thompson, of WCCA, Anchorage, felt there were economics people don't realize.

Number 0050 — Jackson again reiterated the need for regulations to define the Board's authority.

Number 0090 — As there was no further business to come before the committee, the meeting was adjourned at 2:50 p.m.

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

Presented by

Zee Pamplin Jackson
Rehabilitation Consultant
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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 Rehabiliation 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 catostrophic 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 tion of either basic legislative changes or administrative regulation, the responsibilities of carrier" and employers to provide rehabilitation service, 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 catostrophic 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[1/]

	Eligible Cases Closed	Avg. Time in Rehab. Process	% College Training	Successful Rehabs.	Avg. Cost Per Eligible Case	Avg. Cost/ Successful 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.

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

TABLE 2

DVR[2/]

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

a. Cost	#	
0-500	18	
500-1000	9	
1000-1500	9	64% below $2500
1500-2000	7	
2000-2500	3	
2500-3000	3	
3000-3500	2	
3500-4000	7	
4000-4500	1	
4500-5000	3	
5000-and over	10	

b. Referral Period	#	Avg. Cost/Case
0-6 Months after inj.	14	$2168
7-12	26	2391
13-18	10	2494
19-24	7	975
25-30	10	2332
30-36	4	2492
36 and over	1	8258

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

2/ 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	#	
0-500	40	
500-1000	36	
1000-1500	28	75% below $2500
1500-2000	25	
2000-2500	13	
2500-3000	12	
3000-3500	11	
3500-4000	10	
4000-4500	4	
4500-5000	2	
5000 and over	7	

b. Referral Period	#	Avg. Cost/File
0-6 Months after inj.	NA	$1414
7-12	"	1670
13-18	"	2003
19-24	"	1875
25-30	"	1926
30-36	"	2198
36 and over	"	-

* 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/ 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 OWCP, 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, dispells the notion of complete unawareness in this matter.

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.

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
1/ Alaska	6,356	249	3.9	72	28.9	1.1	Unknown
2/ Idaho	7,800	1431	18	344	24	4.4	38
3/ OWCP - 4/ FECA	47,982	7608	16	763	10	1.6	68
OWCP - 5/ 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/ Longshoremens 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.

RECOMMENDATION 9

That co ractual 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 <u>right</u> to rehabilitation services coexists with the <u>need</u> 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 reasonalbe 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 resistence 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 inured 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 competative 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 catostrophically 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. Successfull 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 <u>need</u> as opposed to the <u>desire</u> 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. Artifical 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.

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Section

(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

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Worker Rehabilitation

Idaho
Industrial Commission
Rehabilitation Division

Exhibit 2

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

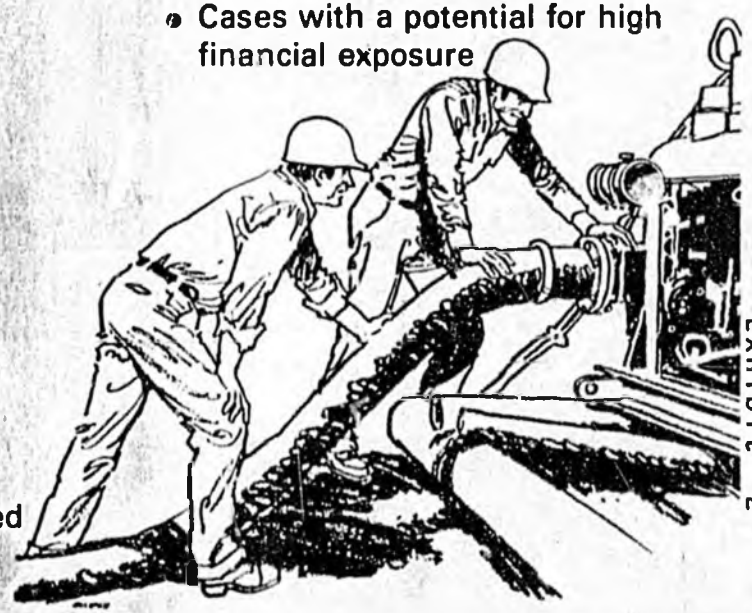

Exhibit 2

9:00 Jeff - Resolutions;

Discussion
of
Preliminary Results
of
Survey of Injured Workers

METHODOLOGY

This survey was conducted to measure the post injury, economic status of injured workers and to examine their reactions to the delivery system of rehabilitation benefits in the Alaska Workers' Compensation System

A time frame considered to be most useful to the survey was established. Workers who sustained injured between January, 1977 and December 1980 were included in the survey. This time frame eliminated injuries occurring during the pipeline "boom" economy of the mid-seventies. It also provided an adequate stabilization period for injured workers to get back on their "economic feet."

Injured workers surveyed were divided into three groups. The first group included workers who had signed compromise and release agreements, which did not include provisions for rehabilitation benefits. The second group of injured workers were those referred to the state vocational rehabilitation agency, and the third group of injured workers were those referred to private rehabilitation firms.

Survey forms were mailed to all 142 workers in the two rehabilitation groups. For the compromise and release group, every second case was selected out of a total of 1000 cases. Surveys were mailed to 468 injured workers in this group. Thus, the total number of workers surveyed for the three groups was 610. This represents an adequate cross section of the entire universe.

Response to the Survey

Due to time constraints and problems experienced in obtaining correct addresses, the survey has not been completed. Of the 610 survey forms sent out, 180 (30%) were returned as undeliverable as the worker was either unkown at the address, or the forward had expired. Of the remaining 430 surveys, 65 (15%) have been completed and returned. In the next two weeks, telephone surveys will be conducted to complete the sample of respondants.

Preliminary Results

Of the 65 workers who responded, 26 had received rehabilitation services. In evaluating how helpful rehabilitation was in returning them to work, 14 respondant stated "very helpful", 7 chose "not helpful" and 5 chose something in between. As more surveys are returned, the responses will be correlated with the source of referral. Of the 26 rehabilitation respondents, 12 were referred to rehabilitation by a source other than the choices given in the survey. This "other" source was the doctor and 8 of these 12 found rehabilitation was "very helpful" in returning them to work. However, until more responses are received, no hard and fast conclusions or inferences can be made with any degree of validity.

Responses to questions on income from employment only, are more complete. Virtually all the workers had been injured well over two years ago. Yet in 1980, 52% of the 65 workers had incomes under $12,000. In 1981, 55% of the 65 respondants reported incomes under $12,000. For the remaining group, in 1980, only 10 respondants had incomes over $25,000, while that number rose to 15 in 1981. These figures support the beliefs of those in the workers' compensation community regarding the fate of injured workers. Unless positive steps are

taken quickly to return them to the work place, injured workers can get stuck at a level of income far below that held at the time of injury. However, due to the small percent of survey response received to date, definitive conclusions cannot be made.

The survey does allow a look at income in another way. Of the 65 respondants, 31 were employed at the time they received the survey. A comparison of pre-injury and post-injury average weekly wage (AWW) for this group shows that 12 respondants had an AWW in the same income bracket as before injury, 15 had weekly wages in a higher bracket than before injury, while only 3 had an AWW which fell into a lower bracket than before injury. These figures support another commonly held belief in the compensation system. For workers who timely return to the work place, upward, economic mobility is possible. Responses which evaluate physical demands of current jobs add another diminsion regarding employability of injured workers. Desptie the fact that 27 of the 31 employed respondants are working for wage at or above their pre-injured weekly wage, 16 or over half the group, are in positions that required less physical demand than their pre-injure jobs. In other words, an injury which results in physical limitations need not result in limiting the personal and economic achievement, afforded by productive employment.

ZEE PAMPLIN JACKSON
Rehabilitation Consultant

December 11, 1981

The Alaska State Legislature has funded a study of rehabilitation and retraining for injured workers in the state. The goal is to develop more efficient and constructive rehabilitation and retraining services in Alaska so that injured workers can receive the best help possible during their period of disability. Part of this study will compare the post-injury experience of people who have gone through rehabilitation and retraining, with the post-injury experience of people who have signed compromise and release agreements.

As someone who has signed a compromise and release agreement, you can provide useful information for the study. If you would fill out the brief enclosed questionnaire and return it in the postage paid envelope, I would greatly appreciate it.

I want to emphasize that any information you provide will remain strictly confidential. This study is in no way connected with any benefits you may have received in the past, or might received in the future. If you have any questions, please call me collect at (907) 264-2460 from 8:00 a.m. to 4:30 p.m. Alaska Standard Time.

Your help in this project could make a difference in getting better and more effective laws passed for the protection of injured workers. Thank you for your time and cooperation in returning the questionnaire as quickly as possible.

Sincerely,

Zee Jackson
Rehabilitation Consultant

P.O. Box 3130 • Anchorage, Alaska 99510 • (907) 264-2460

"CONFIDENTIAL FOR STATISTICAL PURPOSES ONLY"

RETURN IN THE ENCLOSED STAMPED ENVELOPE TO:

Zee Jackson
P.O. Box 3130
Anchorage, Alaska 99510

WORKERS' COMPENSATION VOCATIONAL REHABILITATION SURVEY

1. When were you injured? MONTH _____ YEAR _____

2. Since your injury, have you received any rehabilitation services?

YES ☐ IF YES, ANSWER THESE QUESTIONS NEXT →

NO ☐

IF NO, CONTINUE WITH QUESTION #3

2a. Who referred you to the rehabilitation services?

Insurance Carrier ☐ Employer ☐

Division of Workers Comp. ☐

Attorney ☐ Other ☐

2b. How helpful was the rehabilitation service in returning you to work?

Very helpful ☐ Helpful ☐

A little helpful ☐ Not helpful ☐

NOW GO TO QUESTION #3

3. How long were you unable to work because of your injury?

Less than 1 month ☐ 1-3 months ☐ 4-6 months ☐ 7-12 months ☐
Over 1 year ☐

4. Are you currently employed?

YES ☐ IF YES, ANSWER THESE QUESTIONS NEXT →

NO ☐

4a. What is your usual gross weekly income?

Under $200 ☐ 100-299 ☐ 300-499 ☐ 500-800 ☐
Over 800 ☐

4b. How long have you been at your present job?

Under 1 month ☐ 1-3 months ☐ 4-6 months ☐
7-12 months ☐ Over 1 year ☐

4c. Are the physical demands of your current job
greater than ☐ less than ☐
the same as ☐
your pre-injury job? ☐

4d. Is this a seasonal job?
Yes ☐ No ☐ Other (Explain)

NOW GO TO QUESTION #5

4e. Is your work injury preventing you from working?

YES ☐ NO

5. Approximately what was your gross income from employment in 1980?

Under $12,000 ☐ 12-18,000 ☐ 18,001-25,000 ☐
25-35,000 ☐ 35,000 or over ☐

6. Approximately what do you expect to earn from employment only in 1981?

Under $12,000 ☐ 12-18,000 ☐ 18,001-25,000 ☐
25,000-35,000 ☐ 35,000 or over ☐

PLEASE WRITE ANY COMMENTS YOU MIGHT HAVE ABOUT YOUR EXPERIENCE WITH THE WORKERS' COMPENSATIUON SYSTEM

You can use the reverse side.

B. Reeves

Disincent 25 to RTW

1. AWW –
   a. best 3 last 3 could be more than ~~one~~ @ time of injury cmpo - AWW more than
   b. Spendable income should be basis for comp. rates
      Should not include room + board or fringes

Primary Parties in W/C

Employee – Labor — Laborers, Operating Engineers, Carpenters, Teamsters

Employer – Management

Needs of Primary Party
RTW. Timely
Reduce Comp. cost

RHB Services comparable & accomplishing goals

RHB Counselors are facilitators, (ee)
NOT primary parties

House Labor & Commerce SIGN-IN SHEET Voc. Rehab

Name (please print)	Address	Representing	Testify? (YES or NO)	Phone Number
Pat Mooney	0581 - 50 Bld. Juneau	Voc. Rehab -	?	586-6500
Mike Rudisell	0589 - 60 Bld Juneau	Voc Rehab.		586-1245
Mike Thomas	Box 1211 Juneau	Am. Insurance Assn	No	5863340
Jim Robison	Box 899 Anch.	W/C district counsel of Labor Alaska State AFL-CIO		276-1640
Don Rouleau	Box 11-2653 Anch.	"	No	274-5464
Paul Haase	P.O Box 1149	Workers' Comp. Second Injury fund	No	465-2791
Kel Christian	P.O. Box 330 Anch		Yes	262-2460
Dick McClintock	P.O.B 1149 Juno	Dept of Labor W/C Div.	NO	465-2790
Ed Hite	201 Danner, Anch	Daryl A. Cody	NO	349-6733
Jack Thompson	2216 Post Rd Anch 99501	WCCA		
Michael Thill	Capital Rm 119	Senate Labor & Commerce Aide	No	465-3716
Eileen Collins	P.O. Box 1149	Labor	No	465-2700
David Kerner	P.O. Box 1149	W/C Board Mbrs	No	465 2790
Elaine VanderSande	" " "	Workers Comp	No	465-2790
Jean Kyes		A.M.C.	—	6-1740
Jon Rogers		AGC	No	276 5354
Barbara Hudson	201 Danner - Anchorage	Pacific Marine Ins	no	800-426-4115
Paul Tweedy	5921 Sunset St	Self	No	276-6856
DAVID KERTNER	P.O.B. 1149, DEPT LABOR	LABOR W/C BOA. Workers Comp	NO	465.2780
Wes Coyner				

HOUSE LABOR & COMMERCE COMMITTEE HEARING DATE: 1-26-82

House Labor & Commerce SIGN-IN SHEET Voc. Rehab

Name (please print)	Address	Representing	Testify? (YES or NO)	Phone Number
Glenn Lundell	Box 1149, Juneau 99811	Dept of Labor	No	465-2700
Dwayne Ward		Labor	No	
Don Koch	POUCH D JUNEAU 99811	DIV. OF INSURANCE	NO	465 2577
George Kruse	310 2nd - Juneau 99801	AK State COALC	No	586-7323
MIKE MORGAN	9170 GLACIERWOOD DR	DIV VOC REHAB	NO	586-6500
Kathy Kolkhorst	P.O. 1712 Juneau 99802	A.G.'s office	NO	465-3603

HOUSE LABOR & COMMERCE COMMITTEE HEARING DATE: 1-26-82

LABOR & COMMERCE COMMITTEE

DAILY COMMITTEE HEARING

Date: 1/26/82 Place: _____

Members	Present	Absent	Time Arrived	Time Left
Rep. B. Bylsma, V. Chair	✓		1:05	
Rep. D. Randolph	✓		12:58	
Rep. B. Rogers	✓		1:15	
Rep. T. Gardiner	✓		1:18	
Rep. T. Martin, Chair	✓		12:58	

Subject Matter:

House Bill No. 159

Senate Bill No. _____

Special Orders:

1-27-82
HB 159

AN INTERIM REPORT ON THE ALASKA WORKERS' COMPENSATION SYSTEM

John H. Lewis
P.O. Box 330550
Miami, Florida 33133
(305) 443-8111

January 27, 1982

INTRODUCTION

The purpose of this document is to analyze the major areas of concern within the Alaska workers' compensation system. The items discussed were chosen because of their economic significance, and in some instances because of existing controversies as to their proper role in the compensation system. Although many issues remain for additional discussion, those contained in this report represent the critical questions which must be resolved in order to develop an appropriate legislative response to the current workers' compensation controversy.

THE BUNKHOUSE RULE

The major criteria for determining the compensability of an accidental injury is whether it arose out of and in the course of the employment (AOE/COE). This phrase is contained in the Alaska Workers' Compensation Act as well as 48 others. Obviously this test must be interpreted in those instances in which compensability is disputed, and as a result, there is a huge volume of case decisions from across the country, providing additional and more specific guidelines for determining when the AOE/COE test has been met. Since the Alaska Workers' Compensation Act is relatively new, it did not go through the developmental period in which these rules were structured, and simply adopted existing guidelines, in many cases selecting the most far-reaching of available options. The bunkhouse rule is one of these guidelines.

Normally an injury must occur during the hours of employment and be caused by some incident of the work to meet the AOE/COE test. However, years ago the courts determined that when a worker is required to live away from home, particularly for extended periods of time, the test should be broader. This gave rise to the bunkhouse rule. The rule has many variations, all of which to one extent or another make the point that under these circumstances, injuries outside of normal working hours can still be deemed compensable, since the requirements of the job "forced" the employee to be in the circumstances which led to the injury. Despite some very unusual results, the bunkhouse rule has never been considered enough of a threat to the integrity of the workers' compensation system in any state to justify legislative intervention. In Alaska, due to the large number of remote work sites, the relatively high number of bunkhouse rule cases and the cost of even a minor injury, some question has been raised as to the continued application of the rule in its present form. However, any attempt at statutory modification of the rule should be undertaken with caution and something less than extreme optimism, because new language means new court tests, with unpredictable results. It may well be the fear of the unknown that has led other states to accept the certainty of existing case law rather than embark on the uncertain path of legislative action and subsequent court decisions.

A major consideration is whether the magnitude of the problem is worth the legislative effort. To date it appears that bunkhouse cases, at least those that raise questions about their propriety, do not constitute a significant expense when compared to the compensation system as a whole. However, they may very well constitute a significant portion of compensation expense for a number of employers.

Another consideration is the implications of modification of the rule. Assuming that a legitimate injury occurs at a remote site, but is not compensable due to the operation of a modified bunkhouse rule, the injured party will almost certainly incur considerable expense in returning to an area where medical treatment is available. There are a number of obvious solutions to this problem, but it cannot be ignored. One should also consider the impact on employers of a modification of the bunkhouse rule. The obligation to provide workers' compensation coverage grants the employer immunity from civil action by an employee only when an injury is compensable. A significant narrowing of the bunkhouse rule will increase the possibility of civil suits, which tend to be more expensive than workers' compensation cases. Given the standards which presently govern the question of liability in civil cases, many "minor" compensation cases could become "major" civil cases. Even the lowly broken tooth suffered during mealtime could find its way to the courts, if caused by a foreign or improper object in the employee's food.

A final consideration is a virtually unverifiable opinion expressed by a number of individuals familiar with the problem that most "abuses" of the bunkhouse rule result from a desire to return to civilization for various purposes and that any solution other than a better leave policy on the part of employers will simply lead to either "abuses" of the new rule or the development of other, equally expensive ways of getting back home.

The list of alternatives is practically endless. The following is a limited range of alternatives all of which can be modified and combined with others to reach the desired conclusion.

1. Limit compensable injuries at remote sites to accidents occurring during actual working hours.

2. Limit compensable injuries to those accidents occurring on the premises of the camp, regardless of the hour of occurrence or the activity engaged in.

3. Limit compensable injuries to those accidents occurring during working hours and those resulting from a special hazard directly related to the conditions of remote site living, such as a fire or weather related incident.

4. Eliminate from the range of compensable accidents those resulting from personal activities such as eating, and/or recreational activities.

A number of concerns have been expressed, primarily by those on the employer/carrier side, over the impact on costs of the current physician selection mechanism, which leaves the choice of treating physician to the employee. On its face this is a totally appropriate method, but there are a number of competing interests which at least deserve consideration. A factor weighing most heavily in favor of employee choice, a method used by approximately half the states, is that it is the employee who is being treated, and who should be given the opportunity to select physicians he trusts. On the other hand it is the employer who is paying the bills, which leads to legitimate concerns over paying for doctors who may not be the best available, or whose primary reason for selection may be a willingness to give a high disability rating, which in turn may lead to increased compensation benefits. Obviously the employee may have reason to be equally as concerned about an employer/carrier choosing a physician primarily on the basis of a willingness to testify "properly."

Perhaps the most effective solution to this dilemma lies with the Board. Given the small number of health care providers in Alaska, the Board should be well aware of the abilities of each. If a party feels improper treatment is being provided, an expedited hearing will give the Board the opportunity to order a change in treating physician, if necessary. If a physician is consistently one-sided in his testimony, the Board should be able to take this factor into consideration in reaching decisions on questions such as causation and extent of disability. The only potential problem here is with the appellate courts, which in their decisions tend to limit the Board's authority to accept or reject testimony based upon evaluation of a witness's credibility. If the Board is to be encouraged to take steps to minimize problems in medical care, it may be necessary to provide specific legislative direction to the courts, to insure that the Board's authority is not diluted.

The use of physicians in contested cases simply because of their extreme views can also be limited by encouraging the Board to select impartial examining physicians to help resolve medical disputes, and by explicitly relying on experts in whom the Board has a high degree of faith. Once again some legislative direction may have to be given to the courts to permit the Board to accept such testimony in appropriate cases rather than that presented by the litigants. This type of action can send a message to litigants that it does not pay to use medical testimony from witnesses who are biased, and can also result in a moderation of positions taken by medical experts.

In conjunction with the foregoing, there are a number of methods of physician selection in use in various states which can be considered.

1. Pure employee selection, as presently exists in Alaska.

2. Pure employer/carrier selection, tempered by the ability of the employee to apply to the Board on an expedited basis for change.

3. Initial employee selection for a limited period of time, such as ten days, with the employer having the right to change at the end of the period.

4. Initial employer/carrier selection for a limited period, with the employee having the right to change at the end of the period.

5. Employee selection from a panel selected by the employer/carrier.

6 Employer/carrier or employee selection from a panel designated by the Board. This typically involves initial inclusion of all practitioners in the state, with removal from the panel by the Board for cause.

SECOND INJURY FUND

The sole purpose of a second injury fund is to encourage the employment of physically impaired persons, or perhaps more accurately, to minimize the disincentives to their employment. A simple example will clearly explain the theory behind the operation of second injury funds. If an employer hires a worker with no physical impairment, who then loses an eye in a compensable accident, the compensation payable in Alaska for that loss will be for a period of 140 weeks. However, if that individual had suffered the loss of one eye prior to employment, the result of loss of the remaining eye would be permanent total disability, with benefit payments continuing for life rather than 140 weeks. In order to eliminate this financial disincentive to hiring, the Second Injury Fund, as it is used in Alaska, would pay all compensation payments subsequent to the first 104 weeks of disability.

Unfortunately, attempts have been made, sometimes successfully, to use funds as tools to reduce an employer/carrier's liability after the fact, when the preexisting impairment was questionable, or the employer's knowledge of its existence doubtful. This type of improper fund use typically leads to stringent controls which in turn lead employers to question whether the fund will work in their favor even when they act properly. In the face of such uncertainty, it is doubtful that even the best intentioned employer will rely on a fund and consider its benefits when contemplating the hiring of a physically impaired worker. Alaska has suffered from this syndrome and now appears to be in the phase which makes it more difficult to obtain reimbursement from its Second Injury Fund.

If the Second Injury Fund is to serve its purpose, two elements must exist. First, benefits from the Fund must flow only to those employers who hire or retain in employment individuals with significant permanent impairments which would otherwise be an obstacle to employment. Secondly, employers must at the time of hiring be as secure as possible in the knowledge that should an injury occur they will be financially protected by the Fund. Presently, uncertainty exists in Alaska as to both elements, and as a result there is considerable doubt as to whether the existence of the Fund provides much incentive for hiring physically impaired workers.

A relatively simple change in procedure may provide the certainty needed in both areas to make the Fund an effective tool. In order to establish knowledge of the impairment at the time of hiring, the employer of a permanently impaired worker could be required to file a simple form with the Fund, settling that question without a doubt, and precluding "after the fact" attempts to prove the requisite knowledge at the time of hiring. To simplify the filing process, each individual who sustained a permanent impairment in a compensable accident could, when ready to reenter the job market, be given a simple two-part form to present to prospective employers. The form would educate the employer as to the protection offered him by the Fund and would also provide the documentation of employment to be forwarded to the Fund. In such cases the employer would be guaranteed the protection of the Fund, should a subsequent injury occur, and would thus be given the incentive to hire. If necessary, a similar mechanism could be used to provide documentation for employees whose injuries would qualify them for Fund protection in the future but were not the result of a compensable accident.

AVERAGE WEEKLY WAGE

For a number of reasons related primarily to the pipeline, Alaska uses a method of computing average weekly wage which is different than those used in the other 49 states. In determining average weekly wage, and in turn the weekly benefit, the injured employee is permitted to pick the calendar year out of the three calendar years immediately preceding the injury in which total wages were the highest, and then divide by 52 to arrive at an average weekly wage. In some cases, this can result in unfairness to one side or the other. For example, an employer with an injured worker may find himself paying weekly benefits in excess of actual wages because of a high paying job with another employer three years prior to the accident. Similarly, an employee with a new but permanent high paying job may find his weekly benefit a small fraction of wages being earned at the time of injury, because of low earnings in the prior three years. Even for those with consistent annual earnings the rule can work a hardship. For example, a worker in extremely seasonal employment who earns a substantial income while working half the year, and nothing the remainder of the year, will have his earnings based upon a 52 week average. If he is injured and is totally disabled during a portion of the season his actual income loss will be twice as high as the average weekly wage on which the benefit is based.

Due to the impact of seasonality, no solution which is even remotely equitable for all concerned can be found unless the various segments of the benefit system, such as temporary total disability and permanent partial disability, are dealt with separately. Therefore, most of the average weekly wage question will be dealt with in those sections of the report which deal with benefits.

There is one aspect of average weekly wage which can be considered independently of benefits. That is, what elements of remuneration should be considered in determining the amount of pre-injury earnings. In Alaska the major concerns in this category are room and board, and fringe benefits. Conceptually, room and board are to be considered as part of average weekly wage only to the extent that they reduce the amount an employee would have expended for these items if he was not working. For example, with regard to room, if an employee is away from home for a few days, and the employer provides living facilities, there is no reason for the value of the facility to be included in average weekly wage computations. This is because the employee was still paying for his own home or rental while away, and did not experience an increase in net income because of the employer's payments. In the case of the worker who may be at a remote site for many months, and live in a facility provided by the employer, resolution of the question is not so simple. Theoretically, the value of living facilities should be included in the wage calculation only if the employee does not maintain another residence while at the remote site, since if he continued to make mortgage or rent payments at home, there would be no net economic benefit derived from living at the employer's facility. Whether a dual system of this type is acceptable, with employees being treated somewhat differently based upon their living arrangements at home, is a matter that is of purely legislative concern, with each of the alternatives somewhat arbitrary in its application.

The question of board is much easier to deal with, at least as to the initial determination as to whether it should be included in the weekly wage at all. Since a meal provided by the employer means a meal that the employee does not have to pay for, the provision of board will always result in a net economic benefit to the employee, and thereby justifies its inclusion in the wage computation. The value of the meal, as well as the value of living facilities, is another matter.

If it is an accurate assumption that room and board cost more to provide on the North Slope than in Anchorage, the valuation of these items presents a real question. Once again on a conceptual basis, the value to the employee is not what it costs the employer to provide room and board, but rather the amount of net economic to the employee. This requires valuation on the basis of how much would have been spent for these items had the employee remained at home. Obviously theory is of little help in this instance, since applying as esoteric an economic theory as this would create an administrative nightmare. Unless the legislature is willing to leave the question of valuation to contractual agreement or litigation on a case by case basis, legislative action is required. The most efficient mechanism may be to give the Board rule making authority to establish room and board values on a statewide or regional basis, to be included in the average weekly wage computation in appropriate cases. This authority provides a great deal of flexibility, in that changes in economic conditions can be quickly reflected in the rules, and adjustments made without the need for additional legislative or court action.

A much more difficult question is how to treat fringe benefits such as hospitalization insurance and employer-funded pension plans. At the present time, almost by practice rather than case decision, these items are not included in the computation of average weekly wage in Alaska. This occurs despite the fact that a reasonable argument can be made for the proposition that the statute is broad enough to permit their inclusion. The issue is of more than academic interest. If at some point a court holds that fringe benefits must be included in the wage computation, many open cases from past years will be entitled to have the weekly benefit increased retroactively, which would result in an enormous economic impact on employers and carriers. This is in addition to the financial impact such a ruling would have on new cases, particularly in view of the high level of fringes in some employments.

From the standpoint of the worker, fringes which are not continued after injury represent an economic loss, and therefore, a basis exists for the inclusion of their value in weekly wage computation. From the standpoint of the compensation system, their inclusion creates administrative problems (which are not entirely insurmountable) and more importantly would provide most workers with weekly compensation benefits substantially in excess of their take home pay, a situation which may be considered something less than optimum in view of the disincentives which it creates. The arguments on both sides are endless, and if the legislature decides to deal with this question it will hear each and every one. Suffice it to say that virtually every other state has avoided including this type of fringe benefit in the wage computation, except on an isolated basis, and Alaska has managed to operate its compensation system without their inclusion. Unless the state is willing to take on the economic and social problems which would be created by fringe benefit inclusion, the legislature should act to clarify the law and avoid the potential for court decision.

TEMPORARY TOTAL DISABILITY

The purpose of temporary total disability benefits is quite simple. They are intended to replace lost income during the time that the injured worker is recovering and unable to return to work. In most states this is also the easiest type of loss to deal with, by simply replacing a portion of the income lost during the period of total disability, with duration measured primarily from a medical standpoint. However, the impact of seasonality on a substantial portion of the Alaska work force creates a situation which cannot be dealt with by traditional means. Therefore, the following analysis and proposed solution may very well be viewed as radical within the context of existing workers' compensation systems. It may also be the only way to establish equity for those receiving and those paying temporary total disability benefits in Alaska.

As previously discussed, the "best of three" method for determining average weekly wage, and thereby temporary total disability benefits, creates problems for all concerned. If one accepts the proposition that temporary total disability benefits are intended to replace lost income during the period of recovery, then the wage basis used to compute these benefits must reflect the income which would have been earned during this period, rather than the level of income earned three years previously. This can be accomplished more accurately by applying the traditional average weekly wage formula used in a significant number of states. The period of comparision, rather than one of the preceding three years, would be the 13 weeks immediately prior to the injury. If the injured employee was not employed for substantially the whole of 13 weeks, the wages of a similar employee who was so employed are used, and if no similar worker is available, then the average weekly wage would be based upon the contemplated full-time wages of the injured worker. Since workers in seasonal employment tend to be highly paid, use of this mechanism may also require an increase in the maximum weekly benefit, so that the higher paid worker is not deprived of adequate income replacement due to the application of an inappropriate weekly maximum.

Of course there is another side to the coin. For the seasonal worker, this level of income replacement is only proper during the period of time that income would actually have been earned. To take the extreme case, is it correct to provide temporary total disability benefits when the injury occurs on the last day of the job, and recovery takes place during a period of time when the employee would have been receiving unemployment benefits? If the answer is no, then temporary total disability benefits in Alaska should be more closely matched to periods of gainful employment, rather than merely relying on the employee's physical condition, with unemployment benefits replacing workers' compensation benefits during what normally would be a period of unemployment. Obviously this method creates new opportunities for litigation, which may make it unacceptable. The only way to determine if the cure is worth the price is through an open discussion involving those primarily concerned, employees and employers. The answer depends upon the extent to which employees are currently being deprived of proper benefits due to the operation of the existing law, the extent to which employers are currently paying what may be considered excessive benefits during periods of seasonal unemployment, and the difficulties which will have to be overcome if "income matching" is to be accomplished in a significant number of cases.