

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on January 27, 1993 in Room 123-S of the Capitol.

Members present: Senators Burke, Downey, Feleciano, Jr., Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Steffes and Vidricksen

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Bob Nugent, Revisor of Statutes
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee: Dick Brock, Administrative Assistant, Kansas Insurance Department
William F. Morrissey, Assistant Director, Workers Compensation Division, Kansas Department of Human Resources

Others attending: See attached list

Dick Brock, Administrative Assistant, Kansas Insurance Department stated he chaired the Insurance Commissioner's Task Force on Workers Compensation. He said the Task Force was created in July of 1991. The Task Force held three meetings in 1991 but was unable to obtain results of a closed claim study. Subsequently, the National Council on Compensation Insurance (NCCI) engaged the firm of Tillinghast, a large independent actuarial consulting firm to conduct a sample closed claim study to develop information regarding workers compensation in Kansas. The sample size of the study was 1,033 claims.

The Task Force recommended each insurance company and group self-insured pool issuing workers compensation policies in Kansas to Kansas employers should be statutorily required to include educational material prescribed jointly by the Commissioner of Insurance and the Director of Workers Compensation with each policy and each renewal. The Task Force also recommended a Workers Compensation Appeals Board be created. HB 2116 has been introduced in the House of Representatives covering this recommendation. The Task Force expressed the need to eliminate the mandatory aspects to the current law with respect to vocational rehabilitation, amend the statutory definition of "work disability" to more clearly express legislative intent and address the issue of non-work related aggravation of a previous injury. The Task Force recommended the enactment of legislation promoting the implementation of accident prevention techniques in the workplace. In regard to fraud and abuse, the Task Force recommended a modest approach that addresses the areas of greatest concern and provides a private right of action to recover monies erroneously paid. Legislation on this issue has been proposed. The Task Force recommended that additional opportunities and resources be devoted to assisting claimants and resolving disputes informally. To accomplish this, it was recommended an ombudsman program and benefit review conference capability be established. Finally, the Task Force recommended assessments for the Workers Compensation Plan be reduced to no more than 10% by December 31, 1996, see Attachment 1.

William F. Morrissey, Assistant Director, Workers Compensation Division, Kansas Department of Human Resources, presented an update on the Governor's Task Force on Workers Compensation. He chaired a 17 member Task Force representing trial lawyers, labor, KCCI, medical, small business representatives, Legislators, vocational rehabilitation, bureaucrats and the Insurance Commissioner. The Governor created the Task Force in July of 1992 and they have not completed their work. The Task Force intends to look at proposals presented during the legislative session. He said he intends to issue an updated report soon.

Mr. Morrissey informed the Committee the Task Force has recommended a data collection system be

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on January 27, 1993.

created. In regard to medical cost containment, a medical fee schedule was approved by the medical fee advisory panel on January 6, 1993 and needs to be adopted by regulation. A plan for utilization and peer review has not been finalized, and the Task Force is looking into managed care.

The Committee meeting was adjourned at 9:00 a.m.

The next meeting is scheduled for January 28, 1993.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 1/27/93

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jim Allen	Topeka	PIRNA Inc.
Nal Hudson	Topeka	NFIB/Kansas
Jacky SLAMETER		
Bill Morrissey	Topeka	KDHR/Work Comp
Bill Wempe	"	Ks. Ins. Dept
Cameron Brewer	"	KTLA
David Henzlik	Topeka	KDA
Janet STUBBS	"	HBAK
Bill Curtis	Topeka	Ks Assoc of School Bds
Sharon Huffman	Topeka	KCDC
Leland Smith	Wichita	WIBN
Billy Newman	Topeka	Dept. of Admin.
Marla Rutter	Topeka	Dept. of Admin.
RICHARD L THOMAS	TCBOLA	DHR / WORK COMP
Nelsie Sweeney	Overland Park	OP Chamber of Commerce
Theresa Hunsicker	Topeka	KTLA
Christy Young	Topeka	Topeka Chamber of Com.
Mark Dorellina	Topeka	KDOC 77
Robert Filicamp	Lansing	Lt. Gov. Office
Kay Farley	Topeka	Office of Judicial Admin.
Laura Pooggan	Topeka	Sen. Kays Office
Frances Kastner	Topeka	Ks Food Dealers Assn
Roger Franko	Topeka	Ks Govt Consulting
LARRY MAGILL	TOPEKA	PROF. IND. INS. AGENTS
Terry Leatherman	Topeka	KCCJ

GUEST LIST

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STATE OF KANSAS

KANSAS INSURANCE DEPARTMENT

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Topeka 66612-1678 913-296-3071

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RON TODD
Commissioner

January 13, 1993

The Honorable Ron Todd
Commissioner of Insurance
420 S.W. 9th Street
Topeka, Kansas 66612

Dear Commissioner Todd:

On behalf of the Commissioner's Workers' Compensation Task Force you appointed in July 1991, I wish to submit the attached report. This report summarizes the task force activities and includes the recommendations we were able to reach consensus on for consideration by the 1993 Kansas Legislature.

In presenting this report, I want to emphasize two points. First, although most of the recommendations were agreed to by a significant majority of the task force members, not every member of the task force is in agreement with every recommendation. Sometimes there was outright opposition, sometimes lack of agreement was due to a more narrow or specific concern, and sometimes dissent arose because a recommendation simply didn't go far enough. I can discuss the recommendations or areas where complete agreement was lacking in more detail if you wish. However, I believe the lack of unanimity is simply evidence of a full and healthy discussion and debate and need not detract from the value of the recommendations. The second point I want to make is that the task force does not view this report and recommendations as a complete and definitive resolution of the workers' compensation problem. Rather, it represents our effort to accomplish as much as possible prior to the 1993 legislative session as well as a deliberate attempt to avoid duplicating the work of the Special Legislative Committee and Governor's Task Force.

Finally, the task force has attempted to be responsive to its charge but recognizes that you may not agree with or accept all of the recommendations or all provisions of a particular recommendation. This, of course, is your prerogative.

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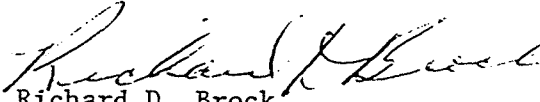
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The Honorable Ron Todd
January 13, 1993
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The task force is now on stand-by status pending conclusion of the 1993 legislature. At that time a decision can be made to discharge the task force or reconvene it depending on the reforms enacted.

If you have any questions or if I can provide additional information, please do not hesitate to call on me at your convenience.

Respectfully submitted,


Richard D. Brock
Administrative Assistant

RDB:mmk

Enclosure

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Report of the Commissioner's Workers Compensation Task Force

The Commissioner's Workers' Compensation Task Force was appointed in July 1991 to identify and recommend changes that will address continuing increases in workers' compensation costs and resulting insurance rates. The appointment of this task force followed approval of an overall increase of 24% in workers' compensation insurance rates and such approval was accompanied by a directive to the National Council on Compensation Insurance (NCCI) to implement a study of Kansas claims for the purpose of identifying reasons claims costs continue to rise.

During the latter part of August 1991, the NCCI responded to this directive with a compilation of general, anecdotal information obtained from 13 insurance companies and 1 large insurance agency which administers workers' compensation self-insurance programs for various clients. Although of some interest as a confirmation of personal opinions held by some observers, this kind of a response provided no quantitative information and was accompanied by no supporting information. As a result, it was of little value to the task force or other interested parties. Subsequently, two representatives of NCCI appeared before the task force at its September 1991 meeting and presented statistical data reflecting the aggregate cost of workers' compensation insurance claims and expenses. However, this was little more than a summary of historical ratemaking data already available. Therefore, it was not helpful in identifying "cost drivers" or other aspects of the workers' compensation environment that provide an indication of necessary reforms. Consequently, the Commissioner's directive for a claims study had still not received an adequate response.

At this point, Commissioner Todd directed a letter to the president of the NCCI expressing frustration about the situation. As a result NCCI entered into a contract with Tillinghast, a large, independent actuarial consulting firm to conduct a sample closed claim study to develop information regarding workers' compensation costs in Kansas.

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By design, the study sought information on approximately 1,000 claims of a permanent injury nature (permanent partial disability, permanent total disability, and fatalities). To obtain this information, 7 insurers considered to be representative of the workers' compensation market and 1 self-insured administrator were each asked to contribute approximately 125 claims each. No group-funded pool insureds were included. Upon completion of the study the actual sample size was 1,033 claims so the target of 1,000 was exceeded by a small number.

The study produced an abundance of information which means some of the findings will be of particular interest to some observers while others will find totally different pieces of data more meaningful. In addition, it would probably be impossible to conduct a study and publish conclusions that satisfied every desire or need. Therefore, some readers will be disappointed by the absence of information of a particular nature. A complete copy of the closed claims study is included as Appendix I to this report and should be reviewed before drawing final conclusions.

The study did draw attention to several areas of possible reform which were taken up by the task force and ultimately became part of the various subcommittee reports discussed later. In particular, the study highlighted the cost increases associated with the 1990 Kansas Supreme Court decision in the Hughes case. The decision in Hughes appears to have increased costs of work disability in permanent partial disability cases. Likewise, costs associated with vocational rehabilitation, the aggravation of pre-existing injuries, attorney involvement and unscheduled injuries are specifically noted by the Tillinghast study and the task force was obliged to review and respond to the issues surrounding such costs.

One aspect of the study that deserves some explanation and attention is the experience difference between commercially insured and the self-insured employer. The study indicated that average claim cost was \$26,331 for commercial insurance companies compared to \$16,603 for self-insureds. We should note first that the study did not control for

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the mix of employers or the nature of the injury. The claims from commercial carriers represent a mixture of employers and job positions. However, the third party administrators (TPA) claims are from several self-insurers who are unlikely to experience the same type of injuries sustained by the general workforce in Kansas. For example, the Tillinghast study reports that the TPA did not experience a single disfigurement or permanent total disability claim. In addition, carriers experience substantially more claims for trunk injuries (38.8% versus 28.2%). This figure includes back injuries which are high cost injuries. In addition to the limitations of the study itself, there may be several reasons for this variation in average claim costs.

Self-insurers have a direct and immediate financial incentive: For good claims management (small insureds who are too small to be experience-rated lack this incentive because their costs are not directly affected); to improve and maintain workplace safety; encourage employee cooperation and confidence; to more closely monitor and manage medical care and return-to-work programs (most smaller insured employers do not have the ability or capacity to rehire their injured employees or create light duty positions, while self-insurers are usually large employers with multiple job openings with return-to-work policies that encourage a more rapid return to work); and, implement other initiatives designed to reduce injuries and minimize costs.

This same characteristic is reflected in other findings. For example, the study reveals that a claimant's attorney is involved in 55.1% of cases for commercial carriers but 50% of cases for self-insureds. These numbers seem to be surprisingly high but it must be remembered that the study encompassed only serious claims. As a result, the overall frequency of attorney involvement, i.e. 71.2% or 735 of the 1,033 claims, should probably not be too surprising. Nevertheless, by any measure, involvement of attorneys adds significant expense to the workers' compensation system and in large measure defeats the no-fault, administrative concept the workers' compensation system was originally intended to embody. This does not mean attorney involvement itself is the problem. Rather, what the numbers suggest is a real need to educate

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and inform employees, employers, health care providers and others involved. Restoring and/or enhancing confidence in the ability of the workers' compensation system to fairly and adequately but not wastefully respond to workplace injuries should reduce the perceived need of any party to seek or use the services of a private attorney.

Finally, the closed claim study again reflects a difference between commercially insured and self-insured claims in various lag times identified and tested. For instance, self-insureds closed 27.4% of claims within 180 days of the injury whereas commercial insureds closed only 6.2% within this time period. Moreover, those closed by self-insureds within the 180 day time frame had an average cost of \$1,429 versus a \$7,429 average cost to commercial carriers. It should be noted, however, that the study included only 125 self-insured claims from a single source and presumably flowed from the same type of claims administration. Consequently, we cannot infer from the study that all self-insured risks produce the same or similar results. In addition, the concern about the high cost of workers' compensation is not restricted to commercially insured employers. Therefore, the comparisons between commercially insured employers and self-insureds, should not lead to a conclusion or a belief that the entire workers' compensation problem can be resolved by administrative changes.

Nevertheless, it was on the basis of the aforementioned comparison and other similar information in the closed claim report, that the Commissioner's Workers' Compensation Task Force divided itself into six 3 and 4 member subgroups each of which was given a specific charge. The subgroups and their respective charges were as follows:

The Subgroup on Education and Information was charged with the responsibility of developing recommendations to:

- (1) Assign responsibility for and require the development of educational information and materials to consistently and uniformly advise Kansas employers and employees of their

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rights and obligations under the Kansas workers' compensation law;

- (2) Establish minimum standards with respect to the content of such material; and
- (3) Implement a distribution process or system for such information and material that will assure its receipt and facilitate its understanding by those to whom it is directed.

The Subgroup on Alternative Dispute Resolution was instructed to develop and recommend a cost effective and time efficient mechanism to expedite agreement on disputed workers' compensation claims in lieu of litigation. Such recommendations shall include a draft of any legislation necessary to assure the application of the ADR mechanism in all possible and appropriate situations.

In pursuing its charge, the Subgroup shall consider successful or promising programs utilized in other jurisdictions including the Settlement Day Procedures for Workers' Compensation Claims developed by United States Arbitration and Mediation of California, Inc.

The Subgroup on Fraud and Abuse was to explore the initiatives developed in other jurisdictions, incorporate such changes as may be necessary or desirable to accommodate the Kansas environment, and recommend the establishment of facilities, authority and processes necessary to:

- (1) Detect fraudulent receipt or attempts to receive workers' compensation benefits;
- (2) Detect willful misrepresentation or concealment of payroll information, job descriptions, employee benefits or other improprieties;
- (3) Detect conduct by insurance companies or employers that deprive injured employees of the timely receipt of benefits to which they are reasonably entitled;
- (4) Assure application of appropriate penalties to serve as a deterrent to abuse of the workers' compensation system (including a review of K.S.A. 1991 Supp. 44-512a); and

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- (5) Assign responsibility for administration.

The Subgroup on Workers' Compensation Plan (Plan) was charged with reviewing its statutory foundation (K.S.A. 40-2108 et seq.), Plan of Operation, and such other information and material relevant to the Plan as the Subgroup deems necessary. Following such review, the Subgroup was to develop any recommendations it deemed necessary that would:

- (1) Reduce the number of risks insured in the Plan;
- (2) Improve the treatment received by risks in the Plan particularly with respect to policyholder service, safety programs, and other accommodations available to risks in the voluntary market;
- (3) Relieve subsidies born by insureds in the voluntary market for Plan insureds whose claims experience consistently displays a lack of concern for employee safety; and
- (4) Improve Insurance Department oversight over the Plan.

The Subgroup on Statutory or Administrative Impediments to Fair and Equitable Treatment had the responsibility of conducting a review of the current statutory provisions constituting the Kansas Workers' Compensation Law. On the basis of such review coupled with the Subgroup's knowledge of the law's application and effect, the Subgroup developed recommendations to:

- (1) Eliminate situations where application of the law to a particular employer imposes a financial burden without a commensurate realization of economic protection for a workplace injury; and
- (2) Clarify and simplify those elements of the statutory benefit structure which preclude the development of a reasonably reliable prediction of benefits payable for a given injury situation.

The Subgroup on Workplace Safety was assigned the task of developing and recommending:

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- (1) A means of enhancing employer awareness of workplace safety; converting such awareness into practical application; and, providing economic rewards (or penalties) based on injury reduction;
- (2) Standards or requirements necessary to assure the active and productive cooperation of insurance companies in establishing an effective safety program; and
- (3) A system of incentives and disincentives to promote safety awareness and practice by employees.

Each subgroup then developed preliminary recommendations and suggestions or advanced ideas or commentary that permitted the task force as a whole to establish a sense of direction which led to the following recommendations.

Before describing the specific recommendations, a summary of the task force discussions may be instructive. First, it became quite clear early in the task force deliberations that education and information should be a key element in any efforts to improve the workers' compensation environment in Kansas. If employers are not acquainted with the operation of the workers' compensation system but simply view it as a statutory obligation with which they must comply; are not informed or provided assistance that will improve the insurance risk characteristics of their business; and do not recognize the somewhat obscure but nonetheless very significant impact of employee perceptions or satisfying employer/employee relationships, employers are less likely to allocate time and resources to risk management and much more likely to abuse or believe they are being abused by the system. On the other hand, injured employees will more quickly seek the services of an attorney to protect their interests when they don't know or understand what benefits they may be entitled to; don't know the steps necessary to access such benefits; and don't know what other reliable assistance is available. Some employees are also more likely to mistrust or abuse the system if the workplace environment is hostile or otherwise unpleasant.

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As noted by the subgroups created and the charges assigned, workplace safety was also a prime target of task force attention. Obviously, workplace injuries are what activates and drives the entire workers' compensation system. Therefore, to the extent workplace safety can be improved and workplace injuries prevented, the real and imagined problems affecting the workers' compensation system should be proportionately reduced. However, a closer look at programs designed to promote employer interest in workplace safety by a set or series of separate rate or premium incentives or disincentives raises serious questions about the value of the results. The experience rating plan already in use recognizes the improved loss experience and injury reduction an employer can enjoy through implementation and administration of an effective safety program.

To suggest some sort of advance rate discount or penalty for establishing or failing to establish a safety program meeting certain standards when we are already confronted with a system where the costs are already outstripping the revenues presents several problems. In the first place, under such prospective plans, no reduction in costs or benefits has yet materialized so any premium discounts would only exacerbate an existing shortfall. Second, it is difficult to envision standards or criteria for workplace safety that would automatically produce the desired results regardless of the employer's ability or desire to effectively implement and administer the plan. Third, as previously noted, the vast majority of risks are already subject to experience rating. Consequently, rewards and penalties resulting from the attention given or not given to workplace safety are already built into the rating structure. Finally, any rate or premium discount would have to be unrealistically significant if such discount would be intended to produce the economic resources the employer would need to establish an effective program of workplace safety.

This does not at all diminish the value or absolute need to address this critical issue. One of the most effective ways to do so would seem to be the statutory imposition of strict workplace safety requirements on Kansas employers. In Oregon, for example, safety requirements in the form of a state OSHA law are in place and their recent workers'

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compensation reform effort resulted in the authorization of 43 additional safety inspectors/consultants to enforce and administer the law as well as provide advice and assistance to employers. This kind of general requirement would have the added advantage of addressing workplace safety with respect to all employers. Currently, employers whose workers compensation premium is less than \$4,500 per year or averages less than \$2,250 per year over a three year period are not eligible for experience rating. Also, workplace safety is not a consideration in the issuance of a certificate as a self-insurer. Thus, while it might seem that self-interest would prompt accident prevention programs and activities by self-insurers, there is nothing in the current requirements that obliges or encourages them to do so. Unfortunately, despite the advantage of its universal application, a state sponsored, all-encompassing approach to workplace safety, is probably not politically or economically feasible in Kansas.

On the other hand, the state of Texas now requires all insurance companies writing workers' compensation insurance in that state to furnish a full-range of accident prevention services to its insureds. Notice of the availability of these services is required to be printed on the front of each workers' compensation policy.

In addition, education and information can be an effective means of promoting the advantages and rewards of accident prevention. This medium can also be used to promote and generically define safe work habits and a safe workplace.

As evidenced by these suggestions, opportunities to achieve a much higher degree of workplace safety than currently exists seem to exist without imposing onerous new mandates on Kansas employers or adding significant costs to the workers' compensation system.

The task force is also aware or was made aware of certain statutory or administrative considerations which add significant costs to the workers' compensation system without any apparent commensurate benefit to anyone. One of the most obvious examples is the fact that a general contractor is

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or may be liable under the workers' compensation act for injuries suffered by an independent contractor during the course of his or her employment. Therefore, to protect itself, the general contractor will require the independent contractor to provide evidence of workers' compensation insurance. Such a requirement can be met and the evidence of workers' compensation insurance can be acquired. However, there is a significant charge even when the independent contractor has no employees and does not need or wish to expend even more funds to provide coverage on him or herself.

Although difficult to resolve, the workers' compensation system is or has become quite complicated because of the lack of clear definitions for many of its terms. Even such core elements as the meaning of the word "disability" for many compensation purposes is beyond the comprehension of employees, employers and probably many persons directly involved in administration of the system. Such complexities add to the concerns, uncertainties and fear of employers and injured employees, complicates the efforts to provide information and education, and directly adds significant expense to a fair and equitable application of the benefit structure.

Another issue discussed by the task force was the apparent lack of equity the current law produces in regard to the aggravation of previous injuries. Such inequity begins with the not infrequent situations where a new employee suffers an aggravation of a previous injury incurred during employment with a previous employer. In these situations, the new employer will probably become totally responsible for the disability when, in fact, it was the workplace of a previous employer that may have been responsible.

In addition, it was noted that the current definition of "accident" allows compensation for the entire degree of disability even though much of it may have been a natural result of the aging process or a non-work related injury. The closed claims study indicates that aggravation of previous injuries is a significant cost problem particularly with respect

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to back injuries. As a result, any effort to develop reforms to equitably reduce workers' compensation costs should address this issue.

The last example of existing statutory or administrative requirements that add unnecessary costs to the workers' compensation system is the area of vocational rehabilitation. Again citing the closed claims study, it revealed that over half of the total amount expended for vocational rehabilitation was for evaluation expenses. Another significant portion of these total costs (32.6%) now go to maintenance benefits so a very small portion of this cost is actually used for education, retraining, and job placement services. It can at least be inferred from these numbers that the current system is generating vocational rehabilitation evaluations that are not only unnecessary but are of no value to injured workers.

The current literature regarding workers' compensation costs, reform efforts in other states, and anecdotal information on a state and local level all portray fraud and abuse of the workers' compensation system as a significant cost driver. Not surprisingly, empirical evidence to measure or quantify the degree and extent of this cost impact is not available. Nevertheless, to the extent some employers deprive the system of premium dollars it should otherwise have through deliberate misclassification of their risk, underestimation of payrolls or other devices to illegitimately lower their costs; when employees exaggerate the extent of their injury, or wrongfully attribute an injury incurred outside the scope of employment to their workplace; when insurance companies deliberately deny or compromise benefits they know are owed; or when various professions take advantage of the workers' compensation system for purely selfish ends, the result is an unfair and unnecessary burden on all honest, law-abiding decent people living, working and/or doing business in this state.

The Workers' Compensation Plan is another element of the system that clearly needs attention. A vehicle of this kind is essential if all employers are to be able to comply with their statutory obligations under the Workers' Compensation Act. In addition, given the nature of residual

market mechanisms, i.e. programs which make insurance available to risks unable to obtain it in the voluntary market, it is perhaps reasonable to expect that some subsidization will be necessary. However, Kansas has now reached the point that such subsidy is itself creating a lack of availability in the voluntary market which, in turn, results in more employers having to resort to the Workers' Compensation Plan for coverage. This is a serious problem which needs immediate, effective attention.

The final area explored by the task force was prompted by the belief that many disputes about various workers' compensation issues, but primarily the equitable settlement of claims by or on behalf of injured workers, could be resolved more efficiently and economically than is possible when formal litigation is involved. Although no unique or innovative alternatives were developed by the task force, initiatives of other states were reviewed and considered.

Recommendations:

I. Information and Education

A. Each insurance company and group self-funded pool issuing workers' compensation policies in Kansas to Kansas employers should be statutorily required to include educational material prescribed jointly by the Commissioner of Insurance and the Director of Workers' Compensation with each policy and each renewal.

- (1) Such material shall include nontechnical, summary information and descriptions regarding:
 - (a) the employer's responsibilities under the workers' compensation law;
 - (b) the workers' compensation benefit structure;
 - (c) claims administration;
 - (d)(i) Workers' compensation insurance, insurer responsibilities, and rating procedures including the nature and impact of experience modifications;
 - (ii) appeal process with respect to rating classifi-

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cations and other rating issues including
experience modifications; and

(e) accident prevention and workplace safety.

- B. The information described in A above shall be provided each individual self-insured employer by the Director of Workers' Compensation at the time the Certificate of Self-Insurance is delivered.
- C. Upon receipt of notice of an injury, the employer shall immediately provide the injured person an explanation of the benefits to which the person may be entitled, the process to be followed in filing a claim for such benefits and a toll-free telephone number the injured person may use to obtain further information and assistance from the office of the Director of Workers' Compensation.

The information required by this recommendation shall be jointly developed by the Commissioner of Insurance and the Director of Workers' Compensation for delivery to insured and self-insured employers in sufficient numbers to accommodate the employer's needs.

- D. Insurers, self-insurers, insurance agents associations, licensed rating organizations, health care providers, vocational rehabilitation facilities and other associations or groups involved in the administration, or payment of services provided in connection with workers' compensation claims shall:
- (1) Cooperate with the Commissioner of Insurance and the Director of Workers' Compensation in the preparation and presentation of seminars, audio-visual materials, and other instructional information designed to promote workplace safety, improve employer/employee relationships, generally enhance confidence in the integrity of the workers' compensation system, and reduce the cost of workers' compensation while providing a stable means of equitably compensating persons injured

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in the course of performing the duties of their employment; and

- (2) Encourage and assist in the development of specialized continuing education for health care providers that will acquaint them with their role and the impact of their decisions regarding impairment ratings, medical improvement potential, return to work evaluations and other aspects of the workers' compensation system largely controlled by health care providers in addition to the medical care rendered.

A legislative proposal designed to implement this recommendation is included in Appendix II as Legislative Proposal No. 1.

II. Statutory and/or Administrative Considerations

A. Create a Workers' Compensation Appeals Board

- (1) Eliminate the current practice of having workers' compensation case appeals heard by the Director of Workers' Compensation and Kansas District Courts;
- (2) Provide for a non-political selection process;
- (3) Eliminate current Workers' Compensation Division personnel attached to the appeal function and/or direct all or some of the positions to other duties i.e. data base design, development, and implementation; ombudsman to assist injured workers and beneficiaries; investigators; etc.
- (4) Hear preliminary hearing decisions.

A legislative proposal designed to implement this recommendation is included in Appendix II as Legislative Proposal No. 2.

- B. Eliminate the mandatory aspects of the current law with respect to vocational rehabilitation. In lieu thereof, substitute provisions allowing the employer to apply for a vocational rehabilitation evaluation; and be eligible to receive vocational rehabilitation only

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- (1) If the employee suffered a compensable injury;
- (2) The employee has reached maximum medical improvement but still suffers from permanent physical or mental problems;
- (3) Such problems prevent the employee from performing work for the same employer at a comparable wage;
- (4) The employer has not offered the injured person a specific job at a comparable wage which he or she is capable of performing; and
- (5) prohibit vocational rehabilitation from being a consideration in settlement negotiations.

A legislative proposal incorporating this recommendation has not been included because the task force presumes the issue will be the subject of one or more legislative proposals developed by others. Therefore, the task force offers this conclusion as a consideration in whatever legislative proposal becomes the focus of attention with respect to changes in the current vocational rehabilitation provisions.

- C. Amend the statutory definition of "work disability" to more clearly express legislative intent and address the issue of non-work related aggravation of a previous injury.

As indicated in the report, the task force is convinced that the lack of a clear, understandable definition of workplace injury is a major contributor to the lack of confidence many injured employees have in the workers compensation system. This ultimately leads to disputes and adds significant expenses to the dispute resolution function.

In addition, the current definition of "accident" allows compensation to be awarded for the entire degree of disability even though a measurable portion of the disability may be attributable to the natural aging process or a non-work related injury.

The task force was unable to develop a definition that would effectively address this problem in the time we were able to devote to the subject.

However, this should not diminish its significance or discourage efforts to effectively address this issue.

III. Workplace Safety

In addition to the dissemination of information as described in Recommendation I, the task force recommends the enactment of legislation promoting the implementation of accident prevention techniques in the workplace. To avoid the expense the state would incur in mandating, enforcing and administering a state OSHA type of program, the task force recommendation would require insurers to make accident prevention services meeting certain standards available to insured employers.

A legislative proposal designed to implement the recommendation is included in Appendix II as Legislative Proposal No. 3.

IV. Fraud and Abuse

The task force considered several mechanisms and concepts designed to address the anecdotal indications of fraud and abuse in the workers' compensation system. Since the task force was unable to validate or quantify the impact of fraud and abuse on the cost of workers' compensation in Kansas, a suggestion to establish a comprehensive, state administered unit of government to investigate allegations and penalize offenders was discarded. In lieu thereof, the task force is recommending a more modest approach that addresses the areas of greatest concern and provides a private right of action to recover monies erroneously paid.

A legislative proposal designed to implement this recommendation is included in Appendix II as Legislative Proposal No. 4.

- V. To enhance the ability of the workers' compensation system to efficiently and effectively respond to the fears and concerns of injured workers, it is recommended that additional opportunities and resources be devoted to assisting claimants and informally resolving disputes. This might be accomplished by increasing and

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strengthening the role of existing claims services now available from the Division of Workers' Compensation; however, the task force recommends establishment of a more formal or better defined process in the form of an ombudsman program and benefit review conference capability.

A legislative proposal designed to implement this recommendation is included in Appendix II as Legislative Proposal No. 5.

VI. Workers Compensation Plan

Subsidization of the Workers' Compensation Plan by the voluntary workers' compensation insurance market is a very significant problem. Therefore, the task force recommends that this subsidy be reduced to no more than 10% by December 31, 1996. However, if the reduction in the subsidy does not generate greater acceptance of risks by the voluntary market by reducing the premium volume of the plan to no more than 20% of the total workers compensation insured market by December 31, 1997, the minimum subsidization requirement will no longer apply.

A legislative proposal designed to implement this recommendation is included in Appendix II as Legislative Proposal No. 6.

VII. Miscellaneous

The recommendations described above consist of those the task force was able to develop and achieve a positive consensus on in the time available to it following receipt of the Closed Claim Study. Such recommendations should not, however, be presumed to be the sum total of the action needed to produce necessary changes in the Kansas workers' compensation environment. Therefore, the concluding recommendation of the task force, at least for this phase of its work, is that the work of the Special Legislative Committee on Workers' Compensation, the Governor's Task Force on Workers' Compensation, the 1992 legislative initiatives and other available sources be included in the search for solutions.

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