Chapter 4

The Medical Care and Rehabilitation Objective

An objective of workmen's compensation as important as income maintenance is delivery of medical care and rehabilitation services for work-related injuries or diseases. The system provides more than $1 billion of medical and rehabilitation benefits a year, composing about a third of all workmen's compensation benefits. Most employees with work-related impairments need only medical benefits: of the annual total of 5 million compensable claimants, 4 million are not disabled long enough to be eligible for cash benefits.

A proper medical care and rehabilitation program has three components. First, definitive medical care must be provided to restore the patient's abilities or functions. Medical care requires attention not only to immediate needs, such as hospitalization, but also to the longer-term requirements of workers who would benefit from physical rehabilitation. These workers may require surgery and a wide variety of treatment and supplies furnished by health professionals, including fitting, instruction and exercises associated with prosthetic appliances. Second, vocational counseling and job retraining may become necessary if the worker suffers a loss of endurance or skills needed to perform his previous duties. The third component is the worker's actual return to productive employment.

The three components are closely related. For example, emergency surgery should be performed in a manner to prepare for eventual use of prosthetic devices, if necessary. Also early neglect of immobilized patients may lead to muscular atrophy which can hinder rehabilitation. It is perhaps even more important to begin promptly to prepare patients psychologically for recovery of their capabilities and morale, before apathy or despair become deep-rooted.

The performance record of the present workmen's compensation program varies considerably for these three components of medical care and rehabilitation. In general, the program provides satisfactory medical care during the acute and healing stages of the worker's impairment. Physical rehabilitation, however, is badly neglected in many States, although some carriers and State funds perform well. Second, the record on vocational rehabilitation is spotty: in some States workmen's compensation channels many workers into vocational rehabilitation, but in most States the needed liaison with available agencies is poorly developed or the number of suitable agencies is limited. Finally, as to the job placement of rehabilitated employees, most workmen's compensation programs contribute in some degree to placement through the use of a second- or subsequent-injury fund, but placement services are not adequate in most States.

The considerable variation in the performance of the States may be explained in part by the lack of appreciation that all three functions of medical care and rehabilitation are important. A substantial effort is needed to recognize these three functions and provide a coordinated program of aid to the worker as soon as a serious work-related impairment occurs.

A. MEDICAL CARE AND PHYSICAL REHABILITATION

The goal for medical care and physical rehabilitation services is to provide benefits of high quality at reasonable cost. This goal has been pursued by a variety of techniques, including limitations on the employee's choice of physician and sometimes on the amount, duration, or type of medical services.

Choice of Physician

There are three approaches to the initial choice of physician in workmen's compensation. Some States permit a worker the free choice of physician. Others allow the employer or insurance carrier to select the physician. An intermediate approach allows the employee to select his physician from a panel. In three States, the panel is chosen by the employer. In New York, the workmen's compensation board selects the panel, which includes a high proportion of the State's physicians. Connecticut also permits the employee to choose his physician from a list prepared by the agency.

The standard published by the Department of Labor recommends that the initial physician should be selected by the worker in accord with the rules and regulations adopted by the administrative agency. This recommendation has been interpreted to mean that a State which permits an employee to select his physician from a panel complies with the standard (Table 4.1). In 1972, one half of the States were in compliance.

TABLE 4.1. Jurisdictions allowing injured worker initial free choice of a physician or choice from a panel, 1966-72

Year	States (50)	Other "States" (6)	Federal (2)
1966	21	2	1
1972	25	2	1

See Table 2.3 for explanatory notes.

The issues involved in choice of physician are divided between choice of the initial physician and selection of such consultant physicians as may be needed for special diagnostic or treatment problems in difficult cases. All parties desire competent medical service from as many physicians as necessary to provide whatever care the worker's injury or disease requires. The particular emphasis of workmen's compensation on prompt and thorough restoration of the worker places special importance on medical services provided by consultant specialists.

The initial choice of physician is therefore significant in difficult cases as the means of entry into a team of medical consultants. The employee is of course desirous of using a family physician in whom he has confidence through previous experience. The employer or carrier's motive is to assure prompt and expert care directed toward rehabilitation and reemployment. The workmen's compensation agency wants to use physicians familiar with accurate reporting and evaluation of impairments. Few physicians combine in one person all these qualities. Nonetheless, any arguments that physicians treating work-related injuries and diseases should be selected under special limitations are not so weighty as to invalidate completely the normal method of physician selection.

R4.1

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 workmen's compensation agency.

The union and management of a particular plant may select a physician panel, which could then be approved by the agency. The selection or approval by the agency should be made after consultation with medical authorities and the lists should include those physicians who have demonstrated by practice a special interest and competence in occupational health.

After the initial selection of a physician by the employee, circumstances may arise where a change in physician is necessary in order to provide the most appropriate medical care. As described later in this section, the workmen's compensation agency should have the authority and responsibility to suggest or even require such a change.

Limits on Medical Care by Statute or Regulation

The goal of medical care of high quality at reasonable cost has been pursued in some States by statutory or regulatory limitations on medical care as to duration, total expenditure, or type of service. These limitations sometimes are applied to workers with occupational diseases even when in the same State there are no such limits on benefits for work-related injuries. Table 4.2 shows the extent of compliance with the standard published by the Department of Labor which recommends full medical benefits for workers injured on the job. The number of States meeting this standard has increased substantially in the past 25 years. For no other standard published by the Department of Labor are the 50 States so near full compliance. Table 4.3 indicates the number of States in compliance with the standard recommending full medical benefits for workers who contract an occupational disease. Again, the record of improvement by the States is encouraging, although as of January 1, 1972, 14 States had not met the standard.

As to restrictions on the types of medical services under workmen's compensation, most

TABLE 4.2. Jurisdictions providing, without arbitrary limits on duration or amount, full medical benefits for injuries, 1946-72

Year	States (50)	Other "States" (6)	Federal (2)
1946	26	2	2
1956	31	3	2
1966	39	3	2
1972	41	4	2

See Table 2.3 for explanatory notes.

TABLE 4.3. Jurisdictions providing, without limitation on duration or amount, full medical benefits for occupational diseases, 1946-72

Year	States (50)	Other "States" (6)	Federal (2)
1946	18	2	2
1956	23	3	2
1966	28	3	2
1972	36	4	2

See Table 2.3 for explanatory notes.

State statutes authorize payments for "all reasonable and necessary medical, surgical, and hospital care." Some agencies by regulation interpret this language to deny payments for certain types of medical practitioners or types of health care institutions. For example, some States will not pay workmen's compensation benefits for rehabilitation centers, home health programs, occupational therapists, osteopaths, registered nurses, or psychologists. Puerto Rico and 17 States now have restrictions on at least some kinds of practitioners or health institutions. (See *Compendium,* Chapter 10)

Another limitation on medical services is the rule used in some States that a patient cannot receive further medical benefits if no such benefits were paid during a stipulated period, such as two years. These limitations mean that if the effects of a work-related injury or disease return long after treatment was discontinued, the patient will be ineligible for further medical care.

We do not quarrel with the right of a State to limit medical care benefits based on the

merits of a particular case. We do quarrel with rules which arbitrarily preclude medical care regardless of the merit of the claim or the restorative value of the medical benefits. Indeed, these arbitrary rules, while they may be intended to achieve the worthy objective of high quality care at a reasonable cost, are almost invariably inappropriate to that end. In essence, these limits can be self-defeating because they may force a disabled worker to be unproductive indefinitely because his medical rehabilitation is incomplete.

R4.2

We recommend there be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment.

R4.3

We recommend that the workmen's compensation agency have discretion to determine the appropriate medical and rehabilitation services in each case. There should be no arbitrary limits by regulation or statute on the types of medical service or licensed health care facilities which can be authorized by the agency.

R4.4

We recommend that the right to medical and physical rehabilitation benefits not terminate by the mere passage of time.

This last recommendation means that once a worker receives medical benefits, a claim for further medical care can be filed at any time. The possible exception would be if the worker has signed a compromise and release agreement. However, we believe such agreements should be rare. (See Chapter 6)

The Appropriate Solution to Quality Care at Reasonable Cost

There are no short cuts to quality medical care and rehabilitation at reasonable cost. This goal for a workmen's compensation program can not be reached by use of arbitrary limits on amount, duration, or type of medical and rehabilitation services, nor can quality at reasonable cost be achieved by permitting the widespread use of private arrangements (compromise and release agreements) to limit potential liability. Ultimately, the only assurance of quality and reasonable cost is effective supervision of medical care and rehabilitation services by the State workmen's compensation agency.

The Department of Labor has published a standard recommending that a rehabilitation division be established within each workmen's compensation agency. Fewer than half the States comply with this recommendation. (Table 4.4)

TABLE 4.4. Jurisdictions with a rehabilitation division in the workmen's compensation agency, 1966-72

Year	States (50)	Other "States" (6)	Federal (2)
1966	17	2	2
1972	22	2	2

See Table 2.3 for explanatory notes.

With or without a rehabilitation division, not all workmen's compensation agencies supervise the delivery of medical care. The Department of Labor also has published a recommendation that agencies supervise medical care in order to achieve the maximum restoration of the worker with a minimum of delay. In only 26 States (Table 4.5) is this function performed in a manner consistent with this standard.

TABLE 4.5. Jurisdictions authorizing workmen's compensation agency to supervise medical care, 1966-72

Year	States (50)	Other "States" (6)	Federal (2)
1966	23	2	1
1972	26	3	1

See Table 2.3 for explanatory notes.

R4.5

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

The role of the agency in supervising medical care and rehabilitation services warrants serious, professional attention. The duty can not be performed by a clerical review of records. To exercise its authority well, the division must be staffed or supervised by physicians and other health specialists, with an advisory committee to receive appeals from treating physicians. The supervisory division should be able to order carriers or employers to provide necessary medical care, to limit payments for medical and rehabilitation services to usual and customary levels, and when appropriate, to require patients to seek consultation or change the form and source of treatment.

R4.6

We recommend that every employer or carrier acting as employer's agent be required to cooperate with the medical-rehabilitation division in every instance when an employee may need rehabilitation services.

We believe the key to our preceding recommendations is the recognition that a modern workmen's compensation program cannot meet its medical care and rehabilitation objective if attention is directed exclusively to the provision of medical care in the period immediately following awareness of the injury or disease. Achievement of the objective also entails prompt initiation of physical rehabilitation, as well as the subsequent restoration of vocational skills and the return of the worker to a productive employment. These several components can be achieved only with conscientious supervision by a workmen's compensation agency which has the authority, responsibility, and professional competence for coordinating the many activities of medical care and rehabilitation.

Coordination with Other Programs

There is some coordination between the medical care benefits of workmen's compensation and those presently available through the Medicare program of Social Security, the Veterans Administration programs, the public assistance system, and private health insurance plans. Almost universally, such programs do not pay for medical care if protection is available from workmen's compensation. Some do attempt to overcome present deficiencies in workmen's compensation protection. If a worker over 65 meets the eligibility requirements, Medicare will help pay medical benefits which workmen's compensation does not pay because of statutory limitations or because of compromise and release agreements. If the jurisdiction of workmen's compensation is in doubt, a disabled worker who is a veteran may be treated by the Veterans Administration, subject to recoupment of costs if the worker is subsequently held to be entitled to workmen's compensation benefits. For the most part, however, workmen's compensation now bears first responsibility for medical care of work-related impairments.

The various proposals for national health insurance usually are designed to cover the entire population, but either explicitly or by interpretation exclude medical care provided by workmen's compensation. To the extent that medical care is not provided by workmen's compensation for work-related injuries or diseases because of the program's lack of coverage or limitations on the duration or amount of medical benefits, these proposed national health insurance programs would assume part of the costs associated with work-related impairments. This assumption of costs would be inconsistent with a central tenet of workmen's compensation—that the costs of work-related injuries and diseases should be allocated to the responsible source—and will be unnecessary if our recommendations for medical care under workmen's compensation are adopted.

B. VOCATIONAL REHABILITATION

In general workmen's compensation is not doing an effective job of assuring that workers with work-related disabilities are helped to recover lost abilities and to return to their previous jobs, or, where this is impossible, to learn substitute skills. The major source of such assistance in most States is a department of vocational rehabilitation. These departments largely are funded by Federal money and often are associated with education programs or other activities of the State government with little formal connection with the workmen's compensation agency or even, in some States, with the agency responsible for physical restoration of disabled workers.

Such vocational services as are provided by the workmen's compensation program generally result from efforts of employers and insurance carriers. Carriers and employers have a strong inducement to provide vocational services for disabled workers whose prospects indicate they may return to work and give up their claims to weekly benefits.

Despite the activities by the State departments of vocational rehabilitation and the carriers and employers, it appears that many workers who could benefit from vocational rehabilitation do not receive these services. Workmen's compensation should take a more active role in assuring vocational rehabilitation.

R4.7

We recommend that the medical-rehabilitation division be given the specific responsibility of assuring that every worker who could benefit from vocational rehabilitation services be offered those services.

This responsibility may be substantial because there are many private and public agencies which provide vocational rehabilitation assistance, and the medical-rehabilitation division will have the obligation to channel the impaired worker to the appropriate set of services.

R4.8

We also recommend that the employer pay all costs of vocational rehabilitation necessary to return a worker to suitable employment and authorized by the workmen's compensation agency.

At the present time, much of the cost of vocational rehabilitation for those with work-related impairments is paid from sources outside the workmen's compensation program, such as the Federal grants to the departments of vocational rehabilitation. For two reasons, we recommend that employers finance the cost of vocational services authorized by the workmen's compensation agency. One is that an objective of workmen's compensation is to allocate to the responsible source all the costs of work-related injuries and diseases. Charging the cost of vocational rehabilitation for work-related cases to other sources of revenue violates this objective. The second reason is that State departments of vocational rehabilitation have been less than consistent in attending to the occupationally disabled. They have changed their priorities from time to time. We believe the needs of the occupationally disabled worker will be met best by assuring a reliable source of financial support for vocational rehabilitation within the workmen's compensation program.

Vocational rehabilitation also can be encouraged by providing special incentives for workers. During the period of rehabilitation, many workers need financial assistance to pay for the additional expenses associated with their instruction. This is especially true when the worker must attend training sessions away from home. The recommendation published by the Department of Labor is that special maintenance benefits be paid during the learning period. There are 27 States which offer such payments. (Table 4.6)

TABLE 4.6. Jurisdictions providing special maintenance benefits during period of rehabilitation, 1946-72

Year	States (50)	Other "States" (6)	Federal (2)
1946	7	1	1
1956	15	2	2
1966	19	2	2
1972	27	4	2

See Table 2.3 for explanatory notes.

R4.9

We recommend that the workmen's compensation agency be authorized to provide special maintenance benefits for a worker during the period of his rehabilitation. The maintenance benefits would be in addition to the worker's other benefits.

The nature, amount, and duration of these benefits would be within the discretion of the medical-rehabilitation division.

Still other incentives may be appropriate to encourage workers to seek vocational rehabilitation. There is concern that some workers may

hesitate to restore their capabilities because they fear their cash benefits will be reduced as their earning capacity or actual earnings improve. These are rare instances but can be anticipated. One control would be to pay cash benefits on the basis of the worker's actual disability and impairment, or, if the worker refuses rehabilitation services, on the basis of the extent of impairment or disability which the disability evaluation unit of the agency decides would have prevailed if the worker had utilized the proffered services. An even stronger control would be to make a worker entirely ineligible for cash benefits unless he accepts the restoration services offered by the medical-rehabilitation division. Such encouragement to cooperation appears in several workmen's compensation statutes now, and experience indicates that the procedure sometimes is an effective stimulus to rehabilitation.

C. RETURNING THE REHABILITATED WORKER TO A JOB

A workmen's compensation program which provides definitive medical care, effective physical rehabilitation, and appropriate vocational rehabilitation services is not satisfactory unless it also can return the successfully rehabilitated worker to a job. Placement of the formerly or partially disabled worker is a task made more formidable by the reluctance of some employers to hire the handicapped, whether because of the fear of unusual costs associated with handicapped workers or for other reasons. Basically the reluctance of employers to hire the handicapped must be overcome outside of workmen's compensation because cost of the program is but one of several concerns of employers. But workmen's compensation can at least counteract the fear of employers that employment of a worker with an impairment may result in exceptional workmen's compensation costs if that worker subsequently experiences a work-related injury or disease.

Second-Injury Funds

A second-injury or subsequent-injury fund within the workmen's compensation program insures that a handicapped worker who then subsequently suffers a work-related injury or disease will receive full compensation to cover the resulting impairment. At the same time, the employer will be charged only for the benefits that are associated with the second injury. This is an effort to deal equitably with a situation where the second injury would not have occurred but for the prior impairment or where the degree of impairment that results from the combination of the prior and second injuries is more serious than the total effect of the two injuries considered separately. For example, the loss of one eye is considered a 24 percent impairment relative to the whole man by the American Medical Association's *Guides to Evaluation of Permanent Impairment.* Taken separately, the loss of two eyes would add up to 48 percent, but the loss of both eyes is considered 85 percent impairment of the whole man. The second-injury fund charges the employer only for the impairment caused by the second injury when considered by itself, and the fund pays the worker the difference between the amount charged to the employer and the total benefits warranted.

All but four States have some form of second- or subsequent-injury fund. Some of these laws, however, are applicable only when the prior disability is one of a limited number specified in the act. The standard published by the Department of Labor proposes that the subsequent-injury fund be broad enough to protect workers with all types of prior impairments, including arthritis, heart disease, and epilepsy. Table 4.7 indicates the number of States complying with the standard.

TABLE 4.7. Jurisdictions providing broad coverage of previous impairments by subsequent-injury funds, 1946-72

Year	States (50)	Other "States" (6)	Federal (2)
1946	5	1	1
1956	11	3	1
1966	16	3	1
1972	20	5	1

See Table 2.3 for explanatory notes.

R4.10

We recommend that each State establish a second-injury fund with broad coverage of pre-existing impairments.

Section 20 of the Model Act provides an example of a statute with broad coverage: 26 specific permanent impairments are listed and, in addition under a general clause, any permanent impairment which is equivalent to 50 percent of total impairment is also eligible to be covered by the fund. In general terms, the Model Act approach is consistent with our recommendation.

As implied by the standard published by the Department of Labor and our recommendation, the coverage offered by a second-injury fund may be too narrow to benefit many handicapped workers. It is possible also to make the list of prior impairments covered so broad that virtually every employee can be found, by intensive medical examination, to have a physical limitation which would be compensable by the fund. Since the second-injury funds are usually financed by general assessments against all employers, such broad coverage subverts the policy of allocating the cost of injuries and diseases to the firms primarily responsible.

Only a few States appear to have a second-injury fund with coverage which may be too broad. Usually, the coverage of prior impairments is too narrow, partly because the financial support for second-injury funds in some States is inadequate. Some States finance their second-injury fund by assessing employers a charge for work-related deaths when the victim leaves no surviving dependent. The amount of these assessments per case and the number of deaths in some States do not support a second-injury fund with a sufficiently broad coverage of prior impairments. The most successful method of financing second-injury funds appears to be assessments against employers or their insurers in proportion to the benefits they pay. However, because employment of the handicapped is a concern which transcends the workmen's compensation program, a more general source of financial support for the funds may be desirable.

R4.11

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 appropriations from general revenue, or by both sources.

If the fund is financed from charges in proportion to benefits paid, the total amount of the assessments should vary from year to year in accordance with the needs of the second-injury fund. This method is similar to Section 55 of the Model Act.

Another striking factor brought to our attention during our hearings is the general lack of awareness and utilization of second-injury funds. Clearly, a second-injury fund cannot help a handicapped worker get a job if employers are not aware of its nature or not encouraged to use the fund.

R4.12

We recommend that workmen's compensation agencies publicize second-injury funds to employees and employers and interpret eligibility requirements for the funds liberally in order to encourage employment of the physically handicapped.

A related issue is: Should an employer be eligible to use a second-injury fund if he was not aware of the employee's handicap when he was hired. Presumably under these circumstances the employee's handicap did not hinder his employment. Therefore, it can be argued, since he did not need the assistance of a second-injury fund to get his job, the employer should not be eligible to use the fund if the worker is again disabled.

On the other hand, it can be argued that even if the employer was not specifically aware of a worker's impairment at the time he was hired, the employer might be reluctant to hire him if he was one of a class of workers likely to have health problems, such as older workers. If the employer were eligible to use the second-injury fund as long as he could demonstrate the worker had an impairment prior to the time he was injured, then the fund indirectly aids employment of the handicapped by reducing the employer's concern over hiring certain classes of workers.

Another argument for allowing employers to use the second-injury fund for workers whose

impairment was unknown at the time of hiring has little to do with employment of the handicapped. The argument is that it would be unfair to charge an employer for the total cost of a workmen's compensation claim when part of the reason for the extent of impairment was not work-related. The employer should bear the portion of the award due to the work-related injury or disease, but no more.

The underlying issue here appears to be: What is the basic purpose of the fund? If the main intent is to encourage employment of the handicapped, then prior knowledge of the impairment perhaps should be a factor in determining eligibility for coverage by the second-injury fund. If on the other hand the main intent is to spread the risks associated with pre-existing impairments among employers equitably, then prior knowledge of the handicap would seem irrelevant to eligibility for coverage by the fund. In actuality, second-injury funds are presumed to serve both purposes: it would appear to be up to the States to determine for themselves which purpose should dominate.

Those States concerned primarily with employment of the handicapped could require employers to notify the second-injury fund of the nature of a new employee's impairment at the time of hiring. This procedure would assure employers of some protection from the fund, encourage employment of the handicapped, and also encourage employers to provide pre-employment physical examinations.

REFERENCES FOR CHAPTER 4

Section A, See *Compendium,* Chapters 3, 4, 10, 19, and 20
Section B, See *Compendium,* Chapters 3, 4, 11, 19, and 20
Section C, See *Compendium,* Chapters 3, 4, 11, 19, and 20

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.*

Chapter 5

The Safety Objective

The encouragement of safety is one of the basic objectives of a modern workmen's compensation program. The relevance of this objective is not as immediately obvious as income maintenance or medical care and rehabilitation. Some view workmen's compensation as a program which deals exclusively with the *consequences* of work-related impairments: they assume that other programs, such as health and safety code enforcement, have the responsibility for *preventing* such impairments. However, workmen's compensation operates in at least two ways to reduce the frequency and severity of work-related injuries.

First, the workmen's compensation program provides employers with preventive services, including safety engineering. In this role, workmen's compensation is only one of many programs directed at preventing injuries. A second general role is to provide a monetary incentive to employers to improve their safety records. Here workmen's compensation is a primary force.

After a brief review of data on the extent of work-related deaths, injuries, and diseases, we shall discuss the contribution of workmen's compensation in preventing work-related injuries. (In this chapter, injury also connotes work-related disease, in conformity with the terminology of certain statistical series.)

A. DATA ON WORK-RELATED INJURIES AND DEATHS

A discussion of work-related injuries and deaths must begin with a caveat: the available data are fragmentary and their accuracy is uncertain. The primary source of information on work-related deaths, the National Safety Council, provides only relatively aggregated data, such

as deaths for the entire manufacturing sector. There are no estimates of the numbers of deaths in individual industries within manufacturing, such as steel or rubber. Also because of the unavailability of data that permit precise calculations, the National Safety Council's estimates of deaths for recent years are based in part on extrapolations from Bureau of Labor Statistics estimates in 1964 of the proportion of disabling work injuries that culminate in death.

The available data on disabling work injuries, collected by the Bureau of Labor Statistics, also have serious limitations. These data were obtained from reports submitted on a voluntary basis by only about 20 percent of U.S. employers, not a representative sample. Also work injury rates are available for only about 16 States.

Fortunately we are on the threshold of a new era of occupational accident statistics. As a result of the Occupational Safety and Health Act of 1970, a revised and expanded recordkeeping system is in effect for work-related injuries, diseases, and deaths. Beginning with the period of July to December 1971 and annually thereafter, rates of occupational deaths, injuries, and seven categories of occupational illnesses will be calculated on the basis of data collected by the new recordkeeping system. Unfortunately, the new data were not available soon enough for the use of this Commission. Meanwhile, despite their limitations, the data that are available are worth examining.

Analysis of Available Data

Table 5.1 provides information on work-related deaths and injuries since 1930. The annual number of work-related deaths has decreased from 19,000 in 1930 to 14,200 in 1971. Because the total work force has grown substantially during this period, the death rate per 100,000 workers has been cut by more than half. The decline in the death rate has continued

TABLE 5.1. Trends in work-related deaths and injuries, 1930-71

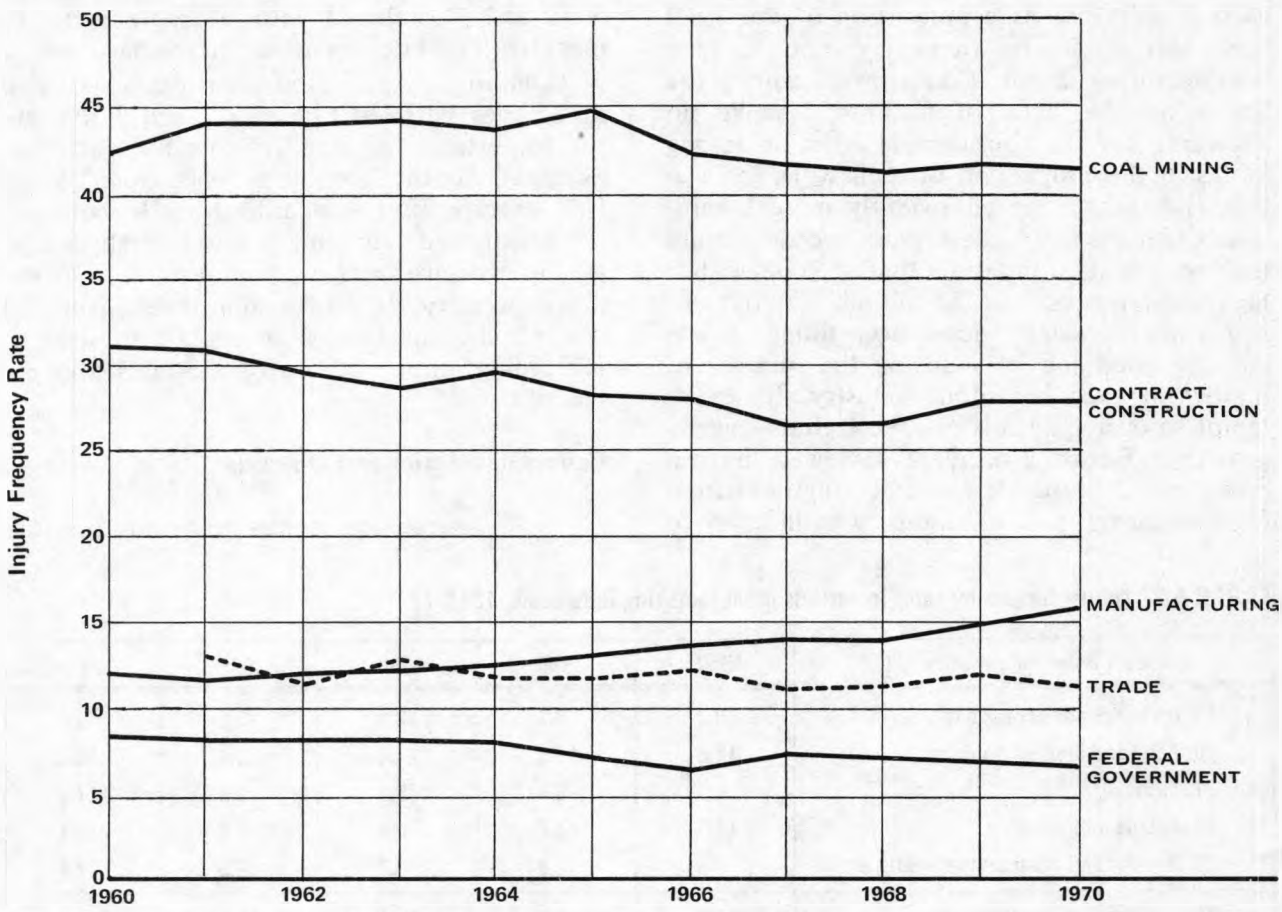
Year	Deaths				Injuries
	All workers[a]		Manufacturing[a]		Manufacturing[b]
	Number	Rate per 100,000 workers	Number	Rate per 100,000 workers	Frequency rate[c]
1930	19,000	–	–	–	23.1
1935	16,500	39	1,900	22	17.9
1940	17,000	38	2,000	19	15.3
1945	16,500	33	2,700	18	18.6
1950	15,500	27	2,600	17	14.7
1955	14,200	24	2,000	12	12.1
1960	13,800	21	1,700	10	12.0
1965	14,100	20	1,800	10	12.8
1970	14,300	18	1,800	9	15.2
1971	14,200	18	1,800	10	NA

a Source. The National Safety Council, *Accident Facts,* 1972 ed.

b Sources. U.S. Department of Labor, Press Release 71-663, December 20, 1971. U.S. Department of Labor, Bureau of Labor Statistics, *Handbook of Labor, Labor Statistics* 1970, pages 364-374. U.S. Department of Labor, Press Release 1484, February 23, 1956. U.S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 1098, *Work Injuries in the United States* During 1950, pages 12-15.

c Frequency rate is the number of disabling injuries per 1,000,000 man-hours of exposure.

FIGURE 5.1. Work injury frequency rates 1960-1970 (Selected industry divisions and groups)



The injury-frequency rate is the number of disabling work injuries per million employee-hours worked.

Source: U.S. Department of Labor, Bureau of Labor Statistics.

for 40 years. The injury frequency rate, the number of disabling injuries per million employee hours worked, also has declined substantially in the manufacturing sector over the past several decades, although the rate has increased since 1961 and was higher in 1970 than it has been since 1951.

These data on work-related injuries and deaths are instructive, but further insights are possible through the use of other data.

There are substantial differences in injury rates among industries. Figure 5.1 indicates the work injury frequency rates for 1960 to 1970 for several different classes of industry. Coal mining and contract construction are relatively hazardous; the trade and Federal government sectors are relatively safe; and the manufacturing sector ranks in the middle. Also, within the manufacturing sector there are substantial differences as shown in Table 5.2. Not only are some manufacturing industries consistently more hazardous than others; the injury frequency rates are increasing in some while elsewhere they are going down.

Within a single manufacturing industry, there is typically a difference in accident experience among firms according to their size. Figure 5.2 shows the accident experience of various size firms compared to the average injury rate in their industry.

Because of the substantial and persistent differences in injury rates among industries and various size firms, caution is necessary in using accident statistics. The following discussion demonstrates an adjustment made because of inter-industry differences in injury rates.

Injury rates by State are available for 16 States for 1969. Column 1 of Table 5.3 shows

the injury frequency rates for the total manufacturing sector in each of the 16. Column 2 shows each State's rate as a proportion of the 1969 U.S. average injury frequency rate for the manufacturing sector. Comparisons among the States on the basis of Column 2 make no allowance for the considerable variation among States in the proportion of their work force in industries which are consistently more hazardous. Comparison of these gross averages could lead to the interpretation that a State with a high concentration of hazardous employment had a poor accident record even though it was doing a good job of reducing the number of injuries in each hazardous industry. In an attempt to overcome this bias, each State's aggregate manufacturing accident data were broken down into 20 separate manufacuting industries. Comparisons were made industry by industry to calculate the ratio of the State's rate to the U.S. injury frequency rate, and these comparisons were then combined into a single ratio to measure the State's relative performance shown in Column 3. As can be seen, the substantial differences between Columns 2 and 3 indicate the importance of standardizing the data. For example, South Carolina appears close to the U.S. average after standardization. In contrast, the unadjusted rate appeared to be half as high as the national average. Columns 4 to 6 use injury severity data to demonstrate again that use of the unadjusted averages can lead to misleading interpretations of a State's accident record.

Causes of Injuries and Diseases

A source of controversy in previous

TABLE 5.2. Injury frequency rates in various manufacturing industries, 1950-70

Standard industrial classification	1950	1955	1960	1965	1970
19 Ordnance and accessories	6.2	6.1	2.4	2.8	9.8
20 Food and kindred products	18.9	18.6	21.1	23.4	28.8
21 Tobacco	6.8	6.6	8.7	9.5	11.9
22 Textile mill products	11.0	9.7	9.2	9.6	10.4
23 Apparel and other textile products	6.6	6.9	6.7	6.8	7.7
24 Lumber and wood products	49.8	40.5	38.0	36.0	34.1
25 Furniture and fixtures	21.0	18.1	18.8	19.9	22.0
26 Paper and allied products	16.1	12.9	12.3	12.6	13.9
27 Printing and publishing	8.2	9.1	9.5	10.0	11.7
28 Chemical and allied products	11.1	8.0	7.4	7.5	8.5
29 Petroleum and coal products	9.3	6.5	6.8	8.6	11.3
30 Rubber and plastic products	10.0	6.9	4.4	5.2	18.6
31 Leather and leather products	10.8	11.8	11.4	13.4	15.2
32 Stone, clay, and glass products	20.5	19.0	18.3	18.7	23.8
33 Primary metal industries	14.8	12.2	10.5	12.9	16.9
34 Fabricated metal products	19.0	15.4	15.4	18.1	22.4
35 Machinery, except electrical	13.8	11.1	10.8	11.9	14.0
36 Electrical equipment	7.4	5.6	5.2	5.9	8.1
37 Transportation equipment	8.3	5.7	6.1	6.6	7.9
38 Instruments and related products	7.7	5.8	5.8	6.2	7.9
39 Miscellaneous manufacturing	13.3	12.5	12.7	13.3	15.8

Sources. U.S. Department of Labor: Press release 71-663, 20 Dec 71; press release 1484, 23 Feb 56; Bureau of Labor Statistics, *Handbook of Labor Statistics 1970*, p 364-74; Bulletin 1098, *Work Injuries in the United States During 1950*, p 12-15.

studies of work-related injuries is the uncertainty as to source or cause of the injuries. Although most injuries are the consequence of a series or combination of events, certain of these events, statistically speaking, may be more critical than others, and would therefore be more important in accident prevention programs.

Efforts to identify these critical factors tend to be influenced by the vocabulary or the professional interests of the investigators. The events studied represent an interaction of behavior and environment. Engineers have tended to emphasize environmental factors in accidents on the principle that proper design and construction can make occupational activities almost foolproof. Educators and psychologists have tended to emphasize behavioral factors such as fatigue, alcoholism, sensory defects, boredom, and lack of motivation. A theory that certain workers are accident prone was fashionable for a while until it was scrutinized by investigators who established that, inexperience aside, the situation and not the worker is accident prone. The engineering approach to the prevention of occupational injuries has made great contributions to safety and will no doubt continue to be of primary importance. Research on human factors and motivation, however, also will contribute to prevention of work-related injuries.

Determination of the prevalence and

TABLE 5.3. Injury frequency and severity rates in manufacturing in 16 States, 1969

State	Frequency rate[a]			Severity rate[a]		
	(1) Rate[b]	(2) Unadjusted ratio[c]	(3) Adjusted ratio[d]	(4) Rate[b]	(5) Unadjusted ratio[c]	(6) Adjusted ratio[d]
Ala.	14.8	1.0	1.3	1,200	1.6	1.7
Ark.	25.5	1.7	1.7	1,845	2.5	2.0
Conn.	12.2	.8	1.1	404	.6	.7
Fla.	19.3	1.3	1.3	1,342	1.8	1.7
Ga.	19.5	1.3	1.5	1,472	2.0	2.0
Ind.	15.2	1.0	1.1	860	1.2	1.4
Iowa	19.0	1.3	1.9	700	1.0	1.2
Maine	21.6	1.5	1.3	1,064	1.5	.9
Mich.	11.4	.8	1.0	470	.6	.9
N.J.	14.2	1.0	1.1	684	.9	1.0
N.Y.	13.4	.9	1.1	548	.8	.9
Pa.	13.7	.9	1.1	651	.9	1.0
S.C.	7.5	.5	1.0	NA	NA	NA
Va.	12.8	.9	.9	793	1.1	1.0
Wis.	20.9	1.4	1.5	839	1.1	1.2
Wyo.	30.6	2.1	1.5	2,295	3.1	1.0
U.S.A.	14.8	–	–	730	–	–

a Frequency rate equals the number of disabling injuries per 1,000,000 man-hours of exposure.

Severity rate equals the number of lost work days per 1,000,000 man-hours of exposure.

b U.S. Department of Labor, Bureau of Labor Statistics, Report No. 389, *Injury Rates by Industry, 1969.*

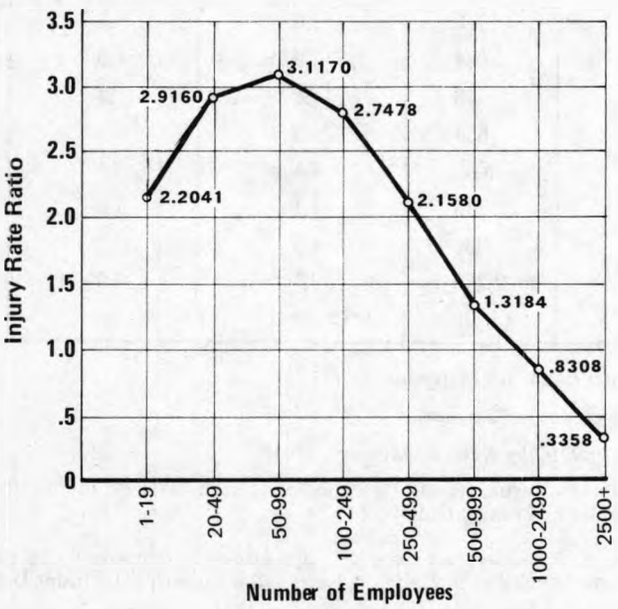
c The unadjusted ratio is the frequency rate (or severity rate) for the entire manufacturing sector in each State divided by the frequency rate (or severity rate) for the entire manufacturing sector in the United States.

d The adjusted ratio is calculated by (1) dividing the State frequency (or severity) rate for each 2-digit manufacturing industry by the corresponding U.S. rate to obtain 2-digit industry ratios, and (2) averaging all of the 2-digit industry ratios for each State (using U.S. 2-digit employment data as weights).

identification of the exact causes of work-related diseases are even more challenging tasks than analysis of injury data. The incidence of disease probably is understated and the data are unreliable for several reasons. Most physicians are unfamiliar with occupational diseases. The symptoms of most occupational diseases are non-specific and easily attributed to non-occupational diseases. Diagnosis is complicated by the long latent period of many occupational diseases. Diseases frequently are caused by many factors and many nonoccupational diseases can be aggravated by occupational exposures.

For these reasons, employers and employees generally are not as aware of the risks of occupational disease as they are of the risks of work-related injuries. Although the causative factors of the important occupational diseases have been established well enough to permit employers to apply effective preventive measures, specialized knowledge in the recognition, evaluation, and control of these hazards is required. Professionals (industrial hygienists) with this knowledge are not generally available except in large companies and in a few insurance companies.

FIGURE 5.2. Ratio of injury rate for firms of various sizes in relation to the average injury rate in their industry. Ratios are weighted average for 39 manufacturing industries.



Conclusion

The data on work-related injuries, diseases, and deaths raise many questions. Why are there apparently such substantial differences among States in their injury rates? What force in the past decade has apparently reversed the long term trend in the reduction of the injury frequency rates?

It is to be hoped that many questions pertinent to the prevention of impairments will be answered by the data being collected under the Occupational Safety and Health Act of 1970. Some are beyond the scope of this Commission's inquiry. However, in several important ways, it is believed that a workmen's compensation program can reduce the rate of work-related injuries, diseases, and deaths.

B. WORKMEN'S COMPENSATION AND ACCIDENT PREVENTION SERVICES

The Relationship Between Workmen's Compensation and Other Sources of Accident Prevention Services

Accident prevention services traditionally have been divided into three components: engineering, enforcement, and education. The three E's of safety occupy many organizations and programs outside workmen's compensation. These include State safety agencies, which in most States are separate from the workmen's compensation agency; private organizations, such as the National Safety Council; and, as a result of the Occupational Safety and Health Act of 1970, agencies of the Federal government.

There is ample reason for close cooperation between the workmen's compensation agency and other organizations, but no compelling reason to combine the workmen's compensation agency and State safety agencies. Certain States have found such mergers advantageous but we have seen no evidence that the advantages of consolidation are clearcut.

We do encourage cooperation among safety organizations. The place to begin is in systematic collection and exchange of data. Reports on accidents sent to the State's safety agency are potentially a valuable source of information for a workmen's compensation

agency. Likewise, workmen's compensation reports could be used by the State safety agency to refine its estimates about the types of injuries and hazards which deserve special attention.

The Federal government now requires employers to report considerable information on industrial injuries, diseases, and deaths. These reporting requirements, which are standard throughout the country, will be useful to State safety and workmen's compensation agencies.

R5.1

We recommend that a standard workmen's compensation reporting system be devised which will mesh with the forms required by the Occupational Safety and Health Act of 1970 and permit the exchange of information among Federal and State safety agencies and State workmen's compensation agencies.

Other substantial advantages which would accrue from a compatible reporting system for workmen's compensation are discussed in Chapter 6.

Accident Prevention Services Within Workmen's Compensation

Within the workmen's compensation program, substantial resources are devoted to providing accident prevention services. Private insurance carriers annually spend $35 million on safety services, which is 1.1 percent of the standard premiums collected by these carriers. State insurance funds and self-insuring employers also invest considerable sums to promote safety.

The achievements of the insurance carriers and State funds in providing accident prevention services to employers are substantial and commendable. These services warrant encouragement, especially in view of certain unfulfilled needs for accident prevention. For example, small firms may be unable to finance their own safety programs and their carriers may find it prohibitively expensive to provide them with adequate accident prevention services. A possible way to partially overcome this problem is to charge small firms a supplementary safety premium which carriers would be required to spend on safety efforts for the class of firms paying the premium.

Another need that warrants attention concerns insurance carriers that do not provide an effective safety program for their policyholders, especially those carriers doing a limited amount of business in a particular State. In some States there are more than 100 carriers writing workmen's compensation insurance. It is unlikely that they are all able to provide effective and comprehensive safety programs.

R5.2

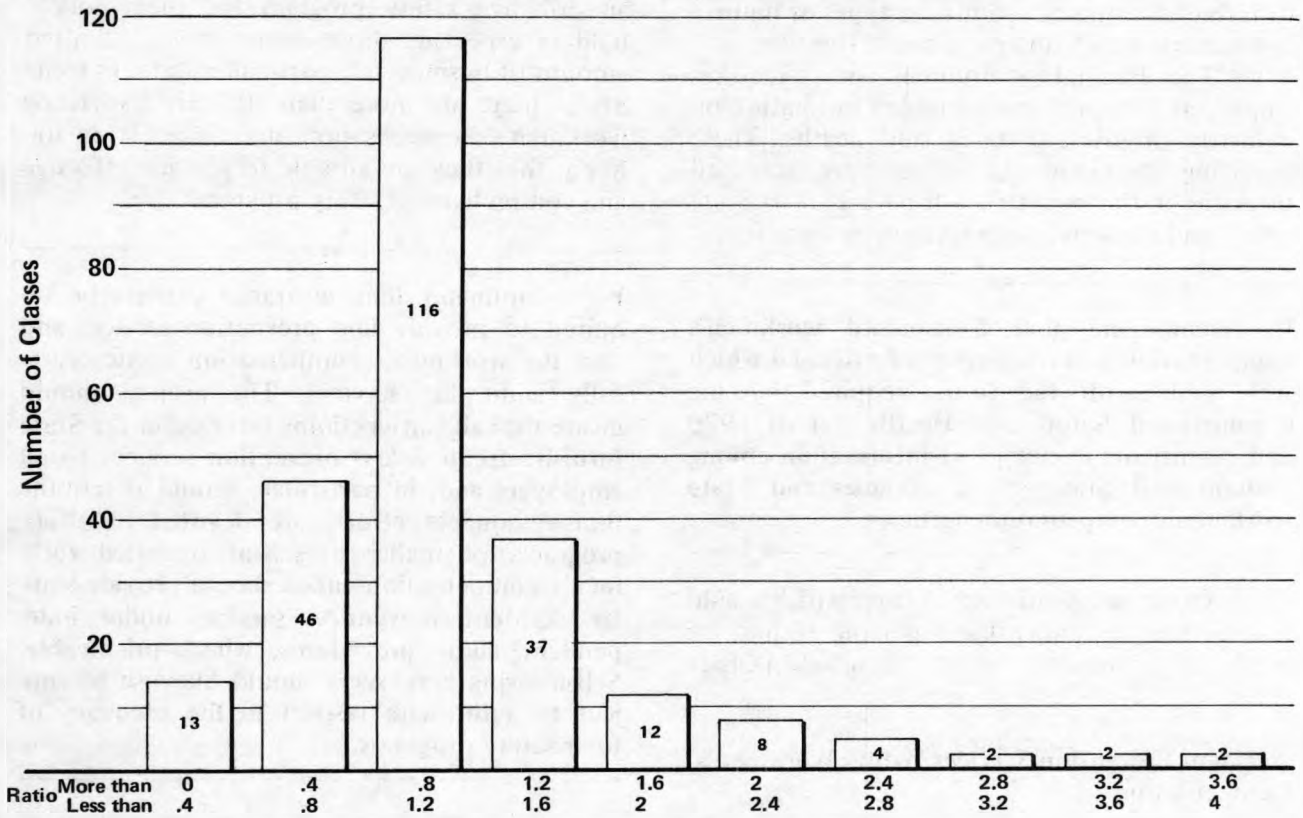
We recommend that insurance carriers be required to provide loss prevention services and that the workmen's compensation agency carefully audit the services. The agency should insure that all carriers doing business in the State furnish effective loss prevention services to all employers and, in particular, should determine that reasonable efforts are devoted to safety programs for smaller firms. State-operated workmen's compensation funds should provide similar accident prevention services under independent audit procedures, where practicable. Self-insuring employers should likewise be subject to audit with respect to the adequacy of their safety programs.

Remedial action, including revocation of the right to sell workmen's compensation insurance or to self-insure, may be necessary where a carrier or self-insurer is not providing an effective safety program. The workmen's compensation agency should assume responsibility for the audit of safety programs of carriers and self-insurers and should either take the necessary remedial action or, where appropriate, request the State insurance commission or other State agency to act on the basis of the information collected by the workmen's compensation agency.

C. WORKMEN'S COMPENSATION AND THE FINANCIAL INCENTIVES TO REDUCE ACCIDENTS

The primary contribution to safety provided by workmen's compensation probably comes from the financial stimulus inherent in the insurance rate-making procedures used in every State. In those States where employers meet their statutory obligation to provide work-

FIGURE 5.3. Distribution of the 242 most important workmen's compensation insurance classes in Wisconsin according to the ratio of actual loss to expected loss for each class in 1969*



* Categories with a ratio of more than 1.0 had losses larger than expected. Those between .8 and 1.2 have the closest relation between anticipated and actual losses.

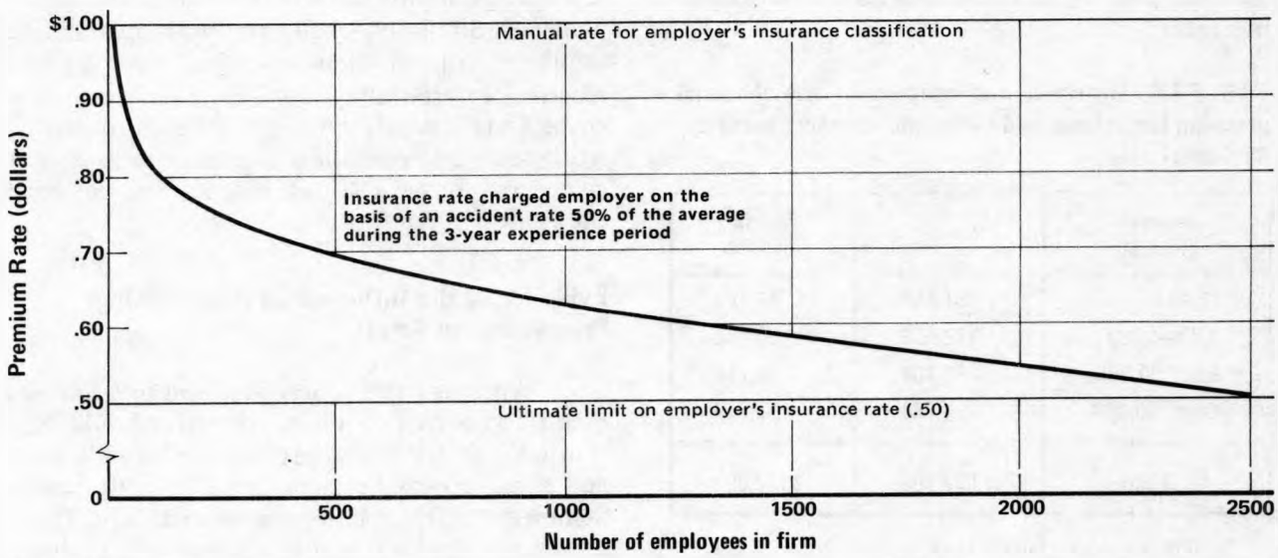
men's compensation protection by purchasing insurance from private carriers, a sophisticated rate-making procedure allocates the total cost of the program in the State according to the benefits paid by classes of employers. Employers are grouped in about 500 active insurance classes. An insurance rate, known as the "manual rate," is calculated and published for each of these classes. For larger firms, this manual rate is modified by the firm's individual experience relative to other firms in the same insurance classification. Some of the largest firms use retrospective rating, which results in insurance costs based almost entirely on the firm's own experience. In most States with exclusive State workmen's compensation funds, similar procedures are followed.

This merit-rating policy is designed to provide a powerful stimulus to safety efforts, both by properly allocating the cost of industrial accidents among various industries and by rating the individual firms within each of these industries on the basis of their experience.

Allocation of Cost of Accidents Among Industries

The ability of the workmen's compensation rate-making procedure to allocate the cost of the program among industries on the basis of their relative losses is demonstrated in Figure 5.3. This figure shows the relationship between the expected losses for the 242 most important insurance classifications and the amount of actual losses for those same insurance classifications during a recent policy year in Wisconsin. The expected losses of each class are used as a basis for its manual rate. The general correspondence between expected and actual losses indicates the rate-making procedure is fairly allocating the costs of the workmen's compensation program to the industries responsible for

FIGURE 5.4. Relation between manual rate and experience rate as firm size increases for firm with injury frequency rate that is 50 percent of the industry average



the losses. This allocation of costs means that industries with relatively inferior accident records will tend to have higher prices or lower profits or both, while those industries which have relatively favorable accident experience will be in a superior competitive position. The allocation of the costs of the workmen's compensation program to the industries responsible for the losses thus encourages the economy to make a better use of its resources.

Incentives to Individual Firms to Improve Safety Records

Although most employers pay at rates based on the experience of their entire class, firms paying workmen's compensation premiums of sufficient amount can have their basic insurance rates (manual rates) modified by formulas which take into account their individual experience. An annual premium of at least $750 at manual rates for at least two years is necessary to be eligible for experience-rating by a private carrier. The extent to which a firm's own experience will be used to modify its manual rates depends on the size of the firm's premium because the larger the premium, the more confident the insurer can be that the past injury record offers a sound statistical base for predicting future experience. Figure 5.4 shows how a firm with an accident rate 50 percent as high as the average firm in its insurance class can have its premiums reduced as the size of the firm increases. For ease of exposition, the figure translates premium volume into number of employees by assuming an average manual rate ($1.00 per $100 of payroll) and a national average weekly wage ($150.00 per week). (These same assumptions apply to the following paragraph.)

Firms with fewer than 10 employees, however favorable their accident experience, are too small to be experience rated. A firm must have almost 300 employees before an accident rate 50 percent of the average warrants a 25 percent reduction in its insurance premiums. A firm with 1500 employees and half the average injury record will pay at about a 40 percent discount from the manual rate for its class.

Still another alternative to manual rates is available to the largest firms through retrospective rating. Ordinarily, the rates for a given policy period are unaffected by the firm's experience during that period. If a firm has experience different than the average firm in its class, its rate is not affected until the next policy year. In retrospective rating, premiums for a given policy period are determined after the period is over and are based almost entirely on the firm's own experience. Many large companies prefer retrospective rating since their ability to control losses through accident preven-

tion will lower their insurance costs. About 30 percent of all workmen's compensation premiums are paid by employers who use retrospective rating.

TABLE 5.4. Distribution of insurance by size of annual premium for policies sold by private insurance carriers, 38 States

Annual premium	Policies	Payroll* (billions)
$0-999	851,360	$ 25,156
1,000-4,999	172,553	30,138
5,000-99,999	52,764	60,718
Over 100,000	1,028	16,679
Total	1,077,705	$132,690

* Total for employers in each class.

Source. National Council on Compensation Insurance. Data on competitive State funds experience from five States are included in the table.

Table 5.4 shows the country-wide distribution of payroll by size of risk, where risk is measured by the dollar value of premiums. About 80 percent of all firms are too small to be experience rated. However, because the firms rated on experience are large, their payrolls cover about 80 percent of all insured employees.

The implication of Figure 5.4 and Table 5.4—that experience rating is unavailable or unimportant for most firms—must be qualified. About 14 percent of all workmen's compensation benefits are paid by self-insured employers. For these employers the relation between benefits paid and the cost of workmen's compensation is quite apparent; the gap widens in proportion to the degree that self-insurers reinsure a portion of their risk. Also, it would be misleading to suggest there are no cost consequences for unusual accident records in firms too small to be experience rated. A firm with a relatively bad accident record may be required to buy insurance from an assigned risk pool, where an extra charge is normally assessed. Such a penalty is an incentive to safe practice. On the other hand, small firms with unusually good safety records may have their premiums reduced only to the extent that they lower the average rate of injury in their class.

Despite these qualifications, it appears that small firms with relatively poor accident records ordinarily do not suffer commensurate penalties. Similarly, small firms with outstanding safety records in their insurance class do not receive corresponding reductions in insurance costs. Consequently, present methods of setting workmen's compensation insurance rates do not give small firms a strong incentive to improve their safety record.

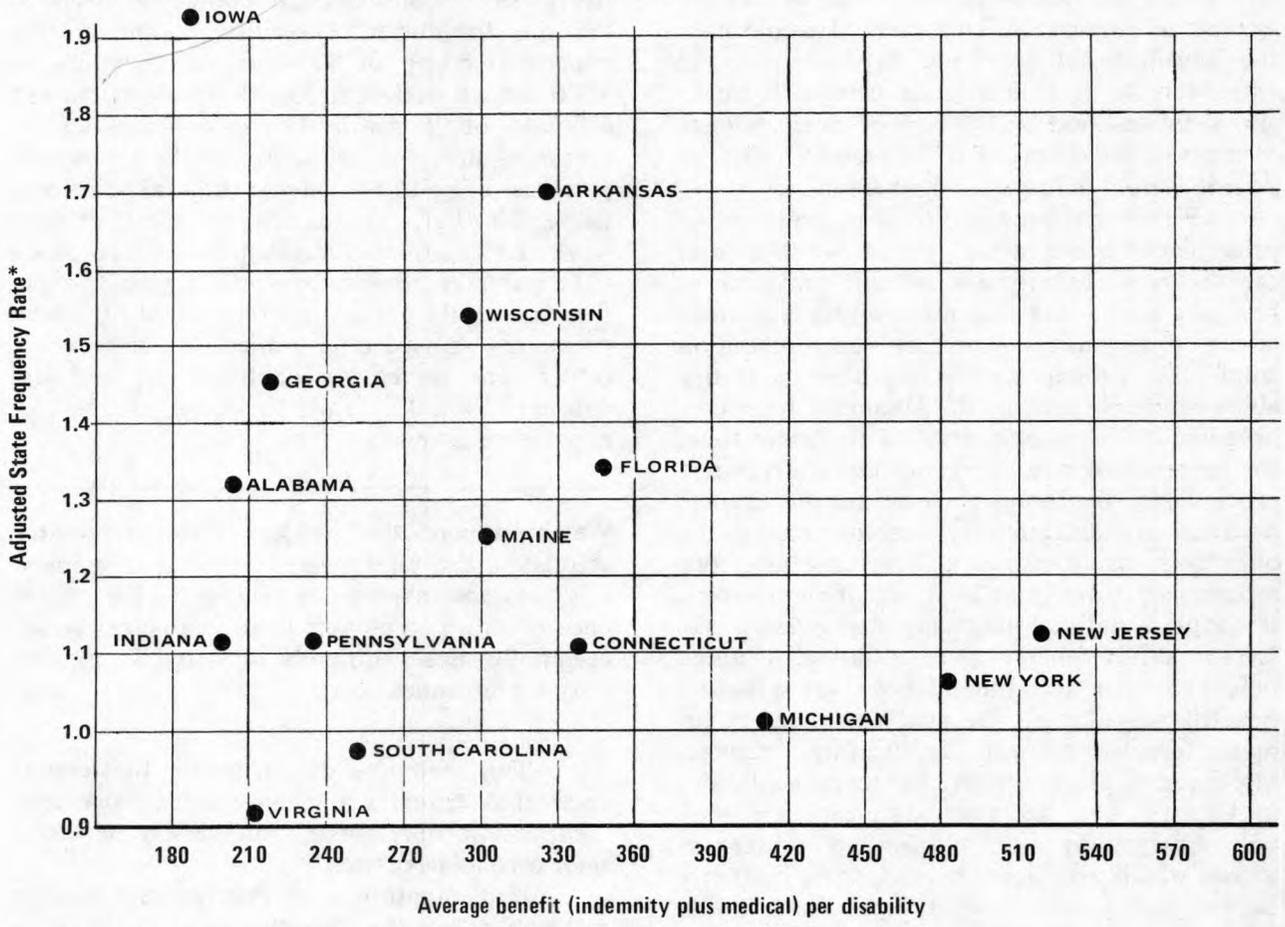
Evidence of the Influence of Rate-Making Procedures on Safety

Although the procedure used to set workmen's compensation insurance rates should substantially affect the safety records of industries and firms, especially large firms, it is difficult to demonstrate this relationship statistically. There have been few systematic attempts to evaluate the relationship of the rates to safety, probably because there are so many variable factors that influence accident rates.

A crude indication of the effect of the rate-making procedure on accidents can be drawn from the safety records of firms of various sizes. Figure 5.4 suggests that the stimulus to safety through the experience rating procedure becomes more powerful as the size of the firm increases. Figure 5.2, however, reveals that accident rates do not decline consistently as firm size increases. This lack of evidence to demonstrate that accident rates decline as experience rating becomes more powerful suggests that other forces which influence safety records are stronger than the potential savings in premiums which can result from a superior safety record.

Figure 5.5 illustrates a somewhat more sophisticated measure of the influence of workmen's compensation on safety. The data compare the States on the basis of the generosity of workmen's compensation benefits. Through the experience rating system, the higher benefits imply higher insurance costs for employers. These costs should encourage employers in States with high benefits to intensify their safety programs, and thus States with high benefits would be expected to have low injury rates and vice versa. Figure 5.5 spots for each State its relative injury frequency rate and the amount of workmen's compensation benefits per case paid

FIGURE 5.5. Relationship between State injury frequency rate and State workmen's compensation average benefit (indemnity and medical), per case, 1968-1969 policy year



* The injury frequency rate is adjusted to establish a uniform rate of risk. See Table 5.3.

in the State. There does not appear to be a systematic relationship in Figure 5.5 between the level of benefits and the safety record in the State. These data suggest again that workmen's compensation insurance rates are not the strongest force affecting the frequency of accidents.

One reason for the apparent lack of relationship between accident rates and workmen's compensation insurance costs is that these costs are but one of several financial incentives to employers to reduce accidents. The National Safety Council estimates that in 1971 the total cost of work accidents exceeded $9 billion; workmen's compensation premiums represent less than half of this total. The other costs include items such as the value of the loss of production by workers other than those injured, the recruitment and training of replacements, and the damage to goods and machinery. These other financial incentives to employers to improve their safety records are at least as powerful as the incentives from potential savings in workmen's compensation premiums.

Another reason why it is difficult to demonstrate the effect of the present workmen's compensation program on safety records is that, since, as noted in Chapter 3, workmen's compensation benefits generally are inadequate, the insurance costs assessed against employers also are generally inadequate. If workmen's compensation benefits were increased as we have recommended in Chapter 3, the merit rating system of workmen's compensation would provide a stronger stimulus to safety.

It could be argued that the present method of setting workmen's compensation

insurance rates should be abandoned and that, in its place, a flat-rate premium should be charged against all employers. This method would have the advantage of removing any incentive for employers to fight legitimate claims. It might also seem justified by the lack of clear evidence to support the theory that the present insurance pricing system reduces accident frequency.

We are not prepared to abandon the basic principles of merit rating. Indeed, we think that the theory underlying the present procedure is basically sound and that merit-rating is a virtue which distinguishes workmen's compensation from other programs providing benefits to disabled workers, such as the Disability Insurance program of Social Security. At the same time, the rate-making practice in workmen's compensation must be brought closer to the theory. Because of the interrelationships among the objectives of workmen's compensation, our recommendations in at least two other chapters, if adopted, will automatically strengthen incentives to safety inherent in merit-rating. As noted before, if our recommendations for adequate benefits are adopted, the stimulus to safety for many employers will significantly increase. Moreover, if States accept our recommendations in Chapter 6 concerning administration, they will substantially curb the limited number of abuses which now occur because some insurance carriers and some employers fight claims rather than improve safety records.

Insofar as the merit-rating procedure itself is concerned, we have two recommendations.

R5.3

We recommend that, subject to sound actuarial standards, the experience rating principle be extended to as many employers as practicable.

In extending the principle to smaller firms, some consideration could be given to lowering the current eligibility requirement for experience-rating of $750 annual premium to $500 annual premium. On the basis of current estimates of the distribution of policyholders by premium size, this reduction could extend experience-rating to as many as 100,000 additional firms. Further, as the States escalate their workmen's compensation benefits in accordance with our recommendations in Chapter 3, many firms currently paying less than $500 of annual premium will become subject to experience-rating. The increased benefits could add still another 100,000 firms to those eligible for experience-rating.

R5.4

We recommend that, subject to sound actuarial standards, the relationship between an employer's favorable experience relative to the experience of other employers in its insurance classification be more equitably reflected in the employer's insurance charges.

This recommendation means that experience-rated firms would have their workmen's compensation premiums more closely related to their own loss experience.

Implementation of this recommendation will strengthen the incentive to safety which is already an attribute of workmen's compensation.

REFERENCES FOR CHAPTER 5

Section A, See *Compendium,* Chapter 1
Section B, See *Compendium, Chapters 4, 15, 18, 19, and 20*
Section C, See Compendium, Chapters 4, 17, 18, 19, and 20

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.*

Chapter 6

The Effective Delivery System Objective

An effective delivery system, the fifth objective of a modern workmen's compensation program, is required in order to achieve the four basic objectives: complete coverage, adequate income maintenance, necessary medical care and rehabilitation, and safety incentives. Such a system enlists both private and public organizations including insurance carriers, courts, and workmen's compensation agencies. A variety of individuals are also involved, including employers, employees, attorneys, and physicians.

An effective delivery system is a means to an end, not an end in itself. Its performance is evaluated relatively in comparison with other systems and absolutely by the degree of accomplishment of the four basic objectives of workmen's compensation.

As originally conceived, the workmen's compensation delivery system was to be self-administering. It was expected that, with elimination of the fault concept and the prescription of benefits by statute, employees would be able to protect their interests without external assistance. The hope for self-administration was overly optimistic.

It has become clear that workmen's compensation claims and statutes are, in practice, much more complex than anticipated. Determination of compensability and the extent of disability are inherently controversial. Nevertheless, litigation might have been less frequent had State agencies provided enough positive assistance to workers who were unable by themselves to deal with the complexities of the law. For budgetary and other reasons, most States have not provided such aid. Consequently, the void has been filled by an active plaintiff's bar.

Claimant's counsel have in fact contributed to the performance of the system to the degree they have protected employees' rights.

Their arguments in court through the years have liberalized interpretations of conventional tests for compensability and they have supported many legislative improvements.

The participation of attorneys, however, has not been without costs. In almost every State, claimants' attorneys' fees are deducted from awards to the workers. Their fees, while reflecting considerable service to employees, are a significant proportion of the total monetary cost of workmen's compensation. Less obvious costs of litigation which affect the performance of the delivery system may be even more substantial. These costs include delays and uncertainties resulting from legalistic jousting over means of determining benefits, as well as the immeasurable cost of interference with or delay of rehabilitation of the disabled. An equally tragic side-effect of litigation is the tendency to polarize attitudes of labor and management to the extent that both resist reforms that would be to their common advantage.

Workmen's compensation can be undermined by excessive litigation. It would be possible for the administrative agency to eliminate most of the need for counsel by providing assistance to employees. However, when the agency fails them in this regard few employees without counsel are prepared to negotiate with representatives of employers or insurers. The delivery system can perform well without outside counsel for impaired employees only if State agencies both receive authority commensurate with their responsibility and are given the staff and budget sufficient to fulfill their obligations.

In a modern workmen's compensation program, a State agency has six primary obligations.

First, in order to insure that the basic objectives of the program are met, the agency must take the initiative in administering the law.

Second, the agency must continually review the performance of the program and be willing to change its own procedures. It must request the State legislature to amend the law in order to meet the changing needs of the program.

A third obligation of a workmen's compensation agency is to advise workers of their rights and obligations under the law and to assure that they receive the benefits to which they are entitled.

Fourth, the agency should apprise employers and carriers of their obligations and rights under the law. Other parties in the delivery system, including physicians and attorneys, should also be informed of their obligations and privileges.

Fifth, the agency should assist in voluntary and informal resolution of issues. The agency should make sure that such voluntary agreements are consistent with the law. An agreement which the concerned parties are prepared to accept must, if inappropriate, be prohibited.

Sixth, the agency must adjudicate claims which cannot be resolved voluntarily. Adjudication, however, should be a secondary task. If the agency is performing well in fulfilling the first five obligations, there will be little need for adjudication.

A. ADMINISTRATIVE ORGANIZATION

In order for these six administrative obligations to be fulfilled, careful design of the administrative organization and of the procedures of the workmen's compensation program is necessary.

Current Patterns of Structure

The administrative structure of workmen's compensation in the various States can be catalogued in several dimensions. One relates to the responsibilities of the administrator. There are two general approaches to responsibilities of the chief administrator. In about half of the States, the chief administrator has administrative duties only. He is not an adjudicator. The administrator either is responsible to the Governor; to a State cabinet officer, such as the Commissioner of Labor; or to the workmen's compensation commission, which is composed of members of an appeals board.

The second approach makes the chief administrator an adjudicator as well. In some States, the chief administrator is a designated member of the commission that rules on contested claims, and in others, the entire commission is assigned the administrative responsibilities.

A third approach is used only in Louisiana, where there is no administrator: the work-

men's compensation program is court administered.

Another dimension for cataloguing administrative structures concerns the forum to which disputed claims are first referred. In five States, these claims are assigned to the same courts that handle general litigation. In 45 States, contested cases are assigned to adjudicators who handle workmen's compensation claims only.

The cataloguing of administrative structure on these two bases does not convey adequately the extent of differences among the States. Some commissions that have administrative or adjudicatory responsibility for workmen's compensation also carry other unrelated responsibilities. The Ohio Industrial Commission, the State's final level of appeal for workmen's compensation, also manages the State insurance fund. In New York, the Workmen's Compensation Board also runs the temporary disability insurance program, which pays short-term cash benefits to workers disabled from non-work-related sources.

States also differ in the degree to which they perform the six cited obligations. Some States do little else than adjudicate contested claims.

Analysis and Recommendations on Structure

The key to an effective delivery system is the agency's active pursuit of the administrative obligations. If these are fulfilled satisfactorily, the number of claims which require adjudications should be low. The thrust of the system should be to create an ambience of protection and mediation rather than adjudication.

R6.1

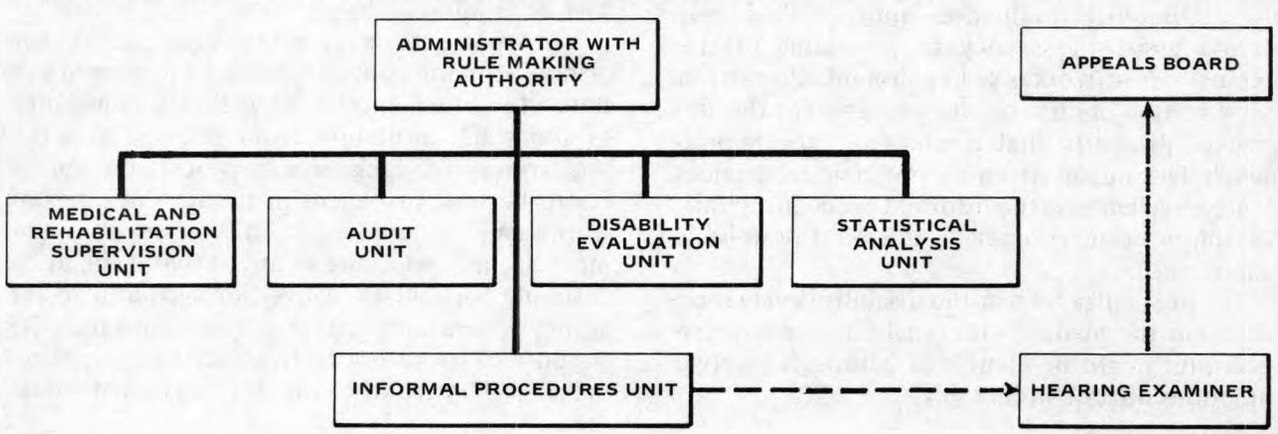
We recommend that each State utilize a workmen's compensation agency to fulfill the administrative obligations of a modern workmen's compensation program.

To give proper attention to its administrative obligations, the agency should carry out all the functions contained in Figure 6.1. This figure is not intended as a model organizational chart for every State to emulate. It is offered as a short summary of the functions that should be performed by a State. We recognize that the precise manner in which a State performs these functions must be adapted to local factors, including the State's size and history. The functions of the units in Figure 6.1 are described below.

Administrator. There should be one person responsible for the administration of the agency. He should have the authority to supervise all employees of the agency except the members of the appeals board. In addition, he should have the power to hire hearing examiners and all other employees, and the power to reward or penalize, subject to civil service regulations, according to the performance of duties. The administrator should prepare the budget for the agency.

The recent tendency, particularly in larger States, has been to make the chief administrator a full-time employee with no adjudicatory responsibilities and independent of the appeals board. In general, we believe this is a desirable policy. The agency under our recommendations will have substantial nonadjudicatory obliga-

FIGURE 6.1. Hypothetical organization chart of Workmen's Compensation Agency



tions. One person should be responsible for these obligations. Some States, however, have been able to meet most of the obligations of a modern workmen's compensation program even though the chief administrator is an adjudicator or under control of the appeals board. We support these arrangements where they have proved effective.

Informal procedures unit. We believe that one of the most important aspects of administration of workmen's compensation is the agency's responsibility for utilizing a positive program to provide assistance to workers. A unit following informal procedures should supervise all claims in their initial stages, including those disputed. The unit should help all concerned to reach voluntary agreements consistent within the dictates of the act, without necessarily resorting to legal advocacy. Only if the unit fails in this task should claims be assigned to hearing examiners for formal procedures leading to adjudicative awards.

In some States, especially small ones, the same official might attempt informal settlement of a disputed claim with authority to assume the role of a hearing examiner and make a formal determination only if informal procedures fail. However, the distinctive difference between informal procedures and formal hearings will perhaps best be protected if the agency assigns different personnel to these respective functions.

Medical and rehabilitation supervision unit. This unit should actively monitor and supervise all medical care and physical and vocational rehabilitation services. It must have responsibility and authority to order appropriate medical and rehabilitation care, subject to review of the administrator and consultation with appropriate health authorities. (See Chapter 4.)

Disability evaluation unit. This unit should assist the agency to determine (a) the extent of a worker's impairment due to a work-related injury or disease, and (b) the degree of disability that results from the impairment. The impartial unit's professional services can be available to the informal procedures unit, to the hearing examiner, and to the appeals board.

In smaller States, the disability evaluation unit and the medical and rehabilitation supervision unit might be combined, although the two functions differ considerably.

Audit unit. The audit unit should monitor the agency's performance in complying with the law and in treating approved claims consistently. The unit can sample reports of settlements reached by informal procedures and decisions of the adjudicatory process, including awards by hearing examiners and the appeals board. It should also review settlements reached voluntarily without direct participation of agency officials. In one State, such reviews of voluntary payments had the effect in a few years of raising the volume of awards acceptable to the agency from 35 percent to 80 percent of the total number of voluntary agreements. The audit unit also can monitor the performance of carriers and self-insurers in following the progress of beneficiaries and the delivery of payments.

Statistical analysis unit. This unit has the general responsibility for collecting and interpreting data on administrative operations. These interpretations guide the administrator's decisions on regulations and agency procedures and serve also to demonstrate to the legislature a basis for opposing or supporting statutory changes.

Staff

The quality of experience and the job security of agency employees can have an important bearing on the effectiveness of the agency's operations. There is considerable variation among the States in the length of terms of the members of the appeals board and in the job security or career protection provided to the administrator and other employees. In some States, employees have civil service status or other forms of protection. In others, employees have little job security.

Arguments supporting long terms for members of the appeals board and protected job status for other employees include: continuity of the staff, insulation from politics, and the opportunity for long-term or protected employees to become proficient in the technicalities of workmen's compensation. The primary argument against indefinite tenure is that it might be desirable to hold the Governor accountable for agency operations, in which circumstance he would require authority to select agency policymakers. The conflict in the arguments over

tenure is most difficult to resolve concerning the status of the administrator. We believe a blending of the security and accountability factor is necessary.

R6.2

We recommend that in those States where the chief administrator is a member of the appeals board, the Governor have the authority to select which member of the appeals board or commission will be the chief administrator. In those States where the administrator is not a member of the appeals board or commission, his term of office should either be indefinite (where he serve at the pleasure of the Governor) or be for a limited term, short enough to insure that a Governor will, sometime during his term of office, have the opportunity to select the chief administrator.

Arguments in favor of longer terms and substantial job protection for members of the appeals board are stronger than for the chief administrator.

R6.3

We recommend that the members of the appeals board or commission be appointed for substantial terms.

R6.4

We also recommend that agency employees be given civil service status or similar protection.

Once they have satisfactorily completed their probationary period, agency employees should be removed only for just cause.

R6.5

We recommend that the members of the appeals board or commission and the chief administrator be selected by the Governor subject to confirmation by the legislature or other confirming body. The other employees of the agency should be appointed by the chief administrator or selected in accordance with the State's civil service procedure. Insofar as practical, all employees of the agency should be full-time, with no outside employment. Salaries should be commensurate with this full-time status.

Advisory Committees

Many workmen's compensation agencies use some form of advisory committee or advisory council. The basic purposes of an advisory committee are to expose the administrator to a broad range of experience on which he can formulate his program and to give him a broad base of support in obtaining necessary legislative changes.

The testimony presented at our hearings suggests that the laws in some States have developed in a patch work fashion, as judicial interpretations and statutory amendments have been grafted onto the original statutes. A thorough and detailed examination of the workmen's compensation law appears necessary in most States.

R6.6

We recommend that an advisory committee in each State conduct a thorough examination of the State's workmen's compensation law in the light of our Report.

This advisory committee could be composed of representatives of the workmen's compensation board, insurance carriers, business, labor, the medical profession, the legal profession, and educators, all having special expertise in workmen's compensation, and representatives of the general public. *Ex officio* members drawn from the legislature or from the Governor's office could also be included.

Methods of Financing

No administrative agency will perform its responsibilities effectively and efficiently unless it is adequately staffed and financed. There must be sufficient resources for the agency to carry out its task. Financing of workmen's compensation must not be subject to wide swings from year to year.

Several methods of financing the cost of administration currently are used. These include appropriations from general revenue, income from the operation of the State workmen's compensation insurance fund, assessment on insurance premiums, licensing fees for employers or carriers, and an ear-marked payroll tax. The most common method is to assess the premiums

collected by the insurance carrier, private or State, and to make an equivalent assessment against self-insurers.

R6.7

We recommend that the workmen's compensation agency be adequately financed by an assessment on insurance premiums or benefits paid plus an equivalent assessment against self-insurers.

Normally, the funds collected are placed in a special fund from which the legislature appropriates money for the budget of the workmen's compensation agency. This method of financing has a record of success.

We also suggest consideration of the Model Act's proposal for handling balances in the fund at the end of the appropriation period. The balances are carried forward into the next appropriation period for the use of the workmen's compensation agency. If the fund reaches a surplus level, there is a choice of reducing the assessment on the employers or transferring the excess to another of the special funds within the workmen's compensation program, such as the second-injury fund. The fund should not be used for purposes outside the workmen's compensation program.

B. THE PROCESSING OF WORKMEN'S COMPENSATION CLAIMS

This section indicates, in general terms, the procedures we believe are appropriate for the processing of workmen's compensation claims. We recognize that these procedures must be modified to fit the particular needs of each State.

Information About the Workmen's Compensation Program

Despite the fact that workmen's compensation covers a substantial majority of all employers and employees and that the system processes more than 5 million claims each year, it is apparent from our hearings that many employees and employers are not aware of important aspects of the program. Some employees apparently filed workmen's compensation claims more by chance than by intent. Some employer's representatives seemed unaware of the nature of such important features as the second-injury fund.

R6.8

We recommend that the workmen's compensation agency develop a continuing program to inform employees and employers about the salient features of the State's workmen's compensation program.

A worker does not need to know the details of the program prior to the time he suffers an impairment, but he should know the general nature of the program. He needs to know where to turn for assistance in the event he is disabled. Employers should be kept informed of their rights and obligations in order to improve the effectiveness of the delivery system.

Employee's Notice of Physical Impairment or Death

State laws now require an employee to provide notice to his employer of any impairment resulting from a work-related injury or disease. In the event of a work-related death, this notice must be provided by the employee's dependents. Usually, written notice to the employer is unnecessary because the employer quickly hears about an accident on the job. Nevertheless, the employee, to protect his rights, should file a written report.

It is in the employer's interest to know of an injury so that the employee can be directed promptly to appropriate medical and rehabilitation services and so that the employer can collect necessary information for his report to the insurer or the State. However, some employees fail to notify their employers because they do not know the law's requirement.

R6.9

We recommend that the employee or his surviving dependents be required to give notice as soon as practical to the employer concerning the work-related impairment or death. This notice requirement would be met if the employer or his agent, such as an insurance carrier, has actual knowledge of the impairment or death, or if oral or written notice is given to the employer.

Under the Model Act, the claimant's failure to give notice can be excused if it can be demonstrated that "for some satisfactory reason such notice could not be given or that the employer or carrier has not been prejudiced by failure to receive such a notice." We believe that the Model Act's suggestion for waivers for failure to give such notice are appropriate.

Employer's Report of a Work-Related Impairment or Death

Employers in all States but Louisiana are obligated under certain circumstances to report to the workmen's compensation agency when they have knowledge of an employee's work-related impairment or death. In 25 States, all work-related injuries and deaths must be reported. In 14 States, the employer is required to report work injuries that result in time lost beyond the shift or working day in which the injury occurred or that resulted in some permanent impairment. In 10 States, employers must report only potentially compensable cases (those involving permanent disabilities or lost time beyond a specified waiting period).

The employer's report of work-related impairments or deaths is a valuable source of information. These reports can be screened immediately to estimate prospective claims and to identify workers who may benefit from medical and rehabilitation services. Employers' reports can be used also for operations research; e.g. statistical analyses can identify unsafe establishments. The employer's report on the work-related impairment or death may become the first document in the employee's case file, although an employer would be reluctant to provide full information in the initial report if he felt it could be used against him in a contested claim.

R6.10

We recommend that employers be required to report to the agency all work-related injuries or diseases which result in death, in time lost beyond the shift or working day in which the impairment affects the worker, or in permanent impairment to the worker.

States may wish also to require that employers file with a State agency a copy of their reports on all injuries and diseases filed in compliance with the Occupational Safety and Health Act of 1970.

R6.11

We recommend that, for those injuries and diseases which must be reported to the workmen's compensation agency, the period allowed for employees to file claims not begin to run until the employer's notice of the work-related impairment or death is filed with the workmen's compensation agency.

This recommendation assumes that the employee will have met his obligation to notify the employer. (R6.9) The time limits for filing a claim are discussed below.

Uncontested Claims

In most workmen's compensation cases, there is no dispute between the employee and the employer about the employer's initial liability for benefits. When a worker is injured on the job and in immediate need of medical care benefits, or is incapacitated enough days to satisfy the waiting period requirement for temporary total disability benefits, the employer usually is willing to assume his responsibility for these benefits. Sometimes, although there was no dispute about initial liability, subsequent events may lead to a contest; for example, a dispute about the extent of the worker's permanent impairment.

When liability is not contested, payment to the worker may begin by one of several routes: direct payment, agreement, or others. In direct payment States, such as Wisconsin, the employer is obligated to begin payment at once, unless there is a legitimate dispute about liability. In the agreement States, such as Massachusetts, the employer is under no obligation to pay until an agreement has been reached between the employer and the employee concerning the benefits to be paid. Possible errors in amount or date are corrected by the agency before the agreement is approved. Agreements have the advantage of being contracts enforceable by law. On the other hand, agreements in some situations may impose a heavy clerical burden on the system and delay payment to the worker. Direct payments, however, require more

post-payment auditing than agreements. Other approaches also are used. For example, in Maryland the employer is under no obligation to pay until a claim is filed by the employee with the State agency. We do not believe that the differences among the methods of initiating payments in uncontested cases are critical. Most members of the Commission, however, prefer the direct payment approach because this approach seems likely to increase the promptness of the first payment since the employer is obligated to proceed without waiting for approval of the State agency or the employee's agreement. When payments begin promptly, the extent of litigation probably will be reduced because employees will see they can receive benefits without legal assistance. While these advantages support the direct payment approach, the agreement method also has worked successfully in some States. We would not wish to foreclose any effective ways to begin prompt payment of uncontested claims.

The crucial aspect in the processing of uncontested cases is not which payment system is used, but whether the State agency is active or passive. The administrative obligations of workmen's compensation can be met only by an active agency. If the agency takes the initiative to protect the rights of workers, then the system of beginning payments in uncontested cases is of secondary moment. If, on the other hand, the agency is passive and does little more than adjudicate disputes, any approach to payment inevitably becomes litigious and ultimately cumbersome because workers in increasing numbers will employ counsel in order to protect their interests.

An active administration will exercise substantial influence in all workmen's compensation claims, including those which are not contested. This active role begins with the screening of the employer's report of a work-related impairment or death, continues with a review of the report that, in almost every State, the employer must file as soon as he is aware that an impairment is compensable, and culminates with a thorough examination of the report that the employer submits when payments are terminated.

R6.12

We recommend that the administrator of the workmen's compensation agency have discretion under his rulemaking authority to decide which reports are needed in uncontested cases.

Generally, the administrator is likely to require a notice of first payment. One use of this notice is an analysis by the audit unit of the promptness of payment by employers and carriers. The administrator is also likely to require a notice concerning employees who need medical and rehabilitation services. Although the employer or carrier is expected to take the initiative in providing emergency and restorative services, the State agency also should be in contact with the employee to insure proper care.

If the period of disability is extended, the agency needs periodic progress reports on the worker. These reports provide information on the amount of cash benefits and whether the employee has gone back to work. In response to these reports from the employer or carrier, the agency should advise the employee of his rights and provide him a record of the benefits he has received. A notice will be needed also when payments are terminated.

Contested Claims

Disputed claims for workmen's compensation tend to fall into two broad categories: issues of liability or coverage and issues of the extent of payment. In the first bracket come such questions as: is the employer insured? does the law apply to the particular event, worker, or impairment? did the impairment arise out of and in the course of employment? is the disability related causally to the injury or exposure? In the second category, the questions are: how real or serious is the impairment or disability? how long will the disability endure? how much earning power has been lost and how much should be replaced? who, in the event of death, are legitimate dependents?

The mere cataloguing of these issues probably conveys the image of workmen's compensation as a litigious labyrinth. And the popular support of the notion of "the rule of law, not of man," may lead some to conclude that the more litigation, the better. We do not sympathize with this reasoning. In a properly functioning workmen's compensation program, the agency should be the basic source of protection for the worker and should resolve

most of these issues without the assistance of legal counsel representing employee or employer. There will, of course, be occasional claims which involve facts or legal issues so inscrutable that a contest between the worker and his employer is inevitable. The next few pages are devoted to such cases. But a workmen's compensation program in which more than an insignificant minority of claims involve formal contests is aberrant and suggests that the State is not providing adequate protection to workers through the workmen's compensation agency.

Number of contested claims. The extent to which claims are contested is shown in Table 6.1. The term "contested claim" is used to refer to any dispute between the employee and the employer concerning the general liability of the employer or the extent or duration of the benefits that the employer must pay. A claim is not considered contested if the employer voluntarily pays the benefits and the employee had no disagreement with the benefits paid. Nor would the case be considered contested if the State agency merely reviews the benefits voluntarily paid by the employer and accepted by the employee, or merely reviews the agreement reached by the parties on a voluntary basis.

Although information on contested cases is far from complete, the data in Table 6.1 indicate that a substantial proportion of claims in some States are contested. If employers and carriers have an obligation to initiate direct payments in uncontested claims and if the agency provides positive assistance to employees in all claims, the number of contested cases should be reduced substantially.

TABLE 6.1. Contested cases as a percentage of all reported cases in State and Federal jurisdictions, 1971

Percent	States (50)	Other "States" (6)	Federal (2)
Less than 5%	11	2	0
5-9.9%	6	0	1
10-24.9%	3	0	0
25-49.9%	4	0	0
50% or more	1	0	0
Cannot estimate	25	3	1

See Table 2.3 for explanatory notes.

Time limit for filing initial claim. If the employer accepts liability for the impairment and the employee does not disagree with the amount and duration of the benefits offered by the employer, the employee should not be obliged to file a workmen's compensation claim. If there is a dispute, however, then the employee must file a claim with the workmen's compensation agency.

When the employer accepts some liability in the case but disputes the total amount of the liability, the employer should be obliged to pay that portion of the benefit accepted as a liability while the employee files a claim for the contested portion.

Various considerations apply to the time limit for filing this initial claim. From the employee's side, initially the impairment may not be serious enough to interfere with his capacity to work, but the impairment may worsen over a prolonged period. Moreover, the employee may not be aware immediately that the impairment is work-related. From the employer's side, the earliest possible date for the filing of the claim is desirable because the employer can prepare his defense and anticipate the eventual extent of his liability.

The problem for the employee in meeting the time limit for filing a claim is particularly acute when impairment results from a latent work-related disease. A substantial time lag may occur between exposure to the occupational agent or stress, on the one hand, and, on the other, the manifestation of symptoms and diagnosis of the etiology, medically speaking, and determination of causality in the legal sense. The standard published by the Department of Labor recommends that the time limit on filing occupational disease claims be flexible. Filing should be permitted for at least one year after the employee has knowledge of his impairment and its relationship to his job and after he experiences some wage loss because of the impairment. Table 6.2 indicates that about one-half of the States meet this recommended standard.

R6.13

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.

TABLE 6.2. Jurisdictions with adequate time limit for filing occupational disease claims, 1966-72

Year	States (50)	Other "States" (6)	Federal (2)
1966	21	1	1
1972	24	3	1

See Table 2.3 for explanatory notes

The role of the agency in contested cases. The primary responsibility of the agency in contested cases is to settle claims at the informal, nonadjudicatory level. Several procedures are available to accomplish this goal. First, in order to reduce common misunderstandings that lead to controversy, the chief administrator can promulgate guidelines for evaluating impairments. For example, the medical criteria used to evaluate the extent of permanent impairment can be elaborated. Second, the agency can provide, through the disability evaluation unit, an impartial estimate of the extent of impairment of individual employees. Also, the agency can help to resolve disputes through informal procedures. The informal procedures unit would not make formal findings of facts or issue binding legal opinions. Its role would be to advise the parties of solutions consistent with the law and to persuade them to accept recommended solutions.

Those contested claims which cannot be settled by the informal procedures unit must be referred to the formal adjudicatory section of the agency. Even here, the hearing examiner can attempt to resolve the dispute as informally as possible, through such devices as pretrial conferences. The hearing examiner should make the employer's payment prior to the trial a matter of record. If the disability evaluation unit has provided an advisory rating on the extent of the worker's disability, the hearing examiner may make use of this information or he may request additional assistance from the disability evaluation unit. The hearing examiner also may accept evidence from the contestants before making his decision. States may wish to establish a rule which would admit written statements from the treating or examining doctor as part of the record, rather than requiring a personal appearance of the doctor.

The decision of the hearing examiner could be appealed to the appeals board, which could overrule the hearing examiner on questions of fact and of law. The decision of the hearing examiner, however, should be presumed correct and the appeal should not stay the examiner's award.

Court review of agency decisions. In a number of States, the final decision of the workmen's compensation agency can be appealed to the courts and a de novo trial can be obtained or the courts will review both questions of fact and of law. In other States, the decision of the agency is final as to questions of fact; appeals are limited to questions of law. The retrial of the facts of a contested claim is expensive for the parties and the State. Moreover, a prolonged period of litigation can interfere with the worker's rehabilitation. There is, however, some merit to a review of the facts in workmen's compensation cases to insure that basically similar situations are evaluated consistently. This review should, however, be performed by the appeals board within the workmen's compensation system. In fact, the complexities of workmen's compensation and the expertise developed by the members of the agency appellate board make it unlikely that additional review of the facts by a court will improve the quality of the decision.

R6.14

We recommend that where there is an appellate level within the workmen's compensation agency, the decisions of the workmen's compensation agency be reviewed by the courts only on questions of law.

The appeal from the workmen's compensation agency should go to the appellate court of the State, or in those States with no intermediate appellate courts, directly to the State supreme court.

TABLE 6.3. Plantiff's attorney's fees as a percentage of benefit payments in State and Federal jurisdictions, 1972

Percent	States (50)	Other "States" (6)	Federal (2)
Less than 5%	1	0	0
5/9.9%	2	0	0
10% or more	0	0	0
Cannot estimate	47	5	2

See Table 2.3 for explanatory notes.

Legal expenses. The legal fees charged by plaintiff and defendant lawyers probably are a significant part of the costs of workmen's compensation, but few data are available on the matter. Table 6.3 provides data on plaintiffs' attorneys' fees in certain States; comparable data for defendants' attorneys' legal fees are unavailable.

We have considered separately the issues of the size of the fees, the basis of the fees, and the sources of payment.

As to the size of fees, it is evident that a meager return for counsel will have the effect of denying the claimant competent representation. However, fees should not be so high as to encourage gratuitous litigation.

As to the basis of the fees, many States require by statute or regulation that the fee be computed as a percentage of the total award. This arrangement is an incentive to litigation and can leave the plaintiff who pays the fee with a smaller net return than he might have received from voluntary payments before the claim was litigated. A rule which based fees on the difference between the final award and the amount which the employer had paid voluntarily would restrict litigation to those claims most likely to yield a substantial net gain for the plaintiff. At the same time, the incentive for the plaintiff to accept a reasonable settlement without litigation would be increased.

R6.15

We recommend that attorneys' fees for all parties be reported for each case, and that the fees be regulated under the rule making authority of the workmen's compensation administrator.

The agency should consider the work performed by the attorneys in the case as well as the difference between the amount the employer was paying prior to the beginning of the formal hearing and the amount paid by the employer in the ultimate award. Attorneys might be employed by the agency to appraise the value of legal service by counsel.

An additional question is whether the employee or the employer should pay the employee's attorney's fee. With the adoption of our recommendations for improvements in the delivery system and the adequacy of benefits, it is not unreasonable to hold the employee primarily responsible for any attorney's fees that he incurs. However, States should consider the shifting of these fees to the employer as a form of penalty in those cases in which the employer or his insurer has acted in an unjustified manner.

Closing of Workmen's Compensation Cases

After liability of the employer is established, either by voluntary payments or by a formal hearing, a decision must be made about the duration of the employer's liability.

One of the most controversial aspects of the workmen's compensation program in many States involves the use of compromise and release agreements to close cases. Such an agreement usually involves three elements: a compromise between the plaintiff's claim and the employer's previous offer concerning the amount of benefits to be paid; the payment of the compromised amount in a lump sum; and the release of the employer from further liability. As indicated in Table 6.4, compromise and release agreements are widely used. In some States, these settlements are rarely rejected by the State agency. Few workers when faced with a legal document such as a compromise and release agreement feel capable of evaluating their own rights without the aid of an attorney.

The extensive use of compromise and release agreements is not consistent with our recommendations for an active workmen's compensation agency. These agreements have as their main virtues the termination of potential financial liability and administrative responsibilities for the employer or the carrier and the reduction of the administrative load of the State agency.

TABLE 6.4. Compromise and release settlements as a percentage of all cash benefit cases in State and Federal jurisdictions, 1971

Percent	States (50)	Other "States" (6)	Federal (2)
Less than 5%	6*	2	1*
5/9.9%	5	0	0
10.0/24.9%	8	0	0
25.0/49.9%	4	0	0
50.0% or more	1	0	0
Cannot estimate	26	3	1

* In 6 States and under the FECA, compromise and release settlements are not permitted.

See Table 2.3 for explanatory notes.

These factors do not provide adequate justification for a procedure which can seriously deprive the employee of his rights. If, for example, the need for medical benefits is miscalculated at the time the compromise and release settlement is signed, the worker eventually may find himself deprived of such benefits when the need recurs. Moreover, an impairment which at the moment of the settlement does not appear to be a hindrance to employability may within a few years become a serious economic handicap for the worker. Should his employer, for example, go out of business, the worker may find that his physical impairment becomes a serious obstacle to other employment.

R6.16

We recommend that the workmen's compensation agency permit compromise and release agreements only rarely and only after a conference or hearing before the workmen's compensation agency and approval by the agency.

Under some circumstances, compromise and release agreements perform a useful function, as when there are legitimate doubts concerning the employer's liability and the worker might receive nothing if he pursues his claim. These possibilities explain why we are disinclined to recommend that all compromise and release agreements be prohibited.

R6.17

We recommend that the agency be particularly reluctant to permit compromise and release agreements which terminate medical and rehabilitation benefits.

Some States permit compromise and release agreements for income benefits but not for medical and rehabilitation benefits. To the extent a State wishes to permit these agreements, it would be appropriate for the State to manifest its permissiveness exclusively for income actions.

R6.18

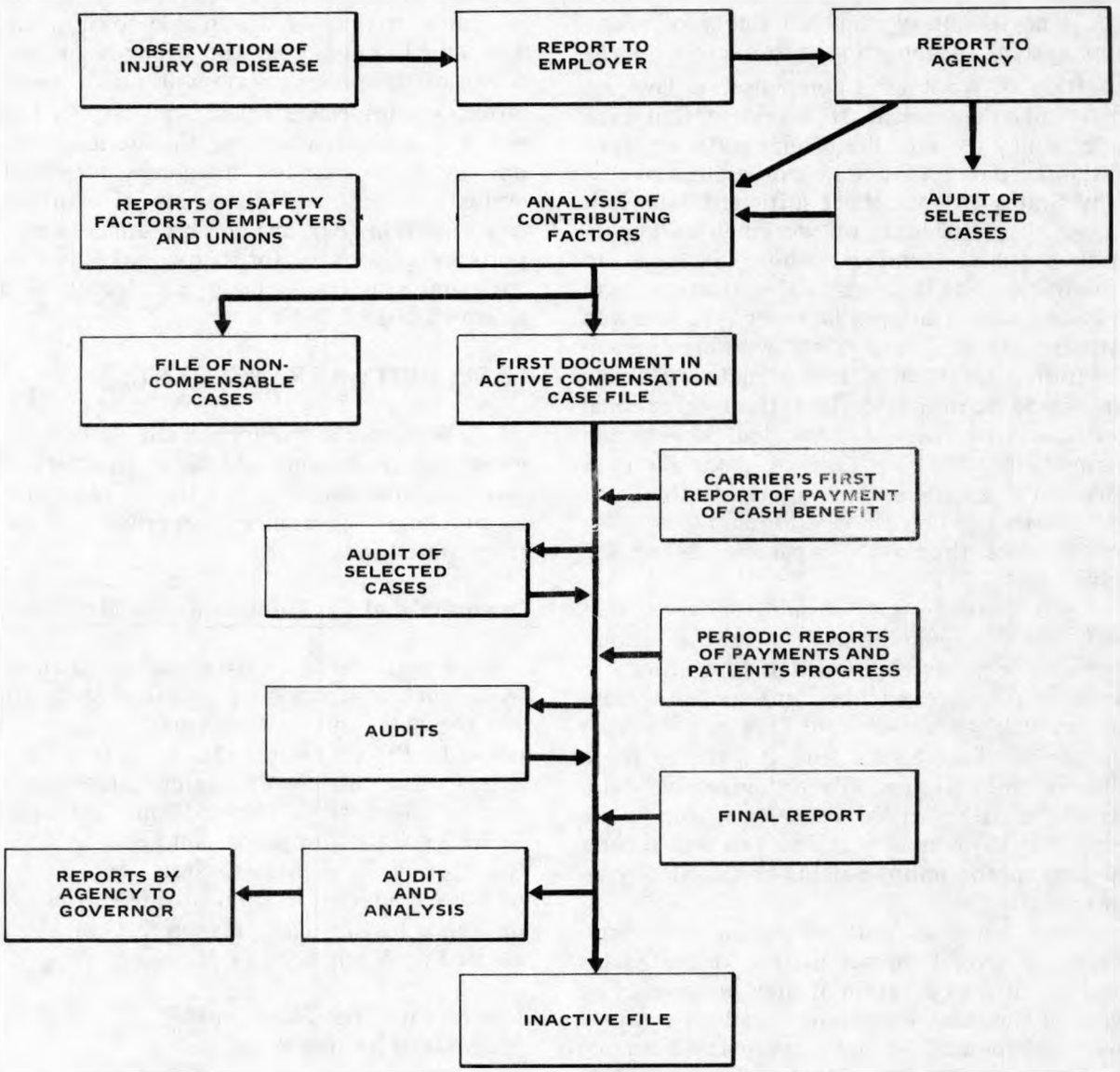
We also recommend that lump-sum payments, even in the absence of a compromise and release agreement, be permitted only with agency approval.

On some occasions, a lump-sum payment in advance of income benefits is desirable; for example, when a beneficiary is in need of capital to establish a small self-sustaining business.

Supervision of Medical Care and Rehabilitation Services

Many workmen's compensation agencies fail to supervise claims in which the impaired worker could potentially benefit from medical care and rehabilitation services. For many workers, the employers and insurance carriers voluntarily provide suitable medical care and rehabilitation services, but no State agency can assume that these services will be delivered automatically. The medical care and rehabilitation unit must receive adequate reports if it is to supervise effectively the medical care, physical rehabilitation, and vocational rehabilitation functions of workmen's compensation. In large States, the medical care and rehabilitation unit should be a separate division within the workmen's compensation agency. In small States, the administrator may find less formal arrangements are satisfactory, such as the use of a part-time medical director to advise the administrator on employees requiring medical and rehabilitation services. (See Chapter 4)

FIGURE 6.2. Flow of information through a workmen's compensation agency



Reports and Statistics

An active workmen's compensation agency, to perform its tasks well, must acquire information from its clients. Figure 6.2 suggests the reports that might be required and their possible uses. The specific needs for data can best be determined by the administrator.

R6.19

We recommend that the administrator have the authority to prescribe the reports which must be submitted by employers, employees, attorneys, doctors, carriers, and other parties involved in the workmen's compensation delivery system.

This Commission has been directed to examine "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." We believe that portion of the directive relating to injuries and diseases is moot because

the Occupational Safety and Health Act of 1970 requires such reports.

The feasibility and desirability of a uniform system of reporting information on the operation of workmen's compensation laws are not readily determined. It is evident that each State agency requires the receipt and analysis of substantial data on the State's program, and that many States do not collect sufficient data. It is not so clear that data on workmen's compensation should be uniform among States as to terminology, definitions, categorization, and style. At our hearings, however, we received testimony from several State workmen's compensation administrators indicating that uniform data would be desirable. Also, the International Association of Industrial Accident Boards and Commissions, the professional association of workmen's compensation administrators, for many years has urged collection and dissemination of data that are comparable among the various States.

Comparable data would enhance that virtue of the Federal system which enables States to serve as experimental laboratories in the administrative sciences and to learn from one another's successes and failures. Lacking comparable data, States find it hard to tell a failure from a success. Given comparable data, our Commission would have been able to be more definitive in our evaluations and recommendations for improvements in the State program.

We have, as part of our investigation, submitted several questionnaires to the States for data on the operation of their programs. For many of the most important questions in workmen's compensation, data comparable among the States are not available. For instance, State agencies have no consistent data on the number of employees covered by their workmen's compensation laws. Most States do not have data on the promptness of payment to injured workers. Almost no State has information on the number of workers receiving the maximum benefit in the State. The general lack of data, and the particular lack of comparable data, hinder objective analysis of State workmen's compensation programs.

Realistically, it would probably take most States several years to collect all of the data which would have been useful to the work of this Commission. This is not to suggest that no data are available on the operation of the State programs or that we are unable to draw confident conclusions about the strength and weaknesses of the present State workmen's compensation systems. Nevertheless, we would be remiss not to call attention to the deficiencies of present data and the handicaps to effective evaluation and administration of workmen's compensation. No one desires unnecessary reports or uniformity for its own sake, but more data on a uniform basis is a practical and worthwhile goal.

C. SECURITY ARRANGEMENTS

Workmen's compensation laws require employers to demonstrate ability to satisfy their statutory obligations either by self-insurance or by purchase of insurance from private carriers or from State funds.

Importance of the Three Insurance Methods

Private carriers provide 63 percent of all workmen's compensation benefits; State funds, 23 percent; and self-insuring employers, 14 percent. Private insurance is allowed in 44 States, and under the Longshoremen's and Harbor Workers' Compensation Act. In 12 States, private insurance competes with State funds, but in 6 States, State funds operate without competition from private carriers. Self-insurance by financially responsible employers is allowed in all but 4 States.

Evaluation of the Three Basic Methods of Insurance

Evaluation of the cost and quality of the three types of insurance is complicated by the lack of appropriate data. For example, States have rarely attempted to determine the rate of return of profits on the net worth of carriers, nor have they collected sufficient data on many aspects of performance, such as promptness of payment and adequacy of rehabilitation services. Despite the paucity of data, a tentative evaluation of the three methods of insurance is possible. This evaluation is aided by a recent study sponsored by the Department of Labor. (C. Arthur Williams, Jr. "Insurance Arrange-

ments Under Workmen's Compensation," U.S. Department of Labor.)

A comparison of the relative costs of providing workmen's compensation coverage by the three insurance methods is often clouded by the charge that private carrier costs are excessive since there is a 40 percent loading factor built into the rates. This assertion is misleading because the 40 percent load is used only to establish the gross insurance rate (termed the manual rate). The net insurance rate paid by employers is often less than the gross rate. Most premiums are experience-rated or subject to quantity discounts which on average reduce the cost of insurance by about 6 percent. Another factor which lowers the cost of insurance is that dividends are paid to policyholders by both mutual insurance carriers and participating stock companies. In recent years, such dividends have reduced the cost of insurance by approximately another 6 percent. These discounts may reduce the loading charge to less than 25 percent on average.

Net insurance premiums can be calculated by allowing for the impact of experience-rating, dividend payments, and similar factors on gross premiums. A benefit ratio, comparing present and prospective benefit payments to net insurance premiums, can then be determined. In recent years, the benefit ratio for all private carriers has been about 0.7. The benefit ratio for State funds has been about 0.9. While data are fragmentary, it appears likely that self-insurers have somewhat higher benefit ratios than State funds. This is not surprising, since self-insuring employers are on the average larger than the employers insured by private carriers and State funds, and therefore benefit from the economies of scale, which reduce the percentage of administrative costs.

Differences in the benefit ratios for private carriers and State funds can be explained in part by the quality of services provided by private carriers and State funds discussed below and in part by the absence of significant selling expenses for State funds. The sales costs of nonparticipating stock insurers are more than 10 percent of premiums earned. Also, State funds generally are excused from State and local taxes, which cost private insurers about 2.5 to 3.5 percent of premiums earned.

The differences between State funds and private carriers are not due to high profits of private carriers. In recent years, the statutory underwriting profits of nonparticipating stock insurers have averaged only about 1 percent of premiums, and the rate of return on net worth for all private carriers is not out of line with the return in other industries. Expense variances have been much more important than stockholder profits in determining relative costs of private insurers and State funds.

The lower costs of State insurance often are associated with lower quality services. Most State funds provide less local claims service than private carriers; some pay less attention to the prevention of injuries. Although there is little data on the quality of service provided by self-insurers, it is likely that only large employers are capable of providing adequate service.

Despite differences of opinion among the Commission members on the desirability of the three approaches to insurance, we all agree that the most serious problems of the present workmen's compensation program can be solved without restructuring basic insurance arrangements. The Commission urges that efforts to improve workmen's compensation not be hindered by debate on the relative merits of the three types of insurance. There is as much difference in cost and quality of service within each of the three approaches to insurance as among the categories.

R6.20

We recommend that the States be free to continue their present insurance arrangements or to permit private insurance, self-insurance, and State funds where any of these types of insurance are now excluded.

State Supervision of Security Arrangements

Ideally, a State with an active workmen's compensation program will supervise performance of all three types of insurance. The workmen's compensation agency should collect a broad range of performance data on insurers' efforts, including information on promptness, accuracy, and sufficiency of payments, and on adequacy of safety and rehabilitation programs.

The agency should collect, analyze, and publish such data for all types of insurers, including State funds. Widespread dissemination of information on carrier and State fund performance will enable employers to select high quality insurers.

While most private carriers and self-insurers appear to be meeting their responsibilities, data on their performance should be reviewed by the insurance commission or whatever State agency holds the supervisory responsibility. When warranted, the right to insure should be revoked.

The supervisory agency should also review ratemaking procedures of private carriers and State funds. The review should cover costs of operation and profitability of private carrier operations, including the rate of return on net worth. The agency should also encourage experience-rating wherever it conforms to sound actuarial principles.

Role for Special Funds

There is a role for special funds in a modern workmen's compensation program. In addition to the second-injury fund (Chapter 4), a special fund is desirable to deal with insolvent carriers or with insolvent or noncomplying employers. In most social insurance programs, employees have little fear of losing their benefits because of insolvency, since the programs are funded by the government. In workmen's compensation, special arrangements are necessary to insure that statutory benefits are available.

R6.21

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.

Another special fund may be the appropriate means to protect the purchasing power of the benefits for workers or their dependents in cases of long duration. The value of the benefits which began 25, 10, or even 5 years ago has been eroded by declines in the purchasing power of the dollar. Our recommendations in Chapter 3 for increased benefits for permanent disability and death cases, linked to increases in the State's average wage, will protect the value of benefits which commence after our recommendations are adopted, but further protection is needed for those receiving compensation now.

R6.22

We recommend that, because inflation has adversely affected the payments of those claimants whose benefits began when benefits were not at their current levels, a workmen's compensation retroactive benefit fund be established to increase the benefits to current levels for those claimants still entitled to compensation.

Ohio and Oregon are examples of States which have established funds for this general purpose.

REFERENCES FOR CHAPTER 6

Section A, See *Compendium,* Chapters 4, 13, 14, 16, and 20
Section B, See *Compendium,* Chapters 4, 9, 10, 11, 13, 14, and 20
Section C, See *Compendium,* Chapters 4, 15, 16, 17, and 20

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.*