,Approved:_____
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 5:25 p.m., on March 17, 1993 in Room 123-S of the Capitol.

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

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:
Bud Langston, Vocational rehabilitation provider
Jim Hunt
Dick Charlton, Paralyzed Vererans of America
Glenda Allison, Topeka
John Ostrowski, Attorney, representing the AFL-CIO
Bill Dempsey, Workers Compensation Fund, Kansas Department of Insurance
William F. Morrissey, Assistant Director, Workers Compensation Division, Department of Human Resources

Others attending: See attached list

Continuation of Hearing on Substitute for HB 2354--Workers compensation reform

Bud Langston, Vocational rehabilitation provider, addressed vocational rehabilitation in **Substitute for HB 2354**. He testified in regard to returning injured Kansas workers back to the labor market. More cases will be returned to the ability to perform work at a comparable wage through placement efforts and not have to deal with the more costly and less effective re-education and training portion of the return to work process, see Attachment 1.

Jim Hunt, an injured worker, submitted prepared testimony supporting vocational rehabilitation programs, see Attachment 2.

Richard Charlton, Paralyzed Veterans of America, recommended: 1. employees retain the option to be represented by their own attorney in benefit review conferences, 2. claims by employees that they were not misusing drugs or alcohol at the time of their injuries should be carefully evaluated, 3. employees should have the opportunity to receive directed care and treatment through their normal medical providers, 4. do not make rehabilitation services available to an injured employee only if the employer or insurance carrier agrees, and 5. repeal the open records act in regard to workers compensation medical records, see Attachment 3.

Glenda Allison, Topeka, testified she suffers from bilateral carpal tunnel. She expressed opposition to legislation that would reduce benefits to injured workers like herself, see Attachment 4.

John Ostrowski, Attorney representing the AFL-CIO, testified that benefit reduction is not the solution to this state's worker compensation problems. The AFL-CIO cannot accept the Senate amendments as each is regressive for workers. He listed objections in the area of: a) an ombudsman program without attorneys, b) definition of accident, c) scheduling of upper extremity injuries, d) redefining permanent total disability, e) definition/scheduling of work disability, f) redefining temporary total disability, g) changing the definition of average weekly wage, h) limiting an individual to a 100% lifetime permanent partial disability, i) changing the provisions regarding change of physician, and j) inflicting a "negligence" standard on the worker. Each of these changes can be shown to produce unnecessary hardships on injured workers and are unnecessary to solve the rising costs within the system, see Attachment 5.

Bill Dempsey, Workers Compensation Fund, Kansas Department of Insurance, responded to Committee questions regarding the hiring of private counsel to represent the Fund. He stated there is no impropriety involved in hiring private counsel. He also responded to a Committee question that contributions of smaller employers, as an explicit portion of their premiums, somewhat subsidizes the Fund payment made to the larger employers.

In response to a question regarding how rate increases are arrived at, Mr. Dempsey stated the NCCI files a rate increase with the Insurance Commissioner. The Insurance Commissioner, under Kansas law, is obligated to approve a reasonable rate. Before approving a rate increase, the Insurance Commissioner hires an independent actuary to review the rate filings.

Bill Morrissey, Assistant Director, Workers Compensation Director, Kansas Department of Human Resources, explained the proposed substantive amendments in **Substitute for HB 2354**, as amended by the House Committee of the Whole, with respect to second injury claims. 1) Remove the determiniation of the percent of contribution by the Workers Compensation Fund from the workers compensation litigation process and instead have the issues addressed in a new administrative process. 2) remove the requirement that an employee show it had prior knowledge of a pre-existing condition in order to make a claim against the workers compensation fund. In the majority of instances the entire claim against the fund would be completely disposed of within the office of the insurance commissioner by a claims adjuster. There would be no need for field office staffing. The estimated costs for the additional staff would be $593,115. He also provided the Insurance Department's estimate and the Division of the Budget estimate, see Attachment 6.

There being no further conferees, the hearings on **Substitute for HB 2354** was closed.

The committee meeting was adjourned at 7:00 p.m.

The next meeting is scheduled for March 18, 1993.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE DATE: 3/17/93 (pm)

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Hal Hudson	Topeka	NFIB/Kansas
Sharon Huffman	Topeka	KCDC
R.D. CHARLTON, SR	"	ADAPTING SUNFLOWER P.A.C.
DICK JENTS	TOPEKA	DHR/WORK COMP
John Ostrowski	Topeka	KS AFL-CIO
Ron Littler	" "	KANSAS Insurance Dept.
Kay Luther	" "	" " "
Bill Dempsey	Topeka	Ks. Ins. Dept.
KEITH R LANDIS	TOPEKA	CHRISTIAN SCIENCE Comm on PUBLICATION FOR KS
Tom Whitaker	TOPEKA	KS MOTOR CARRIERS ASSN.
MARY E. TURKINGTON	"	" " "
Jim McHaffie	Topeka	KCCI
Harry D. Welves	Wichita	AFL-CIO
Richard Wagner	Topeka	KCCI
Richard Smith	Wichita	WIBA
Darrel Webb	Wichita	Learjet
BILL ABBOTT	WICHITA	BOEING
TERRY LEATHERMAN	Topeka	KCCI
Shawn Harrelson	Topeka	KS. Tire Dealers Assn.
Wayne Maichel	"	KS AFL-CIO
Bill Leiker	"	URW
Dan Bruner	"	KDHR

PRESENTATION TO THE SENATE COMMERCE COMMITTEE
ON THE SENATE'S AMENDED VERSION
OF SUBSTITUTE HOUSE BILL 2354

(Workers Compensation Cost Containment or Cause Shifting)

Reviewing the Senate's amendments to Substitute House Bill 2354 shows there are two major points that need to be studied.

Cost containment by not providing a return to work program and removing from the employer's liability the provision of temporary total disability benefits and cost of vocational rehabilitation vendors. By utilizing this method there will be an increase in the awards paid under workers compensation using the test currently outlined in 44-510E (permanent partial general disability) in that it is a wage loss determination or the ability to earn pre-injury wage. Therefore, if a person is not provided a vehicle by which to re-enter the labor market at any wage the presumption by the injured worker would be a 100% diminution in the person's capacity to earn wages. In order to dispute this claim it will be necessary to hire vocational experts to determine that the person's ability is not actually their earnings at the time of the adjudication of the case, but their ability. Use of ability will require each side have their hired expert to give testimony in these cases. This will greatly increase the cost of adjudication of workers compensation claims. In most cases the cost of the hired vocational expert will exceed the cost of a return to work plan. The return to work plan as addressed in Substitute House Bill 2354 limits the vendor's cost to $1,500.00. This could be exceeded in the payment of benefit dollars to the vocational expert to adjudicate the findings of the ability to earn comparable wages. Under the proposed legislation the first line in 44-510G indicates that "A primary purpose of the Workers Compensation Act shall be to restore the injured employee to work at a comparable wage." The proposed legislation removes any incentive or vehicle by which the injured employee shall be returned to the labor market at any wage. This piece of legislature mirror images the vocational rehabilitation legislation enacted by Missouri in 1989 or 1990 where the employer has the sole right to refer at his own discretion any employees they wish to have returned to the labor market. Enclosed in the packet provided to this committee is a copy of a letter from Dorothy Powell of the Division of Workers Compensation, Department of Labor and Industry Relations for the State of Missouri. Ms. Powell's title is physical rehabilitationist and not vocational. That is most likely because vocational rehabilitation does not exist in the State of Missouri. You will notice in the fourth paragraph that most vocational

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rehabilitation in the State of Missouri is provided by the Division of Vocational Rehabilitation. If we rely on Social and Rehabilitation Services, and specifically Kansas Rehabilitation Services, to return industrially injured employees to the labor market these numbers will significantly diminish. A small number of workers compensation cases would qualify as persons with severe disabilities. Those workers compensation cases with catastrophic physical impairments, estimated at 100 persons per year, would be eligible for services under all circumstances. In the event that available resources prevented rehabilitation services from serving all eligible persons, the majority of workers compensation cases could be on a waiting list for an indefinite length of time.

In the packet of information provided you will find a copy of Donna Whiteman's letter (Secretary of Kansas Department of Social and Rehabilitation Services) under date of February 24, 1993 where this language is quoted.

Also provided is the response of the rehabilitation community to the February 1993 Legislative Post Audit Report. In this one page response to the Report the dispute of mandated vocational rehabilitation services is explained. Also the agreement by the vocational rehabilitation community that vocational rehabilitation is currently being used as a bargaining chip is evident. To correct this does not require throwing out the entire provision of services, only that it indicate that once a person applies for rehabilitation services, the case is held in abeyance as far as settlement until the rehabilitation process is complete. The Fee Schedule Committee has provided a cap of $3,500 per case. This will be a significant cost savings to the employer under 44-510G. In the Legislative Post Audit (page 24) there is an example of what is described as ineffective rehabilitation. The provision of permanent restrictions and the determination by the medical provider that maximum medical improvement has been attained would offset this example. This case is not representative of either good or bad vocational rehabilitation, only that it is a statement that the medical community must provide permanent and concise restrictions prior to referral for return to work services.

A sample of cases has been provided. This sampling of cases, which numbers approximately 30, shows different return to work outcomes. On page 33 of the Legislative Post Audit Report is a statement that indicates 2 out of the 28 selected cases were returned to work. The sampling of cases provided today would dispute the numbers in the audit and although these cases are not at comparable wage in some cases, some exceeded the pre-injury wage.

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The Division of Workers Compensation reviewed 59 cases from the State Self-Insurance Fund. This represented all cases since July 1, 1992 through February 28, 1993. Twenty of these cases were closed as not eligible, not practical, or refused services. Another 13 of these cases was shown to have been returned to work or ability restored.

Also provided to this committee today is an article from The Business Insurance Magazine under date of December 14, 1992 that identifies the driving costs of workers compensation. This study shows controllable workers compensation cost drivers are a big part of the increase. You will further notice that not only is vocational rehabilitation not a cost driver, but that the provision of these services would tend to drive down the cost of workers compensation. In the second paragraph there is reference to an increased emphasis on returning injured employees to work sooner. The States studied includes the State of Florida. In the Legislative Post Audit Report there was a specific reference to an official from Florida saying vocational rehabilitation is ineffective and costly. There seems to be somewhat of a contradiction between the Legislative Post Audit Report witness and the Business Insurance article. The article in Business Insurance was performed by the Workers Compensation Research Institute.

In summary, after looking at the articles and information Substitute House Bill 2354 is endorsed as a way of effectively returning injured Kansas workers back to the labor market. If there were any changes that would be practical it would be the provision of 70 days for placement instead of 45 days. The reason for this request is so more cases will be returned to the ability to perform work at comparable wage through placement efforts and not have to deal with the more costly and less effective re-education and training portion of the return to work process.

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State of Missouri
Department of Labor and Industrial Relations
DIVISION OF WORKERS' COMPENSATION
P.O. Box 58, Jefferson City, MO 65102-0058

~~John Ashcroft~~
Governor

Donna M. White
Department Director

C. Bruce Cornett
Division Director

February 1, 1993

Richard Thomas
Division of Workers' Compensation
800 S. W. Jackson #600
Topeka, Kansas 66612-1227

Re: Vocational Rehabilitation

Dear Mr. Thomas:

In accordance with our recent telephone conversation, this letter is written as a follow-up to our discussion of vocational rehabilitation in Missouri.

It is not mandatory under our statute for the employer to provide vocational rehabilitation to the injured worker. The employer"may choose" to offer (or not to offer) re-training and only in those cases where the worker sustained a very specific kind of injury and the employer did offer rehabilitation would the Division be involved with the case.

To date, the Division has not supervised or monitored any workers' compensation case with the employer providing vocational rehabilitation to an injured worker. This is not to say there may be those cases in which the employer has authorized rehabilitation for the injured employee but if so, the case has not been brought to our attention as one of the seriously injured described in the statute.

Most vocational rehabilitation in our State is provided by the Division of Vocational Rehabilitation (Department of Education) and they have their own evaluations, counselors, plans and programs. The Director of this Division advises most referrals of work-related injured employees are made by insurance carriers; however, he also advised they have no statistics available on number of these referrals nor injured-worker rehabilitation cases.

I enjoyed visiting with you by telephone and hope this information will be helpful to you!

Sincerely,

Dorothy Powell
Physical Rehabilitation

Reply to:
☐ Cape Girardeau (314) 290-5757
☐ Jefferson City (314) 751-4231
☐ Joplin (417) 629-3032
☐ Kansas City (816) 889-2481
☐ St. Charles (314) 949-2945
☐ St. Joseph (816) 387-2275
☐ St. Louis (314) 340-6865
☐ Springfield (417) 895-6375

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JOAN FINNEY, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

DONNA WHITEMAN, SECRETARY

February 24, 1993

The Honorable Carlos Mayans
House of Representatives
State House, Room 171-W
Topeka, Kansas 66612

Dear Representative Mayans:

I am writing in response to your inquiry about the reference to the Kansas Vocational Rehabilitation Center (KVRC) in Salina in the Legislative Post Audit report on Workers' Compensation.

Over the years since it was established in 1966, KVRC has earned a reputation for providing quality vocational evaluation services at a competitive price. In FY 1992, the Center served 1,475 persons with a staff of 58.5 FTE, including rehabilitation counselors, residential staff, nurses, and administrative support staff. The total budget for the Center was $1.9 million in FY 1992.

While the Center primarily serves Rehabilitation Services clients, a limited number of evaluations have been done for Workers' Compensation claimants. The feedback from these evaluations has been consistently positive, with emphasis on their objectivity.

As specified in the federal Rehabilitation Act, the priority population for the state vocational rehabilitation agency is persons with severe disabilities. A small number of worker compensation cases would qualify as persons with severe disabilities. Those worker compensation cases with catastrophic physical impairments, estimated as 100 persons per year, would be eligible for services under all circumstances. In the event that available resources prevented Rehabilitation Services from serving all eligible persons, the majority of worker compensation cases could be on a waiting list for an indefinite length of time.

The fiscal impact to implement the Center as the preferred provider would require approximately $158,000. Four positions would be needed plus operating expenses. Please let me know if you have any questions.

Sincerely,

Donna Whiteman
Secretary

DW:GY:mlk

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

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RESPONSE TO FEBRUARY 1993 PERFORMANCE AUDIT REPORT

(1) The 1987 law does not mandate vocational rehabilitation services. It only requires the insurance company to report the status of the injured worker at 90 days of lost time.

(2) Vocational rehabilitation is currently being used as a bargaining chip. This could be corrected by passing laws that do not allow lump sum settlements during the rehabilitation process.

(3) The Kansas SRS Vocational Rehabilitation central office has advised us the majority of claimants will not be eligible for services, due to federal mandates that require an emphasis on serving the severely disabled first.

(4) The JTPA program is not a reliable source of funding for the industrially injured due to the fluctuation of available service dollars.

(5) A cap of $3,500 per case has been approved by the medical fee schedule advisory panel. All exceptions must be approved through the Division.

(6) The case example on page 24 is not an example of ineffective rehabilitation. Permanent restrictions were assigned by the doctor. The administrative law judge ordered benefits based on those restrictions. The vocational rehabilitation counselor developed a plan that resulted in a successful return to work at a comparable wage. The settlement was based on the permanent disability. After the rehabilitation process was successfully completed, the doctor reduced the previously assigned permanent restrictions. This is a medical issue, not a rehabilitation issue. Proposals to eliminate work disability when an individual returns to work at a comparable wage are supported by the rehabilitation community.

PROJECTED COSTS OF VOCATIONAL REHABILITATION CASES

Fiscal Year	# of Cases Closed with Cost Data	Total Cost Reported (a)	Avg. Cost Per Case (a)
1990	1,053	$2,594,981	$2,464
1991	1,476	$4,647,940	$3,149
1992	1,616	$5,983,261	$3,703
Projected 1993	**1,258**	**$4,151,713**	**$3,301**

(a) The costs shown here include charges for evaluations, preparation of rehabilitation plans, and actual rehabilitation services for injured workers.

It is not clear how the sample of cases on page 33 were selected. The statutory requirement to complete a vocational assessment on people who have reached maximum medical improvement is 50 days. The parties have an option to change vendors if the statutory time frame is not met. It is unclear why the time frames were exceeded (i.e., medical instability, litigation and other factors outside the control of the rehabilitation vendors). In addition, reasons for case closure were not identified which may lead to a false conclusion that they not successful.

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WORKERS COMPENSATION/VOCATIONAL REHABILITATION

Current Law	# of Days	Placement Proposal	# of Days
Assessment/Plan Development	50		
Review by Rehab. Administrator	20	Job Placement Plan (10 weeks)	70
Deadline to Request Mediation	10		
Final Recommendation By Rehab. Administrator	20		
12 Week Job Placement	84		
TOTAL # DAYS	184	TOTAL # DAYS	70
TOTAL # WEEKS	26.3	TOTAL # WEEKS	10
Temporary Total Benefits 26.3 wks x $299 = $7,864 $7,864 x $1,000 cases = $7,864,000 $7,864 x 500 cases = $3,932,000		**Temporary Total Benefits** 10 wks x $299 = $2,999 $2,999 x 1,000 cases = $2,999,000 SAVINGS OF $4,865,000 $2,999 x 500 cases = $1,499,500 SAVINGS OF $2,432,500	

Richard L. Thomas
Rehabilitation Administrator
3-10-93

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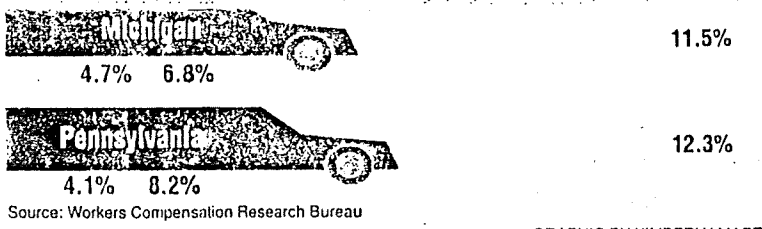

Source: Workers Compensation Research Bureau

GRAPHIC BY KIMBERLY MART

Study says controllable work comp cost drivers a big part of increases

By MEG FLETCHER

Soaring workers compensation costs may be ripe for cost containment efforts, a new study suggests.

Increased emphasis on returning injured employees to work sooner could have a particularly significant impact.

Factors within the control of workers compensation systems are a major component of growing workers comp costs, the study shows.

In fact, these cost drivers accounted for 46% to 67% of the average annual increase in workers comp costs within six selected states from 1984 to 1988. The remainder of the increases was due to "natural cost drivers," which result from economic activity outside the control of comp systems, according to the study.

"This is the first study that quantifies the cost drivers in workers compensation," said Richard A. Victor, executive director of the Workers Compensation Research Institute, which conducted the study.

"It provides much-needed focus and sets priorities for cost containment," he said of the findings, which will be available later this month.

The study uses data on six states—Florida, Georgia, Illinois, Massachusetts, Michigan and Pennsylvania—collected from detailed claim information supplied by the National Council on Compensation Insurance.

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WCRI study

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his was a time of dramatic escalation in costs—as much as 20% a year," said Mr. Victor, who co-authored the study with John A. Gardner, a WCRI senior economist, and Daniel Sweeney, a former research assistant.

During the period studied, the state with the largest average annual increase in total costs was Florida, which saw a 20.8% increase, followed by: Massachusetts, 19.6%; Georgia, 17.3%; Pennsylvania, 12.3%; Michigan, 11.5%; and Illinois, 10.8%. Illinois data, though, only covers 1985 to 1988.

Of these increases, factors within the comp system's control—termed "additional cost drivers" by the study—account for a disproportionate amount.

Three of the states experienced "rapid" growth in these additional cost drivers: Florida, 13.7% per year on average, or 65.9% of overall increases; Massachusetts, 12.8%, or 65.3% of overall increases; and Georgia, 10.2%, or 59% of overall increases.

The remaining three states experienced "moderate" growth in these costs, although additional cost drivers still comprised a large portion of overall cost increases. The states with more moderate growth of these costs were: Pennsylvania, 8.2% per year on average, or 66.7% of overall increases; Michigan, 6.8%, or 65.3% of overall increases; and Illinois, 5%, or 46.3% of overall increases.

The study divided the so-called additional cost drivers into three categories:

- Front-end cost drivers, which are factors affecting the number of claims paid. According to the survey's authors, these include such factors as: an expansion of the scope of compensability, whether by statute, courts or practice; a reduction in employer efforts to promote safety or increased worker carelessness; and increased use of workers comp, such as might occur in a recession or tight labor market.

Increased medical costs attributable to increases in the number of claims—above what could be attributed to natural employment growth—is included in front-end cost drivers.

- Back-end cost drivers, which affect the size of a claim once compensability has been established. These include such factors as: the disability's duration; the propensity of claimants to receive permanent partial disability benefits or wage-loss benefits; the likelihood of receiving a lump sum settlement; and attorney involvement and litigiousness, among other things.
- Medical prices and utilization, which is slightly different from total medical costs, the survey's authors say. This measure captures such cost drivers as: rising medical prices; increased use of new technology; more services being provided; and changes in billing practices.

Adding to these additional cost drivers are the so-called natural cost drivers, which result from normal economic activity, the study says. "These include employment growth, wage growth and general inflation," according to the study's authors.

The WCRI analyzed the data the same way you peel an onion, explained Mr. Victor. The researchers started with the annual average rate of growth of costs in each of state and broke it down into these successively smaller layers to uncover the cost drivers, he said.

Among their conclusions was that growth in medical prices and utilization were significant cost drivers, though they generally accounted for less than the growth in back-end claims costs.

For example, as a percentage of additional cost drivers, medical prices/utilization contributed 19.1% per year on average in Massachusetts, while back-end costs contributed 52.9% annually in that state.

Previously, many system observers thought medical costs were the single biggest cost driver behind workers comp costs, the study noted.

The largest factor driving medical costs was "the growing intensity of treatment and billing practices by medical providers other than hospitals," according to the WCRI.

"For the past decade, medical practice has succeeded in reducing the incidence and average length of stay of hospitalization. Many procedures that formerly required inpatient surgery are now performed as outpatient services. So physician services and other products or services, such as drugs or attendant care, now account for a larger share of the medical cost dollar," the survey's authors explain.

Back-end cost drivers were the largest cost drivers in all states but Pennsylvania.

"The back-end of the claim is the place where a large number of factors come together," the study says.

Many factors that affect the size of a claim are determined at this juncture, the WCRI notes, such as whether: an injured worker returns to work or not; total temporary disability payments are continued; or a claimant is entitled to permanent partial disability or wage-loss benefits.

"In most states, this is a primal focal point for litigation," the WCRI says. "Standards for decision making are frequently subjective, attorneys are frequently involved, hearings requested. . .In short, it is a major friction point in the system."

Despite their contribution to overall workers compensation costs, the WCRI says that few recommendations for system reform have addressed the back end of claims. "Historically, it has been difficult for policymakers and study commissions to untangle the nature of the beast," the authors say.

As a result, "activities aimed directly at improving outcomes at the back end of the claim would appear to have a high payoff," the WCRI says. These activities could include statutory and administrative changes that affect these costs, efforts by employers and insurers to reduce litigation and, in particular, efforts by all parties to return injured employees to work sooner.

Front-end cost drivers were a greater factor in "rust belt" states—Illinois, Michigan and Pennsylvania—than in "sun belt" states of Florida and Georgia, according to the researchers.

This suggests that business cycle fluctuations are an important contributor to these front-end costs, the researchers conclude. The three rust-belt states experienced significant recessions in the early 1980s, followed by rebounds after 1984, whereas Florida and Georgia experienced steady economic growth over the survey period.

One possible explanation for this phenomenon is that in an economic recovery, hiring increases and inexperienced workers have higher injury rates, the WCRI says.

Though the data studied by the researchers comes from the mid 1980s, the findings provide a "good" description of cost drivers in 1992, according to the WCRI.

The study should be of interest to anyone interested in containing workers compensation costs, the WCRI says.

However, Mr. Victor cautions that "cost containment is not an end in itself, but one of several critical system goals."

Other important goals include giving injured workers adequate and equitable benefits promptly and without litigation, as well as timely and quality medical care.

In addition, a workers comp system should provide for speedy return to work and encourage injury prevention.

Achieving those goals often requires legislators to balance the interests of injured workers, who want the system to provide broad compensation, and those of employers, that want the system to be more affordable and cost effective.

The WCRI plans to continue its research into cost drivers and has received an unspecified financial commitment to study these and other costs drivers in at least 15 additional states, according to Mr. Victor.

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"Cost Drivers in Six States" will be available for $75, plus 5% tax for Mass. residents, in late December from the Workers Compensation Research Institute, 101 Main St., Cambridge, Mass. 02142; 617-494-1240.

nel suggests health reform guidelines

SANTA MONICA, Calif.—Any health care reform package drafted by the Clinton administration

The plan, "Parameters for Health System Reform," appeared in the

mer at the Rand Corp. in Santa Monica, Calif.

y name is Jim Hunt, I was previously employed by K.U. Med. Center in Kansas City Kansas as a steam fitter. I worked in tunnels quite often,it was hard,dirty,hot work, but I liked it.

I was injured on the job when myself and three others were installing a squirrel cage fan that weighed 250 lbs. on a shaft that weighed 350 lbs. in an air-handeling unit.I was balancing the fan on a platform while the rest of the crew tried to slide the shaft through the center opening of the fan.I felt my neck tighten up first then my lower back.After the shaft was installed I told the others on my crew to come help me get down and then went to the emergency room.This was my second injury in two years, the first one I was off work for four months,the second time I was off for two years. I then recieved a settlement.

After my second injury I was sent through the Voc-Rehab. program,and tested for transferable skills which at the time I did not think I had any.After the testing I was amazed about what kind of skills I actually had.As for my case worker I felt secure with them.I did not hire an attorney,I think as far as workmans comp. goes attorneys are as much of the problem as anybody else.As I said I felt secure with my case workers. Whenever I had questions they were there to help and I beleived what they told me.You need to understand that I was not in it for the scam,but more for the need.

At the time of my injury I made approx. 24 thousand a year,with real good benefits. I make approx. 22 thousand a year now and I had to cancel my health insurance because I can't afford it,the primiums went up 49% after my first year teaching,which is what I do now.I also have to take college course to maintain my certification,which costs approx. 200. dollars a semester.So in all actuallity I took quite a lose.However I'm working.I've since my injury have gotten behind on bills and am still playing catch-up. So as you should be able to tell I'm not in this for the money.

We have alot of problems in this country,workers comp. is definatley one of them, however doing away with a program that worked for me in my opinion is a big mistake. When we have a system that promotes abuse,such as our workers comp. system we cannot expect it to work.We have a self-serving judicial system,a self-serving media,and a bunch of self-serving legislators.We do have some good people in those positions, however to the common individual taxpayers they are hard to find.Face it we have alot of lazy greedy people in this country,and just as many lawyers looking to make a buck on the pains of others,you've seen them on television commercials saying so-and-so got $250,000 for a back injury or whatever.Which I do beleive an attorney has the right to advertise,but they also have an obligation to the public as a whole not to abuse such rights by false advertising,or advertising scams.When the leaders of insurance companies and even the workers comp. system are demoted and then three weeks later file a claim because their breifcase was to much for them or their lawbooks were to heavy,or they slipped or whatever,abuse the system,and then tell the public I'm right,I'm within my

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legal bounds,then the public questions their legitimacy,and the legitimacy of those who are supposed to be keeping these people in check.It happens from our judicial system through our insurance companies,our Senate and House,and just about any other self-serving system.And when the common average law-abiding,taxpayer hears of such scams it's just one more slap in the face.And as we all know the American public can only take so many slaps before they react.

I would like to add that any educational programs we have in this nation should be cheked thoroughly and access waste ought to be cut,and what works should be built on. Whenever you can make a tax burden a tax payer,you're on the right track.Alot of people are told by their lawyers not to try,Don't try to work,tell the doctor it hurts whatever just keep my money coming,alot of doctors are in lawyers pockets.These individuals should be prosicuted to the fullest extent of the law.Until we make some hard dicisions in this country and face up to what really needs to be done to serve and protect the American public we will be in situations such as this one.We all have a basic understanding of whats right and whats wrong.Lets keep greed and laziness out of the picture and go on to make a better sociaty for our youth and everybody that has the desire to progress. As I said we need to keep our lawmakers in check,let me refer to a problem that upsets me alot,and thats the Brady Bill.Instead of making crimanals do harder time,if any,for offences that include guns,the leaders of our country want to make the gun enthusiast the crimanal for owning a legal,as of now, guns .Thats not right.Another thought to ponder is if you want to save money kill everybody that earned the right to be on death-row that in it's self would save taxpayers $30,000,000 in the first year.But there again we have lawyers,and legislators that say that would'nt detour crime.I know if somebody dies they won't be able to bother anybody again.

In closing I must say going through the workers comp. system was a definate learning experience.Looking back maybe I should have hired an attorney,tied up an alredy over-whelmed court system and tried to grab the gold ring.But I feel more content being able to look at myself in the mirror every morning knowing I'm not part of the problem.However I will try to be part of the solution.Also please be advised the American public are tired of our legislaters cutting off the head to cure the headachs of their problems.

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TESTIMONY PRESENTED TO
SENATE COMMERCE COMMITTEE
MARCH 16, 1993

by
Richard Charlton, Legislative Director
Sunflower Sub-Chapter, Mid-America Chapter
Paralyzed Veterans of America.
1951 SW Mission Ave, TOPEKA KS 66604-3371

Madam Chairperson, members of the Committee. Thank you for the opportunity to testify before you today on Worker's Compensation Reform.

Paralyzed Veterans of America advocates for full inclusion into society of all persons with a disability. We are deeply concerned about the amendments to Substitute House Bill 2354 and recommend the following changes:

1) Item four (4), page 2: Your committee is recommending ombudsman to represent the employee during the claimant advisory programs and benefit revenue conferences. The ombudsman concept would be of value, especially as a starting point in the claim process. Ombudsmen are salaried agency affiliated employees. An ombudsman could be restrained or limited in their representation of the employee because of this affiliation.

Therefore, it is imperative that the employee retain the option to be represented by their own attorney.

2) Item eight (8), page four (4): We concur with your committee recommendation prohibiting recovery when drugs and alcohol contribute to the injury. We wish to point out that some employees may require types of medication which may give a false reading in alcohol or drug testing.

Therefore, we recommend that care be taken to evaluate claims by the employee that they were not misusing these items at the time of their injury.

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3) Item fifteen (15), page five (5): Your committee has recommended exclusive discretion, for choosing medical providers be given to the employer and/or insurers without the input of the employee. These health care providers are paid by the employers and/or insurers and would tend to be biased toward the bill payer. Therefore, the employee should have the opportunity to receive directed care and treatment through their normal medical providers.

4) Item twenty (20), page seven (7): Your sub-committee is recommending retaining vocational rehabilitation services only if the employer or insurance carrier agrees. (Three years ago Missouri passed such a law. Employers and insurers have not made a single referral to Vocational Rehabilitation since they passed a similar law.) If there isn't any agreement, the worker can request vocational rehabilitation services by referral of the Vocational Rehabilitation Administrator. You are removing all requirements to provide the injured employee any opportunity to be rehabilitated through the workers' compensation program.

Therefore, in order to receive necessary rehabilitation services they will have to be put on an extremely long waiting list. In fact the severely disabled sometimes are precluded from rehabilitative services because of the relative cost of rehabilitation.

Vocational Rehabilitation Services of Social and Rehabilitation Services (SRS) has consistently been underfunded. They cannot service all of the disabled clients on their current, extremely long waiting list . Therefore, the added influx of new clients, who would have normally received services through workers' compensation funds, would now add to the backlog of SRS clients.

5) Finally, we have a great concern about the fact that the workers compensation records are open to the public. Public access to these records has resulted in many job applicants being passed over for employment because they have a record of an on-the-job injury.

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The Americans With Disabilities Act prohibits employers from making an inquiry into a job applicant's medical history, including prior workers compensation claims. Even though the Division of Workers Compensation has no control over what an employer asks an employee on a job application, they certainly could have control over what information they release to prospective employers.

This could be accomplished very simply by repealing K.S.A. 44-550b(a)and (b) which states: (a) *All records provided to be maintained under K. S.A. 44-550 and amendments thereto shall be open to public inspection. (b) This section shall be part of and supplemental to the workmen's compensation act.*

With this section repealed, the workers compensation records would then be subject to the Kansas Open Records Act, K.S.A. 45-201 et seq., which would not allow the records to be released to the public.

Kansas is currently the only state, that allows free public access to all workers compensation records without any tracking system whatsoever. Many states have laws that impose penalties for unlawful release and/or use of the information contained in a workers compensation file.

The State of Kansas is in direct violation of the ADA. Therefore, the records should be closed.

I am attaching copies of some of the state laws regarding workers compensation to give you an idea of what other states are doing. Please review these laws and give them your careful consideration.

In conclusion, Worker's Compensation is supposed to be no-fault insurance but it has become very biased toward the employers and insurers. Don't you think its time that Kansas got on the bandwagon and protected the rights of disabled workers?

Thank you for this opportunity to present this testimony. I will be glad to answer any questions you might have at this time.

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STATE LAWS REGARDING WORKERS COMPENSATION RECORDS

ALASKA - Sec. 23.30.107. **Release of information.** Upon request, an employee shall provide written authority to the employer, carrier, rehabilitation provider, or rehabilitation administrator to obtain medical and rehabilitation information relative to the employee's injury.

Sec. 23.30.247. **Discrimination prohibited.** (a) An employer may not discriminate in hiring, promotion, or retention policies or practices against an employee who has in good faith filed a claim for or received benefits under this chapter. An employer who violates this section is liable to the employee for damages to be assessed by the court in a private civil action.

(b) This section may not be construed to prevent an employer from basing hiring, promotion or retention policies or practices on considerations of the employee's safety practices or the employee's physical and mental abilities; or may this section be construed so as to create employment rights not otherwise in existence.

(c) This section may not be construed to prohibit an employer from requiring a prospective employee to fill out a preemployment questionnaire or application regarding the person's prior health or disability history as long as it is meant to either document written notice for second injury fund reimbursement under AS 23.30.205(c) or determine whether the employee has the physical or mental capacity to meet the documented physical or mental demands of the work. (§ 40 ch 79 SLA 1988)

Effective date - July 1, 1988

GEORGIA - 34-9-12. Employer's record of injuries; availability of board records...

(b) The records of the board, insofar as they refer to accidents, injuries, and settlements, shall not be open to the public but only to the parties satisfying the board of their interest in such records and their right to inspect them. Under such reasonable rules and regulations as the board may adopt, the records of the board as to any employee in any previous case in which such employee was a claimant shall be open to and made available to such claimant, to an employer or its insurance carrier which is called upon to pay compensation, medical expenses, or funeral expenses, and to any party at interest, except that the board may make such reasonable charge as it deems proper for furnishing information by mail and for copies of records.

AG letter, dated January 25, 1991, RE: All records of the State Board of Workers' Compensation pertaining to accidents, injuries, and settlements are confidential, unless a party can meet the statutory requirements for access or has authority pursuant to the Child Support Recovery Act.

The parties to the claim are the employee, the employer, and the insurer.

FARRELL et al. v. DUNN. (copy in file) Plaintiff's (Farrell) car was struck by Defendant's (Dunn) car. Defendant attempted to obtain

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certified copies of Plaintiff's workers compensation records but was denied. Defendant filed a motion to compel the Board to produce the records, but was denied based upon OCGA § 34-9-12 because Defendant was not a party in the workers compensation claim.

Idaho - The following information sheet must accompany all certification forms (requests for information from workers compensation records):

Idaho Code §9-340[(38)](37) exempts from mandatory disclosure under the Idaho Public Records Act "worker's compensation records of the Idaho Industrial Commission" except:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitation; or

(c) To employers and prospective employers not subject to the provisions of the americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

If you or your business employ five or more persons or do business with the federal government or receive federal funding, you or your business may be subject to the Americans with Disabilities (42 U.S.C. 12112), the Rehabilitation Act of 1973 (29 U.S.C. 701), or the Idaho Human Rights Act (§67-5901), Idaho Code. If you have any questions as to whether you are subject to these laws, please consult your attorney.

MARYLAND - AG Letter, dated April 25, 1990, RE: Disclosure of Medical Records concludes that medical records should be placed in a sealed envelope within the claim file, or access thereto otherwise restricted, so that these records will not be impermissibly redisclosed when public access to the file is allowed.

The Annotated Code of Maryland, health General Article, §4-302(d), as amended by Senate Bill 584, provides as follows:

A person to whom a medical records is disclosed may not redisclose the medical record to any other person unless the redisclosure is:

(1) authorized by the person in interest;
(2) otherwise permitted by this subtitle;
(3) permitted under Article 88A, §6B of the Code; or
(4) directory information

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A claimant's consent to disclosure of medical records by a health care provider is not authorization for redisclosure by any person, including the Commission, to whom the records are disclosed. Thus, medical records within a workers' compensation claim file, under this revised law, are not to be open to public inspection.

MICHIGAN - §418.230 ***GET FROM LAW BOOK

Since July 1992, as a result of the ADA, bureau responses to requests for information include the following information:

> "The users of this information should be aware of prohibitions against covered entities using this information for pre-employment inquires as described in Title I of Public Law 101-336, The Americans with Disabilities Act of 1990".

The number of responses to requests from employers for workers compensation information decreased by 71% within the first year.

MINNESOTA - Workers Compensation 176.231 Subd. 8. **No public inspection of reports.** Subject to subdivision 9, a report or its copy which has been filed with the commissioner of the department of labor and industry under this section is not available to public inspection. Any person who has access to such a report shall not disclose its contents to anyone in any manner.

*A person who unauthorizedly discloses a report or its contents to another is guilty of a misdemeanor.

Subd. 9 **Uses which may be made of reports.** Reports filed with the commissioner under this section may be used in hearings held under this chapter, and for the purpose of state investigations and for statistics. These reports are available to the department of revenue for use in enforcing Minnesota income tax and property tax refund laws, and the information shall be protected as provided in chapter 270B.

The division or office of administrative hearings or workers' compensation court of appeals may permit the examination of its file by the employer, insurer, employee, or dependent of a deceased employee or any person who furnishes written authorization to do so from the employer, insurer, employee, or dependent of a deceased employee.

> The following is contained on the Authorization Form:
> "Information concerning disability may not be used to make a job decision unless state or federal law requires use of this information. Any use or distribution of this information beyond that authorized by the subject of this data unless authorized by state or federal law is prohibited. Questions concerning use of disability information may be directed to the Minnesota Department of Human Rights at (612) 296-5663, or toll free in greater Minnesota at 1-800-652-9747."

NEVADA - NRS 616.192 **Confidentiality and disclosure of information; penalty for use of information for political purposes; privileged**

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communications.

1. Except as otherwise provided in this section and in NRS 616-193 and 616-550, information obtained from any employer or employee is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's identity.

2. Any claimant or his legal representative is entitled to information from the records of the insurer, to the extent necessary for the proper presentation of a claim in any proceeding under this chapter.

*6. If any employee or member of the board of directors or manager or any employee of the manager, in violation of this section, discloses information obtained from the files of claimants or policyholders, or if any person who has obtained a list of claimants or policyholders under this chapter uses or permits the use of the list for any political purposes, he is guilty of a gross misdemeanor.

NORTH DAKOTA - North Dakota Century Code, Chapter 65-05-32. **Privacy of records and hearings.** Information contained in the claim files and records of injured employees is confidential and is not open to public inspection, other than to bureau employees or agents in the performance of their official duties. Providing further that:

1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant.

2. Employers or their duly authorized representatives may review and have access to any files of their own injured workers.

3. Physicians or health care providers treating or examining workers claiming benefits under this title, or physicians giving medical advice to the bureau regarding any claim may, at the discretion of the bureau, inspect the claim files and records of injured workers.

4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the bureau at any stage of the proceedings on any matter pertaining to the administration of this title.

5. The claimant's name; social security number; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public.

6. At the request of a claimant, the bureau may close the medical portion of a hearing to the public.

NEW JERSEY - Article 9. Inspection of Records. §34:15-128. **Limited right to inspect or copy records.** Notwithstanding any other provision of the chapter to which this act is a supplement or of any other law, no records maintained by the Division of Workmen's Compensation shall be open to inspection or copying by or on behalf of any person who seeks such inspection or copying for the purpose of selling or furnishing for a consideration to others reports or abstracts or workmen's compensation records or work-injury records

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pertaining to any individual, except in the case of an investigation by or on behalf of an employer in connection with any pending workmen's compensation case.
§34:15-59. **Docket; records.** The secretary of the bureau shall keep a docket in which shall be entered the title of each cause, the date of the determination thereof, the date of appeal, if any, and the date on which the record in case of appeal was transmitted to the appellant. The secretary shall also file the record of each case left with him by the official conducting the hearing, and shall keep a card index of such record in such manner as to afford ready reference thereto. such records shall be open to the inspection of the public.

NEW MEXICO - 52-5-21. **Administration records confidentiality; authorized use.** Unless introduced as evidence in an administrative or judicial proceeding, all records of the administration shall be confidential, provided, however, that, once an accident or disablement occurs, any person who is a party to a claim upon that accident or disablement is entitled to access to all files relating to that accident or disablement and to all files relating to any prior accident, injury or disablement of the worker.
Effective date: January 1, 1991.

NEW YORK - Workers' Compensation Law §125. **Job discrimination prohibited based on prior receipt of benefits.**
1. It shall be unlawful for any employer to inquire into, or to consider for the purpose of assessing fitness or capability for employment, whether a job applicant has filed for or received benefits under this chapter, or to discriminate against a job applicant with regard to employment on the basis of that claimant having filed for or received benefits under this chapter. An individual aggrieved under this subdivision may initiate proceedings in a court of competent jurisdiction seeking damages, including reasonable attorney fees, for violation of this subdivision.
*2. An employer who violates the provisions of subdivision one of this section shall be guilty of a misdemeanor, and upon conviction shall be punished, except as in this chapter or in the penal law otherwise provided, by a fine of not more than one thousand dollars.
3. In addition to the criminal penalty set forth herein, where the chair has determined that an employer has violated the provisions of subdivision one of this section, the chair may, after a hearing, impose a penalty against such employer in an amount not exceeding twenty-five hundred dollars.
Effective date Jan 1, 1992.

OHIO - BWC Internal Memorandum from Law Director to BWC Administrator, Subject: Release of Information to the General Public, Dated November 12, 1992.

"The Bureau's obligation to disclose public information is set forth in Ohio Revised Code §149.43(B) which states the following, in relevant part:

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> All public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time.

More specifically, Ohio Revised Code §4123.88 restricts the public availability of information contained in workers' compensation claim files. Section 4123.88 states, in pertinent part:

> No person shall, without prior authority from the bureau, a member of the commission, the claimant, or the employer, examine or directly or indirectly cause or employ another person to examine any claim file or any other file pertaining thereto ... No employee of the bureau or commission ... shall divulge any information in respect of any claim which is or may be filed with the bureau or commission to any person other than members of the commission or to the superior of the employee except upon authorization of the administrator of workers' compensation or a member of the commission or upon authorization of the claimant or employer.

TEXAS - Texas Workers' Compensation Act, Article 2, Chapter C, §2.31. **Injury information confidential.** (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this Act.

(b) Information concerning an employee who has been finally adjudicated of wrongfully obtaining payment under Section 10.04 of this Act or Section 32.51, penal Code, is not confidential.

(c) The commission shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (d) of this section if:

(1) the claim is open or pending before the commission, on appeal to a court of competent jurisdiction, or the subject of a subsequent suit where the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form developed by the commission for this purpose and provides all required information.

(d) Information on a claim may be released as provided in Subsection (c) of this section to:

(1) the employee or the employee's legal beneficiary;

(2) the employee's or the legal beneficiary's representative;

(3) the employer at the time of injury;

(4) the insurance carrier;

(5) the Texas Certified Self-Insurer Guaranty Association, if established by law and if that association has assumed the obligations of an impaired worker;

(6) the Texas and Casualty Insurance Guaranty Association, if that association has assumed the obligations of an

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impaired insurance company; or

(7) a third party litigant in a lawsuit in which the cause of action arises from the incident which gave rise to the injury, in which case Subsection (c)(1) of this section does not apply.

§2.33. **Information available to prospective employers.** (a) When a person applies for employment, the prospective employer who has workers' compensation insurance coverage is entitled, on compliance with this chapter, to obtain information on the applicant's prior injuries.

(b) The employer must make the request by telephone or file the request in writing not more than 14 days after the date on which the application for employment is made.

(c) The request must include the applicant's name, address, and social security number.

(d) the employer must obtain written authorization from the applicant before making the request.

(e) If the request is made in writing, the authorization shall be filed simultaneously. If the request is made over the telephone, the employer shall file the authorization not later than the 10th day after the date on which the request is made.

VIRGINIA - §65.2-903. **Records not public.** The records of the Commission, insofar as they refer to accidents, injuries and settlements, shall not be open to the public but only to the parties satisfying the Commission of their interest in such records and their right to inspect them.

WASHINGTON - RCW 51.28.070. **Claim files and records confidential.** Information contained in the claim files and records of injured workers, under the provisions of this title, shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but representatives of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant. A claimant may review his or her claim file if the director determines, pursuant to criteria adopted by rule, that the review is in the claimant's interest. Employers or their duly authorized representatives may review any files of their own injured workers in connection with any pending claims. Physicians tr3eating or examining workers claiming benefits under this title, or physicians giving medical advice to the department regarding any claim may, at the discretion of the department, inspect the claim files and records of injured workers, and other persons may make such inspection, at the department's discretion, when such persons are rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this title.

WISCONSIN - §102.33(2)(a) Except as provided in par. (b), the records of the department related to the administration of this

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chapter are subject to inspection and copying under s. 19.35(1).

102.33(2)(b), Stats., Notwithstanding par. (a), a record maintained by the department that reveals the identity of an employee who claims worker's compensation benefits, the nature of the employee's claimed injury, the employee's amount, type or duration of benefits paid to the employee or any financial information provided to the department by a self insured employer or by an applicant for exemption under s. 102.28(2)(b) is confidential and not open to public inspection or copying under s. 19.35(1). The department may deny a request made under s. 19.35(1) to inspect and copy a record that is confidential under this paragraph, unless one of the following applies:

1. The requester is the employee who is the subject of the record or an attorney or authorized agent of that employee. an attorney or authorized agent of an employee who is the subject of a record shall provide a written authorization for inspection and copying from the employee if requested by the department.

2. The record that is requested contains confidential information concerning a worker's compensation claim and the requester is an insurance carrier or employer that is a party to the claim or an attorney or authorized agent of that insurance carrier or employer. an attorney or authorized agent of an insurance carrier or employer that is a party to an employee's worker's compensation claim shall provide written authorization for inspection and copying from the insurance carrier or employer if requested by the department.

***WYOMING** - §27-14-805. **Confidentiality of information.** Except as otherwise provided by this act, information obtained from any employer or covered employee pursuant to reporting requirements under this act shall not be disclosed in a manner which reveals the identity of the employer or employee except to the employer, the employee, legal counsel for an employer, legal counsel for an employee or in situations necessary for the division to enforce any of the provisions of this act. The confidentiality limitations of this section do not apply to transfers of information between the divisions of the department of employment so long as the transfer of information is not restricted by federal law, rule or contract. Any employee who discloses information outside of the department in violation of federal or state law may be terminated without progressive discipline.

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CLAIMS INFO REQUEST

Today's Date_____ Date of request_____ Date received_____

Name of person for which information requested _____
S.S. No. _____

Is there a wc claim filed for this individual?
no___ yes ___ #_____

Is there a release from the claimant?
no___ yes___ clmt rqst ____ subpoena ____

What is the location of file?
Jun ___ Anc ___ Fbx ___
Date Sent _____ Date Sent _____ Date Sent _____

Has a copy previously been provided? _____

What was provided?
Copies #_____
update only from _____
complimentary copy ____ bill for copy ____

Screens (note in diary) ____
claim ____ pymt ____ diary ____ jdcl ____

type of letter sent _____

Date mailed _____ Billed to _____
#pages _____ #screens _____ Inv. #_____

---

last injurious exposure _____ Er rqst _____ Subpoena _____
adjustor req-other claims this claimant, addtl file copy _____
employ screeng _____ credt ck _____ agen info-qualify req ____
third party _____ claimant copy___ atty representation____ 3/17/93
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INFORMATION SHEET TO ACCOMPANY
§9-340[(38)](37) CERTIFICATION FORM

Idaho Code, §9-340[(38)](37) exempts from mandatory disclosure under the Idaho Public Records Act "worker's compensation records of the Idaho Industrial Commission" except:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent

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jurisdiction.

If you or your business employ five or more persons or do business with the federal government or receive federal funding, you or your business may be subject to the Americans with Disabilities (42 U.S.C. 12112), the Rehabilitation Act of 1973 (29 U.S.C. 701), or the Idaho Human Rights Act (§67-5901), Idaho Code. If you have any questions as to whether you are subject to these laws, please consult your attorney.

§9-340[(38)](37) CERTIFICATION

_____ (**Requester**) hereby requests that the Idaho Industrial Commission release to him/her/it the following documents or records in its possession relating to:

Name of Claimant or Claim #:

_____

_____

_____

_____

_____

REQUESTER CERTIFIES THAT: (choose one)

☐ He/she/it is an employer subject to the provisions of the Americans with Disabilities Act (ADA) 42 U.S.C. 12112; the Idaho Human Rights Act §67-5901, Idaho Code; the Rehabilitation Act of 1973, as amended 29 U.S.C. 701; or other similar statutory limitations, that a conditional offer of employment has been extended to claimant, that such inquiry is made of all its applicants for this category of employment to whom conditional offers have been extended, and that the information received will be used only in accordance with the ADA or other similar statutory limitation (attach copy of written conditional offer of employment);

☐ He/she/it is an employer not subject to the Americans with Disabilities Act (ADA) 42 U.S.C. 12112, the Idaho Human Rights Act §67-5901, Idaho Code; the Rehabilitation Act of 1973, as amended 29 U.S.C. 701; or other similar statutory limitations, and that claimant has executed a written release authorizing the Industrial Commission to provide the requested records (attach copy of written release); or

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☐ A civil court of competent jurisdiction has determined that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records (attach copy of court's order).

Requester's Signature

Print Name and Title

Date

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Question # 8

AUTHORIZATION FORM FOR FILE REVIEW OR RELEASE OF COPIES of WORKERS' COMPENSATION CLAIMS FILE

To: STATE OF MINNESOTA
Workers' Compensation Administrative Operations
Records Section

I hereby authorize _____
to review and/or receive copies of any or all parts of the Minnesota Workers' Compensation claims file(s), for the date(s) of injury as indicated below. This authorization is valid for six months from the date signed.

Employee Name: _____

Social Security Number: _____

Employer Name: _____

Insurer Name (if known) _____

Date(s) of Injury: _____

Information concerning disability may not be used to make a job decision unless state or federal law requires use of this information. Any use or distribution of this information beyond that authorized by the subject of this data unless authorized by state or federal law is prohibited. Questions concerning use of disability information may be directed to the Minnesota Department of Human Rights at (612) 296-5663, or toll free in greater Minnesota at 1-800-652-9747.

_____
Signature

_____
Company Name (if applicable)

_____
Date

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Question # 8

Minnesota
Department of Labor and Industry

443 Lafayette Road
St. Paul, Minnesota 55155
(612) 296-6107

Telecommunication Device
for the Deaf (612) 297-4198

FAX (612) 297-1329

RE: AUTHORIZATIONS FOR MINNESOTA WORKERS' COMPENSATION CLAIMS FILE REVIEW OR RELEASE OF COPIES

M. S. §176.231 requires that authorization be given by the employee, employer, insurer, or dependent of the deceased employee in order to review and/or copy any or all parts of a Workers' Compensation file.

This authorization must be an **original** signed and dated by the appropriate party, and addressed to Workers' Compensation Administrative Operations, Records section. Also, please be specific as to date of injury. If you wish to review all of the files for a particular employee, please indicate "any and all" dates of injury. (Please note that requests for "any and all" dates of injury may require additional processing time.) Only those dates of injuries indicated on the authorization can be reviewed by the requesting party. An employer or insurer must obtain authorization from the employee to review a file to which it is not a party.

A sample authorization form is attached for your use.

Attachment

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Minnesot

EE Name

SSN

DOI

Signature	Company Name	Date

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STATE OF NEW JERSEY
DEPARTMENT OF LABOR

RAYMOND L. BRAMUCCI
Commissioner

DIVISION OF WORKERS' COMPENSATION
CN 381
TRENTON, NEW JERSEY 08625-0381
(609)-292-2414

MARK E. LITOWITZ
Director
and
Chief Judge

RE:
SS:
VS:
C.P. No.
Your File:

Dear

This will acknowledge receipt of your request for copies of records in the above entitled case.

In an effort to expedite your request we ask that you sign the certification and return it to us along with your check made out to the NJDWC with the check marked "not to exceed $7.50". When we receive same we will notate the appropriate charge on your check, and forward a copy of your check and certified copies of the records you requested.

CERTIFICATION

I, the undersigned, do hereby state under penalty of the law, that I seek the inspection or copying of the records of the Division of Workers' Compensation concerning _____ *(Employer)*

on behalf of _____ *(Requester)*, in connection with a Workers' Compensation case by said

_____ *(Petitioner)*. I do not seek such records for the purpose of selling or furnishing

for a consideration to others, reports or abstracts of these records pertaining to any individual, except in the case of an investigation or on behalf of an employer in connection with any pending Workers' Compensation case. (NJSA 34:15-128)

_____ *(Date)*

_____ *(Signature - Title)*

NOTE

You may expedite future copywork requests by enclosing a completed certification and check with your request. You may reproduce the certification for this purpose. Copy work charges are $.50 per page for the first 10 pages, $0.25 per page for the next 10 pages and $0.10 per page thereafter. Please note that a separate form must be completed for each file requested.

N.J. Division of Workers' Compensation

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STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

MARY SMITH

VS.

Civil Action
File No.:

SEARS DEPARTMENT

CERTIFICATE PURSUANT TO
R.I.G.L. SECTION 9-17-5.1

I, Matthew P. Carey, as Keeper of the Records of the Department of Labor/Division of Workers' Compensation, being charged with the responsibility of being custodian of the records of the Division do hereby certify that pursuant to a subpoena duces tecum served on February 12, 1993, requesting the entire workers' compensation file regarding Linda Smith SS# 000-00-0000, date of injury August 21, 1989, including but not limited to medical records, any evidence of payment and any other document in our possession concerning Ms. Smith, a copy of which is attached, I conducted a due and diligent search of the records of the Division and hereby submit the attached copies of those records requested in the subpoena.

The copies of records for which this certification is made are true and complete reproductions of the original records which are in the possession of the Division of Workers' Compensation. The original records were in the regular course of business, and it was the regular course of the Division of Workers' Compensation to make such records at or near the time of the matter recorded.

This certification is given pursuant to Rhode Island General Laws Section 9-17-5.1 by the custodian of the records in lieu of his personal appearance.

Matthew P. Carey
Keeper of the Records

Subscribed and sworn to before me this _____ day of February, 1993.

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TESTIMONY BEFORE SENATE SUBCOMMITTEE

My name is Glenda Allison, I reside at 1641 S.W. 37th Terrace, Topeka, Kansas. I suffered a workers' compensation injury from my work as a secretary/word processor with USD 501. The nature of my injuries is bilateral carpal tunnel. In addition, I have constant problems with my shoulders and neck, also caused by the repetitive nature of my work.

I have heard that the Senate is considering severely reducing benefits to workers who have injuries like mine. I would describe my injuries as very severe. My daily household tasks, such as vacuuming, laundry and folding clothes, ironing, reaching into cupboards and closets, carrying in groceries, unscrewing jars and pop bottles, aggravates the pain. There are times when I have to depend upon friends to complete some of these simple tasks. Even driving for any considerable length of time causes intense pain. There are days when my pain is so severe I have trouble turning the key in the ignition. I have to use both hands to turn the key. I am on anti-inflammatory and pain medication daily. The stress of this injury and its effects on my future goals has made it necessary for me to be on anti-depressants and/or tranquilizers.

As a result of my injuries, I was unable to continue my work and my employer has not been able to accommodate me. I am 51 years old, and divorced, and my sole source of income is my ability to work as a secretary which is what I have done for the past 30

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years. My employment plans had been to remain with USD 501 until retirement because of the good benefits. Having performed this type of work for 30 years, my employment outlook is bleak. Quite frankly, it is difficult to be gainfully employed without use of your hands. I have made inquiries with employers regarding possible employment. Every office that I have contacted uses computers to some degree, either by inputting actual information or accessing records in order to perform the job. My physician has instructed me to avoid jobs requiring oft repetitive use of my hands and upper extremities. HOW MANY JOBS DO YOU KNOW OF THAT CAN BE PERFORMED WITHOUT THE USE OF HANDS AND ARMS?

I am also involved in vocational rehabilitation. In my opinion, <u>it is a joke</u>! For the past nine months, I have worked with a counselor chosen by the insurance company. He seems to be working on their behalf rather than mine. At every turn he has slanted reports against me, by making negative connotations in his progress reports. I have no hesitancy in saying that he has gotten more out of voc rehab than I have. Due to my frustration and disgust with this process, I enrolled in classes at Washburn University to try to increase my employment potential. Washburn University has given me support for attending classes by providing notetakers, carbonless two part notebook paper and a tape recorder. This is the most positive thing that has happened to me.

The sad part is that I feel my injuries were preventable. I recall requesting equipment that would ease the pressure on my wrists,

neck and arms, because I realized that my work station was causing me problems. I was told that the budget would not allow such equipment. On my own, I tried rearranging my work station by adjusting the chair height, taking pillows to sit on and placing them behind my back for support. None of these measures seemed to ease my increasing pain and discomfort.

Now being sensitized to what happened to me, whenever I go into an office or place of business, I am upset because I see similar conditions and know that my pains and problems are being inflicted on others due to their working conditions. I am amazed that with the increase of carpal tunnel syndrome that the business community has not seen fit to put resources into redesigning the work stations of their support personnel in order to minimize these injuries. It would seem to me that it would be more cost efficient to prevent such injuries from occurring to their employees rather than having to pay workers' compensation claims. I feel that more attention should be focused on ergonomics.

I would urge the Senate not to pass a law reducing benefits to injured workers like myself. I feel strongly that the publicity surrounding certain high dollar, political settlements, has hurt me, and workers like me.

Respectfully submitted,

Glenda Allison

Glenda Allison

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TESTIMONY
of the
AFL-CIO

SENATE COMMERCE COMMITTEE
Substitute for HB 2354
March 17, 1993

As members of this body are well aware, this is the second consecutive year that massive time has been spent on workers' compensation "alleged reform" in Kansas. The mandate of business, and a proposition which the AFL-CIO concurs with, is to reduce costs. In its simplest form, this body must deal with "whose ox are we goring?".

It would seem that with the massive amount of study to date, the cost drivers, and the solutions to those cost drivers, are identifiable. This committee knows what is necessary to reduce costs within the system, and has known for some time that costs can be controlled without dramatic reduction in benefits to injured workers. Time and again, it has been pointed out to the legislature that we are a "poor benefit state". **The solution cannot be to reduce benefits every time medical providers raise costs, there is an increase of compensable accidents, insurance companies make a poor investment, court reporter fees go up, attorneys raise their hourly rates for defending claims, or administrative costs increase.** If previous Kansas legislators had taken such an unprecedented path, current benefits would now be zero. Rather, the issue is one of finding fairness in the short term, and implementing the groundwork for long range solutions.

The Kansas AFL-CIO has always sincerely believed, and has expressed the position, that benefit reduction is not the solution to this State's problems. Although it may tread upon certain "special interests", the areas which this body should be concentrating on are:

1. **Medical cost containment:** Kansas should adopt the national recommendations of a fee schedule *coupled with* utilization review or group pooling *coupled with* a very limited choice of physicians.

2. **Safety:** There is apparent opposition to passing the strongest possible safety law. Safety and its enforcement must be thought of as a cost reducer as opposed to a cost driver.

3. **State competitive fund:** For those who believe that state competitive funds are unworkable, there is an attachment based on the most current information. Small businesses should be storming the Statehouse to be removed from the assigned risk pool and receive the benefit of competition in the marketplace which in turn would lead to efficiency

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of administration and logical investment and reserve policies.

4. **Vocational rehabilitation:** Substitute for HB 2354 streamlines vocational rehabilitation. Current provisions in the Senate bill eliminate vocational rehabilitation. The legislature should understand and take responsibility for the fact that many of the problems that the current vocational rehabilitation system has were created by the language of the 1987 amendments.

5. **Abuse:** Fraud is difficult to prove either criminally or civilly. Most of the conferees who have appeared and testified about alleged "fraud" within the system were really testifying about "abuse". In reviewing the laundry list provided in substitute for HB 2354, as a practitioner, I can specifically identify at least one case for each item. Is there fraud within the system? Maybe. Is there abuse within the system? Definitely. Why, then, remove the abuse provisions?

6. **Education:** Over and over, certain individuals have expressed that attorneys are the "root of all evil" within workers' compensation. Some provisions have gone so far as to make it virtually illegal to hire an attorney to represent them in the workers' compensation claim. Passing a law which prohibits people from obtaining legal advice borders on unconscionable. The key is to understand why people seek legal advice in the workers' compensation system. The seeking of legal advice is not predicated upon TV advertising. No matter how many TV ads I see for an electric cow prodder, I will not buy one if I don't have any cows! People seek attorneys under the current system because they are without information and are not being serviced by insurance companies. It is suggested that the provisions of Sub. HB 2354, as involves education (including education from a beefed up Claimant's Advisory Section), dovetail quite well with the abuse provisions. Furthermore, if we added to that a competitive state fund such that the quality of service went up, it is unquestioned that there would be dramatic decreases in litigation. **Reporting a workers' compensation accident was never intended to be a declaration of war by the employee upon the employer.**

7. **Workers' Compensation Fund:** There are instant savings by making involvement of the Workers' Compensation Fund a nonlitigated situation. It is my understanding that attorney's fees for the Fund will be six million dollars in 1993. This does not include the costs of litigation, which certain estimates say double the actual fees. The Fund has evolved from its inception of being all public

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money, and from its original purpose of hiring the handicapped.

We believe that Sub. HB 2354 represents a compromise by labor on several key issues including work disability, preexisting conditions, Social Security offsets, child support garnishments, appeal of preliminary hearings, notice of accidents, the workers' compensation board, and others.[1] Furthermore, "groundwork" is laid for long term solutions in terms of data collection, fee schedules, advisory council, and other areas.

The AFL-CIO can accept none of the Senate amendments as each is regressive against the workers. The most glaring objections are in the areas of:

a) an ombudsman program without attorneys,

b) definition of accident,

c) scheduling of upper extremity injuries,

d) redefining permanent total disability,

e) definition/scheduling of work disability,

f) redefining temporary total disability,

g) changing the definition of average weekly wage,

h) limiting an individual to a 100% lifetime permanent partial disability,

i) changing the provisions regarding change of physician, and

j) inflicting a "negligence" standard on the worker.

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[1] There have been recent references to the fact that organized labor does not represent the majority of workers in the State of Kansas. In fact, organized labor has been called a "special interest group". It is true that we do serve the special interests of the working men and women of Kansas. We would again emphasize that this is a so-called "right to work" state, and that there does not exist one set of workers' compensation statutes for union employees, and another set of laws for nonunion employees. Thus, in helping one, we believe we help the others. Furthermore, there is a great diversity of wages paid to union workers, such that we do encompass a broad spectrum of workers.

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Each of these changes can be shown to produce unnecessary hardships on injured workers and, again, are unnecessary to solve the rising costs within the system.

Respectfully submitted,

John M. Ostrowski

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Idaho Announces State Fund Dividend of $23.7 Million

On December 9, 1992, Idaho Governor Cecil D. Andrus announced that the State Insurance Fund would distribute a $23.7 million dividend to its policyholders.

The dividend, from unspent workers' compensation premiums, was distributed in more than 13,240 checks which were mailed to Idaho businesses January 6, 1993.

"I am pleased to return this dividend to Idaho employers because it is a direct reflection of their efforts to prevent accidents and reduce work-related injuries, which is the most effective way to contain the costs of workers' compensation insurance," Governor Andrus said. "This substantial dividend also indicates that the State Insurance Fund has been successful in controlling costs and maintaining efficient operations."

The dividend is calculated on the premium paid and losses incurred for each eligible policyholder insured with the Fund for at least six months between July 1990 and June 1991. The dividend represents a return of approximately 31 percent of the State Fund's total premium for the dividend period.

The Fund has returned $97.4 million in dividend in the last five years, including the $23.7 million declared this year. Last year's dividend was $21.6 million.

Commemorating the State Insurance Fund's 75th anniversary of service to Idaho employers, Governor Andrus made a special presentation to Alexander Davis Clothing Company, the State Fund's first policyholder. Bill Simons, president of Alexander Davis, is the great-grandson of former Idaho Governor Moses Alexander, who in 1917 signed the Workers' Compensation Act into law. The State Fund's first policies were written effective January 1, 1918.

The State Insurance Fund is Idaho's largest provider of workers' compensation insurance. The State Fund insures more than 16,600 Idaho businesses, approximately 75 percent of the state's employers.

The State Insurance Fund is organized within the Executive Office of Governor Cecil D. Andrus. Since its creation in 1917 by the Idaho Legislature as part of the Workers' Compensation Act, the State Insurance Fund has been self-supporting from the premium and investment earnings. The Fund has provided an assured source of workers' compensation insurance for Idaho employers and security for the payment of benefits to covered workers for 75 years.

North Dakota Fee Schedule Pays Off In Savings

Excerpted from Comp Review, *published by the North Dakota Workers' Compensation Bureau*

results through September 9, 1992 have shown significant savings.

Through this date, bills totaling

Guy Carpenter & Co. Joins as Associate Member

AASCIF extends a belated welcome to new associate member Guy Carpenter & Co. Reinsurance Intermediaries and Vice President Timothy J. Brophy. The firm was approved for membership at the Annual Business Meeting in San Juan, but due to an

Tennessee S Making Prog

The following report o progress of the new Tennessee Fund was provided to AASCIF dent Jerry LeCompte by Shar Roberson, Chief Counsel for ance, Tennessee Department of merce and Insurance.

Commissioner McReynol asked me to provide you with a pr report concerning the establishm our State Fund. First of all, I like to personally thank you for a ing our initial meeting and pro the Board with the kind of sou vice that you did.

The Board has hired an att who has incorporated the Board our general corporation statute. Board has not hired a manager as date of this correspondence. It w consensus of the Board that a ma was not needed at this point and

Missouri Dele

Roger J. Executive Vice dent for Insura the Accident Fu Michigan repor

State Funds Must Be Doing Something Right

By Merle D. Parsley
AASCIF Vice President

Editor's Note: The following article was authored by AASCIF Vice President Merle D. Parsley for publication in the NCCI State Fund Quarterly Report. *Merle also forwarded it to us for inclusion in the Newsletter.*

State insurance funds are gaining in popularity - no one can argue that fact. Increasing numbers of employers are attracted to state funds, and new state funds are being created across the country at an amazing rate. State funds must be doing something right.

Yet, the Alliance of American Insurers continues to lambaste state funds, their financial performance, their effectiveness and their viability. Not only does the Alliance criticize state funds, but it uses misleading and inaccurate data in order to make its case. Why?

This publication, NCCI's State Fund Newsletter, is testament to the growth of state funds and the critical role they play in the national workers' compensation system. I appreciate the efforts of NCCI and President Bill Hager to strengthen relations between the state funds and private carriers. Though I may not always agree with Mr. Hager or with NCCI on specific issues, we share a common purpose: to improve the workers' compensation system.

It is difficult for me and many of my colleagues in this business to unite with the private sector while the Alliance continues to berate state funds. The time and effort contributed to such negativity is counterproductive to solving the problems that plague all workers' compensation insurance carriers.

In January 1991, independent insurance agents began writing policies for the Idaho State Insurance Fund for the first time since its inception in 1917. As of September 1, 1992, independent agents have brought in $16 million in estimated annual premium on 2,990 policies. As a result of this partnership, agents have a better understanding of how the Idaho State Fund operates, which they can assess each time they attempt to meet a client's workers' compensation insurance needs. We took this step to benefit Idaho's employers whose alternatives within the private insurance sector had become - and are - increasingly limited.

> *"Our efficiency pays off in dividends to policyholders."*

Thousands of Idaho employers have been denied coverage by private insurance companies because their policy is not deemed profitable. Many private carriers have dropped out of workers' compensation insurance altogether. This is a major contributor to the growth the Idaho State Fund has experienced.

Since the mid-1980s, our policy count has increased from 4,300 to more than 16,000, and our premium has grown from $15 million to an estimated $90 million for 1992. The bottom line is, in Idaho and in other states, funds are succeeding in providing an assured market for workers' compensation insurance.

When private insurers do not provide a market for workers' compensation insurance, state funds do, and at the lowest possible cost. That is our mission.

It is important to keep in mind the diverse objectives and ownership of private insurance carriers and state funds. While private insurance companies are owned by shareholders, state funds are generally considered to be owned by policyholders. The objective of private insurance companies is to return the greatest amount of money possible to shareholders while the objective of state funds is to provide insurance coverage at the lowest possible cost without jeopardizing the financial stability of the fund.

For the past three years, the Idaho State Insurance Fund has been the only Idaho workers' compensation insurer to oppose recommended rate increases, resulting in a 13 percent overall savings to Idaho employers. We have opposed rate increases because we have not needed a rate increase; we have become more efficient at holding down the cost of doing business in Idaho. Our efficiency pays off in dividends to policyholders. Since 1984, the State Insurance Fund has distributed more than $100 million in dividends to policyholders.

The workers' compensation system is faced with many problems - problems that are not unique to state funds. Exorbitant health care costs, fraud, abuse, and a poor image in the eyes of the insuring public - these are the problems that must be addressed to improve the national workers' compensation system. I challenge the Alliance to quit throwing stones at state funds, stop berating state funds for writing business that the private insurance companies turned away or cancelled, and start tending to the problems common to all workers' compensation insurance carriers - the health of our industry.

"United We Stand, Divided We Fall" was the title of Mr. Hager's address at a recent state fund conference. I believe Mr. Hager has the support of the state funds. It would benefit all carriers if members of the Alliance would join us as part of the team. United we stand.

Workers Remedy

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Janet Morris Appointed AASCIF

Janet Morris

Janet Morris, Assistant Director of Claims Administration at the Washington State Fund, has been appointed as an AASCIF vice-president by t
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Workers comp researchers outline 'success stories'

By MEG FLETCHER

CAMBRIDGE, Mass.—Several successful workers compensation programs can provide lessons for those seeking help with workers comp problems, a research organization says.

WCRI

The model programs were representatives of three different types of programs that the Workers Compensation Research Institute identified as "success stories" at its annual conference last month.

The programs cited by the WCRI are the Electrical Employers Self-Insurance Safety Plan in New York; a workers compensation insurance program underwritten by Travelers Insurance Co; and the exclusive state workers comp fund operated by Washington Department of Labor and Industries.

In addition, the Cambridge, Mass.-based institute separately praised Wisconsin's workers compensation program, which it analyzed in a recent study (*BI*, Nov. 16, 1992).

"Nirvana for workers compensation is higher benefits for workers and lower costs for employers," said Stephen Rosenfeld, vice chairman of the Boston Risk Management Corp. Mr. Rosenfeld was one of several experts who discussed the success stories at the WCRI meeting.

The Electrical Employers Self-Insurance Safety Plan, which was established in 1967 as the first workers comp self-insurance pool in New York state, has reached that goal, according to the WCRI.

The program, which is administered by Local 3 of the International Brotherhood of Electrical Workers in New York City, has paid $39.7 million in supplemental weekly indemnity benefits to union workers who were injured on the job during the past decade.

For example, the basic statutory indemnity level that EESISP-covered workers in New York City received last year was $505 per week, which is $155 higher than the state-mandated level other electricians in New York State received.

Meanwhile, participating employers have saved approximately $90 million in estimated premium costs during the past decade, the WCRI said.

The program saves money by emphasizing safety and operating with lower overhead costs, said James R. Harley, the EESISP's safety director. It also uses "peer pressure" to prevent the filing of fraudulent claims and to encourage injured workers to return to work as soon as is medically appropriate.

The EESISP's success illustrates that collective bargaining can be a powerful, positive force in reducing the costs of workers comp, according to Mr. Harley.

In addition, safety is fundamental to cost savings, but it must have "status" with employers and employees to succeed, he said.

A well-run self-insured program is not the only way to succeed in controlling costs, however.

Changes in Travelers workers compensation operations since 1988 have made workers comp the company's fastest-growing and most profitable line of insurance, accounting for $2.5 billion of premium or its equivalent for self-insured firms, said Senior Vp Richard W Palczynski.

Hartford, Conn.-based Travelers is now the third-largest workers comp insurer in the Fortune 1,000 market, and is the second-largest servicing carrier for workers comp assigned risk pools. It also writes some small workers comp risks, though in a "dwindling" number of states, he said.

Travelers' restructuring included doubling the number of claims adjusters nationwide to halve their workload; expanding adjusters' training in "best practices"; expanding the number and type of treatment reviewers; and establishing a national network of physicians specifically to provide medical services to workers comp claimants.

However, in-house changes were not enough to remedy the problem created by insured employers that reported claims three to four weeks after an injury, Mr. Palczynski said.

In response, Travelers established a toll-free telephone reporting system and employer education programs to speed the reporting of claims. Travelers' goal was to enlist employers' help so it could "pounce" on a claim within 24 hours, he said.

"We came to realize that the greatest leverage to loss payout reduction is not in networks or in adjuster's inventories; it is with the employer directly in how the employer treats the worker after injury, in showing how much he or she cares about the worker, in making sure the worker receives the right treatment and in designing re-

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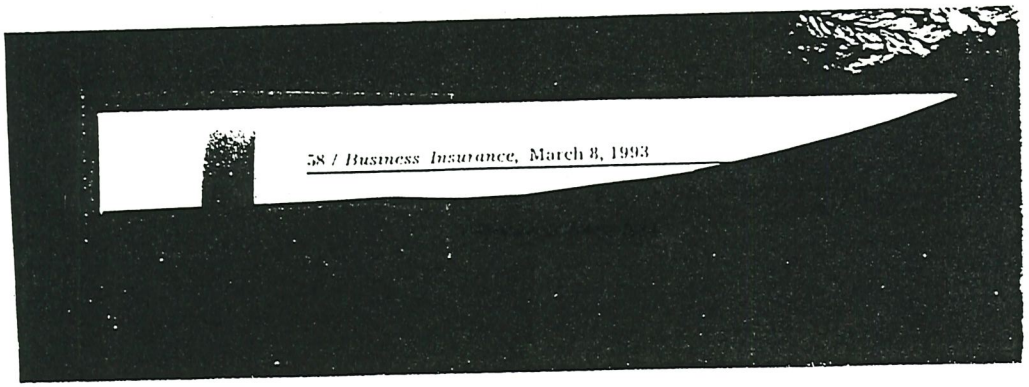

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turn-to-work opportunities," Mr. Palczynski said.

In addition, Travelers invested heavily in safety consulting by establishing a group of 15 engineers capable of performing long-term, on-site evaluations of an employers' operations.

Travelers' program is paying off.

For example, after eight months, Arley Merchandise Corp., a curtain manufacturer in Taunton, Mass., was able to reduce lost workdays to 44 per 100 employees from 284.6 in 1991, which was three times the Bureau of Labor Statistics' rate for its class of employer.

As insurers, there is a great deal of leverage in today's system to improve this line," Mr. Palczynski said.

In addition, administrators of state workers compensation systems may be able to learn some lessons from reforms adopted by Washington state.

The Washington state fund, an exclusive workers comp fund, had a $225 million deficit in 1985. A series of reform measures, including repealing mandatory vocational rehabilitation, wiped out that deficit by 1987.

"Benefit delivery is not the problem," despite the attention that issue receives, said Joseph A. Dear, former director of the state Department of Labor and Industries in Olympia, which administered the fund.

The state fund's turnaround was engineered by enlisting labor and management cooperation. In addition, health care costs were controlled, while the fund took steps to assure quality care. In addition, the state fund improved its organizational capabilities and directed its attention to preventing losses and encouraging safety.

The fund now has a $330 million surplus (*BI*, Feb. 22).

In response to the success stories identified by the WCRI, Bernard L. Brommer, president of the Minnesota AFL-CIO, warned that too often workers comp reform efforts focus on cutting employees' benefits. Instead, insurers and employers should respond in a caring way following an injury and focus on safety.

"The delivery mechanism is not the most important element of success," said Allyn C. Tatum, a member of the Arkansas Workers Compensation Commission and immediate past president of the International Assn. of Industrial Accident Boards & Commissions.

"It's people—how you treat them and how you motivate them," he said. "Common sense and common courtesy will go a long way to solving our workers compensation problems."

Boston Risk Management's Mr. Rosenfeld added, "The opportunities for private reform are enormous." He encouraged people to develop them, rather than be daunted by legislative reform problems. BI

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Comp managed care explored

By MEG FLETCHER

CAMBRIDGE, Mass. State workers compensation regulators are increasing their efforts to contain workers comp medical costs, including exploring managed care strategies.

However, state workers comp systems still lag behind group health care plans in terms of embracing managed care initiatives.

WCRI

"Activity in medical cost containment has increased within the past few years," says Carol A. Telles, a research associate with the Workers Compensation Research Institute.

"Much of the increased activity has focused on price controls through medical fee schedules and hospital payment regulation," she said.

"As the next logical step, and as part of the move toward a comprehensive cost containment program, states have turned to enforcement and managed care programs, mostly in the form of bill review and utilization review," Ms. Telles said at a session during the WCRI's conference, in Cambridge, Mass., last month.

Between 1990 and 1992, the use of six key medical cost containment tools tracked by the WCRI was increased by 14 state workers comp systems. Those tools are: limiting initial choice of provider; limiting provider change by employee; fee schedules; hospital payment review; bill review; and utilization review.

In 1992, about 17 states allowed employers to use at least four of those strategies, up from about 10 states in 1990, the research organization says.

The WCRI data, which reviewed only activities allowed by state workers comp regulators as of September 1992, is the latest in a series of national inventories that tallies —but does not evaluate—the effectiveness of cost containment strategies. The latest study will be published in June.

Many of the managed care tools now used to control group health care costs are transferable to workers comp medical care, including preferred provider networks, utilization review, bill review, case management and medical practice policies, observed Ms. Telles.

Only cost sharing, in which employees directly pay a portion of their medical expenses, is not likely to occur in workers comp, she noted.

However, states' use of managed care strategies to date has not been uniform, Ms. Telles said. Some state laws mandate that employers use managed care techniques. Other states allow private payers to initiate such techniques.

"For managed care to become widely used in workers comp, it is not clear that specific statutory authority is essential, but ambiguity may inhibit action and lead to unnecessary debate," she said.

In addition, state authorization to adopt managed care techniques doesn't necessarily result in program implementation, she said.

Although the appropriate cost containment role for state workers comp agencies is yet to be defined, Ms. Telles said, the range of responses includes:

- Empower development of managed care options by requiring them by law.
- Regulate providers and organizations through a certification process or monitoring program.
- Evaluate the effectiveness of managed care by sponsoring or participating in pilot programs.

Florida and Ohio currently have pilot managed care programs under way, Ms. Telles noted.

- Inhibit development of managed care through restrictive rules or outright bans.

For example, four states—Illinois, Montana, Nebraska and New York—prohibit employers from requiring employees to obtain care only from preferred providers.

In contrast, the Minnesota Department of Labor and Industry certifies managed care organizations, like PPOs, to treat workers comp claimants. The department requires certified providers to attend educational sessions, to see workers comp claimants within 24 hours of injury and to communicate with employers about returning the employee to work.

If a Minnesota employer chooses to use a certified managed care organization, its employees are required to cooperate, said Gloria Gebhard, director of rehabilitation and medical affairs for the Minnesota Department of Labor and Industry in St. Paul.

The state agency's cost control program also includes treatment standards for lower back pain, surgery and chronic pain. The agency uses a new medical fee schedule based on a resource-based relative value scale, she said.

Minnesota also requires standardization of certain billing information, which helps the state agency collect and evaluate data.

Despite advances by some state agencies, private payers are using managed care techniques on their own far more than they are encouraged by state agencies.

The involvement of employers and insurers is often motivated by the financial pressure caused by rising workers comp rates.

"Workers compensation is a make-or-break issue for many companies," said Joseph Tangney, senior vp of cost containment for American International Group Inc. in New York.

The related high costs can wipe out entire companies, leading to another problem: "The workers of America are not protected if there are no jobs, either because (the jobs) are moved from one state to another or exported to another country," he said.

"The proper perspective is one of partnership and not confrontation; one of shared responsibilities and not finger-pointing; one of a joint effort to create and preserve a safe and economically viable workplace," Mr. Tangney said.

If this approach is applied conscientiously, everyone can benefit and survive in the system, which has severe systemic problems, he said.

Mr. Tangney urged employers, insurers and state agencies to contain costs by cooperating to reduce claims frequency, aggressively re-evaluate and manage each claim, effectively manage the administrative process and aggressively manage service providers.

And one option, fee schedules, is not the answer, he said.

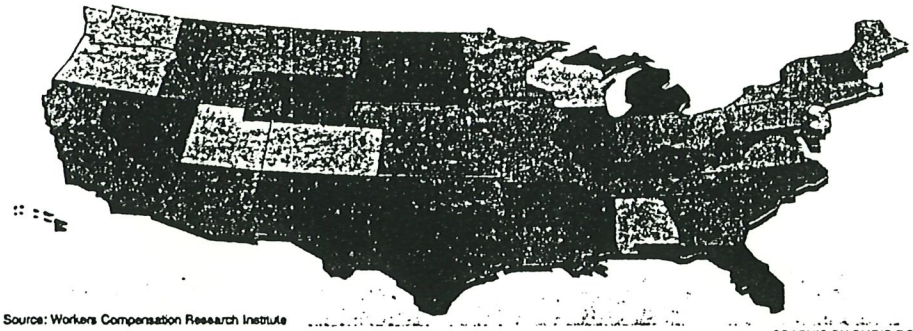
Mr. Tangney criticized traditional fee schedules because they lack uniformity and effectiveness. He predicted they will eventually be replaced by another standard.

In Canada, fee schedules help curb medical costs, but that savings may be more than offset by higher indemnity costs caused by lengthy delays in getting appointments with health care specialists, Canadian representatives at the conference said. BI

Workers comp cost control options

Some states allow employers to use several medical cost containment strategies in their workers compensation programs. Others severely limit employers' options.

Number of strategies: 6 5 4 3 2 1 or 0



Source: Workers Compensation Research Institute

GRAPHIC BY CHRIS ROY

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Senate Commerce Committee
meeting of March 17, 1993

Comments of William F. Morrissey

The proposed substantive amendments in Sub for HB 2354 as amended by the House Committee of the Whole with respect to "second injury" claims were:

1) Remove the determination of the percent of contribution by the Workers Compensation Fund from the workers compensation litigation process and instead have the issues addressed in a new administrative process.

2) Remove the requirement that an employer show it had knowledge of a pre-existing condition in order to make a claim against the workers compensation fund.

The Workers Compensation Fund, which is administered by the Insurance Commissioner's office, pays for conditions which contribute to disability and which pre-existed a current injury for which claim is being made.

The issue as to how much of a claim is payable by the fund is a medical issue.

The process would not involve hearings.

In the majority of instances the entire claim against the fund would be completely disposed of with a single contact between a claims adjuster for the insurance carrier and a claims adjuster within the office of the insurance commissioner. The process could take as little as 30 minutes and rarely more that eight hours of an adjuster's time for each case.

Removal of the "knowledge" requirement would make it easier for an employer to make a claim against the fund.

Other amendments in Sub for HB 2354 would reduce the number of claims in which an employee would be entitled to compensation for pre-existing conditions thereby reducing the number of cases on which a reimbursement claim could be based.

The overall effect should be that there may be more cases but the average case would be of the less serious and less costly kind.

All operations of the personnel carrying out the pre-existing claim process could be in the Topeka office with claims handled by correspondence, telephone or personal conference. There would be no need for field office staffing.

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Attachment 6-1

Allowing an average of 2 hours to handle each claim would enable ten claims adjusters to dispose of some 5,000 cases per year.

Clerical duties such as preparing payment vouchers, typing correspondence, scheduling conferences, etc, could be accomplished by one clerical person for each two claims adjusters in addition to the clerical staff now employed for fund purposes.

The estimated costs for the additional staff would be:

10 Insurance Claims Investigator II (Sal & Ben $30,643)	$306,430
5 Office Assistant III (Sal & Ben $20,512)	$102,560
Professional Fees (200 Physician reviews @ $250)	$ 50,000
Capital Outlay	
($3,500 per non-clerical employee)	$ 35,000
($9,325 per clerical employee)	$ 46,625
Operating Expenses ($3,500 per employee)	$ 52,500
Total	$593,115

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In-House Staff Determines Liability of Workers' Compensatio. Fund. The attached Table 2 gives two cost estimates for initiating an in-house defense of the Workers' Compensation Fund as proposed in Section 49 of Sub. HB 2354. The bill does not specify the type of positions to be added to the Insurance Department in order to process and decide claims against the Workers' Compensation Fund. (One possible option is the addition of Insurance Claims Investigator positions to settle claims.) However, the Insurance Department believes that to prevent excessive increases in Workers' Compensation Fund expenditures, experienced legal staff is the best way to ensure moderate claim awards. Therefore, the Insurance Department estimates that it would need 60.0 additional legal staff positions and 20.0 clerical positions (See Table 2, Part A) to establish seven area offices. These area offices would assume the responsibility of defending the Workers' Compensation Fund that is now done through contracting with outside attorneys. The Department assumes an average caseload of 125 per attorney position to handle the annual active caseload of approximately 7,500 cases.

The Division of the Budget believes that the Insurance Department's estimated $3.9 million cost for an in-house program in FY 1994 may be high compared to the actual FY 1992 contractual expenditure of $3.4 million from the Workers' Compensation Fund for legal fees. The estimated FY 1992 breakdown in billable hours is 51,120 hours for attorney services and 11,360 for paralegal services. In Table 2, Part B, total annual hours for a full-time FTE position are calculated by multiplying 50 weeks by 40 hours per week. The FY 1992 estimate of 62,480 billable hours is then divided by 2,000 annual hours per FTE position. Using this methodology, an additional 31.0 legal staff positions could provide 62,480 hours of defense services in FY 1994. (With 31.0 professional positions, the average active caseload per position would be 242 cases, which compares to the State Self-Insurance Fund caseload of 290 cases per person in the Department of Administration.)

Table 2, Part B shows the Division of the Budget estimate of $2.9 million from the Workers' Compensation Fund for an in-house program in FY 1994. This amount would finance the addition of 38.0 legal and paralegal positions, which could provide up to 76,000 hours of defense services or a 21.6 percent increase in service hours above the FY 1992 estimate. The Division's estimate assumes seven area offices with an average of 5.0 legal staff and 1.0 secretarial position in each. The Division of the Budget notes that an Attorney III position is equal in pay to the Administrative Law Judge classification used in the Division of Workers Compensation. Therefore, the Division of the Budget believes that qualified personnel could be found to represent the Workers' Compensation Fund at a reasonable cost to the state. If Insurance Claims Investigator positions were added in place of all or some of the Attorney II positions, then the salary expenditure could be reduced even further. The Division of the Budget estimate also includes $600,000 in professional fee

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expenditures to carry out the physician reviews provided for in the bill. The professional fee amount would finance approximately 3,000 reviews at an average cost to the Workers Compensation Fund of $200 each.

TABLE 2
COST FOR IN-HOUSE WORKERS' COMPENSATION FUND PROCESS

Part A: Insurance Department's Estimate	FY 1994
20.0 Attorney II (Range 28)	$ 653,280
30.0 Attorney III (Range 31)	1,134,360
10.0 Attorney IV (Range 32)	397,080
14.0 Secretary II (Range 15)	242,760
6.0 Secretary III (Range 17)	114,624
80.0 FTE Positions -- Estimated Base Salaries	$2,542,104
Estimated Fringe Benefits	555,896
Subtotal Salaries and Fringe Benefits	$3,098,000
Other Operating Expenditures (7 Offices)	443,221
One-time Capital Outlay Costs	322,320
Total Expenditures from Workers' Comp. Fund	$3,863,541

Part B: Division of the Budget Estimate

Detail of Legal Fees Paid for Fund Defense in FY 1992	
Estimated Portion for Attorney Hours ($60 rate)	$3,067,200
Estimated Portion for Paralegal Hours ($30 rate)	340,800
Total Actual Fees Paid in FY 1992	$3,408,000
Estimated Attorney Hours	51,120 hrs.
Estimated Paralegal Hours	11,360 hrs.
Total Estimated FY 1992 Hours	62,480 hrs

50 Weeks x 40 Hour Week = 2,000 Annual Hours per FTE Position

FY 1992 62,480 Billed Hours Translates into 31.0 FTE Positions

DOB's Estimated Cost to Handle Fund In-House	FY 1994
24.0 Attorney II (Range 28)*	$ 822,816
7.0 Attorney III (Range 31)	277,956
7.0 Legal Assistants (Range 18)	147,420
7.0 Secretary III (Range 17)	140,364
45.0 FTE Positions -- Base Salaries and Wages	$1,388,556
Estimated Fringe Benefits	327,407
Subtotal Salaries and Fringe Benefits	$1,715,963
Professional Fees -- Physician Reviews	600,000
Other Operating Expenditures (7 Offices)	286,308
One-Time Capital Outlay Costs	297,443
Total Expenditures from the Workers' Comp. Fund	$2,899,714

* If 24.0 Insurance Claims Investigator II (Range 23) positions were substituted for the Attorney II positions, the base salaries for the 24.0 FTE positions would be reduced to $645,120.

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