



Sec. 23.30.140. APPOINTMENT OF GUARDIAN BY COURT. The board may require the appointment of a guardian or other representative by a competent court for any person who is mentally incompetent or a minor to receive benefits [COMPENSATION] payable to the person under this chapter and to exercise the powers granted to or to perform the duties required of the person under this chapter. If the board does not require the appointment of a guardian to receive the compensation of a minor, appointment for this purpose is not necessary.

② * Sec. 44. AS 23.30.145 is amended to read:

Sec. 23.30.145. ATTORNEY FEES. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first \$1,000 of benefits [COMPENSATION] or part of the first \$1,000 of benefits [COMPENSATION] and 10 percent of all sums in excess of \$1,000 of benefits [COMPENSATION]. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to benefits [COMPENSATION] awarded; the fees may be allowed only on the amount of benefits [COMPENSATION] controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the benefits [COMPENSATION] awarded. In determining the amount of fees the board shall take into consideration the nature, length and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

(b) If an employer fails to file timely notice of controversy or fails to pay [COMPENSATION OR MEDICAL AND RELATED] benefits within 15 days after it becomes due or otherwise resists the payment of [COMPEN-

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SATION OR MEDICAL AND RELATED] benefits and if the claimant has employed an attorney in the successful prosecution of his claim, the board shall make an award to reimburse the claimant for his costs in the proceedings, including a reasonable attorney fee. The award is in addition to the [COMPENSATION OR MEDICAL AND RELATED] benefits ordered.

(c) If proceedings are had for review of an [A COMPENSATION OR MEDICAL AND RELATED BENEFITS] order before a court, the court may allow or increase an attorney's fees. The fees are in addition to [COMPENSATION OR MEDICAL AND RELATED] benefits ordered and shall be paid as the court may direct.

① * Sec. 45. AS 23.30.155(j) is amended to read:

(j) If an employer has made advance payments or overpayments of compensation, he is entitled to be reimbursed, after approval by the board, out of any unpaid installment or installments of compensation due.

② * Sec. 46. AS 23.30.155 is amended by adding new subsections to read:

(n) Compensation owed to an injured employee in the state shall be paid by a check or draft that may be cashed on the first banking day after it is received by the employee and on any succeeding banking day.

(o) Whenever the board determines that it is in the interest of an injured employee and that a substantial hardship will not be imposed on the employer, the liability of the employer for all or part of compensation payable under AS 23.30.190 may be discharged by the payment of a lump sum.

② * Sec. 47. AS 23.30 is amended by adding new sections to read:

Sec. 23.30.157. AVAILABILITY FOR EMPLOYMENT. (a) An injured employee who receives compensation or medical and related benefits under this chapter and who is not employed shall register with the employment service operated by the state and shall report to job inter-

views and referrals arranged by the employment service.

(b) An employee described in (a) of this section who is unemployed and has received 10 or more job referrals within the preceding three years may not receive further benefits under this chapter unless the employee is determined to be permanently totally disabled in accordance with AS 23.30.180.

② Sec. 23.30.159. OTHER EARNINGS. (a) An injured employee who receives compensation or medical and related benefits shall report monthly any wages earned during the preceding month

(1) to the board; or

(2) if the employer elects to pay benefits directly, to the director of insurance.

(b) An employee who fails to report wages as required under (a) of this section may not receive benefits under this chapter until those reports are made.

② * Sec. 48. AS 23.30.160 is amended to read:

Sec. 23.30.160. ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS.

No assignment, release, or commutation of [COMPENSATION OR] benefits due or payable under this chapter, except as provided by this chapter, is valid, and the [COMPENSATION AND] benefits are exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt. This exemption may not be waived.

② * Sec. 49. AS 23.30.165 is amended to read:

Sec. 23.30.165. LIEN. (a) Each employee and beneficiary entitled to benefits [COMPENSATION] under the provisions of this chapter has a lien for the full amount of his benefits [COMPENSATION], including costs and disbursements of suit and attorney fees allowed, upon all of the property in connection with the construction, preservation, mainte-

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nance or operation of which the work of the employee was being performed at the time of his injury or death. For example: in the case of an employee injured or killed while engaged in mining or in work connected with mining, the lien extends to the entire mine and all property used in connection with it; and in the case of an employee injured or killed while engaged in fishing or in the packing, canning, or salting of fish, or other branch of the fish industry, the lien extends to the entire packing, fishing, salting or canning plant or establishment and all property used in connection with it; and this is the case with other businesses, industries, works, occupations and employments.

(b) The lien is prior and paramount to any other lien on the property, except a lien for wages or materials as provided by law, and is of equal rank with a lien for wages or materials.

(c) The lien extends to all right, title, interest and claim of the employer in the property affected by the lien.

(d) A person claiming a lien under this chapter shall, within one year after the date of the injury from which the claim of benefits [COMPENSATION] arises, file for record in the office of the recorder of the recording district in which the property affected by the lien is located a notice of lien signed and verified by the claimant or someone on his behalf, and stating in substance, the name of the person injured or killed out of which injury or death the claim of benefits [COMPENSATION] arises, the name of the employer of the injured or deceased person at the time of the injury or death, a description of the property affected or covered by the lien and the name of the owner or reputed owner of the property.

(e) The lien for benefits [COMPENSATION] provided for in this section may be enforced by equitable proceedings as in the enforcement

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of other liens upon real or personal property, within 10 months after the cause of action arises. Nothing in this section prevents an attachment of property as security for the payment of benefits [COMPENSATION].

② * Sec. 50. AS 23.30.170(a) is amended to read:

(a) In case of default by the employer in the payment of benefits [COMPENSATION] due under an award of benefits [COMPENSATION] for a period of 30 days after the benefits are [COMPENSATION IS] due, the person to whom the benefits are [COMPENSATION IS] payable may, within one year after the default, apply to the board making the compensation order for a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in AS 23.30.110, the board shall make a supplementary order declaring the amount of the default. The order shall be filed in the same manner as the compensation order.

① * Sec. 51. AS 23.30.175(b) is repealed and reenacted to read:

(b) After June 30 and before December 1 of each year, the commissioner shall adopt and publish the average weekly wage for the preceding calendar year as computed by the United States Secretary of Labor for the purposes of unemployment insurance. In determining the rate of compensation the commissioner shall use the average weekly wage figure for each jurisdiction, including Alaska, for which the Secretary of Labor computes an average weekly wage. These figures are the applicable average weekly wages for those jurisdictions for the following calendar year. The average weekly wage for Alaska is the amount determined by dividing (1) the total wages paid by all employers covered by the Alaska Employment Security Act by (2) the average monthly employment reported by those employers for the same period and dividing the result by 52.

① * Sec. 52. AS 23.30.175(c) is repealed and reenacted to read:

(c) The following rules apply to recipients who do not reside in Alaska:

(1) The weekly rate of compensation shall be calculated using the recipient's average weekly wage times the ratio of the average weekly wage of the jurisdiction in which the recipient resides to the average weekly wage of Alaska. The rate is based on the average weekly wages in effect when the recipient leaves Alaska and shall be adjusted annually upon publication of the average weekly wages for all jurisdictions.

(2) The calculation required by this subsection does not apply if

(A) the average weekly wage of the recipient and the resulting compensation rate is determined under AS 23.30.220(2) by use of wages earned in jurisdictions other than Alaska; or

(B) the absence of the recipient is for medical or rehabilitation services not reasonably available in Alaska.

(3) Application of this subsection may not result in a reduction of the weekly compensation rate to less than \$65 a week except as provided in (a) of this section.

① * Sec. 53. AS 23.30.175(d) ^{Sec 15 P 7} is repealed and reenacted to read:

(d) In a jurisdiction for which no average weekly wage is computed by the United States Secretary of Labor for the purposes of unemployment insurance, the average weekly wage shall be as determined by the commissioner.

② Sec. 54. AS 23.30.180 is amended to read:

Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total disability adjudged to be permanent 66-2/3 percent of the injured employee's average weekly wages shall be paid to the employee during the continuance of the total disability. Permanent [LOSS OF BOTH

HANDS, OR BOTH ARMS, OR BOTH FEET, OR BOTH LEGS, OR BOTH EYES, OR OF ANY TWO OF THEM, IN THE ABSENCE OF CONCLUSIVE PROOF TO THE CONTRARY, CONSTITUTES PERMANENT TOTAL DISABILITY. IN ALL OTHER CASES PERMANENT] total disability is determined in accordance with the facts.

Sec 16 P 7,8

* Sec. 55. AS 23.30.190 is amended to read:

② Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL DISABILITY.

(a) In case of disability partial in character but permanent in quality the compensation is 66-2/3 percent of the injured employee's average weekly wages in addition to compensation for temporary total disability or temporary partial disability paid in accordance with AS 23.30.185 or 23.30.200, respectively, and shall be paid to the employee as follows:

- ② (1) arm lost, 156 [280] weeks compensation, not to exceed \$43,680;
- ② (2) leg lost, 156 [248] weeks compensation, not to exceed \$40,320;
- ② (3) hand lost, 156 [212] weeks compensation, not to exceed \$33,600;
- ② (4) foot lost, 156 [173] weeks compensation, not to exceed \$28,700;
- ② (5) eye lost, 140 weeks compensation, not to exceed \$22,400;
- ② (6) thumb lost, 51 weeks compensation, not to exceed \$10,400;
- ② (7) first finger lost, 28 weeks compensation, not to exceed \$6,440;
- ② (8) great toe lost, 26 weeks compensation, not to exceed \$5,320;
- ② (9) second finger lost, 18 weeks compensation, not to exceed \$4,200; third finger lost, 18 weeks compensation, not to exceed \$3,500;
- ② (10) toe other than great toe lost, eight weeks compensation, not to exceed \$2,240;

② (11) fourth finger lost, seven weeks compensation, not to exceed \$2,100;

② (12) loss of hearing of one ear, 52 weeks compensation, not exceeding \$7,280; loss of hearing of both ears, 156 [200] weeks compensation, not to exceed \$28,000;

② (13) compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit; compensation for loss of the first phalange is one-half of the compensation for loss of the entire digit;

② (14) amputation between the elbow and the wrist is considered equivalent to the loss of an arm, and amputation between the knee and ankle is considered equivalent to the loss of a leg;

② (15) compensation for loss of binocular vision or for 80 percent or more of the vision of an eye is the same as for loss of the eye;

② (16) compensation for loss of two or more digits, or one or more phalanges of two or more digits of a hand or foot may be proportioned to the resulting loss of use of the injured hand or foot, but may not exceed the compensation for loss of a hand or foot;

② (17) compensation for permanent total loss of use of a member is the same as for loss of the member;

② (18) compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member;

② (19) in addition to other allowable compensation, the board shall award proper and equitable compensation up to \$10,000 for

② (A) serious disfigurement of face, head and, when such disfigurement is likely to handicap the employee in securing or holding employment, for serious disfigurement of neck or limbs normally exposed, or

(2) (B) partial or total loss of or loss of use of a part or function of the body not otherwise provided for under this section;

(1) (20) in all other cases in this class of disability the compensation is 66-2/3 percent of the difference between his average weekly wages and his wage-earning capacity after the injury in the same employment or otherwise, payable during the continuance of the partial disability, but subject to reconsideration of the degree of the impairment by the board on its own motion or upon application of a party in interest; [WHENEVER THE BOARD DETERMINES THAT IT IS IN THE INTEREST OF JUSTICE, THE LIABILITY OF THE EMPLOYER FOR COMPENSATION, OR ANY PART OF IT AS DETERMINED BY THE BOARD, MAY BE DISCHARGED BY THE PAYMENT OF A LUMP SUM;]

(2) (21) in a case in which there is a loss of, or loss of use of more than one member or parts of more than one member set out in (1) - (18) of this subsection [SECTION], not amounting to permanent total disability, the award of compensation is for the loss of, or loss of use of, each member or part of the member, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, (16) of this subsection [SECTION] applies.

(2) (b) Total compensation paid under (a)(20) of this section may not continue for more than 156 weeks or exceed \$60,000.

(1) * Sec. 56. ^{Sec 17 P8} AS 23.30.191 is repealed and reenacted to read:

Sec. 23.30.191. EXPENSES FOR REHABILITATING INJURED EMPLOYEES. An employee, who, as a result of injury, is or may be expected to be totally or partially incapacitated for his normal occupation and who, under the direction of the board, is being rehabilitated to engage in a remunerative occupation, may receive compensation necessary for his

rehabilitation of 66-2/3 percent of his average weekly wage subject to the maximum payable under AS 23.30.175.

② * ~~Sec. 57~~ AS 23.30.210(b) is amended to read:

(b) At any time after death, or after 30 days subsequent to the date of injury, the employer and the employee or the beneficiary or beneficiaries, as the case may be, have the right to reach an agreement in regard to a claim for injury or death under this chapter [HEREUNDER] in accordance with the applicable schedule [HEREOF], but a memorandum of the agreement in a form prescribed by the board shall be filed with the board. Otherwise, the agreement is void for any purpose. If approved by the board, the agreement is enforceable the same as an order or award of the board and discharges the liability of the employer for the benefits [COMPENSATION] notwithstanding the provisions of [AS 23.30.130,] AS 23.30.160 [,] and AS 23.30.245(b) [AS 23.30.245]. The agreement shall be approved by the board only when the terms conform to the provisions of this chapter and, if it involves or is likely to involve permanent disability, the board may require an impartial medical examination and a hearing in order to determine whether or not to approve the agreement. The board may approve lump-sum settlements when it appears to be to the best interest of the employee or beneficiary or beneficiaries.

① * ^{SEC 18 P 8} Sec. 58. AS 23.30.215(a)(1) is amended to read:

(1) reasonable and necessary funeral expenses not exceeding \$2,500; the commissioner by regulation shall annually adjust this limit to reflect increased expenses resulting from inflation [\$1,000];

③ * ^{SEC 20 P 8} ~~Sec. 59~~ AS 23.30.220(2) is amended to read:

(2) the average weekly wage is [THAT MOST FAVORABLE TO THE EMPLOYEE] calculated by dividing 52 into the total wages earned, including self-employment, in [ANY ONE OF] the [THREE] calendar year

[YEARS] immediately preceding the injury;

② * Sec. 60. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.227. OTHER BENEFITS. (a) Notwithstanding any other provision of this chapter, an injured employee may not receive compensation for permanent total, permanent partial, temporary total, or temporary partial disability if he receives unemployment benefits (AS 23.20) for the same period of time.

(b) Notwithstanding any other provision of this chapter, an injured employee may not receive compensation for permanent total, permanent partial, temporary total, or temporary partial disability that exceeds 100 percent of his average weekly wage when added to any sick pay to which he is entitled for the same period of time.

(c) Notwithstanding any other provision of this chapter, the amount of compensation received by an injured employee for permanent total, permanent partial, temporary total, or temporary partial disability shall be reduced by the amount of retirement benefits paid to him for the same period of time.

② * Sec. 61. AS 23.30.235 is amended to read:

Sec. 23.30.235. CASES IN WHICH NO BENEFITS ARE [COMPENSATION IS] PAYABLE. No benefits [COMPENSATION] may be paid if the injury was occasioned solely by the intoxication of the employee or by the wilful intention of the employee to injure or kill himself or another.

② * Sec. 62. AS 23.30.245 is amended to read:

Sec. 23.30.245. INVALID AGREEMENTS. (a) An agreement by an employee to pay a portion of the premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by the employer for the purpose of providing benefits [COMPENSATION OR MEDICAL SERVICES AND SUPPLIES] as required by this chapter is not valid. An employer who makes a deduction for this purpose from the pay

of an employee entitled to the benefits of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000.

(b) An agreement by an employee to waive his right to benefits [COMPENSATION] under this chapter is not valid.

Sec 20 P 8,9

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* Sec. 63. AS 23.30.250 is amended to read:

Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who wilfully makes a false or misleading statement or representation for the purpose of obtaining a benefit or payment under this chapter is guilty of theft as defined in AS 11.46.100(3) and is punishable as provided in AS 11.46.120 - 11.46.150 [A MISDEMEANOR, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

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* Sec. 64. AS 23.30.255 is amended to read:

Sec. 23.30.255. PENALTY FOR FAILURE TO PAY BENEFITS [COMPENSATION]. (a) An employer required to secure the payment of benefits [COMPENSATION] under this chapter who fails to do so is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. If the employer is a corporation, its president, secretary, and treasurer are also severally liable to the fine or imprisonment provided in this section for the failure of the corporation to secure the payment of benefits [COMPENSATION]. The president, secretary, and treasurer are severally personally liable, jointly with the corporation, for the benefits [COMPENSATION] or other benefit which accrues under this chapter in respect to an injury which happens to an employee of the corporation while it has failed to secure the payment of benefits [COMPENSATION] as required by AS 23.30.075.

(b) An employer who knowingly transfers, sells, encumbers, as-

signs, or in any manner disposes of, conceals, secretes, or destroys any of his property after one of his employees has been injured within the scope of this chapter, with intent to avoid the payment of benefits [COMPENSATION] under this chapter to the employee or his dependents, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. If the employer is a corporation, its president, secretary, and treasurer are also severally liable to the penalty of imprisonment as well as jointly liable with the corporation for the fine.

(c) This section does not affect any other liability of the
② employer under this chapter.

* Sec. 65. AS 23.30.260 is amended to read:

Sec. 23.30.260. PENALTY FOR RECEIVING UNAPPROVED FEES AND SOLICITING. A person is guilty of a misdemeanor, and upon conviction is punishable for each offense by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both, if he

(1) receives a fee, other consideration, or a gratuity on account of services rendered in respect to a claim, unless the consideration or gratuity is approved by the board or the court; or

(2) makes it a business to solicit employment for a lawyer or for himself in respect to a claim or award for benefits [COMPENSATION].
③ ~~Sec 2 P 2~~

* Sec. 66. AS 23.30 is amended by adding a new section to read:

② Sec. 23.30.263. UNLAWFUL EMPLOYMENT PRACTICE. It is unlawful for an employer to discharge or otherwise discriminate against an employee because he has filed a claim for workers' compensation benefits under this chapter.

* Sec. 67. AS 23.30.265(9) is amended to read:

(9) "death" as a basis for a right to benefits [COMPENSA-

① TION] means only death resulting from an injury;

* Sec. 68. AS 23.30.265(16) is amended to read:

(16) "medical and related benefits" includes but is not limited to physicians' fees, nurses' charges, pain clinic services, hospital services, hospital supplies, medicine and prosthetic devices, physical rehabilitation, and treatment for the fitting and training for use of such devices as may reasonably be required which arises out of or is necessitated by an injury, and transportation charges to the nearest point where adequate medical facilities are available;

② * Sec. 69. AS 23.30.265(19) is amended to read:

(19) "self-insurer" means an employer who, instead of insuring his liability under this chapter as it provides, elects to pay directly the benefits [COMPENSATION] provided for, and who has furnished to the director of insurance [BOARD] satisfactory proof of his financial ability to make the direct payments and has been issued a self-insurance certificate;

① * Sec. 70. AS 23.30.265(20) is amended to read:

(20) "wages" means the money rate at which the service rendered is recompensed under the contract of hiring [IN FORCE AT THE TIME OF THE INJURY,] and includes the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from other [OTHERS] than the employer;

① * Sec. 71. AS 23.30.265 is amended by adding new paragraphs to read:

(29) "benefits" means compensation and medical and related benefits;

(30) "in the course of employment" includes travel to and from a remote job site but does not include activities outside of working hours that are not work-connected or in which an employee ordi-

signs, or in any manner disposes of, conceals, secretes, or destroys any of his property after one of his employees has been injured within the scope of this chapter, with intent to avoid the payment of benefits [COMPENSATION] under this chapter to the employee or his dependents, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. If the employer is a corporation, its president, secretary, and treasurer are also severally liable to the penalty of imprisonment as well as jointly liable with the corporation for the fine.

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narily engages while not at a remote job site.

①* Sec. 72. AS 23.30.005(k), 23.30.095(g), 23.30.125(b), and 23.30.175(e) and (f) are repealed.

①* Sec. 73. This Act takes effect on July 1, 1982.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

TO: CSHB 159(L&C)

1
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8 service.

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13 dance with AS 23.30.180.
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11 *Direct to*
12 *Self-insured employer or carrier.*

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A M E N D M E N T

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TO: CSHB 159(L&C)

See new schedule in AS.

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6 percent or more of the vision of an eye is the same as for loss of the
7 eye;

8 (16) compensation for loss of two or more digits, or one or
9 more phalanges of two or more digits of a hand or foot may be propor-
10 tioned to the resulting loss of use of the injured hand or foot, but
11 may not exceed the compensation for loss of a hand or foot;

12 (17) compensation for permanent total loss of use of a member
13 is the same as for loss of the member;

14 (18) compensation for permanent partial loss or loss of use
15 of a member may be for proportionate loss or loss of use of the member;

16 (19) in addition to other allowable compensation, the board
17 shall award proper and equitable compensation up to \$10,000 for

18 (A) serious disfigurement of face, head and, when such
19 disfigurement is likely to handicap the employee in securing or
20 holding employment, for serious disfigurement of neck or limbs
21 normally exposed, or

22 (B) partial or total loss of or loss of use of a part
23 or function of the body not otherwise provided for under this
24 section;

25 (20) in all other cases in this class of disability the
26 compensation is 66-2/3 percent of the difference between his average
27 weekly wages and his wage-earning capacity after the injury in the same
28 employment or otherwise, payable during the continuance of the partial
29 disability, but subject to reconsideration of the degree of the impair-

ment by the board on its own motion or upon application of a party in interest; [WHENEVER THE BOARD DETERMINES THAT IT IS IN THE INTEREST OF JUSTICE, THE LIABILITY OF THE EMPLOYER FOR COMPENSATION, OR ANY PART OF IT AS DETERMINED BY THE BOARD, MAY BE DISCHARGED BY THE PAYMENT OF A LUMP SUM;]

(21) in a case in which there is a loss of, or loss of use of more than one member or parts of more than one member set out in (1) - (18) of this subsection [SECTION], not amounting to permanent total disability, the award of compensation is for the loss of, or loss of use of, each member or part of the member, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, (16) of this subsection [SECTION] applies.

(b) Total compensation paid under (a)(20) of this section may not continue for more than 156 weeks or exceed \$60,000.

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A M E N D M E N T

#4

TO: CSHB 159(L&C)

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* Sec. . AS 23.30 is amended by adding a new section to read:

Sec. 23.30.227. OTHER BENEFITS. Notwithstanding any other provision of this chapter, an injured employee who receives compensation for permanent total, permanent partial, temporary total, or temporary partial disability shall have that compensation reduced by an amount equal to unemployment benefits (AS 23.20) received for the same period of time.

A M E N D M E N T

#5

TO: CSHB 159(L&C)

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* Sec. . AS 23.30 is amended by adding a new section to read:

Sec. 23.30.227. OTHER BENEFITS. (a) Notwithstanding any other provision of this chapter, an injured employee may not receive compensation for permanent total, permanent partial, temporary total, or temporary partial disability that exceeds 100 percent of his average weekly wage when added to any noncompensable sick pay to which he is entitled for the same period of time.

(b) In this section "noncompensable sick pay" is sick pay which is without cash value.



The
Report of
The Comprehensive Study of
Vocational Rehabilitation in The
Alaska Workers' Compensation Program

The Report of
**The Comprehensive Study of
Vocational Rehabilitation in
The Alaska Workers'
Compensation Program**



JUNEAU, ALASKA
March 12, 1982

ZEE PAMPLIN JACKSON
Rehabilitation Consultant
P. O. Box 3130
Anchorage, AK 99510
(907) 264-2460
March 12, 1982

To the Legislature.

A Preliminary Report was delivered to you on January 26, 1982.

I have the honor to submit to you the Final Report of the Comprehensive Study of Vocational Rehabilitation in the Alaska Workers' Compensation Program in accordance with House Bill 94, effective July 11, 1981. Corrections and minor changes which do not alter the essence of the Preliminary Report have been made.

Findings of the study have led to general conclusions regarding the delivery system of vocational rehabilitation benefits to injured workers. The State Workers' Compensation system has the potential to fulfill its obligations to injured workers and employers through the provision of properly structured and managed rehabilitation services. These services are presently inadequate, however, for a substantial number of injured workers. Recommendations for change and major improvements are offered for consideration in developing an effective delivery system of rehabilitation benefits to injured workers in Alaska.

Sincerely,

Zee Pamplin Jackson
Rehabilitation Consultant

Staff

REHABILITATION CONSULTANT

Zee Pamplin Jackson

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Acknowledgments

On behalf of the members of the staff, I wish to acknowledge the assistance we received in conducting the study and preparing this Report.

The Department of Labor and the Division of Workers' Compensation arranged for office space and telephones. Administrative staff at both levels provided guidance on fiscal policies, procedures and budgetary matters. Their supportive assistance in preparing the Preliminary Report was provided with diligence, good will and best wishes.

The staff was assisted by rehabilitation professionals and administrators of other workers' compensation rehabilitation programs, who contributed ideas and advice. Gary Stivers of the Idaho Industrial Commission and Charles Kilczewski of the Office of Workers' Compensation Programs were among those who provided data and their views on structuring and managing rehabilitation services for industrially injured workers. In addition, we express our appreciation to injured workers, employers, unions, insurance companies, physicians and attorneys who provided valuable ideas and resource data for our review.

The Workers' Compensation Board was critical to the completion of the study. The Board imparted elements of practicality and feasibility through its legal and technical contributions. These elements, and the Board's expressed interest in improving the rehabilitation program, provided a framework for the conclusions and recommendations of the study.

Special gratitude is expressed to Nancy Fisher. Her patience and perseverance in transcribing numerous drafts added clarity and legibility to the Report.

Zee Pamplin Jackson
Rehabilitation Consultant

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Introduction & Summary

Major Conclusions and Recommendations

INTRODUCTION

In 1981 the Legislature of the State of Alaska enacted laws relating to workers' compensation. House Bill 94 became effective on July 11, 1981. Section 7 of the bill provides for the Division of Workers' Compensation within the Department of Labor to conduct a comprehensive study of vocational rehabilitation of injured workers. The Division was directed to report its findings and recommendations for legislative or administrative action by the 30th day of the Second Session of the Twelfth Legislature.

The study began on August 24, 1981. Activities for the past six months have been devoted to querying, collecting, investigating and analyzing concerns registered by all participants in the State's workers' compensation system. Four public hearings, conducted by the House Labor and Commerce Committee on Workers' Compensation, were attended in Anchorage, Fairbanks and

Juneau. A survey of over 600 injured workers was conducted. Meetings were held with physicians, rehabilitation professionals, insurance companies, employers and representatives of labor and management. Records of the Division of Workers' Compensation, rehabilitation firms and insurance companies were reviewed. The rehabilitation programs in two other workers' compensation systems were reviewed and discussed in order to show examples of the potential savings and benefits to be derived from a properly structured and managed program. Additionally, published reports and writings of study groups and authorities in workers' compensation were reviewed.

The study found that the delivery system is not providing timely and adequate rehabilitation services to a substantial number of those injured workers who could benefit from these services for two primary reasons. First, the system does not afford prompt referral of appropriate cases to

rehabilitation facilities. Second, injured workers are not consistently advised of their potential entitlement to these services, nor are the services being provided monitored. This is due primarily to a lack of resources and trained personnel within the Division of Workers' Compensation, as well as the absence of established procedures and guidelines for delivering and monitoring the system. The State's workers' compensation system has the potential to fulfill its obligations to injured workers and employers through the provision of properly managed rehabilitation services. A detailed discussion of these findings and recommendations are offered in the main body of the report, which is summarized below.

PART I. THE GOALS OF REHABILITATION IN A WORKERS' COMPENSATION PROGRAM

There are five goals of rehabilitation in a workers' compensation program.

Early identification of injured workers who potentially need rehabilitation

Workers who may not be able to return to their 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.

Use of competent rehabilitation providers

The unusual characteristics of workers' compensation and the different approach required for successful rehabilitation 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 system alike.

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.

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.

Provide incentives, remove disincentives to rehabilitation

A rehabilitation program may fall short of fully achieving the primary objective of a workers' compensation system unless it maintains sufficient incentives and removes disincentives in the rehabilitation process.

PART II. EVALUATION OF VOCATIONAL REHABILITATION IN THE ALASKA WORKERS' COMPENSATION PROGRAM AND RECOMMENDATIONS

1. Injured Workers Who Potentially Need Rehabilitation Should Be Identified as Early as this Determination Can Reasonably Be Made.

Based on available data, it appears that the average time from the date of injury to referral is 16.8 months for injured workers referred to the state vocational rehabilitation program and 11.8 months for workers referred to the private rehabilitation firm.

Recommendation. Insurers/employers should timely report to the Division of Workers' Compensation all injured workers who potentially need rehabilitation services. The Division of Workers' Compensation should timely screen these reports and contact injured workers regarding their potential entitlement to these services. (See Recommendations 1.1 through 1.4 in the main body of the report for complete details.)

2. Provision of Rehabilitation Services by Competent Counselors.

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 the presence of critical elements needed to meet the objective of a workers' compensation rehabilitation program. Clearly, the lack of regulations, definitive procedures and guidelines for the provision of vocational rehabilitation has affected the performance of counselors providing services to injured workers covered by the Act.

Recommendation. Regulations on vocational rehabilitation should be adopted. The Division of Workers' Compensation should establish, publish and distribute guidelines for providers of rehabilitation services. (See Recommendations 2.1 through 2.5.)

3. 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. There is little evidence in support of Alaska employers providing measurable opportunities for reemployment of injured workers.

Recommendation. Insurers should provide assistance to employers in developing programs for reemployment of injured workers. Arrangements can be made for counselors' services, to include on-site job analyses and assistance in modification of jobs to enhance reemployment opportunities of an employer's injured employees. The Division of Workers' Compensation should encourage the development and implementation of reemployment programs by providing positive monitoring and endorsement of the efforts of all parties. Union agreements can be negotiated between management and labor for reemployment and rehabilitation of injured union members. (See Recommendations 3.1 through 3.4.)

4. Maintenance of Atmosphere Conducive to Rehabilitation.

In general, the extent and timeliness of communication, coordination and commitment seem inadequate for the purpose of supporting a successful rehabilitation program. The lag between date of injury to date of referral of injured workers to rehabilitation supports the conclusion that injured workers are not timely contacted and advised of their entitlement or potential need for rehabilitation services. 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 during rehabilitation 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.

Recommendation. Insurers/employers, union representatives and the Division of Workers' Compensation should 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. The services of rehabilitation professionals can enhance this effort and contribute to the maintenance of an atmosphere conducive to successful rehabilitation. (See Recommendations 4.1 through 4.3.)

5. Provision of Incentives, Removal of Disincentives.

Proper rating of employers, participation in the targeted jobs tax credit program and the proper administration of the Second Injury Fund have all been identified as incentives to employers to rehire their injured workers and support the rehabilitation program. The extent to which experience and retrospective rating methods are used in rating Alaska employers is unknown and is beyond the scope of this report. Changes in the administration of the Second Injury Fund which would enhance the overall rehabilitation program of the state's workers' compensation system appear to be in order. (See discussion in Part Two, under Goal 5 and Recommendations 5.1 through 5.7.)

Applications for settlements are frequently submitted for various reasons, including funding for proposed self-employment ventures in lieu of participation in a supervised rehabilitation program. Recommendations for such plans, without adequate documentation to support the soundness or feasibility of the proposals, are common. All parties seem to lose sight of the end goal of rehabilitation when this occurs.

Recommendation. 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 the injured worker. (See Recommendation 5.8.)

Rehabilitation professionals providing services to injured workers in Alaska readily attest to the activities of both the plaintiffs' bar and defense attorneys as interfering in the rehabilitation process. 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 2.1 through 2.5.)

Parties who refuse to cooperate or who sabotage the rehabilitation effort through 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 the board's more recent decisions and orders reflects an increased effort to make sufficient applications of these remedies in support of the rehabilitation objective.

DELIVERY OF REHABILITATION IN THE ALASKA 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 Part One of this report and achieve the five goals of rehabilitation. Despite the ongoing 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. Administrative monitoring and positive assistance to injured workers and all other members

in the system require the adoption of the recommendations set forth in this report.

The savings experienced in other compensation programs cited in the main body of 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 dividends in the reduction of compensation costs to employers, injured workers and society.

Part One

Goals of Rehabilitation

A brief description of the history of rehabilitation provisions
for industrially injured workers

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 ten 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 for 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 was the rehabilitation of disabled workers, the first state vocational rehabilitation law was enacted in 1918 in Massachusetts. (Berkowitz, 1963). The law, administered by the Industrial Accident Board, covered only those persons disabled by industrial accidents and occupational diseases. Following Massachusetts' lead, other states enacted laws with similar rehabilitation provisions. Congress, through the passage of Public Law 236 in 1920, created the State/Federal Vocational Rehabilitation Program. Its statement of purpose provided for the promotion of vocational rehabilitation of industrially disabled workers. Thus, persons with occupational disabilities 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 ten percent 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. Sawyer 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, he notes, the state vocational program seeks to rehabilitate disabled persons to their maximum potential through the provision of education 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 we previously discussed, Congressional mandates have directed the focus of the state/federal program to give priority to specific disability groups classified as severely disabled. These include developmental disabilities, congenital, orthopedic and neurological conditions, and catastrophic injuries resulting in paraplegia and quadriplegia. The bulk of individuals in these disability categories are adolescents and young adults, most of whom have never participated in the world of work. Therefore, the process employed in making them work ready is habilitation rather than rehabilitation. Since their backgrounds do not include significant work experience which has 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-injury 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 work place will differ considerably from that taken for the first 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. This concept cannot realistically exist independent of economic wisdom in a workers' compensation program. 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 program. The end result is an economic as well as a social asset to the injured worker, the compensation system and society. Properly 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 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 Group's report included its model rehabilitation program.

Based on the cited research and studies conducted by recognized authorities in workers' compensation, it is clear the consensus 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 combination of either basic legislative changes or administrative regulations, the responsibilities of carriers and employers to provide rehabilitation services specifically directed toward returning injured workers to suitable gainful employment are spreading to all jurisdictions. (Sawyer, 1981).

It is reasonable to conclude that the legal requirement to provide rehabilitation benefits for injured workers has as its basis a collective mandate by society, for industry to provide benefits which most effectively achieve the basic remedial and restorative purpose for which the workers' compensation laws were intended.

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

The National Commission on State Workers Compensation Laws suggest 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 Board must make adjudicatory decisions to resolve issues affecting rehabilitation.

The compensation agency must have sufficient authority and adequate 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.

F. FIVE SPECIFIC GOALS OF REHABILITATION IN A WORKERS' COMPENSATION PROGRAM

One of the four basic objectives of a modern workers' compensation program, as presented in the report by the National Commission, is the provision of sufficient medical care and rehabilitation services. The Commission suggests that these services are equally as important as the cash benefits of the program. However, it can be reasoned from a long-range perspective, these services are even more important than cash benefits, given the nature of their permanent and long-term value. Indeed, the provision of temporary compensation payments to replace a substantial portion of the worker's lost earnings, during the period of total disability, is a critical factor if the worker and his family are to be spared the disastrous hardships resulting from lack of income. However, the temporary characteristic of compensation payments suggests that a remedy with a far more long-range quality must be provided if the compensation system is to achieve its more fundamental objective of restoring the worker's ability to earn wages by returning him to the work place. Rehabilitation is an effective tool to be used in achieving this basic objective.

Five goals must be achieved in a workers' compensation rehabilitation program if the system is to serve its primary purpose. The basic goals are:

1. *early identification of injured workers potentially needing rehabilitation;*
2. *provision of effective rehabilitation services through the use of competent professionals;*
3. *provision of early return to direct employment;*
4. *maintenance of atmosphere conducive to rehabilitation;*
5. *provision of incentives, removal of disincentives in rehabilitation.*

(1) EARLY IDENTIFICATION OF INJURED WORKERS POTENTIALLY NEEDING REHABILITATION

One of the central themes repeated by rehabilitation professionals as well as noted authorities in workers' compensation is the need for early involvement in the rehabilitation process of workers whose injuries prevent them from timely returning to their regular job. Indeed, the idea as Sawyer suggests may well have originated with a limited number of leading

insurers who embraced the notion of rehabilitation as a part of a sound workers' compensation system. Whatever the original source, this premise, which has been endorsed by previously cited authorities, has gained increasing acceptance in workers' compensation over the past recent years.

Those 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 is a minor disability can result in protracting that disability to the point where an unwholesome attitude regarding return to work becomes permanent and fixed, and the psychological hurdle required to overcome this is extremely difficult, if not impossible to achieve. The notion of a timely return to work should be one of the first imparted to an injured worker.

The responsibility of the employer to provide rehabilitation benefits to injured workers has been sufficiently discussed. The extent to which this responsibility is met by the employer or insurer depends on the extent to which top management is committed to rehabilitation. This decision cannot be left to the discretion of individual claims adjusters. Early intervention in appropriate cases requires an unequivocal commitment to rehabilitation and precludes the adversary approach. In Sawyer's words:

The role of the claims administrator moves from that of a "dollar doler" to an advocate of good care directed toward the earliest possible return to safe employment. In this context the disability, not the claimant, is the adversary to be overcome. (Sawyer, 1981).

The vice-president of a local insurance company, recognized in the workers' compensation community for her commitment to rehabilitation, reports that it is a standard company requirement of claims adjusters to make initial arrangements for rehabilitation in all cases where the injured worker remains off work 60 days or longer after the injury. In jurisdictions where the workers' compensation agency monitors rehabilitation, the adjuster files a report with the agency to advise that rehabilitation services are being initiated, or to request assistance from the agency in arranging for services. The company's philosophy and commitment to rehabilitation, which top administration holds as a non-negotiable policy with its staff, are included in the initial and ongoing training of all claims adjusters. While the company does not afford statistical data on its total rehabilitation program, the vice-president emphatically holds that the company

indeed saves money for its insureds through its non-adversary, early intervention approach to rehabilitation.

The state workers' compensation agency, in fulfilling its obligation to support the goal of early identification of injured workers needing rehabilitation services and to ensure their receipt of these services, must maintain a systematic reporting and screening mechanism. Insurance companies and self-insured employers should file reports in all lost-time cases where injured workers continue to remain off work after a specified period of time. (A recommended time period is discussed in Part Two.) The report should indicate the carrier's immediate or future plans with explanation for the provision of rehabilitation services. Simultaneously, the workers' compensation agency must continually screen all lost-time injury reports and arrange for rehabilitation services in appropriate cases where the carrier has failed to do so.

The early intervention approach clearly militates against the obsolete concept that the injured worker's medical condition must be fixed and stationary before a successful rehabilitation effort can begin. A recently completed study by the California Workers' Compensation Institute Rehabilitation Committee appears to refute this outmoded concept. The study sample was randomly selected from files closed by the Rehabilitation Bureau of the State Division of Industrial Accidents during June and July of 1980. Findings are based on a detailed analysis of 611 cases. The results of the study show a direct correlation between early implementation of rehabilitation and completion rate. (See Table 1.) Clearly, the dangerous wait-and-see practice has no real validity and can be a deterrent to successful rehabilitation. If allowed to prevail, it will most surely undermine achieving the goals of successful rehabilitation.

(2) IDENTIFICATION AND USE OF COMPETENT REHABILITATION PROVIDERS WHO UNDERSTAND THE PURPOSE AND PHILOSOPHY OF WORKERS' COMPENSATION.

The differences in philosophical approaches to rehabilitation in workers' compensation systems and state/federal programs have been adequately discussed. Little or no purpose is served in arguing the merits of these differences in a vacuum. It is important to understand, however, the need to provide rehabilitation services in a workers' compensation program in a manner which supports the basic objective of the system. Therefore, it is important to engage the services of

those rehabilitation providers who not only understand this objective, but who are willing to provide services to injured workers consistent with achieving this objective. The counselor must have a sufficient understanding of medical issues and the function of the workers' compensation system, along with the ability to employ sound rehabilitation practices within the total context of the system.

Beyond meeting the requirement of understanding and working to achieve the objective of a workers' compensation program, the rehabilitation counselor must be competent and skilled in working with multiple parties in the system. The counselor must possess the ability to establish rapport with the injured worker to create the level of trust and cooperation necessary to achieve a successful outcome of the rehabilitation effort. The injured worker must be involved. It is not only his right but also his responsibility, as his complete involvement is a major key to any successful result. This means approaching the worker from an objective, yet restorative and supportive posture. This posture precludes counselor attempts to adjudicate and negotiate settlement and other claims issues more appropriately left to the adjudicatory body in the system.

The counselor must be able to effectively work with and gain the support of the treating physician in the rehabilitation effort. Contacting the physician prior to contacting the injured worker, to explain what is being attempted, is imperative if the counselor expects to gain the support of the physician, who can pave the way for a successful rehabilitation outcome. Work restrictions and remaining physical capabilities, which will serve as a basis for vocational planning, can be obtained at this time. Simultaneously, the counselor's presence provides assistance to the physician in his efforts to counsel the patient in working toward recovery and an eventual return to productive employment, with emphasis on what he can do, as opposed to what he cannot do.

Since the earliest possible return to work is the goal of industrial rehabilitation, inordinate delay on the part of the counselor in conducting extensive vocational evaluations and testing, before attempting to develop a direct return-to-work plan, is inappropriate in the workers' compensation system. An attempt to return the injured worker to his modified job held at the time of injury, or a different job with the same employer is the appropriate initial direction to take. If this is not possible, selective placement with a new employer in a job using established skills compatible with remaining physical capabilities is the next logical course to pursue. If either course is likely to result in returning the injured worker to safe, gainful employment, the counselor must not only be competent and willing to pursue this course, but must be required to pursue it by the workers' compensation system. In the face of existing opportunities for direct return to work, it is a disservice to an injured worker and his family if the counselor attempts to develop an unnecessary training plan which may result in prolonging the disability and increasing the cost of workers' compensation to industry and ultimately to society.

When efforts to return the injured worker to direct employment are not likely to succeed because of insufficient marketable skills, the counselor must recognize the need to timely establish a plan of vocational training, the scope and duration of which must not exceed that which is absolutely necessary to return the injured worker to an employment status commensurate with his pre-injury status. It is reasonable to place parameters on the training benefits of injured workers which will coincidentally place limitations on the employers' liability for such benefits. (Suggested parameters are offered in the recommendations in Part Two of this report.) There must be a plan with a realistic goal. This requires skillful, specific actions on the part of the counselor, as plans do not emerge from the waters. The goal of the plan should be clearly described and fully understood by those who are to participate in it. A time table with specific target dates, and a delineation of roles and responsibilities, specifying who, what, when, where and how, must be spelled out.

TABLE 1. Results of early implementation.

	% Plans Implemented	
	Before P & S	After P & S
Rehab plans completed	82	74
Employees working	75	65
Plan suspended/terminated	18	26
Average cost	\$4,238	\$7,671
Remarks:	P & S refers to the injured worker's medical condition as being permanent and stationary.	

Claims management by the insurer, and administrative oversight by the state workers' compensation agency, cannot occur in a void. Therefore, the system requires the counselor to maintain effective communication with all interested parties. The counselor must provide initial written and oral communication regarding the original plan, and make ongoing reports sufficient in content and scope to keep all appropriate parties fully advised of the progress being made toward achieving the goal of the plan and the primary objective of workers' compensation. This requires consistent, ongoing monitoring by the counselor. The workers' compensation system must provide additional monitoring to ensure the counselor is meeting this requirement.

Cooperative Agreements. During the formative years of no-fault workers' compensation, many systems provided for cooperative agreements between the workers' compensation agency and the state/federal division of vocational rehabilitation. This practice was primarily due to the fact that the state/federal program was the sole source of rehabilitation services for disabled workers. The National Commission's report, however, detailed the past failure of many state programs to fulfill the expectancy of the compensation systems, as well as the failure of state compensation agencies to resolve this matter. In view of this failure, coupled with the emergence of private rehabilitation providers, whose services appear to be more specifically geared toward working with industrially injured workers, cooperative agreements between the two agencies may well be obsolete. As noted earlier, the purpose of the workers' compensation system can best be served by identifying and utilizing those providers whose services support the primary objective of the compensation system.

(3) PROVISION FOR EARLY RETURN TO DIRECT EMPLOYMENT.

The success of rehabilitation in a workers' compensation program rests on attaining 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 during 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. This too, appears to be borne out by the study of the California Workers' Compensation Rehabilitation Committee. The results show that modification of the worker's pre-injury job and direct placement of workers with transferable skills were more successful than formal training programs in terms of return to work. (See Table 2.) The results also revealed the costs and outcome of plans were inversely proportionate, with the least expensive program offering the greatest opportunity to return the injured worker to the work force. (See Tables 2 and 3.)

Key Players Necessary

Employer Participation. The employer's responsibility to his injured employee must transcend the traditional role of merely paying premiums and forwarding accident reports to the insurance company. The employer has the first and foremost obligation to do everything within reason to assure his employee's return to safe work. It is accepted that this will not always be possible. However, the employer must make more than a cursory attempt in the return to work

TABLE 2. RTW by plan type completed.

	<u>% RTW</u>
Modified Work	84.6
OJT + schooling	72.2
Direct placement	71.1
On-the-job training	69.7
Formal Schooling	52.1

effort. His actions may include arrangements for an on-site job analysis by a qualified rehabilitation professional, to identify a job compatible with the remaining physical capacities of the recovered employee, or the union representative may be called upon to run interference in overcoming obstacles in union agreements which may prevent the injured worker from successfully returning to work. At any rate, the employer will not know what can be done until he initiates an active and aggressive return-to-work effort. In the absence of this effort, complaints regarding spiraling workers' compensation costs are hardly justifiable.

Employee Responsibility. The employee must clearly understand his rights do not exist independent of his responsibilities under the workers' compensation law. He must therefore act responsibly in the face of a valid reemployment offer made by his employer. His total cooperation as well as participation in a return-to-work effort is a requirement, not an option, if he expects to receive the benefits which the system provides. Pursuit of training or a more elaborate rehabilitation plan is not justified if the opportunity exists for his return to a safe employment status compatible with his pre-injury employment status. After all, the basic purpose of workers' compensation is to ensure his opportunity for restoration to work when he is medically able to do so. This is not synonymous with guaranteeing an unconditional right to training.

Union Support. Union representatives can play a significant role in supporting reemployment programs for their members. Contracts can be negotiated to permit the existence of light-duty and rehabilitation positions to which an injured worker may be assigned, once released by

his physician for light duty. Information obtained from the Idaho Industrial Commission Rehabilitation Division confirms the benefits to be reaped from union involvement and support of direct reemployment opportunities for its members.

During the 1981 fiscal year, 18% of injured workers experiencing lost time in Idaho received rehabilitation services. Twenty-four percent of those who received services were successfully rehabilitated. Of the total number successfully rehabilitated, 38% returned to work with their previous employer. (See Table 4.) The administrator of the industrial rehabilitation unit, as well as labor and industry representatives, attributes this high rate of return to direct employment to the cooperative efforts of labor and management. Such efforts include contractual provisions for rehabilitation and light-duty assignments of industrially injured union members.

Significant Others

Rehabilitation Counselor. The role of the counselor in the rehabilitation process, as previously discussed, is worthy of mention here. Early and consistent contact with the injured worker and other family members, consultation with the treating physician regarding remaining physical capacities and performance of on-site job analysis are all activities which can be effectively and timely performed by the competent rehabilitation counselor, who serves as a key link in the communication process with all appropriate parties. The timely release of a sufficiently recovered worker to light-duty employment is significantly enhanced if the treating physician is aware of existing opportunities for such work, and the availability of counselor services to assist the patient in making a safe return to work.

TABLE 3. Average cost by plan type.

	<u>1978</u>	<u>1980</u>
Modified work	\$ 2,754	\$ 3,346
Direct placement	1,495	4,966
On-the-job training	3,487	5,058
OJT + schooling	4,603	8,372
Formal schooling	<u>5,707</u>	<u>9,886</u>
Average	<u>\$ 4,218</u>	<u>\$ 6,927</u>

TABLE 4. Data for Idaho Industrial Commission rehabilitation program FY 81.

Fiscal Year	# of Time Injuries	Workers Provided Services			Injured Workers Successfully Rehabilitated		
		#	% Lost Time Cases	% Rec'd Training	#	% of Wkrs. Served	% of Lost Time Cases
81	7,800	1,431	18	2	344	24	4.4
Remarks: *Lost time injuries based on 20% of total injuries (39,026) provided by Administrator of Idaho Industrial Commission, Division of Rehabilitation.							

Attorney Obligation. In most cases, attorney involvement in the rehabilitation process should be appropriately limited to encouraging respective clients to participate in the rehabilitation effort. There may be a few instances where issues in the claim may have a bearing on rehabilitation or vice versa, and thus litigation may ensue. However, direct, ongoing attorney involvement in the rehabilitation process is unnecessary and inappropriate in the workers' compensation system. The remaining physical capabilities of an injured worker as related to his ability to return to productive work are determined by his physician. The counselor is the key person who works with the injured worker, his physician, the employer and all other appropriate parties in the rehabilitation effort. The worker's compensation agency provides monitoring and administrative oversight to ensure all parties will act in good faith in meeting their respective responsibilities and obligations. Clearly, this well-designed procedural mechanism makes it possible to address issues and concerns in the appropriate context and removes the opportunity, as well as the necessity for excessive attorney involvement in the rehabilitation process.

(4) MAINTENANCE OF AN ATMOSPHERE CONDUCTIVE TO SUCCESSFUL REHABILITATION

Sawyer, in a written discourse on private insurance company rehabilitation programming, makes several noteworthy statements regarding rehabilitation and claims disposition:

Rehabilitation, in the broadest sense, represents one of several concepts currently being advocated as socially desirable and economically feasible for inclusion in a modern benefit system. It has reached the point of respectability primarily as a result of the voluntary experimentation by those leading insurance companies that have recognized the need for workers' compensation to mean something more than "a check in the mail" and filing forms for industrial commission review.

Sawyer goes on to note:

Rehabilitation is important in claims disposition... An adversary approach to claims handling is obsolete. Modern claims practices recognize the essential function of the claims person in identifying and meeting the needs of his employer and claimant alike. (Sawyer, 1978).

Rehabilitation is a process which does not occur in isolation. The condition and atmosphere in which rehabilitation takes place are primary determinants of the eventual outcome of that process. The screening and early identification of injured workers who potentially need rehabilitation services and the timely provision of these services will not necessarily result in a successful outcome if the process is fraught with hostilities, mistrust and excessive litigation. Certain positive elements which may be termed the "four C's" must be present to ensure successful rehabilitation.

Concern

An accident resulting in a traumatic injury to a worker is a sudden, potentially devastating experience with far-reaching implications for the injured worker, his future and that of his family. This is no time to present him with vague ambiguities and benign neglect. The adjuster must recognize and demonstrate an understanding of the worker, his reaction and that of his family to the injury and its potential effect on their future. An early demonstration of concern and a sincere effort to assist the worker in receiving all the benefits to which he is entitled, including rehabilitation, will often eliminate disputes over issues arising from the injury.

Communication

Perhaps one of the main barriers to successful rehabilitation and claims disposition is poor communication, or the absence of communication. Whether this barrier is present at the onset of the injury, or develops at a later stage in the claim, it can result in exacting a heavy toll on the injured worker and his family, the employer and

the compensation system alike. A dearth of information to the injured worker regarding his rights, extent of benefits and how to secure them and his responsibility for meeting certain requirements can lead to the worker acting on erroneous information sought from inappropriate sources. This may result in the claims adjuster taking action which adversely affects the worker and sets the tone for the course and eventual disposition of the claim.

A simple and most desirable way of providing the injured worker with information on his benefits, rights and responsibilities is through the employer at the time of injury. This of course requires the employer to be sufficiently knowledgeable of the state compensation laws and attendant matters. This requirement is entirely reasonable, as the employer is the responsible party for damages sustained by a worker in the performance of his job. It is a matter of historical reality, however, that the claims adjuster, as a representative of the employer is the likely party with whom the injured worker will have the most contact throughout the duration of his claim. The extent to which the adjuster is available to communicate with the injured worker and advise him of what the provisions are for rehabilitation and other services, can have a significant bearing on his orientation to litigate or cooperate in the rehabilitation process.

Some insurance companies take a rather progressive approach in this regard. Instead of waiting to be contacted by the severely injured worker, as a matter of standard company policy, the adjuster pays a personal visit to the worker and his family in the home or hospital to determine what their needs and concerns are as a result of the injury, and to explain as nearly as possible procedural matters and the series of events most likely to occur in the course of the claim. Going a step beyond this, the adjuster assigns a rehabilitation counselor who works with everyone involved through the collection of information pertinent to the rehabilitation and ultimate disposition of the case, and who serves as the major communication link between the worker and his family and all other parties in the compensation system.

Coordination

Successful rehabilitation requires considerable coordination. The early assignment of a competent rehabilitation counselor is an appropriate step toward achieving this. The counselor is able to direct the initial emphasis on the worker and the problems presented by the injury, and to subsequently expand the focus to include all other factors within the context of the compensation

system pertinent to the eventual outcome of his return to the work force and resumption of a productive life. Medical treatment and course of recovery, remaining physical capacities and abilities and opportunities for return to direct employment can be used by the counselor and the injured worker to develop a realistic plan. Now is the time for the who, what, where, when and how to be glued together and set in motion for the achievement of a return-to-work goal.

Cooperation/Commitment

A rehabilitation plan will not realize its purpose unless the parties involved bring to it a sufficient level of commitment to ensure its success. Good faith, cooperation and understanding of respective roles, rights and responsibilities are ingredients necessary to ensure commitment to the rehabilitation effort.

The employer at the time of injury must make a sincere effort to provide the recovered employee appropriate, safe work commensurate with remaining physical abilities and skills. The employee must be realistic and understand his responsibility to cooperate with the employer in a reemployment plan. The counselor must meet the responsibility of counseling the worker toward exploring existing opportunities for direct return to work. The claims adjuster, after agreeing to the plan, must act in good faith by providing timely compensation payments and other services necessary to support the plan. The attorneys must act responsibly by counseling their clients to fully cooperate in the rehabilitation effort. All parties must be realistic and flexible to allow for amendment of the plan if change is needed to ensure achievement of the ultimate return-to-work goal. The workers' compensation agency must provide sufficient administrative oversight and monitoring to ensure that all parties clearly understand and meet their responsibilities.

(5) PROVISION OF INCENTIVES, REMOVAL OF 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 the rehabilitation of injured workers. Caution must be exercised so that expectations regarding rehabilitation are not based on the premise that good faith efforts on the part of all parties in the system 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.

Incentives

Proper Rating of Employers. Authorities in workers' compensation have suggested internalizing the costs of work-related accidents and diseases by properly rating employers will support the safety objective of a workers' compensation system. The Interdepartmental Workers' Compensation Task Force's recommendation that experience rating should be extended to small as well as large employers in an incentive to reemploy injured workers. (Interdepartmental Workers' Compensation Task Force, 1977). Experience rating permits a "before-the-fact" look at an employer's safety and reemployment record over a specified period of time. If the record is good, the employer is given a credit toward future premiums.

A similar incentive exists in retrospective rating where the employer pays a fixed advance premium based on his classification rate and estimated payroll. His loss experience is assessed after the policy has been in force for a predetermined period of months. Depending on his experience, he may be reimbursed for a portion of the advance premium.

A detailed discussion of the intricate features of rating methods is not intended. They are offered in light of their suggested use by authorities in workers' compensation as incentives to employers in rehiring their injured employees. The insurance industry should provide assistance and information on rating to employers as a part of loss-control services to them.

Targeted Jobs Tax Credits. As part of the Revenue Act of 1978, Congress created the Targeted Jobs Tax Credit (TJTC), which gives private-sector employers an incentive in the form of tax credits to hire certain targeted groups including vocational rehabilitation clients. New legislation was passed in August 1981 which allows employers to claim a full two-year credit on all certified employees. The TJTC credit is based on 50% of the first \$6,000.00 in wages paid to a qualified employee during the first year of employment, and 25% of the first \$6,000 in wages paid during the second year. The potential "in-pocket" two-year savings can amount to as much as \$3,870 per eligible employee, depending on the amount of wages paid and the employer's tax bracket. The program requires minimal paperwork on the part of the employer. The knowledgeable rehabilitation counselor is aware of this incentive and

should readily make prospective employers aware of its features when assisting the injured worker in returning to employment.

Second Injury Fund. Placement of the partially disabled worker is difficult at best, depending on the extent of the disability, age, education background, skill level of the disabled person and the prevailing job market. The task is made more difficult by employer reluctance to hire the handicapped. While a cure-all to eliminate this reluctance is not likely to exist, the workers' compensation system can provide a remedy to at least reduce the fears of employers surrounding hiring a worker with an impairment, through establishing a second injury fund. The National Commission has suggested that second injury funds serve two intents: to encourage employment of the handicapped and to spread the risk associated with pre-existing impairments among employers equitably. Both intents are applicable for purposes of this discussion.

A second injury fund within the workers' compensation system presents a remedy to deal equitably with a situation where the second injury would not have occurred had the prior impairment not existed, or where the degree of impairment resulting from the combination of the prior and subsequent injuries is more serious than the total effect of the two injuries considered separately. The fund provides full compensation for the worker who suffers a second injury, and simultaneously allows the employer to be responsible only for the benefits resulting from the second injury.

The second injury fund can help a handicapped worker get a job if employers are aware of the existence and nature of the fund. As suggested by the National Commission, the workers' compensation agency can encourage rehabilitation and employment of industrially handicapped workers through wide publication and interpretation of eligibility requirements.

Substantial Maintenance. That the basic needs of injured workers and their families continue during rehabilitation is too obvious for argument. It is worth emphasizing, however, the importance of keeping this in mind when discussing incentives which will enhance the rehabilitation effort. Total compensation should of course continue during the period of rehabilitation. Additionally, maintenance payments to offset extra expenses such as transportation costs incurred by the worker while undergoing rehabilitation should be provided. This realization is prevalent in the compensation community as most systems provide such incentives.

Removal of Disincentives

Premature Settlements. Perhaps one of the greatest deterrents to rehabilitation in workers' compensation is the settlement of a claim before an injured worker undertakes or completes rehabilitation. Larson notes:

One of the worst enemies of the rehabilitation program is the reckless, lump-summing of permanent disability awards, since this usually means that the claimant loses all benefit of continued surveillance of his case, and often finds himself in a few years with neither money nor competitive earning ability. (Larson, 1980).

Attempts by any party in the system to settle a workers' claim prior to the worker undertaking a rehabilitation effort should not be allowed by the workers' compensation agency, unless it has been determined after careful consideration that settlement is in the best interest of the injured worker. Factors and conditions to be considered are too varied and numerous in each individual case to allow a complete discussion in this report. The primary aim is to motivate an injured worker to undertake a supervised rehabilitation program designed to restore his ability to earn a living as a productive worker, rather than to allow him to persist in "foot-dragging" based on the expectation of receiving the "pot of gold" at the end of the rainbow. The workers' compensation agency should ensure that all parties in the system understand the policy regarding settlement and rehabilitation.

Excessive Litigation. As previously discussed, excessive litigation serves no useful purpose in the rehabilitation process. It is likely to be a primary obstacle to successful rehabilitation of

industrially injured workers. Excessive litigation serves to obscure the goal of rehabilitation in achieving the primary objective of workers' compensation. It causes the focus to shift from restoring the injured worker's competitive earning ability to highlighting his disability. In the ensuing process, rehabilitation is not used as an effective tool for the long-range benefit of the injured worker. It becomes a bargaining stick employed by the worker's attorney in the quest to obtain his pot of gold. It is simultaneously used as a trade-off carrot by the insurer's attorney to limit future liability. The workers' compensation agency can provide an effective remedy to this unacceptable paradox by reducing the need and opportunity to litigate, through maintenance of an effective delivery system of rehabilitation services. As suggested by the National Commission, litigation may occur less frequently if state agencies provide enough positive assistance to workers who are unable by themselves to deal with the complexities of the law. Regulations, along with definitive procedures and guidelines for rehabilitation services, aggressively administered, would remove much of the opportunity to litigate.

Other Stimuli

There are likely to be a few cases in which some workers may hesitate to restore their earning capabilities because of a possible reduction in benefits. Although these instances may be rare, they are to be expected and must be dealt with if the compensation system is to have an effective rehabilitation program. Workers who refuse rehabilitation services, or who sabotage rehabilitation efforts by passive-aggressive means, should be encouraged to cooperate by having their benefits temporarily suspended during the total period of noncooperation. A similar provision acting upon the employer should also exist. This provision is contained in many compensation systems and can be an effective stimulus to ensure cooperation in the rehabilitation process.

Part Two

Evaluation & Recommendations

Evaluation of rehabilitation in the Alaska workers' compensation
program, with recommendations for changes

INTRODUCTION

The first workers' compensation act was passed in Alaska in 1915. The law, which limited coverage to miners, permitted employers and employees to elect coverage under the act. Provisions for a schedule of lump-sum benefits were included. The act did not include provisions for medical and rehabilitation care or a second injury fund.

The current act provides for expenses for vocational rehabilitation to be paid out of that portion of the Second Injury Fund exceeding \$10,000. Persons undergoing rehabilitation are entitled to receive extra compensation for maintenance during the period of rehabilitation. The total expenditures for maintenance, training, necessary transportation and other rehabilitation services may not exceed \$10,000 for one person. (See Appendix B for chronological changes in the law from 1915 to 1981.)

The 1972 Report of the National Commission significantly influenced states' workers' compensation legislation over recent years. Many states have amended their laws to permit adoption of most, if not all, of the 19 essential recommendations made by the Commission. The Alaska Workers' Compensation Act is in compliance with 14 of these essential recommendations. (U.S. Department of Labor, 1981). Three of these hold positive implications for vocational rehabilitation.

Two of the essential recommendations call for the removal of statutory limits on dollar amount and passage of time for medical care and physical rehabilitation. Students of industrial rehabilitation have long recognized quality medical and physical rehabilitation treatments as necessary precursors to successful vocational rehabilitation. This long-standing belief is supported by the Commission's recommendation for inclusion of these benefits in a workers' compensation program.

The third essential recommendation which affects vocational rehabilitation, and with which the Alaska workers' compensation program complies, provides for the replacement of a substantial portion of the worker's lost wages during the period of disability. As previously discussed, the basic needs of the injured worker and his family continue in spite of the injury. Anxieties regarding the family's ability to meet these needs are legitimate and must be sufficiently abated if the worker is to make a satisfactory recovery and return to gainful work. Unresolved anxieties produced by an inadequate source of income to meet basic needs will interfere with the rehabilitation process. As noted by the Commission: "A worker

may be in such dire circumstances that he may be forced to return to work before he has properly recovered or he may become so demoralized as to be indefinitely disabled." Substantial protection against interruption of income during rehabilitation prevents this and enhances the prospects for successful rehabilitation.

Efforts of the Division of Workers' Compensation to improve its service delivery system are worthy of discussion here. The Division has recently implemented an automated system which provides an effective tool for capturing and managing complex interdependent sets of data and for releasing staff resources to resolve client problems promptly. It also addresses program quality in a legal sense by providing access to precedence information, thereby reducing the ad-hoc nature of Workers' Compensation Board decisions. Access to claims filed in the field offices will enable compensation officers to resolve disputes in the early stages and thus will reduce the number of board hearings. This will consequently reduce litigation and its costs for all parties. Additionally, the Division has recently implemented a comprehensive compensation report which will enhance its automated system. Training sessions have been provided to insurers on the proper use and completion of the new compensation report.

The board has submitted proposed changes in regulations in Title 8 of the Alaska Administrative Code dealing with workers' compensation and vocational rehabilitation, to clarify the Alaska Workers' Compensation Act. Hearings are currently being held on these proposed changes. (See Appendix C.)

A brochure, explaining benefits to injured workers covered by the Workers' Compensation Act, was published approximately eight months ago and has been widely distributed. Similarly, a handbook for employers is presently being prepared for distribution in the near future. Both publications should enhance the delivery system of the Alaska Workers' Compensation Act.

The board's increasing efforts to address the rights and responsibilities of all parties in the rehabilitation process are reflected by its more recent decisions. Applications for compromise and release settlements, which preclude the worker from engaging in or exploring rehabilitation alternatives prior to settlement, are being disallowed or at the very least, discouraged. The board is taking an active role in ordering vocational evaluations to establish the feasibility of return-to-work plans prior to approving them.

The administrative officer for the Second Injury Fund has been provided additional staff, in

the relentless effort to more efficiently administer the fund and oversee rehabilitation plans requiring Second Injury Fund expenditure. Workers' Compensation officers have been shifted to allow more direct contact with injured workers and other parties to provide individual assistance in rehabilitation and other benefit matters. This shift permits more field visits by the officer as the Division continues in its efforts to improve the delivery system to all parties.

Discussion of Data

Although the Alaska workers' compensation program has many strengths, recording and maintaining baseline data pertinent to rehabilitation is not among them. Gathering quantifiable data from all sources in the system was difficult, due to the incomplete nature of available records.

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 supplied 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 exist for the purpose of comparing data collected from the two sources.

First, data for the state rehabilitation program reflects a three-year period for fiscal year 1978 through fiscal year 1980. Data supplied by the private rehabilitation firm is for the period of July 1, 1980 through July 31, 1981.

Second, terms common to rehabilitation of disabled persons have several definitions for the purposes of statistics, depending on who collects and records 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 60 days; 2) in a job consistent with restrictions imposed by the disabling condition. The state rehabilitation program considers a successfully rehabilitated 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 such as an unpaid homemaker. 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 involvement of the rehabilitation firm. It is important to keep these limitations in mind when making comparisons between data presented for the two sources. Tables 5 and 6 present data received from the state vocational rehabilitation program. Tables 7 and 8 present data received from the private rehabilitation firm.

Although data limitations do not allow unequivocal conclusions to be drawn concerning workers' compensation rehabilitation in Alaska, several widely accepted ideas are supported by the figures presented in the tables. For both the state rehabilitation program and the private 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 costs, the general direction is one of increased costs as the time between date of injury and the date of referral to rehabilitation increases. There appear to be differences between the state rehabilitation program and the private firm in terms of average cost. The private rehabilitation firm shows 75% of the cases with costs for services below \$2,500 as reflected in Table 8a. A comparable figure for the state program can be seen in Table 6a, which shows 64% of the cases with costs for services below \$2,500. This difference may be explained in several ways. First, as noted in Table 5, the average time from the date of injury to the date of referral to rehabilitation is 16.8 months for the state program and 11.8 months for the private rehabilitation firm as noted in Table 7. Given the relationships expressed in Tables 6b and 8b, it is reasonable to expect the state program's average costs per case to be higher than the private firm's cost per case. A second factor affecting costs is the average time spent in the rehabilitation process. The average number of months spent in the rehabilitation process for the injured worker served by the state program is 27 months for fiscal year 1980, as can be seen in Table 5. A comparable figure for the private firm is 7.4 months, as shown in Table 7. A third explanation for cost differences between the two programs may be reflected in Table 5 which shows 21% of the cases closed by the state program in fiscal year 1980 involved training, as compared to 3% of the cases for the private firm, which can be seen in Table 7. Training costs for tuition, books and supplies clearly add to the overall costs of services.

Table 5 shows that as the percent of workers receiving college training has decreased since fiscal year 1978, the percent of workers successfully rehabilitated has increased. This inverse correlation is consistent with reported results of the

TABLE 5. Data supplied by the Alaska Division of Vocational Rehabilitation (DVR).

Period	Total Cases Closed	Avg. Mos. in Rehab. Process	% College Training	# of Workers Successfully Rehabilitated	Avg. Cost/Case	Avg. Cost/Successful Case
FY80	61	27	21	13 (54%)	\$2,280	\$3,505
FY79	50	23	36	12 (44%)	1,615	2,821
FY78	48	32	38	29 (42%)	1,468	3,021

Remarks: The average time from date of injury to date of referral to rehabilitation was 16.8 months (derived from DVR data and injury dates reflected in the Division of Workers' Compensation records).

TABLE 6. Cost analysis and referral period — (DVR)

For 72 randomly selected closed cases during fiscal year 78 through fiscal year 80.

a. Cost	#	b. Referral period	#	Avg. Cost/Case
0- 500	18	0- 6 mos. after injury	14	\$2,168
500-1,000	9	7-12	26	2,391
1,000-1,500	9 64% below	13-18	10	2,494
1,500-2,000	7 \$2,500	19-24	7	975
2,000-2,500	3	25-30	10	2,332
2,500-3,000	3	30-36	4	2,492
3,000-3,500	2			
3,500-4,000	7	36 and over	1	8,258
4,000-4,500	1			
4,500-5,000	3			
5,000				
and over	10			

Remarks: Figures for 72 randomly selected cases closed for fiscal years 1978, 1979, and 1980. Thus, an average time from date of injury to date of referral to rehabilitation derived from Table 6b, will not correlate with the figure of 16.8 months noted in Table 5.

TABLE 7. Data supplied by private rehabilitation firm.

Period	# of Surveyed Cases Closed	Avg. Mos. in Rehab. Process	% Rec'd. Training	# of Workers Successfully Rehabilitated	Avg. Cost/Case	Avg. Cost/Successful Case
July 1, 1980 through July 31, 1981	188	7.4	3	91 (48%)	\$1,685	\$1,847

Remarks: The average time from date of injury to date of referral to rehabilitation was 11.8 months as reported by the firm.

**TABLE 8. Cost analysis and referral period — private firm.
For 188 case files closed between 7/1/80 and 7/31/81.**

a. Cost	#	b. Referral period	#	Avg. Cost/Case
0- 500	49	0- 6 mos. after injury	44	\$1,414
500-1,000	36	7-12	18	1,670
1,000-1,500	28 75% below	13-18	9	2,003
1,500-2,000	25 \$2,500	19-24	7	1,875
2,000-2,500	13	25-30	7	1,926
2,500-3,000	12	over 30	6	2,198
3,000-3,500	11			
3,500-4,000	10			
4,000-4,500	4			
4,500-5,000	2			
5,000				
and over	7			

study conducted by the California Workers' Compensation Institute, as well as beliefs embraced by members of the workers' compensation community regarding a higher success rate of shorter and less expensive programs over longer and more expensive programs.

While many inferences can be made from the data presented in Tables 5 through 8, it must be kept in mind that the percentage of injured workers involved in rehabilitation with respect to the total number of workers experiencing lost-time injuries is small. The Division of Workers' Compensation processed an average of 6,838 lost-time injuries for fiscal years 1978, 1979 and 1980. The administrator of the Second Injury Fund estimated 200 to 250 injured workers were determined eligible for fund expenditures in fiscal year 1980. This does not include those workers provided direct placement and other services, however, where expenditures from the fund were not required. It cannot be determined that a certain percentage of workers suffering lost-time injuries in a given fiscal year will receive rehabilitation services within that same fiscal year. Based on the estimate of the Second Injury Fund administrator, however, 3 to 4% of these workers eventually become eligible for such services. Table 9 presents comparable data for the state rehabilitation program and the private rehabilitation firm of such factors as the percent of workers with lost-time injuries who were provided services and the percent of workers with lost-time injuries who were successfully rehabilitated.

Survey of Injured Workers

A survey was conducted to measure the post-injury economic status of injured workers and to examine their reactions to the delivery system of rehabilitation in the Alaska worker's compensation program.

Injured workers surveyed fell into two main groups. The first group included workers who had signed compromise and release agreements which did not include provisions for rehabilitation benefits. Out of approximately 1,000 of such

workers, 468 were randomly selected to be included in the survey. The second group included 142 injured workers who were certified as eligible for and referred to rehabilitation. A total of 610 injured workers were surveyed from the two groups.

Due to time constraints, problems experienced in obtaining correct addresses and incomplete answers to all questions, response to the survey was limited to the point that no definite conclusions can be drawn.

The survey called for subjective evaluation by injured workers of the rehabilitation services they received. The overriding concerns expressed by injured workers were the inordinate delays they experienced before referral to rehabilitation occurred, the lack of information available to them regarding their entitlement to rehabilitation benefits and the complexity of the system which necessitates obtaining attorney services. These concerns support the argument for positive administration and assistance by the Division of Workers' Compensation.

1. EARLY IDENTIFICATION OF INJURED WORKERS

A basic goal of rehabilitation in workers' compensation is the early identification of injured workers who may not be able to return to the job held at the time of injury, or who may eventually return to their regular work with comprehensive vocational rehabilitation services. In either case, the workers' compensation program must maintain systematic procedures for the reporting of these injuries by the insurance company and the screening of these reports by the workers' compensation agency. The Alaska workers' compensation system does not maintain such a procedure. The insurance companies are not required to file reports, timely or otherwise, indicating a worker's need for rehabilitation services or identifying the workers who are eventually provided these services. Based on available data, it appears that injured workers are not timely identified or referred for rehabilitation services in the Alaska

TABLE 9. Comparable rehabilitation data for Alaska workers' compensation program.

Provider of Services	# of Lost Time Cases	Closed Cases Received Services			Injured Workers Successfully Rehabilitated			Avg. Mos. in RH3	Avg. Cost per Case
		#	% Lost Time Cases	% Received Training	#	% Closed Cases	% Lost Time Cases		
1/ Private Firm	7,704	108	2.4	3	91	48	1.1	7.4	\$1,685
2/ DVR	6,356	61	1.9	21	33	54	0.5	27	3,505

Remarks: 1/ Data provided covered period of July 1, 1980 through July 31, 1981.
2/ Data provided by Division of Vocational Rehabilitation for FY 80.

workers' compensation system. There is no universally accepted, hard and fast rule regarding the point at which an injured worker should be referred to rehabilitation. Average recovery time for the bulk of industrial injuries, back strains and sprains, and the acuteness of other more serious injuries serve as guidelines for most workers' compensation agencies in deciding when to initiate vocational rehabilitation services. While specific time frames vary among workers' compensation agencies, the general rule of thumb applied is, services should be initiated as soon as it appears the worker is unlikely to be able to return to his pre-injury employment. Using this rule of thumb, several study groups suggest 120 days of continuous lost-time as the time when reports regarding the worker's need for services should be filed. Administrative rules of the Oregon workers' compensation program range from within 96 hours of the insurer's knowledge of seriously injured workers who are hospitalized, to 90 consecutive days of lost-time for less seriously injured workers. Additionally, workers who have suffered intermittent lost-time of 190 days from the date of injury must also be reported to the Oregon Workers' Compensation Division. The Idaho Industrial Commission has no specific reporting requirements of insurers or employers. When vocational rehabilitation services are needed as determined by the adjuster, a request is made for the assistance of the Industrial Commission's rehabilitation staff in initiating rehabilitation services. Still, the Office of Workers' Compensation Programs, in administering the Longshoremen's and Harbor Workers' Compensation Act, requires the insurer to report injured workers who continue to receive compensation payments 60 days from the date of injury. Immediate reporting is encouraged of workers who suffer catastrophic or acute injuries.

The workers' compensation agency, in attempting to meet the early identification goal, must balance the reporting requirements of the insurer with its capability to timely screen these reports. This capability is determined of course by the staff and resources of the workers' compensation agency. The purpose of timely reporting will be undermined if the agency is not sufficiently staffed to screen the reports and monitor provision of rehabilitation services to workers who need them.

Recommendation 1.1

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

- a. all injured workers who experience continuous lost-time 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 1.2

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

Recommendation 1.3

That subsequent to, or during the screening process, the Division of Workers' Compensation 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, and the worker's rights and responsibilities in the rehabilitation effort.

Recommendation 1.4

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

2. PROVISION OF REHABILITATION SERVICES BY COMPETENT COUNSELORS

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 their schools of rehabilitation. 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 experience.

Counselors presently providing rehabilitation services to injured workers covered by the Alaska Workers' Compensation 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 remaining critical elements are sufficiently present to meet the objectives of a workers' compensation rehabilitation program.

First, some counselors appear not to understand their roles as they attempt to interpret laws to the board regarding a worker's entitlement to rehabilitation benefits, 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 objectives of the workers' compensation 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, it appears that a number of counselors are 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 or ignored. In some instances, attempts to coerce board approval of Second Injury Fund expenditures are made simultaneously to the counselor's overt resistance to the board's requests for information needed to support a plan recommended by the counselor.

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

Recommendation 2.1

That pursuant to the adoption of regulations on vocational rehabilitation, the Division of Workers' Compensation establish, publish and distribute guidelines for providers of rehabilitation services in accordance with Recommendation 2.2 through 2.5 and the following time frames:

- Completion of vocational evaluation and plan recommendation—six weeks

- Complete development of plan—six weeks
- Direct placement program—three months
- On-the-job training—three to six 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 2.2

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 2.3

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 2.4

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 2.5

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

Members of the rehabilitation community in Alaska have expressed concern regarding the provision of rehabilitation services by persons with proper credentials. The Alaska Rehabilitation Association, an affiliate of the National Rehabilitation Association, reports it is currently taking steps to address this concern. The priority of the Association as reflected in its constitution and bylaws is the certification of rehabilitation professionals practicing in Alaska. In general, setting standards and ethics for rehabilitation practitioners is best left to the

professional associations. However, the basic objective of rehabilitation in a workers' compensation system must be kept uppermost in mind in establishing guidelines and standards for professionals providing services to industrially injured workers. The performance of rehabilitation providers must be measured against these standards, which the system must determine it needs in order to achieve the purpose for which the workers' compensation system was established. The timely return of injured workers to safe employment commensurate with that held at the time of the injury, the cost-effectiveness of services, and the understanding as well as the responsiveness of providers to the needs of injured workers and the compensation system alike are the ultimate credentials which will determine the suitability of rehabilitation professionals providing services in the compensation system.

3. 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." 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 Workers' (LHCA) and the Federal Employees' Compensation Act (FECA). According to information received from the OWCP, 763 injured workers were successfully rehabilitated under the FECA for fiscal year 1981.

Sixty-eight percent of these workers were reemployed by their previous employers. (See Table 10 for data on the rehabilitation programs of the federal acts).

Insurance companies can be instrumental in helping employers 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 fiscal year 1981. A \$1.25 million savings in projected compensation payments resulted from this effort. Additionally, the employer reported higher morale and a reduction in suspected fraudulent claims as additional payoffs. The benefits to be derived from reemployment of injured workers by their previous employers is obvious.

There is little evidence in support of Alaska employers providing measurable opportunities for reemployment of injured workers. 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 in Alaska 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 limited efforts of temporarily assigning injured employees to light duty. On the whole, employers readily proclaim the nature of their business precludes rehiring their injured employees: their operations simply cannot accommodate workers with less than full body integrity. Insurers' comments contributed little to modify or change the complexion of this proclamation. Neither party admitted to having particular knowledge of how to improve this present state of affairs, although the suggestion of some insurers regarding performance of on-site job analysis, in cases of reemployment dispelled the notion of complete unawareness in this matter.

OFFICE OF WORKERS' COMPENSATION PROGRAMS

TABLE 10. Vocational Rehabilitation Performance Report FY 81.

Program	# of Compensated Lost-Time Cases	Cases Screened for Services		Cases Opened for Services			Injured Workers Successfully Rehabilitated				Avg. Mos. in R/HB	Avg. Cost Succ. Case
		#	% of Lost-Time Cases	#	% of Compensated Cases	% Rec'd Training	#	% of Cases Opened	% RTW w/Prev. Emp.	% of Compensated Cases		
1/LHCA	19,002	4,947	26	947	5	28	386	41	23	2.0	23	\$1,500
2/FECA	47,982	7,608	16	2,214	5	11	763	34	68	1.6	18	2,000

Remarks: 1/ Longshoremen's and Harbor Workers' Compensation Act
2/ Federal Employees' Compensation Act

Recommendation 3.1

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

Recommendation 3.2

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

Recommendation 3.3

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

Recommendation 3.4

That contractual agreements be negotiated between management and labor for reemployment/rehabilitation of injured union members.

4. MAINTENANCE OF ATMOSPHERE CONDUCTIVE 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 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 in Alaska 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 workers are 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 regard 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 lost-time workers provided services, coupled with the percent of lost-time workers successfully rehabilitated, indicate this element too, is inadequate to support a rehabilitation program.

Recommendation 4.1

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 4.2

That in the case of workers experiencing lost-time, 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 rehabilitation personnel who serve as a communication link between the injured worker and insurance company, as well as other appropriate parties in the system. These personnel assist in creating an atmosphere conducive to an early return to work and facilitate coordination and development of rehabilitation plans for those workers who may not be able to return to employment without training.

Recommendation 4.3

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

5. PROVISION OF INCENTIVES, REMOVAL OF DISINCENTIVES

Incentives

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

Recommendation 5.1

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

Recommendation 5.2

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

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. The extent to which counselors adequately advise employers of this incentive when attempting to place injured workers is unknown.

Recommendation 5.3

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 this program.

Additional Maintenance. Injured workers undertaking a rehabilitation program can receive up to \$200 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 in the Alaska workers' compensation program.

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

Recommendation 5.4

That language in AS 23.30.040(e) be changed from dollar amount to 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 the fund appropriately.

Recommendation 5.5

That the Division of Workers' Compensation 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.

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 fiscal year 1981, 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. This is 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 Fund monies to the agency, and attempting to renew a cooperative agreement between the two agencies is questionable for at least three reasons. First, the obsolete practice of forming cooperative agreements between a compensation and state rehabilitation agency has been sufficiently discussed in Part One of this report. 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 requiring expenditure of Second Injury Fund monies.

Recommendation 5.6

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

Recommendation 5.7

That criteria for development, recommendation and implementation of rehabilitation plans, in accordance with Recommendations 2.1 through 2.5, be applied to all providers of vocational rehabilitation services to persons covered by the state compensation laws.

Disincentives

Premature Compromise and Release Settlements. Authorities on workers' compensation are strong opponents of settlements which prematurely preclude an injured worker's participation in a supervised rehabilitation program. There is a 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 in the Alaska workers' compensation community. Almost equally as common, and particularly disturbing, are the recommendations for such plans without adequate documentation to support their soundness or feasibility. Motivations vary among the parties making unfounded recommendations for such plans.

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.

The injured worker'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: "Given the worker's vocational evaluation results, his interests and motivation to succeed, the proposed venture will afford him a realistic vocational goal." It will also provide the counselor with much-needed relief from the task of developing a sound rehabilitation

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

In instances such as these, all parties seem to lose sight of the goal of rehabilitation: the return of the injured worker to gainful employment by restoring the ability to earn a living. An 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 gainful employment which will afford him a livable wage, and thus is a means to an end. An unsound plan, however, may not afford him a sufficient income and will thereby fail to achieve the ultimate 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 gainful employment. In cases not involving self-employment plans or supervised rehabilitation programs, claims should be settled only after a determination has been made that to do so is in the best interest of the injured worker.

Recommendation 5.8

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

Excessive Litigation. Rehabilitation professionals providing services to injured workers in Alaska readily attest to the activities of both the plaintiffs' bar and defense attorneys as interfering in the rehabilitation process. Indeed, this seems to be borne out by testimony offered during the public hearings on workers' compensation, and in the claims files of injured workers. Excessive litigation serves little if any purpose in the rehabilitation process, and if allowed to exist, will undermine the primary objectives of rehabilitation. As suggested earlier, regulations, guidelines and well-defined procedures regarding rehabilitation will remove much of the need and opportunity to litigate. (See Recommendations 2.1 through 2.5.)

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 authority to apply such remedies in the Alaska workers' compensation system. A review of the board's more recent decisions and orders reflects increased efforts to make sufficient application of these remedies in support of the rehabilitation objectives.

Administrative Organization. The key to an effective delivery system of rehabilitation benefits is the workers' compensation agency's active pursuit of its administrative obligations which this report has previously elaborated. The delivery system can perform well if the Division of Workers' Compensation has authority commensurate with its responsibility and is given the staff and resources sufficient to fulfill its obligations.

Recommendation 5.9

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

Recommendation 5.10

That the Division of Workers' Compensation establish procedures for collecting and analyzing data pertinent to determine the effectiveness of its rehabilitation program.

Members of the Alaska workers' compensation community must agree on the overriding objective of rehabilitation in workers' compensation. It is not an education benefit, a guaranteed training program or a money system, as is the view of some participants. It is not a legalistic system as some attorneys seek to make it. Neither is it a system solely designed to control claims and costs, which may be the view of loss-control technicians or claims adjusters. Instead, the resources and services are provided to restore the injured employee to work. The system must recognize and maintain this return-to-work objective if it is to achieve its basic purpose.

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Appendix A

Glossary

adequate: sufficient for what is needed or required; delivering sufficient benefits and services to meet the objectives of the program.

catastrophic injury: damage to a body part caused by an acute, traumatic episode resulting in a severe anatomical or function loss (see injury).

experience rating: a method of rating based on the individual employer's previous loss experience relative to the average employer in his class and the statistical reliability of that experience.

developmental disability: a condition resulting from a physical or intellectual impairment as a consequence of abnormal neurological or cerebral development.

disability: a condition resulting in loss of earnings or earning capacity caused by an impairment.

gainful employment: paid employment which restores the injured worker to maximum self-support.

habilitate: to educate or train (the physically or mentally handicapped) to maximize their ability to function in society.

impairment: an anatomic or functional abnormality or loss.

industrial rehabilitation: restoration of earning capacity of a person whose disability is a consequence of a job-related injury or disease (see vocational rehabilitation).

injury: damage to the body resulting from an acute traumatic episode.

plan: a proposal of services to be performed by a rehabilitation provider with a goal of returning the injured worker to gainful employment.

regulations: rules applied by the board to govern the delivery system of worker's compensation benefits.

rehabilitate: to restore to a normal or optimum state of constructive activity.

rehabilitation provider: any federal, state or local government agency, or any public or private entity performing services designed to return the injured worker to gainful employment.

retrospective rating: a form of experience rating under which an employer pays a premium which varies with his own loss experience during the policy period.

safe work: gainful employment consistent with a worker's physical and mental capacity and vocational skills.

second injury fund: a special fund which assumes all or part of the liability for benefits provided to a worker because of the combined effect of a work-related impairment with a pre-existing condition.

severe disability: a serious or grave condition caused by an anatomic or functional abnormality or loss, resulting in a loss of earning capacity.

vocational rehabilitation: a program of services, not limited to medical services, designed to restore an injured or disabled worker to gainful employment.

Appendix B

Chronological Development of Workers' Compensation in Alaska, 1915 - 1981

Year**Brief Summary of Laws and Changes**

- 1915 First Alaska Workmen's Compensation Act passed. Covered miners only. Employers and employees permitted to elect not to come within the provisions of the Act. Schedule of lump sum benefit payments established. No provision for medical, surgical, hospital treatment, rehabilitation, and second injury fund. (Ch. 71 SLA 1915).
- 1923 Repeal of 1915 Act and passage of new law. Language and format of old Act for the most part contained in new law. Coverage extended to all employments except domestic service, agriculture, dairying and the operation of railroads as common carriers. Schedule of benefits increased in all classifications. (Ch. 98 SLA 1923).
- 1925 Amendment to place responsibility for providing medical, surgical and hospital treatment for injured employees on the employer. (Ch. 63 SLA 1925).
- 1927 Repeal of prior compensation laws and enactment of new law. Payments allowed under schedule of benefits increased. Temporary partial and total disability compensation increased from 50% of weekly wages to 65%. Interest at 8% per year permitted as a charge against employers on overdue payments to employees. Right to lien on property of employer for full amount of compensation owing. (Ch. 13 SLA 1927).
- 1929 Repeal and substantial reenactment of existing law. Definition of "child," "widower," and "married" added. (Ch. 25 SLA 1929).
- 1935 Amendment to change provisions relating to payments to beneficiaries. Employers no longer required to pay transportation costs of injured employees in connection with medical, surgical, or hospital treatment. (Ch. 84 SLA 1935).
- 1937 Amendment to make insurers parties defendant in actions or proceedings brought under the Act. (Ch. 63 SLA 1937).
- Amendment to change waiting period after an injury from one week to one day in addition to the day on which the injury occurred. (Ch. 74 SLA 1937).
- 1941 Amendment to fix time for payment for any temporary disability compensation, defining "wage earning capacity" of an employee. (Ch. 44 SLA 1941).
- 1946 Existing law repealed with enactment of new "compulsory" type law eliminating right of employees and employers to "elect" whether or not to come within the provisions of the law. Self-insurance by employers permitted. Schedule of benefits substantially the same as provided in the 1929 law. Second Injury Fund established. (Ch. 9 ESLA 1946).
- 1949 Section pertaining to liens to secure compensation modified. (Ch. 104 SLA 1949).
- 1951 Alaska Industrial Board reconstituted to include the Auditor in place of the Insurance Commissioner to serve with the Attorney General and the Commissioner of Labor. (Ch. 133 SLA 1951).
- 1953 Alaska Industrial Board again reconstituted and the Auditor replaced by the Insurance Commissioner. Other members remained unchanged. (Ch. 24 SLA 1953).
- Coverage extended from employers employing three or more persons to those employing one or more persons. Death and partial permanent disability benefits roughly doubled. Length of time employers required to provide medical and related treatment increased from one year to two years following injury. Period employees required to wait following an injury before compensation begins increased from two days to three days. Limited temporary disability payments to twenty-four months and provided a ceiling of \$75 per week to any claimant. (Ch. 60 SLA 1953).
- 1955 Maximum weekly compensation to be paid during any temporary disability increased from \$75 to \$100. Employer liability for providing medical and related services increased from two to four years following the injury (Ch. 141 SLA 1955).

- 1959 A new and comprehensive workers' compensation law was passed for Alaska. Detailed provision on aspects of administration and insurance were included. The new law called for the appointment of an Alaska Workers' Compensation Board consisting of the Commissioner of Labor, one labor representative and one industry representative.
- 1960 Second Injury Fund contributions increased. In cases of fatally injured workers with no dependents, employers (carriers) must pay a flat \$1,500 into the Fund. In-training maintenance allotments for injured workers increased from \$50 to \$100 per month.
- 1961 Public hearings held on the possibility of establishing a nonprofit exclusive state fund and the workers' compensation then in effect. Two legislative proposals for establishing a state fund did not pass.
- 1962 Insurers must provide claims adjustment facilities. Funeral expense allotment increased from \$500 to \$1,000. Executive officers permitted to waive coverage under the Workers' Compensation Act. Exclusiveness of liability clarified (fellow employees cannot be liable). Two year period for employer liability on medical treatment established, with the Board authorizing all treatment after that. Four-year limit for filing in case of occupational disease established.
- 1963 Rehabilitation benefits extended to compensate in situations where temporary total or temporary partial benefits have been exhausted. Penalty of misdemeanor established for anyone interfering with the selection of an authorized physician, or for improperly influencing the work of an authorized physician.
- 1964 Penalties added for failure to insure. Definition of injury broadened. Benefits increased for temporary total and permanent partial disability.
- 1965 \$3,500 maximum allowed for all serious disfigurement of face, head, etc. Two panels established to assist the board in hearing claims.
- 1966 Second Injury Fund contribution rate increased to 5% of permanent partial losses. Spending limit for rehabilitation increased to \$5,000 per case. Death benefits for survivors increased. Maximum weekly compensation increased from \$81 to \$100 per week.
- 1968 Board empowered to approve lump-sum payments in cases of unscheduled permanent partial injuries. Eligibility for Second Injury Fund money clarified. Maximum weekly compensation increased from \$100 to \$113.
- 1970 Permanent partial disability benefits increased. Contribution rate to Second Injury Fund increased to 8% of permanent partial disability losses. Maximum weekly compensation increased from \$113 to \$127.
- 1972 Benefits increased to scheduled permanent partial disability. Maximum weekly compensation increased from \$127 to \$175. Minimum increased from \$25 to \$65 per week. Employer liability, when the state, a home rule or other political subdivision of the state awards a contract, clarified. If the contractor fails to maintain a valid insurance policy, the state may either terminate the contract or continue the premium payments on the contractor's behalf.
- 1974 Section on benefit adjustment added to the statute. Benefits for temporary and permanent disabilities shall be calculated according to currently existing benefit rates, and not the rates at time of injury, except in cases where the new rate would cause a decrease in benefits. Death benefits increased for surviving spouse or children. Maximum weekly compensation for permanent total disability increased to \$175.
- 1975 Five-step increase in maximum weekly benefit level passed. Maximum levels go from 80% of state average weekly wage on July 1, 1975 to 200% of state average weekly wage on January 1, 1981. Legislation doubles the maximum compensation allowed for scheduled permanent partial disabilities. Compensation rate for death benefits in case of surviving spouse only or children only, raised to 67% of deceased's average weekly wage. In cases of surviving spouse only, benefits to be paid until remarriage. \$75,000 maximum total benefits for surviving spouse removed, as was \$30,000 maximum for temporary

partial and permanent partial disability. Determination of state average weekly wage now based on three consecutive quarters of state wage data ending June 30th of the year in question.

- 1976 Out-of-state claimants receive adjusted benefit based on the ratio of a given state's average weekly wage, to Alaska's average weekly wage. National Council on Compensation Insurance designated the statistical agency for the Division of Insurance with respect to underwriting experience in workers' compensation insurance.
- 1977 Unscheduled permanent partial disability maximum compensation established at \$60,000. Death benefits reduced for widows or widowers under age 52, except in cases where the widow or widower is permanently and totally disabled, at the time of the deceased worker's death. A Social Security offset established. Basis for calculating benefits changed. Average weekly wage in any one of the three calendar years immediately preceding the injury used in order to compute benefit levels.
- 1979 Workers' compensation coverage may be extended by a political subdivision to volunteer ambulance attendants and policemen. Workers' Compensation Board increased from five to seven members.
- 1981 Second Injury Fund solvency strengthened as the contribution base expands and the contribution rate becomes flexible according to the fund's reserves at year end. Expense limits for rehabilitation are increased. The Alaska Workers' Compensation Board increased to seven members. Reporting requirements for carriers strengthened to facilitate more accurate cost and injury data collection by the Division of Workers' Compensation. The Legislature funded a study of vocational rehabilitation of injured workers to be completed early in the Second Session of the Twelfth Legislature. Limit for rehabilitation expenditure increased to \$10,000.

Appendix C

Proposed Alaska Workers' Compensation Board Regulations

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 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.

(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

Rep. Randolph

RECOMMENDED CHANGES TO THE
ALASKAN
WORKERS' COMPENSATION ACT

PREPARED FOR
THE ALASKA CONFERENCE OF EMPLOYERS, INC.

§ Jack Thompson
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2216 Post Road
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REPRODUCED BY THE
WORKERS' COMPENSATION COMMITTEE OF ALASKA, INC.
WITH THE PERMISSION OF THE
ALASKA CONFERENCE OF EMPLOYERS, INC.

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The Alaska Conference of Employer's, (ACE) a non-profit research co-operation, has commissioned this study which is designed to spell out in specific detail exactly what changes to the workers' compensation law are necessary to accomplish three objectives:

1. Reduce the waste of the compensation dollar on non-disabling injuries.
2. Reduce the waste of administrative, medical, legal and judicial time and resource.
3. Maximize benefits and minimize costs.

This is the second study sponsored by ACE. The first, published in 1980, was commissioned to identify the problems associated with the workers' compensation program. It accomplished its objective by demonstrating the effects of misdirected incentives, subjectivity in benefit determination, and the unfairness of benefit structures. Another very important result materialized in that it put the legislature on notice that the business community was starting to cry for help.

There are only so many dollars available for compensation as the source of funds is not infinite. Employers who paid attention to claims could not only monitor the status of injured employees they could read their insurance company loss runs and form an impression of the effectiveness of their premium dollar. Their impression was negative, as they saw a waste of time, human resources, and productivity, all of which translate into premium dollars. Those premium dollars, insignificant in the past, were now a very major expense item which easily could determine the difference between a profit or loss for the business.

On the other side of the coin, the burdens endured by employees are often overwhelming when you consider the contortious an employee must go through to obtain what he considers a fair benefit. When a benefit structure is designed for the average person, everyone considers it unfair. When a social program pays the electrical lineman and the executive \$33,600 for the loss of a hand resulting from an occupational injury, what is fair. The executive is probably back to work in a week, while the lineman is out of work for months.

These problems can be corrected, and this study was commissioned to define those problems involved and to create positive solutions designed to reduce the cost burden on employers while increasing or making the benefit structure more fair.

In order to convince readers that there is an incredible waste in the compensation premium dollar we needed data to support our theories. We found a total lack of statistical data of the type needed to draw factual conclusions. Therefore, as the result of a meeting in Seattle with industry leaders we decided to accomplish our task in two steps. First, using the data we did have, draw the best conclusions we could and complete the study. Second, was to simultaneously research a large group of recent claims to validate our conclusions. This method puts the credibility of this study in jeopardy of being invalidated by the claim study, but the supporting opinions of everyone concerned made it mandatory that we accept the risk, as the probability of error was considered minimum.

Alaska is not the first state to have its claims studied in this respect, as Florida, Louisiana, and Washington have already conducted the study. The Alaskan Workers' Compensation Act is structured the same as all the other laws in the United States and we have no reason to believe the results obtained in Alaska will differ from those obtained in other states. What was found in other states is that 70 percent of the injured workers who receive cash awards under the permanent partial disability section of the law suffered no economic loss subsequent to the payment of the award. This is a significant indicator of waste if an exceptionally large portion of the benefit dollars are paid in the permanent partial disability section of the law.

The best comparative data obtainable was gathered in Florida during 1977-1978, before their historic change to a wage-loss program. That data was selected for comparative purposes because there is also data gathered after the change to wage-loss which would enable us to predict the effects of our changes if they were similar. The data utilized from Florida is contained in a report prepared by the Bureau of Economic Analysis, Division of Economic Development, Florida Department of Commerce, published in October, 1981, page 7. The content of that report is so pertinent to our study it is added as Exhibit I.

Tables I and II on page 7, compare the percentage distribution of resolved

workmen's compensation cases by injury type, and the percentage distribution of benefits paid in resolved workmen's compensation cases by injury type, between Florida, Alabama, and Wisconsin.

The pertinent data displayed is the difference in percent distribution of permanent partial disability claims between states. As previously stated, 70 percent of the persons who receive cash awards under the permanent partial disability section of the law, incurred no economic loss subsequent to being paid the award. If a disproportionate amount of money is allocated to the permanent partial disability cases, it therefore follows that a significant amount of money is scattered among many claimants who had no economic loss.

In Florida, 30 percent of the claims fell into the permanent partial disability classification, and Florida allocated 67.2 percent of all claim dollars to those claims. In Alabama, only 7 percent were permanent partial cases and they consumed 37.5 percent of the claim dollars. In Wisconsin, 9 percent were permanent partial disability cases that accounted for 40.8 percent of the dollars. Florida had three to four times the number of permanent partial disability cases as Wisconsin and Alabama. Florida also allocated almost twice the percentage of dollars to those claims as did the other states.

The available data in Alaska indicates that our situation is very similar to that in Florida. The source of our data is the National Council on Compensation Insurance (NCCI) and is presented as Exhibit II. Utilizing the state average weekly wage we converted those statistics into comparative data. The results indicate that in Alaska, 24.15 percent of the claims are classified as permanent partial disability cases and we allocated 66.21 percent of all claim dollars to those claims. The claims study in progress at this time will add credibility to those statistics and most importantly, be current. The claim study has been commissioned by the State of Alaska and results will be made available in early 1982.

	Distribution of Claims		Distribution of Claim Dollars	
	<u>Permanent Partial</u>	<u>Other</u>	<u>Permanent Partial</u>	<u>Other</u>
Florida	30%	70%	67.2%	32.8%
Alaska	24%	76%	66.2%	33.8%
Alabama	7%	93%	37.5%	62.5%
Wisconsin	9%	91%	40.8%	59.2%

Note: A later Florida study placed the percentage of claims in the permanent partial category at 24 percent. See Exhibit I, page 22.

As in Florida, Alaska's workers' compensation law has a hole in the dyke containing the claim dollars. Alaska, like Florida, has an inordinate number of permanent partial disability claims and allocates 2/3rds of all claim dollars to those claims.

What is there about the typical permanent partial disability claim which accounts for its popularity and uncommon distribution of money? It is this section of the law which compensates the injured worker who incurs an injury which results in a permanent impairment of one of the body functions. The most predominate type of case is the common back injury. During the healing period, the employee is paid compensation to replace his average weekly wage, and this is the point where the claim gets very costly. Approximately 70 percent of these worker's return to their same job, same pay, same or other employer, and incur no further economic loss. However, that worker is entitled to an additional cash award for the future decrease in wages he may incur throughout his lifetime, as measured by a disability rating subjectively computed by his physician. The higher the rating, the higher the cash award, resulting in employees canvassing the medical community for a physician who will give a higher disability rating (at the employer's expense, called, doctor shopping). For the approximately 30 percent who do incur subsequent economic loss, they are often entitled to be retrained for a new occupation. A number of employees utilize attorneys in this case as the costs of retraining can also be paid in a lump sum along with the award for loss of future wage earning capacity. Many cases are settled on a compromise and release at this point, with the insurance company issuing a check. For those resourceful enough to obtain employment in their old occupation, they pocket the cash; others find new lines of related work. Few are actually trained. Adding to the cost, is the claimant's attorney's fee which is a percentage of the award paid to the worker. The employer must also hire an attorney to represent himself before the board. It is not difficult to visualize the dollar cost involved in these cases and thereafter wonder if the existing act is accomplishing its intended purpose. If the purpose of the original law was to distribute money by the buckets-full to people without economic loss, the intent of the law is being served.

This is Alaska's problem: This was Florida's problem until they changed their law to one based upon wage-loss. Gone are the cash awards for hypothetical loss of future wage earning capacity. Instead, the wage-loss program replaces future wages lost only when wages are actually lost and an employee's wage history can be monitored for as long as 10 years subsequent to reaching the date of maximum medical improvement. Also gone is the doctor shopping as an objective rating system replaces the subjective system. The change to wage-loss redistributed the dollars. For the 70 percent who had no economic loss it took dollars away and gave the 30 percent who actually had economic loss far more dollars. The balance was used for premium reduction.

As a result, Florida employers are enjoying workers' compensation rates 36.4 percent lower than the 1979 pre-wage-loss rates. Employees who actually incur economic loss are enjoying a higher level of benefits without the hassel which accompanies the compensation systems as it exist in Alaska.

Our recommendation encompasses the wage-loss theory of compensation, and also changes numerous other sections to correct injustices to both the employer and employee, all directed towards making the system fair as perceived by all.

It is the author's opinion, that if the Alaska Workers' Compensation Act should ever be changed as suggested in this study, premium rates will decrease by 25 percent initially, and further decreases determined by company experience will result in a total reduction equal to 35-40 percent.

Before proceeding into our recommendations we wish to identify our major sources for the revisions.

For wage-loss related sections the Florida Workers' Compensation Act was heavily relied upon by modifying its provisions to meet the requirements of Alaska.

The second major source was a "model workers' compensation law" drafted in the 1960's and revised in 1974, by The Council on State Governments, entitled the Workmen's Compensation and Rehabilitation Law, Revised. Many of the existing provisions in the Alaska Act were taken from that "model law" as were many sections found in compensation acts throughout the nation. Portions of that document are attached for your information as Exhibit III.

The third source was "Larson, Workers' Compensation Law, by Dr. Authur Larson, wherein almost every facit of workers' compensation is discussed in

detail. Larson is a renowned authority on workers' compensation and his passages are liberally quoted by courts throughout the land. The Larson volumes were indispensable to this study.

In the following pages on a section by section bases we will enumerate the problems we found, describe our solutions, and indicate the source of the recommendation. Each section is reproduced in its entirety to enable the reader to comprehend the entire content of the section, even if the changes are minor.

New wording is underlined, and wording being deleted is capitalized in brackets.

AS 23.30.040
SECOND INJURY FUND

Problem and Solution:

1. Existing section utilizes the words "Permanent Partial Disability" in subsection (b) which is inconsistent with a wage-loss program. Change "Permanent Partial Disability" to "Permanent Impairment, Wage-Loss".

2. Subsection (e) authorizes vocational retraining and vocational rehabilitation and authorizes the payment of a maintenance expense. This and other references should be combined in one section. Transfer content of subsection (e) to a new section, proposed AS 23.30.094, Rehabilitation.

Justification:

1. Required in order to conform with overall recommendation in section 190, wage-loss.

2. See proposed section 094, Rehabilitation.

Recommendation:

AS 23.30.040 SECOND INJURY FUND

(a) There is created a second injury fund, administered by the commissioner of labor. Money in the second injury fund may only be paid for the benefit of those persons entitled to payment of benefits from the second injury fund under this chapter. Payments from the second injury fund must be made by the commissioner of labor in accordance with the orders and awards of the board.

(b) If an employee suffers a compensable injury which results in temporary total disability, temporary partial disability, permanent impairment, wage-loss [PARTIAL DISABILITY], or permanent total disability, the employer or insurance carrier shall contribute to the second injury fund. The contribution shall be made by one year from the date of the injury or on termination of the employee's claim, whichever is sooner. If the claim is not terminated within one year, subsequent contributions shall be made yearly until the termination of the employee's claim. The amount of the contribution is the product of the compensation to which the employee is entitled for temporary total disability, temporary partial disability,

permanent impairment, wage-loss [PARTIAL DISABILITY], or permanent total disability, [OR FOR REHABILITATION UNDER AS 23.30.191] and the applicable contribution rate set out in Column A of the subsection. By December 15 of each year the commissioner shall determine and make available to the public the applicable contribution rate for the following calendar year according to the reserve rate of the second injury fund in Column B of this subsection:

Column A	Column B	
Second Injury Fund Contribution Rate	Reserve Rate	
(Percent)	At Least (Percent)	But Less Than (Percent)
6	0	50
5	50	75
4	75	100
3	100	125
2	125	150
1	150	175
0	175	-

(c) If an employee suffers a compensable injury which results in death and the employee is not survived by a widow, widower, child, or dependent relative eligible to receive death benefits under AS 23.30.215, the employer or insurance carrier shall pay \$10,000 to the second injury fund.

(d) The board shall refund a payment made into the second injury fund if the employer or insurance carrier shows that it made the payment by mistake or inadvertence, or if it shows there existed at the time of the death of the employee a beneficiary entitled to benefits under AS 23.30.215.

[(e) THE BOARD MAY DIRECT AND PROVIDE THE VOCATIONAL RETRAINING AND VOCATIONAL REHABILITATION OF A PERMANENTLY DISABLED PERSON WHOSE CONDITION IS A RESULT OF AN INJURY COMPENSABLE UNDER THIS CHAPTER BY MAKING COOPERATIVE ARRANGEMENTS WITH INSURANCE CARRIERS, PRIVATE ORGANIZATIONS AND INSTITUTIONS, OR STATE OR FEDERAL AGENCIES. THE PERSON BEING RETRAINED OR REHABILITATED IS ENTITLED TO RECEIVE ADDITIONAL COMPENSATION FROM THE SECOND INJURY FUND FOR MAINTENANCE DURING THE PERIOD OF RETRAINING AND REHABILITATION IN THE SUM THE BOARD CONSIDERS NECESSARY, NOT TO EXCEED \$200 A MONTH. THE TOTAL EXPENDITURES FOR MAINTENANCE, RETRAINING, REHABILITATION, AND NECESSARY TRANSPORTATION MAY NOT EXCEED \$10,000 FOR ONE PERSON.]

(f) All amounts collected as civil penalties under AS 23.30.155 (c) shall be paid into the second injury fund.

(g) The attorney general may investigate claims and hire expert witnesses necessary to prevent fraudulent or excessive claims for money in the second injury fund.

(h) Administration expenses of the state under this section and AS 23.30.205 shall be paid from the general fund.

AS 23.30.045

EMPLOYER'S LIABILITY FOR COMPENSATION

Problem and Solutions:

1. Subsection (a) does not list the proposed new section, 094, Rehabilitation. Insert AS 23.30.094 in subsection (a).

2. Subsection (e) allows the Division of Vocational Rehabilitation (DVR) to place an injured worker on job training, work readiness, work therapy experience, or in work sampling programs without liability to accommodating employer. The Workers' Compensation Division of the Department of Labor desires the same advantage. Include the Department of Labor as it would facilitate the placement of these people in vital programs.

3. Subsection (c) places the liability on the State of Alaska for injuries incurred by employees placed in job training, work readiness, work therapy experience, or in work sampling programs, rather than on the employer responsible for the original claim. The State of Alaska assumes liability for subsequent accidents when an injured employee is placed in job training programs with accommodating employers. Is it necessary or desirable for the State to lift the liability burden off the previous employer when the previous employer has the option of providing the same program voluntarily? No. Therefore, change "state" to "employer paying compensation".

4. Subsection (d) (e) and (f) require government entities contracting with "persons" to provide a certificate of workers' compensation insurance. Single proprietors, "persons", do not carry workers' compensation as they have no employees. The utilization of the word "employer" is more appropriate than "person" as the former contemplates someone who has employees and therefore is required to purchase workers' compensation insurance. Therefore, change "persons" to "employers".

Justification:

1. Rehabilitation, like medical and related benefits is an employer provided program and is appropriately inserted in Article 2, Duties of Employer.

2. Recommended by Division of Workers' Compensation, Department of Labor in H.B. 159.

3. The liability of the employer should appropriately extend until the employee is returned to work and all compensation liability is terminated.

4. Recommended by the Division of Workers' Compensation, Department of Labor in H.B. 159.

Recommendation:

Sec. 23.30.045 EMPLOYER'S LIABILITY FOR COMPENSATION

(a) An employer is liable for and shall secure the payment to his employees of the compensation payable under AS 23.30.50, AS 23.30.094, AS 23.30.095, AS 23.30.145, and AS 23.30.180 - AS 23.30.215 of this chapter. If the employer is a subcontractor, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor unless the subcontractor secures the payment.

(b) Compensation is payable irrespective of fault as a cause for the injury.

(c) For a person eligible for vocational rehabilitation service under AS 23.15.180 [AND] who is placed with an employer for service [WITHOUT WAGES] at the request of the office of vocational rehabilitation or the Department of Labor to give him on the job training, work readiness, [OR] work therapy experience, or work sampling, notwithstanding AS 23.30.196(c) and (d), the liability set out in (a) of this section applies to the [STATE RATHER THAN TO THE] employer paying compensation.

(d) No contract may be awarded by the state or a home rule or other political subdivision of the state to an employer unless the employer [PERSON] to whom the contract is to be awarded has submitted to the contracting agency proof, furnished by the insurance carrier, of current coverage by workers' compensation insurance from an insurance company or association authorized to transact the business of workers' compensation insurance in this state or proof, furnished by the board, of a current certificate of self-insurance from the board. The employer [PERSON] to whom

the contract is awarded shall keep his workers' compensation insurance policy in effect during the life of the contract with the state or political subdivision. If the state or the political subdivision of the state fails to obtain proof of coverage or self-insurance or to protect itself under (e) of this section, and an employee of the contractor is injured during the term of the contract, the state or the political subdivision is liable for workers' compensation to the employee if the employee is unable to recover from the employer because of the employer's lack of financial assets. The state or the political subdivision is not liable, however, to the employee for workers' compensation if the employee can recover from the employer under (a) and (b) of this section.

(e) When a contracting agency of the state or a political subdivision receives notice that the workers' compensation insurance policy of an employer to whom the agency has awarded a contract has been cancelled due to nonpayment of a premium, without being replaced by a comparable policy, the agency may either terminate the contract with the employer or continue the premium payments on his behalf in order to keep the policy in force during the life of the agency's contract. If the agency chooses to keep the policy in force, it may deduct its payments from the contract price or bring an action against the employer to recover the amount of the payments. When the contracting agency receives notice that the board has revoked a certificate of self-insurance held by an employer [A PERSON] to whom a contract has been awarded, the agency may terminate the contract. This subsection does not limit the causes of action or remedies which the state or political subdivision may have against the employer.

(f) As used in this section "contractor" means an employer [A PERSON] who undertakes by contract performance of certain work for another and "sub-contractor" means an employer [A PERSON] to whom a contractor sublets all or part of his initial undertaking.

AS 23.30.070

REPORT OF INJURY TO BOARD

Problems and Solutions:

1. Subsection (a) requires employers to submit the notice of injury

(form ADL 210) to the board within 10 days of acquiring knowledge of the claim. It is not a reasonable requirement as viewed by most employers. It is reasonable to expect an employer to submit the notice of injury to the board within 10 days after receiving the notice of injury form (ADL 210) in the business office of the employer. This relieves the employer from possible penalties for the reporting while maintaining the important requirement to make the first payment within 14 days of acquiring knowledge as required in AS 23.30.155.

2. Employees when injured have little or no knowledge of the workers' compensation act and obtaining a copy of the law will not help the average employee understand the benefits. Employees should be informed of compensation benefits with an easy to read booklet that offers correct advice. We have option to make the employer or the Division of Workers' Compensation responsible for notifying employees of the benefits. Time is of the essence as the injury has occurred and the employer has knowledge before the board, therefore, the employer should be responsible. It is also hoped that this communication responsibility will relieve some of the existing friction which develops between employees and employers when a claim occurs.

Justification:

1. By request of ACE.
2. Adopted from Florida Workers' Compensation Law, Section 440.185 (4).

Recommendation:

Sec. 23.30.070 REPORT OF INJURY TO BOARD

(a) Within 10 days from the date the employer has received in his business office written notice of an injury, death, disease, or infection as prescribed by AS 23.30.100(b), [KNOWLEDGE OF AN INJURY OR DEATH OR FROM THE DATE THE EMPLOYER HAS KNOWLEDGE OF A DISEASE OR INFECTION], alleged by the employee or on his behalf to have arisen out of and in the course of the employment, the employer shall send to the board a report setting out

- (1) the name, address, and business of the employer;
- (2) the name, address, and occupation of the employee;
- (3) the cause and nature of the alleged injury or death;
- (4) the year, month, day, and hour when and the particular locality