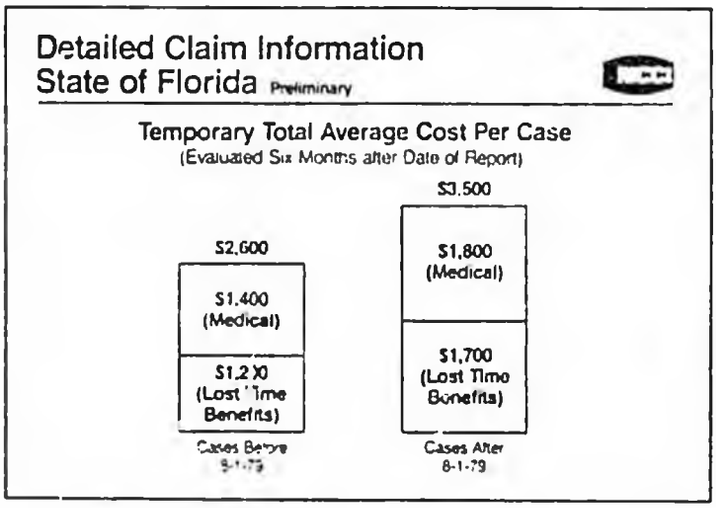
1762 HLC HB 159.

Benefit Dollars

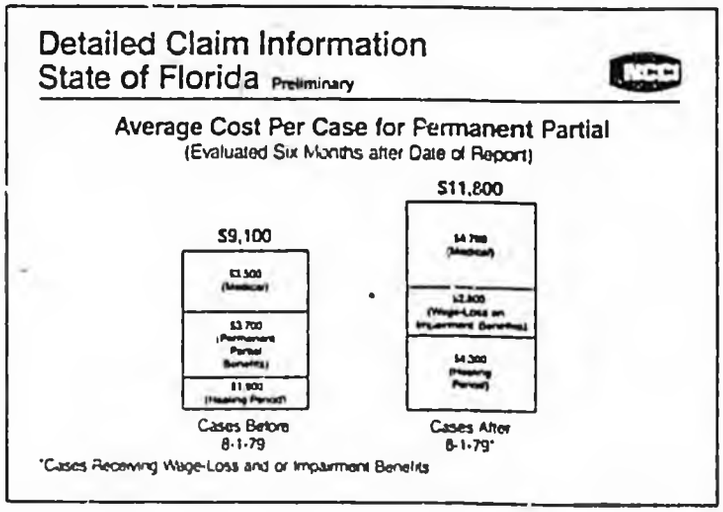
Temporary Total Cases A temporary total injury is one in which a worker suffers a complete inability to work for a period of time but is expected to regain full productivity. An injured worker is considered a temporary total case only if there appears to be no likelihood that in the future the worker will receive any permanent total, wage-loss, or impairment benefits. The average cost per case for temporary total cases has increased approximately 35% since August 1, 1979. One reason for this increase is that the maximum weekly benefit payable to a worker who has sustained an injury classified as temporary total increased by 50% and the percentage rate of compensation also increased on August 1, 1979. Another reason for the increase is that a worker with a relatively minor injury, who would have been classified as a permanent partial disability case before the new wage-loss concept became effective on August 1, 1979, will now receive only temporary total lost time benefits. The inclusion of these [illegible] the temporary total category, some of which may be more serious than the previously typical temporary total case, results in an increase in the average cost per temporary total case.

The average medical cost for a worker with a temporary total disability has increased by approximately $400 since August 1, 1979. The Florida Medical Fee Schedule, which is determined by the Department of Labor and Employment Security, sets the permissible fee which may be paid for medical procedures for an injured worker covered by the Florida workers' compensation law. On July 1, 1980 the Department of Labor and Employment Security approved a new medical fee schedule which, on the average, increased permissible medical fees approximately 30%. A change in the medical fee schedule affects all injured workers who receive medical treatment after the change is effective, regardless of the date of the injury. Since an injured worker is more likely to receive medical treatment soon after the injury has occurred, this increase in the medical fee schedule has probably affected those workers injured after August 1, 1979 to a greater extent than those workers injured before August 1, 1979. Thus this may be one reason that the cost of medical benefits has increased, on the average, for temporary total cases.



Permanent Partial Cases The average permanent partial cost per case has increased about 30% subsequent to August 1979. Obviously, it is generally only those workers who are significantly injured who are receiving these increased benefits. Many fewer workers suffer wage-loss or a permanent impairment injury under the new law than received a permanent partial award under the old law. Thus while the benefit paid to the individual significantly injured worker has increased there has been an overall reduction in cost associated with permanent partial injuries.

Workers qualifying for wage-loss and/or impairment benefits, on the average receive more lost time benefit dollars during their healing period, at which time the worker receives lost time benefits based on the benefits applicable for a temporary total disability, than did workers classified as permanent partial cases prior to the introduction of the new workers' compensation system on August 1, 1979. This may be the result of the more serious nature of injuries for those workers who qualify for wage-loss benefits or who suffer a permanent impairment. There also may be a tendency for an injured worker to prolong the period for which he or she may receive temporary total benefits rather than benefits based on his lost wages.

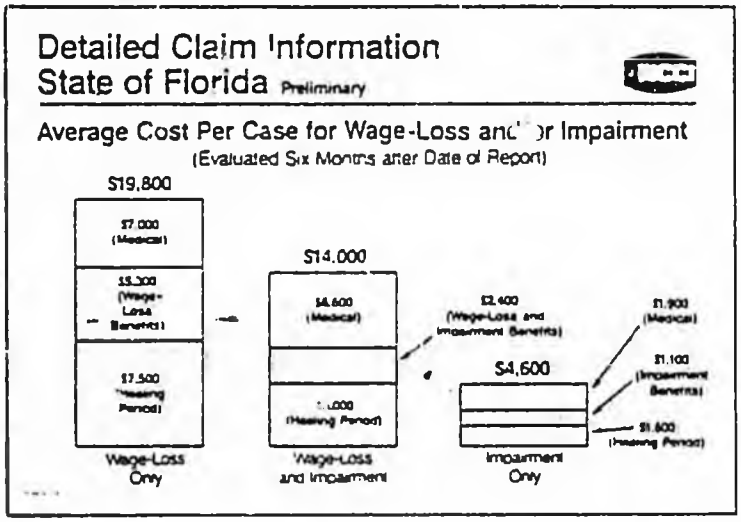


Wage-Loss and Impairment Cases When a claim is evaluated six months after it is first reported it appears that cases which involve only wage-loss injury and which do not involve a permanent impairment, on the average, have greater lost time and medical costs than cases with both wage-loss and impairment injuries or impairment only cases. One reason for this may be that wage-loss only claims often involve serious injuries to the back, neck and head and are not eligible to receive impairment benefits. The high cost of these injuries tends to increase the average cost of wage-loss only cases.

The impairment benefit only cases, on the average, are the least costly, probably because these workers are less seriously injured than workers who suffer wage-loss injuries.

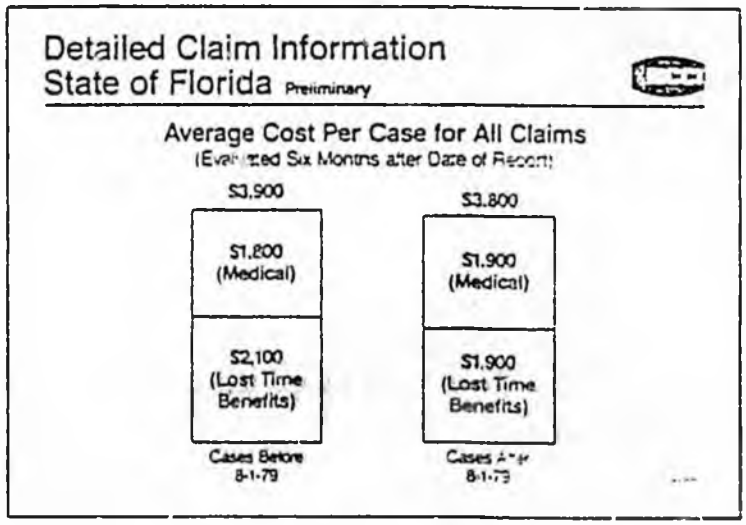
The small sample size of wage-loss and impairment cases deters any general conclusions covering all workers who suffer wage-loss or a permanent impairment injury.

It should be noted tnat during the healing period the injured worker receives lost time benefits based on the benefits applicable for a temporary total disability.



All Lost Time Cases The average cost per case for all claims has decreased 3% since the new Florida workers' compensation insurance legislation became effective August 1, 1979. This occurred despite the 50% increase in the maximum weekly lost time benefit and an increase in the rate of compensation for a weekly lost time benefit mandated by the law, effective August 1, 1979. Thus the decrease in the average lost time benefits may indicate that workers are returning to employment sooner. As with other estimates of costs which are made six months after each claim is reported, it can only be an approximation of the final cost which will be incurred in connection with a reported injury.

While the average cost per case for both temporary total cases and permanent partial cases increased, the average cost per case for all cases decreased. This reduction occurred because of the shift of cases with minor injuries, which would have received permanent partial benefits prior to August 1, 1979, into the category of temporary total cases.

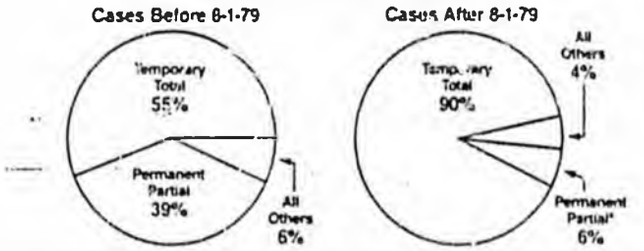


Percentage of Total Lost Time and Medical Benefit Dollars by Benefit Type The portion of lost time and medical benefit cost attributable to wage-loss and impairment cases under the new law has decreased drastically from the percentage attributable to permanent partial injuries under the old law. This shift indicates that total benefit costs for partially injured workers have decreased, while benefits for significantly injured workers have increased, because workers with only minor injuries are no longer able to receive permanent partial benefits.

When later evaluations are conducted we expect to see an increase in the percentage of total costs attributable to wage-loss cases as more cases are recognized by the insurance company. As mentioned previously a number of carriers may not be able to classify a worker as a wage-loss case until he has actually begun to receive wage-loss benefits. Also at later evaluations we expect we may see an increase in costs for wage-loss and impairment cases since there will be an opportunity for a more accurate evaluation of costs after carriers have gained more experience with wage-loss cases.

Detailed Claim Information
State of Florida Preliminary

Percentage of Lost Time and
Medical Benefit Dollars by Benefit Type
(Evaluated Six Months after Date of Report)



*Cases Receiving Wage-Loss and or Impairment Benefits

Administration of Claims

Attorney Representation The percentage of injured worker represented by an attorney has decreased about 50% since August 1, 1979. This appears to indicate that one intent of the law, to decrease excessive litigation to obta undeserved permanent partial benefits, has been met.

One thing which must be kept in mind when considering the percentage of cases represented by an attorney at the time of the initial six month evaluation o claim is the likelihood that a claimant will choose to see attorney representation sometime in the future. A NCC study in Florida found that the number of claimants represented by an attorney increased more than 50% in the period subsequent to the initial six months from the date of injury. Consequently we expect to see some increase in attorney representation when these claims ai evaluated in a later report. This is true for claims occurring both before and after August 1, 1979.

Detailed Claim Information
State of Florida Preliminary

Percentage of Claims With Attorney Involvement
(Evaluated Six Months after Date of Report)

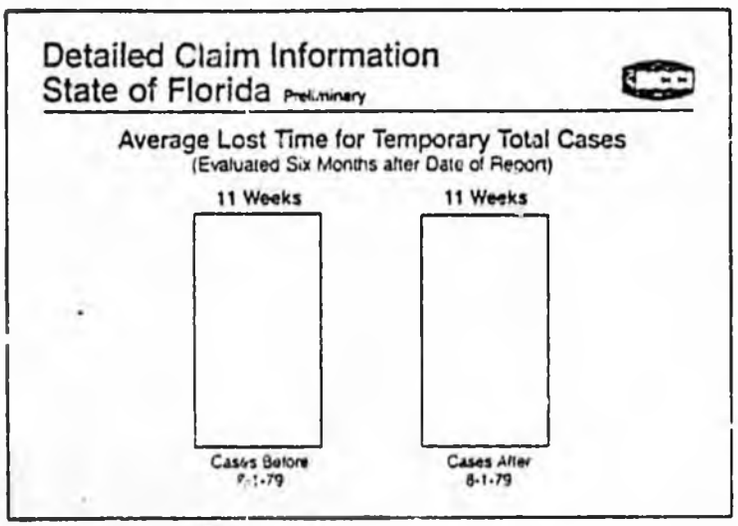
Benefit Type	Cases Before 8-1-79	Cases After 8-1-79
Permanent Partial	34%	20%*
Temporary Total	9%	6%
All Claims	13%	6%

*Cases Receiving Wage-Loss and/or Impairment Benefits

Additional Observations

Further Changes In Patterns of Claims by Benefit Type

Time Lost from Employment by Temporary Total Cases There has been no significant change in the duration of temporary total cases since the August 1, 1979 law change. Since more serious injuries are included among the temporary total cases after August 1, 1979 it may be that for equivalent injuries employees are actually returning to work sooner. As previously noted an injured worker is considered a temporary total case if there appears to be no likelihood that in the future the worker will receive any permanent total, wage-loss, or impairment lost time benefits.

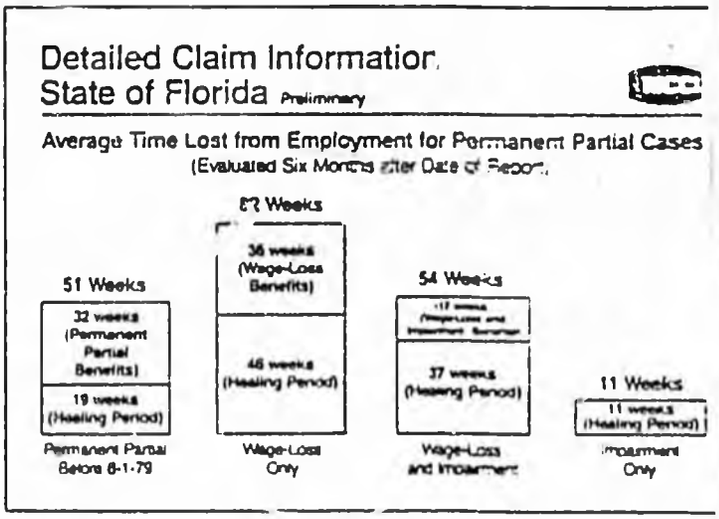


Time Lost for Permanent Partial Cases The average time lo from employment for wage-loss cases is greater, on the average, than time lost by permanent partial cases prio to the August 1, 1979 law change. These wage-loss case are more serious, on the average, and require benefits a longer period of time.

On the average, at the time of the six month evaluation, a wage-loss case has not begun to receive wage-loss benefits. Because of this, claims people can only make a rough estimate of the time lost from employment as a result of an injury classified as one subject to wage-loss benefits.

The impairment only cases receive lost time benefi during the healing period, based on the benefits applicable for a temporary total disability, on the avera for 11 weeks. However, after this period of time the injured worker receives an additional lump sum benefi based on the nature of his or her permanent impairmer On the average, it appears that impairment only cases a returning to work relatively soon.

The sample size of wage-loss and impairment case too small to allow us to make any conclusive observations.



Doctor Visits On the average, workers with wage-loss or permanent impairment injuries, visit the doctor less frequently than workers who suffered an injury which was classified as a permanent partial disability under the old law. This decrease in the frequency of doctor visits is striking since, on the average, it seems that wage-loss and impairment cases involve more seriously injured workers than those with permanent partial injuries under the old law.

At the initial six month evaluation period of claims a number of injured workers have not yet submitted any doctor or medical bills. Prior to receiving a bill the insurance company is not aware of the number of doctor visits made by the injured worker. In order to reach a better estimate of the average number of visits to a doctor we have excluded from the average all claimants who have not yet reported any doctor visits.

Detailed Claim Information
State of Florida Preliminary

Average Number of Doctor Visits
(Evaluated Six Months after Date of Report)

Benefit Type	Cases Before 8-1-79	Cases After 8-1-79
Permanent Partial	16	13*
Temporary Total	9	10
All Claims	10	10

*Cases Receiving Wage-Loss and or Impairment Benefits

Hospital Confinement Since the August 1, 1979 law change there has not been a significant change, on the average, in the time spent in the hospital by injured workers. This is not surprising since the change in the law should not have any effect on the severity of injuries which occur in Florida.

On the average, a wage-loss or impairment case is more likely to be confined in a hospital than a permanent partial case under the old law. This has probably occurred because, on the average, a wage-loss or impairment case, involves a more seriously injured worker than a permanent partial case under the old law.

Detailed Claim Information
State of Florida Preliminary

Average Number of Days Confined in Hospital
(Evaluated Six Months after Date of Report)

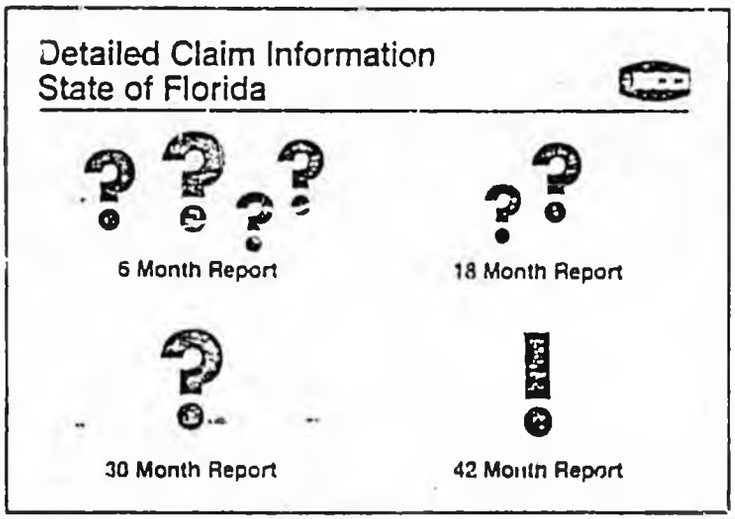
Benefit Type	Cases Before 8-1-79		Cases After 8-1-79	
	Percentage of Cases Confined in Hospital	Average Number of Days	Percentage of Cases Confined in Hospital	Average Number of Days
Permanent Partial	50%	10	65%	9*
Temporary Total	25%	7	30%	8
All Claims	30%	8	30%	8

*Cases Receiving Wage-Loss and or Impairment Benefits

Future Development of NCCI Detailed Claim Information

The information contained in this report gives a preliminary overview of the changes in the Florida workers' compensation system due to the law changes of August 1, 1979. As a result, these findings may be different when the claim of each injured worker is reevaluated at a later date. As previously stated, each claim will be reevaluated 18 months, 30 months, and 42 months after the date the injury is reported to the insurance company. These later reports will allow time for the companies to make a much more informed judgment of individual claim features such as the type of benefit the injured worker will eventually receive, the total lost time costs, total medical costs, and the time lost from employment.

These claim features will be judged with increasing precision at each later evaluation date.



Importance of Consistent and Appropriate Claims Evaluation

There are several important factors which must be considered when choosing a method for gathering workers' compensation claims information. Three of these are particularly significant. First, it is necessary that reasonable and appropriate comparisons may be made concerning the gathered information. Second, the absolutely highest integrity of information must be maintained through the intensive validation of all submitted information. Third, information must be gathered from a broad base so that it is representative of experience in the entire state.

In order to insure that reasonable and appropriate comparisons could be made of our gathered information the NCCI Call for Detailed Claim Information requires that each claim is initially evaluated at six months after the claim is reported to the insurance company. Then each claim is reevaluated 18, 30, and 42 months after the report of injury. By initially evaluating each claim six months after the report of the injury we allow time for a equivalent amount of knowledge to be gathered by the insurance company about each claim. This is essential, since the initial estimates of benefit costs can be modifie after the claimant's medical condition has had additiona time to stabilize. With each claim evaluated at the same period of time after the accident we obtain a basis of information about which meaningful comparisons can be made.

There is an alternative method for gathering claim information which does not result in this comparison of corresponding information. An example of this method would be to evaluate workers' compensation claims for workers injured between July 1 and December 31 based on the information available on December 31. Howe er this method results in an attempt to evaluate some claim the day the injury occurs and other claims up to 6 montl after the injury occurs. The result of evaluating each clai on the same calendar date is to compare claims about which we have an unequal depth of knowledge. In fact, since there is a time lag before an injury is reported, the insurance company will not even be aware yet of all the injuries which occurred in the six month period.

NCCI ensures the highest integrity of its Detail Claim Information by a system of intensive editing and validation procedures. When a compilation of informatio is not intensively edited, there is no guarantee that human error, such as adding a zero to the end of a number incorrectly, will not cause incorrect observations to be made about the Florida workers' compensation system.

In order to ensure a broad basis for our observations of the Florida workers' compensation system, the Call for Detailed Claim Information has gathered information from virtually all of the insurance companies writing workers' compensation in Florida. This provides an appropriate representation of large, small, local and national insurance companies in our gathered information. If information is gathered from a small number of companies it would be possible for any one insurance company, whose experience is not typical for Florida as a whole, to disproportionately affect observations of the Florida workers' compensation system. By using a large number of carriers we get a picture of how the system is functioning for all regions and industries in Florida where workers are insured by their employer through an insurance company.

POLICYHOLDER NAME

NO.

National Council On Compensation Insurance

FLORIDA CALL FOR DETAILED CLAIM INFORMATION

COMMON INFORMATION

INSURER:

1. CARRIER CODE

2. POLICY NUMBER

3. CLAIM NUMBER

4. REPORT TYPE *(Circle Below)*
[1] 6 Months [3] 30 Months
[2] 18 Months [4] 42 Months

5. TRANSACTION CODE *(Circle Below)*
[1] Original Reporting
[2] Revised Reporting

CLAIMANT DESCRIPTION

6. POLICY EFF. DATE — MO. DAY YEAR

7. EMPLOYEE SOC. SEC. NO.

8. DATE OF INJURY — MO. DAY YEAR

9. DATE REPORTED — MO. YEAR

10. STATE OF ACCIDENT

11. STATE OF JURISDICTION

12. CLASS CODE

13. INJ. DESCR. CODE

14. LOSS COVER. CODE

15. AGE AT DATE OF INJURY

16. SEX *(Circle Below)*
[1] Male [3] Unknown
[2] Female

17. MARITAL STATUS *(Circle Below)*
[1] Single or Divorced or Widowed [3] Separated
[2] Married [4] Unknown

18. EMPLOYMENT STATUS WHEN CLAIM REPORTED *(Circle Below)*
[1] Regular Employee [3] Unemployed [5] Disabled Employee [7] Former Employee—All Other
[2] Unemployed Due to Plant Shutdown [4] Employee on Strike [6] Retired Employee [8] Unknown

19. PREINJURY WAGE

20. METHOD OF DETERMINING PREINJURY WAGE *(Circle Below)*
[1] Actual Wage [3] Wage required for Minimum Weekly Benefit
[2] Estimated Wage [4] Wage required for Maximum Weekly Benefit

21. STATUS *(Circle Below)*
[1] Claim Open and not Resolved
[2] Claim Open and Resolved
[3] Claim Closed

22. DATE RESOLVED — MO. DAY YEAR

23. REOPENED INDICATOR *(Circle Below)*
[1] Yes [2] No
[3] Initially Recorded as Medical Only

INDEMNITY BENEFITS & PAYMENTS (Excluding Vocational Rehabilitation) (Express in Whole Weeks and Whole Dollars)

24. INCURRED (INC.) DURATION OF BENEFITS (TEMP. TOTAL WEEKS)

25. TEMPORARY TOTAL INCOME BENEFITS INCURRED

26. TYPE OF BENEFITS *(Circle Below)*
[1] Only Temporary Total
[2] Permanent Total (with or without Temp. Total Benefits)
[3] Wage-Loss Benefit and no Impairment Benefit
[4] Wage-Loss Benefit and Impairment Benefit
[5] Temporary Partial
[6] Death (with or without Temp. Total Benefits)
[7] Impairment Ben. and no Wage-Loss Benefit
[8] Other (including combination of the Above)

27. LATEST WEEKLY BENEFIT

28. INC. DURATION (NON TT BENS.) (WEEKS)

29. TOT. INC. (NON TT BENS.)

30. OTHER INDEMNITY BENS. INC

31. TOTAL INDEMNITY BENS. PAID

VOCATIONAL REHABILITATION BENEFITS (Express in Whole Dollars)

32. TOTAL VOC. REHAB. INC. COSTS

33. TOTAL VOC. REHAB. PAID COSTS

34. VOCATION REHAB. EVALUATION EXPENSE INCURRED

35. VOCATIONAL REHAB. INCURRED INDEMNITY

36. VOCATION REHAB. EDUCATIONAL EXPENSES (INCURRED)

MEDICAL BENEFITS (Express in Whole Dollars)

37. PAID TO DATE, HOSPITAL COSTS

38. PAID TO DATE OTHER MED. COSTS

39. TOTAL INCURRED MEDICAL COSTS

40. NUMBER OF DAYS CONFINED IN HOSPITAL – TO DATE

41. NUMBER OF DOCTOR VISITS – TO DATE

CLAIM ADMINISTRATION DETAILS

42. APPORTIONMENT BETWEEN CARRIERS
[1] Yes [2] No

43. APPORTIONMENT FOR PRE-EXISTING CONDITIONS
[1] Yes [2] No

44. CLAIMANT'S ATT'Y. OR AUTHORIZED REPRESENTATIVE
[1] Yes [2] No

45. AMOUNT OF CLAIMANT'S ATT'Y FEES INCL. IN AWARD

46. AMOUNT OF CLAIMANT'S ATT'Y FEES IN ADDITION TO AWARD

47. CONTROVERTED CLAIM *(Circle Below)*
[1] No [3] Disability
[2] Compensability [4] Multiple Reasons

48. METHOD OF DISPOSITION *(Circle Below)*
[1] Closed By Agreement [4] Award for Employee
[2] Withdrawal of Claim by Claimant [5] Award for Carrier
[3] Withdrawal of Controversy by Insurer [6] None

49. METHOD OF PAYMENT *(Circle Below)*
[1] Lump Sum [3] Both
[2] Periodic [4] None

50. PRODUCT LIABILITY SUBROGATION *(Circle Below)*
[1] Yes [2] No

51. AUTOMOBILE LIABILITY SUBROGATION *(Circle Below)*
[1] Yes [2] No

52. OTHER SUBROGATION *(Circle Below)*
[1] Yes [2] No

53. ALLOCATED LOSS EXPENSE *Paid*

54. DATE OF CLOSING — MO. DAY YEAR

FORM #C19940F

POLICYHOLDER NAME

National Council
On Compensation Insurance

ADM. NO.

FLORIDA SUPPLEMENTARY CALL FOR DETAILED CLAIM INFORMATION

COMMON INFORMATION

INSURER:

1. CARRIER CODE

2. POLICY NUMBER

3. CLAIM NUMBER

4. REPORT TYPE *(Circle Below)*
1 6 Months
2 18 Months
3 30 Months
4 42 Months

5. TRANSACTION CODE *(Circle Below)*
1 Original Reporting
2 Revised Reporting

MEDICAL IMPROVEMENT

55. Expected Date of Max. Medical Imp.
Mo. | Day | Yr.

56. Was Date of Maximum Medical Improvement Contested?
1 Yes 2 No

57. Actual Date of Maximum Medical Improvement
Mo. | Day | Yr.

IMPAIRMENT BENEFITS

58. Did Claimant Suffer Permanent Impairment Due to Amputation, Loss of 80% or More of Vision after Correction, or Serious Facial or Head Disfigurement? *(Circle Below)*
1 Yes 2 No

59. If the Answer to (53), above, is Yes, Enter Impairment Rating
%

60. If the Answer to (58) is Yes, Enter Impairment Award
$

61. Was the Impairment Rating Contested?
1 Yes 2 No

62. Did Claimant Suffer Permanent Impairment Other than Due to Amputation, Loss of 80% or More of Vision after Correction, or Serious Facial or Head Disfigurement?
1 Yes 2 No

63. If the Answer to (62) is Yes, was the Existence of Permanent Impairment Contested?
1 Yes 2 No

64. If the Answer to (62) is Yes If Percentage Impairment Rating is Known, Enter here
%

WAGE-LOSS BENEFITS

65. Enter Date Wage Loss Benefit Starts
Mo. | Day | Yr.

66. Has Right to Wage Loss Benefit Terminated?
1 Yes 2 No

67. If the Answer to (66) is Yes, Enter Date. If the Answer to (66) is No, Enter Date it is Expected that Right to Wage Loss Benefits Will Terminate
Mo. | Day | Yr.

68. Circle Reason for Actual or Expected Termination of Right to Wage Loss Benefit (Circle one box only)
1 — A Two Year Period Without Three Consecutive Months for which a Wage Loss Benefit is Payable
2 — Maximum Duration Runs out (350 weeks for injuries occurring on or before July 1, 1980 and 525 weeks for injuries after July 1, 1980 — or 5 years for temporary partial)
3 — Injured Employee Reaches Age 65
4 — There is no Wage Loss Based on the Formula
1 2 3 4

69. Enter Total Incurred Wage Loss Benefit
$

70. Enter Total Wage Loss Benefit Paid to Date
$

71. Enter Monthly Amount of Most Recently Paid Wage Loss Benefit
$

72. Enter Date of Most Rec. Paid Wage Loss Benefit
Mo. | Day | Yr.

73. Enter Current Average Monthly Wage
$

74. Were Wage Loss Benefits Ever Discontinued and Subsequently Reinstated to Claimant?
1 Yes 2 No

75. If the Answer to (74), above, is Yes, Enter How Many Times this has Occurred

ADDITIONAL INFORMATION

76. Is Claimant Working for Same Employer as when Injured?
1 Yes 2 No

77. If Claiment is Age 62 or over, is Claimant Receiving Social Security Retirement Benefits?
1 Yes 2 No

78. Has this claim been selected by the standard sampling procedure of the detailed claim call?
1 Yes 2 No

C19945F

NCCI Locations

NCCI National Office, *New York City*

NCCI Rating Division and Data Processing Center, *New Jersey*

NCCI Midwest Regional Office
P.O. Box 1666, 2715 W. Monroe Street, Springfield, Illinois 62705—Monitors NCCI Offices Servicing Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska, Oklahoma and South Dakota

Illinois Council on Compensation Insurance, *P.O. Box 1666, 2715 W. Monroe Street, Springfield, Illinois 62705*—Services Illinois

Indiana Compensation Rating Bureau, *5920 Castleway, West Drive, Suite 121, P.O. Box 50940, Indianapolis, Indiana 46250*—Services Indiana

Kansas Council on Compensation Insurance, *P.O. Box 1577, 3601 West 29th Street, Topeka, Kansas 66601*—Services Kansas

Missouri Council on Compensation Insurance, *10825 Watson Road, St. Louis, Missouri 63127*--Services Missouri

North Central Council on Compensation Insurance, *4685 Merle Hay Road, OakMoor II, Suite 101, Des Moines, Iowa 50323*—Services Iowa, Nebraska and South Dakota

Oklahoma Council on Compensation Insurance, *3555 N.W. 58th Street, Suite 730, Oklahoma City, Oklahoma 73112*—Services Oklahoma

Coal Mine Council on Compensation Insurance, *10825 Watson Road, St. Louis, Missouri 63127*—Services Coal Mines

NCCI Southern Regional Office, *2 Office Park Circle, Box C-40, Birmingham, Alabama 35283*—Monitors NCCI Offices Servicing Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, South Carolina and Tennesse

Arkansas Council on Compensation Insurance, *307 Donaghey Building, 7th & Main, Little Rock, Arkansas 72201*—Services Arkansas

Florida Council on Compensation Insurance, *7960 Arlington Expressway, 4th Floor, P.O. Box 8899, Jacksonville, Florida 32239*—Services Florida

Louisiana Council on Compensation Insurance, *3501 North Causeway Boulevard, Suite 600, Metairie, Louisiana 70002*—Services Louisiana

South Carolina Council on Compensation Insurance, *3710 Landmark Drive, Suite 109, P.O. Box 4383, Columbia, South Carolina 29240*—Services South Carolina

Southeastern Council on Compensation Insurance, *2 Office Park Circle, Box C-40, Birmingham, Alabama 35283*—Services Alabama, Georgia, Kentucky, Mississippi and Tennessee

NCCI Western Regional Office, *One Tamarac Square, Suite 500, 7555 E. Hampden Avenue, Denver, Colorado 80231*—Monitors NCCI Offices Servicing Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, Oregon and Utah

Alaska Council on Compensation Insurance, *620 S.W. 5th Avenue, Suite 1110, Portland, Oregon 97204*—Services Alaska

Montana Council on Compensation Insurance, *620 S.W. 5th Avenue, Suite 1110, Portland, Oregon 97204*—Services Montana

Mountain States Council on Compensation Insurance, *One Tamarac Square, Suite 504, 7555 E. Hampden Avenue, Denver, Colorado 80231*—Services Arizona, Colorado, Idaho, New Mexico and Utah

Oregon Council on Compensation Insurance, *620 S.W. 5th Avenue, Suite 1110, Portland, Oregon 97204*—Services Oregon

NCCI Eastern Regional Office, Pennsylvania, Services Connecticut, District of Columbia, Maine, Maryland, New Hampshire, Rhode Island and Vermont

Mid-Atlantic Council on Compensation Insurance, *305 W. Chesapeake Avenue, Baltimore, Maryland 21204*—Services District of Columbia and Maryland

Northeastern Council on Compensation Insurance, *P.O. Box 60, 21 Wintonbury Mall, Bloomfield, Connecticut 06002*—Services Connecticut, Maine, New Hampshire, Rhode Island and Vermont

Additional Copies May Be Obtained From:
National Council on Compensation Insurance,
Public Affairs Office, One Penn Plaza, New York, N.Y. 10119

or

Florida Council on Compensation Insurance, 7960 Arlington Expressway, 4th Floor, P.O. Box 8899, Jacksonville, Florida 32239

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

Presented by

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

January 26, 1982

Abstract, Summary of Recommendations, Overview

ABSTRACT

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

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

RECOMMENDATION 1

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

a. All injured workers who experience continuous time loss of 90 to 120 days from the date of injury, depending on the staffing level of the Division, and

b. All acutely injured workers where an immediate determination can be made that the worker will not likely be able to return to the job held at the time of injury.

RECOMMENDATION 2

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

RECOMMENDATION 3

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

RECOMMENDATION 4

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

RECOMMENDATION 5a

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

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

RECOMMENDATION 5b

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

RECOMMENDATION 5c

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

RECOMMENDATION 5d

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

RECOMMENDATION 5e

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

RECOMMENDATION 6

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

RECOMMENDATION 7

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

RECOMMENDATION 8

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

RECOMMENDATION 9

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

RECOMMENDATION 10

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

RECOMMENDATION 11a

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

RECOMMENDATION 11b

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

RECOMMENDATION 12a

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

RECOMMENDATION 12b

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

RECOMMENDATION 13

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

RECOMMENDATION 14

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

RECOMMENDATION 15

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

RECOMMENDATION 16

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

RECOMMENDATION 17

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

RECOMMENDATION 18

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

RECOMMENDATION 19

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

OVERVIEW OF REHABILITATION IN WORKERS' COMPENSATION

A. HISTORY OF REHABILITATION PROVISIONS FOR INDUSTRIALLY INJURED WORKERS.

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

B. REHABILITATION DEFINED.

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

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

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

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

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

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

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

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

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

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

> While insurance losses and benefits are usually stated in monetary terms, the full consequences of human disability cannot be measured by money alone. Earnings lost due to accident or sickness can be replaced and medical expenses can be reimbursed, but there is no meaningful way to financially translate the value of an arm or a leg, or the personal dignity of being able to contribute to society as a useful member rather than merely existing disabled and dependent.
>
> The study group went on to state that:
>
> If insurance is to protect against these human losses, it must do more than provide financial compensation alone. It must also strive to restore such losses. Insurance should provide the means for disabled workers to return to gainful employment whenever possible, and to regain as much functional independence as they can, even if they cannot return to work. Compensation cannot accomplish these goals without rehabilitation. (Insurance Rehabilitation Study Group, 1975).

The Study Groups' report included its model rehabilitation program.

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

D. WHO SHOULD FUND REHABILITATION IN WORKERS' COMPENSATION

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

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

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

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

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

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

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

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

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

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

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

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

PART ONE

Five Specific Goals of Rehabilitation

in a

Workers' Compensation Program

PART ONE

Five Goals of Rehabilitation in a Workers' Compensation Program

I. Early Identification of Injured Workers Who Potentially Need Rehabilitation

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

Needs:

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

II. Use of Competent Rehabilitation Providers

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

Critical Elements Needed:

1. Sound background in basic rehabilitation principles

2. Ability to work with multiple parties

3. Willingness to deliver according to needs of the system

   - direct placement approach
   - on-the-job training
   - appropriate evaluation (timely and limited)
   - timely developed training (as needed only)
   - timely issued reports (information)

4. Respect for, and responsive to Board authority

III. Provide Opportunities for Return to Direct Employment

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

Needs:

1. Employer Responsibility

   - modify old job
   - offer new job
     (Use on-site job analysis)

2. Employee Responsibility

   - cooperate w/employer efforts
   - timely accept job offer
   - maintain flexibility

3. Union Support and Involvement

   - go to bat for member (negotiate)
   - negotiate contract agreements to support light duty and rehabilitation

4. Counselor Role

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

5. Attorney Obligation (for both parties)

   - remain on side line and advise respective clients to cooperate

6. Workers' Compensation Agency

   - advise, assist, monitor

7. Board

   - settle disputes

IV. Maintenance of Atmosphere Conducive to Rehabilitation

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

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

V. Provide Incentives, Remove Disincentives to Rehabilitation

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

A. Incentives

1. Proper Rating of Employers.

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

a. Experience Rating - provides for a before tne fact look at safety and reemployment record for recent years. A good record results in credit toward future premium.

b. Retro Rating - employer pays advance premium based on classification rate times estimated payroll. Losses are assessed after period of months (pre-determined). Depending on experience, employer may get reimbursed.

2. Targeted Jobs Tax Credit

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

  50% of first $6000 wages for first year

  25% of first $6000 wages for second year

3. Second Injury Fund

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

4. Additional maintenance for extra expense during rehabilitation

5. Monitoring by workers' compensation agency

B. Removal of Disincentives

1. Prevention of premature and inappropriate compromise and release settlements

2. Eliminate excessive litigation

C. Other Stimuli

1. Penalty for non-cooperation (Both Parties)

2. PPD determination should reflect non-cooperation

PART TWO

Findings, Conclusions, Recommendations

SUMMARY AND INTERPRETATION OF DATA

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

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

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

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

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

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

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

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

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

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

GOAL I

Early Identification of Injured Workers Potentially Needing Rehabilitation.

CONCLUSION

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

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

RECOMMENDATION 1

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

a. All injured workers who experience continuous time loss of 90 to 120 days from the date of injury, depending on the staffing level of the Division, and

b. All acutely injured workers where an immediate determination can be made that the worker will not likely be able to return to the job held at the time of injury.

RECOMMENDATION 2

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

RECOMMENDATION 3

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

RECOMMENDATION 4

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

GOAL II

Provision of Rehabilitation Services by Competent Counselors

CONCLUSION

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

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

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

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

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

RECOMMENDATION 5a

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

- Completion of Vocational Evaluation and Plan Recommendation - 6 weeks

TABLE 1

DVR[1/]

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

* Through 7/1/81 -
Average time between date of injury and date of referral (includes cases still open) 16.8 Months.

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

TABLE 2

DVR[2/]

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

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

64% below $2500

b. Referral Period	#	Avg. Cost/Case
0-6 Months after inj.	14	$2168
7-12	26	2391
13-18	10	2494
19-24	7	975
25-30	10	2532
30-36	4	2492
36 and over	1	8258

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

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

TABLE 3

PRIVATE REHAB.

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

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

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

TABLE 4

PRIVATE REHAB.

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

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

RECOMMENDATION 5b

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

RECOMMENDATION 5c

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

RECOMMENDATION 5d

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

RECOMMENDATION 5e

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

GOAL III

Provide for Early Return to Direct Employment

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

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

Insurance companies can be exceedingly instrumental in helping their insureds develop reemployment programs. A carrier for a large employer covered under the LHCA reports services provided the employer in establishing a reemployment program approved by the OWCP, resulted in the employer rehiring 18 injured workers over a nine month period during FY 82. A 1¼ million dollar savings in projected compensation payments resulted from this effort. Additionally, the employer reported higher morale and reduction in suspected fraudulent claims as additional payoffs. That tremendous benefits are derived by the reemployment of injured workers by employers at the time of injury is too obvious for further elaboration.

CONCLUSIONS

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

RECOMMENDATION 6

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

RECOMMENDATION 7

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

RECOMMENDATION 8

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

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

TABLE 5

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

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

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

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

RECOMMENDATION 9

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

GOAL IV

Maintenance of Atmosphere Conducive to Rehabilitation

CONCLUSIONS

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

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

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

RECOMMENDATION 10

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

RECOMMENDATION 11a

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

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

RECOMMENDATION 11b

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

GOAL V

Provision of Incentives, Removal of Disincentives

CONCLUSIONS

Incentives

A. Experience and Retro Rating

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

RECOMMENDATION 12a

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

RECOMMENDATION 12b

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

B. Targeted Jobs Tax Credits

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

RECOMMENDATION 13

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

C. Additional Maintenance

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

D. Second Injury Fund

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

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

RECOMMENDATION 14

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

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

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

RECOMMENDATION 15

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

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

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

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

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

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

RECOMMENDATION 16

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

RECOMMENDATION 17

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

Disincentives

A. Premature Compromise and Release Settlements

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

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

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

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

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

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

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

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

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

RECOMMENDATION 18

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

B. Excessive Litigation

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

C. Other Stimuli

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

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

Delivery of Rehabilitation in Alaska's Workers' Compensation System

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

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

RECOMMENDATION 19

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

PHYSICIANS' CONCERNS

1. Rehabilitation counselors should consult with treating physician before contacting injured worker. The counselor often gives advise which conflicts with physician's planned course. Physician can pave the way and make the prospects of rehabilitation less threatening if he is aware of the counselor's contact in advance.

2. Workers should be advised of benefits from day one of injury. Rights and responsibilities of worker should be spelled out. This would reduce adversary atmosphere.

3. Employers engage in inappropriate hiring practices to begin with. Thorough pre-hiring physical exam should be conducted. Conditions incompatible with physical demands of certain jobs would be detected at that time.

4. Workers' compensation should take natural aging process into account. Wear and tear process should not be financed by workers' compensation system.

5. Remedies should be more vigorously applied to workers who fail to follow doctor's orders.

6. Attorneys are too involved in the rehabilitation process. Counselor, physician and injured worker should be primary parties involved.

7. Rehabilitation benefits should be consistent and uniformly delivered. There is no control in the present system. Physician and patient need rules to play by.

8. Employer must assume more responsibility to provide light duty work until worker can resume regular job.

9. Union dispatch precludes loyalty to the employer - Union regarded as the "employer".

10. Union rules should be more flexible to support rehabilitation.

11. Unions must assure worker's who are dispatched are physically able to perform the duties of the job.

12. Professional rehabilitation providers inadequate. A more clearly defined system would encourage more providers to practice in Alaska's system.

13. Services provided by DVR are not particularly geared to industrial workers - more effective with catostrophically disabled population.

14. Insurance adjusters have inadequate backgrounds in medicine and human behavior. Inappropriate actions against claimants result in adversary behavior by claimant; (foot dragging and going against doctor's recommendations.) Adjusters must use more amiable approach.

REHABILITATION COUNSELORS' CONCERNS

1. Attorneys often interfere with rehabilitation. Some attorneys forbid their clients to see counselors, insist on being present at every counseling session, attempt to dictate what program should be developed for the injured worker, and often advise their clients not to cooperate with the counselor by using passive aggressive tactics. Counselors would like to see guidelines or regulations developed which forbid attorneys to interfere or attempt to run the rehabilitation process.

2. The workers' compensation system expects counselors to be miracle workers. Successfull rehabilitation of injured workers in the compensation system is difficult if not impossible in light of the following:

   a. Inadequate requirements of workers to cooperate with the counselor.

   b. Ineffective enforcement of the vague rules presently existing in the system when evidence clearly shows the worker has been uncooperative.

   c. Some insurance companies act in good faith in attempting to arrange rehabilitation services for workers who need them. Other companies fail to make such arrangements and may even interfere when workers seek services on their own.

   d. Those companies that support the rehabilitation effort are often penalized as the Board allows uncooperative workers too many chances to cooperate. Limitations should be placed on these chances.

3. The Workers' Compensation agency should be staffed with rehabilitation professionals who determine which agency will provide services to injured workers in disputed cases. This would reduce the level of excessive "rehabilitation shopping" by all parties which presently exists, and it would eliminate dual assignment of rehabilitation providers by both sides.

4. Counselors have too little time as it is to provide adequate services to the disabled population. Requiring counselors to appear in hearings and other judicial processes further reduces the time counselors should be devoting to rehabilitating the disabled population.

INJURED WORKERS' CONCERNS AND REACTIONS

1. The system has gotten so complex that an attorney is absolutely necessary in proceeding with many cases. Yet, some injured workers were not advised that they needed an attorney until it was too late.

2. Injured workers have reported receiving "high pressure" from carriers to settle for smaller settlements than required by law. This included threats of holding up final settlement unless the injured worker agrees to carrier's terms.

3. Injured workers who realized later that they needed rehabilitation assistance, were not given any indication that the option was available, at the time of injury.

4. Benefits are either cut-off without notice or held up as part of pressure tactics. In cases of jobs which pay by commission, an injured worker reported that benefits stopped immediately upon taking the job, although it was 4 months before he received his first commission check.

5. There were positive reactions to some insurance companies' case management, in addition to positive feelings about some injured workers' rehabilitation experience.

6. There is concern expressed that DVR does not cooperate with the injured worker's interest in rehabilitation. This point was expressed in a case where the injured worker reported the counselor stalled 6 months in getting the program started and took 2 months in getting the purchase of a calculator approved.

7. Concern has been expressed over the proper medical treatment. The use of chiropractors is more helpful in some cases, yet is discouraged by some doctors.

8. Injured workers are frustrated that some of the jobs they are retrained for are not available on the job market when the rehabilitation program is completed. They wind up returning to their old job or taking a position which has a high probability of reinjury.

INSURER/EMPLOYER CONCERNS

1. The Act requires insurers/employers to provide rehabilitation services to injured workers. Thus, the insurer/employer should be able to determine which rehabilitation agency the worker will be referred to for these services. This would eliminate the current practice of workers/attorneys shopping around to find the counselor who will recommend the longest training program.

2. Claimants' attorneys should be restricted from practicing "rehabilitation" and submitting training/rehabilitation plans for their clients.

3. Insurers/employers should not be required to provide rehabilitation services to workers who refuse reemployment offers by employers. There should be a limit placed on the time an injured worker has to accept the offer.

4. When training plans are presented for approval, the Board should make every effort to ensure the need for training before approving the plan and requiring the insurer to continue total compensation payments. Training should be approved on the basis of <u>need</u> as opposed to the <u>desire</u> of workers who merely want a new career.

5. Counselors should be used to perform on-site-job analysis to determine if the job is compatible with the worker's restrictions. Presently, the physician, who does not have sufficient knowledge of the world of work, makes this decision based on the whims of the patient, who often misrepresents physical demands of a given job.

ATTORNEYS' CONCERNS

1. Alaska has an inadequate number of competent rehabilitation counselors. Often, workers do not have a choice and must use DVR.

2. Particular counselors are inconsistent in serving injured workers; engage in power playing to control worker's life; dabble in claims and legal matters; incorrect information given worker, sometimes intentionally, if worker has not followed the counselor's "rules".

3. Present system does not have mechanism to make rehabilitation work. No one to monitor system and keep parties in line, particularly counselors who behave in questionable manner.

4. Disputes regarding rehabilitation should be promptly heard and decisions timely issued. Delays destroy motivation for rehabilitation.

5. Artifical rehabilitation hurts workers with serious injuries.
   EX: Sixty-one year old worker w/65% rating. Has fifth grade education and no work skills other than heavy labor. Ineligible for retirement by 4 years. Placed in pie shop as a part-time wrapper. Paid $4.00/hr = $60/week = approx. $200/month. Counselor issued a report of "successful rehabilitation" so worker was found PPD, thus $60,000 limit applied. Questionable whether worker will be able to continue in work force due to severity of injury, age, and limited skills. If unable to continue working, $60,000 inadequate source of income for worker's remaining lifetime. If PTD, rating is precluded by "successful rehabilitation" stamp.

6. Board should penalize insurers/employers who misrepresent the law. Failure to advise worker of entitlement to rehabilitation is misrepresentation.

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APPENDIX OF EXHIBITS

CHAPTER 47
VOCATIONAL REHABILITATION

Section

CHAPTER 47

VOCATIONAL REHABILITATION

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

Authority: AS 23.30.005
AS 23.30.040

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

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

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

Authority: AS 23.30.005
AS 23.30.040

8 AAC 47.030. EVALUATION ANALYSIS. (a) No vocational plan may be initiated until board approval has been secured. Board approval may be secured by any party by filing a petition for initiation of a vocational plan, accompanied by a written evaluation analysis. Copies of the petition and the evaluation analysis must be served upon all parties and the administrator of the Alas'a 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;

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

Authority: AS 23.30.005
AS 23.30.040

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

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

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

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

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

Authority: AS 23.30.005

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

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

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

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

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

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

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

Authority: AS 23.30.005
AS 23.30.040

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Worker Rehabilitation

Idaho
Industrial Commission
Rehabilitation Division

Exhibit 2

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

Who Benefits From Our Services?

- Disabled workers
- Employers
- Attorneys
- Physicians
- Society

What Are Our Goals?

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

What Services Are Provided?

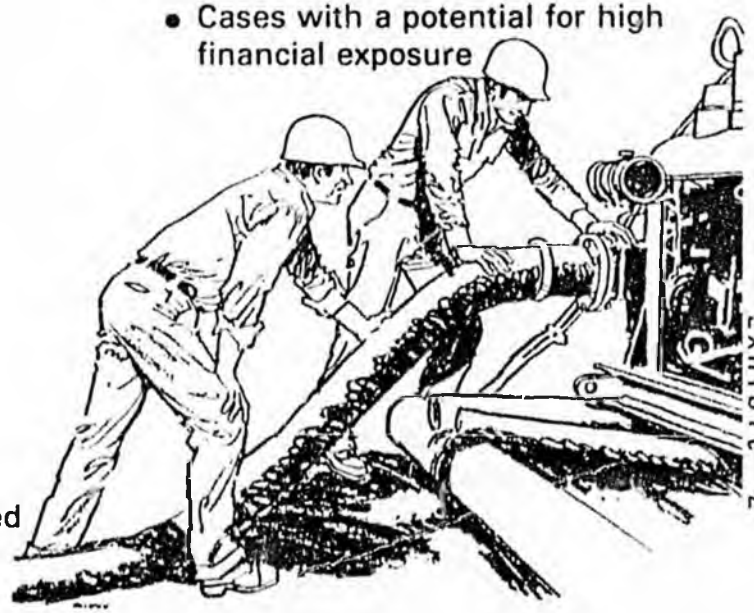
Services provided are those necessary to return the worker to a job with his former employer, or to a job similar to the one held prior to becoming injured.

Services available include:

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

Who Should Be Referred?

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



Who Is Eligible For Our Services?

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

Exhibit 2

House Labor + Commerce - Staff copy.

AN INTERIM REPORT ON THE ALASKA WORKERS' COMPENSATION SYSTEM

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January 27, 1982

INTRODUCTION

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

THE BUNKHOUSE RULE

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

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

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

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

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

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

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

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

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

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

MEDICAL BENEFITS

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

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

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

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

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

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

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

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

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

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

SECOND INJURY FUND

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

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

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

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

AVERAGE WEEKLY WAGE

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

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

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

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

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

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

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

TEMPORARY TOTAL DISABILITY

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

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

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

PERMANENT PARTIAL DISABILITY

In every workers' compensation system the most expensive element, and the most controversial, is that of permanent partial disability benefits. Much can and has been written about the history, development and philosophy of permanent partial disability benefits, and some of it is quite interesting. However, what is necessary at this time is simply an understanding of the various benefit alternatives available for compensating permanent partial disability, a philosophical decision as to the reasons for which Alaska wishes to provide such benefits and, based upon that decision, the development of a mechanism and formula to distribute those benefits appropriately.

Permanent partial disability results when an individual is injured and having recovered to the greatest extent possible is left with a physical problem which did not exist prior to injury. If the condition is severe enough to totally destroy the individual's ability to obtain and retain gainful employment, the result is classified as permanent total disability. What we are concerned with here is that class of cases in which a permanent physical problem exists, but the ability to earn has not been totally destroyed. At this point there are three basic criteria which can be used to determine who is to receive permanent partial disability benefits, and in what amount.

The first theory is based upon permanent physical impairment, and is often referred to as the "whole man theory." Pursuant to this theory, the amount of benefits payable for permanency is determined on the basis of the degree of permanent physical impairment suffered, a purely medical determination, without reference to its effect upon the individual's life, employment or economic status. Assuming equal average weekly wages, a lawyer and a machinist who both suffered equally serious hand injuries would receive the same amount of money for their injuries, despite the probable difference in economic impact.

The second theory deals with loss of wage earning capacity, which takes into consideration not only the degree of physical injury, but also its probable impact on the ability of the individual to earn a living. This requires that in the event of a dispute, the fact finder must predict, usually quite soon after release from active medical care, what effect the injury will have on the individual's ability to compete in the open labor market. The test does not require any economic loss to occur and in fact, because the concern is with loss of capacity, a substantial award for partial loss of that capacity is in no way inconsistent with a factual situation in which the employee remains with the same employer and on the same job track until normal retirement, with no economic loss resulting from the injury. Typically, if this prediction, which usually takes the form of an award, proves wrong, nothing can be done to modify it in the absence of a change in the employee's actual physical condition.

The final alternative for paying permanent partial disability benefits is what is commonly known as the "wage loss" method. This system involves paying benefits based solely upon actual loss of income resulting from the effects of an injury, with the amount of the loss determined as it actually occurs, rather than on a "prediction" basis as would take place under the earning capacity loss theory described above.

Alaska follows a pattern used in well over half the states, with a few unique twists, starting with a combination of the impairment theory and the earning capacity loss theory. If a permanent injury is limited to a[illegible] of the extremi-

ties (fingers, toes, hand, leg, etc.) or the eye or hearing, the amount of the benefit paid is based solely upon the physical impairment sustained, which in turn is based almost solely upon medical evaluation of the loss. The actual benefit calculation is accomplished by first determining the workers' weekly benefit rate, which is 66 2/3% of his average weekly wage, subject to a maximum of $942 per week. Sec. 23.30.190 of the Act is then consulted, which contains a schedule indicating the weeks of benefits, at the rate just described, for total loss or total loss of use of the particular bodily member involved. For example, total loss of an arm results in benefits being paid for 280 weeks, at the individual's weekly benefit rate. If the loss is less than total, the worker is paid benefits for the proportionate number of weeks. For example, a 50% loss of use of the arm would result in benefits paid for 50% of 280 weeks or 140 weeks. This method of benefit computation, known as "the schedule", is used to one extent or another in most states in the manner just described, but Alaska has complicated the picture to some extent by adding another limitation, that of a maximum dollar amount. For example, while the loss of an arm is theoretically 280 weeks of compensation, it is also subject to a dollar maximum of $43,680.00. This means that anyone whose weekly benefit is in excess of $156 (over 75% of injured Alaskan workers) will not receive the full 280 weeks provided initially by the statute. In fact, the average injured worker will only receive 136.5 weeks of compensation for total loss or loss of use of an arm. The same result holds true, within a few dollars and a few percentage points, for all of the other injuries covered by the schedule.

For those injuries not covered by the schedule, primarily back and head injuries, the benefit is based upon loss of wage-earning capacity, which is determined by computing the difference between earning capacity prior to injury and after injury, and replacing 66 2/3% of the difference, on a weekly basis. Theoretically these benefits are payable for life, but in reality are subject to a maximum dollar amount of $60,000.00. Although, as previously mentioned, earning capacity loss does not require actual loss of earnings, the Alaska statute does require that determination of the amount of loss in the first instance be accomplished by considering actual post injury earnings, but if actual earnings are found not to "fairly and reasonably" represent earning capacity, other factors can be considered, and an award made which is at variance with the actual economic loss sustained. Application of this "adjustment factor" varies from time to time, primarily due to changes in the philosophy of the Board, which must determine the degree of loss in contested cases. At the present time, the Board appears to place heavy reliance on actual earnings, and in many instances applies the law in a manner approaching that of a wage loss system, with benefits determined on a weekly basis as actual loss of income occurs.

Each of these methods contains a number of flaws, in both the amount of benefits which may be paid to an individual worker, and in the problems inherent in determining the amount to be paid. From the standpoint of getting the money to the people who need it, the impairment method is the weakest of the three. Historically, workers' compensation has placed major emphasis on paying benefits to replace economic loss, and since the schedule or impairment method does not consider economic loss at all, it misses the mark in most cases. Its primary justification is ease of application, since there is supposedly very little to argue about when determining the extent of physical impairment. However, it has been found that it is relatively easy to locate doctors who will be 20 to 30 percentage points apart when evaluating the same injury, and as a result use of a schedule does not guarantee an absence of litigation.

It is possible to minimize these shortcomings in two ways. First, if guidelines are adopted for the determination of the extent of impairment, such as those published by the American Medical Association, it is relatively easy to avoid significant disagreement among medical experts. Secondly, some degree of economic reality can be incorporated in the schedule, as is done in California, by modifying the weeks to be paid in a number of ways. On the assumption that the economic impact of an injury increases geometrically, rather than proportionately as severity increases, the schedule can be "stepped" so that one week of benefits may be payable for each of the first 10 points of impairment (1-10% impairment), two weeks paid for each of the next 10 points, three weeks for each of the next 10, and so on. In this manner an individual with a 10% loss of use of the arm would receive 10 weeks of compensation and someone with a 20% loss would receive 30 weeks, reflecting an assumption, of limited validity, that the economic impact of a 20% loss is more than twice as severe as that from a 10% loss.

The weeks payable can also be modified to take into consideration other factors such as age, type of occupation (physical vs. sedentary), and amount of education, with a percentage increase or decrease in the rating depending upon the answers given to relevant questions contained in a rating formula. Obviously this significantly increases the liklihood of litigation, so that a price is paid for attempting to make the schedule more economically realistic.

Use of a schedule basis raises an interesting question as to the development of average weekly wage, particularly if an unmodified schedule based totally on physical impairment is used. Since economic impact is being ignored, there is no reason to tie the amount of benefit to average weekly wage. The fact that one worker makes more than another does not mean that his arm is also "worth" more, and in fact the opposite may be true. As a result, if an impairment schedule is used, the amount of benefits to be paid can be established legislatively as a specific dollar amount for each loss, to be paid in every case regardless of the individual's earnings.

Application of an earning capacity loss system also presents a number of problems, primarily on the operational side. From a philosophical standpoint, it more closely follows the basic workers' compensation premise of dealing with economic loss, although as previously described it is entirely possible to pay benefits for loss of capacity in cases in which no actual economic loss ever occurs. In fact, the few studies which have been undertaken tend to show that only a minority of cases demonstrated significant economic loss several years after injury, although in most of those cases the loss was significant.

Another finding from these studies demonstrates a more serious problem with earning capacity loss systems. For most of the cases with significant losses, the compensation paid was totally inadequate to deal with the economic loss incurred, while in the remaining cases the amount of compensation paid was far in excess of the loss. This resulted primarily from the fact that the award must by its very nature be a prediction, and an estimate, a task which is probably beyond the ability of mere mortals. There are simply too many variables determining the effect an injury may have on a given individual, and attempts to make the award fit the case are something less than accurate. Also inherent in this uncertainty is the need for lawyers and litigation in order to arrive at a "correct" decision. Since a determination of loss of earning capacity is strictly a judgment call, a claimant would be foolish to simply accept a determination made by the employer/carrier, and would be equally foolish to go before the Board without an attorney to present his case. Unfortunately there is little that can be done to eliminate these problems without virtually switching to another benefit system.

For purposes of determining loss of earning capacity, the computation of average weekly wage should simply reflect a realistic and established preinjury earning capacity. Since in this type of system we are not concerned with matching benefit payments with actual loss of income, it is possible and preferable to base the wage on average earnings for a recent but extended period of time, such as the previous twelve months. Given a willingness to accept the opportunity for additional litigation, the Board could be given the authority to modify the figure arrived at in this manner, if it can be established that because of extraordinary circumstances the figure is significantly high or low.

The third and final alternative is a wage loss system. In its purest form, it provides benefits only in the event of actual loss of income attributable to the injury. This immediately raises a question as to its fairness, since in the extreme case an individual who suffered a loss of limb but was able to return to full employment would receive nothing in the way of benefits for his injury. While this may not be inconsistent with historical workers' compensation philosophy, it does leave a great deal to be desired when applied in real life. This problem can be cured by paying an impairment award, preferably limited to serious injuries, regardless of any wage loss benefits which may also be due.

Another problem may result from comparing preinjury wages with inflated post-injury wages, an obvious inequity. This can be limited to a great extent by adjusting the comparison to take into consideration the change in wage rates through time, although given the experience under the Longshore Act, it is questionable whether an unlimited adjustment would be acceptable.

For Alaska, use of a wage loss system would raise two very significant questions. First, a wage loss system can only be successful, from a cost standpoint, if the great majority of workers can be returned to jobs which pay the same or almost the same as those held at the time of injury. If the frequently heard statement that "there is no light duty in Alaska" is true, adoption of a wage loss system would be an economic disaster. Similarly, if union rules are so strict that a worker with a permanent injury cannot be given preferential treatment in obtaining work within his capabilities, the ability to return people to gainful employment would be greatly reduced, and the benefits of a wage loss system eliminated.

Secondly, serious consideration must be given to the system's ability to determine when an income loss is "due to the injury" rather than some other factor, such as the end of the season. As in the case of temporary total disability, use of a wage loss system depends on matching benefit payments with actual economic loss, so that factors such as end of season, a return to a state with lower wage levels, and an individual's desire to reduce his workweek must all be taken into consideration in determining wage loss. If this cannot be accomplished with a fair degree of accuracy, the system would be a total disaster.

While research is continuing in an attempt to determine the ability of Alaska employers to return injured individuals to the workplace, in the final analysis a decision on these potential problems can only be reached by joint labor/management discussions. It is doubtful that anyone else can or should determine whether this type of system can be used effectively in Alaska and without their concurrence an attempt to implement a wage loss system would probably result in economic disaster.

If a wage loss system is adopted, the computation of average weekly wage would closely follow that recommended for temporary total disability. The wage base should reflect the weekly wages actually earned during the period of employment, whether it be six months or a year, so that the comparison of pre- and post-injury wages will reflect the actual loss incurred. Therefore, a 13 week average, or something in that range, would be appropriate, with the safeguards described in the temporary total disability section.

PERMANENT TOTAL DISABILITY

Statistically, permanent total disability benefits do not constitute a significant proportion of the overall cost of workers' compensation in Alaska, although the state does rank sixth nationally in frequency of permanent total cases. This does not mean that permanent total disability does not significantly impact on the compensation system. Its importance is hidden to a great extent, because its effects are felt in the area of permanent partial disability benefits. This is due to the threat of a case becoming a permanent total, with lifetime benefits and no dollar maximum, which results in cases being settled at levels approaching their maximum permanent partial disability value, $60,000.00, instead of being litigated, and possibly resulting in a finding of total disability.

As mentioned previously, permanent total disability occurs in those circumstances in which the injury is so severe as to totally destroy, for all practical purposes, the ability of an injured worker to obtain anything other than intermittent and financially insignificant employment. In cases in which the physical injury is severe, there is usually no question as to the individual's entitlement to total disability benefits. However, of concern to the Alaska compensation system is the worker who retains relatively substantial physical abilities, but claims to be or is actually unable to work because of the limited job opportunities in the area. For example, should an injured worker who cannot find employment in Eagle, where he lives, have his workers' compensation status determined on the basis of Eagle alone, or should the availability of suitable employment in other parts of the state be considered? And if there is no suitable employment in Alaska for someone injured shortly after moving to the state, or who has indicated in some manner that working in Alaska is temporary rather than permanent, should employment opportunities in the lower 48 be considered? Again there is no correct answer, only issues that are appropriate for legislative decision on a policy basis.

At the present time the statutory provision dealing with permanent total disability, Sec. 23.30.180, provides virtually no indication of the factors to be considered in determining total disability status. This is left to the courts, and results in a great deal of uncertainty as to the possible outcome of individual cases. Although no statute can eliminate the potential for court involvement, the legislature can create a great deal more certainty by enacting amendments to Sec. 23.30.180 which provide clear policy guidelines to those who must apply the law.

WCCA

Position Paper

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Prepared by

The Workers' Compensation Committee of Alaska (WCCA)

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SECTION I: LEGISLATIVE CHANGES

MAXIMUM BENEFITS:

Currently, maximum weekly benefits allowed under Alaska Law (AS 23.30.175) are based upon 66-2/3% of actual wages, but never more than 167% of the average weekly wage in the state. In 1981, the average weekly wage factor will increase to 200%.

This formula does not recognize that workers whose salaries are much higher than the state average weekly wage have considerable discretionary income.

WCCA POSITION: that the following benefit schedule be used in place of the current method of calculating benefits:

1. 66-2/3% of wages up to 150% of the average weekly wage, PLUS,
2. 40% of wages falling between 150% and 200% of the average weekly wage, PLUS,
3. 20% of wages falling between 200% and 300% of the average weekly wage.
4. No benefits for wages in excess of 300% of the average weekly wage.

The following table shows what will happen to benefit payments based upon a $393 average weekly wage under the current formula using the 200% factor to be applied in 1981. To the right is the benefit payment indicated by the recommended new formula.

WEEKLY WAGE Time of Injury	WEEKLY BENEFIT Existing	WEEKLY BENEFIT Proposed
$ 200.00	$133.00	$133.00
393.00	262.00	262.00
600.00	400.00	397.00

$ 800.00	$533.00	$475.00
1,000.00	667.00	515.00
1,179.00	786.00	550.00

PERMANENT TOTAL DISABILITY:

Based upon medical facts and the worker's occupation, an injured worker may be classified as having a permanent injury. Permanent injuries are then further distinquished as being totally disabling or partially disabling, and long term wage loss benefits are paid accordingly.

Currently a worker can be classified as totally disabled rather than partially disabled in two ways: One (1) Automatically presumes a worker to be totally disabled if he/she loses both or any mix of two hands, arms, feet, legs or eyes, and Two (2), a determination is made of the actual facts of the injury case in question.

Actual case histories show that some workers who have lost the use of two or more limbs can, and have, returned to their former employment successfully.

WCCA POSITION: that the Alaska Statue (AS 23.30.180) which automatically presumes a worker to be totally disabled be repealed and (second) that an actual case by case determination sha establish the level of disability of the injured.

PERMANENT PARTIAL BENEFITS-UNLIMITED

Currently, a worker with a permanent partial injury can collect benefits for an unlimited period of time. This results in a loss to the workforce for workers who can return to some form of work but are not encouraged to do so since benefit payments continue.

WCCA POSITION: that a worker with a permanent partial injury be entitled to benefits for a thirty-six (36) month maximum period. To receive benefits beyond thirty-six (36) months, the worker must qualify for a permanent total disability status, in which case benefits would extend for life.

AVERAGE WEEKLY WAGE CALCULATION

When calculating the wage loss benefit payable to an injured worker, an average weekly wage is determined by finding the highest annual wage earned by the worker in any one of the three years prior to injury and dividing that total by fifty-two (52). As a result, wages earned during a "boom" period over the last three years can significantly increase the wage loss benefit payable to the injured. That benefit may be even greater than the worker's wages at the time of injury.

WCCA POSITION: AS 23.30.220 One (1) be amended to read as follows, "The formula for calculating average weekly wage be the total of the injured worker's preceding years wages (including self-employment wages) divided by fifty-two (52)."

FILING TIME LIMITATIONS

The time limitation (AS 23.30.105) for filing a Workers Compensation Claim in Alaska is as follows:

A. Within one year after job-related death
B. Within two years after knowledge of a job-related disability
C. Within two years after the last compensation payment
D. No time limit for latent injuries (example-asbestos related cancer).

Those (above listed) limitation are signifcantly broader than those of other states.

WCCA POSITION:

A. No change
B. No change
C. An injured must file within one year after the last compensation payment (for a recurring/disabling injury).
D. No change

OFFSETS TO WORKER'S COMPENSATION BENEFITS

Current law allows for duplication of benefits in some instances. Although these situations are rare, the law should be amended to prevent benefit duplications.

1) If a worker is receiving unemployment benefits and files a worker's compensation claim (for an on-the-job injury), he can legally collect both benefits.

WCCA POSITION: that if worker's compensation benefits are currently being paid, then unemployment benefits should cease. It is the intent of the law that benefits are intended to pay wagge loss only for the period of time a worker is unable (due to injury) to work.

2) It is possible for an injured worker to collect both sick pay benefits and worker's compensation benefits for a short period of time.

WCCA POSITION: that the sum of these weekly payments be limited to 100% of the worker's wage, with the worker's compensation benefit being paid first.

3) An injured worker may currently collect retirement benefits to which he/she is entitled in addition to worker's compensation benefits.

WCCA POSITION: that worker's compensation benefits be reduced by the amount being paid in retirement benefits.

CHOICE OF PHYSICIAN

In order to ensure quality medical treatment and to contain costs at the same time, the treating physician should give direction to the injured worker's care. Alaska's liberal policy of free and open choice of physicians sometimes result in duplicate treatment, lack of coordination between treating physicians and specialists, or an occasional "shopping spree" by the injured for the elusive "cure" to pain. A malingering worker may search for a physician who will support his claim to injury.

With exceptions (which follow), the employer or insurer should be allowed to provide an injured worker with a list of at least two physicians in the geographic area for treatment. These physicians should be specialists (where necessary) based upon the nature of the injury. They should not be selected based upon their fees charges, but on their interest in the industrial injured and desire to provide efficient medical services to return the work to a productive life.

The exceptions to the use of physicians as described above are twofold:

1. If an injured worker has seen a family physician or a physician in the specialty required to treat his injury in the prior twelve (12) months, he may be treated by that physician.

2. If the injured worker is not responding to treatment or is otherwise dissatisfied with the first selected physician, he may choose another physician from a list of three other physicians in the geographical area. This list will also be provided by the employer or insurer.

WCCA POSITION: sufficient change in the law to reflect the preceding statement and/or policies.

PAIN CLINICS

In addition to the pain associated with an injury during treatment and healing, pain often persists after complete healing in the form of chronic or "learned" pain behavior. To the worker experiencing such "learned" pain, it is real and often prevents the worker from feeling prepared to return to work.

Pain clinics existent in Alaska have developed techniques for treating such pain. The Worker's Compensation Board and the adjustors of insurers should be encouraged to utilize pain clinics to eliminate any significant extensions of benefit payments period, and costly, time-consuming legal arguments over the preparedness of a worker to return to work.

WCCA POSITION: that the applicable Alaska Statutes be amended to reflect the above position.

HEARING REPRESENTATIVES

The role of the Worker's Compensation Board is to expedite the resolution of disputes between the injured and employers of their insurers. This system in intended to provide rapid and fair determination on the factual issues being disputed.

It is intended that the Board itself be a point of initial review of disputes and cases can later be appealed to Suprior or a higher Court. Often there is no need for either party to be represented by counsel. However, a large per cent of disputes heard by the Board involve attorney representation.

It would be determined that when appearing before the Board the injured needs to be or not to be reprensented by counsel. The insured should be encouraged not to utilize counsel but rather hearing representatives (trained claims people). In short, a fairness in adequacy of representation should be examined, and procedures at the hearing be established. Better hearing procedures can and should result in a significant expense savings due to reduced attorney costs for both employer or insurer and the injured.

WCCA POSITION: that the appropriate Alaska States be changed to reflect the preceding statements and opinions.

EXTRAORDINARY CONSTRUCTION

The development of the Trans Alaska Pipeline System resulted in a tremendous increase in the number of workers in the sate. In addition, wages paid to many workers were much higher than those previously paid. Worker's Compensation claims costs for pipeline development injuries were much higher than for other work-related injuries in Alaska during 1977 and 1978. The cost of all pipeline injuries included in loss experience data supplied to the Division of Insurance for company premium rate purposes drove the cost of all insurance for all Alaska employers to a new high.

If another extraordinary construction project (Alaska-Canada Gas Pipeline or the Capitol Relocation) occurs in the future, the Division of Insurance should segregate the actual premiums

and losses of this (these) project from other Alaska experience. This will allow other employers in the state a fair rate from which to pay benefits to the injured worker.

WCCA POSITION: that the applicable Alaska Statutes be amended to reflect the above position.

SECTION II: ADMINISTRATIVE CHANGES