The Report of

The National Commission on State Workmen's Compensation Laws

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NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS
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July 31, 1972

To the President and The Congress

I have the honor to submit to you the Report of the National Commission on State Workmen's Compensation Laws in accordance with the provisions of the Occupational Safety and Health Act of 1970.

Although the backgrounds of the members of the Commission varied considerably, we began with a common and profound conviction that American workers should receive adequate and fair protection if they suffer a work-related injury, disease, or death. The importance we attached to our assignment was heightened by the recognition that workmen's compensation now covers almost 85 percent of the labor force and annually provides benefits to millions of workers.

As our year of hearings and meetings progressed, we reached a general agreement on the potential role and actual record of workmen's compensation. We have concluded that there is a significant role for a modern workmen's compensation program and that the States' primary responsibility for the program should be conserved. We also agree that the protection furnished by workmen's compensation to American workers presently is, in general, inadequate and inequitable. Significant improvements in workmen's compensation are necessary if the program is to fulfill its potential.

We have indicated our prescription for needed reforms. We believe the actual protection afforded by workmen's compensation to injured workmen and their families can soon converge on the potential.

Sincerely,

John F. Burton, Jr.

John F. Burton, Jr.
Chairman

The President

The President of the Senate

The Speaker of the House
of Representatives

Members of the Commission

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Acknowledgments

On behalf of the members of the National Commission on State Workmen's Compensation Laws, I wish to acknowledge the assistance we received in preparing this *Report.*

The Department of Labor's Task Force on Structuring Independent Agencies prepared a tentative budget and arranged for our offices prior to the appointment of the Commission. This assistance substantially shortened our start-up time. Monroe Berkowitz, by his contribution of expertise and time in the first weeks of the Commission's activity, helped to solve the first flurry of administrative and budgetary issues.

The Commission was aided by a number of contractors who provided data, analyses, or advice. Arthur Larson of Duke University and Sam Estep of the University of Michigan were among those who made appearances at a meeting of the Commission. The *Compendium on Workmen's Compensation,* which C. Arthur Williams edited, was a valuable input to our deliberations. Marcus Rosenblum has added an element of felicity to the *Report* by his editing.

The staff of the Commission has exceeded any reasonable expectations as to quality and diligence. Lloyd Larson and Dan Price, two of the workmen's compensation professionals in the Federal service, on loan to us for the year, contributed ideas and data and suppressed nascent errors. Those staff members, such as Wayne Vroman and Louise Russell, who looked at old workmen's compensation problems with a new perspective, compelled a careful rethinking of traditional assumptions. Nancy Watkins contributed to both the style and substance of the *Report.*

The administrative support for the Commission, as directed by Dottie Creekmore, met the critical test: things ran smoothly. Particularly supportive in the preparation of the *Report* were Joanne Lancaster and Louisa Rowland, who transformed scribblings into legible copy with speed, accuracy, and good will.

Three staff members were critical to the work of the Commission. John Lewis was able to answer even the most technical legal questions while also providing advice that hopefully will make the *Report* accessible to those other than legal technicians. Ward Donohoe was an all-star utility infielder: he was the public information officer; he wrote a paper to be published by the Commission; and he successfully arranged 20 meetings and hearings around the country. Peter Barth was the most important contributor to the Commission's efforts. He provided ideas and counsel that were essential. He was also the intermediary among the Commission, the staff, and the contractors: it is a tribute to his abilities that he served successfully as three-way flak-catcher.

John F. Burton, Jr.
Chairman

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INTRODUCTION

Congress, in the Occupational Safety and Health Act of 1970, declared that:

> the vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the full protection of American workers from job-related injury or death requires an adequate, prompt, and equitable system of workmen's compensation as well as an effective program of occupational health and safety regulation . . . .

Congress went on to find, however, that in recent years serious questions have been raised concerning the fairness and adequacy of present workmen's compensation laws in the light of the growth of the economy, the changing nature of the labor force, increases in medical knowledge, changes in the hazards associated with various types of employment, new technology creating new risks to health and safety, and increases in the general level of wages and the cost of living.

For these reasons, Congress established the National Commission on State Workmen's Compensation Laws to "undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable

system of compensation." The Act required that a final report, containing a "detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable," be transmitted by the Commission to the President and to the Congress no later than July 31, 1972.

Activities of the Commission

On June 15, 1971, the President appointed 15 Commission members, representing State workmen's compensation agencies, business, labor, insurance carriers, the medical profession, educators, and the general public. In addition, the Act designated three members of the President's cabinet as Commissioners.

The Commission faced a formidable task. We were asked to evaluate 56 diverse jurisdictions and 16 specific topics, many complex. Our effective working period was less than a year. We resolved at our first meeting to meet our deadline despite the advantages that would have flowed from additional time. We made this decision because important and pressing issues dictated prompt action. The Congress had expressed a keen sense of urgency about workmen's compensation in setting the July 31 deadline. The Commission members and staff have responded to this urgent concern with their best effort.

The Commission has had an active and productive year. Since its first meeting, on July 21, 1971, ten additional meetings have been held to develop the plan and review the substance of this Report. In total, these sessions consumed 32 days with, on the average, 17 Commissioners in attendance.

In addition to the meetings, the Commission held nine public hearings for a total of 18 days. These hearings included three in Washington, plus regional hearings in Chicago, Boston, San Francisco, Dallas, Atlanta, and New York. Because the first hearing was scheduled on short notice, only 10 Commissioners were able to attend. For the subsequent eight hearings, never were fewer than 15 Commissioners present. More than 200 witnesses appeared. The edited transcript of the hearings, to be published, is expected to exceed 800 printed pages.

A full-time staff of 30 employees assisted the Commissioners. The professional staff included economists, lawyers, physicians, statisticians, and others specialising in workmen's compensation and rehabilitation. More than 200 documents were provided to the Commission by the staff, including selections from previous publications and original reports based on staff surveys and studies.

The Commission was authorized to enter into contracts with government agencies, private firms, institutions, and individuals for the conduct of research or surveys and the preparation of reports to be published by the Commission. These publications include a *Compendium on Workmen's Compensation*, a comprehensive review of the issues and information concerning workmen's compensation, and a series of *Supplemental Studies* which examine selected issues in detail. As the *Compendium* and *Supplemental Studies* were prepared and edited by independent scholars, the Commission assumes no responsibility for the ideas expressed in these publications. With some of these ideas the Commission disagrees. Nonetheless, the material was valuable to the Commission and is being published in order to encourage further studies and appraisals of workmen's compensation.

We have carefully considered the views presented at our hearings and by our staff and contractors. The issues have been analyzed thoroughly in our formal sessions, correspondence, and conversations. Although we have given serious attention to previous recommendations for workmen's compensation programs, such as the widely approved standards published by the U.S. Department of Labor and the Model Act published by the Council of State Governments, we assumed as our responsibility a complete reexamination of workmen's compensation in light of the historical changes noted by Congress. We have evaluated the effects of these changes on the "fairness and adequacy" of the program launched more than 50 years ago. We have concluded there is a substantial and vital role for workmen's compensation in contemporary America.

The main body of our Report contains three parts which lead to this broad conclusion. The general objectives of a modern workmen's compensation program are discussed in Part One. A detailed evaluation of the present workmen's compensation program and our recommendations follow in Part Two. In Part Three, we discuss the future of workmen's compensation.

These three parts are summarized below. Many supporting data and analyses are contained in the corresponding sections of the Report. References for factual information in the Report are included in the *Compendium.*

PART I. OBJECTIVES FOR A MODERN WORKMEN'S COMPENSATION PROGRAM

There are five major objectives for a modern workmen's compensation program: four of them basic and an equally important one that supports the others.

The four basic objectives are:

Broad coverage of employees and of work-related injuries and diseases

Protection should be extended to as many workers as feasible, and all work-related injuries and diseases should be covered.

Substantial protection against interruption of income

A high proportion of a disabled worker's lost earnings should be replaced by workmen's compensation benefits.

Provision of sufficient medical care and rehabilitation services

The injured worker's physical condition and earning capacity should be promptly restored.

Encouragement of safety

Economic incentives in the program should reduce the number of work-related injuries and diseases.

The achievement of these four basic objectives is dependent on a fifth objective:

An effective system for delivery of the benefits and services

The basic objectives should be met comprehensively and efficiently.

PART II. EVALUATION OF STATE WORKMEN's COMPENSATION PROGRAMS AND SELECTED RECOMMENDATIONS

Congress in the Occupational Safety and Health Act of 1970 specified that our study and evaluation should include, "without being limited to," 16 subjects. We believe this evaluation will be most significant if those subjects are discussed in relation to the five objectives cited above. Accordingly the 16 subjects are listed below (Figure A) with reference to the objectives most pertinent and with a citation of the chapter in the Report which deals most extensively with the respective topics.

In addition to the five objectives, another basis for our evaluation is the Congressional directive to determine if State workmen's compensation laws provide an "adequate, prompt, and equitable" system. We use "adequate" to mean sufficient to meet the needs or objectives of the program; thus, we examine whether the resources being devoted to workmen's compensation income benefits are sufficient. We use "equitable" to mean fair or just; thus, we examine whether workers with similar disabilities resulting from work-related injuries or diseases are treated similarly by different States. (See Glossary for full definitions of these and other terms.)

1. A Modern Workmen's Compensation Program Should Provide Coverage of Employees and Work-Related Injuries and Diseases

Coverage of Employees [Section 27(d)(1)(C)

Although the percentage of employees covered by workmen's compensation is increasing, State and Federal programs now reach only about 85 percent of all employees. This coverage is inadequate. Inequity results from the wide variations among the States in the proportion of their workers protected by workmen's compensation. Thirteen States that cover more than 85 percent of their workers contain more than half of the nation's labor force, but 15 States cover less than 70 percent. Inequity also results because the employees not covered usually are those most in need of protection: the low-wage

FIGURE A. Guide to discussion of 16 subjects

SUBJECT LISTED IN SECTION 27 (d) (1) OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970	OBJECTIVE UNDER WHICH SUBJECT IS DISCUSSED IN INTRODUCTION AND SUMMARY	CHAPTER IN REPORT WHERE SUBJECT IS DISCUSSED
A. The amount and duration of permanent and temporary disability benefits and the criteria for determining the maximum limitations thereon	Income protection	3
B. The amount and duration of medical benefits and provisions insuring adequate medical care and free choice of physician	Medical care and rehabilitation	4
C. The extent of coverage of workers, including exemptions based on number or type of employment	Coverage	2
D. Standards for determining which injuries or diseases should be deemed compensable	Coverage	2
E. Rehabilitation	Medical care and rehabilitation	4
F. Coverage under second- or subsequent-injury funds	Medical care and rehabilitation	4
G. Time limits on filing claims	Effective delivery system	6
H. Waiting periods	Income protection	3
Compulsory or elective coverage	Coverage	2
J. Administration	Effective delivery system	6
K. Legal expenses	Effective delivery system	6
L. The feasibility and desirability of a uniform system of reporting information concerning job-related injuries and diseases and the operation of workmen's compensation laws	Effective delivery system	6
M. The resolution of conflict of laws, extraterritoriality, and similar problems arising from claims with multi-State aspects	Coverage	2
N. The extent to which private insurance carriers are excluded from supplying workmen's compensation coverage and the desirability of such exclusionary practices, to the extent they are found to exist	Effective delivery system	6
O. The relationship between workmen's compensation on the one hand, and old-age, disability, survivors insurance and other types of insurance, public or private, on the other hand	Income protection and medical care and rehabilitation	3 and 4
P. Methods of implementing the recommendations of the Commission	*	7

Discussed in the Introduction and Summary under Part III, The Future of Workmen's Compensation.

workers, such as farm help, domestics, casual workers, and employees of small firms.

The lack of coverage is due primarily to the statutory exclusion of specific occupations or classes of employers. Another important factor is the persistence in some States of a tradition that coverage be elective.

Our recommendations on coverage are in essence that coverage be extended so as to provide protection to most employees now excluded and that coverage be mandatory.

Elective coverage [Section 27(d)(1)(I)]. Despite progress in recent decades, the laws of more than a third of the States retain the elective feature, installed originally in deference to constitutional interpretations that are largely irrelevant now.

We recommend that workmen's compensation be compulsory rather than elective. (See R2.1)

(In this Introduction and Summary, in the interest of brevity, we have abbreviated and reworded some of our recommendations contained in Chapters 2 through 6. Each recommendation in this summary contains a reference to the full text of the recommendations published in these five chapters. R2.1 is the first recommendation in Chapter 2.)

Numerical exemptions [Section 27(d)(1)(C)]. Barely half the States extend coverage to firms with one or more employees, and among these are States which exempt certain classes of employers, such as charitable organizations.

We recommend that employers not be exempted from workmen's compensation because of the number of their employees. (See R2.2)

Exclusions [Section 27(d)(1)(C)]. Exclusions include such categories as farmworkers, casual and domestic workers, and employees of State or local governments.

Farmworkers. Only about a third of the States cover farmworkers on essentially the same basis as other workers. Because of administrative considerations, we recommend a two-stage approach to coverage for agricultural workers.

As of July 1, 1973, coverage should be extended to agricultural employees whose employer's annual payroll exceeds $1,000. By July 1, 1975, coverage should be extended to farmworkers on the same basis as all other employees. (See R2.4)

Casual and domestic workers. Although several States cover some casual household employees, no State covers them on the same basis as all other workers. The transient or casual character of domestic jobs and the large number of households argue against efforts to provide coverage by conventional means.

We recommend that by July 1, 1975, household workers and all casual workers be covered under workmen's compensation at least to the extent they are covered by Social Security. (See R2.5)

Government employees. The laws of 44 States require coverage of some or all State employees; 36 States require coverage of employees of local governments; the other laws are elective.

We recommend that workmen's compensation coverage be mandatory for all government employees. (See R2.6)

Conflicts among State laws [Section 27(d)(1)(M)]. Employees who are subject to the laws of two or more jurisdictions are often uncertain as to where to file a claim: The claim may be compensable under one State law and invalid under another, or, in the extreme, compensable under neither.

We recommend that the employee be given the choice of filing a claim for workmen's compensation in any State where he was hired, or where his employment was principally localized, or where he was injured. (See R2.11)

Coverage of Injuries and Diseases Section 27(d)(1)(D)

Substantial litigation results from efforts to determine which injuries or diseases are work-related and compensable. There are both legal and medical questions in each claim. The medical question is whether there was in fact an impairment or death caused by an injury or disease that was work-related. The legal question is whether the worker has suffered disability, i.e., a loss of actual earnings or earning capacity

attributable at least in part to the work-related impairment.

The traditional test for determining whether an injury or disease is compensable, is that the cause must be an "accident,"—sudden, unexpected, and determinate as to time and place. This interpretation has served to bar compensation for most diseases and for injuries which were considered routine and usual in the place of employment.

We recommend that the "accident" requirement be dropped as a test for compensability. (See R2.12)

The compensability of diseases has been hampered also by the uncertain etiology of many impairments. Efforts to overcome this uncertainty by listing specific compensable diseases results in lack of coverage for some diseases.

We recommend that all States provide full coverage of work-related diseases. (See R2.13)

2. A Modern Workmen's Compensation Program Should Provide Substantial Protection Against Interruption of Income

In general, workmen's compensation programs provide cash benefits which are inadequate. The majority of disabled beneficiaries receives less than two-thirds of the lost wages. In most States, the most a beneficiary may receive, "the maximum weekly benefit," is less than the poverty level of income for a family of four. Moreover, many States limit the duration or the total amount of cash payments.

Payments are inequitable as well as inadequate. Benefits differ widely from State to State. Within States, high-wage workers, if disabled, receive a smaller proportion of their lost earnings than do low-wage earners because they are limited by the ceiling of the maximum weekly benefits. Also, in some States, it appears that benefits paid for minor injuries are relatively more generous than payments for serious injuries.

Many programs appear to pay uncontested claims with reasonable promptness. When claims are contested, the record is less satisfactory.

Cash benefits are based primarily on the worker's actual loss of wages or loss of wage earning capacity. Also, whether or not they suffer a loss of wages or of earning power, workers in many States may receive cash payments because of work-related impairments.

Benefits usually are computed as a percentage of gross pay, rather than spendable earnings. Tax factors and the number of dependents contribute to inequities in this approach, and the inequities would be compounded if higher benefits were paid. The traditional payments are two-thirds of pre-tax wages. Benefits calculated as 80 percent of spendable earnings would better reflect the worker's preinjury economic circumstances and cost the system little more. The small increase in cost would in any event recognize the value of the supplements or fringe benefits which have been introduced since the two-thirds formula was established, and which are not included in gross pay.

Temporary total disability benefits [Section 27(d)(1)(A)]. A worker who is temporarily and totally disabled experiences a temporary and complete loss of wages. Benefits do not begin unless the disability persists for a specified waiting period. Usually, if the disability continues beyond a specified qualifying period, the worker receives benefits retroactively for the time lost in the waiting period. A worker's benefit is calculated as a prescribed proportion of his previous wages, subject to minimum and maximum weekly benefits.

Waiting period [Section 27(d)(1)(H)]. Recommendations published by the Department of Labor propose a 3 day waiting period and a 14 day retroactive period. In contrast, the Model Act of the Council of State Governments specifies a 7 day waiting period and a 28 day retroactive period. Most States meet the standard of the Model Act, but do not meet the Department of Labor recommendation. Although the Model Act would provide benefits for 83 percent of lost time, the U.S. Department of Labor standard would compensate for 93 percent. The purpose of the waiting and retroactive provisions are to reduce payments for truly minor incidents and to assure benefits for even moderately serious injuries.

We recommend that the waiting period be no more than 3 days and that the retroactive period be no more than 14 days. (See R3.5)

Maximum weekly benefits. Both the Department of Labor and the Model Act recommend that the maximum weekly benefit should be at least two-thirds of the average weekly wage in the State. The majority of States do not meet this standard: most did in 1940, but since then have not kept pace with the rise in wages. In 32 States as of January 1, 1972, the maximum for a family of four was less than 60 percent of the State's average wage. Such levels of payment are clearly inadequate.

A maximum of two-thirds of the State's average wage, coupled with a provision that purports to provide disabled workers at least two-thirds of their individual wages, produces the anomaly that almost half of all disabled workers—those who had earned more than the State's average wage—would receive less than two-thirds of their lost pay.

We recommend progressive increases in the maximum weekly wage benefit, according to a time schedule stipulated in Chapter 3, so that by 1981 the maximum in each State would be at least 200 percent of the State's average weekly wage. (See R3.8 and R3.9)

Proportion of lost wages to be replaced. The decision fixing the proportion of lost wages to be replaced must balance incentives to employers to improve safety with incentives to the disabled to take full advantage of rehabilitation services and to return to work.

We recommend that cash benefits for temporary total disability be at least two-thirds of the worker's gross weekly wage. The two-thirds formulation should be used only on a transitional basis until the State adopts a provision making payments at least 80 percent of the worker's spendable weekly earnings. (See R3.6 and R3.7)

Each worker's benefit would be subject to the State's maximum weekly benefit.

Permanent total disability benefits [Section 27(d)(1)(A)]. A worker is eligible for permanent total benefits when he experiences a complete loss of wages for a prolonged period. In a few States, a worker may receive permanent total benefits merely because he is unable to return to his previous job.

We recommend that our permanent total benefit proposals be applicable only in those cases which meet the test of permanent total disability used in most States. (See R3.11)

Our position on maximum weekly benefits and the proportion of wages to be replaced is identical with our recommendations for temporary total disability. The main issues for permanent total disability benefits concern the total sum allowed and the duration of payments.

Although there is wide agreement that payments for permanent total disability should be paid for life, we found that 19 States in 1972 failed to comply with that recommended standard. In 15 States, duration of payments was limited to 10 years and in 11 States the gross sum payable was less than $25,000, which is less than the average full-time worker in the United States earns in four years.

We recommend that permanent total benefits be paid for the duration of the worker's disability without limitations as to dollar amount or time. (See R3.17)

Relationship to other programs [Section 27(d)(1)(O)]. The variability of benefits provided to disabled workers from sources other than workmen's compensation aggravates the inequities of the system.

If our recommendations for increases in the maximum weekly benefit for permanent total disability and the removal of limitations of time and duration are accepted, we believe that these permanent total benefits should be coordinated with other programs.

We recommend that the Social Security benefits for permanent and total disability be reduced in the presence of workmen's compensation benefits. (See R3.18)

Permanent partial disability benefits. The issues arising from benefits for permanent partial disability are so critical to the future of workmen's compensation that the subject warrants the highest priority. Unfortunately, the critical need for corrective action is matched by the elusiveness of the proper remedy, and there is a serious danger that premature or insufficiently detailed recommendations might only worsen

the present problems. These problems include the wide variation from State to State in the ratio of permanent partial benefits to total benefits, and the apparent tendency in some States for the payment of disproportionately large benefits for minor permanent partial disabilities relative to the benefits for major permanent partial and permanent total disabilities. Also, in some States, evaluations of the extent of permanent partial disability often seem to be without consistent guidelines. Although the recently issued American Medical Association's *Guides to the Evaluation of Permanent Impairment* are a welcome contribution, they are designed only for the evaluation of impairment and do not purport to provide guidance for the evaluation of disability, as opposed to impairment.

These apparent inconsistencies and deficiencies warrant a separate study and report. We do not deny the importance of the permanent partial phase of workmen's compensation; we feel our responsibility at this time is to point to the need for the immediate commencement of a thorough examination of permanent partial benefits.

Death benefits. Death benefits consist of payments to the surviving spouse, minor children, or other dependents of a worker who dies as a result of a work-related injury or disease. Such benefits account for less than one percent of all workmen's compensation cases and less than ten percent of the total payments. The limits on the weekly benefits and on the total duration or amount, as found in many States, result in little overall cost saving for the program and are particularly ill founded.

We recommend that death benefits be at least 66 2/3 percent of the worker's gross weekly wage. The two-thirds formulation should be used only on a transitional basis until the State adopts a provision making payments at least 80 percent of the spendable earnings of the worker. (See R3.20 and R3.21)

We recommend that the minimum weekly benefit for death cases be at least 50 percent of the average weekly wage in the State. (See R3.26)

In death cases, we recommend that the State's maximum weekly benefit be increased until, by 1981, the maximum represents 200 percent of the State's average weekly wage. (See R3.23 and R3.24)

We see no justification for arbitrary limitation of the amount or duration of benefits to survivors of a deceased worker.

We recommend that benefits in death cases be paid to a widow or widower for life or until remarriage, and in the event of remarriage we recommend that two years' benefits be paid in a lump sum to the widow or widower. We also recommend that benefits for a dependent child be continued until the child reaches 18, or beyond such age if actually dependent, or at least until age 25 if enrolled as a full-time student in any accredited educational institution. (See R3.25)

Relationship to other programs [Section 27(d)(1)(O)]. Adoption of our recommendations will assure that families of those who die from work-related causes will have greater and more continuous protection than they might receive from Social Security.

We recommend that workmen's compensation benefits be reduced by the amount of any payments received from Social Security by the deceased worker's family. (See R3.27)

3. Workmen's Compensation Should Provide Sufficient Medical Care and Rehabilitation Services

Medical care and rehabilitation services contribute both a monetary and a human value to the workmen's compensation system. Medical benefits have a monetary value of one billion dollars a year, about a third of the charges to the system. Four out of five beneficiaries receive medical services only.

In addition to medical services from the time of injury or detection of the disease, the system provides physical restoration services, including surgery and physical therapy, guidance and instruction in restoring earning capabilities, and placement in productive employment.

The record of delivering such services varies. Performance of medical services is reasonably good but, with only a few exceptions, the performance of physical restoration is less successful. Vocational guidance and instruction services are spotty and placement services for rehabilitated workers are generally inadequate.

These services need increased attention and coordination.

Choice of physician [Section 27(d)(1)(B)]. Among the issues that relate to the quality of medical care is the method of selecting a physician for the injured employee. The recommended standard published by the U.S. Department of Labor would permit the employee to select the physician freely or in accord with rules of the workmen's compensation agency. Half the States use this system. It can be argued that such freedom for the employee is illusory or disadvantageous to one with a work-related disease which may be improperly diagnosed by a physician unfamiliar with a specialized working environment. Conversely it may be argued that any limitation on the freedom of choice is an infringement on access to independent medical services.

We recommend that the worker be permitted the initial selection of his physician, either from among all licensed physicians in the State or from a panel of physicians selected or approved by the State's workmen's compensation agency. (See R4.1)

Amount and duration of medical benefit [Section 27(d)(1)(B)]. Limits on the amount or duration of medical care are more prevalent for work-related diseases than for injuries. The trend has been to remove such limits for injuries: 41 States comply with the U.S. Department of Labor standard of full medical benefits for those injured on the job. The trend has been similar with respect to diseases but only 36 States in 1972 provide full benefits. The limitations apply largely to diseases activated by dust.

Where the statutes specify payment of "all reasonable" charges, this language has been interpreted in some States to impose limitations on the types of services used. The wisdom of limiting services according to the merits of an individual situation is not open to challenge, but we oppose arbitrary rules that limit medical or rehabilitation services without regard to their merit. Such limits can be self-defeating if they deny benefits, such as prosthetic devices, which restore a patient to a productive career. For the same reasons we oppose compromise and release agreements which terminate an employee's right to medical benefits. Even when lump sum payments are offered in exchange for such waiver of rights, we believe the agreements should require approval of the administrative agency.

We recommend there be no statutory limits on the length of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment. (See R4.2)

Supervision of quality care at reasonable cost. There are no short cuts to economical delivery of medical care of satisfactory quality. There is no substitute for conscientious supervision by competent professionals in order to insure that a job is done well. Nevertheless, fewer than half the States provide such supervision within the workmen's compensation agency. Supervision can not be effective if limited to a clerical review of case histories. There must be skilled observation and authority to order provision of necessary services, to curb excessive charges, and to recommend or require workmen to seek appropriate consultation.

Fewer than half of the States have a medical-rehabilitation division and only 26 provide such supervision in a manner consistent with recommended standards.

We recommend that each workmen's compensation agency establish a medical rehabilitation division, with authority to effectively supervise medical care and rehabilitation services. (See R4.5)

Vocational rehabilitation [Section 27(d)(1)(E)]. Medical care would be far more effective if well coordinated with vocational rehabilitation services. Such coordination would require employers to report promptly to the medical-rehabilitation division on the condition of claimants who are seriously disabled. Simultaneously, the claimant should be informed of his rights and opportunities to use restorative, guidance, and instruction services. Employees of the medical-rehabilitation division would be held responsible for following the course of such services and for assisting in their delivery.

Although some vocational services are provided by insurance carriers and employers, vocational aspects of rehabilitation are handled in most States mainly by agencies that rarely

have more than a tangential relationship with workmen's compensation or physical rehabilitation services.

Many disabled workers fail to receive vocational services partly because they are not aware of their rights, partly because they lack motivation because of a fear they will lose compensation benefits if rehabilitated, and partly because they cannot afford the out-of-pocket costs of maintenance during instruction.

We recommend that the medical-rehabilitation division within each State's workmen's compensation agency be given the specific responsibility of assuring that every worker who could benefit from vocational rehabilitation services be offered those services. (See R4.7)

The cost of such services should be assessed against the employers, if only to assure that rehabilitation receives appropriate attention within the workmen's compensation program. Provision of special maintenance benefits during the period of instruction, with the sum and period to be determined by the medical-rehabilitation division, would help to assure cooperation of the worker in the instruction program. A worker who refuses vocational assistance might also be subject to denial of other benefits.

Placement of the disabled and use of second-injury funds [Section 27(d)(1)(F)]. "Hire the Handicapped" campaigns have a much broader base than workmen's compensation. They aim to employ not only those disabled on the job, a small portion of the total number of disabled, but others, notably veterans.

The employer concerned with operating costs, including premiums for workmen's compensation insurance, tends to be dubious about, if not averse to, hiring anyone with a preexisting impairment. If an employee with only one hand loses the other, or if an employee with sight in only one eye becomes totally blind, it is inequitable to burden the employer with the charges for the total disability. For this reason, all but four States have established a subsequent- or second-injury fund which assumes responsibility for paying for the compounding effects of a second injury. By this means, the worker receives in full the benefits which are his right, but the employer is charged only for the contributing effects of the last injury and not for the total. He is charged for one eye only: the fund pays the balance of the award for total blindness.

Unfortunately, many employers appear to have little knowledge of such funds. Also, in many States, the funds are insufficiently financed. Only 20 States have second-injury funds with broad coverage of preexisting impairments. Coverage that is so broad as to cover virtually every employee would defeat the purpose of the fund. The Model Act specifies 26 permanent impairments eligible for coverage by a second injury fund and, in addition, covers any impairment which is equivalent to 50 percent of total impairment.

We recommend that States establish a second-injury fund with a broad coverage of pre-existing impairments. We recommend that the second-injury fund be financed by charges against all carriers, State funds, and self-insuring employers in proportion to the benefits paid by each, or by general revenue, or by both sources. We urge State workmen's compensation agencies to interpret eligibility for second-injury funds liberally in order to encourage employment of the physically handicapped and to publicize the programs to employers and employees. (See R4.10, R4.11, and R4.12)

4. Workmen's Compensation Should Encourage Safety

Consistent with its aims to protect maintenance of income and to deliver services of high quality with the maximum economy, workmen's compensation also offers incentives to improve the safety of working conditions.

Although the supporting evidence is limited, we believe that the experience rating of insurance premiums can offer employers an incentive to develop safe designs, practices, and working arrangements. It has been demonstrated in individual industries that preventive health and safety programs dramatically improve productivity and reduce labor costs. The spur to safety from experience rating is restricted because 80 percent of all employers are too small to be eligible under present regulations.

We recommend that, subject to sound actuarial standards, the experience rating principle be

extended to as many employers as practicable. (See R5.3)

In addition to the built-in stimulus to safety provided by experience rating, workmen's compensation also promotes safety by expending substantial resources on accident prevention services. However, in some States there are so many carriers writing workmen's compensation insurance, it is unlikely that all provide effective safety programs. Likewise, some State-operated insurance funds and some self-insuring employers devote insufficient resources to safety programs.

We recommend that insurance carriers be required to provide loss prevention services and that the workmen's compensation agency carefully audit these services. State-operated workmen's compensation funds should provide similar accident prevention services under independent audit procedures where practicable. Self-insurers should likewise be subject to audit with respect to the adequacy of their safety programs. (See R5.2)

There Should Be an Effective Delivery System for Workmen's Compensation

The effectiveness of workmen's compensation is to be judged by the program's ability to deliver the benefits and services which fulfill its basic objectives.

Six obligations of administration [Section 27(d)(1)(J)]. In this connection, the primary obligations of the workmen's compensation agency are: (1) to take initiatives in administering the act, (2) to provide for continuing review and seek periodic revision of both the workmen's compensation statute and supporting regulations and procedures, based on research findings, changing needs, and the evidence of experience, (3) to advise employees of their rights and obligations and to assure workers of their benefits under the law, (4) to apprise employers, carriers, and others involved of their rights, obligations, and privileges, (5) to assist voluntary resolutions of disputes, consistent with the law, (6) and to adjudicate disputes which do not yield to voluntary negotiation. Adjudication should be the least burdensome of these six obligations if the others are well executed.

Legal expenses [Section 27(d) (1)(K)]. Originally it was hoped that the compensation program would be self-administering; that employees would protect their interests without need for legal counsel or other outside intervention. The no-fault concept and prescribed benefits, it was assumed, would reduce the need for litigation. The complexities of the law and doubts about the sources and nature of impairments have dashed these expectations, although, given sufficient assistance by administrative agencies, claimants might have relied less on privately retained counsel and the system as a whole might have been spared the concomitant legal expenses.

We recommend that attorneys' fees for all parties be reported for each case, and that the fees be regulated under the rulemaking authority of the workmen's compensation administrator. (See R6.15)

Administrative organization. Disputes on claims in five States are assigned immediately to the general courts. Adjudicators who handle workmen's compensation cases exclusively have the primary duty to resolve disputes in 45 States. Only if they fail are the decisions appealed to the courts.

We recommend that each State utilize a workmen's compensation agency to fulfill the administrative obligations of a modern workmen's compensation program. (See R6.1)

In line with their traditional role of providing a laboratory for experimentation, with variations suited to their own experience, needs, or creativity, the States have devised a variety of structures to administer their workmen's compensation programs. It is difficult to evaluate these structures outside the entire political and economic context of each State. The State agencies vary remarkably in their assignment and exercise of responsibilities. Some agencies do little but adjudicate, with small regard for the effective delivery of workmen's compensation services or for their other administrative obligations, cited above. For this reason, we advocate a strong administrative leadership with authority commensurate to the responsibility, empowered to supervise all employees except the members of the appeals board. One person should be

responsible for the administration of the State workmen's compensation program. This emphasis on personnel as a crucial factor in the excellence of the system extends to the entire staff of the agency.

We recommend that, insofar as practical, all employees of the agency be full-time with no outside employment, with salaries commensurate with this full-time status. (See R6.5)

Processing of claims. A number of positive recommendations on administrative procedure appear in Chapter 6. In this summary, we will mention only two, which are included in the list of subjects assigned to us for evaluation by Congress.

Time limits on filing claims [Section 27(d)(1)(G)]. The problem for an employee in meeting the time limit for filing his claim is particularly acute when his impairment results from a work-related disease. A substantial lag may occur between exposure to the disease-producing substance and the manifestation or diagnosis of the disease. The recommendation published by the Department of Labor favors a flexible time limit, so that workers with long developing disabilities can still receive benefits, and about one-half of the States meet this recommended standard.

We recommend that the time limit for initiating a claim be three years after the date the claimant knows, or by exercise of reasonable diligence should have known, of the existence of the impairment and its possible relationship to his employment, or within three years after the employee first experiences a loss of wages which the employee knows or, by exercise of reasonable diligence, should have known was because of the work-related impairment. If benefits have previously been provided, the claim period should begin on the date benefits were last furnished. (See R6.13)

A uniform system of reporting [Section 27(d)(1)(L)]. An active State agency, such as we have recommended, requires the receipt and analysis of substantial data. Most of these data may be useful only within the particular State, but there are advantages which would result from nationally uniform data on several aspects of workmen's compensation, such as promptness of payments, the number of workers receiving the maximum benefits, and the amount of legal fees. At the present time, most States cannot provide this information on any basis, and almost none of the data can be compared across States.

A salutary consequence of preparation and dissemination of comparable data would be the enhancement of one virtue of the Federal system, namely that States can be laboratories of experiment and learn from one another.

Insurance systems [Section 27(d)(1)(N)]. Most workmen's compensation laws provide that qualified employers may self-insure their obligations. Other employers are required to buy insurance from a private carrier or a State fund. Although private carriers are excluded from some States, they provide 63 percent of all workmen's compensation benefits; State funds, 23 percent; and self-insured employers, 14 percent.

The studies available to us indicate that no type of insurance has a general advantage over another in delivering services.

We recommend that States be free to continue their present insurance arrangements or, if the States wish, to permit private insurance, self-insurance, and State funds where any of these types of insurance now are absent. (See R6.20)

Protection against insolvency. Special means are needed to protect employees in the event the employer fails to comply with the insurance requirements of the workmen's compensation law of if a carrier or employer becomes insolvent. Insolvency is a risk of the free enterprise system, but the penalties should not be assessed upon disabled employees.

We recommend that procedures be established in each State to provide benefits to employees whose benefits are endangered because of an insolvent carrier or employer, or because an employer fails to comply with the law mandating the purchase of workmen's compensation insurance. (See R6.21)

PART III. THE FUTURE OF WORKMEN'S COMPENSATION

Our intensive evaluation of the evidence

compels us to conclude that State workmen's compensation laws are in general neither adequate nor equitable. While several States have good programs, and while medical care and some other aspects of workmen's compensation are commendable, strong points too often are matched by weak.

In recent years, State laws have improved. In 1971, more than 300 bills were enacted, about 100 more than customary in odd-year legislative sessions. This encouraging burst of activity nevertheless failed to satisfy many basic needs. Of 16 recommendations for workmen's compensation published by the Department of Labor, the average State meets only eight. The wide variation among the States also are disturbing. While 9 States meet at least 13 of the recommendations, 10 States meet 4 or fewer.

An appropriate response to the serious deficiencies of workmen's compensation has been the major concern of our Commission. Are we to conclude that workmen's compensation is permanently and totally disabled, or is there a rational basis for continuing the program?

That fundamental question has obliged us to consider the possible alternatives to workmen's compensation. We have discussed the implications of abolishing workmen's compensation and reverting to the negligence suits, a remedy abandoned some 50 years ago. This option is still inferior to workmen's compensation: its deficiencies include uncertainties for both employer and worker and the substantial costs arising from litigation over the degree and source of impairment. Such litigation also has serious adverse effects on efforts at rehabilitation.

An even more radical option is the proposal to disassemble the program and distribute the components elsewhere. We are convinced that the problems associated with partition are insoluble, and that the injured workingman would be adversely affected. Each of the programs to which the components would be assigned has at least one serious deficiency compared to workmen's compensation. For example, the eligibility requirements of the Disability Insurance program under Social Security preclude benefits until the worker has several quarters of covered employment. In workmen's compensation, in contrast, the worker is eligible from the first day he is employed. Also, we do not believe there is likely to be in the near future a source of medical care as satisfactory as workmen's compensation. Under most proposals for national health insurance, there are deductibles and other limitations on benefits not found in most workmen's compensation statutes. The ultimate weakness of partition, however, is that there are no well established locations for the two most important components of workmen's compensation: cash benefits for short-term total disabilities and cash benefits for long-term partial disabilities.

Perhaps in another decade or two, an attractive alternative to workmen's compensation will emerge.

For the foreseeable future we are convinced that, if our recommendations for a modern workmen's compensation program are adopted, the program should be retained.

The issue then becomes the final subject assigned to us by Congress: what are the "methods of implementing the recommendations of the Commission?" As we have reviewed the efforts for improvement by the various States, it has become apparent that the answer to this question is the most elusive of all that have been raised. Our recommendations are not fundamentally different from those of earlier investigations; yet previous recommendations have won no strong support.

Several reasons for the indifferent response to previous reform proposals are evident. The lack of interest in or understanding of workmen's compensation by State legislators and the general public is attributable in part to the complexity of the program. Various interest groups, including employers, unions, attorneys, and insurance carriers, have often allowed their specialized concerns to stand in the way of general reform. And State legislators and officials, even when they have been genuinely interested in reform, have too often been dissuaded by the irrational fear that the resulting increase in costs would induce employers to transfer business to States with less generous benefits and lower costs.

In view of these experiences, we have contemplated various strategies for improving workmen's compensation. Among those suggested at our hearings were a complete Federal takeover; retention of present State programs with only voluntary responses to Federal guidance or recommendations; and various methods of combining the basic State-

run system with a more active and influential role for the Federal government.

Despite disagreements among the Commissioners on some matters, such as the timing of certain methods for improving workmen's compensation, we all agree on some points.

We agree that the States have the economic capability of responding to our recommendations.

Although our recommendations will increase the costs of workmen's compensation for most States and many employers, we agree that employers and the States have the resources to meet such costs. The States have the distinct advantage of having personnel and procedures in place: a Federal takeover would substantially disrupt established administrative arrangements. Moreover, we have seen no evidence that Federal administrative procedures are superior to those of the States.

We reject the suggestion that Federal administration be substituted for State programs at this time.

Several Commissioners believe that a Federal takeover of workmen's compensation may be appropriate in a few years if the present deficiencies are not corrected promptly, but they also believe these deficiencies can be overcome by the States.

All Commissioners believe the virtues of a decentralized, State-administered workmen's compensation program can be enhanced by creative Federal assistance.

One role for the Federal government is to help the States learn from one another. Our hearings have impressed us that a superior method in one State is not adopted swiftly by other States, a lag explained partially by the complexity of workmen's compensation. This learning lag can be shortened substantially.

We urge the President to appoint a Federal commission to provide encouragement and technical assistance to the States.

This assistance could include consultation on statutory amendments and improved data and reporting systems. Another function of the Commission would be to develop additional recommendations to supplement ours. Some of their recommendations should be based on a continuing review of permanent partial disability benefits and the delivery system for workmen's compensation. These topics could not be examined thoroughly during the brief life of this Commission, and are critical to the overall design of a modern workmen's compensation program and to the elimination of the most likely sources of inefficiencies and excessive payments in the present program.

All Commissioners believe there is another potential role for the Federal government in workmen's compensation. We have specified certain of our recommendations as the essential elements of a modern workmen's compensation program. We recommend that compliance of the States with these essential recommendations be evaluated on July 1, 1975, and, if necessary, Congress with no further delay in the effective date should then guarantee compliance with these recommendations.

The essential elements of workmen's compensation recommended by this Commission are:

Compulsory Coverage (R2.1,

No Occupational or Numerical Exemptions to Coverage (R2.2, R2.4, R2.5, R2.6 and R2.7)

Full Coverage of Work-Related Diseases (R2.13)

Full Medical and Physical Rehabilitation Services without Arbitrary Limits (R4.2 and 4.4)

Employee's Choice of Jurisdiction for Filing Interstate Claims (R2.11)

Adequate Weekly Cash Benefits for Temporary Total, Permanent Total, and Death Cases (R3.7, R3.8, R3.11, R3.12, R3.15, R3.21 R3.23)

No Arbitrary Limits on Duration or Sum of Benefits (R3.17, R3.25)

If, after the 1975 review, Federal support is needed to guarantee compliance with these essential recommendations, they should be included as mandates in Federal legislation. Any employer not covered by a State workmen's compensation act would be required to elect coverage in an appropriate State. For all employers in States where the scope of protection of the State act does not include the essential recommendations, supplemental insurance or self-insurance to provide this broader pro-

tection would be required. The normal enforcement method would be the imposition of fines on non-complying employers. Most claims would be handled by existing State workmen's compensation agencies using their regular procedures, except that the scope of protection afforded by the State must include the essential recommendations.

The Commission was unanimous in concluding that congressional intervention may be necessary to bring about the reforms essential to survival of the State workmen's compensation system. We believe that the threat of or, if necessary, the enactment of Federal mandates will remove from each State the main barrier to effective workmen's compensation reform: the fear that compensation costs may drive employers to move away to markets where protection for disabled workers is inadequate but less expensive. There was disagreement concerning the appropriate time for Congressional action, with a majority concluding that States should be given until 1975 to act before Federal mandates are enacted if States have not adopted our essential recommendations. One reason for the delay is the feeling that an immediate push for congressional legislation would precipitate a confrontation which would delay positive action at the State level pending the outcome. Another reason is that many necessary reforms in the State workmen's compensation programs are not susceptible to Federal mandates. If our mandates immediately were adopted by Congress and made applicable to the States, some States might fail to undertake the thorough review of our recommendations that are not appropriate as Federal mandates.

If the Federal government guarantees the adoption of our essential recommendations, if a new Commission is established to encourage and assist the States, and, most important, if those who control the fate of workmen's compensation at the State level accept responsibility for the program's reform, we believe that soon the protection provided by workmen's compensation to "the vast majority of American workers, and their families . . . in the event such workers suffer disabling injury or death in the course of their employment. . . [will be] adequate, prompt, and equitable."