The Report of

The National Commission on State Workmen's Compensation Laws

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The Report of The National Commission on State Workmen's Compensations Laws

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Prepared circa 1973 by John F. Burton Jr., Former Chairman

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NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS
1825 K STREET, N. W.
WASHINGTON, DC 20006

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.
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The President of the Senate

The Speaker of the House
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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
I. 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)

5. 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."

Part One

General Objectives

A brief description of the origin and current state
of workmen's compensation in the United States of America
and an affirmation of general objectives appropriate for a modern
workmen's compensation program

Chapter 1

The General Objectives of Workmen's Compensation

Accidents, many of them avoidable, annually cause 115,000 deaths and more than 11 million injuries which are disabling beyond the first day, according to the National Safety Council. No small part of this annual toll is work-related. Each year some 14,000 workers die, another 90,000 are permanently impaired, and more than 2,000,000 miss one or more days of work because of job-related injuries and diseases. Ten million workers a year require medical treatment or at least temporarily suffer restricted activity because of work-related injuries, according to the National Center for Health Statistics. The dollar cost of lost wages, medical treatment, lost production, damaged equipment, and other consequences of work-related accidents for 1971 is estimated at $9.3 billion.

The importance of work-related injuries and diseases is not so much in the number or frequency. There is less likelihood that a worker will be injured at work than elsewhere, according to the National Safety Council, although, considering the hours of exposure, a person is more likely to be injured and less likely to be killed on the job than away from the job. (Table 1.1) Numbers aside, the true concern with work-related disabilities is that they strike men and women in their most productive years when they are most likely to have a dependent family.

Increased concern with work-related injuries and diseases and new awareness of remedial possibilities have motivated recent legislation both by State and Federal governments. State legislatures in 1971 adopted amendments to workmen's compensation laws at twice the normal rate for odd-year sessions. Federal actions have included the Coal Mine Health and Safety Act of 1969 (compensating miners totally disabled by pneumoconiosis and, in the

TABLE 1.1. Accidental deaths and injuries of workers,[a] 1971

Place	Deaths	Injuries (thousands)	Death[b] rate	Injury[b] frequency rate
Total	55,700	5,400	.12	11.8
At work	14,200	2,200	.09	14.4
Away from work	41,500	3,200	.14	10.4
Motor vehicle	25,100	950	.90	30.8
Public non-motor vehicle	8,600	1,100	.08	10.0
Home	7,800	1,200	.05	7.1

a Excludes children, housewives, students, the unemployed, the self-employed, employers, members of the armed forces, the retired, and others.

b Per 1,000,000 man-hours of exposure for all workers in all industries, including agriculture.

Source. National Safety Council, Accident Facts, 1972 Edition.

event of death, their widows and children) and the Occupational Safety and Health Act of 1970. By this Act, the Federal government assumed responsibility for establishing and enforcing safety and health standards for the protection of almost all employees.

The Act also established this Commission with the charge 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" for workers who suffer disabling injury or death in the course of their employment. The Act obligated the Commission to "transmit to the President and to the Congress not later than July 31, 1972, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable."

A. THE BASIC NATURE OF WORKMEN'S COMPENSATION

There is a workmen's compensation act for each of the 50 States, and for five of the six other "States" we were asked to study. There are also two Federal workmen's compensation programs, for a total of 58 jurisdictions. (See Glossary) No two acts are exactly alike, but many have similar basic features.

Workmen's compensation provides cash benefits, medical care, and rehabilitation services for workers who suffer work-related injuries and diseases. To be eligible for benefits, normally an employee must experience a "personal injury by accident arising out of and in the course of employment." All laws provide benefits for workers with occupational diseases, although not all cover every form of occupational disease.

Chapter 2 considers in some detail the phrase "personal injury by accident arising out of and in the course of employment." In general, its effect is to exclude some injuries and diseases from the scope of the program. But the distinguishing feature of workmen's compensation is that it assures benefits for many who could not win suits for damages under the common law, which usually requires that an injured party prove the defendant was at fault. Workmen's compensation benefits are paid even when the employer is free of negligence or other fault. These benefits are the employer's exclusive liability for work-related injuries and diseases. As the next section indicates, this decision to hold the employer liable without fault, while limiting his liability, was a deliberate choice.

When an injury or disease falls within the scope of the workmen's compensation program, the employer must furnish medical care, usually unlimited in time or amount. Most States also provide vocational and medical rehabilitation services, or supervise these services as furnished by the employer.

Cash benefits usually are classified as temporary total, temporary partial, permanent total, permanent partial, and death benefits. Temporary total benefits are paid to employees

unable to work after a specified waiting period. Temporary partial benefits are paid during a period of reduced earnings. These temporary benefits cease when the worker returns to full wages or is found eligible for permanent total or permanent partial benefits. Permanent total benefits are paid to those disabled completely for an indefinite time. Permanent partial benefits are paid if the employee incurs an injury or disease which causes a permanent impairment or experiences a permanent but partial loss of wages or of wage-earning capacity. If the worker is fatally injured, the employer is required to provide burial expenses and to pay benefits to specified dependent survivors. For each category of benefits, all States prescribe a maximum weekly benefit and usually a minimum weekly benefit. Some States prescribe limits on duration or total amount or both for certain classes of benefits.

The primary purpose of these benefits is to replace some proportion of wage loss, actual or potential. Many States also provide benefits because of impairment (See Glossary), whether or not this results in lost wages. Most laws prescribe a schedule of permanent partial impairments which specifies the number of weeks' benefits paid for the loss (including loss of use) of particular parts of the body.

In all but one State, an administrative agency supervises workmen's compensation claims; in 45 States, the agency also adjudicates disputes concerning eligibility for benefits and extent of disability. Decisions of these agencies may be appealed for review by the courts. In five States, the courts decide all disputed claims.

Despite the State role in workmen's compensation, it is largely a privately administered and funded program. The workmen's compensation statutes provide that each employer shall compensate disabled workmen by a certain formula of benefits, and that the employer must pay for these benefits. The employer usually makes private insurance arrangements to meet his statutory obligations. In all but four States, the employer may self-insure the risks of work-related injuries and diseases if he can meet the State financial standards. In 44 States, the employer may purchase workmen's compensation insurance from private insurance carriers. There are 18 States which operate insurance funds, but 12 of these compete with private carriers. Of the States which bar private carriers, three allow eligible employers to self-insure. Private insurance carriers are responsible for about 63 percent of all benefits paid, self-insurers for 14 percent, and State funds for 23 percent.

Workmen's compensation benefits are financed by charges in the form of insurance premiums at rates related to the benefits paid. The relationship between benefits paid and the employer's costs is most direct for self-insuring employers. Other employers are rated on the experience of their class by State insurance funds or private carriers. Typically, several hundred insurance classifications are used in each State. The individual employer usually pays a rate related to the benefits paid by all employers in his class, but employers with sufficiently large premiums can have their rates modified to reflect their own record of benefit payments relative to other firms in their class. Some employers pay three times as much per $100 of payroll as others in their classification. These differences provide a powerful incentive to reduce the frequency of compensable injuries and diseases.

B. THE ORIGIN OF WORKMEN'S COMPENSATION IN AMERICA

In the first decade of the twentieth century, U. S. industrial injury rates reached their all-time peak. In 1907, in two industries alone, railroading and bituminous coal mining, the toll was 7,000 dead. Despite these tragedies, the remedies available to recompense disabled workers or their families were inadequate and inequitable, consisting mainly of appeals to charity or law suits based either on the common law or, in many jurisdictions, on employers' liability statutes.

The common law for work injuries originally developed when most employers had few employees. Often a firm was like a large family that settled disputes without appeal to the courts. With this tradition, courts tended generally to lack sympathy for complaints by employees. In an economic and political climate favoring industrial growth, the courts were reluctant to burden entrepreneurs with the care of those disabled in their employment.

Most observers were critical of the common law handling of work-related injuries. As plaintiff, the workman had to prove the employer's negligence. Given the complexity of the work situation and the reluctance of fellow workers to testify against the employer, the worker often could not prove his claim. Even more obstructive to the employee's chance for recovery were three defenses available to the employer: (1) contributory negligence: the worker whose own negligence had contributed in any degree to his injury could not recover; (2) the fellow-servant doctrine: the employee could not recover if the injury resulted from the negligence of a fellow worker; and (3) assumption of risk: the injured man could not recover if the injury was due to an inherent hazard of which he had, or should have had, advance knowledge.

By the middle of the 19th century, protests against the grossest deficiencies and inequities of the common law led to employers' liability laws, which restricted the employer's legal defenses. However, these laws still obliged the employee to prove the employer's negligence, and their contribution to the ability of an injured workman to win a claim against his employer was minimal.

At the opening of the 20th century, the shortcomings of the legal remedies for work-related injuries were common knowledge. The compensation system which based liability on negligence was an anachronism in a time when work was recognized to involve certain inherent and often unpredictable hazards. Awards for injuries generally were inadequate, inconsistent, and uncertain. The system was wasteful, partially because of high legal costs. Settlements were delayed by court procedures. Society was disturbed by the burden of charity for uncompensated injured workmen. As Arthur Larson has observed, "the coincidence of increasing industrial accidents and decreasing remedies had produced in the United States a situation ripe for radical change. . . ."

Workmen's compensation statutes, as an alternative to the common law and employers' liability acts, had many objectives, most of them designed to remedy past deficiencies. The statutes aimed to provide adequate benefits, while limiting the employer's liability strictly to workmen's compensation payments. These payments were to be prompt and predetermined, to relieve both employees and employers of uncertainty, and to eliminate wasteful litigation. Appropriate medical care was to be provided. Most radical of all these objectives was the establishment of a legal principle alien to the common law: liability without fault. The costs of work-related injuries were to be allocated to the employer, not because of any presumption that he was to blame for every individual tragedy, but because of the inherent hazards of industrial employment. Compensation for work-related accidents was therefore accepted as a cost of production.

These objectives were widely applauded. The workmen's compensation program eventually was supported by both the National Association of Manufacturers and the American Federation of Labor.

The no-fault approach spread rapidly: between 1911 and 1920, all but six States passed workmen's compensation statutes. These laws were influenced by the contemporary interpretations of constitutional law. The Supreme Court's reading of the interstate commerce clause precluded the possibility of a Federal law on workmen's compensation for most private industry, although the Federal Employers' Liability Act, applicable to railroad employees engaged in interstate commerce, and a compensation act covering certain Federal employees were both enacted in 1908. A New York State study commission, whose 1910 report was the basis for the New York Compensation Act, would have adopted the German compensation plan's feature of employee contributions had this been deemed constitutional. Of even greater impact was the 1911 decision by the Court of Appeals of New York that compulsory coverage was unconstitutional because the imposition of liability without fault was taking of property without due process of law. Consequently, these early laws made coverage elective and applied mainly to specified hazardous industries.

Although most of these constitutional views no longer hold, their imprint on today's workmen's compensation statutes is unmistakable. The present system is basically State operated and almost exclusively employer financed. Moreover, in some States, the tradition of elective coverage and the application to only certain occupations continues: only about 85 percent of all employed wage and salary workers

are covered by workmen's compensation.

A description of the origins of workmen's compensation, including the vestigial constitutional inhibitions, serves a larger purpose than homage to history. The basic principles of the present program are largely those established 50 or 60 years ago; they can be completely understood only in the context of forces present at their creation.

Since then, the task of workmen's compensation has grown more difficult. Technological advances have produced unfamiliar and often indeterminable physical and toxic hazards. Occupational diseases associated with prolonged exposures to unsuspected agents or to fortuitous combinations of stresses have undermined the usefulness of the "accident" concept. While advances in medical knowledge have facilitated the treatment of many injuries and diseases, they have also enlarged the list of diseases that may be work-related. Simple cause/effect concepts of the past have yielded to an appreciation of the many interacting forces that may result in impairment or death. In addition to genetic, environmental, cultural, and psychological influences, physicians must consider predisposing, precipitating, aggravating, and perpetuating factors in disease. Etiologic analysis, estimates of the relationship to work, and evaluation of the extent of impairment have become accordingly complex for many illnesses.

Workmen's compensation has failed, meanwhile, to achieve certain of its original objectives. The program has not been self-administering but has seemingly spurred litigation. Benefits have increased but in most States have not kept pace with rising wage levels. The failure to adapt to changing conditions has led to many criticisms, but constructive criticism requires a restatement of the objectives for the modern era.

C. FIVE OBJECTIVES FOR A MODERN WORKMEN'S COMPENSATION PROGRAM

Many of the traditional attributes of the workmen's compensation program, such as liability without fault, have continuing validity. Other attributes which persist, such as elective coverage, are no longer warranted in the light of the objectives of a modern workmen's compensation program. These are stated in general terms below. Specific applications appear in Part Two.

The four basic objectives are:

broad coverage of employees and work-related injuries and diseases;

substantial protection against interruption of income;

provision of sufficient medical care and rehabilitation services; and

encouragement of safety.

The achievement of these basic objectives is dependent on an equally important fifth objective:

an effective system for delivery of the benefits and services.

After discussing these five objectives in turn, we shall examine a distinctive attribute of workmen's compensation: the program is designed to assure that the objectives reinforce each other.

(1) Workmen's Compensation Should Provide Broad Coverage of Employees and Work-Related Injuries and Diseases

Workmen's compensation protection should be extended to as many workers as feasible, and all work-related injuries and diseases should be covered.

Coverage of employees. Among the many reasons given for the lack of universal coverage of employees is that many of the currently excluded firms are small or have poor safety records and are reluctant to bear the cost of workmen's compensation. This argument is not convincing. Many States have been able to extend their laws to virtually all employers without undue financial distress. An economic advantage of coverage is that employers are relieved of possible liability in damage suits. Moreover, if the costs of newly covered employers are high, this means that employees and society were previously absorbing the costs of work-related impairments and deaths through enforced poverty or welfare payments. We be-

lieve these costs should be assessed against employers, not against the disabled or the ordinary taxpayer.

Another factor in the exclusion of certain occupations from workmen's compensation is that these groups, such as household workers, lack political influence. We believe that this explanation, while historically accurate, is unacceptable as a basis for a modern workmen's compensation program. Another historic reason for excluding certain workers was the constitutional requirement of due process. At one time, the due process standard forced States to make their laws elective, so that the laws embraced primarily work that was especially dangerous. Today, the constitutional limitations of due process have little or no relevance to workmen's compensation.

More cogent arguments against extending workmen's compensation to certain classes of employees are based on administrative feasibility. If certain employers, such as homeowners or owners of small farms, were required to cover all of their employees, many of whom are casual, the administrative burden on employers, insurance carriers, and State workmen's compensation agencies would be substantial. A related argument is that it is difficult to inform homeowners and other employers of casual labor of the coverage requirement. Because these arguments have some merit, our recommendations will reflect our concern for these conditions, while manifesting our primary interest in protecting workers, regardless of who are their employers.

A final argument against universal mandated coverage is that it limits the ability of employees and employers to decide freely how much protection against work-related injuries and diseases is desirable. In the absence of workmen's compensation, the parties would be free to negotiate contracts concerning the risks of industrial disabilities, or each party could individually purchase insurance.

For several reasons we do not find the freedom-to-contract plea convincing. A classic point against that plea is that employees do not have equal bargaining power with their employers, particularly when employees are not unionized. An even more compelling reason for mandatory insurance is that the task of selecting a job is complex. Most workers are unlikely to assess properly the probabilities of being exposed to work-related impairments. Often employees and employers are contemptuous of the risks they assume. We believe that society can appropriately mandate workmen's compensation coverage as a way of insuring that those injured at work do not become destitute.

Coverage of injuries and diseases. All work-related injuries and diseases should be covered by workmen's compensation. Of necessity, the meaning of "work-related" must be defined by statute and interpreted judicially, but injuries and diseases which are in fact work-related should not be excluded from coverage because of legal technicalities. On this basis, statutes which restrict coverage to a list of specified occupational diseases are incompatible with the objective of complete protection.

Arguments against broad coverage of injuries and diseases are sometimes similar to those against broad coverage of employees, e.g. the expense of full coverage. Experience refutes these theories: many States have succeeded with broad coverage of work-related injuries and diseases.

(2) Workmen's Compensation Should Provide Substantial Protection Against Interruption of Income

Workmen's compensation must be an insurance program, not a welfare program. The availability and extent of cash benefits should not depend primarily on a beneficiary's economic needs, as in public assistance programs. Rather, the cash benefits for the disabled worker should be closely tied to his loss of income. The benefit formulas should also be carefully predetermined in order to reduce uncertainties of employees and employers about the possible consequences of injuries and diseases.

Disability benefits. The basic measure of the worker's economic loss is the life-time diminution in remuneration attributable to the work-related injury or disease. This can roughly be described as wage loss, although remuneration is composed of earnings plus supplements (Figure 1.1). Supplements include fringe benefits, such as health insurance, and legally mandated expenditures, such as employers' contributions for Social Security.

The appropriate measure of lost remuner-

FIGURE 1.1. Elements of remuneration before and after impairment from injury or disease

	BEFORE IMPAIRMENT		AFTER IMPAIRMENT
	Basic wages and salaries		Basic wages and salaries
+	Irregular wage payments	+	Irregular wage payments
+	Pay for leave time	+	Pay for leave time
+	Employer contributions for supplements	+	Employer contributions for supplements
=	Total remuneration	=	Total remuneration
−	Taxes	−	Taxes
−	Work-related expenses	−	Work-related expenses
		−	Expenses caused by injury or disease
=	Net remuneration	=	Net remuneration

See Table 3.1 for U.S. Department of Commerce definition of "compensation," which is equivalent to "total remuneration" in Figure 1.1.

ation is not the difference between total remuneration before and after the disability. Rather, the difference in net remuneration before and after the disability should be considered. This comparison reflects factors that are affected by disability such as taxes, work-related expenses, some fringe benefits which lapse, and the worker's uncompensated expenses resulting from the work-related impairment.

Workmen's compensation should replace a substantial proportion of the worker's lost remuneration. From the standpoint of the worker, insurance against the full possible loss of remuneration is desirable. Replacement of a substantial proportion is justified by a feature of workmen's compensation which distinguishes the program from other forms of social insurance. In exchange for the benefits of workmen's compensation, workers renounced their right to seek redress for economic damages and pain and suffering under the common law. In no other social insurance program, such as Social Security or unemployment compensation, did workers surrender any right of value in exchange for benefits.

As discussed below, other objectives of workmen's compensation have implications for the proportion of lost remuneration that should be replaced, but the general conclusion stands: a substantial proportion of the disabled worker's lost remuneration should be replaced by workmen's compensation.

While workmen's compensation benefits should be a substantial proportion of the worker's lost remuneration, there are reasons to set minimum and maximum weekly cash benefits. A low-wage worker, if totally disabled, may be unable to live on the same proportion of lost remuneration that is appropriate for most workers. To avoid committing such a worker to dependence on welfare, a minimum weekly payment may be needed. Of course, if another program, such as a family income maintenance program, were to guarantee a basic level of income for all workers, there might be no need for minimum benefits under workmen's compensation.

The arguments for maximum benefit are more troublesome. As long as benefits are linked to the losses in net remuneration caused by the work-related impairment, the task of providing incentives for return to work should be no more difficult for a worker with high earnings than for others. To argue that maximum benefits will reduce the costs of the program for employers is to ask disabled high-wage workers to bear a high proportion of their own lost remuneration. A somewhat more appealing argument for maximums is that highly paid workers presumably are able to provide their own insurance and to make decisions about risks. A maximum limit on benefits would provide high-income workers an opportunity to design their own insurance programs: if, for example, the maximum benefits would replace only half of a high-wage worker's lost remuneration, he may choose to increase his

private insurance. Another possible argument for maximums is that if one conceives of workmen's compensation benefits being paid out of a fixed fund, then other uses for the fund, such as an extended duration for permanent total benefits, may have a greater priority than the replacement of a high proportion of lost remuneration for well paid workers. A final argument is that if workmen's compensation engages in some income distribution to the low-wage workers through the device of minimum benefits, then the same philosophy justifies income redistribution at the expense of high-wage workers. We are not totally unsympathetic to this philosophy, but we emphasize again that the primary purpose of workmen's compensation is to provide insurance against interruption of income, not welfare or income redistribution. We conclude that there is an uneasy case for maximum and minimum benefits as long as they do not distort the primary insurance function of workmen's compensation.

Impairment benefits. In the preceding paragraphs, we argue that the primary basis for determining workmen's compensation income benefits should be the remuneration lost by the worker because of disability. As noted in Section A, many States also provide cash benefits because of work-related impairment (See Glossary), even if this does not result in lost remuneration. We believe that, within carefully designed limits, impairment benefits are appropriate, but they should be of secondary importance in a modern workmen's compensation program and the amount of such benefits should be limited.

The argument for impairment benefits is that many workers with work-related injuries or diseases experience losses which are not reflected in lost remuneration. Permanent impairment involves lifetime effects on the personality and on normal activity. This factor suggests that workmen's compensation benefits should not be tied solely to lost remuneration.

There are several reasons, however, why impairment benefits should be of limited number and amount. One is the historical exchange, or quid pro quo, which we believe is of continuing validity insofar as impairment benefits are concerned. The quid is the principle of liability without fault, which means that many workers qualify for workmen's compensation benefits who could not qualify for damages under negligence suits. The quo is that an employer's liability is limited. The employer's liability is less in some workmen's compensation cases than it would be under negligence suits, where awards can include payments for full economic loss, pain and suffering concurrent with an accident, and the non-financial burdens of permanent impairment.

The objective of an effective delivery system also requires limits on impairment benefits. The determination of the degree of impairment is inherently complicated and expensive. If benefits linked to the degree of impairment play a secondary role in workmen's compensation, there will be far less time consumed in evaluating such claims.

For these reasons, we believe that the primary basis for determining workmen's compensation benefits should be lost remuneration, and that cash benefits for impairment should be limited.

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

Too often workmen's compensation is viewed simply as a cash indemnity to pay the disabled worker for loss of earnings or impairment or both. The cash benefits are important, but equally so are medical care and rehabilitation services. The objectives of workmen's compensation include repair of the damage both to earning capacity and the physical condition of the worker.

A proper medical care and rehabilitation program is a triad of functions. First, high quality medical care must be provided to restore promptly the patient's abilities or functions. Medical care includes not only hospitalization and medical and surgical services but also a wide variety of treatment and supplies furnished by health professionals such as physical therapists. Second, vocational counselling, guidance, or retraining may become necessary if the worker suffers a job-related loss of endurance or skills needed to perform accustomed duties. The third step of rehabilitation is restoration to continuing productive employment.

These three functions can be achieved only if disabled employees receive prompt and sufficient medical care with continuous physical

and vocational rehabilitation as long as restorative efforts are justifiable. Positive incentives that encourage disabled workers, employers, insurance carriers, and administrative agencies to provide and utilize appropriate rehabilitation services should be built into a modern workmen's compensation program.

Rehabilitation is not a mere gesture of social responsibility: it is economic wisdom. With a relatively small investment of resources, many disabled workers can be returned to productive jobs where they are again self-sufficient and where their efforts increase the total yield of goods and services. At the same time, restoration relieves others of the burden of supporting the disabled.

There is economic wisdom in efforts to improve the worker's physical condition even when the expenditures cannot be justified by the gain in earning capacity. The worker's feeling of worth and well-being is a legitimate concern. Nevertheless, it is reasonable to place some limits on the employer's liability for rehabilitation benefits which do not increase the worker's earning capacity. Expenditures for rehabilitation that will not enhance a worker's earning capacity do not deserve priority over other uses for those rehabilitation resources outside of the workmen's compensation system.

A further function of rehabilitation is to offer incentives to employers to put the beneficiaries of rehabilitation services on the payroll. Some employers feel that should such workers again suffer from a work-related injury or disease after being hired, the rise in their insurance costs will be substantial. In order to remove that barrier to employment of the rehabilitated, statutes should provide for procedures to limit the employer's liability for pre-existing impairments.

(4) Workmen's Compensation Should Encourage Safety

Workmen's compensation should encourage safety directly by providing economic incentives for each firm and employee, and indirectly by providing incentives for increased output in firms and industries having fewer work-related injuries and diseases.

First, workmen's compensation should encourage each employer to utilize safety devices and methods and to stimulate employees to observe safe practices. Proper allocation of the costs of work-related injuries or disease, including lost wages and production and accidental damages to property, can provide a powerful economic incentive for safety programs. Because the employer's control over working conditions far exceeds that of the employee, we believe that assigning to the employer the largest portion of the costs of work-related injuries and diseases will best serve the objective of safety.

It might be argued that the appropriate way to assess the cost of work-related impairments is on a case-by-case basis, with the burden assigned in proportion to each party's negligence. This scheme, however, would be inherently litigious and would clearly violate the objective of an effective delivery system, discussed below.

In order to provide the most powerful direct incentives to safety, we believe in strengthening the concept of relating each employer's workmen's compensation costs to the benefits paid to his employees.

Second, workmen's compensation can indirectly encourage safety by strengthening the competitive position of firms and industries which have superior safety records. It does this by allocating the costs of work-related injuries and diseases to the appropriate firms and industries. An industry with high workmen's compensation costs owing to a poor safety record may have to increase its prices. Consumers will then tend to patronize industries with low rates of injury and disease. Within an industry, the firm with an inferior safety record will tend to have higher costs and lower profits than its direct competitors, who consequently are more likely to prosper and grow.

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

An effective system for the delivery of benefits and services, as relevant for workmen's compensation as for any other program, is needed to insure that other program objectives are met efficiently and comprehensively.

Comprehensive performance means that the participating personnel and services are of sufficient number and quality to serve the program's objectives. The personnel and institutions contributing to a comprehensive perform-

ance include employers, insurance carriers, attorneys, physicians, and State courts and workmen's compensation agencies.

Efficient performance means that a given quality of service, such as the treatment necessary to restore the functions of an injured hand, is provided promptly, simply, and economically. The efficiency of a program may be judged by comparing its performance with similar activities inside and outside the system. To justify itself, workmen's compensation should meet its objectives more economically than any other system of delivering such benefits. Within the system, functions should be designed and performed with the least expense for a given quality of service.

The Interrelationship of the Objectives of Workmen's Compensation

Although in the preceding parts of this section we discuss the objectives of workmen's compensation separately, the program is designed to serve its several objectives simultaneously and automatically. The degree to which workmen's compensation serves multiple objectives simultaneously is a feature which distinguishes it from other social insurance programs.

To the extent that the objectives of workmen's compensation are complementary, the interrelationship or linkages built into the program are desirable. For example, the replacement of a high proportion of lost remuneration by income benefits provides a spur to safety efforts by employers, since the benefits are charged against the employer via experience rating. Conversely, if an inadequate proportion of lost remuneration is replaced by income benefits, then the stimulus to safety will be inadequate. In this way the objectives of safety and replacement of lost remuneration reinforce each other.

On the other hand, to the extent that the objectives of workmen's compensation are in conflict, the linkages compel compromises or trade-offs. For example, the rehabilitation objective suggests that the portion of the disabled worker's lost remuneration replaced by cash benefits should be low enough to provide the worker with an incentive to return to work. This reduction, however, conflicts with income protection and safety objectives. In the abstract, there is no "correct" balance between conflicting objectives. We give serious consideration to such conflicts when, in Part Two, we frame our specific recommendations.

* * *

We have suggested five objectives for a modern workmen's compensation program. We believe that workmen's compensation can and should be designed to make positive use of the interrelationships among these objectives. Because the accommodation of these five interrelated objectives is itself so complex a task, we emphatically discourage the use of workmen's compensation to meet the objectives of other programs.

REFERENCES FOR CHAPTER 1

Introduction, See *Compendium,* Chapter 1
Section A, See *Compendium,* Chapter 4
Section B, See *Compendium,* Chapters 2 and 3
Section C, See*Compendium,* Chapter 3

The *Compendium on Workmen's Compensation* was prepared for the National Commission on State Workmen's Compensation Laws. References for data cited in this *Report* are included in the *Compendium,* but the Commission does not endorse all ideas expressed in the *Compendium.*