



STATE OF MAINE
WORKERS' COMPENSATION BOARD
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December 31, 2024

Senator Michael Tipping, Chair
Representative Amy Roeder, Chair
Joint Standing Committee on Labor
100 State House Station
Augusta, ME 04333-0100

Re: Resolves 2023, c. 139; December Update

Resolves 2023, c. 139 requires that the Workers' Compensation Board (the "Board") include information about reports it has considered. This update focuses on one such report: The Report of the National Commission on State Workmen's Compensation Laws, July 1972 ("Report of the National Commission"). The Board considered this report because it identified benchmarks that, for fifty years, have been used to assess state workers' compensation systems.

I. The National Commission on State Workmen's Compensation Laws

The National Commission on State Workmen's Compensation Laws (the "National Commission") was created by the Occupational Safety and Health Act of 1970. Membership included representatives from insurance companies, businesses, labor unions, business schools, the medical and legal professions, and state industrial accident commissions. The impetus for creating the National Commission was explained in the Introduction to the Report of the National Commission.

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

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

Congress went on to find, however, that

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

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

Report of the National Commission, July 1972, pp. 3-4.

The National Commission's report was submitted to the President and Congress in 1972. In its report, the National Commission identified five broad objectives for workers' compensation programs. It also made 84 recommendations, 19 of which were deemed essential, regarding what should be included in an equitable workers' compensation program.

The five broad objectives were:

- 1) Broad coverage of employees and of work-related injuries and diseases,
- 2) Substantial protection against interruption of income,
- 3) Provision of sufficient medical care and rehabilitation services,
- 4) Encouragement of safety, and,
- 5) An effective system for delivery of the benefits and services.

Report of the National Commission, July 1972, p. 15.

The 19 essential recommendations¹ were (page numbers refer to the *Report of the National Commission*):

- 2.1 (p. 45) We recommend that coverage by workmen's compensation laws be compulsory and that no waivers be permitted.
- 2.2 (p. 45) We recommend that employers not be exempted from workmen's compensation coverage because of the number of their employees.
- 2.4 (p. 46) We recommend a two-stage approach to the coverage of farmworkers. First, we recommend that as of July 1, 1973, each agriculture employer who has an annual payroll that in total exceeds \$1,000 be required to provide workmen's compensation coverage to all of his employees. The coverage requirement could be based on the payroll in the preceding year. As a second stage, we recommend that, as of July 1, 1975, farm workers be covered on the same basis as all other employees.

¹ The full list of recommendations is included in Appendix A.

- 2.5 (p. 47) We recommend that as of July 1, 1975, household workers and all casual workers be covered under workmen's compensation at least to the extent they are covered by Social Security.
- 2.6 (p. 47) We recommend that workmen's compensation coverage be mandatory for all government employees.
- 2.7 (p. 47) We recommend that there be no exemptions for any class of employees, such as professional athletes or employees of charitable organizations.
- 2.11 (p. 48) We recommend that an employee or his survivor be given the choice of filing a workmen's compensation claim in the State where the injury or death occurred, or where the employment was principally localized, or where the employee was hired.
- 2.13 (p. 50) We recommend that all States provide full coverage for work-related diseases.
- 3.7 (p. 60) We recommend that, subject to the State's maximum weekly benefit, temporary total disability benefits be at least $66 \frac{2}{3}$ percent of the worker's gross weekly wage.
- 3.8 (p. 62) We recommend that as of July 1, 1973, the maximum weekly benefit for temporary total disability be at least $66 \frac{2}{3}$ percent of the State's average weekly wage, and that as of July 1 1975, the maximum be at least 100 percent of the State's average weekly wage.
- 3.11 (pp 63-64) We recommend that the definition of permanent total disability used in most States be retained. However, in those few States which permit the payment of permanent total disability benefits to workers who retain substantial earning capacity, we recommend that our benefit proposals be applicable only to those cases which meet the test of permanent total disability used in most States.
- 3.12 (p. 64) We recommend that, subject to the State's maximum weekly benefit, permanent total disability benefits be at least $66 \frac{2}{3}$ percent of the worker's gross weekly wage.
- 3.15 (p. 64) We recommend that as of July 1, 1973, the maximum weekly benefit for permanent total disability be at least $66 \frac{2}{3}$ percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.
- 3.17 (p. 65) We recommend that total disability benefits be paid for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time.
- 3.21 (p. 71) We recommend that, subject to the State's maximum weekly benefit, death benefits be at least $66 \frac{2}{3}$ percent of the worker's gross weekly wage.

- 3.23 (p. 71) We recommend that as of July 1, 1973, the maximum weekly death benefit be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.
- 3.25 (p. 72) We recommend that death benefits be paid to a widow or widower for life or until remarriage, and in the event of remarriage we recommend that two years' benefits be paid in a lump sum to the widow or widower. We also recommend that benefits for a dependent child be continued at least until the child reaches 18, or beyond such age if actually dependent, or at least until age 25 if enrolled as a full-time student in any accredited educational institution.
- 4.2 (p. 80) We recommend there be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment.
- 4.4 (p. 80) We recommend that the right to medical and physical rehabilitation benefits not terminate by the mere passage of time.

Ultimately, the National Commission reported:

The inescapable conclusion is that State workmen's compensation laws in general are inadequate and inequitable. While several States have good programs, and while medical care and some other aspects of workmen's compensation are commendable in most States, the strong points are too often matched by weak.

Report of the National Commission, July 1972, p. 119.

The Report of the National Commission did not contain a breakdown by state of compliance with the essential recommendations. It did include a state-by-state cost impact analysis performed by the National Council on Compensation Insurance. The estimate was published in Table B.1 (*Report of the National Commission, July 1972, pp. 143-144*). As explained by the National Commission:

Table B.1 contains estimates by the National Council on Compensation Insurance of incorporating the recommendations of the National Commission on State Workmen's Compensation Laws into the laws in effect on January 1, 1972, in each of the 50 States and the District of Columbia.

* * * * *

Table B.1 presents the National Council's estimates of incorporating our recommendations into the January 1, 1972, law present in each State. For example, if all of our Chapter 3 benefit recommendations for 1973 were incorporated into the 1972 Alabama law, insurance rates would increase by 48.2 percent.

Report of the National Commission, July 1972, p. 141.

The chart below incorporates the information in Table B.1 of the *Report of the National Commission*. According to this chart, Maine would have experienced one of the smallest cost impacts (in some cases it would have reduced costs) of adopting the National Commission’s recommendations. It appears, then, that the National Commission would have identified Maine as jurisdiction with a “good program” that met most of the essential recommendations recommended by the Commission.

JURISDICTION	All Recommendations		Essential Recommendations	
	With 1973 maximum weekly benefit	With 1975 maximum weekly benefit	With 1973 maximum weekly benefit	With 1975 maximum weekly benefit
Alabama	48.2	64.2	37.8	48.6
Alaska	64.7	80	35.8	44.5
Arizona	1.8	7.1	-1.5	2.4
Arkansas	19.1	30.1	13.6	21.3
California	22.1	30.2	13.6	19.2
Colorado	36.9	50.5	25.6	34.6
Connecticut	24.6	33.5	-0.4	4.5
Delaware	38.4	51.9	28.4	37.1
Dist. of Columbia	24	34.2	17.8	25
Florida	32.7	43.5	24	32
Georgia	51.4	67	39.5	49.9
Hawaii	8.8	16.9	3.2	9.1
Idaho	11.5	20.9	8.3	15.2
Illinois	21.1	26.3	10.1	17.3
Indiana	37.3	50.3	26.4	35.3
Iowa	36.4	48.7	27.7	36
Kansas	47.2	61.1	38.4	48.6
Kentucky	46.5	62	31.2	42.3
Louisiana	64.9	80.4	48.9	60.1
Maine	-9.8	-2.4	0.5	7.7
Maryland	18.6	27.6	13.5	20.7
Massachusetts	8.8	17.9	4.2	11.3
Michigan	24.3	34.8	17.1	25.1
Minnesota	21.4	32.3	14.7	22.7
Mississippi	48.3	63.8	40.7	51.2

Missouri	40	52	33.6	42.6
Montana	58.9	81.7	49.1	62.4
Nebraska	20.6	33.2	11.7	19.9
Nevada	17.9	25.4	2.4	10
New Hampshire	7.2	16.8	2.8	10.3
New Jersey	11.1	32	3.6	20.6
New Mexico	47.2	62.2	32.5	42
New York	19.7	28.2	12.3	18.6
North Carolina	30	42	27.9	36.8
North Dakota	34.5	51.6	28.4	39.1
Ohio	54.1	72	14.9	25.7
Oklahoma	53.3	67.8	42.8	53.1
Oregon	25.7	36.7	11.7	19.2
Pennsylvania	44	60.4	27.4	37.8
Rhode Island	10.1	16.7	6.3	11.8
South Carolina	33.2	45.1	26.6	35.2
South Dakota	33.3	48.5	27.4	38.1
Tennessee	30.7	42.5	23.4	31.8
Texas	50	64.8	38.3	48.9
Utah	42.2	56.8	31.4	40.3
Vermont	19.8	28.6	13.7	20
Virginia	35.5	48.1	24	32.4
Washington	22.6	33.1	-0.4	6.5
West Virginia	21	35.6	16.4	27.9
Wisconsin	12.9	21.3	8.5	14.8
Wyoming	60	80.8	49.4	61.9
AVERAGE	31.07	43.46	21.28	29.99

II. Compliance with the 19 Essential Recommendations

Since 1972, the National Commission’s report and its 19 essential recommendations have been an important part of discussions about the adequacy of state workers’ compensation systems. For example, in 2001, the Office of Workers’ Compensation Programs with the U.S. Department of Labor Employment Standards Administration compared state workers’ compensation systems to the 19 essential recommendations. The following information is from Table 1 of that report. The highest score a jurisdiction could have achieved was 19, which meant the jurisdiction would have adopted all essential recommendations. Maine scored 12.75 – just below 12.88, the average for all jurisdictions.

STATE	TOTAL	COVERAGE	BENEFITS	MEDICAL
Alabama	13	4	7	2
Alaska	13.25	3.5	7.75	2
Arizona	12	5.5	4.5	2
Arkansas	8.5	2.5	5	1
California	12	6	5	1
Colorado	13.25	5.5	5.75	2
Connecticut	14	3.5	8.5	2
Delaware	12	4	6	2
Dist. of Columbia	15.75	6	7.75	2
Florida	11	3.5	7.5	0
Georgia	9.75	2.5	5.25	2
Hawaii	14.75	6	7.75	1
Idaho	12	6	4	2
Illinois	15	4	9	2
Indiana	11.5	5	4.5	2
Iowa	15.5	4.5	9	2
Kansas	12	5.5	5.5	1
Kentucky	14.25	5.5	6.75	2
Louisiana	10.25	3.5	4.75	2
Maine	12.75	4.5	7.25	1
Maryland	14.25	3.5	8.75	2
Massachusetts	12.75	4	7.75	2
Michigan	9.75	2.5	5.25	2
Minnesota	12.5	4	6.5	2
Mississippi	7.25	2	3.25	2
Missouri	14.75	5	8.75	1
Montana	12.75	4.5	8.25	1
Nebraska	16.5	5.5	9	2
Nevada	14.75	4	8.75	2
New Hampshire	15.75	8	5.75	2
New Jersey	10.5	7	3.5	0
New Mexico	14	3.5	8.5	2
New York	10.75	3	5.75	2
North Carolina	13.75	3.5	8.25	2
North Dakota	14.5	4	8.5	2
Ohio	14.5	4.5	9	1
Oklahoma	14.75	4	8.75	2

Oregon	14.75	5	7.75	2
Pennsylvania	13.75	4	7.75	2
Rhode Island	13	2.5	8.5	2
South Carolina	13	3.5	7.5	2
South Dakota	13.25	2.5	8.75	2
Tennessee	12	3.5	6.5	2
Texas	10.5	2.5	6	2
Utah	12	5	5	2
Vermont	15	4.5	8.5	2
Virginia	11.75	1.5	8.25	2
Washington	13.5	6	5.5	2
West Virginia	14.75	4	8.75	2
Wisconsin	15	5	8	2
Wyoming	8.25	3	3.25	2
AVERAGE	12.88	4.24	6.92	1.76

The essential recommendations were referenced by the Department of Labor again in 2016. The 2016 analysis included three years, 1972, 1980 and 2004. According to this chart, in 1972, the national average was 6.79 and score was 9. In 1980, the national average was 12.1 and Maine’s score was 13.5. In 2004, the national average was 12.85 and Maine’s score was 10.75.

STATE	1972	1980	2004
Alabama	2	9	13
Alaska	5.5	14	14.25
Arizona	7.5	11.5	13
Arkansas	2.5	7.5	7.5
California	7	12	12
Colorado	10	16	12.75
Connecticut	10.5	13.75	14
Delaware	8	11	12
Dist. of Columbia	11	14	15.75
Florida	5	10.5	9.75
Georgia	5	9.5	8.75
Hawaii	12	14.5	14.75
Idaho	9	9	12
Illinois	4	14	15
Indiana	7	11	11.5
Iowa	8.5	14.5	15.5

Kansas	1	9.5	12.5
Kentucky	6	11.5	14.25
Louisiana	1.5	11.25	10.25
Maine	9	13.5	10.75
Maryland	8.5	14.25	14.25
Massachusetts	6.5	11.5	12.75
Michigan	11	10	9.75
Minnesota	6.75	12.75	9.5
Mississippi	7	7	7.25
Missouri	6	10.75	13.75
Montana	3	15.5	12.75
Nebraska	10.25	13.5	17
Nevada	3	14	14.75
New Hampshire	11.75	18.5	15.75
New Jersey	10.5	10.5	12.5
New Mexico	2	12.5	14
New York	9	10	10.75
North Carolina	3	12.5	14
North Dakota	8.75	13.75	14.5
Ohio	8.5	16.5	15.5
Oklahoma	4.5	9.75	13.75
Oregon	10.5	13.5	15.75
Pennsylvania	8	13	13.75
Rhode Island	10	13.5	14
South Carolina	3	11	13
South Dakota	6.5	13.25	13.25
Tennessee	2	8.5	12
Texas	4.5	9.5	12.5
Utah	8	12	12
Vermont	5	13.75	15
Virginia	3.5	10.5	10.75
Washington	10	9	13.75
West Virginia	6	14.75	13.75
Wisconsin	10.5	15	15
Wyoming	7	9	9.25
AVERAGE	6.79	12.10	12.85

These charts suggest that, as measured by the National Commission’s 19 essential recommendations, Maine was above average in terms of compliance until 2004, when it fell below the national average.

The Board created the following chart to compare Maine’s current Act to the 19 essential recommendations. It uses the 2001 formulation (which subdivided recommendation 2.1 into two parts and 3.25 into 4 parts) with two exceptions. Recommendations 4.2 and 4.4 have been subdivided into two sections to separately account for medical and rehabilitation benefits.

	Recommendation Text	Compliance (as of 1975 Recommendation)	Statutory citation (if applicable)	Score
2.1 (a)	coverage by workmen's compensation laws be compulsory	Y	§ 401(1)	0.5
2.1(b)	no waivers be permitted	N	§102 (11)(A)(3), (4), (5), (6) & § 102(11)(B)	
2.2	employers not be exempted from workmen's compensation coverage because of the number of their employees	Y		1
2.4	a two-stage approach to the coverage of farmworkers. First, we recommend that as of July 1, 1973, each agriculture employer who has an annual payroll that in total exceeds \$1,000 be required to provide workmen's compensation coverage to all of his employees. The coverage requirement could be based on the payroll in the preceding year. As a second stage, we recommend that, as of July 1, 1975, farm workers be covered on the same basis as all other employees.	N	§ 401 (1)(B) & (C)	
2.5	as of July 1, 1975, household workers and all casual workers be covered under workmen's compensation at least to the extent they are covered by Social Security.	N	§ 401 (1)(A)	
2.6	workmen's compensation coverage be mandatory for all government employees	Y	§102 (11)(A)	1
2.7	no exemptions for any class of employees, such as professional athletes or employees of charitable organizations	Y	§102 (11)(A)(3) requires elected or appointed executive officers to specifically included	1
2.11	an employee or his survivor be given the choice of filing a workmen's compensation claim in the State where the injury or death occurred, or' where the employment was principally localized, or where the employee was hired	Y	<i>Cavers v. Houston McLane Co.</i> , 2008 ME 164	1
2.13	all States provide full coverage for work-related diseases	Y		1
3.7	subject to the State's maximum weekly benefit, temporary total disability benefits be at least 66 2/3 percent of the worker's gross weekly wage	Y	§§ 212 (1-A), 213(1)(C) & 215 (1-A)	1
3.8	as of July 1, 1973, the maximum weekly benefit for temporary total disability be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1 1975, the maximum beat least 100 percent of the State's average weekly wage	Y	§ 211	1
3.11	the definition of permanent total disability used in most States be retained. However, in those few States which permit the payment of permanent total disability benefits to workers who retain substantial earning capacity, we recommend that our benefit proposals be applicable only to those cases which meet the test of permanent total disability used in most States ²	N		
3.12	subject to the State's maximum weekly benefit, permanent total disability benefits be at least 66 2/3 percent of the worker's gross weekly wage	Y	§ 212	1
3.15	as of July 1, 1973, the maximum weekly benefit for permanent total disability be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage	Y	§ 211	1

² In its report, the National Commission defined permanent total disability benefits as follows: “Permanent total disability benefits should be paid to a worker who experiences a work-related injury or disease which leads to a permanent impairment that makes it impossible for him to engage in any substantial gainful activity for a prolonged period. If a worker earns income subsequent to his injury, he may be eligible for the permanent partial disability benefits described later in this chapter. Our recommendations for improvements in the level and extent of permanent total disability benefits assume that the improvements will be applied only to those who truly are permanently and totally disabled. A few jurisdictions, however, use definitions of permanent total disability which permit such awards to impaired workers who retain substantial wage earning capacity.” *Report of the National Commission*, July 1972, p. 63.

3.17	total disability benefits be paid for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time	Y	§ 212	1
3.21	subject to the State's maximum weekly benefit, death benefits be at least 66 2/3 percent of the worker's gross weekly wage	Y	§ 215	1
3.23	as of July 1, 1973, the maximum weekly death benefit be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage	Y	§ 211	1
3.25(a)	death benefits be paid to a widow or widower for life or until remarriage	N	§ 215	
3.25(b)	in the event of remarriage we recommend that two years' benefits be paid in a lump sum to the widow or widower	N		
3.25(c)	death benefits for a dependent child be continued at least until the child reaches 18, or beyond such age if actually dependent	Y	§ 215 (although if self-supporting for 6-months after age 16 benefits terminate)	0.25
3.25(d)	death benefits for a dependent child be continued at least until age 25 if enrolled as a full-time student in any accredited educational institution	N	§ 102(8)(C)	
4.2 (a)	no statutory limits of time or dollar amount for medical care for any work-related impairment	Y		0.5
4.2 (b)	no statutory limits of time or dollar amount for physical rehabilitation services for any work-related impairment	N	§ 217 (5)	
4.4 (a)	the right to medical benefits not terminate by the mere passage of time	Y	(although subject to statute of limitations § 306)	0.5
4.4 (b)	the right to physical rehabilitation benefits not terminate by the mere passage of time	Y	(although subject to statute of limitations § 306)	0.5

Maine's score, in this chart, is 14.25. Since the Board created this chart, a national average is not available for comparison.

III. Conclusion

In testimony before the U.S. House of Representatives in 2010, John F. Burton, Jr., the Chair of the National Commission, provided a caveat regarding the 19 essential recommendations:

The National Commission's 1972 *Report* was critical of state workers' compensation programs, describing them as "in general neither adequate nor equitable." The National Commission made 84 recommendations, and described 19 of the recommendations as essential. The reforms in state workers' compensation programs in the next few years were impressive: the average state compliance score with the 19 essential recommendations increased from 6.9 in 1972 to 11.1 in 1976 to 12.0 in 1980 (Robinson et al. 1987: Table 1). But reform of most state workers' compensation laws then slowed, so that by 2004 (when the U.S. Department of Labor stopped monitoring the states), on average states complied with only 12.8 of the 19 essential recommendations of the National Commission (Whittington 2004).

At the risk of oversimplifying the almost 40 years since the National Commission submitted its *Report*, I would characterize the 1970s as the Reformation Period, the 1980s as the Relative Tranquility Period, and the years since 1990 as the Counter Reformation Period. The extent of the deterioration in adequacy and equity of state workers' compensation programs in the last 20 years is not reflected in compliance scores with the essential recommendations of the National

Commission. Rather, the slippage has occurred in other aspects of the program. A number of states changed their workers' compensation laws during the 1990s to reduce eligibility for benefits (Spieler and Burton 1998). These provisions included limits on the compensability of particular medical diagnoses, such as stress claims and carpal tunnel syndrome; limits on coverage when the injury involved the aggravation of a preexisting condition; restrictions on the compensability of permanent total disability cases; and changes in procedural rules and evidentiary standards, such as the requirement that medical conditions be documented by "objective medical" evidence.

Testimony of John F. Burton, Jr., November 17, 2010. Available at: <https://democrats-edworkforce.house.gov/imo/media/doc/documents/111/pdf/testimony/20101117JohnBurtonTestimony.pdf>

Maine's system has met, and continues to meet, many of the 19 essential recommendations contained in the National Commission's 1972 Report. The Board will continue to study these, and other issues, as it continues its work on this Resolve.

Submitted by:

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John C. Rohde
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Cc: Senator Dick Bradstreet
Senator Joseph Rafferty
Representative Marshall Archer
Representative Matthew Beck
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Representative Gary Drinkwater
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Representative Laurel Libby
Representative Rafael Macias
Representative Charles Skold

Representative Mike Soboleski
Steven Langlin - OPLA Analyst
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APPENDIX A

NOTE

All recommendations from the July, 1972 Report of the National Commission on State Workmen's [sic] Compensation Laws are included below. The 19 Essential recommendations are grouped together in the Introduction (as they were set forth in the original report).

Subsequent recommendations are organized by the chapter from which they are taken (along with the page number from the report).

Essential recommendations are in regular type with an asterisk, other recommendations are denoted by italics.

INTRODUCTION

(p. 26) "The essential elements of workmen's compensation recommended by this Commission are:

- Compulsory Coverage (R2.1)
- No Occupational or Numerical Exemptions to Coverage (R2.2, R2.4, R2.5, R2.6 and R2.7)
- Full Coverage of Work-Related Diseases (R2.13)
- Full Medical and Physical Rehabilitation Services without Arbitrary Limits (R4.2 and 4.4)
- Employee's Choice of Jurisdiction for Filing Interstate Claims (R2.11)
- Adequate Weekly Cash Benefits for Temporary Total, Permanent Total and Death Cases (R3.7, R3.8, R3.11, R3.12, R3.15, R3.21, R3.23)
- No Arbitrary Limits on Duration or Sum of Benefits (R3.17, R3.25)"

CHAPTER 2

***2.1** (p. 45) We recommend that coverage by workmen's compensation laws be compulsory and that no waivers be permitted.

***2.2** (p. 45) We recommend that employers not be exempted from workmen's compensation coverage because of the number of their employees.

2.3 (p. 46) *We recommend that . . . coverage be extended to all occupations and industries, without regard to the degree of hazard of the occupation or industry*

***2.4** (p. 46) We recommend a two-stage approach to the coverage of farmworkers. First, we recommend that as of July 1, 1973, each agriculture employer who has an annual payroll that in total exceeds \$1,000 be required to provide workmen's compensation coverage to all of his employees. The coverage requirement could be based on the payroll in the preceding year. As a second stage, we recommend that, as of July 1, 1975, farm workers be covered on the same basis as all other employees.

***2.5** (p. 47) We recommend that as of July 1, 1975, household workers and all casual workers be covered under workmen's compensation at least to the extent they are covered by Social Security.

***2.6** (p. 47) We recommend that workmen's compensation coverage be mandatory for all government employees.

***2.7** (p. 47) We recommend that there be no exemptions for any class of employees, such as professional athletes or employees of charitable organizations.

2.8 (p. 48) *We recommend the term "employee" be defined as broadly as possible*

2.9 (p. 48) *We recommend that workers' compensation be made available on an optional basis for employers, partners and self-employed persons*

2.10 (p. 48) *We recommend that workers be eligible for WC benefits from the first moment of their employment*

***2.11** (p. 48) We recommend that an employee or his survivor be given the choice of filing a workmen's compensation claim in the State where the injury or death occurred, or where the employment was principally localized, or where the employee was hired.

2.12 (p. 49) *We recommend that the "accident" requirement be dropped as a test for compensability*

***2.13** (p. 50) We recommend that all States provide full coverage for work-related diseases.

2.14 (p. 50) We recommend that the “arising out of and in the course of the employment” test be used to determine coverage of injuries and diseases

2.15 (p. 51) We recommend that the etiology of a disease, being a medical question, be determined by a disability evaluation unit under control and supervision of the WC agency

2.16 (p. 51) We further recommend that for deaths and impairments apparently caused by a combination of work and non-work sources, issues of causation be determined by the disability evaluation unit

2.17 (p. 51) We recommend that full WC benefits be paid and impairment or death resulting from both work-related and non-work causes if work-related factor was a significant cause of the impairment or death

2.18 (p. 52) We recommend that WC benefits be the exclusive liability of an employer when an employee is impaired or dies because of a work-related injury or disease

2.19 (p. 52) We recommend that suits by employees against negligent third parties generally be permitted. Immunity from negligence actions should be extended to any third party performing the normal functions of the employer

CHAPTER 3

3.1 (p 56) We recommend that subject to the state’s maximum weekly benefit, a worker’s weekly benefit be at least 80% of spendable weekly earnings

3.2 (p 57) We recommend that subject to the state’s maximum weekly benefit, a worker’s weekly benefit be at least 66 2/3 percent of the gross weekly wage

3.3 (p 58) We recommend that if our recommended benefit increases for WC are adopted, the benefits of other public insurance programs should be coordinated with WC benefits. In general, WC should be the primary source of benefits for work-related injuries and diseases

3.4 (p 58) We recommend that WC benefits not be reduced by the amount or payments from a welfare program or other program based on need

3.5 (p 59) We recommend that the waiting period for benefits be no more than 3 days, and that a period of no more than 14 days be required to qualify for retroactive benefits for days lost

3.6 (p 60) We recommend that subject to the state’s maximum weekly benefit TTD benefits be at least 80% of the worker’s spendable weekly earnings. This formula should be used as soon as feasible or in any case as soon as the maximum weekly benefit in a state exceeds 100% of the state’s AWW

**3.7 (p. 60) We recommend that, subject to the State's maximum weekly benefit, temporary total disability benefits be at least 66 2/3 percent of the worker's gross weekly wage.*

***3.8** (p. 62) We recommend that as of July 1, 1973, the maximum weekly benefit for temporary total disability be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1 1975, the maximum beat least 100 percent of the State's average weekly wage.

3.9 (p 62) *We recommend that as of July 1, 1977, the maximum weekly benefit for temporary total disability be at least 133 1/3 percent of the State's average weekly wage; as of July 1, 1979, the maximum should be at least 166 2/3 of the State's average weekly wage; and that after July 1 1981, the maximum should be at least 200 percent of the State's average weekly wage*

3.10 (p 62) *We recommend that for all maximum weekly benefits the maximum be linked to the SAWW for the latest available year as determined by the agency administering the State employment security program*

***3.11** (pp 63-64) We recommend that the definition of permanent total disability used in most States be retained. However, in those few States which permit the payment of permanent total disability benefits to workers who retain substantial earning capacity, we recommend that our benefit proposals be applicable only to those cases which meet the test of permanent total disability used in most States.

***3.12** (p. 64) We recommend that, subject to the State's maximum weekly benefit, permanent total disability benefits be at least 66 2/3 percent of the worker's gross weekly wage.

3.14 (p 64) *We recommend that beneficiaries in PTD cases have their benefits increased through time in the same proportion as increases in the SAWW*

***3.15** (p. 64) We recommend that as of July 1, 1973, the maximum weekly benefit for permanent total disability be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.

3.16 (p 64-65) *We recommend that as of July 1, 1977, the maximum weekly benefit for permanent total disability be at least 133 1/3 percent of the State's average weekly wage; as of July 1, 1979, the maximum should be at least 166 2/3 of the State's average weekly wage; and that after July 1, 1981, the maximum should be at least 200 percent of the State's average weekly wage*

***3.17** (p. 65) We recommend that total disability benefits be paid for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time.

3.18 (p 66) *We recommend that provided our other recommendations for permanently total disability benefits are adopted by the States, the Disability Insurance program of Social Security continue to reduce payments for those workers receiving WC benefits*

3.19 (p 67) *We recommend that each State undertake a thorough examination of PPD benefits and that the Federal government sponsor a comprehensive review of present and potential approaches to PPD*

3.20 (p 71) We recommend that, subject to the State's maximum weekly benefit, death benefits be at least 80 percent of the worker's spendable weekly earnings. This formula should be used as soon as possible or in any case as soon as the maximum weekly benefit in a State exceeds 100% of SAWW

***3.21** (p. 71) We recommend that, subject to the State's maximum weekly benefit, death benefits be at least 66 2/3 percent of the worker's gross weekly wage.

3.22 (p 71) We recommend that beneficiaries in death cases have their benefits increased through time by same proportion as increases in the SAWW

***3.23** (p. 71) We recommend that as of July 1, 1973, the maximum weekly death benefit be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.

3.24 (p 72) We recommend that as of July 1, 1977, the maximum weekly death benefit be at least 133 1/3 percent of the State's average weekly wage; as of July 1, 1979, the maximum should be at least 166 2/3 of the State's average weekly wage; and that after July 1, 1981, the maximum should be at least 200 percent of the State's average weekly wage

***3.25** (p. 72) We recommend that death benefits be paid to a widow or widower for life or until remarriage, and in the event of remarriage we recommend that two years' benefits be paid in a lump sum to the widow or widower. We also recommend that benefits for a dependent child be continued at least until the child reaches 18, or beyond such age if actually dependent, or at least until age 25 if enrolled as a full-time student in any accredited educational institution.

3.26 (p 72) We recommend that the minimum weekly benefit for death cases be at least 50% of the SAWW

3.27 (p 73) We recommend that WC death benefits be reduced by the amount of any payments received from Soc Sec by the deceased worker's family

CHAPTER 4

4.1 (p 79) We recommend that the worker be permitted the initial selection of physician either from among all licensed physicians in the State or from a panel of physicians selected or approved by the WC agency

***4.2** (p. 80) We recommend there be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment.

4.3 (p 80) We recommend that the WC 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

***4.4** (p. 80) We recommend that the right to medical and physical rehabilitation benefits not terminate by the mere passage of time.

4.5 (p 80) *We recommend that each WC agency establish a medical rehabilitation division with authority to effectively supervise medical care and rehabilitation services*

4.6 (p 81) *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*

4.7 (p 82) *We recommend that the Med-rehab division be given the specific responsibility of assuring that every worker who could benefit from VR services be offered those services*

4.8 (p 82) *We recommend that the employer pay all costs of VR necessary to return a worker to suitable employment and authorized by the WC agency*

4.9 (p 82) *We recommend that the WC agency be authorized to provide special maintenance benefits for a worker during the period of rehabilitation. The maintenance benefits would be in addition to the worker's other benefits*

4.10 (p 84) *We recommend that each state establish a second injury fund with broad coverage of pre-existing impairments*

4.11 (p 84) *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*

4.12 (p 84) *We recommend that WC 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"*

CHAPTER 5

5.1 (p 93) *We recommend that a standard workers' compensation reporting system be devised which will mesh with the forms required by the OSHAct of 1970 and permit the exchange of information among federal and state safety agencies and federal and state WC agencies*

5.2 (p 93) *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.*

5.3 (p 98) We recommend that subject to sound actuarial standards, the experience rating principle be extended to as many employers as possible

5.4 (p 98) 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 classification be more equitably reflected in the employers insurance charges

CHAPTER 6

6.1 (p 101) We recommend that each state utilize a workers compensation agency to fulfill administrative obligations of modern WC program

6.2 (p 103) 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.

6.3 (p103) We recommend that member of the appeals board or commission be appointed for substantial terms

6.4 (p 103) We recommend that agency employees be given civil service protection

6.5 (p 103) 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.

6.6 (p 103) We recommend that an advisory committee in each state conduct a thorough examination of the State's WC law in light of 1972 Report

6.7 (p 104) We recommend that the WC agency be adequately financed by assessment on insurance premiums or benefits paid plus equivalent assessment against self-insureds

6.8 (p 104) We recommend that the WC agency develop a continuing program to inform employees and employers about the salient features of the State's WC system

6.9 (p 105) 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 .

6.10 (p 105) *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*

6.11 (p 105) *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.*

6.12 (p 106) *We recommend that the administrator of the WC agency have discretion under rulemaking authority to decide which reports are needed in uncontested cases*

6.13 (p 107) *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, because of the work-related impairment. If benefits have previously been provided, the claim period should begin on the date benefits were last furnished.*

6.14 (p 108) *We recommend that where there is an appellate level within the WC agency, the decisions of the WC agency be reviewed by the courts only on questions of law.*

6.15 (p 109) *We recommend that attorney fees for all parties be reported for each case and that the fees be regulated under the rule making authority of the WC administrator.*

6.16 (p 110) *We recommend that the WC agency permit compromise and release agreements only rarely and only after a conference or hearing before the WC agency and approval by agency*

6.17 (p 110) *We recommend that the agency be particularly reluctant to permit compromise and release agreements which terminate medical and rehabilitation benefits*

6.18 (p 110) *We recommend that lump sum payments even in the absence of a compromise and release agreement only with agency approval*

6.19 (p 111) *We recommend that the administrator have the authority to prescribe forms which must be submitted by employers, employees, attorneys, doctors, carriers and other parties involved in the WC delivery system*

6.20 (p 113) *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*

6.21 (p 114) *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.*

6.22 (p 114) *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.*